



MEMORANDUM OF UNDERSTANDING
BETWEEN
FINANCIAL MARKETS AUTHORITY
AND
COMMERCE COMMISSION

MEMORANDUM OF UNDERSTANDING dated 31 March 2014

between

FINANCIAL MARKETS AUTHORITY (FMA)

and

COMMERCE COMMISSION (the Commission)

together, the agencies

PURPOSE OF THIS MEMORANDUM

1. FMA is an independent Crown entity established under the Financial Markets Authority Act 2011 (**FMA Act**), with statutory functions under that Act and the Acts listed in Schedule 1 of that Act. FMA enforces securities, financial reporting, and company law as they apply to financial services and securities markets and its role is to help develop financial markets that efficiently allocate capital, operate with integrity and provide diverse investment opportunities for New Zealanders and international investors.
2. The Commission is an independent Crown entity established under the Commerce Act 1986, with statutory functions under that and other statutes including, relevantly, the Fair Trading Act 1986 (**FTA**) and the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**). The Commission's purpose is to achieve the best possible outcomes in competitive and regulated markets for the long-term benefit of New Zealanders.
3. From 1 April 2014 FMA will have primary regulatory and enforcement responsibility for fair dealing in relation to financial products and services (**FMA's jurisdiction**).¹
4. The Commission retains the ability to investigate breaches of the FTA in respect of financial products and services, and to take enforcement action, where FMA consents.
5. The Commission retains primary regulatory and enforcement responsibility in respect of consumer credit contracts as those contracts fall outside of FMA's jurisdiction.²
6. The purpose of this Memorandum of Understanding is to record FMA and the Commission's shared commitments as to:
 - 6.1 FMA's primary regulatory and enforcement responsibility for misleading and deceptive conduct in relation to financial products³ and financial services;⁴
 - 6.2 the spirit of cooperation that will operate between the agencies; and

¹ Part 2 of the Financial Markets Conduct Act 2013 (**FMC Act**).

² Clause 10 of the Financial Markets Conduct (Phase 1) Regulations 2014.

³ "Financial product" is defined, for the purposes of Part 2 of the FMC Act, in section 18 of that Act.

⁴ "Financial service" is defined in section 6 of the FMC Act.

- 6.3 the processes and principles applying to the granting of consent for the Commission to exercise its FTA jurisdiction in relation to financial products and financial services.
7. Nothing in this memorandum is intended to limit or affect the independence of each agency or the requirement that each agency must independently perform its statutory functions.

GENERAL PRINCIPLES

8. In pursuing these goals, FMA and the Commission recognise that:
- 8.1 FMA has primary regulatory responsibility for misleading and deceptive conduct in relation to financial products and financial services.⁵
- 8.2 It may be necessary or desirable for the Commission to seek from FMA, and for FMA to grant, consent for the Commission to commence proceedings under the FTA in relation to financial products and financial services.⁶
- 8.3 The Commission has primary regulatory responsibility for misleading and deceptive conduct in relation to consumer credit contracts.⁷ For the avoidance of doubt, FMA and the Commission agree that the Commission does not require FMA consent to commence proceedings in relation to consumer credit contracts.
9. FMA and the Commission will cooperate to ensure that all matters of jurisdiction, and any matter in which both agencies are or might be engaged, are efficiently and effectively resolved and publically communicated.

CONSENT TO BRING PROCEEDINGS

10. The Commission may seek consent from FMA permitting it to bring proceedings under the FTA in relation to financial products and financial services. Such consent may include (but is not limited to) situations where the Commission seeks to add FTA causes of action to a proceeding also brought under another statute.
11. Failure by the Commission to obtain consent does not invalidate any proceedings subsequently brought by the Commission.⁸
12. FMA will exercise its statutory discretion whether to consent to the Commission bringing proceedings, but will not unreasonably withhold its consent.
13. FMA may consent to the Commission bringing proceedings in respect of identified classes of conduct arising in relation to financial products and financial services, as well as in respect of individual or stand-alone matters.

CO-OPERATION PRINCIPLES

14. FMA and Commission will operate together in a spirit of cooperation, including by:
- 14.1 referring complaints to the other agency where appropriate;

⁵ Part 2 of the FMC Act.

⁶ See section 48P of the FTA (as in force from 1 April 2014).

⁷ As defined in section 11 of the CCCFA.

⁸ See section 48P(3) of the FTA (as in force from 1 April 2014).

- 14.2 responding promptly to contact from the other;
 - 14.3 working together, so far as is practicable, to improve the effectiveness and efficiency of our investigations and enforcement in the areas of financial products and services;
 - 14.4 giving notice to each other at the earliest time possible of any actions or proposed actions of which the other might reasonably expect to be advised;
 - 14.5 communicating and sharing information and know-how to improve the effective delivery of the agencies' respective statutory functions in regard to financial products and financial services; and
 - 14.6 entering into further Memoranda of Understanding to record any agreed process or practice for giving effect to these co-operation principles.
15. Personnel from the agencies will meet as required to give effect to the requirements of this memorandum.
16. This memorandum will be made available on both agencies' websites.

MAINTAINING CONFIDENTIALITY

17. Without prejudice to or limitation of any applicable legal principles, each agency will observe the strictest confidence in relation to information supplied under this Memorandum, or derived from or based on any such information (**Protected Information**). Neither agency will use or disclose Protected Information unless the use or disclosure is required by law, authorised by the other, or is otherwise required to fulfil that agency's statutory functions.

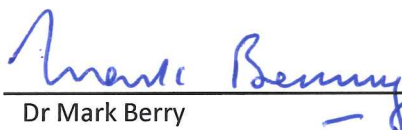
COMMENCEMENT, AMENDMENT AND TERMINATION

18. This Memorandum will come into effect when signed by both agencies and will remain in effect until terminated by either agency (by giving 30 days' written notice) or by mutual consent.
19. All confidentiality commitments between the agencies will remain in effect despite any termination of the memorandum.
20. The Memorandum may be amended by mutual written consent of the agencies.

EXECUTED



Rob Everett
Chief Executive
Financial Markets Authority



Dr Mark Berry
Chairman
Commerce Commission