NOVEMBER 2022

Submissions report: Standard conditions for financial institution licences

Collation of written feedback received as part of the FMA's public consultation on the proposed standard conditions for financial institution licences

FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TĀTAI HOKOHOKO

Introduction

We would like to thank all submitters for their feedback on our consultation on the proposed standard conditions for financial institution licences. We received 13 written submissions from a range of stakeholders including industry bodies, banks, insurers and one law firm. We appreciate the points raised and the effort put into each submission.

This document contains a collation of the written submissions. We have withheld some information in accordance with the Official Information Act 1982 and the Privacy Act 2020. We have also published a summary report setting out the key themes raised in the submissions and our response.

Submissions

1. AIA NZ
2. American Income Life Insurance Company
3. ANZ
4. BNZ
5. CUBS NZ
6. Dentons Kensington Swan
7. Financial Advice New Zealand
8. Financial Services Council NZ
9. Financial Services Federation
10. Insurance Council of New Zealand
11. New Zealand Automobile Association
12. New Zealand Bankers' Association
13. UniMed

AIA New Zealand

AIA House, 74 Taharoto Road,
Takapuna, 0622
Private Bag 300981, Albany,
Auckland 0752
T: +64 9 488 8800
F: +64 9 488 8810
aia.co.nz

7 September 2022

Financial Markets Authority
Level 5, Ernst & Young Building
2 Takutai Square
Britomart
Auckland 1010

By email: consultation@fma.govt.nz [redacted]

SUBMISSION ON THE PROPOSED STANDARD CONDITIONS FOR FINANCIAL INSTITUTION LICENCES

This submission is made on behalf of AIA New Zealand Limited and its related entities (together, "**AIA NZ**"). We are pleased to have the opportunity to submit our views on the proposed standard conditions for financial institution licences consultation paper dated July 2022 (the "**Consultation Document**"), under the Financial Markets (Conduct of Institutions) Amendment Act 2022 ("**CoFI Act**").

About AIA NZ

AIA NZ is a member of the AIA Group, which comprises the largest independent publicly listed pan-Asian life insurance group. It has a presence in 18 markets in Asia-Pacific and is listed on the Main Board of The Stock Exchange of Hong Kong. It is a market leader in the Asia-Pacific region (excluding Japan) based on life insurance premiums and holds leading positions across the majority of its markets.

Established in New Zealand in 1981, AIA NZ is New Zealand's largest life insurer and has been in business in New Zealand for over 40 years. AIA NZ's vision is to champion New Zealand to be the healthiest and best protected nation in the world.

AIA NZ offers a range of life and health insurance products that meet the needs of over 450,000 New Zealanders. AIA NZ is committed to an operating philosophy of *Doing the Right Thing, in the Right Way, with the Right People*. AIA NZ launched the New Zealand Conduct Framework in January 2019 to help ensure the consistent delivery of good customer outcomes across the organisation.

AIA NZ is also a prominent member of the Financial Services Council ("**FSC**").

Key submission points

AIA NZ continues to support the conduct regime that has been formalised under the CoFI Act. We also support the proposed standard conditions as set out in the Consultation Document. Our submission

focuses on specific points of feedback regarding their implementation and drafting. Our submission is set out in the attached Feedback Form. In summary, the key points are:

- Taking learnings from the implementation of the financial advice provider ("**FAP**") regime under the Financial Markets Conduct Act 2013 ("**FMCA**"), as amended by the Financial Services Legislation Amendment Act 2019, the FMA should aim to publish its Financial Institution Licence Application Guide ("**Application Guide**") as soon as possible and well in advance of the commencement of the CoFI Act licensing window. This will allow Financial Institutions (**FIs**) sufficient time to work through the requirements and avoid the delayed licence applications currently being observed under the FAP regime.

- If the FMA intends to set target dates for certain FIs to submit their conduct licence applications prior to the expiry of the licensing window, as was seen with class 2 and 3 FAP licences, we recommend that these expectations are indicated at the same time the Application Guide is published to allow adequate time for planning and preparation.

- We question the value of including standard conditions relating to outsourcing and business continuity planning ("**BCP**") given FIs will already be subject to substantial regulation (for example, under prudential regulation by the Reserve Bank of New Zealand (**RBNZ**)). We recommend that the FMA consider whether such standards could be factored into FIs' regulatory returns (condition 3) or form part of material change notifications (condition 2), as an example. If such standards are to remain, their scope should be narrowed to focus on outsourcing arrangements or technology systems that, if they were to fail, would have a significant impact on FIs' ability to deliver fair customer outcomes.

- The extraction and provision of information for the regulatory return could be labour intensive, costly, technically challenging and require a long lead time to deliver (especially for the first return), depending on the complexity of the requirements. We encourage the FMA to carefully consider what information is necessary to provide effective oversight over FIs' fair conduct programmes and allow as much lead-in time as possible for meeting these requirements.

- We agree that record keeping is an important part of good conduct and that having and maintaining records should be a key part of fair conduct programmes. However, we think that the current drafting of standard condition 6 is very broad and could encompass all records of an FI. Accordingly, the FMA should consider applying a materiality threshold to the record keeping requirements and providing FIs with additional time to supply records when requested by the FMA. We recommend a minimum of 20 working days, with the ability to request additional time if needed.

AIA NZ also contributed to, and fully supports, the submission from the FSC.

Confidentiality / release of information

This submission contains some information that is confidential, as identified in our response. We kindly request that if a request under the Official Information Act 1982 for this submission is received, the indicated confidential information is withheld.

We would be pleased to discuss any questions you have on this submission and would welcome the opportunity to collaborate or consult further with the FMA as it considers the next steps.

Yours sincerely

[redacted]

Feedback form

Consultation paper: Proposed standard conditions for financial institution licences

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed standard conditions for financial institution licences: [your organisation's name]' in the subject line. Thank you. **Submissions close at 5pm on Wednesday 7 September 2022.**

Date:	**7 September 2022**	Number of pages: **[5]**
Name of submitter:	[redacted]	
Company or entity:	**AIA New Zealand Limited**	
Organisation type:	**Life Insurer**	
Contact email and phone:	[redacted]	

Question number	Response
1	***Condition 1 – Ongoing requirements***
(a)	We generally support this proposed standard condition. Please see our specific comments in sections (b) and (e) below.
(b)	The true extent of any additional compliance costs that may arise from meeting this standard condition will depend on the content and expectations contained in the Application Guide. We encourage the FMA to issue the Application Guide as soon as possible and would also encourage prior consultation with the industry to ensure that compliance costs and administrative burden are minimised.
(c)	We do not think that this condition will have any other adverse impact on our business.
(d)	We do not think that this condition will create an unreasonable barrier to entering the market.
(e)	The explanatory note to this standard condition covers the ongoing requirements regarding directors, senior managers and any other relevant parties remaining fit and proper persons. We think that the reference to "any other relevant parties" needs to be removed. The definition of "relevant party" under the Financial Markets Conduct Regulations 2014 is very broad (see Regulation 189) and will bring into the regime persons who meet that definition but do not influence AIA NZ's fair conduct programme. We note that section 396(b) of the FMCA requires the FMA to be satisfied that directors and senior managers are fit and proper, but does not extend to relevant parties. We also note that all organisations captured by the CoFI Act will be subject to fit and proper requirements under other regimes (for example, prudential licensing by the RBNZ and financial advice provider licensing by the FMA). It will be important for the FMA to ensure that this standard condition does not create duplication of effort in terms of ensuring the fit and proper requirements are met across the different regimes. This could be achieved by limiting the scope of the requirement to matters that are directly relevant to the CoFI Act and fair conduct programmes. The explanatory note to this proposed standard condition states that, to comply, FIs need to "ensure you keep your policies, processes, systems and controls (***including those*** that form your fair conduct programme) up to date, and that they take into account any changes you may make to your business or service arrangements" (our emphasis added). This drafting implies that the standard condition applies wider than the fair conduct programme, which we believe is outside the scope of the standard conditions. We support the FSC submission that the

	explanatory note to this standard condition should be amended to read "You will need to ensure you keep your policies, processes, systems and controls that form your fair conduct programme up to date ...". The explanatory note (and/or the Application Guide) should clarify that where FIs under CoFI also hold FAP licences, that the CoFI licensing requirements do not overlap or duplicate FAP obligations. There is concern that the requirements to ensure compliance with fair conduct programmes will duplicate processes and controls implemented by a FAP to comply with its own requirements under the FMCA.
2	***Condition 2 – Notification of material changes***
(a)	We support the requirement for notification to only apply to a *material* change in the nature of the financial institution service, as a suitable threshold for notification. We support the proposal that this standard condition does not apply to changes in product offerings or distribution methods that do not impact the nature of an organisation's business. Please see our further comments in section (e) below.
(b)	We do not think that this condition will create any additional compliance costs for our business.
(c)	We do not think that this condition will have any other adverse impact on our business.
(d)	We do not think that this condition will create an unreasonable barrier to entering the market.
(e)	More explicit guidance should be provided on what matters will be considered "material" and, therefore, require notification. For example, the current explanatory note is not as clear as it could be as to whether an expansion by an insurer into a new product category (for example, investment management products) or an exit from a product category (for example the exit by life insurers from credit card repayment insurance products) would be considered a material change. We consider that such changes to product categories would not be a material change to the nature of an FI's service, but this should be made clear in the document. We also consider that further clarity is needed regarding the reference to moving an insurer's business into "run-off", to make it clearer that this does not include the closing of a product (whether or not this results in a pay out to or migration of customers to a substantially similar product) or ceasing to issue a type or class of product. We further consider that the notification requirement does not, and should not, apply to operational restructures (for example, internal operating models or changes in reporting line structures) which do not directly impact the fair conduct programme and/or the nature or quality of services or products delivered to customers. This should also be clarified in the document.
(f)	Compliance with this condition would be enhanced by further guidance on how the FMA defines "implementation" for the purposes of this condition.
3	***Condition 3 – Regulatory returns***
(a)	In principle we support this standard condition and appreciate the need for the FMA to be provided with timely information for it to perform its supervisory functions. Until the FMA consults on the proposed content of regulatory returns it is difficult to assess the impact of this requirement, but by analogy to the content of regulatory returns for other market service licence types, the requirements and their impact on FIs could be substantial. We encourage the FMA to consider all formal and informal mechanisms by which it and other regulators obtain data from market participants, and limits potential duplication of information provided under this standard condition when compared to the other regimes.
(b)	There is a potential that the extraction and provision of information for the regulatory return could be labour intensive, costly, technically challenging and require a long lead time to deliver

	(especially for the first return), depending on the complexity of the requirements. It may also require process changes (for example, to record reportable data using a defined methodology). Factors like the type of information, its expected format, the definitions used for requested information (for example the definition of what is considered "replacement business" often differs between insurers), the frequency of the returns and the timing of the returns around other reporting deadlines will influence the extent of the compliance cost of this standard condition.
(c)	We do not think that this condition will have any other adverse impact on our business.
(d)	We do not think that this condition will create an unreasonable barrier to entering the market.
(e)	In establishing the scope and detail of regulatory returns, the FMA should carefully consider how FIs can securely deliver such information and data especially as that information and data will likely be confidential and sensitive to customers and/or FIs. When the FMA releases further a consultation on regulatory return requirements, it should also consult on its proposed solution for secure data transfer and storage, taking into account cyber security events of recent years. Regulatory return requirements should also specifically acknowledge and address FIs' privacy obligations in respect of customers' personal information.
4	***Condition 4 - Outsourcing***
(a)	We question the value of including outsourcing and BCP standard conditions when such matters are already the subject of substantial regulation. For example, the Insurance (Prudential Supervision) Act 2010 ('**IPSA**') is currently under review, with a specific consultation on a risk-based approach to outsourcing, including business-continuity focussed outsourcing rules. The RBNZ has also issued Risk Management Programme guidance and guidelines in regard to carrying on business in a prudent manner for the insurance sector which covers both outsourcing and BCP. We therefore strongly recommend that the FMA considers whether such matters should remain solely within the remit of other regimes and works with the Council for Financial Regulators to assess whether further oversight of outsourcing and BCP from a conduct perspective is necessary. We encourage the FMA to consider whether conduct considerations for these matters can be incorporated into the other requirements, for example into the regulatory return and/or the material change requirements. If these standard conditions are to remain, the scope of these standard conditions should be limited to covering systems or processes which, if disrupted, would materially affect the continued provision of the FI's service to customers. This would ensure consistency between standard condition 4 and 5 and reduce potential compliance burden. It is also important for both standard condition 4 and 5, that the conditions are concise so that they only apply to systems or processes that "are necessary to the provision of our fair conduct programme". The use of "financial institution service" could be interpreted broadly. The scope of the standard conditions should closely mirror the core duties of FIs under the CoFI Act.
(b)	**CONFIDENTIAL** [redacted]
(c)	We strongly support the proposal that services performed by authorised bodies should not constitute an outsourcing arrangement. Many FIs, including AIA NZ, operate multiple entities as

	part of their operating structure. This means that aspects of services necessary for FIs to provide financial institution services could be carried out by an authorised body rather than the licensed FI. In our view this approach is pragmatic and proportionate as authorised bodies should be subject to sufficient oversight and control by the licensed FI. This approach also mirrors the approach taken under the FAP licensing regime.
(d)	We believe that this standard condition has the potential to increase compliance costs on FIs. While most FIs will already employ due diligence processes for most outsourcing arrangements, additional work and cost will likely be incurred in assessing whether existing arrangements meet the new standards set by the CoFI regime and closing any gaps that are identified. Additional costs may also be incurred where formal arrangements are required with related body corporates.
(e)	We do not think that this condition will have any other adverse impact on our business.
(f)	We do not think that this condition will create an unreasonable barrier to entering the market.
(g)	We have no additional comments on the proposed standard condition.
5	***Condition 5 – Business continuity and technology systems***
(a)	Consistent with standard condition 4 we consider that business continuity is already heavily regulated under other licensing regimes that apply to FIs, including FAP licencing and prudential regulation by the RBNZ. All FIs that obtain financial institution licences should, as a result of existing regulatory obligations and expectations, already have robust business continuity processes in place. We strongly encourage the FMA to consider the need for this standard condition and whether the FMA's requirements in respect of conduct concerns could be better addressed as part of other standard conditions. If this standard condition remains, we recommend the FMA ensures that these requirements align with the BCP and critical technology requirements of the RBNZ and any further requirements which may emerge following the IPSA review. For this standard condition we echo our response to question 4(a) in that the scope of this condition should be limited to technology systems which are necessary to, and have a direct impact on, the provision of fair conduct programmes.
(b)	Yes, AIA NZ has a documented BCP which covers its whole business including its insurance and financial advice provider business.
(c)	Yes, AIA NZ relies on some critical technology systems to deliver our financial institution service.
(d)	We do not think that this condition will create any additional compliance costs for our business.
(e)	We do not think that this condition will have any other adverse impact on our business.
(f)	We do not think that this condition will create an unreasonable barrier to entering the market.
(g)	We acknowledge the FMA's need to ensure the operational resilience of FIs' critical technology systems. However, we note that the licensing regime under CoFI is focused on conduct and not the operational resilience and maintenance of the banking and insurance system. These matters are dealt with by prudential regulation by the RBNZ. In addition, when there has been an issue with systems and processes which materially impact an FI's ability to deliver its services to customers, the FI's focus should be on completing necessary actions to limit harm to customers and ensuring continued fair customer outcomes. Preparing notification communications to regulators (and responding to the inevitable questions which arise in response to notification) may redirect crucial resources away from and delay completion of those critical actions. Therefore, if this standard condition is retained, we recommend extending the notification requirement to five business days. This balances the importance of timely notification to the FMA

	with the need to protect customers, their data and maintain appropriate focus on customer service. We also suggest that the FMA provide further guidance and additional practical examples of the sort of events that will and will not trigger the notification requirement, along with how those events might impact different types of FIs. For example, the outage of an FI's contact centre phone system which lasts a few hours could be an event which has a material impact for a bank, but the same outage may not have a material impact for an insurer. More guidance on notification would also provide the opportunity for the FMA to clarify that the notification requirement does not apply to planned system outages, which are required to ensure the ongoing maintenance and resilience of FIs' systems and to periodically test FIs' BCP arrangements. The explanatory note to the standard condition states that the notification applies to events which have a material adverse impact on customers. Where the event impacts customers' data privacy and confidentiality (and the incident does not otherwise trigger notification under the condition), we suggest that the materiality threshold for notification under CoFI should be the same as the materiality threshold under the Privacy Act 2020. This will provide consistency for both FIs and customers.
6	***Condition 6 – Record keeping***
(a)	We acknowledge the importance of comprehensive and effective record management. However, we do note that the breadth of the CoFI Act means that these record keeping requirements could have touch points into all aspects of an FI's business, essentially meaning all of an FI's records are covered. We suggest that the FMA consider whether a materiality threshold would be appropriate for the requirements under this standard condition Please see our specific comments in section (e) below.
(b)	Considering the breadth of the requirements, additional costs could be incurred in having to retain and ensure access to such a large range of information.
(c)	We do not think that this condition will have any other adverse impact on our business.
(d)	We do not think that this condition will create an unreasonable barrier to entering the market.
(e)	We note that the 10-working day timeframe to produce records is relatively short in the context of the currently wide breadth of records we are required to keep. We recommend that this requirement is increased to 20 working days, with the option to request a longer period from the FMA, if needed.

Feedback summary – *if you wish to highlight anything in particular*

In respect of the licencing process, we strongly recommend that the FMA applies learnings from the FAP licensing process. The FMA should provide clear guidance and early sign posting to FIs on their expectations for conduct licence applications. We note that the proposed licensing window is approximately 18 months. However, if the FMA intends to stagger the closing window for applications before the end of the period (as occurred with FAP licensing) then this should be communicated early so FIs can prepare for this.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

AMERICAN INCOME LIFE
insurance company

1200 Wooded Acres • Waco, TX 76710

September 7, 2022

Financial Markets Authority
Level 5, Ernst & Young Building
2 Takutai Square
Britomart
Auckland

By email: ***consultation@fma.govt.nz***

American Income Life Insurance Company (*AIL*) welcomes the opportunity to make submissions on the proposed standard conditions for financial institution licences as set out in the FMA's consultation paper dated July 20, 2022.

AIL is a life insurer selling mainly to communities, including lower income households and migrant workers, which have traditionally not been well-served by other insurers in New Zealand.

AIL is one of the few life insurers that specifically services this market segment in New Zealand. It focuses mainly in selling level premium term life contracts, which remain affordable to policyholders as they age, avoiding the steep premium increases of yearly renewable plans typically offered by other insurers.

AIL operates a branch in New Zealand, with assets held in a dedicated Custodial Fund that ensures protection of its New Zealand policyholders. Its home office is registered in the State of Indiana, United States of America.

AIL's insurance products in New Zealand are distributed and sold via an independent local intermediary. AIL does not, in New Zealand, provide regulated financial advice, and AIL remains outside of the financial advice provider regime.

AIL responds to the questions raised in the consultation paper in the feedback form set out below.

Respectfully yours,
AMERICAN INCOME LIFE INSURANCE COMPANY

[redacted]

Feedback form

Consultation paper: Proposed standard conditions for financial institution licences

Date: 7 September 2022 Number of pages: 8

Name of submitter: [redacted]

Company or entity: American Income Life Insurance Company

Organisation type: Licensed insurer

Contact name (if different):

Contact email and phone: [redacted]

Question number	Response
1a: Do you agree or disagree with the proposed standard condition? Please provide your reasons.	AIL is supportive, in principle, of a continuing obligation to satisfy the requirements set out in section 396 (and if applicable, section 400) of the Financial Markets Conduct Act (the *FMC Act*), as set out in the proposed "ongoing requirements" condition. However, AIL cannot definitively conclude whether it is supportive of this condition until AIL has had the opportunity to review and consult on, any eligibility criteria in CoFI regulations which, under section 396(a), would be the primary obligation of this condition and of the financial institution licence application guide (the *Application Guide*). Also section 396 is expressed subjectively, by being prefaced with "the FMA is satisfied". While obtaining the FMA's satisfaction is a suitable criterion for obtaining a licence as a one-off event manifested in the granting of a licence, it is not suitable formulation for an ongoing requirement for a licensee. The condition needs to refer objectively to the criteria in section 396(a) to (g). Otherwise, how is a compliance team to know whether the FMA is satisfied? See AIL's comments under 1e relating to requirements with overlap with those imposed by IPSA.
1b Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	The "ongoing requirements" condition would likely result in higher compliance costs, but the additional costs should not be significant. However, AIL cannot fully evaluate the compliance costs associated with the proposed "ongoing requirements" condition until any CoFI regulations and the Application Guide are released. AIL asks that the FMA encourages MBIE to consult on, and then finalise, any CoFI regulations and the Application Guide as soon as practicable, and well ahead of the opening of COFI licence applications.
1c Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	Again, AIL cannot definitely conclude whether the "ongoing requirements" condition will have any adverse impact on AIL's business until any CoFI regulations and the Application Guide are finalised.

1d Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	It is unlikely that the "ongoing requirements" condition would be a significant barrier to entry but, again, AIL cannot definitely conclude whether the "ongoing requirements" condition would be a material barrier to entry until any CoFI regulations and the Application Guide are finalised.
1e Do you have any other comments on the proposed standard condition or how it is drafted?	AIL is currently exempt from the IPSA fit and proper requirements on the basis that AIL's home jurisdiction (Indiana, USA) has comparable requirements. AIL assumes that the "fit and proper" requirements being introduced through this condition by referencing section 396(b) are sufficiently flexible to accommodate suitable foreign law equivalents, in the same way as IPSA has done. There should be a comparable exemption for foreign insurers in similar situations. The section 396 requirements also potentially overlap with the IPSA prudential requirements. AIL recommends that the "ongoing requirements" condition specifically carve out aspects, particularly under capability, that are dealt with under IPSA.
2a Do you agree or disagree with the proposed standard condition? Please provide your reasons.	AIL supports the proposed "notification of material changes condition" and finds the description in the Explanatory note of what is a material change, helpful.
2b Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	No.
2c Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	No.
2d	No.

Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	
2e Are there any material matters other than those detailed in the explanatory note that should be notified to the FMA?	No.
2f Do you have any other comments on the proposed standard condition or how it is drafted?	No.
3a Do you agree or disagree with the proposed standard condition? Please provide your reasons.	AIL is supportive, in principle, of the proposed "regulatory returns" condition, and acknowledges the FMA's interest in obtaining sufficient material information to monitor licensees' compliance with their license conditions. However, AIL's support of this proposed "regulatory returns" condition depends on the nature and level of reporting proposed when the FMA publishes the regulatory return framework and methodology (the *Return Framework*). At this stage, AIL observes that as a licensed insurer AIL is required under the Insurance (Prudential Supervision) Act (the *IPS Act*), to file semi-annual solvency returns and insurer returns with the Reserve Bank of New Zealand (the *RBNZ*). To reduce duplication, cost, and regulatory and compliance burdens, AIL recommends: • the regulatory returns under the COFI regime be required on an annual basis only; and • the FMA does not seek information which is relevant for purposes covered by reporting to the RBNZ, particularly the RBNZ's required solvency and insurer return information which is gathered under the IPS Act.
3b Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	The proposed regulatory returns condition would result in higher compliance costs. AIL cannot consider the degree that the proposed "regulatory returns" condition will create additional compliance costs until AIL has had an opportunity to review and consider the Return Framework. At this stage, AIL's main concern, which is based on the examples given in the Explanatory note (such as: "information about the implementation and maintenance of, and compliance with, your fair conduct programme"), is that the FMA may be looking to obtain a voluminous amount of information which, of course, would increase the compliance costs for AIL and other financial institutions.

3c Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	The proposed "regulatory returns condition" would also result in adverse impacts on AIL's business through the distraction of management resources. AIL cannot consider the degree that the proposed "regulatory returns" condition will distract management resources until AIL has had an opportunity to review and consider the Return Framework.
3d Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	Additional compliance obligations do contribute to creating barriers to entry which heighten the hurdles for newcomers to the market, so it is important that the "regulatory returns" are not unnecessarily granular and can be easily satisfied.
3e Do you have any other comments on the proposed standard condition or how it is drafted?	No
4a Do you agree or disagree with the proposed standard condition? Please provide your reasons.	AIL is supportive, in principle, of the proposed "outsourcing" condition, provided the requirements apply only those functions that are core to the licensed activities for which the license is obtained. AIL agrees that distribution activities should be excluded on the basis that they are regulated separately under the financial adviser regime. For insurers, the condition should expressly not require assurances that are provided through IPSA compliance requirements and risk management programmes, to avoid the same risks being dealt with under different and duplicative compliance obligations; unnecessarily increasing compliance costs.
4b What core services that will be related to your financial institution service do you currently outsource?	Not applicable.
4c We are proposing that any parts of your financial institution service that are performed by an authorised body on your financial institution licence will	Not applicable

not constitute an outsourcing arrangement for the purposes of this condition. Do you agree or disagree with this proposal? Please provide your reasons.	
4d Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	No.
4e Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	No.
4f Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	Additional compliance obligations contribute to creating barriers to entry which heighten the hurdles for newcomers to the market, so it is important that the outsourcing obligations are not too restrictive.
4g Do you have any other comments on the proposed standard condition or how it is drafted?	No
5a Do you agree or disagree with the proposed standard condition? Please provide your reasons.	AIL does not support the proposed business continuity and technology systems condition. AIL opposes this requirement for two primary reasons: • **duplication of regulation**: the IPS Act requires that AIL (under sections, 18 and 73 of the IPS Act) prepares a risk management program. The RBNZ's risk management program guideline for licensed insurers requires, as a part of the risk management program, plans for disaster recovery and business continuation. Further, the RBNZ has also, in April 2021, issued its "Guidance on Cyber Resilience" which applies to AIL as a licensed insurer. As AIL is an overseas insurer, it has also gone to great time and effort to ensure that relevant portions of its

	overall risk management program and technology systems are sufficiently tailored to meet local RBNZ requirements. The wording of the proposed business continuity and technology systems condition, the explanatory note and the FMA's comments do not suggest to AIL that these would be materially different to AIL's obligations under the IPS Act. Instead, AIL has concerns that this condition would lead to unnecessary duplication and a significant increase in compliance costs where there are discrepancies between the requirements under the IPS Act and the proposed business continuity and technology systems condition; and • **scope of the COFI regime**: AIL questions whether it would be necessary to achieve the purposes of the COFI regime (i.e., to ensure the fair treatment of customers) to include a condition to the COFI conduct license on business continuity and technology systems. As the FMA notes in its comments on page 12 of the consultation "[t]he purpose of this standard condition is to ensure that financial institutions have suitable arrangements in place to be able to manage disruptions to their business." These purposes are arguably the same purposes behind the requirement to maintain a risk management program under the IPS Act. In the alternative, if the FMA intends to keep the proposed business continuity and technology systems condition, AIL recommends that the FMA grants an exemption to the proposed business continuity and technology systems condition where a financial institution is subject to comparable obligations under different legislation (such as the IPS Act).
5b Do you currently have a documented business continuity plan?	Yes, AIL maintains a current documented business continuity plan.
5c Will you rely on critical technology systems to deliver the market service of acting as a financial institution? If not, why do you not consider any of your technology systems to be critical?	Yes.
5d Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	Yes, the proposed business continuity and technology systems condition is likely to create significant additional and unnecessary compliance costs for AIL; reviewing the requirements of this condition and comparing and reconciling them with the IPS Act requirements. The additional costs stem from the requirement to meet similar conditions under two separate licences (the COFI conduct licence and AIL's insurer licence).

5e Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	Yes, repetition of requirements across two separate pieces of legislation imposes a burden on human resources, as well as costs.
5f Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	Additional compliance obligations do contribute to creating barriers to entry which heighten the hurdles for newcomers to the market, so it is important that the requirements are not more than necessary in the context of the entire regulatory framework, not just single pieces of legislation looked at in isolation.
5g Do you have any other comments on the proposed standard condition or how it is drafted?	No
6a Do you agree or disagree with the proposed standard condition? Please provide your reasons.	AIL supports the proposed record keeping condition. .
6b Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	While the record keeping condition will likely result in higher compliance costs (for example, costs associated with providing the FMA with requested information and the additional record keeping in respect of its fair conduct programme), AIL agrees that the costs of keeping and maintaining customer records is already a business cost.
6c Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	While AIL currently treats its customers fairly, there would be additional human resources needed to prepare and record the fair conduct programme, its development, implementation and maintenance and the additional information to demonstrate AIL's compliance with, and regular review of its fair conduct programme.
6d	All additional costs and compliance requirements contribute to a barrier to entry; it is simply a matter of degree.

Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	
6e Do you have any other comments on the proposed standard condition or how it is drafted?	The 7 year retention rule is complex and should be simplified to at least 7 years from the date it is made.
Feedback summary – *if you wish to highlight anything in particular*	

Memo

Classification: **Confidential**

TO:	The Financial Markets Authority	**PRIORITY:**	Important
FROM:	ANZ Bank Limited	**TOTAL PAGES:**	3
SUBJECT:		**DATE:**	13 September 2022

Dear Sir/ Madam,

Standard Conditions 4 and 5

The FMA's proposed COFI Licence Standard Conditions, include:

- ***Standard Condition 4:*** *"If you outsource a system or process necessary to the provision of your financial institution service, you must be satisfied that the provider is capable of performing the service to the standard required to enable you to meet your market services licensee obligations."*
- ***Standard Condition 5:*** *"You must have and maintain a business continuity plan that is appropriate for the scale and scope of your financial institution service. If you use any technology systems, which if disrupted would materially affect the continued provision of your financial institution service (or any other market services licensee obligation), you must at all times ensure the operational resilience of those systems – being the preservation of confidentiality, integrity and availability of information and/or technology systems – is maintained. Your business continuity plan and your technology systems must be established, implemented and maintained in a way that supports compliance with your fair conduct programme."*

ANZB's Proposal

We propose (for reasons to be discussed) that:

- To avoid unnecessary duplication with BS11 and existing FMCA markets services licence outsourcing standard conditions, Banks that are subject to BS11 (i.e. Large Banks) and existing FMCA licensees should be exempt from COFI Licence Condition Standard 4 (**SC4**).
- For non-Large Banks, to avoid an unnecessary compliance burden, the SC4 requirements should be reconsidered in light of the extensive bank/RBNZ engagement and lessons learned from the implementation of BS11.
- To avoid unnecessary duplication and/or potential conflict with anticipated upcoming prudential Banking Standards relating to business continuity management for Deposit Takers (under the new Deposit Takers Bill), Deposit Takers would be exempt from SC 5. Or, the FMA should closely engage with the RBNZ to ensure that the requirements in SC 5 would be consistent with any upcoming RBNZ business continuity related banking standards, the RBNZ's existing Cyber Risk Management Guidance (released in April 2021), which covers registered banks, non-deposit takers, licensed insurers and designated financial market infrastructures.
- We note that ANZB is already subject to a comprehensive and detailed suite of prudential outsourcing obligations and, as part of the ANZ Group, also falls under APRA's Prudential Standard CPS 232 (Business Continuity Management).

Points for discussion

1. **SC 4 / BS11 overlap / areas of unintended complexity and uncertainty:**
   - There is a significant overlap between BS11 scope and its requirements and SC 4.
   - Unlike BS11, some language used in SC 4 brings areas of potential unintended complexity and uncertainty resulting in unexpected or potentially excessive compliance costs if we were to try to comply.
2. **SC 4 compliance burden would appear to outweigh benefit to consumers:**
   - Given the wide application of SC 4, we believe the compliance burden of proposed due diligence under SC 4 would significantly outweigh any benefits gained through the proposed supplier due diligence.
3. **SC 4 (in respect of financial adviser services) replicates existing FAP Licence Standard**
   - Duplication of existing FAP Licence standard conditions creates an unnecessary additional compliance burden, for example – even duplicate obligations must still be identified, loaded into our risk system with controls and reported against.
4. **SC4 impact on existing FMA MIS and Derivative licences**
   - MIS and Derivatives services are within scope for COFI (and hence the COFI Licence Standard Conditions). However, FMA MIS and Derivatives Licence Standard Conditions already contain a more limited version of SC 4. The COFI Licence would have the effect of amending the Standard Conditions of ANZB's MIS and Derivative Licences retrospectively, for some but not all derivative issuers.
5. **SC 5 vs proposed Deposit Takers Act (s. 80)**
   - ANZB is a deposit taker. The upcoming Deposit Takers Act (**DTA**) is intended to house all prudential standards for deposit takers (including registered banks). Section 80 of the Exposure Draft of the DTA enables the RBNZ to provide standards on business continuity planning, as well as relevant areas of risk management, and problem assets. It is important to note that business continuity planning for a Deposit Taker is only one piece of a complex puzzle to maintain stability. Of equal importance is how ANZB manages its operational, credit, liquidity, interest rate, concentration, market, model and cybersecurity risk, and policies and processes for early identification and management of problem assets (including maintaining adequate provisions and reserves in connection with problem assets). These standards all work together.
   - The FAP Licence includes Standard Condition 5 (SC 5) would apply over a very significant proportion of ANZB's business (i.e. everything within the scope of COFI). We are concerned that SC 5 might conflict with upcoming prudential standards under s.80 of the DTA and that, when developed in isolation of other standards around relevant risks and problem assets, would unhelpfully place further requirements on ANZB that do not work in the context of a registered bank and/or provide no discernable benefit. Given the specialist nature of business continuity management, we would also expect new requirements (prudential or other) to be the subject of extensive consultation and industry engagement, and include detailed guidance. That would enable us to consider and provide feedback as to how such requirements might work with APRA's Prudential Standard 232 (Business Continuity Management).
   - We also note that in April 2021, RBNZ published its Cyber Risk Management Guidance (April 2021), which covers registered banks, non-deposit takers, licensed insurers and designated financial market infrastructures. Has the FMA considered this Guidance in considering its approach COFI SC5?
6. **Prudential vs Market Conduct legislation**

- The DTA's proposed main purpose is to "to promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy by protecting and promoting the stability of the financial system", which includes promoting "the safety and soundness of each deposit taker". There is an end customer element in mind. The main purposes of the FMCA, are to:
    - promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
    - promote and facilitate the development of fair, efficient, and transparent financial markets.
- As a general comment, we understand that there may be some examples where it is important to ensure the conduct of outsource providers over and above the direct and primary conduct obligations of FI's under COFI. However, for Large Banks (such as ANZB) the obligations proposed under SC 4 and SC 5, are better placed within the prudential regime (as opposed to a financial markets conduct regime). Duplicating them across two regimes will be inherently problematic for Large Banks, and very likely deliver unintended consequences rather than the benefits desired.

Regards

ANZ Bank Limited

Bank of New Zealand's response to the FMA's Consultation Paper: Proposed standard conditions for financial institution licences

07 September 2022

1 Introduction

1.1 Bank of New Zealand (BNZ) has prepared this response to the Financial Markets Authority's (FMA's) Consultation Paper: Proposed standard conditions for financial institution licences (Consultation).

1.2 BNZ is broadly supportive of imposing the six proposed standard conditions on financial institution licences. However, we have some concerns with the breadth of the record keeping condition which is discussed in more detail below. We are also concerned about the overlap in requirements with other licensing conditions and regulatory requirements and consider that it may be appropriate to exempt Banks from proposed conditions 4 (Outsourcing) and 5 (Business continuity technology systems) given Banks already comply with very similar requirements set by the Reserve Bank of New Zealand (RBNZ).

1.3 BNZ is aware that the New Zealand Bankers Association (NZBA) has also made a submission on the Consultation. BNZ has contributed to, and supports, that submission.

1.4 Should the FMA have any questions in relation to this submission, please contact [redacted]

[redacted]

[redacted]

[redacted]

2 Condition 1 - Ongoing requirements

2.1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.

2.2 BNZ agrees with this proposed standard condition. It makes sense that financial institutions (FIs) should be required to meet licensing standards on an ongoing basis and not just at the time of obtaining a licence. To support FIs' further understanding of these requirements BNZ looks forward to the publication of the Financial Institution Licence Application Guide.

2.3 We have no further comments on this proposed condition.

3 Condition 2 – Notification of material changes

3.1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.

3.2 BNZ agrees with the proposed standard condition requiring a FI to notify FMA of material changes to the nature of its financial institution service. The examples given in the Consultation are helpful and indicate a high bar for notification i.e. "changing the form of your business from a licensed non-bank deposit taker to a registered bank" and would not include a change to the relevant services and products a FI offers. In any event, we assume that if there was any confusion about what might be notifiable that FIs could test their understanding of what should be considered 'material' with their relationship partners at the FMA.

3.3 We have no further comments on this proposed condition.

4 Condition 3 – Regulatory returns

4.1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.

4.2 In principle BNZ agrees with the proposed standard condition. However, the scope is currently uncertain and could be unnecessarily duplicative. The FMA will be aware that most Banks already have obligations to provide regulatory returns under their DIMS, Derivatives, MIS and FAP licences and must meet the Annual Return requirements of the CCCFA. These returns already require information on the numbers of consumers, number of breaches and complaints information so there is potential for significant overlap and/or inconsistencies between requirements. We would like to see this condition more clearly specify the nature of the information that the FMA wants to see in the returns (i.e., can the FMA specify the types of breaches and complaints information?).

4.3 To prevent unnecessary duplication, we submit that consultation on the exact information that will be required to be reported on in regulatory returns begins soon. We note that we still don't know the regulatory returns requirements for FAP licences which go live in March 2023 and this has made designing our record keeping and data collection processes for our FAP licence challenging. Ideally the consultation for the FI regulatory returns will begin earlier in the licensing process.

4.4 Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

Complying with this condition is likely to create additional compliance costs for our business. However, the detail of that additional compliance cost will depend on the final terms of the Regulatory Return Framework and Methodology and what new systems (if any) need to be built to collate the required data.

BNZ has no further comments on this section.

5 Condition 4 – Outsourcing

5.1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.

BNZ has no issues with the proposed standard condition requiring a FI to have outsourcing arrangements in place. However, it does query whether such a condition should be required for Banks who are already required to comply the RBNZ's Banking Standard 11 and will be required to comply with standards under the new Deposit Takers Act covering outsourcing, business continuity planning and cyber security risk. Accordingly, along with the New Zealand Bankers Association and the Financial Services Council, we encourage the FMA to consider an exemption for FIs that are already subject to a significant outsourcing requirements.

BNZ has no further comments on this section.

6 Condition 5 – Business continuity and technology systems

6.1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.

As noted in the response to proposed standard condition 4, considering FIs are also required to be registered or licensed and regulated by the RBNZ, we encourage the FMA to either exempt Banks from this condition or ensure that requirements between the regimes are consistent and do not result in duplication for regulated entities. We also submit that the FMA engages with the RBNZ on their requirements and agree a system to either share information on FIs as it relates to business continuity and technology systems or accept the same information. This would prevent uncertainty of requirements and unnecessary compliance costs.

BNZ has no further comments on this section.

7 Condition 6 – Record keeping

7.1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.

In principle BNZ supports the introduction of a record keeping condition as a licensing requirement for FIs. However, we are concerned with the potential scope of this condition. The explanatory note to this proposed Condition 6 specifies requirements to retain records to demonstrate how a FI has *established, implemented, and maintained* their fair conduct programme and taken *all reasonable steps to comply with it*. Given the breadth of the fair conduct programme this could require keeping records of all internal colleague interactions and external customer and colleague interactions. This is clearly cumbersome and gives rise to complex data and privacy management and consent issues. Clearer guidance and examples are needed to understand what customer and bank interactions the regulator is interested in to evidence compliance with the fair conduct programme. In our view being a "data light" organisation has clear benefits for good conduct and there are inherent risks with maintaining extensive records of personal information. We note the examples provided in the condition's explanation are given "(***without limitation***)" and we don't support a blanket record keeping condition without further clarity to narrow the scope of this.

In addition, BNZ considers that record keeping requirements should be consistent across regulatory regimes including the CCCFA. In particular we consider the timeframe of 10 working days is very tight particularly if a request related to several customers. It is also inconsistent with CCCFA – s 9CA(7) requires that a "lender must provide the records within 20 working days of the date on which the request is received by the lender…". Our preference is that this standard record keeping condition timeframe is extended to 20 working days to align with the CCCFA requirement.

7.2 Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

BNZ considers that there may be significant compliance costs to implement new systems to ensure we are meeting the record keeping obligations under various regulations on an ongoing basis including, for example, voice recording technologies. A full scoping of the costs cannot be completed until further details are provided. However, improving conduct and culture is part of BNZ's strategy and we do recognise adequate record keeping is part of that strategy and we have provisioned for additional costs.

7.3 Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

The main adverse impact would be if the condition is so broad it creates a situation where all customer and colleague interactions at the bank are recorded. Creating records in this manner has a risk of creating a fear-based culture where staff focus on ensuring they are "ticking the boxes" rather than meeting customer needs. We think it is important to be able to clearly articulate what records need to be kept and what they will be used for in customer and colleague interactions.

BNZ has no further comments on this section.

7 September 2022

CoFI Consultation
Financial Markets Authority
Wellington

By email: consultation@fma.govt.nz

Dear Sir/Madam

Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI Act)

Consultation Paper: Proposed standard conditions for financial institution licences

Thank you for the opportunity to provide feedback on the proposed standard conditions for financial institution licences under the CoFI Act. I submit on behalf CUBS NZ which is an unincorporated association that represents the interests of deposit takers that are customer-owned or charitable in nature. Specifically, these institutions are:

Christian Savings Ltd

Credit Union Auckland Inc

Fisher & Paykel Credit Union Inc

Steelsands Credit Union Inc

Unity Credit Union Inc

Wairarapa Building Society

Heretaunga Building Society

Nelson Building Society

All our members are democratically owned and operated and have combined Assets in excess of $2b and represent over 100,000 individual consumers with significant representation in regional New Zealand. Many of their members come from lower socio-economic demographics and/or are not well served by mainstream banking.

In specific response to the questions posed in the Consultation Paper, we comment:

Condition 1 - Ongoing requirements

(a) Agree but this requirement is already included in the obligations of NBTD's under the Non-bank Deposit Takers Act s19 (Kinds of licence conditions and their effect), s25 (Governance Requirements) and s27-29 (Risk Management Programmes). For NBDT's it should not be required to prove compliance with s396 and s400 of the FMC Act given this is already confirmed as above and this a duplication of conditions imposed and regulated by other regulators (RBNZ).

(b) Increased compliance costs is an absolute certainty under the CoFI Act. Each provision of the CoFI licence will require ongoing assurance and auditing to ensure continued compliance as required in the proposed standard. As written, this will be a whole-of-entity workload from the Board of Directors down for a behaviour we are already renown for. For the co-operative and not-for-profit CUBS sector this will reduce member equity without providing additional benefits for those members.

(c) Other than increasing compliance costs and reducing member equity no other adverse impact is envisaged from the proposed standard condition.

(d) No.

(e) No.

Condition 2 - Notification of material changes

(a) Agree.

(b) Yes, in so much as the required notification would undoubtedly involve detailed explanations of the changes, the consequences of those changes and the impact they would have on the entity's fair conduct programme.

(c) No.

(d) No.

(e) No.

(f) It would be important that the condition clearly sets out what matters are considered material to avoid any confusion and incorrect notification.

Condition 3 - Regulatory returns

(a) Disagree. NBDT's are already subject to periodic reviews and audits by their Trustees/Prudential Supervisors and the RBNZ under the terms of their licence. The information and data the FMA is seeking to receive under the standard is already available to them from other sources such as the entity's Product Disclosure Statement, Monthly/Quarterly RBNZ Returns, Annual Reports/Accounts and, in the case of Credit Unions and Building Societies, and their respective Annual Returns. All of the factual business information exampled in the explanatory note is available from these documents available on MBIE websites.

(b) As previously noted, any new regulatory returns will require additional compliance resources to be applied to the preparation and compilation of any required return, thereby increasing compliance costs for the entity.

(c) No, other than the depletion of the entity's net earnings through the increase in compliance costs.

(d) No.

(e) No.

Condition 4 - Outsourcing

No comment.

Condition 5 - Business continuity and technology systems

(a) Disagree. This condition, while acknowledged as good business practice, seems an ill fit for a fair conduct regime. While it can be argued that the development and maintenance of a business continuity plan benefits customers in the event of physical or technological disruption, it has more to do with operational matters than conduct behaviour. Notwithstanding the above, it should again be noted that NBDT's are already required under s27 of the NBTDA to maintain an Operational Risk Management Policy which would necessarily include a cyber risk assessment and business continuity plan.

The requirement to notify the FMA within 72 hours of any material impact on the operational resilience of the entity is an overreach. Such notification would already have been given to the entity's Trustee and Regulatory Supervisor, the RBNZ. Given that any such disruption would be dealt with as a matter of urgency by the entity, an additional layer of notification could detract from this priority to alleviate the disruption.

(b) As described above, all NBDT's would already maintain an approved up-to-date business continuity plan within the terms of their licence.

(c) No comment.

(d) No.

(e) No.

(f) No.

(g) No.

Condition 6 - Record keeping

(a) Agree but again this condition is a duplication of requirements already in existence under various legislative requirements in the sector. For example, s19 of the NBDT Act, s455-459 of the FMC Act, s49-55 of the AML&CFT Act and, in the case of CUBS, s121 of the FS&CU Act and s90 & s130 of the BS Act.

(b) No.

(c) No.

(d) No.

(e) No.

Feedback Summary

It is of significant concern to CUBS NZ that compliance costs are becoming excessive in relation to the nature, size and scope of financial co-operatives. The principle of proportionality, which is a key element of the CoFI Act, is not being acknowledged in these draft standard conditions. In our many interactions with MBIE and the FMA in the

lead-up to the passing of the CoFI Bill, we were assured that the proposals relating to licence terms and conditions would be handled with a “light-touch” in relation to CUBS and would be tempered with consideration of the cost of compliance with the regime against the perceived and actual benefits to be achieved.

We do not see evidence of this “light-touch” in the draft standard conditions. There are too many instances of duplication and triplication of obligations already required of CUBS under the various Acts and regulations CUBS are governed by. Such repetitive regulations and oversight is not good governance or efficient and does little to enhance the mana of the regulatory agency. The additional cost imposed on CUBS works against our social goals of expanding the reach of our services to an audience often estranged from mainstream banking. Compliance costs for smaller entities such as CUBS are already significantly disproportionately greater than those of large banks and insurance companies which continues to work against competition and financial inclusion.

A far simpler approach would be to add “Conduct” to the list of procedures that CUBS must use for effectively identifying and managing risks in s27(2)(b) of the NBDT Act. The conditions covered by these draft standards are all included in this licence requirement:

- Be in writing - s27(2)(a);
- Have appropriate record keeping and documentation - s27(2)(c);
- Ongoing audit and review - s27(2)(d);
- Proportionality - s27(2)(e); and
- Regulatory powers to issue, in the manner that the regulator thinks fit, guidelines for the purpose of interpreting the “Conduct” risk and what must be covered in the Fair Conduct Programme once it was added to s27(2)(b) - s27(3).

We urge you to reconsider your application of the proportionality requirement in relation to your obligations under the CoFI Act and seek to implement a more holistic approach by working in conjunction with the RBNZ, the Registrars of Credit Unions and Building Societies and other regulators to remove the overreach of these standard conditions.

We remain committed to working with you to bring about a more efficient and effective implementation of the CoFI Act provisions so that they actually help consumers and CUBS members rather than depleting their Reserves.

Yours faithfully

[redacted]

Dentons Kensington Swan
89 The Terrace
PO Box 10246
Wellington 6140
New Zealand

dentons.co.nz

Financial Markets Authority
Level 2, 1 Grey Street
PO Box 1179
Wellington 6140

By email: consultation@fma.govt.nz

7 September 2022

Submission on proposed standard conditions for financial institution licences

1 This is a submission by Dentons Kensington Swan on the FMA's *Proposed standard conditions for financial institutions* consultation paper dated July 2022 ('**Consultation Paper**').

About Dentons Kensington Swan

2 Dentons Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Wellington and Auckland. We are part of Dentons, the world's largest law firm, with more than 12,000 lawyers in over 200 locations.

3 We have extensive experience in financial services law issues, with a specialist financial markets team acting for established major players as well as boutique providers and new innovative entrants to the market. We assist a number of financial institutions with their regulatory obligations and conduct and culture initiatives.

General comments

4 Our submission on the Consultation Paper is **attached** as an appendix to this letter. We have only included comments or recommendations in response to consultation questions where we believe there is a legal or regulatory issue to address or consider further, and have not provided feedback on the questions that are aimed primarily at industry participants.

5 While generally supportive of the need for conditions, we believe adjustments are required so that an appropriate balance is struck to ensure that the obligations placed upon licensees are not unduly burdensome and to make the conditions more workable in practice.

6 A key concern is the scope of the conditions. Unlike other cohorts of entities licensed by the FMA, licences for financial institutions – banks, insurers, and deposit takers – have a 'conduct' focus and relate to specific 'relevant services'. The licence is not a 'full service' licence as these entities already hold a licence from the Reserve Bank of New Zealand ('**RBNZ**') to operate and offer services to retail clients. The RBNZ has developed standards, guidance and requirements for the entities licensed by it, in addition to the legislative licensing requirements. The conditions set by the FMA for a conduct

licence should be limited to conduct relating to the relevant services, and avoid any overlap with obligations already imposed as part of a financial institution's RBNZ licence.

7 We suggest the standard conditions for financial institutions be more narrowly framed to reflect the intent of the reforms under the Financial Markets (Conduct of Institutions) Amendment Act 2022 ('**CoFI Act**'). The focus must be on conditions that are relevant for financial institutions' new statutory obligations to treat consumers fairly (including by having an effective fair conduct programme). Otherwise these financial institutions face, in essence, a full 'double licence' regime. The CoFI Act recognises this interplay, with requirements to liaise with RBNZ in relation to licences for existing banks, insurers, and deposit takers and any proposed action to suspend or cancel a licence.

8 With this in mind, the proposed generic standard conditions (largely based on the FMA's standard conditions for entities it licences under the Financial Markets Conduct Act 2013 ('**FMC Act**')) without due consideration of the overarching focus of the CoFI Act – 'to treat consumers fairly' – means the proposed conditions do not adequately focus on conduct. This also creates awkward overlaps with other regulatory requirements and regulator expectations. Redrafting the proposed conditions to focus on 'conduct' would ensure the conditions dovetail with those already in place for banks, insurers, and deposit takers under their existing licensee obligations.

9 We also recommend the FMA reconsider how it applies conditions to licences. At present the FMA has adopted two approaches to licensing. One is underpinned by assessment against minimum standards at the time of licensing; the other is aided by licence application guides. Fundamentally, conditions could be proposed for each entity on the basis of their nature, size, and complexity as part of the application process. Rather than blanket standard conditions perhaps a suite of potential conditions could be developed and then added as generic specific conditions to a licence as and when necessary. This more agile approach to conditions would allow the FMA to take into account other regulatory obligations an applicant may need to comply with, such as being licensed by RBNZ, and other relevant statutory obligations.

10 Given the limited nature of the proposed conditions, and the fact that the CoFI Act already covers many of these key matters, we suggest that very few standard conditions are required for financial institutions. We recommend the FMA consider making more use of specific (and unambiguous) conditions, i.e. apply them to entities at the point of licensing once a proper assessment of that entity's capability has been undertaken, to address any concerns that arise as part of that assessment, rather than applying generic conditions across the board at the outset.

11 Thank you for the opportunity to submit. We would welcome the opportunity to discuss any of the submission points we have raised, and continuing to contribute towards the development of a sound and pragmatic regulatory environment for financial institutions.

Yours faithfully

Feedback form

Consultation paper: Proposed standard conditions for financial institution licences

Date: 7 September 2022 Number of pages: 7 (including cover letter)

Name of submitters: [redacted]

Company or entity: Dentons Kensington Swan

Organisation type: Law firm

Contact email and phone: [redacted]

	Response
Condition 1 – Ongoing requirements	
a	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* The condition is unnecessary in light of requirements under the FMC Act (via sections 410 to 412) to report material changes that result in requirements referred to in section 396 or 400 no longer being satisfied. Regulation 191 of the FMC Regs also ensures the FMA is informed of other substantive changes. There is no need to double up on requirements that exist under the statutory provisions. These provisions already ensure the FMA is informed and provide the FMA with express means to take suitable regulatory action where necessary. In our view, conditions relating to licensing requirements (including to require verification that the licensing requirements continue to be met) must be specific to key matters of capability. The legislation contemplates specific conditions being proposed on a licence in order to assess and ensure capability – section 396(c) provides that the FMA must be satisfied the applicant is "capable of effectively performing that service (having regard to the proposed conditions of licence)." As conditions are relevant to assessing applications for a licence they must be bespoke to the type of licence and applicants. Such conditions must set minimum thresholds or standards to be met in order to be licensed and remain licensed (which can then be verified if necessary to ensure they continue to be met). Without the benefit of seeing a draft of the Financial Institution Licence Application Guide it is difficult to deduce key matters the FMA will assess in reviewing licence applications (commentary in respect of the proposed conditions suggests a focus on capability relevant to fair conduct programmes). In the context of financial institutions, any capability conditions must relate to the narrower scope of the 'conduct' licence and the fair conduct principle without repeating obligations that already exist under the CoFI Act or FMC Act. Conditions that are general in nature or conditions that replicate the statutory obligations – along with generic references to 'policies, processes, systems and controls' – do not assist licensed entities to comply nor do they readily assist the FMA to assess capability or take regulatory action when necessary.
e	*Do you have any other comments on the proposed standard condition or how it is drafted?* This broad condition overlaps with the regulatory return condition. That condition also measures ongoing capability by asking for verification of key matters. If proposed standard conditions 1 and 3 remain they should be more clearly delineated to ensure they align with the underlying statutory intent. A condition imposed via section 403(3)(b) of the FMC Act must function to verify that capability requirements continue to be met. A condition imposed

	under regulation 199(1)(b) of the FMC Regs must operate to ensure statistical information is periodically provided to the FMA. We see the two as distinct requirements and distinct conditions. Of greater benefit to both applicants and the FMA would be actual capability requirements; unambiguous thresholds and standards that can be met and assessed against. The focus should be on what financial institutions need to have in place in order to be 'conduct' licensed (if anything). As mentioned above, such conditions should be specific to the type and scope of the particular licence rather than generic to all licences issued by the FMA. For a conduct licence this will be narrower than a full scope licence. It may well be that very few conditions are necessary for most financial institution licence applicants.
Condition 2 – Notification of material changes	
a	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* The use of the term 'material change' in this context is confusing. Proposed condition 2 should be reframed as a 'reporting condition' (as it functions in a manner akin to regulation 191 of the FMC Regs). The proposed condition must be clearly distinguished from the concept of 'material change' under the FMC Act (section 410) which relates to adverse changes or changes that mean a licensee is no longer capable of effectively performing the market service. In our view, reportable matters under sections 410 to 412 of the FMC Act are distinct from matters reportable under regulation 191 of the FMC Regs. Reporting under section 410 to 412 can lead to adverse regulatory actions (censure through to cancellation) whereas reporting under regulation 191 allows for the FMA to be informed of matters relating to the licensee, many of which function as a 'heads up' rather than requiring any action from the FMA. At present the proposed condition contains three types of 'changes' that are reportable: ▪ Changing the form of business from one type of licensed financial institution to another (a licensed non-bank deposit taker to a registered bank; a registered bank to a licensed insurer; a licensed insurer to a registered bank; a registered bank to a licensed non-bank deposit taker). ▪ Ceasing to be in the business of providing any relevant services to consumers. ▪ An insurer moving its entire business into run-off. These are all fundamental changes to the operative business of a licensee. As currently drafted, the concept of material change to the nature of a financial institution service is vague. It is unclear how far that concept could extend. Instead of requiring notification of 'material' changes (and absent any definition of material in the condition), the FMA should simply set out a short exhaustive list of matters requiring notification.
e	*Are there any material matters other than those detailed in the explanatory note that should be notified to the FMA?* As mentioned above, we consider an exhaustive list of matters the FMA needs to be informed of would avoid confusion as to what is 'material'.
f	*Do you have any other comments on the proposed standard condition or how it is drafted?*

	We reiterate that the proposed condition should be reframed as a reporting condition. And accompanied by a short exhaustive list of matters requiring notification.
Condition 3 – Regulatory returns	
a	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* We are comfortable in principle with the proposed condition. It is broadly in line with the concept of a general condition imposed via regulation 199 of the FMC Regs, i.e. requiring licensees to periodically report information about the nature, scale, and operation of the service (including statistical information about numbers of transactions entered into and amounts involved).
b	*Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.* The condition will create additional work for licensees to pull together their responses. The FMA needs to ensure that any 'regulatory returns data templates' developed for the purpose of this condition 3 are not too burdensome. The FMA should consider whether different templates are useful for the various types of financial institution, e.g. a separate template for large banks. We look forward to the opportunity to participate in the proposed consultation on the requirements for these returns in due course. With this in mind, it would be useful for the FMA to publish key sector findings from its 'annual regulatory response survey' to ensure licensed entities can see value in providing responses.
e	*Do you have any other comments on the proposed standard condition or how it is drafted?* The condition as drafted mixes together concepts from regulation 199 of the FMC Regs and section 403 of the FMC Act. It attempts to function as both a periodic reporting condition and an ongoing verification of capability condition. We support the former purpose, but not the duplication of obligations inherent in the latter. The verification of capability aspect of this condition should be combined with specific capability conditions (i.e. a reworked condition 1, if such a condition is to remain). Any capability conditions must set unambiguous thresholds and standards that can be met and assessed against and subsequently verified as 'continuing to be met'. Proposed condition 3 should be narrowed to correctly align with the scope of regulation 199(1)(b), being a pure statistical focus – nature, scale, and operation of the service, including numbers of transactions entered into and amounts involved. Further, there is no need for the explanatory note to contain a reference to section 412 of the FMC Act. 'Reporting' under section 412 relates to contraventions or adverse changes. In contrast, proposed condition 3 is a simple information gathering tool. Conflating this proposed condition with section 412 is unhelpful and confuses the key driver of obligations, i.e. under section 412 a licensee will be reporting about one-off negative circumstances and not on an ongoing (presumably annual) basis as to nature and scale as condition 3 proposes.
Condition 4 – Outsourcing	
a	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* The condition must be very clearly limited to matters relating to the fair conduct principle and the narrow 'conduct' focus of financial institution licences. Financial institutions are already licensed by RBNZ. For large banks there are extensive requirements for outsourcing under

	BS11: Outsourcing Policy. This policy includes coverage of basic banking services. Insurers and non-bank deposit takers must also have risk management programmes in place under their statutory regimes. Such programmes ordinarily cover outsource matters as part of operational risk considerations. Requirements to 'carry on business in a prudent manner' will also necessitate consideration of outsourcing arrangements. The FMA needs to ensure the proposed standard condition does not duplicate requirements under pre-existing regimes and regulatory obligations. Otherwise licensed entities face a form of double jeopardy if things go wrong, or at best, having to appease two regulators in respect of the same subject matter.
c	*We are proposing that any parts of your financial institution service that are performed by an authorised body on your financial institution licence will not constitute an outsourcing arrangement for the purposes of this condition. Do you agree or disagree with this proposal? Please provide your reasons.* We agree. The condition should also make it clear that engagements with intermediaries are not outsourcing arrangements rather than merely referring to 'third party distribution arrangements' at present.
g	*Do you have any other comments on the proposed standard condition or how it is drafted?* In our view, the condition should be redrafted to more clearly focus solely on outsourcing arrangements that relate to fair conduct and treating consumers fairly, with greater specificity in the explanatory note to call out particular arrangements that are seen to be of higher risk when it comes to outsourcing fair conduct processes. Concerns regarding outsourcing in this context would be limited to the actual design and provision of the relevant services and interactions with consumers. For most entities the condition will be unnecessary. For example, a large bank does not need the FMA to impose a generic outsourcing condition given requirements banks must already have in place in respect of basic banking services. The FMA should consider the use of specific conditions in this context, i.e. to apply an outsource condition only to those entities the FMA assesses as requiring such a condition, rather than putting in place a broad generic outsourcing condition.
Condition 5 – Business continuity and technology systems	
a	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* As with outsourcing, financial institutions are licensed by the RBNZ and must have the ability to carry on business in a prudent manner. They must also have risk management programmes in place. These requirements necessitate the need for contingency plans. The proposed condition needs to be limited to continuity matters relating to the fair conduct principle and the narrow 'conduct' focus of financial institution licences, and should be explicitly stated to be supplemental to any BCP-related condition imposed as part of an RBNZ-issued licence, without needing to replicate processes in place to support such licences. There is no need for the FMA to double up on aspects already covered by the regimes overseen by RBNZ. The need to notify the FMA within 72 hours is unreasonable. As currently drafted the FMA expects an entity, having discovered a cyber or operational breach, to spend critical time and resource compiling a notification to the FMA rather than focusing on actually assessing and fixing the breach that has occurred. At present, we understand the FMA has no resource or capability to assist entities to respond to cyber-attacks or breaches. There is therefore

	nothing to be gained by informing the FMA within 72 hours. We consider a 10 working day timeframe for notification to be reasonable. This provides an entity time to respond to and fix the breach, which should be a financial institution's priority and aligned with a focus on good customer outcomes. Distracting resource to formulate an appropriate notification to the FMA risks detracting from the institution's capacity to minimise risk of customer harm. The entity can subsequently provide a note to the FMA setting out what has occurred, why it occurred, and how it was resolved. The reference to 'maintenance of a sound and efficient financial system and insurance sector' is also out of scope for the FMA. These are matters for RBNZ.
g	*Do you have any other comments on the proposed standard condition or how it is drafted?* Privacy matters should be expressly excluded from the reach of the condition. The loss of customer information, data, or payment details are rightly dealt with by the Office of the Privacy Commissioner. There is no need for the FMA to be involved in privacy matters. Nor should financial institutions need to interact with two separate agencies in such circumstances.
Condition 6 – Record keeping	
a	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* The condition is unnecessary as drafted. Section 446J(1)(c)(ii) of the FMC Act requires fair conduct programmes to include effective means for records to be maintained that are sufficient to allow an assessment to be made of the financial institution's performance in complying with the fair conduct principle. The proposed condition should be reframed by reference to this overarching requirement. This would ensure the condition applies to the narrower scope of the 'conduct' licence, with a focus on fair conduct programmes, whilst not overlapping with financial institutions' existing record keeping requirements. One concern is that since financial institutions are already required to maintain records in respect of their fair conduct programme and compliance with that programme, the condition creates a redundant second 'breachable' licensee obligation, i.e. any entity that fails to comply with 446J(1)(c)(ii), and duties in that respect, will also automatically be in breach of the record keeping condition 6. We do not believe there is any need for this duplication.
e	*Do you have any other comments on the proposed standard condition or how it is drafted?* As mentioned, section 446J(1)(c)(ii) requires financial institutions to 'maintain records'. The onus is placed on the financial institution to develop a policy and accompanying processes to do so. As drafted, the proposed condition cuts across the discretion provided to institutions to develop their own policies and processes. In essence, the condition prescribes some requirements for inclusion within policies and processes under a financial institution's fair conduct programme. If retained, the condition should be redrafted so that it merely complements the statutory record keeping obligations. The explanatory note does not need to refer to keeping a record of the fair conduct programme. That goes without saying as it is a statutory requirement and must be in writing.
Feedback summary Please refer to our cover letter.	

Feedback form

Consultation paper: Proposed standard conditions for financial institution licences

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed standard conditions for financial institution licences: [your organisation's name]' in the subject line. Thank you. **Submissions close at 5pm on Wednesday 7 September 2022.**

Date: 02/09/2022 Number of pages: 5

Name of submitter: [redacted]

Company or entity: Financial Advice NZ

Organisation type: Association

Contact name (if different): [redacted]

Contact email and phone: [redacted]

Question number	Response
Condition 1 **Ongoing requirements**	*(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.* **Yes, we agree in principle.** *(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.* **No** *(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.* **No** *(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.* **No** *(e) Do you have any other comments on the proposed standard condition or how it is drafted?* **No**
Condition 2 **Notification of material changes**	*(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.* **We agree** that the FMA should be notified of material changes to nature or manner, but we question the need for the urgent notification to be within 10 days of the start of the implementation. **Urgency is questioned** – as the notification is related to changes allowed within an existing licence, we do not see the immediate urgency of notification changes. The timeframe could be extended to 30 days depending on the nature of the changes, as the purpose of the notifications are to help FMA risk profile financial institution. *(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.* **No** *(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.* **No**

	(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case. **No** *(e) Are there any material matters other than those detailed in the explanatory note that should be notified to the FMA?* **No** *(f) Do you have any other comments on the proposed standard condition or how it is drafted?* **No**
Condition 3 **Regulatory returns**	*(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.* **Agree** **This is a sensible approach and a necessary standard to provide consistent information to the regulator from across the sector.** *(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.* **This type of information would be readily available in most financial institutions so it should not add significant costs, but it is hard to say exactly what the cost is without knowing the level of data required.** *(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.* **No** *(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.* **No** *(e) Do you have any other comments on the proposed standard condition or how it is drafted?* **Consultation with the industry will be very helpful here to understand the detail of the information required.** **Reporting on key standard metrics around consumer outcomes across the industry would be helpful. Qualitative and quantitative information to be made available as part of reporting.**
Condition 4 **Outsourcing**	*(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.* **Disagree** Whilst we agree all businesses should have a good degree of rigour around the selection and monitoring of their outsourcing providers, this licence requirement that Financial Institutions must ensure these arrangements will meet their regulatory and legislative requirements at all times goes too far and we believe it is beyond the role of a regulator. **Regulatory stretch** – This is a big reach into the ongoing business of a Financial Institution and creates a new level of compliance for this sector far beyond other sectors' regulation and we believe extends the scope beyond the intention of the legislative framework. The obligation on the Financial Institution should be to meet its obligations as set out in the Act and in any licence conditions and the regulator should not have oversight of the "how" this is achieved. The "how" is a commercial decision for the Financial Institution to determine. We believe this whole condition should be removed. **Knowledge gap** - One of the core purposes of outsourcing is to allow someone with more expertise or efficiency to manage a part of the business on your behalf. Outsourcing, in many cases, provides a better outcome to the consumer. This gap in expertise of the Financial Institution (filled by the outsource partner) will often mean the Financial Institution itself does not have the skills to monitor the ongoing performance of the outsourced provider to the degree required by this condition, particularly in specialty technical areas. We also question how the regulator would have the knowledge to assess and monitor compliance against this condition, except at the point of a failure.

	(b) What core services that will be related to your financial institution service do you currently outsource? **n/a** *(c) We are proposing that any parts of your financial institution service that are performed by an authorised body on your financial institution licence will not constitute an outsourcing arrangement for the purposes of this condition. Do you agree or disagree with this proposal? Please provide your reasons.* **Agree there would be sufficient oversight with an authorised body, much more so than an external separate entity.** *(d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.* **Yes** **The cost of policing 3rd party providers to the level required and the cost of additional training to learn enough about the outsourced partner to be able to provide the level of oversight required.** *(e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.* **N/A** *(f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.* **Yes – retraining for Financial Institutions to gain the knowledge in the area that is outsourced to have the level of oversight required. It would be difficult to be across 100% of the actions of another business, regardless of how much knowledge you had gained through training.** *(g) Do you have any other comments on the proposed standard condition or how it is drafted?* **Better clarity is required. This is the area that FAP's have struggled to understand and implement during Licensing due to lack of clarity and real examples to guide them.**
Condition 5 **Business continuity and technology systems**	*(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.* **Disagree** Having a good Business Continuity Plan (BCP), technology and cyber security strategies is good business practice for any sized Financial Institution, which we support and encourage across the sector. However, we do not believe it should be condition of a license to operate, as assessed by the regulator. **Regulatory Stretch** - We cannot think of any other industry where 'best practice' around succession, security of information, and contingency planning is a legislated prerequisite for participation. This is an over-reach by the regulator into the commercial arrangements of the business. **Business Continuity** - In a practical sense, how is the regulator going to assess and monitor each Financial Institutions' BCP plan to check appropriateness and compliance? This area is purely subjective. The regulator can only monitor failures, therefore having appropriate measures can only be viewed historically.

	Technology Systems - Similarly, cyber security is often outsourced, for good reason and best efforts can still result in breaches which can be completely outside the scope of influence for a Financial Institution. No check by the regulator is going to see this potential gap ahead of time. **Monitoring** - Regardless of our view that monitoring this area of business is not the regulator's role, we do not see how the regulator could measure, assess, and monitor this condition. *(b) Do you currently have a documented business continuity plan?* *(c) Will you rely on critical technology systems to deliver the market service of acting as a financial institution? If not, why do you not consider any of your technology systems to be critical?* *(d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.* *(e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.* *(f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.* *(g) Do you have any other comments on the proposed standard condition or how it is drafted?* **Legislative crossover** - This condition and its timeframes does not consider other legislative requirements, such as the mandatory reporting of a notifiable privacy breach under the Privacy Act 2020. The proposed condition, if retained, needs to be aligned to ensure there is no unnecessary duplication or and conflicting requirements to notify. **We don't agree with this condition and recommend it is removed.**
Condition 6 **Record Keeping**	*a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.* **Yes, with some clarification** We agree that good record keeping is an essential component for all Financial Institutions and an area that the regulator should be monitoring. We welcome the clear guidance on the timeframe records are required to be held for under this condition. However, there are some areas that we believe need to be enhanced/clarified in this licensing condition. *(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.* *(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.* *(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.* *(e) Do you have any other comments on the proposed standard condition or how it is drafted?*
Other	

Feedback summary – *if you wish to highlight anything in particular*

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Financial Services Council NZ

Grow the financial confidence and wellbeing of New Zealanders

Wednesday 7 September 2022

Financial Markets Authority
Level 2 1 Grey Street
Wellington

Financial Markets Authority
Level 5 Ernst & Young Building
2 Takutai Square
Britomart
Auckland

By email: consultation@fma.govt.nz

Proposed standard conditions for financial institution licences

This submission on the Proposed standard conditions for financial institution licences, 20 July 2022 (the Consultation Paper), is from the Financial Services Council of New Zealand Incorporated (FSC).

As the voice of the sector, the FSC is a non-profit member organisation with a vision to grow the financial confidence and wellbeing of New Zealanders. FSC members commit to delivering strong consumer outcomes from a professional and sustainable financial services sector. Our 106 members manage funds of more than $95bn and pay out claims of $2.8bn per year (life and health insurance). Members include the major insurers in life, health, disability and income insurance, fund managers, KiwiSaver, and workplace savings schemes (including restricted schemes), professional service providers, and technology providers to the financial services sector.

Our submission has been developed through consultation with FSC members and represents the views of our members and our industry. We acknowledge the time and input of our members in contributing to this submission.

The FSC's guiding vision is to grow the financial confidence and wellbeing of New Zealanders and we strongly support initiatives that align with our strategic intent and deliver:

- strong and sustainable customer outcomes
- sustainability of the financial services sector
- increasing professionalism and trust of the industry.

We welcome the opportunity to comment on the six proposed standard conditions for financial institution (FI) licences. Our submission contains general feedback and business specific details, and costs will be contained in our individual member submissions.

A key concern for our members is some of the proposed standard conditions as currently drafted are extremely broad and overlap or duplicate existing obligations for registered banks, licenced insurers, and licensed non-bank deposit takers which may result in uncertainty and unnecessary additional compliance costs. These obligations include existing prudential requirements which are subject to regulatory oversight from the Reserve Bank of New Zealand (RB). In line with New Zealand's twin peaks model, we strongly recommend the avoidance of overlap and duplication and encourage clarification on regulator responsibilities.

Level 17, Commercial Bay Tower | 11-19 Customs Street West | Auckland 1010 | New Zealand
P +64 (09) 802 1532 | E fsc@fsc.org.nz | W fsc.org.nz

We welcome continued discussions and engagement. I can be contacted on [redacted], to discuss any element of our submission.

Yours sincerely

[redacted]
Financial Services Council of New Zealand Incorporated

Feedback: Consultation paper: Proposed standard conditions for financial institution licences

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed standard conditions for financial institution licences: [your organisation's name]' in the subject line. Thank you. Submissions close at 5pm on Wednesday 7 September 2022.

Date: 7 September 2022

Number of pages: 9 (including a two page covering letter)

Name of submitter: [redacted]

Company or entity: Financial Services Council of New Zealand

Organisation type: Non-profit member organisation

Contact email and phone: [redacted]

1. Condition 1 – Ongoing requirements

a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

Some of our members consider it appropriate for FIs to have requirements to meet licensing standards on an ongoing basis and not just at the time of obtaining a licence. However, the extent of the standards and the ongoing requirements will depend on the content of the Financial Institution Licence Application Guide (the Application Guide). We strongly support this Guide being issued as soon as possible and with an appropriate timeframe for full consultation with the industry.

Where relevant, we consider that the conditions for FI licenses should be consistent with conditions across other licensing regimes to avoid additional compliance burden. As FIs are already registered, licensed entities with oversight from the RB, standard conditions for FI licences should relate specifically to the requirements introduced by the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI) and not impose broader requirements related to a FI's core business, particularly when they overlap with existing regulatory requirements.

The explanatory note for this proposed standard condition states "*You will need to ensure you keep your policies, processes, systems and controls (including those that form your fair conduct programme) up to date, and that they take into account any changes you may make to your business or service arrangements* (emphasis added)". We do not support this condition, or any other standard licensing condition creating obligations that are broader than the requirements set out in CoFI and therefore suggest the explanatory note should read "*You will need to ensure you keep your policies, processes, systems and controls that form your fair conduct programme up to date, and that they take into account any changes you may make to your business or service arrangements".*

b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

We note that whilst our members already have robust policies, processes, systems, and controls in place to ensure consumers are treated fairly, until the FMA publishes the Application Guide and its guidance on expectations for fair conduct programmes, any additional compliance costs cannot be quantified.

c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

Many of our members are still assessing the potential impacts of this proposed standard condition, however we encourage reference to individual organisation submissions for possible further details.

d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

We do not consider that this proposed standard condition on its own would create a barrier to enter the market. However, the increasing and extensive regulatory obligations (for example, requiring some FIs to obtain three licenses; a prudential licence, a licence to be a FAP and a 'financial services' licence under CoFI) and the associated compliance costs are likely to create a barrier to enter the market. As FIs will require oversight of and engagement from intermediaries in order to comply with the various compliance requirements, this may also be a deterrent for new financial advisers to enter the market.

e) Do you have any other comments on the proposed standard condition or how it is drafted?

Most of the organisations captured by this regime will be subject to fit and proper requirements under other regimes such as prudential and FAP licensing. Accordingly, there is potential for overlapping regulation under multiple regimes. We strongly encourage the FMA to ensure that this does not result in a duplication of effort in ensuring compliance across the different regimes and we encourage collaboration with the RB to ensure consistency and minimise duplication where possible.

2. Condition 2 – Notification of material changes

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

Some of our members agree with this proposed standard condition which is limited to the requirement for notification of any material change to the nature of the financial service. Whilst we understand what the FMA is proposing, we consider that additional guidance is needed to confirm what constitutes a "material change", as noted in response to Question 2 (e) below.

(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

Our members consider that more comprehensive guidance is needed from the FMA, to understand fully if this proposed standard will create additional compliance costs.

(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

Many of our members are still assessing the potential impacts of this proposed standard condition, however we encourage reference to individual organisation submissions for possible further details.

(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

We do not consider that this proposed standard condition would create a barrier to enter the market.

(e) Are there any material matters other than those detailed in the explanatory note that should be notified to the FMA?

As noted under Question 2(a) above, we consider that the explanatory note does not go far enough to explain what is considered a "material change". We encourage the FMA to provide more comprehensive and nuanced guidance to the sector to clarify what is meant by "material" in this context.

3. Condition 3 – Regulatory returns

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

We agree in principle with this proposed standard condition, however we note that FIs captured by CoFI already provide a number of regulatory returns to the FMA, across different regimes. Without understanding the information the FMA expects to receive, we are concerned about the potential duplication of reporting to regulators and the compliance burden this may create.

As noted in the Consultation Paper, we agree and welcome consultation with industry prior to publishing the requirements for regulatory returns so the FSC and its members can assist the FMA to ensure its requirements are met whilst minimising the associated impact and compliance costs for FIs.

(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

In principle, our members support this standard condition, and note that it is aligned to the equivalent condition in the FAP licence. However, as the FMA has not yet issued its Regulatory Return Framework and Methodology it is difficult to assess the impact of this requirement at this time.

We encourage the FMA to consider how the existing reporting provided by captured entities can be leveraged where relevant, and how the proposed regulatory returns frameworks for both CoFI and FAP regimes can be aligned to avoid unnecessary compliance burden for captured entities.

There is also the potential, depending on the requirements and scope of the regulatory returns, that the extraction and provision of this information could be labour intensive and costly. Factors such as the type of information, its expected format and the frequency of the returns will influence the extent of the compliance cost of this proposed standard condition. Based on the examples of the information the FMA is likely to require, costs to provide regulatory returns on an annual basis could be significant.

(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

Many of our members are still assessing the potential impacts of this proposed standard condition, however we encourage reference to individual organisation submissions for possible further details.

(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

We do not consider that this proposed standard condition would create a barrier to enter the market.

(e) Do you have any other comments on the proposed standard condition or how it is drafted?

Our members have provided some initial feedback on the examples provided by the FMA of information regulatory returns are likely to require.

For our insurer members, it can be difficult to establish the number of “consumers”. Whilst insurers have robust reporting at a benefit/risk level, calculating the number of “consumers” can be complex and in some cases, it is simply unknown and can only be estimated. For example, under a Group Life insurance policy issued to a policyholder who is a corporate entity for the benefit of its employees, the number of employees covered under the policy is likely to fluctuate throughout the period of insurance. The insurer may not be aware of the exact number of employees at any point in time or informed of changes unless these are significant, for example, outside the range agreed at inception of the policy.

It is important for the FMA to clarify what its definition of a “product” is. As stated above, most life insurers count benefit types and a “product” could be made up of multiple policies all of which may have a variety of different benefits.

We would also encourage the FMA to consider the timing of the request for regulatory returns to ensure it does not coincide with other extremely busy times, such as the end of financial year. This would help FIs manage their resourcing and minimise the associated compliance costs.

4. Condition 4 – Outsourcing

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

In line with New Zealand's twin peaks model, we encourage the FMA to consider what other outsourcing requirements regulated entities are subject to, to ensure that there is not duplication or inconsistencies between the regimes. We have concerns that the proposed standard could potentially be more expansive than the existing requirements of either the FMA or RB, which could lead to unnecessary complexity and excessive compliance burden and cost, particularly if arrangements need to be frequently notified to the FMA under standard condition 2 or section 412 of the Financial Markets Conduct Act 2013 (FMCA). Given the wide application of proposed standard condition 4, the compliance burden would significantly outweigh any customer benefits gained through the proposed supplier due diligence. In addition, without seeing the Application Guide, we question what possible outsourcing arrangements could be included within the CoFI licensing requirements that are specific to the conduct regime and are not already covered in licensing requirements for other regimes.

Insurers are required under the Insurance (Prudential Supervision) Act 2010 (IPSA) to be subject to, and take all practicable steps to comply with, a risk management programme. This programme must set out the procedures that the insurer will use for the effective identification and management of risks including insurance risks and operational risks such as outsourcing of core functions. The RB is currently reviewing the IPSA and has consulted specifically on proposed requirements for outsourcing.
Large banks are generally subject to a standard condition of registration relating to outsourcing which requires them to meet RB expectations as set out in the current RBNZ Banking Standard 11. Banks are also likely to be required to comply with outsourcing standards under the upcoming Deposit Takers Act. As FIs have existing requirements, we do not consider that the proposed new requirements are necessary. This is in contrast to the new financial advice regime where many entities or individuals who now hold a FAP licence were not previously subject to a licensing regime with oversight from a regulator. Accordingly, we encourage the FMA to consider an exemption for FIs that are already subject to outsourcing requirements.

Furthermore, the proposed standard condition 4 relating to outsourcing and proposed standard condition 5 relating to business continuity and technology systems relate to the core functions of being a FI and do not relate specifically to how FIs ensure they treat their customers fairly. Therefore, we question whether conditions 4 and 5 are necessary or appropriate as standard licencing conditions under the CoFI licensing regime.

One of the examples of arrangements captured by proposed standard condition 4 is hosting of technology that supports the provision of relevant services and associated products to consumers. Whilst technology is a key enabler of our member's core operations, we consider it more appropriate for a conduct licensing regime to focus on how outsourcing a core function impacts a FI's ability to treat consumers fairly (if it does at all). As currently drafted the scope of the condition is far wider than this.

For a complex FI, there are likely to be a vast array of outsourced arrangements relating to core functions with a range of different outsource providers. If this condition is retained, it is important that the condition is clearly articulated so it relates to a FI's obligations under CoFI and its ability to treat consumers fairly as opposed to broader requirements.

Therefore, we consider that the scope of what is to be included in this proposed standard condition needs to be very clear and specific to the treatment of consumers. This area may benefit from further consultation or from the FMA conducting a targeted industry workshop.

(b) What core services that will be related to your financial institution service do you currently outsource?

Generally, the core services related to our members' FI services that they may outsource include underwriting, claims management, call centres, IT services, hosting, and software services.

(c) We are proposing that any parts of your financial institution service that are performed by an authorised body on your financial institution licence will not constitute an outsourcing arrangement for the purposes of this condition. Do you agree or disagree with this proposal? Please provide your reasons.

We have no specific comment on this proposal and encourage reference to individual member submissions.

(d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

There may be additional compliance costs involved depending on the scope of this condition and the FMA's expectations for how a FI effectively monitors performance of its outsourced providers including any reporting requirements.

(e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

Many of our members are still assessing the potential impacts of this proposed standard condition, however we encourage reference to individual organisation submissions for possible further details.

(f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

We do not consider that this proposed standard condition would create a barrier to enter the market.

(g) Do you have any other comments on the proposed standard condition or how it is drafted?

We suggest additional clarification could be added to reflect that the nature of the service being outsourced, the nature of the licensee's business, and the overall context will inform a risk analysis as to the level and content of due diligence performed. We also think it is more appropriate for the word "should" to be replaced by the word "could" when discussing matters that could be considered when conducting due diligence.

5. Condition 5 – Business continuity and technology systems

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

As noted in response to proposed standard condition 4, considering FIs are also required to be registered or licenced and regulated by the RB, we strongly encourage the FMA to ensure that requirements between the regimes are consistent and do not result in duplication for regulated entities. As currently drafted the

proposed condition is very broad and does not relate specifically to a FI's obligations under CoFI. We reiterate that we encourage the FMA to ensure licensing conditions do not duplicate with existing requirements creating uncertainty and unnecessary compliance costs.

For example, the Deposit Takers Bill when passed will allow for the issuing of standards pursuant to that Act which may cover Business Continuity Plans (BCP), Disaster Recovery Plans, cyber risks, and outsourcing.

The RB has issued Guidance on Cyber Resilience which applies to all entities regulated by the RB, including registered banks, licensed non-bank deposit takers, and licensed insurers. We suggest licensing conditions and regulatory requirements in relation to BCP and technology more appropriately fit with the RB's regulatory mandate and query whether this condition is necessary or appropriate under the CoFI regime.

The notification period under this proposed standard condition for any event that materially impacts a critical technology system is 72 hours. This is much shorter and inconsistent with FAP licences, which is 10 working days. Whilst we acknowledge that critical technology systems are key to maintaining a well trusted financial services industry, some members consider that this may cause a financial strain on businesses who will need to adapt processes and engage additional resources to respond within this timeframe. For some members, this may mean IT, risk and compliance resources would now need to be available at all times. We also query whether this is an appropriate timeframe under a conduct licensing regime, where a material impact on critical technology would not necessarily have the same conduct implications as it would for prudential matters.

If this proposed standard condition is retained, we consider alignment with the 10 working days for FAP licences is appropriate. In the first 72 hours after an event that materially impacts the operational resilience of a critical technology system, the FI will be focused on actioning its BCP and remedying the issue as soon as possible in order to continue to service its customers. A requirement for a FI to notify a regulator (or potentially multiple regulators in the event of overlap in oversight by the FMA and RB) within the first 72 hours will only serve to distract the FI from this focus. FIs already have significant motivation to resolve an event that materially impacts the operational resilience of a critical technology system in order to manage the significant associated financial and reputational risks.

It is also important to clarify when a timeframe for notification commences. A FI may experience intermittent outages of a critical technology system and it may take a number of days before it is determined to be an event that materially impacts the operational resilience of that system. The 72 hour period should only commence once that determination has been made.

(b) Do you currently have a documented business continuity plan?

Our members will respond to this question in their individual submissions.

(c) Will you rely on critical technology systems to deliver the market service of acting as a financial institution? If not, why do you not consider any of your technology systems to be critical?

Many of our members will rely on critical technology systems. However, we recommend reference to our members individual submissions for details.

(d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

Until the FMA issues its guidance on its expectations for a fair conduct programme, it is difficult to assess whether increased compliance costs to adapt these systems will be incurred.

(e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

We consider that the scope of this proposed standard condition is wide and has the potential to extend much further than conduct related matters. Given the wide ranging impact of fair conduct programmes on every aspect of a FI business this has the potential to cover almost all business correspondence and therefore could create a significant compliance burden.

We recommend further clarification on the perimeters of this proposed standard condition be provided.

(f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

We do not consider that this proposed standard condition would create a barrier to enter the market.

(g) Do you have any other comments on the proposed standard condition or how it is drafted?

As noted above, the scope of this proposed condition is wide and there could be some confusion about the extent of the reporting that is expected, particularly as the explanatory note states that you must have arrangements to notify the FMA if the technological or cyber security event has a material adverse impact on consumers. We encourage clarification on whether there would be an expectation to notify even in the case where very few consumers were affected, or if the event was remedied in a very short time frame, for example, where a system was only unavailable for a few hours.

6. Condition 6 – Record keeping

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

We consider here to be some issues with this proposed standard condition. Under the CoFI amendments to the FMCA, the term “consumer” is used to cover persons to whom FIs may owe obligations in terms of conduct (section 446S). However, a “consumer” in this context is broader because it covers persons to whom a relevant service is offered, even if no service is ultimately provided or associated product acquired. This causes practical issues around how a FI can obtain consent from a non-customer for the FMA to view relevant records.

The explanatory note to this proposed Condition 6 specifies requirements to retain records to demonstrate how the FI has established, implemented, and maintained their fair conduct programme and taken all reasonable steps to comply with it. We recommend further clarity on this detail and what records would satisfy this requirement as given the scope of fair conduct programmes, the required records may be significant and beyond what is necessary or reasonable.

Requiring records to be made available to the FMA (including customer records) for review at their offices may be impractical and sending customer records in any form will be a risk.

Some of our members also note that they would need to review their Privacy Statement to cover the possibility of the provision of personally identifiable information to the FMA.

(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

In addition to our response to Question 6(a), there is possibly additional compliance costs if the process for extraction of customer records and their transfer to the FMA are required.

General Feedback

In respect of the licencing process, we strongly recommend that the FMA considers learnings from the FAP licensing process and utilises those learnings in the CoFI licensing, and we are happy to engage further to provide this feedback. We encourage the provision of clear guidance and early sign posting to FIs around what the FMA are looking for in licence applications. We note that the proposed licensing window is around 18 months, however if the FMA intends to stagger the closing window for applications before the end of the period (as occurred with FAP licensing) then this should be communicated early so FIs can prepare.

We also suggest the FMA considers renaming the 'financial institution licence' to a 'financial institution conduct licence'. Whilst we acknowledge references within the CoFI legislation, it can be confusing to refer to a 'financial institution licence' when many of our members already hold licences to be a financial institution or other licences under the FMCA, for example a FAP. We consider it more appropriate to have clarity that this licence relates to a FI's conduct towards consumers.

FINANCIAL SERVICES FEDERATION

7 September 2022

CoFI Consultation
Financial Markets Authority
Wellington

By email: consultation@fma.govt.nz

Dear Madam/Sir,

Re: Consultation paper: Proposed standard conditions for licenses under CoFI

Thank you for the opportunity for the Financial Services Federation (FSF) to provide feedback to you on the proposed standard conditions for financial institution licenses under the Financial Markets (Conduct of Institutions) Amendment Act 2022 (Act).

By way of background, the FSF is the industry body representing responsible non-bank lenders, fleet and asset leasing providers and credit-related insurance providers. We 89 members and affiliates providing these products to more than 1.6 million New Zealand consumers and business. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society and business is attached as Appendix B.

As you will see from the FSF member list, as in Appendix A, the financial institutions to which the conduct regime will apply who are members of the FSF are the four Non-Bank Deposit Taker (NBDT) members, five Credit Unions or Building Societies, and the small credit-related insurance providers.
This submission will largely represent the views of these members rather than the remainder of the membership that are Non-Deposit-Taking Lending Institutions (NDLIs) or the Affiliate membership.

Although, as responsible lenders who take their compliance obligations very seriously, the NDLI members are keeping a watching brief on the requirements of the conduct regime to ensure that they do not remain out of step with what is being required of other financial institutions.

Before addressing the specified questions, the FSF has some introductory comments to make on the Act and the standard conditions.

Introductory comments

Registered banks are important, and so are NBDTs and other licensed entities, and thus, the preservation of their existence in the market. The significant role that NBDTs and smaller insurance providers play in the domestic market is not entirely understood by the regulators, as we have witnessed by the lack of existing proportionality in regulation affecting deposit takers. Particularly, NBDTs play a significantly important and niche role in providing financing to communities, iwi, and typically marginalised populations to whom the banks cannot offer their streamlined and automated services. Impacting NBDTs and small insurance providers so much that their operations are at stake, is essentially placing another barrier between those hard-to-reach populations and niche markets and their access to stable financing in Aotearoa. To continue to legislate and regulate with this lack of proportionality is a serious concern to the FSF, and must be amended to appropriately consider the entirety of New Zealand's financial markets to allow for these smaller entities to remain in operation.

Further, the FSF will comment on the duplication of many of the requirements in these standards to other licensing regimes capturing our members. For businesses who are already licenced say to the Reserve Bank of New Zealand (RBNZ), they will find it easier as these licence standards are a combination of a Risk Management Policy, Business Continuity Policy and to some extent the Anti Money Laundering (AML) policy. The standards would appear to require similar processes to these specified, however, the level of detail as to what the standard will actually require will determine the onus imposed on these entities, and thereby, their ability to cope with, yet another, licensing regime.

The onerous licensing requirements will be important to be clarified early to allow for an appropriate length of time for entities to set up appropriate and effective policies and procedures to meet them to allow those smaller entities to comply with a more cost-effective process without harming the resources these entities have available to them.

Although the system should be in place early, there should be effective communication between all CoFR members to ensure appropriate alignment between all the regimes and to avoid confusion and improve efficiency for both the regulators and the regulated.

Now the FSF will speak to any comments on each of these standards below. As opposed to answering each question, a more high-level answer will be provided covering all aspects of the questions that relate.

Condition 1 – Ongoing requirements

The FSF and its members agree with the proposed standard condition, however, only in the case that the reporting requirements are not frequent and are consistent. The timing details surrounding the ongoing requirements will be eagerly awaited so entities are able to fully understand the onus imposed by this standard.

This timing factor allows an opportunity for proportionality to come into fruition. The FMA, alongside other CoFR bodies, is encouraged to adopt proportionality in their finalisation of the details surrounding the ongoing requirements.

Ongoing requirements for those larger institutions such as banks, are able to be set up with systems and processes, but those that are smaller entities with minimal resources don't necessarily have the resources which the larger banks possess to record and report. This aspect of ongoing requirements requires a great deal of proportionality consideration to ensure that the regulations, once finalised, are equitable and considerate of size, nature, and risk of the entity.

Further, the ongoing requirements should be complied with at all times, however, should relate specifically to the fair conduct programme. This purpose will need to be bared in mind when drafting the accompanying detail of this standard condition.

Condition 2 – Notification of material changes

In regard to notification of material changes, the FSF contends that the example given as inappropriate is not entirely reflective of actual examples or situations that many entities would find themselves in.

The likelihood and the frequency of the example articulated is so unlikely or infrequent to be considered an actual example on which entities can rely to set a precedent or provide any indication of what a material change may be. Rather, the example provided fails to showcase any amendment to CoFI obligations in the slightest and does seem over the top. The FSF requests that further examples are provided as to what circumstances constitute a material change to adequately direct licensees in their process of compliance.

Further, entities are required to submit identical, if not immensely similar, information to three, or sometimes four, regulatory and enforcement agencies, therefore the need for this notification is not entirely understood. In saying this, the FSF would encourage more communication between the CoFR entities to ensure that the reporting overlap has been minimised as much as possible, and legislative regimes and licensing is as efficient as possible for both those regulated and those who regulate.

Condition 3 – Regulatory returns

This condition also appears to be another duplication and overlaps with other requirements for other licensing regimes entities will be bound by, particularly to the RBNZ for licensing as a deposit taker. Further clarity will be required as to the details surrounding regulatory returns, and whether this information will be much of a duplication of what is already required, or whether there is further complexity and comprehension of the information required for this licensing regime.

The FSF membership has concerns regarding the duplication of effort, which is concerning for those members who are smaller in nature, risk, and portion of the market, and therefore their natural risk and resource availability. Further, the FSF supposes that regulatory changes linked to CoFI are geared towards conduct on consumers, and therefore, the accompanying detail on regulatory return information should only relate to consumer information, this approach factors proportionality and mitigates further efforts of duplication between the regimes.

The regulatory returns appear similar to the AML annual returns that entities are currently required to do. A criticism to consider in regard to the AML annual returns would be that entities are often required to submit significant and substantial amounts of information, and no engagement after this submission is heard. This provides for concerns regarding the lack of constructive feedback or educational opportunities for entities who are proactive in their compliance, however, are not necessarily as well-resourced as those larger entities. The FSF queries whether the possibility of constructive engagement could be considered for the FMA, particularly as the licensing standards are in their earlier years, as opposed to disproportionate enforcement for those smaller entities who are less likely to be understood well by regulatory entities and those who are being hit hardest by the demanding regulatory landscape.

Condition 4 – Outsourcing

The FSF states that any kind of monitoring would require costs. So, proportionality should also be applicable here, as the costs imposed on larger entities again are not as significant as those costs imposed to smaller entities with smaller profit margins and smaller niche communities of customers.

There also needs to be absolute clarity that the definition of outsourcers is just outsourcers, and the scope of this definition will not leak into the definition of distributors, as such a leak would cause significant unintended consequences to licensed entities. Further on this definitional point, it has not been made clear whether authorised bodies are to include non-charging institutions and those under trusts. Clarity on these points should be provided prior to finalisation of the standard.

Again, outsourcing details need to align to processes that affect the end consumer. Although information technology and other arrangements may be outsourced, they do not necessarily have a direct impact on the end consumer. For example, some of our members outsource claims management to other entities and therefore, this would fall within the outsourcing definition under this condition. However, outsourcing their IT network to another entity would not feature under this obligation. This provides further rationale to the consideration for the narrowing scope of what outsourcers are defined as under these regulations.

Members are already undergoing significant due diligence processes on all their suppliers and providers to a high level to ensure that they are satisfied with their suppliers' conduct. Including this in the license obligations could be perceived as excessive amounts of control, as this allows for significant levels of control over entities and their interactions with such outsourcing providers, and also consequently imposes a large onus on licence holders.

Proportionality should again be considered in this context, particularly in operation and the implementation of this obligation which will again be difficult for smaller entities to continue on with. This leads on to the Business Continuity Policy, as members are already recording risks relevant to outsourcing in the event of disruption or disaster, in existing plans which appropriately accommodate this licensing standard.

Licensed entities are already covered under prescriptive and detailed regulation of outsourcing under the Reserve Bank of New Zealand's BS11 Outsourcing Policy. When the new Deposit Takers Bill comes into effect deposit takers will be required to comply with Standards issued under that Act. Standards may be issued covering outsourcing, business continuity planning, and cybersecurity risk. Accordingly, there is potential for deposit takers to again be subject to overlapping regulation under the two (new) regimes. This may not be an optimal outcome from an efficiency perspective, and the FMA should be encouraged to work with the Reserve Bank to ensure consistency.

Condition 5 – Business continuity and technology systems

The FSF members covered by this licensing regime do not necessarily rely on critical technology systems to deliver market services to the extent that other large institutions would be reliant on, so again proportionality should be considered when requiring the reporting on this standard. Imposing such reporting requirements would be causing disproportionate costs on those entities who then do not require these, and thereby do not need to report on these. This aspect of the standard allows the FMA to uphold proportionality considerations, and the FSF urges this.

Further, members note that Business Continuity Plans (BCP) are already required for RBNZ licensing, and therefore query whether this duplication in requirements could be made to be more efficient for entities. The FSF eagerly awaits the details of this standard, as it will be critical in understanding the necessity for a duplication of effort.

Condition 6 – Record keeping

What is currently required seems reasonable to the FSF, as much of what is stipulated is already expected by other regulators, and by this precedent it would appear reasonable (aside from the duplication argument to consider).

A consideration of importance is the onerous requirement for consumers to expressly consent to the release of a company's records to the FMA. Although it may be considered under a title such as '*share your information for any legal purposes*' consumers are not likely to give sufficient attention to this.

Concluding remarks

The FSF acknowledges that many of the standards and their accompanying obligations are not entirely new. Although this duplication could be perceived as favourable, it is not necessarily enough to counter the resource and effort required for compliance initially. On this basis, the FMA is encouraged to consider proportionality where we have indicated, and further, to allow for detail to be further clarified and consulted on. The FSF eagerly awaits the opportunity to further consult on finalised regulations.

Further, the FSF's main concern surrounding duplication of requirements sits around the avoidance of inefficiency and confusion. Overlapping regulation is not considered efficient, and the FMA is encouraged to work with the CoFR, particularly the RBNZ, to ensure the

understandings and objectives of the regimes are separate and to avoid confusion for entities and their compliance processes under both regimes.

Please do not hesitate to contact me if you wish for us to speak to any of our points further.

Yours sincerely,

[redacted]
[redacted]
Financial Services Federation

FINANCIAL SERVICES FEDERATION

Appendix A - FSF Membership List as at 1 August 2022

Non-Bank Deposit Takers, Insurance Premium Funders	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Leasing Providers	Affiliate Members	Affiliate Members cont'd and Credit-related Insurance Providers
XCEDA (B)	AA Finance Limited	Avanti Finance ➢ Branded Financial	Nectar NZ Limited	Buddle Findlay	<u>Credit Reporting, Debt Collection Agencies, Insurance Providers</u>
Finance Direct Limited ➢ Lending Crowd	Auto Finance Direct Limited	Basalt Group	NZ Finance Ltd	Chapman Tripp	Baycorp (NZ) ➢ Credit Corp
Gold Band Finance ➢ Loan Co	BMW Financial Services ➢ Mini ➢ Alphera Financial Services	Basecorp Finance Ltd	Pepper NZ Limited	Credisense Ltd	Centrix
Mutual Credit Finance	Community Financial Services	Blackbird Finance	Personal Loan Corporation	Credit Sense Pty ltd	Collection House
<u>Credit Unions/Building Societies</u>	European Financial Services	Caterpillar Financial Services NZ Ltd	Pioneer Finance	Experian	Debt Managers
First Credit Union	Go Car Finance Ltd	Centracorp Finance 2000	Prospa NZ Ltd	Experieco Limited	Debtworks (NZ) Limited
Nelson Building Society	Honda Financial Services	Finance Now ➢ The Warehouse Financial Services ➢ SBS Insurance	Resimac NZ Limited	EY	Equifax (prev Veda)
Police and Families Credit Union	Kubota New Zealand Ltd	Future Finance	Smith's City Finance Ltd	FinTech NZ	Illion (prev Dun & Bradstreet (NZ) Limited
Steelsands Credit Union Inc	Mercedes-Benz Financial	Geneva Finance	Speirs Finance Group ➢ Speirs Finance ➢ Speirs Corporate & Leasing ➢ Yoogo Fleet	Finzsoft	Quadrant Group (NZ) Limited
Westforce Credit Union	Motor Trade Finance	Harmoney	Turners Automotive Group ➢ Autosure ➢ East Coast Credit ➢ Oxford Finance	Happy Prime Consultancy Limited	<u>Credit-related Insurance Providers</u>
<u>Insurance Premium Funders</u>	Nissan Financial Services NZ Ltd ➢ Mitsubishi Motors Financial Services ➢ Skyline Car Finance	Humm Group	UDC Finance Limited	<u>Lendscape</u> Ltd	Protecta Insurance
Elantis Premium Funding NZ Ltd	Onyx Finance Limited	Instant Finance ➢ Fair City ➢ My Finance	<u>Leasing Providers</u>	KPMG	Provident Insurance Corporation Ltd
Financial Synergy Limited	Scania Finance NZ Limited	John Deere Financial	Custom Fleet	LexisNexis	
Hunter Premium Funding	Toyota Finance NZ ➢ Mazda Finance	Latitude Financial	Fleet Partners NZ Ltd	Motor Trade Association	
IQumulate Premium Funding	Yamaha Motor Finance	Lifestyle Money NZ Ltd	ORIX New Zealand	PWC	
Rothbury Instalment Services		Limelight Group	SG Fleet	Simpson Western	
		Mainland Finance Limited		Verifier Australia	
		Metro Finance			Total 89 members

Appendix B – Key Facts from FSF Member Data Survey

FINANCIAL SERVICES FEDERATION (FSF)

THE NON-BANK FINANCE INDUSTRY SECTOR - 2022

48%

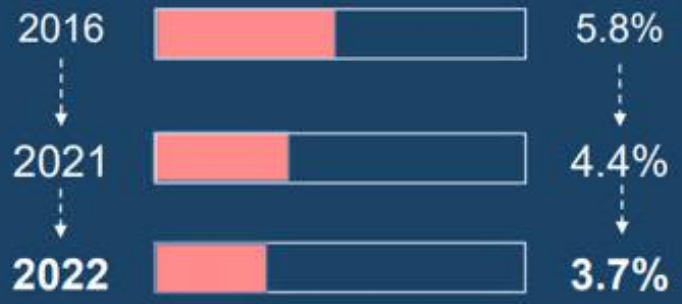
of personal consumer loans are financed by the **non-bank sector** represented by FSF members.

Setting industry standards for responsible lending, promoting compliance and consumer awareness.

Percent of Loan Requests Approved

46%

Percent of Loan Book in Arrears



KEY FACTS: THE NON-BANK FINANCE INDUSTRY SECTOR

FSF Members (as at 28 Feb 2022)

Number of Members	57
Number of Employees	3,561
Applications Processed	1,085,739
Loan Requests Approved	495,434
Percent of Loan Book in Arrears	3.7%

Bank Sector (as at 28 Feb 2022)

Value of Mortgage Loans	$328,776M
Value of Consumer Loans	$7,613M
Value of Business Loans	$117,944M

Non-Bank Sector Share (as at 28 Feb 2022)

% of Total Mortgage Loans	0.4%
% of Total Consumer Loans	47.7%
% of Total Business Loans	5.9%

Insurance Credit Related (as at 28 Feb 2022)

Number of Employees	237
Number of Policies	311,409
Gross Claims (annual)	$27.2M
Days to Approved Claim	20 days

Consumer Loans (as at 28 Feb 2022)

Total Value of Loans	$8,104M
Number of Customers	1,699,683
Number of Loans	1,584,984
Monthly Instalments:	$330M
Average Value of Loan:	
Mortgage	$171,932
Vehicle Loan	$12,393
Unsecured	$2,467
Other Security	$5,754
Lease Finance	$2,804
Average Monthly Instalment:	
Mortgage	$257
Vehicle Loan	$463
Unsecured	$144
Other Security	$302
Lease Finance	$241

Business Loans (as at 28 Feb 2022)

Total Value of Loans	$7,330M
Number of Customers	136,830
Number of Loans	264,827
Monthly Instalments:	$590M
Average Value of Loan:	
Mortgage	$443,784
Vehicle Loan	$28,869
Unsecured	$7,443
Other Security	$32,374
Lease Finance	$24,921
Average Monthly Instalment:	
Mortgage	$2,281
Vehicle Loan	$1,064
Unsecured	$799
Other Security	$11,044
Lease Finance	$939

ICNZ Insurance Council of New Zealand
Te Kāhui Inihua o Aotearoa

Insurance Council of New Zealand
Level 2 Asteron House, 139 The Terrace,
Wellington 6011
Tel 64 4 472 5230
Email icnz@icnz.org.nz
Fax 64 4 473 3011
www.icnz.org.nz

7 September 2022

Financial Markets Authority
Wellington

By email: consultation@fma.govt.nz

Dear Sir/Madam,

ICNZ submission on Proposed standard conditions for financial institutions (COFI)

Thank you for the opportunity to submit on the proposed standard conditions for financial institutions (**Proposed Conditions**) with respect to the implementation of fair conduct programmes.

By way of background, the Insurance Council of New Zealand - Te Kāhui Inihua o Aotearoa (**ICNZ**'s) members are general insurers and reinsurers that insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars' worth of New Zealand assets and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, commercial property and directors and officers insurance).

Please contact [redacted] if you have any questions on our submission or require further information.

This submission has two parts:

- overarching comments, and
- answers to questions in the consultation paper (Appendix One).

1. Overarching comments

It is useful to briefly remind ourselves of the regulatory context within which ICNZ Members operate – the "twin peaks" model, whereby the Reserve Bank of New Zealand (**RBNZ**) oversees the prudential requirements of insurers, and the Financial Markets Authority (**FMA**) has oversight of the market conduct of participants[1].

The RBNZ's legislative tool is the Insurance (Prudential Supervision) Act 2010 (**IPSA**), while the FMA uses the Financial Markets Conduct Act 2013 (**FMCA**), as subsequently amended from time to time. Parliament has passed the Financial Markets (Conduct of Financial Institutions) Amendment Act

[1] We note also that the FMA and the Commerce Commission have overlapping jurisdiction for misleading and deceptive conduct and have a Memorandum of Understanding with respect to how that jurisdiction is allocated.

(**COFI**) requiring financial institutions[2] to develop "fair conduct programmes" aimed at ensuring that consumers receive fair treatment from organisations distributing certain financial advice products and providing financial services.

Once in force, COFI will require licensed insurers to obtain a licence relating to the market service of acting as a "financial institution".

That will mean that many licensed insurers may be required to hold three concurrent licences:

- A licence to act as an insurer in New Zealand, issued by the RBNZ under IPSA;
- A market service licence to provide financial advice (commonly referred to as being a licensed "FAP")[3] with regulatory oversight by the FMA; and
- A separate market service licence to act as a financial institution, with regulatory oversight by the FMA[4].

However, the marketplace is complex and not all involved in the provision of general insurance products will be insurers (they might be intermediaries involved in the sale and distribution of insurance products). Not all insurers deliver product to consumers (being more focused on the commercial market), and not all insurers or intermediaries are FAPs.

While this context is known to the regulator and the industry, it is worth painting the picture of the already complex compliance landscape within which the insurance industry must operate. It is important that the development of new requirements align with and complement existing regulations.

As currently drafted, some of the proposed standard conditions are extremely broad and overlap and/or duplicate with existing obligations on financial institutions. These obligations include existing prudential requirements that are subject to regulatory oversight from the RNBZ. Overlap and duplication in obligations and regulatory requirements result in uncertainty and unnecessarily increases compliance costs. In line with New Zealand's twin peaks model, we strongly recommend overlap and duplication are avoided and there is clarity as to which entity is the responsible regulator.

The main concerns of general insurers

The wording of the Proposed Conditions is very broad and goes beyond matters intrinsically related to the new conduct regime.

- The Proposed Conditions should relate specifically to the fair conduct requirements introduced by COFI. They should not impose broader requirements on a financial institution's core business that do not relate to those requirements and are not related to the interface between the financial institution and consumers[5].

[2] The definition of "financial institution" under the Financial Markets (Conduct of Financial Institutions) Amendment Act 2022 includes licensed insurers providing relevant services to consumers. This submission is from the perspective of the General Insurance provider.

[3] Contrasted with an organisation that simply provides information about financial products, being a "non-FAP".

[4] These licences are or will be issued by the Minister of Commerce and Consumer Affairs, on the advice of the FMA, and the actions of licensees are overseen by the FMA.

[5] If the intent was for such matters to be overseen by the FMA, this should have been explicitly considered in consultation with industry and then provided for in the legislation.

- The industry is concerned that the Proposed Conditions introduce obligations on licensed insurers that do not directly relate to the obligation to comply with the fair conduct principle.

There is a risk that the industry becomes unnecessarily subject to duplicate regulatory requirements.

- With the many similarities to the FAP licence conditions, the FMA must draw out and distinguish the differences and focus on what is appropriate for the conduct regimes.
- FMA should consider whether institutions licenced by the RBNZ should be exempt from some of the proposed licence conditions because these areas of activity are already being monitored by, or are more appropriately monitored by, the RBNZ (for example, outsourcing, business continuity plans, and technology systems).

In short, the Proposed Conditions should be designed to relate only to the COFI "fair conduct" obligation (with exemptions where existing obligations overlap with the Proposed Conditions), to avoid unnecessary and inefficient duplication of regulatory requirements.

2. Conclusion

Thank you again for the opportunity to submit on this matter. If you have any questions, please contact [redacted]

Yours sincerely,

[redacted]

[redacted]

APPENDIX ONE: Answers to questions in the consultation paper

Question	Feedback
Consultation Paper: Proposed standard conditions for financial institution licences	
Conduct of Financial Institutions / Fair Conduct Programmes	
Condition 1 – Ongoing requirements	
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	We agree in principle with a condition confirming that the licensing requirements must continue to be satisfied at all times while a financial institution holds a licence. However, as stated above, the licensing requirements should relate to a financial institution's ability to comply with the fair conduct principle. To reflect this, we suggest the explanatory note should read "*You will need to ensure you keep your policies, processes, systems and controls ~~(including those~~ that form your fair conduct programme~~)~~ up to date, and that they take into account any changes you may make to your business or service arrangements".* We also suggest the following wording change to the Explanatory Note: *"where you make changes to your business or service arrangements, you will need to ensure that they ~~support and do not hinder, the fair treatment of consumers and compliance~~ are consistent with the fair conduct principle and your fair conduct programme".* This change avoids potential difficulties in interpreting "support" and "not hinder" and aligns with language in FMCA.
(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	Adherence to the proposed licensing conditions on an ongoing basis may create significant additional compliance costs for some insurers, particularly as some of the proposed conditions overlap with, but do not align with the FAP licensing conditions. Insurers have undertaken significant conduct uplift activity since the FMA and RBNZ's conduct and culture reviews in 2019 and have already implemented policies, processes, systems, and controls to ensure fair consumer outcomes. However, until the FMA publishes the Financial Institution Licence Application Guide and its guidance on expectations for fair conduct programmes, any additional compliance costs cannot be quantified. ICNZ recommends that the FMA releases the licensing application guide as soon as possible to enable the industry to assess the costs of compliance with this Proposed Condition.

Question	Feedback
(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	It is difficult to assess this without the relevant FMA guidance mentioned in response to question 1 (b) above.
(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	We do not consider that this proposed standard condition on its own would create a barrier to enter the market. However, the increasing and extensive regulatory obligations (for example, requiring some financial institutions to obtain three licenses; a prudential licence, a licence to be a FAP, and a 'financial services' licence under CoFI) and the associated compliance costs are likely to create a barrier to enter the market.
(e) Do you have any other comments on the proposed standard condition or how it is drafted?	We refer you to our response to question 1(a) above. The requirements of section 396 of the FMCA include ensuring that directors and senior managers are fit and proper persons to hold their respective positions and otherwise satisfy the requirements that are prescribed by the regulations for licences for that service (if any). Insurers are already subject to fit and proper requirements under prudential and FAP licensing. As stated above, we strongly encourage the FMA to ensure that the proposed standard conditions do not result in unnecessary duplication and an increase in the associated compliance costs required to satisfy the different regimes. We support and encourage collaboration with the RBNZ to minimize duplication where possible and ensure consistency where there is any necessary overlap. Consideration should be given to whether licensed insurers should be deemed to comply with the fit and proper requirements, given the fit and proper obligations already owed by insurers under IPSA.
Condition 2 – Notification of material changes	
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	We agree with this proposed condition in principle.
(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	Our members to not anticipate any significant additional costs to comply with this proposed condition.

Question	Feedback
(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	Our members to not anticipate any other adverse impacts.
(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	Our members to not consider this proposed condition would create a barrier to enter the market.
(e) Are there any material matters other than those detailed in the explanatory note that should be notified to the FMA?	We refer you to our response to question 2(f) below.
(f) Do you have any other comments on the proposed standard condition or how it is drafted?	As drafted, proposed standard condition 2 is narrower than the equivalent FAP licensing condition: *You must notify us in writing within 10 working days of implementing any material change to the nature of, or manner in which you provide, your financial advice service.* Whilst in general we support consistency across the licensing conditions, we agree that the proposed wording better reflects the FMA's intent as described in the explanatory note and comments section for this condition. FMA should provide guidance on a definition of "materiality". The Explanatory Note suggests that the FMA's view is that a change to a financial institution's business is "material", and therefore within the scope of the "notification" obligation, **only** when it amounts to the financial institution (a) ceasing to be a financial institution (or, in the case of an insurer, moving into run-off), (b) becoming a different "type" of financial institution, or (b) ceasing to provide its products or services to consumers. If that is the FMA's view, that should be more clearly drawn out on the Explanatory Note. If the FMA's view is that other changes to a financial institution's business would meet the "materiality" threshold, it would be helpful for the Explanatory Note to set that out more clearly.

Question	Feedback
Condition 3 – Regulatory returns	
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	We broadly agree with this proposed condition. Financial institutions should provide the FMA the information it requires to monitor financial institutions under the CoFI regime. We are pleased to see the FMA is intending on consulting with industry prior to publishing the proposed Regulatory Return Framework and Methodology as it is important to ensure that any Framework is proportionate and not unduly costly or onerous.
(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	We anticipate the requirement for annual regulatory returns will create additional compliance costs, including additional resourcing and changes to systems to enable the required reporting. Until the FMA issues its Regulatory Return Framework and Methodology it is difficult to assess the full extent of the additional compliance costs. However, based on the examples of the information the FMA is likely to require, costs to provide regulatory returns on an annual basis could be significant.
(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	Other impacts are difficult to assess without more detail.
(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	This is difficult to assess without more detail about the requirements of the regulatory returns.

Question	Feedback
(e) Do you have any other comments on the proposed standard condition or how it is drafted?	The guidance document states that regulatory returns are likely to require reporting of factual business information, such as "numbers and types of breaches" and complaints information. Given the focus of COFI on conduct towards consumers, regulatory return information should only relate to consumer insurance products as defined in COFI. Whilst most insurers have robust reporting at a benefit/risk level, calculating the number of "consumers" can be complex and in some cases, it is simply unknown and can only be estimated. A consumer may have multiple different policies across different brands which may be held in different names. For example, a consumer may have home insurance with one brand held in the name of a trust, motor insurance with another brand (which may operate on a separate system) held in their own name, and contents insurance held jointly with their partner. Therefore, unless a consumer confirms they already hold insurance with that provider and provides the required consent, an insurer may not be able to link two policies held by the same person. It will be important for the FMA to clearly articulate the definitions used in its Regulatory Return Framework and Methodology as the complexity of completing the returns and the associated costs will be impacted by the scope of these definitions. For example, for general insurance a "product" could be determined at a portfolio level (Motor, Home, Contents etc.) or it could be further drilled down into different channels or policy wordings within a particular portfolio that have variations in the benefits offered. In addition, an insurer's business may not have a clear delineation between consumer products and non-consumer products and separately reporting on consumer products may be problematic. As well as factual business information, the FMA has indicated it will be asking for information about the implementation and maintenance of, and compliance with, a financial institution's fair conduct programme. When determining the scope of regulatory returns, we urge the FMA to consider in detail the cost to financial institutions in providing this information on an annual basis against the benefit it is hoping to achieve and ensures a proportional approach is taken. We would also encourage the FMA to consider the timing of their request for regulatory returns. The end of calendar/financial years are generally extremely busy with resources at full capacity. Ensuring requests for regulatory returns outside of these timeframes or allowing financial institutions to nominate the month in which they will provide their return, would help to manage resourcing and minimize the associated compliance costs.

Question	Feedback
Condition 4 – Outsourcing	
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	The proposed standard condition 4 relating to outsourcing and condition 5 relating to business continuity and technology systems relate to the core functions of being an insurer and do not relate specifically to how financial institutions ensure they treat their consumers fairly. Unlike the new financial advice regime where many entities/individuals who now hold a FAP licence were not previously subject to a licensing regime with oversight from a regulator, all financial institutions are currently registered/licensed with oversight from the RBNZ. Therefore, we question whether conditions 4 and 5 are necessary or appropriate as standard licencing conditions under the CoFI conduct licensing regime. The condition should be clear about what arrangements the FMA considers to be an "outsourcing" arrangement. In a complex insurance business, there are likely to be a vast array of outsourced arrangements relating to core functions with a range of different outsource providers. If this condition is retained, it is important that the condition is clearly articulated so it relates to a financial institution's obligations under CoFI and its ability to treat consumers fairly as opposed to broader requirements of an insurer. One of the examples of arrangements captured by condition 4 is hosting of technology that supports the provision of relevant services and associated products to consumers. Whilst technology is a key enabler of an insurer's core operations, we consider it more appropriate for a conduct licensing regime to focus on how outsourcing a core function impacts a financial institution's ability to treat consumers fairly (if it does at all). As currently drafted the scope of the condition is far wider than this. We encourage the FMA to consider what other outsourcing requirements regulated entities are subject to (or will be subject to), to ensure that there is no duplication or inconsistencies between the regimes which would add unnecessary complexity and further increase compliance costs. Insurers are required under IPSA to be subject to, and take all practicable steps to comply with, a risk management programme. This programme must set out the procedures that the insurer will use for the effective identification and management of risks including insurance risks and operational risks such as outsourcing of core functions. The RBNZ is currently reviewing the IPSA and has consulted specifically on proposed requirements for outsourcing. An interesting point here though is the situation for **insurers acting as agents of EQC** where EQC is not subject to license conditions. In practical terms, insurers would apply the same systems though would have to comply with EQC obligations. This area does not seem to have been contemplated.

Question	Feedback
(b) What core services that will be related to your financial institution service do you currently outsource?	There are a range of services an insurer may outsource, including IT services, hosting and software services, underwriting, call centres, managed repairs, and claims investigations and management.
(c) We are proposing that any parts of your financial institution service that are performed by an authorised body on your financial institution licence will not constitute an outsourcing arrangement for the purposes of this condition. Do you agree or disagree with this proposal? Please provide your reasons.	We agree. It is not necessary for this condition to extend to Authorised Bodies, given the oversight obligations in section 400 of the FMC Act.
(d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	There may be additional compliance costs involved depending on the scope of this condition and the FMA's expectations for how a financial institution effectively monitors performance of its outsourced providers including any reporting requirements.
(e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	
(f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	
(g) Do you have any other comments on the proposed standard condition or how it is drafted?	We submit that this condition should be clarified to ensure it relates to the outsourcing of functions related to the fair treatment of consumers and does not apply to *all* outsourcing arrangements entered into by licensed insurers. We suggest that the wording is amended so that it refers to systems and processes necessary for a financial institution to perform its "*financial institution service in circumstances in which the fair conduct principle applies…*" to reflect the language of section 446C of the FMC Act as amended by COFI. The guidance states that the condition applies if you outsource a **system or process** necessary to the provision of your financial institution service to meet your market services licensee obligations as they relate to your financial institution service (licensee obligations). Further clarity is required on when an arrangement constitutes outsourcing. In particular:

Question	Feedback
(Question 4(g) continued)	i. Further clarity is required on what a "system or process" is that is necessary for the provision of a financial institution service as an insurer, given that COFI is a licence which regulates conduct relevant to acting as an insurer for consumers rather than a specific service whereby systems and processes can be easily identified. We consider that only systems and processes that are consumer facing should fall within the scope of the outsourcing condition. ii. The outsourcing condition should be subject to a materiality threshold. That is, the condition should only apply to material outsourcing arrangements which have an impact on consumers. The minimum requirements for fair conduct programmes in section 446M already requires financial institutions to implement risk-based processes, systems and controls to ensure fair outcomes for consumers across all of these areas (and regardless of the distribution method.) This requires financial institutions to review the entire product life cycle to adopt a risk-based approach to ensure fair outcomes. The requirement to implement broader outsourcing considerations to other day-to-day functions would be unduly onerous and would in effect reduce the business partners insurers work with, which would ultimately reduce competition and choice for consumers. iii. The FMA refers to outsourcing the "processing of insurance claims to a specialist claims management company". Insurers may outsource all or parts of their claims handling services for particular products, brands or portfolios. Loss adjusters are often involved in assessing claims; however, the insurer retains overall management of the claim. In some situations, the arrangement may not be subject to full due diligence and may not have a written contract between the parties as the overall management of the claim remains with the insurer and provides the required oversight to ensure consumers are treated fairly. A materiality threshold would allow the appropriate balance between what arrangements should be subject to full due diligence processes and what can be subject to usual business oversight practices. iv. The FMA states that "We would not expect typical distribution arrangements where a third party is involved in distributing the financial institution's relevant services and associated products to consumers to be an outsourcing arrangement." It is unclear what is meant by a "typical" distribution arrangement. It appears that the intention is for all distribution arrangements to be excluded from the outsourcing condition (which we would agree with), but this should be clarified.

Question	Feedback
(Question 4(g) continued)	The **due diligence** requirements set out in the Explanatory Note require financial institutions to consider "reported complaints and their complaints handling procedures". Due diligence obligations of this nature do not make sense in the context of many outsourcing arrangements entered into by licensed insurers. For instance, technology providers and records management providers are not consumer facing, so complaints handling is not relevant. This highlights the overly wide scope of the Proposed Condition. We suggest that the FMA provide clarity as to whether the matters in the explanatory note (eg "important matters that you should consider when conducting due diligence" and "other important information you should consider in respect of your outsourcing arrangements") are mandatory or whether they only apply where relevant to the context. **Multinational - Intragroup Shared Services Arrangements**: In the context of the financial advice provider licence, multinational organisations that rely on intragroup shared services are not considered to be an outsourcing arrangement. This is in accordance with the "Key themes from the FAP Consultation on the proposed licence conditions document" (snip below) where the FMA stated that intragroup arrangements were not outsourcing and therefore not captured by the standards condition. A similar approach should be adopted in this instance as the reliance on group company services does not impose an additional risk to fair outcomes for consumers.  Intragroup arrangements Some submitters asked whether intragroup arrangements were outsourcing. FMA response: We do not consider intragroup arrangements outsourcing and therefore they are not captured by this standard condition.

Question	Feedback
Condition 5 – Business continuity and technology systems	
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	It is not clear how this Proposed Condition relates to the core obligation of complying with the fair conduct principle, or the FMA's ability to monitor compliance with that obligation. As currently drafted, the Proposed Condition is very broad and does not relate specifically to a financial institution's obligations under CoFI. We reiterate that we encourage the FMA to ensure licensing conditions do not duplicate with existing requirements creating uncertainty and unnecessary compliance costs. In addition to requirements under IPSA described above, the RBNZ has issued Guidance on Cyber Resilience which applies to all entities regulated by the RBNZ, including financial institutions under CoFI. We suggest licensing conditions and regulatory requirements in relation to BCP and technology more appropriately fit with the RNBZ's regulatory mandate and query whether this condition is necessary or appropriate under the CoFI regime.
(b) Do you currently have a documented business continuity plan?	We understand our members have documented business continuity plans in place.
(c) Will you rely on critical technology systems to deliver the market service of acting as a financial institution? If not, why do you not consider any of your technology systems to be critical?	Our members rely on critical technology systems to deliver core insurance services. However, it is not currently anticipated that there will be changes in the critical technology systems relied upon to comply with obligations under CoFI.
(d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	
(e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	
(f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	

Question	Feedback
(g) Do you have any other comments on the proposed standard condition or how it is drafted?	Given the existing regulatory requirements already applying to insurers detailed above (and similar requirements for other financial institutions). We question whether there is a need for this condition for Financial Institutions. If it is to be retained, in line with our feedback above, the focus should be on the consumer treatment, and so better wording in the Explanatory note would be: ○ *When establishing, implementing and maintaining your business continuity plan and technology systems, you will need to ensure that they ~~support, and do not hinder, the fair treatment of consumers and compliance~~ with are consistent with your fair conduct programme.* It is also important to clarify when a timeframe for notification commences. An insurer may experience intermittent outages of a critical technology system and it may take a number of days before it is determined to be an event that materially impacts the operational resilience of that system. The notification timeframe should not commence until this has clearly been established. If this standard condition is retained, we consider alignment with the 10 working days for FAP licences is appropriate. In the first 72 hours after an event that materially impacts the operational resilience of a critical technology system, the financial institution will be focuses on actioning its BCP and remedying the issue as soon as possible in order to continue to service its consumers. A requirement for a financial institution to notify a regulator (or potentially multiple regulators in the event of overlap in oversight by the FMA and RBNZ) within the first 72 hours will only serve to distract the financial institution from this focus. Financial intuitions already have significant motivation to resolve an event that materially impacts the operational resilience of a critical technology system to manage the significant associated financial and reputational risks.
Condition 6 – Record keeping	
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	The explanatory note to this proposed condition 6 specifies requirements to retain records to demonstrate how the financial institution has established, implemented and maintained their fair conduct programme and taken all reasonable steps to comply with it. FMA guidance on what records would satisfy this requirement would be helpful as the scope of a fair conduct programme under CoFI is wide and therefore the associated record keeping requirements may be significant and overly burdensome.

Question	Feedback
(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	The assessments of cost and potential additional compliance burden for our members cannot be answered without more detail.
(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	
(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	The assessments of cost and potential barriers to new entrants to the market cannot be answered without more detail.
(e) Do you have any other comments on the proposed standard condition or how it is drafted?	

Feedback form

Consultation paper: Proposed standard conditions for financial institution licences

Date: 7 September 2022	Number of pages: 2
Name of submitter:	[redacted]
Company or entity:	The New Zealand Automobile Association Incorporated (**NZAA**)
Organisation type:	Financial Advice Provider
Contact name (if different):	[redacted]
Contact email and phone:	[redacted]

Feedback summary

We support Financial Institution conduct licensing under the Financial Markets (Conduct of Institutions) Amendment Act 2022 (**CoFI regime**), however, we are concerned with the scope of the conditions and the unnecessary overlap with the present regulatory requirements, and their possible extension to intermediaries who distribute Financial Institutions' products.

Financial Institutions under the CoFI regime are already subject to various licence requirements under their licences with the Reserve Bank of New Zealand (**RBNZ**). A number of intermediaries will also have obligations under financial advice provider (**FAP**) licences (transitional or full) with the FMA. Although NZAA will not be caught directly as a Financial Institution under the CoFI regime, we will likely be covered as an 'intermediary' as we are involved in distributing the relevant services and associated insurance products of a number of Financial Institutions to consumers. Therefore, any unnecessary burden placed on Financial Institutions is likely to flow through and impact on us to an unknown extent.

We submit that the CoFI standard conditions should:

- be limited to focus on conduct and the fair conduct principle; and
- provide clarification of the exclusions, in particular, an express carve-out of intermediaries from the proposed outsourcing standard condition.

We have limited our responses to those questions we have a direct interest in, and appreciate the opportunity to submit on the proposed standard conditions for the COFI regime.

Question number	Response
4(a)	**Do you agree or disagree with the proposed standard condition? Please provide your reasons.** Financial Institutions, including licensed insurers, are already subject to compliance and risk programmes which generally cover outsourcing arrangements. The standard condition for outsourcing should provide clarification that this condition only applies to outsourcing arrangements that directly relate to implementing the fair conduct principle and accompanying programmes. We agree with the commentary which provides 'typical distribution arrangements where a third party is involved in distributing the financial institution's relevant services and associated products to consumers' would not be expected to be an outsourcing arrangement. However, the currently proposed carve-out is limited to the FMA's comments section, and is not included in the proposed standard condition itself, or even

	the Explanatory Note. As such, it has limited effect, and there is a reasonable prospect of Financial Institutions feeling they need to take a broad interpretation of what may constitute an outsourcing arrangement and include intermediated distribution as within scope, given that there are mutual obligations of ensuring intermediated services are consistent with the fair conduct principle. We submit that the position would be far clearer and avoid adding an unnecessary compliance burden for all concerned if an express carve-out for intermediaries was provided in the proposed standard condition, or as a minimum in the Explanatory Note. This could be achieved by expressly excluding intermediaries that engage with financial institutions in distributing relevant services and associated products from the concept of 'outsource provider', or stating that an intermediary is not regarded as a Financial Institution's outsource provider merely by virtue of distributing relevant services or associated products of that Financial Institution. If there is any residual concern that incorporating this carve-out may somehow expose consumers to the risk of an intermediary's services not being provided in a manner consistent with the fair conduct principle, the carve-out could be limited to intermediaries who are licensed FAPs.
4(c)	**We are proposing that any parts of your financial institution service that are performed by an authorised body on your financial institution licence will not constitute an outsourcing arrangement for the purposes of this condition. Do you agree or disagree with this proposal? Please provide your reasons.** Yes, we agree with this proposal. An Authorised Body will already be captured under a Financial Institution's licence, so treating contractual arrangements between them as an outsource would achieve no regulatory benefit for the purposes of the CoFI regime.
4(d)	**Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.** NZAA is unable to quantify the potential cost of having its intermediary services captured within the concept of an outsource service. However, there would inevitably be some cost or demand on resources incurred as a result, which in our view would add an unwarranted additional compliance burden for no consumer benefit. Any cost that might be incurred would be unreasonable.
4(e)	**Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.** We would not expect the proposed standard condition to have any other adverse impact on our business. This is on the basis that the standard conditions will correlate to conduct and fair treatment of customers. However, there remains a risk that if Financial Institutions treat intermediary services as being within scope, there will be disruption to existing arrangements to address the condition requirements, which may impact negatively on NZAA's business.

NEW ZEALAND BANKERS ASSOCIATION

Submission

to the

Financial Markets Authority

on the

Consultation: Proposed Standard Conditions for Financial Institution Licences

7 September 2022

NEW ZEALAND BANKERS ASSOCIATION
Level 15, 80 The Terrace, PO Box 3043, Wellington 6140, New Zealand
TELEPHONE +64 4 802 3358 EMAIL nzba@nzba.org nz WEB www.nzba.org.nz

About NZBA

1. The New Zealand Bankers' Association (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following seventeen registered banks in New Zealand are members of NZBA:
   - ANZ Bank New Zealand Limited
   - ASB Bank Limited
   - Bank of China (NZ) Limited
   - Bank of New Zealand
   - China Construction Bank
   - Citibank N.A.
   - The Co-operative Bank Limited
   - Heartland Bank Limited
   - The Hongkong and Shanghai Banking Corporation Limited
   - Industrial and Commercial Bank of China (New Zealand) Limited
   - JPMorgan Chase Bank N.A.
   - KB Kookmin Bank Auckland Branch
   - Kiwibank Limited
   - MUFG Bank Ltd
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited

Introduction

NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on the Consultation: Proposed Standard Conditions for Financial Institution Licences (**Consultation Paper**). NZBA commends the work that has gone into developing the Consultation Paper.

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

[redacted]

[redacted]

Introduction

NZBA appreciates the FMA's engagement on licensing under the Financial Markets (Conduct of Institutions) Amendment Act 2022 (**CoFI**).

We understand the licensing conditions are intended to support the purpose and scope of CoFI and help the FMA effectively monitor the licensed population that is required to comply with the fair conduct provisions of the Financial Markets Conduct Act.

The proposed conditions capture multiple services that are already regulated by existing regimes, and in some cases those existing regimes cover the same matters in the proposed licence conditions. To help avoid an unintended compliance burden on Financial Institutions (**FIs**) that are subject to overlapping prudential requirements, our view is that the language used in the conditions needs to be more specific and targeted so that the intended reach and scope of each condition is sufficiently clear.

We do support the FMA taking a consistent approach with other licences issued by the FMA so that various licensing requirements can be managed efficiently where there is overlap, however this approach needs to be balanced against ensuring that the purpose and scope of each condition within the context of CoFI is clearly articulated.

We set out specific comments on the conditions below. We encourage the FMA to provide further clarity on the requirements as soon as possible, particularly those that will require systems changes for FIs such as the regulatory reporting requirements. We request that any regulatory reporting requirements are subject to a transition period following the commencement of the new conduct regime. We would also be happy to discuss further any changes the FMA is intending to make.

Condition One: Ongoing Requirements

NZBA supports this condition in principle. We agree that this licence should not be a "point in time" licence, but note that it is difficult to make an informed assessment of the impact of this condition until the Financial Institution Licence Application Guide (**Guide**) is available. Accordingly, we strongly encourage the FMA to release this Guide as soon as possible. FIs should have the opportunity to provide feedback on this condition once the extent of the obligations under the Guide is known.

At this stage, and echoing our comments above, our view is that the eligibility criteria for the CoFI license should be consistent with the eligibility criteria across other licensing regimes to avoid additional and duplicative compliance burden. We also point out that entities are subject to "fit and proper" requirements under other regimes administered by the FMA (such as Financial Advice Provider (**FAP**) regime) and the Reserve Bank of New Zealand (**RBNZ**) (see BS10 Review of Suitability of Bank Directors and Senior Managers issued March 2011). We propose that where an entity has met elements of eligibility criteria under other licences, the FMA consider if this information can be utilised under the CoFI licensing process to avoid duplication of efforts for captured entities. There is precedent for this approach under other regimes. For example, registered banks need not obtain fit and proper person certifications for the purposes of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).

Condition Two: Notification of Material Changes

In the interests of certainty and future-proofing the licence, the explanatory note should go further to explain and clarify what will constitute a "material change". Additionally, the examples given and the explanatory note creates some ambiguity as to what changes would be considered "material". We would welcome a definition of "a material change to the nature of your financial institution service" and more detailed examples covering a broader range of scenarios.

Condition Three: Regulatory Returns

Further to our comments above, we support this condition on the basis that it is intended to facilitate the FMA obtaining updated information from FIs that the FMA reasonably requires to monitor FIs' ongoing capability to perform the financial institution service in accordance with the applicable eligibility criteria, and in a manner that meets the COFI requirements.

Banks provide (or will shortly be required to provide) a number of comprehensive regulatory returns across different regimes, and to different regulators, for example, under their DIMS, derivatives, MIS and FAP licences, and annual returns under the CCCFA. Banks also provide extensive data and information to the RBNZ. Without understanding the information the FMA expects to receive, we are concerned about the potential duplication of reporting to regulators and the compliance burden this will create. We also note that the FMA has yet to consult on the information that will be required for FAP regulatory returns.

We request that any regulatory reporting requirements are subject to a transition period following the commencement of the new conduct regime, similarly to the approach taken to regulatory reporting under the CCCFA. This will allow FIs to implement any required systems changes in an orderly manner.

We encourage the FMA to consider how the existing reporting provided by captured entities can be leveraged where relevant, and how the proposed regulatory returns for both CoFI and FAP regimes can be aligned to avoid unnecessary and duplicative compliance burden for captured entities. We also request that the FMA publish its regulatory return requirements as soon as possible, to allow captured entities sufficient time to understand and prepare for operationalising the requirements.

The explanatory note includes that the regulatory returns are likely to require reporting on numbers and types of breaches. If breach reporting is to be included, there will need to be appropriate materiality thresholds set (we note this position is consistent with the reporting required under the Financial Markets Conduct Act, section 412).

Condition Four: Outsourcing

Some banks are subject to prescriptive and detailed prudential regulation of outsourcing under the RBNZ BS11 Outsourcing Policy. Banks will also likely be required to comply

with standards under the new Deposit Takers Act covering outsourcing, business continuity planning and cyber security risk. Accordingly, we encourage the FMA to consider an exemption for registered banks that are already subject to a significant outsourcing requirement.

If no such exemption is available to registered banks that are already subject to other outsourcing regulatory regimes, it is crucial that the FMA is careful to align any outsourcing requirements to those other regimes, to minimise complexity and compliance burden. We also note that the compliance cost, and impact on commercial outsourcing arrangements could be significant for registered banks that are required to comply with multiple and overlapping regimes. At this stage, we have not seen enough detail on the scope of the condition to comment on the degree of alignment with other regimes. As noted above, the scope of this condition should be specifically linked to conduct requirements rather than being a broader requirement that goes to a FI's operations as a provider of financial services for customers.

We would welcome clarity around whether the "important matters that should be considered when conducting due diligence" are mandatory, or merely suggestions as to what an FI may consider. We would also welcome clarity on whether, and if so, how, such due diligence will be monitored and evidenced.

Further consideration and guidance should be given with respect to some of the complex issues that can arise in relation to the regulation of outsourcing arrangements, for example:

- transitional arrangements (as in some cases, for example, an FI may have entered into a long-term service arrangement, and the terms are not able to be renegotiated until the contract is renewed).
- confidentiality restrictions that prevent access to certain supplier records or information. For example, while service providers usually agree to have BCP obligations, it is not uncommon for the details of their BCP arrangements to be highly confidential and protected.
- record keeping and evidencing expectations of the FMA, particularly given the volume of outsourcing arrangements that this condition may impact.
- the scope of outsourced services and functions that this condition may impact. We understand that substantial effort and resource has been invested in supporting the ongoing management of the RBNZ's BS11 "white list" of services and functions, and we query whether a similar white list may be needed for this condition if the scope of the condition is not further defined.

Condition Five: Business Continuity and Technology Systems

We note the inconsistency between the prescribed time frame of 72 hours for reporting events to the FMA under the proposed standard for business continuity and technology systems, and the 10 working days provided for the equivalent standard under the FAP license. The RBNZ also has different requirements in this area.

Furthermore, as above, CoFI also captures activities related to MIS, Derivatives and DIMS. These activities do not have business continuity and technology systems conditions attached to respective licences, so we note that this proposed condition for the CoFI license may effectively impact and alter existing FMA licences for other regimes.

If the 72 hour window is retained, it would be helpful for the FMA to clarity that this window starts when it has been confirmed that an event has taken place that meets the reporting threshold.

Condition Six: Record Keeping

Further guidance on the scope of this condition is critical. We understand that the intention of the condition is to cover record keeping that directly relates to a FI's fair conduct programme. The drafting of this condition should be sufficiently clear to prevent unintended interpretations (for example the reference to obtaining consumers consent to the FMA viewing records could lead to a position where every single customer interaction is being recorded, which would require significant resource and would be burdensome in terms of compliance costs for businesses without any demonstrable benefit).

We would also welcome clarification on the types of types of records that are expected to be maintained to show how COFI Act requirements are met (as ordinarily FIs would expect to maintain records demonstrating that compliance has been achieved, rather than demonstrating how compliance has been achieved).

It would be helpful if the FMA could provide examples of what specific records they are expecting to be retained and provided.

We have some concerns around the practicalities of implementing "consumer" consent to the FMA viewing or obtaining records in the conduct context because it covers persons to whom a relevant service is offered, even if no service is ultimately provided or associated product acquired. We suggest that the reference to "consumers consent" is replaced with "customers consent" in the explanatory note. If a FI was required to obtain consent from every "consumer" before they had become that FI's customer, significant process changes would be required in order to ensure that consent was obtained.

We also consider that the 10 working day period for providing these records may be difficult, and suggest that a 20 working day period is adopted instead, with FIs being able to apply for an extension of this timeframe if the nature of the request is more complex.

Proposed standard conditions for financial institution licences

Union Medical Benefits Society Limited

06 September 2022

UniMed
YOUR HEALTH INSURER

Tuesday 06 September 2022

The Financial Markets Authority
Wellington
New Zealand

By email: consultation@fma.govt.nz

Consultation: Proposed standard conditions for financial institution licences

Thank you for the opportunity to provide a submission on the Consultation paper: Proposed standard conditions for financial institution licences, July 2022. This submission is on behalf of Union Medical Benefits Society Limited (Trading as UniMed).

UniMed is an Incorporated Society registered under the Industrial and Provident Societies Act 1908 in November 1979. Its principal product and service is health insurance within New Zealand. The Society is domiciled and incorporated in New Zealand and is a Public Benefit Entity.

The Society was granted a licence by the Reserve Bank of New Zealand (RBNZ) on 23 May 2013 to operate as an insurer subject to the Insurance (Prudential Supervision) Act 2010 (IPSA). The Society is also licensed by the Financial Markets Authority to operate as a Financial Advice Provider and is deemed to be a financial markets conduct reporting entity under Part 7 of the Financial Markets Conduct Act 2013 (FMC Act).

UniMed's key market segment is 'Group' workplace schemes, providing health insurance products to employees and their whānau. UniMed manages this via a network of intermediaries and a small employed sales force that engages with corporate clients. While insureds may be part of a Group scheme, the insurance contract is direct between UniMed and the insured. UniMed also provide direct to retail health insurance products and continuation options for group leavers.

We note that while the Proposal affects all financial institutions, including licensed insurers, UniMed's responses in this submission are tailored to focus on UniMed's business structure and the wider health insurance industry.

I can be contacted on [redacted] to discuss any element of our submission.

Yours sincerely

[redacted]

Union Medical Benefits Society Limited

1. Condition 1 – Ongoing requirements

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

UniMed agree in principle that a Financial Institution should be required to continuously satisfy the standards upon which it has been granted its CoFI licence, rather than this be a 'set and forget'. However, as the eligibility standards for obtaining the CoFI licence have not been issued we are unable to comment on whether this proposed condition may be too broad.

UniMed agree that policies, processes, systems and controls relating to a Financial Institution's fair conduct programme (being how it operationalises the fair conduct principle required by the legislation) should be regularly reviewed to ensure that these remain effective.

As a smaller Financial Institution, without the same dedicated resources of the larger entities, we would support an explanatory note to this condition allowing the Financial Institution to perform regular reviews (taking a proportionate risk-based approach) of its policies, processes and controls, rather than requiring a continuous review. Minor changes, which do not affect compliance with the fair conduct principle, could be picked up during routine scheduled reviews, whilst any material changes to the business or service arrangement would prompt an additional review to ensure that such changes 'support and do not hinder the fair treatment of consumers and compliance with [the] fair conduct programme'.

The current explanatory note suggests that this condition could extend to all policies, processes, systems and controls, including those that do not form part of the fair conduct programme. We consider this would be overly burdensome and beyond the scope of the CoFI legislation.

(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

The Financial Institution Licence Application Guide will provide more information about the licencing requirements applicants will need to meet and, under this proposed standard condition, maintain. Until the guide has been issued, we are unable to contemplate the extent of additional compliance costs this condition will create. However, as noted above, UniMed is a smaller Financial Institution. Allowance for a scheduled review and material change review will considerably lessen any associated additional compliance cost on UniMed as opposed to a continuous review.

(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

Other than the uncertainty mentioned above, UniMed do not consider this condition will have any other adverse impact on its business.

UniMed are presently regulated by the FMA under its FAP licence and the RBNZ under IPSA, through which it already demonstrates compliance with many of the S396 requirements (for example, ongoing requirements for Director and Senior Managers to meet the fit & proper test). Many other financial institutions will be in this position. Should there be inconsistency with the ongoing requirements for RBNZ and FMA under FAP licence, (using the same example, inconsistent set of questions for fit & proper test) this may create additional and avoidable burden.

(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

UniMed does not consider this condition will create a barrier to enter the market.

(e) Do you have any other comments on the proposed standard condition or how it is drafted?

UniMed has no additional comments on the proposed standard condition.

2. Condition 2 – Notification of material changes

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

UniMed agree with the condition to notify the FMA when a financial institution makes material changes to the nature of its financial institution service, and we support the inclusion of examples in the explanatory notes for the standard conditions to aid in determining what changes need to be notified.

The additional comments in the consultation paper indicate that notification of a material change could require new or updated policies, process, systems and controls and will assist the FMA in appropriately targeting supervision efforts. UniMed anticipate that this notification of material changes could also potentially trigger consideration of special conditions being applied to the licence, (or a review of the licence entirely) however this is not expressly clear.

(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

UniMed do not consider this proposed condition will result in any material additional compliance cost.

(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

UniMed do not consider this proposed condition will have any other adverse impact.

(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

UniMed do not consider this proposed condition will create a barrier to enter the market.

(e) Are there any material matters other than those detailed in the explanatory note that should be notified to the FMA?

UniMed support the explanatory note containing examples of what does not require notification. It could be helpful to include whether notification is required when a Financial Institution has purchased or acquired a portfolio from another Financial Institution (for example, a health insurer acquiring another FI's

health insurance portfolio) and if such notification depends on whether or not this requires the consent of the RBNZ under IPSA. UniMed do not consider that this example would be a material change provided the acquisition does not materially change the nature of the financial institution service, however clarity on this could be useful.

(f) Do you have any other comments on the proposed standard condition or how it is drafted?

UniMed has no further comments on this proposed standard condition or how it is drafted.

3. Condition 3 – Regulatory returns

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

UniMed agree in principle that that a Financial Institution should be required to provide certain information to the FMA on a periodic (or ongoing) basis and we appreciate that what this information is (and what will be periodic versus ongoing) will be the subject of a later consultation.

(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

As a smaller Financial Institution, this proposed standard condition will create additional compliance cost in terms of resourcing and possibly system changes to produce and prepare the necessary reports. The frequency and format or the returns will influence the extent of compliance costs and burden.

UniMed, like many other Financial Institutions captured under CoFI, is also subject to regulatory returns to the FMA under its FAP licence. A combined regulatory return for financial institutions captured under both regimes would considerably lessen any associated additional compliance cost.

(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be

In advance of the consultation regarding regulatory returns, UniMed is unsure whether this proposed standard condition will have any other adverse impact.

(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

UniMed do not consider this proposed condition will create a barrier to enter the market.

(e) Do you have any other comments on the proposed standard condition or how it is drafted?

UniMed anticipate that it will be able to provide more specific and informed feedback during the consultation on regulatory returns.

4. Condition 4 – Outsourcing

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

While UniMed consider undertaking due diligence on external providers, and completing regular reviews of the providers performance, security, financials etc. is 'best practice' for procurement and contract / provider management, we are uncertain about the scope of this proposed licence condition.

As a licenced FAP UniMed, like many Financial Institutions covered under CoFI, is subject to an outsourcing licence condition. As a licenced insurer UniMed are also regulated by the RBNZ under IPSA, through which it must hold a risk management programme and take all practicable steps to comply with that programme. Risk-based outsourcing rules are presently being considered by the RBNZ as part of the IPSA review.

As drafted, this CoFI condition appears to overlap with obligations already required under FSLAA and those contemplated under IPSA. This creates uncertainty around the risks of duplication, inconsistency as to regulators expectations (and possibly regulatory returns) and what could lead to inevitable compliance burden.

While the FMA's comments in the consultation suggest that this condition may be limited to outsourcing arrangements relating to core functions, this is not expressly clear in the condition itself or explanatory note.

It is feasible that this will capture a significant amount of providers (including those already captured under FSLAA and RBNZ requirements). Not only could this cause a significant increased compliance burden on the financial institution, some providers, particularly smaller providers or those who provide limited services and / or services for limited return, may be concerned at the additional compliance burden on their end which could prompt an end to those relationships.

For closer alignment with the purpose of the CoFI legislation, UniMed suggest this standard condition could be more appropriately worded so that it ensures that the consumers receive good customer outcomes regardless of whether a system is outsourced.

(b) What core services that will be related to your financial institution service do you currently outsource?

UniMed primarily outsource technology related services such as:

- Policy Administration System (PAS)
- Customer Relationship Management system (CRM)
- Telephony
- Website management
- IT services
- Cloud storage

(c) We are proposing that any parts of your financial institution service that are performed by an authorised body on your financial institution licence will not constitute an outsourcing

arrangement for the purposes of this condition. Do you agree or disagree with this proposal? Please provide your reasons.

UniMed are not involved with Authorised Bodies and have no comment on this section.

(d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

UniMed consider this condition will impose additional compliance costs which could become significant. The extent of these costs will depend on the FMA's expectations on the extent of monitoring required of outsourced providers, including any reporting requirements. Early guidance on this would be valuable.

(e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

UniMed are concerned that this proposed condition may create increased compliance burden on providers as well as licensed Financial Institutions. This could lead to loss of provider relationships, where some providers may be too small to meet the cost or burden or may consider that the Financial Institutions business with them is too small to justify the increased compliance work on their end. The loss of these relationships could hurt the financial institution and indirectly, policyholders.

(f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

UniMed do not consider this proposed condition will create a barrier to enter the market however it may cause disruption with, and potentially loss of, existing service providers to the CoFI licenced financial institutions.

(g) Do you have any other comments on the proposed standard condition or how it is drafted?

UniMed has no additional comments on the proposed standard condition.

5. Condition 5 – Business continuity and technology systems

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

While UniMed agree that maintaining an effective business continuity framework is an important tool for protecting consumers and ensuring their ongoing access to the service, we consider that this proposed standard condition largely replicates existing regulatory requirements.

As noted earlier in this submission, as a licenced insurer UniMed is required by the RBNZ under IPSA to hold and maintain a risk management programme and take all practicable steps to comply with that programme. Business Continuity planning and the protection of technology systems are critical components of an effective risk management programme.

We recognise that this proposed condition introduces a new concept that a financial institutions BCP must be established, implemented and maintained in a way that supports compliance with its fair conduct programme. Until guidance on the FMA's expectations for a fair conduct programme are released UniMed are unsure what, if any, material changes its BCP will require to meet this condition, and by association, the extent to which this proposed condition differs from existing compliance requirements.

The proposed timeframe of 72 hours for a Financial Institution to notify the FMA of any event that materially impacts the operational resilience of critical technology systems is a worryingly short period. During the first 72+ hours of a critical event of this nature, financial institutions, particularly smaller entities who do not internally employ large IT and Technology teams, will be prioritising all available resources to the initial response, continuity of operations and business recovery and restoration. Reporting during this time not only may divert critical resource (ie to establish and document an initial event analysis / impact assessment) but is also unlikely to provide any useful information to the FMA. It would be useful to understand what information the FMA would expect to be provided to it within this timeframe, whether this is a simple email notification, with, for example, a report to follow within 10 working days, or whether more detail is expected at this early juncture.

Extending the notification timeframe to 10 working days (as is consistent with FAP licences) would allow the financial institution to dedicate its efforts towards continuity and recovery as a first priority, with time and resource available thereafter to document a more informed (initial) cause and impact analysis it can provide the FMA as part of the notification. UniMed suggest this will assist the FMA in understanding the extent of the incident so that it can respond on a proportionate risk basis.

(b) Do you currently have a documented business continuity plan?

As a licensed insurer regulated by the RBNZ and a FAP licenced by the FMA, UniMed maintain a documented business continuity plan as part of its risk management programme.

(c) Will you rely on critical technology systems to deliver the market service of acting as a financial institution? If not, why do you not consider any of your technology systems to be critical?

UniMed currently relies on some critical technology systems to deliver its core insurance service, including its PAS and CRM.

(d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

UniMed expect to incur additional compliance and resource cost to review its business continuity plan, and potentially its wider risk management framework, in ensuring that this supports compliance with UniMeds fair conduct programme. The extent of this is unclear until guidance on the FMA's expectations for a fair conduct programme are released.

(e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

As alluded to in d) above, a review of UniMed's business continuity plan (and potentially its wider risk management framework) will be completed against FMA's fair conduct programme guidance. It is entirely

feasible that changes to UniMed's risk management framework will cause a ripple effect amongst various other business documents and processes, this has the potential to create a significant compliance burden.

(f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

UniMed do not consider this proposed condition will create a barrier to enter the market.

(g) Do you have any other comments on the proposed standard condition or how it is drafted?

Given the overlap with RBNZ and FMA oversight in the area of BCP / risk management, guidance on whether the two would be expected to act in concert upon notification of an incident or findings of a breach would be useful.

Guidance on when 'the clock starts' for the 72 hour notification period is required and what events need to be notified, for example, whether notification is required for intermittent outages which are remediated within a few hours, without any long term effect on consumers (access or service processing). Guidance should consider level of materiality, for instance whether all consumers / systems are affected or whether the incident is limited to a small number via a single pathway for a short period of time.

6. Condition 6 – Record keeping

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

UniMed agree in principle with a record keeping licence condition and agree this should include a documented fair conduct programme and records that demonstrate that the fair conduct programme is regularly reviewed and that any deficiencies identified have been remedied (we note guidance on what is considered 'promptly remedied' could be useful).

Additional guidance is needed on the FMA's expectations for record keeping on '*how you have established, **implemented and maintained** your fair conduct programme'* and '*how you have taken all reasonable steps **to comply with** your fair conduct programme'* (emphasis added).

UniMed understand that the essence of the legislation is to apply a fair conduct lens as an umbrella over every activity, interaction, process, design etc. That this should be a matter of culture, rather than compliance. It is difficult to understand how to demonstrate this cultural approach into specific records.

We also note that there would be consent issues relating to records which relate to a consumer who has not provided consent for information to be shared with a regulator (for example, potential insureds who, in the course of making an enquiry have provided information but who have ultimately declined to purchase a product or receive a quote (through which a privacy declaration would be given and agreed).

(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

More guidance is needed around the FMA's expectations on record keeping in relation to the implementation and compliance with the fair conduct programme as this could create significant compliance costs.

Considerable cost could be incurred to provide the FMA copies of records at their premises. Any request by the FMA to view these records should consider the burden and cost of the financial institution to provide this.

(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

More guidance is needed around the FMA's expectations on record keeping in relation to the implementation and compliance with the fair conduct programme as this could impact all areas of the business.

(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

UniMed do not consider this proposed condition will create a barrier to enter the market however it may cause disruption with, and potentially loss of, existing providers

(e) Do you have any other comments on the proposed standard condition or how it is drafted?

UniMed has no additional comments on the proposed standard condition.

AUCKLAND – Level 5, Ernst & Young Building | 2 Takutai Square, Britomart | PO Box 106 672 | Auckland 1143
WELLINGTON – Level 2 | 1 Grey Street | PO Box 1179 | Wellington 6140

fma.govt.nz