



# **Memorandum of Understanding**

**between**

**the Financial Markets Authority**

**and**

**New Zealand Police**

## **This memorandum of understanding**

**Between** The Chief Executive of the Financial Markets Authority (the FMA)

**And** The Commissioner of New Zealand Police (Police)

### **Introduction**

1. The FMA was established by the Financial Markets Authority Act 2011 (the FMA Act). The FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets. The FMA's functions include:
  - a. to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, including (without limitation) by—
    - collecting and disseminating information or research about any matter relating to those markets;
    - issuing warnings, reports, or guidelines, or making comments, about any matter relating to those markets, financial markets participants, or other persons engaged in conduct relating to those markets;
    - providing information about its functions, powers, and duties (including promoting awareness by investors that all investments involve risks and that it is not the role of the FMA to remove those risks);
    - providing public information and education about any matter relating to those markets;
    - stating whether or not, or in what circumstances, the FMA intends to take or not take action over a particular state of affairs or particular conduct;
  - b. to perform and exercise the functions, powers, and duties conferred or imposed on it by or under the Financial Markets Legislation (the enactments prescribed in Schedule 1 to the FMA Act);
  - c. to monitor compliance with, investigate conduct that constitutes or may constitute a contravention or an involvement in a contravention of, and enforce, Financial Markets Legislation;
  - d. to monitor, and conduct inquiries and investigations into any matter relating to, financial markets or the activities of financial markets participants or of other persons engaged in conduct relating to those markets;
  - e. to keep under review the law and practices relating to financial markets, financial markets participants, and other persons engaged in conduct relating to those markets; and
  - f. to co-operate with any other law enforcement or regulatory agency and overseas regulators.

2. Police operates under the Policing Act 2008. Police functions include:
  - keeping the peace
  - maintaining public safety
  - law enforcement
  - crime prevention
  - community support and reassurance
  - national security
  - participating in policing activities outside New Zealand
  - emergency management.
3. The parties currently work together and offer advice to each other. They wish to formalise this relationship and specify the terms and conditions under which this will occur.

#### **Objectives**

4. The objectives of this MOU are to:
  - facilitate the investigation of people suspected of unlawful conduct as it relates to the financial services and capital markets
  - facilitate the effective sharing of information between the parties
  - maximise the safety of both parties' employees, and minimise risk
  - contribute to the Government's Better Public Service Goals.
5. These objectives will be achieved through promoting a collaborative working relationship between the FMA and Police based on a spirit of goodwill and co-operation, and by:
  - consulting on relevant strategic priorities and policy initiatives
  - sharing information
  - co-operating in communication and media strategies
  - co-operating in case management
  - supporting training and secondment opportunities
  - co-operating with search warrants and other investigative activities.

#### **Victim focus**

6. The parties recognise the importance of making victims a primary focus of any Police and FMA response to investigations.
7. The party leading an investigation will ensure that appropriate support is provided to victims, including:
  - providing information and access to support services
  - explaining what they can expect to happen during the investigation
  - giving case updates
  - providing any other service required by the Victims' Rights Act 2002.

### **Review of MOU and schedules**

8. The parties agree that from time to time they may develop protocols relating to specific procedures and activities. These will be attached to the MOU as schedules.
9. The parties' representatives will meet every five years, or as required, to review this MOU and schedules.
10. Modification or termination of schedules may be undertaken by the mutual agreement of the parties.
11. Either party may terminate the MOU by giving three months' notice in writing to the other party.

### **Consultation on media releases/statements**

12. Each party will consult with the other before providing information or comment to the media on a matter which falls within the other party's responsibility, or in which the other party has an interest.
13. Each party will raise any operational or policy concerns through appropriate internal channels, rather than through the media.

### **Training**

14. The parties support the development of joint training opportunities involving both Police and FMA staff.
15. The parties will support opportunities to second personnel with the other party, where this would benefit one or both parties.

### **Issue or dispute resolution**

16. All issues, disputes and differences between the parties about the interpretation or performance of this MOU will be resolved at the earliest opportunity by local representatives or managers, wherever possible.
17. Only when matters remain unresolved or require further adjudication should they be referred to the parties' senior management representatives listed in section 24 of this MOU.

### **Costs**

18. Unless the parties mutually determine otherwise, the cost of meeting the commitments of this MOU shall be met by the party incurring the cost. For the avoidance of doubt, the FMA will continue to be charged for Police vetting requests pursuant to the Police (Cost Recovery) Regulations 2017.

### **Legal**

19. Nothing in this MOU shall make either party liable for the actions of the other or constitute any legal relationship between the parties.
20. Nothing in this MOU is intended to limit or affect the independence of either party.



21. The provisions in this MOU are to be read subject to any Chief Executive or Cabinet directives, and any enactment, regulations or rules.
22. Where there are changes to Government policy which affect the purpose and functions of this MOU, each party agrees to inform the other of those changes at the earliest possible time thereafter and agrees to meet to re-negotiate if necessary any aspects of the MOU.
23. Nothing in this MOU is intended to limit or affect the independence of either party.
24. The parties' representatives for the purposes of this MOU are:

#### **Senior Management Representatives**

##### **FMA**

Director of Regulation  
Level 2  
1 Grey Street  
Wellington  
Telephone: (04) 471 7657

##### **New Zealand Police**

Assistant Commissioner, Investigations  
Police National Headquarters  
180 Molesworth Street  
Wellington  
Telephone: (04) 474 9499

#### **Operational Representatives**

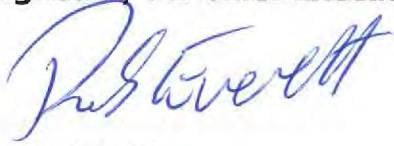
##### **FMA**

Head of Evidence and Investigations  
Level 5, Ernst and Young Building  
2 Takutai Square, Britomart  
Auckland  
Telephone: (09) 300 0425

##### **New Zealand Police**

National Manager, Financial Crime Group  
Police National Headquarters  
180 Molesworth Street  
Wellington  
Telephone: (04) 474 9499

**Signed by the Chief Executive Financial Markets Authority**



Rob Everett

Date: 28-9-17

**Signed by the Commissioner of Police**



Mike Bush MNZM

Date: 12-12-17

## **Schedule 1 to the MOU between the Chief Executive of the FMA and the Commissioner of the Police**

### **Information Sharing**

#### **Purpose**

1. The purpose of this Schedule is to facilitate the sharing of information, where appropriate, to enable the parties to achieve the objectives of the MOU.

#### **Principles**

2. The Privacy Act 1993 allows agencies to share personal information without informing the affected person, even where the person has expressly instructed not to do so.
3. The parties agree to share information in line with its original purpose, or where it is necessary to:
  - uphold or enforce the law, including the prevention, detection, investigation, prosecution, and punishment of offences; or
  - lessen a serious threat to public health or safety; or
  - lessen a serious threat to the life or health of any person.
4. The FMA may share information and documents with law enforcement and regulatory agencies pursuant to section 30 of the FMA Act.

#### **Designated positions**

5. Each party will designate positions that will be authorised to make requests for information from the other party.
6. For Police, designated positions are:
  - Constabulary members holding the rank of Detective Senior Sergeant or above
  - Manager: Financial Intelligence Unit, PNHQ
  - Police members acting in one of the positions above
  - Any other position that may be advised from time to time.
7. For the FMA, designated positions are:
  - Director of Regulation, or equivalent position
  - Head of Evidence and Investigations, or equivalent position
  - Head of Enforcement, or equivalent position
  - Senior Investigator, having received authority from one of the positions above
  - Any other position that may be advised from time to time.

## **Format and timing of requests**

8. Requests for information from the other party will be made in writing to the relevant Operational Representative as specified in section 24 of the MOU.
9. Oral requests may be made in emergency situations, if:
  - a delay may place the life or safety of any person at risk; or
  - a delay may lead to the destruction, concealment, alteration or damage to evidential material or other property.
10. Oral requests will be followed up by a written request as soon as practicable, or as agreed at the time of the request.
11. Requests for information will specify:
  - the information required (identifying the documents or information sought, identity of relevant individuals, addresses etc.);
  - the purpose for which the information is sought;
  - the timeframe in which the information is needed, and the reasons for any urgency requested;
  - any other relevant matters.
12. The parties agree to respond to requests for information as soon as is practicable, and within the timeframe agreed. In the case of an urgent request, the parties will consult to ensure a response to the request is expedited if possible.
13. Information provided to Police under this agreement will be pursuant to Section 30 of the FMA Act.

## **Sharing of other information**

14. The parties agree to proactively share information or intelligence where this is consistent with the principles of this schedule and objectives of the MOU, even if no specific request has been made by the other party.

## **Use, storage and retention of information**

15. Any shared information will only be used by the receiving party for legitimate official purposes and in line with the law and that party's policies, processes and systems.
16. The party providing the information will indicate the level of sensitivity that applies to the information or any part of the information, where appropriate.
17. The parties agree that shared information will be stored with appropriate security measures, whether the information is in electronic form, hard copy documents or otherwise.



18. The parties agree that shared information will not be disclosed to any third party without consultation with the originating party, other than is required by law.
19. The parties acknowledge that if any criminal proceedings are initiated, the Criminal Disclosure Act 2008 will apply in relation to all relevant information held by the prosecuting party.
20. The parties acknowledge that if any civil proceedings are initiated, the High Court Rules 2012 will apply in relation to all relevant information held by either party.

Signature



Rob Everett

Chief Executive  
Financial Markets Authority

Date 28-9-17

Signature



Name Richard CHAMBERS

Assistant Commissioner: Investigations  
New Zealand Police

Date 12 December, 2017.

## **Schedule 2 to the MOU between the Chief Executive of the FMA and the Commissioner of the Police**

### **Search warrants**

#### **Purpose**

1. The purpose of this Schedule is to facilitate co-operation between the FMA and Police in the execution of search warrants by either party, to:
  - enhance the safety of the FMA employees in the execution of their duties
  - assist both agencies in conducting investigative activities
  - utilise the respective resources, skills, experience and powers of the parties effectively and efficiently
  - assist to achieve the objectives of this MOU.

#### **Powers of search**

2. The FMA powers of search are set out in section 29 of the FMA Act 2011.
3. Police powers of search are set out in the Search and Surveillance Act 2012.

#### **Requests for assistance**

4. Either party may request assistance from the other party in the execution of a search warrant.
5. The party making such a request for assistance will consult with the other party before the application for search warrant is made. The application may include information about the nature and reasons for the assistance sought.
6. The FMA may make a request to Police:
  - for Constabulary members of Police to accompany and assist the FMA in the execution of a search warrant, pursuant to Section 110(b) of the Search and Surveillance Act 2012, and Section 29(5) of the FMA Act.
  - for Police assistance to effect entry to a premises, pursuant to Sections 110 and 113 of the Search and Surveillance Act 2012
  - for other assistance as may be appropriate on a case-by-case basis.
7. Police may make a request to the FMA:
  - for FMA employees to accompany and assist Police in the execution of a search warrant, pursuant to Section 110(b) of the Search and Surveillance Act 2012.
8. Requests for assistance to the other party will include:
  - a copy of the signed search warrant

- a copy of the search warrant application, where appropriate
- a copy of any risk assessment completed
- nature of the assistance required
- any other relevant information
- attendance at a briefing prior to the execution of the warrant.

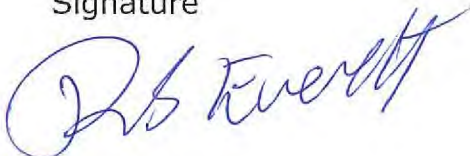
### **Sharing of information**

9. In addition to the information sharing provisions outlined in Schedule 1 to this MOU, the parties agree that:
  - the FMA will advise Police before executing a search warrant, where practical, whether or not they are requesting Police assistance in the execution of the warrant.
  - the FMA may request information from Police prior to the execution of a search warrant, to assist the FMA in assessing and managing risk.
10. Where the FMA advises Police of the execution of a search warrant, Police will record details of the execution, pursuant to Section 98(3)(a) of the Search and Surveillance Act 2012.

### **Disclosure of records**

11. The parties agree that any employees of one party assisting the other in the execution of a search warrant will provide copies of any notes taken during the search, in line with the requirements of the Criminal Disclosure Act 2008 or the High Court Rules 2012.
12. Any notes taken during the execution of such a search warrant may be redacted, if necessary, before provision to the other agency, if the redacted information is able to be withheld pursuant to the provisions of the Criminal Disclosure Act 2008, the High Court Rules 2012 or other lawful authority.

Signature



Rob Everett

Chief Executive  
Financial Markets Authority

Date 28 September 2017

Signature 

Name Richard CHAMBERS

Assistant Commissioner: Investigations  
New Zealand Police

Date 12 December, 2017.