



APRIL 2024

Submissions report: Standard condition on business continuity and technology systems

Collation of written feedback received as part of the FMA's public consultation on the proposed operational resilience standard condition for certain market services licence holders under Part 6 of the Financial Markets Conduct Act 2013

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Introduction

The Financial Markets Authority – Te Mana Tātai Hokohoko (FMA) would like to thank all submitters for their feedback on our [consultation on the proposed standard condition on business continuity and technology systems](#).

We received 12 written submissions from a range of stakeholders including industry bodies, licence holders, and a law firm.

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 Regulatory Impact Statement, available on the [consultation web page](#), which contains key themes from the feedback and our response, along with a summary of the problems we are seeking to address and our final decision.

Submissions

1. Amazon Web Services New Zealand Ltd
2. Corporate Trustees Association
3. Dentons Kensington Swan
4. Finzo
5. FundRock NZ Limited
6. IG Australia Pty Limited
7. Lifetime Asset Management Limited
8. Milestone Financial Services (Southern) Limited
9. Milford Asset Management Limited
10. Public Trust
11. Securities Industry Association
12. Smartshares Limited



Financial Markets Authority
1 Grey St
Wellington
[by email: consultation@fma.govt.nz]

31 August 2023

Re: Proposed standard condition on business continuity and technology systems: AWS comments

Amazon Web Services New Zealand Ltd. (AWS) welcomes the opportunity to comment on the Financial Markets Authority's (FMA) proposed standard condition on business continuity and technology systems.

As you may be aware, AWS is the cloud computing arm of Amazon.com, Inc. AWS has been operating in New Zealand for 10 years. We have offices in Auckland and Wellington and employ more than 150 New Zealand staff in roles such as solutions architects, account managers, sales representatives and professional services consultants.

In September 2021, AWS announced that it would establish an AWS Region in Auckland in 2024, which will bring world-class cloud computing infrastructure onshore to New Zealand. This will enable our thousands of active customers in New Zealand – from large enterprises to government to small businesses and individuals already using AWS global infrastructure – to leverage our advanced cloud services to innovate and scale using highly secure and resilient infrastructure located in New Zealand. The Economic Impact Study¹ that accompanied the AWS infrastructure announcement estimated that this investment of NZ\$7.5 billion will create around 1,000 new jobs and contribute approximately NZ\$10.8 billion to New Zealand's GDP over 15 years.

We have reviewed the proposed standard condition and we are pleased to provide our comments at **Appendix 1**. We welcome the clear proposed standard condition and useful explanatory guidance. Please note that we have provided general comments under question 1, as the remaining questions relate more directly to entities directly subject to the standard conditions, should it come into effect.

We would be pleased to provide additional details on any of the points raised in our response and/or to meet to discuss these issues. Please do not hesitate to contact me at [REDACTED] should you wish to follow up on our comments.

S
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹ [AWS, Economic Impact Study, New Zealand Region \(2021\)](#)



Appendix 1.

FMA consultation on the proposed standard condition for business continuity and technology systems

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

Amazon Web Services New Zealand Ltd. (AWS) supports the proposed standard condition. It represents a helpful clarification and extension of existing expectations of FMA licensees regarding business continuity plans, operational resilience and reporting of material cyber or other technology events. The approach outlined by the FMA aligns with approaches by other regulators in Australia and New Zealand.

General application: We welcome the equal application of the standard condition to both in house (or 'on premises') technology systems and outsourced arrangements. This is extremely important in recognition of the various technology deployment models that different entities use.

Materiality: AWS welcomes the FMA's proposed materiality thresholds. We support the FMA's focus on materiality triggers such as events that represent material disruption to provision of market services, material impacts to operational resilience, and material changes in business locations, structures and operations.

Business continuity planning: We support the approach that the FMA is taking to business continuity planning. In particular, we welcome the recognition that although there are important baseline expectations for business continuity planning (BCP), it is equally important to recognise that detailed prescription is unlikely to work across regulated entities of very different sizes, delivering differing services and facing different levels of risk. The explanatory note outlines clearly that BCP should encompass any outsourcing arrangements - we recommend that the note clarify that the responsibility to manage BCP across any such outsourcing arrangements rests with the FMA licensee.

Operational resilience: We welcome the listed approaches to operational resilience in the explanatory note. The use of cloud technology such as AWS will provide entities with significant advantages in addressing these through extensive monitoring and logging of activity, threat detection and response automation as well as the strong resilience provided by AWS Regions with multiple availability zones.

Notification: We concur with the proposed 72 hour reporting window. We recommend a minor modification to the reporting trigger as follows: ***"You must notify us as soon as possible and, in any case, no later than 72 hours, after becoming aware of (and/or when notified by a third party service provider of) any event that materially impacts the operational resilience of your critical technology systems..."***

Collecting and storing information: We encourage the FMA to consider establishing a secure reporting/transmission platform or online form for the reporting of sensitive information under the standard condition. A reporting template could be integrated into a secure online tool rather than, for example, regulated entities sending FMA potentially sensitive data in attachments to emails. Such a platform could be developed with the necessary viewing permission rights for sharing with other agencies as needed.

Feedback form

Consultation: Proposed standard condition on business continuity and technology systems

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 condition on business continuity and technology systems: [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 September 2023**

Date: 1 September 2023 Number of pages: 1

Name of submitter: [REDACTED]

Company or entity: Corporate Trustees Association www.cta.org.nz

Organisation type: Industry association (for licensed supervisors)

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]

Question number	Response
1	<p><i>CTA broadly supports the proposed standard condition because it represents good practice. Our specific comments are:</i></p> <p><i>The standard condition could clarify that the beginning of the 72 hours is when the event is assessed as being potentially material (to operational resilience), which is not necessarily when the event is first discovered.</i></p> <p><i>Financial services industry compliance in relation to operational resilience requirements is likely to be enhanced if there were greater alignment between FMA and RBNZ of key technical terms. For example: when do the 72 hours begin (see above), and what events are captured (FMA's "operational resilience of critical technology systems" and RBNZ's "cyber incidents").</i></p> <p><i>More precise wording would also help clarify which elements of the condition apply to operational resilience generally (eg the BCP) and which apply only to technology or cyber events (eg the notification requirement). Perhaps it would help to title the condition "Operational resilience" with a cyber / technology subheading within the condition.</i></p>
4	<p><i>CTA supports FMA allowing three months after settling the standard condition for it to take effect. This allows businesses to, where necessary, adjust their procedures and obtain relevant Board or other approval. Nevertheless, CTA members would be happy to encourage their fund manager clients to implement the condition as soon as possible.</i></p>

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.

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

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

By email: consultation@fma.govt.nz

1 September 2023

Submission on Consultation: Proposed standard condition of business continuity and technology systems

- 1 This is a submission by Dentons Kensington Swan on the Financial Markets Authority's ('**FMA**') draft *Consultation: Proposed standard condition on business continuity and technology systems* ('**Consultation Paper**') dated July 2023. The Consultation Paper relates to conditions attaching to licences for managers of registered schemes (but not restricted schemes) ('**MIS**'), providers of discretionary investment management services ('**DIMS**'), derivatives issuers, and prescribed intermediary services (being peer-to-peer lending providers and crowdfunding service providers).

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 advising a range of MIS, DIMS, and derivative issuers, all of which will be affected by the proposed business continuity and technology systems condition set out in the Consultation Paper.

Specific comments

- 4 We have previously commented, publicly, that an express licence condition – for business continuity and technology systems – would provide certainty for licensees as to their obligations. It is good to see that finally come to fruition. We support the concept of a standard business continuity and technology systems licence condition applying to all market services licensees. However, there is room for refinement.

Focus on operational resilience

- 5 We support the condition's headline focus on operational resilience – that is what the condition should be aimed at. However, we have concerns regarding the proposed timeframes imposed within the condition and the fact the condition covers matters of information security. This is where we think the condition goes astray.

Fernanda Lopes & Asociados ► Guevara & Gutierrez ► Paz Horowitz Abogados ► Sirote ► Adepetun Caxton-Martins Agbor & Segun ► Davis Brown ► East African Law Chambers ► Eric Silwamba, Jalasi and Linyama ► Durham Jones & Pinegar ► LEAD Advogados ► Rattagan Macchiavello Arocena ► Jiménez de Aréchaga, Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

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- 6 The condition is directed at critical systems and operational continuity. The substantive elements of the condition should therefore be solely focused on what is actually required by licensees to support business continuity and critical system resilience. The 72 hour reporting requirement and concerns regarding information breaches do not go toward operational resilience. Ultimately we believe these elements are misaligned with the overarching objective of the condition. We consider our comments and suggested changes would assist to ensure the substantive condition is better aligned with the headline focus.

Reporting timeframe undermines statutory requirement

- 7 A key concern is the proposed 72-hour reporting requirement, and the imposition of a reporting requirement within the condition generally. In our view, the FMA should not impose such a timeframe within a condition of licence. This element of the proposed condition cuts across and is inconsistent with the overriding existing statutory requirement.
- 8 Under section 412(3) of the Financial Markets Conduct Act 2013 ('FMC Act') licensees are already required to send a report to the FMA 'as soon as practicable after the licensee forms the belief' that a material contravention of a condition has occurred or is likely to occur. The imposition of a 72-hour reporting requirement is inconsistent with the fundamental statutory requirement and parliamentary intent that reporting be 'as soon as practicable' once the licensee has formed the belief that there has been, or is likely to be, a material contravention.
- 9 The framing of the statutory reporting requirement as being 'as soon as practicable' clearly intends for the licensee to be able to assess and respond to the material problem – including to confirm whether the problem is in fact material – and subsequently report, rather than unnecessarily devoting time and resource in the middle of the assessment and response phase to report to the regulator. Therefore, in practice, the existing 'as soon as practicable' requirement means a licensee is already under an obligation to report material problems – once the licensee forms the belief it is material – in an appropriately couched timely manner, having regard to the particular circumstances and resources of the licensee and the event.

Inconsistent timeframes

- 10 Putting aside the validity of the reporting timeframe, we are concerned with the reasonableness of the 72-hour requirement, noting that licensed financial advice providers have up to 10 working days to report. A 72-hour timeframe could readily occur across a weekend giving a licensee very little time to prepare the substantive report the FMA requires under the proposed condition. Setting a reporting timeframe by reference to hours rather than working days is impracticable.
- 11 Further, there will be very few events that could occur in respect of a DIMS, MIS, or other licensee that requires such urgent reporting to the FMA – noting, in any event, that the FMA is not in a position to help a licensee respond to system issues. The FMA does not have any inherent expertise to assist licensees with such matters, and nor should it. The FMA is a regulator, not a technology support agency.
- 12 Removing the 72-hour reporting timeframe would allow licensees to focus on fixing the system issue, without unnecessary regulatory interference over the critical initial period following discovery of a material event, and to then report as soon as practicable – preferably once a materiality assessment has been completed and substantive details of the incident are available. At that point the FMA can readily assess matters and decide what regulatory action to take in relation to the notified event, whether it be the issuing of a censure for the failure, requiring the licensee to develop an action plan

to ensure the system error does not happen again, or even directing the licensee to make specific improvements.

- 13 Notably, any of these regulatory actions available to the FMA requires a set statutory process to be followed, including giving a licensee no less than 10 working days written notice of any exercise of the power along with reasons why the FMA may exercise the power. Clearly, given the notice requirements and minimum timeframe imposed, the FMA is not intended to act as a rapid response advisory agency. It will make no practical difference to consumers if the FMA is notified of the event within 72 hours or within a more reasonable period.

What is practicable?

- 14 Ultimately, the FMA is imposing its own notions of 'as soon as practicable' for different licensees – 10 working days for financial advice providers and 72 hours for other licence types. In both cases, these requirements are far stricter than what the FMC Act already imposes.
- 15 What is practicable will be fact specific to the licensee and the nature of the particular cyber incident. In some cases a licensee may well be able to report within 72 hours, but only if that is practicable. In other scenarios it will not be practicable to report that readily. In essence, the proposed reporting deadline is telling licensees you must report within 72 hours of discovering an event, even if that is not practicable.
- 16 There is nothing to be gained by requiring licensees to report to the FMA within 72 hours. They should be given time to focus on the task at hand and report to the FMA when practicable to do so in that context with sufficient detail to make the reporting worthwhile.
- 17 What will likely result, in practice, is that licensees simply file a short holding report to the FMA in order to meet the FMA's arbitrary 72-hour deadline. That reporting deadline is unlikely to provide enough time for a licensee to gain sufficient information or details to be able to assess the impact of the event, as contemplated by the proposed condition, and make the report meaningful.

A simple notification or full report?

- 18 Further, we note that there are significant inconsistencies in the reporting requirements for financial institutions, financial advice providers, and all 'other' licensees covered by the proposed condition.

- 19 Under the business continuity and technology systems condition for financial institutions the requirement is simply that those institutions must:

notify us as soon as possible and, in any case, no later than 72 hours, after discovering any event that materially impacts the operational resilience of your critical technology systems.

- 20 There is no additional requirement to provide details of the event and the impact on the market service and recipients of the service. This simple notification requirement makes the timeframe more workable for financial institutions, although not ideal given the existing 'as soon as practicable' statutory obligation.

- 21 Conversely, the financial advice provider business continuity and technology systems condition allows those advice providers up to 10 working days to notify the FMA and provide substantive details. That condition provides:

You must notify us within 10 working days of you discovering any event that materially impacts the information security of your critical technology systems and provide details of

the event, the impact on your financial advice service and clients, as well as your remediation activity.

- 22 The proposed condition in the Consultation Paper for all 'other' licensees attempts to have it both ways – requiring a substantive report within an unreasonably short timeframe. We do not believe this is appropriate.

Unfair?

- 23 The proposed condition is also potentially unfair. Taking the proposed condition to its logical extreme would result in a possible 'double jeopardy' scenario whereby a licensee has some 'interruption to normal transmission' that is material in terms of the operational resilience of its critical technology systems and therefore reportable. The licensee would, as per section 412 of the FMC Act, be under a pre-existing statutory duty to send a report to the FMA 'as soon as practicable'. However, if that report is not sent within the proposed 72-hours the licensee would be under a further obligation to send a report to the FMA detailing the failure to report within the 72-hour timeframe. Unless, of course, the FMA is of the view that failure to report within the 72-hour timeframe is not material and therefore not reportable. In any case, the way in which the proposed reporting aspect of the condition intersects with pre-existing statutory obligations is unclear.

Confidentiality of information

- 24 Finally, we recommend the FMA remove the expansive reference to 'preservation of confidentiality, integrity and availability of information' in the proposed condition. This is clearly the territory of the Office of the Privacy Commissioner. There is no regulatory need for the FMA to step into the shoes of the Privacy Commissioner.
- 25 Burying this additional requirement within the proposed condition exposes a licensee to potential regulatory action and liability from both the Privacy Commissioner and the FMA in respect of what would be the same material breach. The Privacy Act 2020 already has a clear statutory requirement for agencies, which include all licensees, to protect and safeguard the personal information of clients or investors against loss, access, disclosure, or misuse – Information Privacy Principle 5 covers the storage and security of personal information. Breaches must be notified under section 114 of the Privacy Act. Notably, the Privacy Commissioner suggests this be within 72 hours of the organisation becoming aware of the breach. However, such notification requires a fairly simple notice rather than the detailed report required by the proposed condition.
- 26 It is unnecessary for the FMA to muddy the waters and duplicate this pre-existing statutory obligation. In our view the FMA should refrain from encroaching on the clear jurisdiction of the Privacy Commissioner. A simple note to the FMA that the licensee has experienced a privacy breach and is liaising with the Privacy Commissioner should suffice for FMA regulatory purposes, i.e. the licensee has possible systems improvements to make which the FMA is interested in, but the substantive issue can be dealt with by the Privacy Commissioner.

Suggested condition

- 27 In our view, the condition could be readily imposed on licensees with a few key modifications – primarily removing the final sentence of the proposed condition – as follows:

You must have and maintain a business continuity plan that is appropriate for the scale and scope of your market service.

If you use any technology systems, which if disrupted would materially affect the continued provision of your market 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.

~~You must notify us as soon as possible and, in any case, no later than 72 hours, after discovering any event that materially impacts the operational resilience of your critical technology systems, and provide details of the event and impact on your market service and recipients of the service.~~

- 28 Under this reframing, the condition would work seamlessly with the existing statutory reporting obligation (in respect of both the maintenance of business continuity plans and ongoing use of technology systems). For example, if a licensee finds that a key system has gone down, and the licensee forms the belief that the loss of that system is material and in contravention of the requirement to ensure operational resilience, then the licensee must report 'as soon as practicable' to the FMA under section 412(3) of the FMC Act. That report must contain details of the breach.
- 29 The explanatory note to the condition, once the reporting timeframe is removed, can instead set out some expectations regarding reporting timeframes as a form of 'best practice' guidance. This could be along the lines of:
- Licensees have a requirement to report material contraventions or changes to the FMA. The FMA's expectation is that such reports are received within 10 working days of the licensee forming the view that the contravention or change is material. In any event, all such reports must be received as soon as practicable (in accordance with section 412(3) of the FMC Act).
- 30 The condition in this form would also preserve the primacy of the Privacy Commissioner with regard to confidentiality and security of personal information. It also avoids the risk of the Privacy Commissioner and FMA acting at odds with each other, with licensees already under an obligation to inform the Privacy Commissioner of notifiable breaches of their obligations in relation to personal information and facing possible fines in respect of such notifiable privacy breaches. The explanatory note could advise licensees to inform the FMA of a material privacy breach but to liaise directly with the Privacy Commissioner to resolve the matter, noting the FMA is more concerned with the system error itself than the substantive breach (given the necessary limits of its remit in the privacy space).
- 31 We also recommend removing the reference to 'any other market services licensee obligation' in the proposed condition. That reference does not make sense as currently framed – a licensee cannot 'provide' a market services licensee obligation. Rather, licensees must comply with those obligations, including all conditions of licence. Any breach of a market services licensee obligation, even if caused by technological failure, would be a breach of that particular obligation regardless and need not be made a secondary breach of the proposed business continuity and technology systems licence condition.

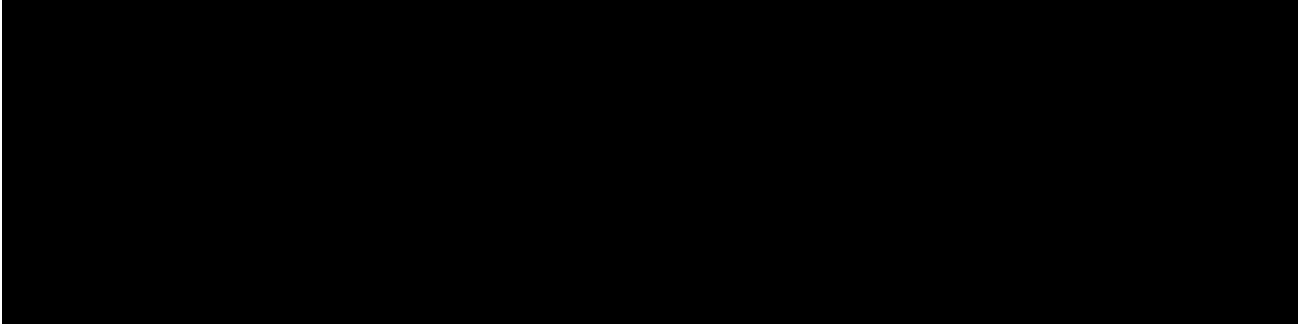
Conclusion

- 32 The need for licensees to have continuity plans and adequate technology systems is not in question. We support such a requirement. However, the imposition of a reporting requirement and deadline within the proposed business continuity and technology systems condition cuts across the existing reporting requirement and 'as soon as practicable' timeframe imposed by statute. That aspect must be removed before the condition can be finalised. Any encroachment into the substantive jurisdiction

of the Privacy Commissioner should also be removed or clarified, and minor drafting points addressed before the condition is finalised.

- 33 We would welcome the opportunity to discuss any of the points we have raised. Thank you for the opportunity to submit.

Yours faithfully



Feedback on a proposed standard condition on business continuity and technology systems for relevant licence holders

Questions from the FMA

Feedback form	
Consultation: Proposed standard condition on business continuity and technology systems	
Date: Number of pages:	3 pages
Name of submitter:	[REDACTED]
Company or entity:	Finzo
Organisation type:	FAP Licence Holder
Contact name (if different):	[REDACTED]
Contact email and phone:	[REDACTED]
Question	Response
1. Do you agree or disagree with the proposed standard condition? Please provide your reasons.	Yes, Finzo is in agreement with this proposed condition. When it comes to the 72 hour notice regulation, this should be clearly outlined to be 72 hours' notice in a normal working week. (e.g. not a long weekend)
2. Do you consider you will need to make material changes to your existing business continuity plan as a result of the proposed condition?	No, we will not need to make any material changes, however, our BCP is always under ongoing and continuous review and improvement.
3. Do you rely on critical technology systems to deliver your market service? If not, why do you not consider any of your technology systems to be critical?	Yes, we do, and we have clearly defined steps in place should any disruption arise.
4. Do you agree with our intention for the proposed standard condition for current or new licensees to be effective three months after publication of our decision (if we decide to impose a standard condition)? Please provide your reasons.	Yes, Finzo agrees with this timeframe, as we believe that this will enable other businesses to make updated to their internal BCP's to fit the new conditions.
5. Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	No, Finzo manages it compliance needs in house through our compliance officer.
6. Would the proposed standard condition have any other adverse impacts on your business? If so, please describe what these would be.	No, not at all.
7. Does the proposed standard condition create a barrier to enter	Not a barrier per say, but what it will do, is ensure that new persons/business entering the market, will be required to

the market? If so, please explain why this is the case.	meet these minimum standards which ultimately will provide better protection and security to the underlying clients.
8. Do you have any other comments on the proposed standard condition or how it is drafted?	We are in favour of it, as it will improve procedures for all businesses.

About this consultation

This consultation proposes a new business continuity and technology systems standard condition for the following types of market service licences:

- Managers of registered schemes (but not restricted schemes);
- Providers of discretionary investment management services;
- Derivatives issuers; and
- Prescribed intermediary services (peer-to-peer lending providers and crowdfunding service providers).

How does this relate to Finzo

Finzo has authorised bodies who are DIMs providers.

How do we currently meet the standard in place?

Operational resilience	<ul style="list-style-type: none"> - Our cyber resilience framework is constantly being refreshed, and we conduct regular training on this for our team and authorised bodies - Our operational functions are clearly outlined in our BCP, and we have put steps in place to reduce the likely disruption from any potential threat.
Market service licences	<ul style="list-style-type: none"> - Our FAP licence conditions clearly state that our authorised bodies must comply with the conditions outlined by the regulator. - These outlined in the BCP framework.

Stance on proposed standard condition

New Standard Condition	
Market Service Licence types	<ul style="list-style-type: none"> - managers of registered schemes (other than a restricted scheme); - providers of discretionary investment management services;

Proposed condition obligations	<p>The purpose of this standard condition is to:</p> <ul style="list-style-type: none"> - ensure licence holders maintain business continuity plans; and - ensure there are appropriate ongoing obligations to maintain the operational resilience of technology systems; and - require licence holders to notify the FMA about material disruptions to their critical technology systems. <p>The proposed condition requires licence holders to have an appropriate and regularly tested BCP. BCPs enable entities to be prepared to respond to and recover from an event that disrupts their market service.</p> <p>Technology systems</p> <p>We recognise the specific threat that material disruptions to technology systems may pose to licensees delivering market services. The proposed standard condition addresses this in the following ways:</p> <ul style="list-style-type: none"> - It places an obligation on licence holders to at all times ensure the operational resilience of technology systems which, if disrupted, would materially affect the continued provision of the licensee’s market service (or any other market service licensee obligation). The obligation extends to ensuring the preservation of confidentiality, integrity and availability of information and/or technology systems is maintained. - It also introduces a new notification obligation, requiring the entity to notify the FMA as soon as possible and, in any case, no later than 72 hours, after discovering any event that materially impacts the operational resilience of the licensee’s critical technology systems. This includes an event that materially disrupts or affects the provision of the licensee’s market service or has a material adverse impact on recipients of those services (e.g. consumers or investors). <p>The 72-hour period is shorter than the 10-working-day period notification requirement under the standard condition for FAPs. This reflects the reliance on technology by the relevant licence holders and the likelihood of harm to consumers and investors when disruptions occur. It also reflects the significance of technology in maintaining sound and efficient financial markets. The 72-hour period is the same as the notification requirement that will apply to financial institution licences.</p>
Implementations timeframe of 3 months	Finzo is in favour of this proposed standard condition coming into effect three months after the date that the decision is published.

Feedback form

Consultation: Proposed standard condition on business continuity and technology systems

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 condition on business continuity and technology systems: [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 September 2023**

Date: 30/08/2023

Number of pages: 3

Name of submitter: [REDACTED]

Company or entity: FundRock NZ Limited

Organisation type: Manager of registered schemes

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
1. Do you agree or disagree with the proposed standard condition? Please provide your reasons.	<p>Yes. FundRock NZ agree that it is in the best interests of our customers to ensure that managers of registered schemes meet minimum business continuity and technology standards.</p> <p>We also agree that, as managers of registered schemes, we are ultimately responsible for delivering our market services including where the service delivery involves reliance on third parties.</p> <p>We believe that many managers of registered schemes are currently operating BCP, Cybersecurity and supplier assurance programmes but agree that it will be beneficial to establish a national standard for licence holders that clarifies the regulatory expectations and is consistent across different licence types.</p>
2. Do you consider you will need to make material changes to your existing business continuity plan as a result of the proposed condition?	<p>No. We will make some changes, but these are not a material change to the existing programme. The changes will include,</p> <ol style="list-style-type: none">1. Documenting the measures we take to ensure resilience of suppliers as part of the BCP. Most of these measures are not new as we currently undertake due diligence on our suppliers and review operational resilience, but we will place some additional governance around the existing process.2. Formalising the BCP review and testing process e.g. ensuring this is performed at least annually rather than approximately annually.
3. Do you rely on critical technology systems to deliver your market service? If not, why do you not consider any of your technology systems to be critical?	<p>Yes. We rely on approximately 16 different technology systems and providers. How critical each is to our business is measured in terms of Maximum Tolerable Outage (MTO) which ranges from 2hrs for key banking systems to 7 days for some less frequently used systems.</p>

<p>4. Do you agree with our intention for the proposed standard condition for current or new licensees to be effective three months after publication of our decision (if we decide to impose a standard condition)? Please provide your reasons.</p>	<p>Yes. For FundRock NZ we already have BCP and supplier management programmes in place. We will need to make some changes/improvements to how we document and record these programmes, but this work is already underway and will be implemented as a matter of best practice regardless of whether the proposed standard is imposed.</p>
<p>5. Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.</p>	<p>Yes. Any additional compliance obligations come with cost. Regulatory compliance is a resource heavy function requiring input from specialist compliance staff, IT staff, and senior management across the business. Paying these staff to meet these increased compliance obligations increases the cost to the business and ultimately the cost of providing investment schemes to our customers.</p>
<p>6. Would the proposed standard condition have any other adverse impacts on your business? If so, please describe what these would be..</p>	<p>No.</p>
<p>7. Does the proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.</p>	<p>Yes. It will potentially prevent fund scheme managers who do not have BCP or Supplier oversight programmes from entering the market, but FundRock NZ sees this as a positive/protective barrier.</p>
<p>8. Do you have any other comments on the proposed standard condition or how it is drafted?</p>	<p>Our main concern is over the proposed use of subjective language which is open to wide interpretation. The term 'Resilience' is the key example of this, e.g. we see a supplier who manages risk to the standard of the SOC1 framework as demonstrating operational resilience, though a supplier who manages risk through to the standard of the SOC2 framework is demonstrating greater operational resilience. Currently we see the use of the SOC1 standard as being sufficient to meet the objectives of the proposed standard of operational resilience but would ideally seek further guidance on the acceptable/expected level of resilience required.</p> <p>We note further that the 2019 Thematic review of cyber resilience in the FMA-regulated entities strongly encouraged all market participants to use a recognised cybersecurity framework, making specific reference to the NIST Cybersecurity Framework and the ISO27000 standards. From this we infer that the FMA considers the NIST Cybersecurity Framework and the ISO27000 standards to be recognised cybersecurity frameworks which demonstrate evidence of an organisation's operational resilience.</p> <p>Several of our key suppliers are already certified to internationally recognised standards such as the ISO27000 standards but others use less well-known domestic frameworks produced and benchmarked by local organisations. Ideally FundRock NZ would like to see further guidance in this area as to what the regulator would consider recognised frameworks.</p> <p>An issue of secondary concern is the requirement to notify the FMA within 72 hours of identifying a material incident. The concern is the level of detail required to be provided in any notification as, if a material incident is actively occurring, we do not wish to divert key resources from resolving the incident to preparing a detailed notification. If the intention is simply for FundRock NZ to notify the FMA that an incident has occurred which we are working to resolve, then 72 hours is a sufficient window, however if the intention is that the notification included a detailed analysis of the cause of the incident, number of clients impacted, a value based analysis of the impact, a detailed resolution plan etc, then we would appreciate that this notification be deferred until after the incident is resolved.</p>

Feedback summary – Overall FundRock NZ is supportive of the formalisation of the BCP and technology systems obligations for managers of registered schemes but request additional guidance/clarity on the specific frameworks that the FMA recognises as appropriate benchmarks for ensuring operational resilience, and on the extent of the initial notification required should a material incident occur.

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.



Feedback form

Consultation: Proposed standard condition on business continuity and technology systems

Date: 30 August 2023 **Number of pages:** 2

Name of submitter: [REDACTED]

Company or entity: IG Australia Pty Limited

Organisation type: Financial Services Provider - Derivatives Issuer

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
Question 1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.	IG AU supports the proposed standard condition and the need for licensees to have documented procedures that guide firms how they will respond, recover, resume and restore its operation following a disruption or possible disruption.
Question 2: Do you consider you will need to make material changes to your existing business continuity plan as a result of the proposed condition?	We don't consider that material changes will be required to our existing Business Continuity Plan.
Question 3: Do you rely on critical technology systems to deliver your market service? If not, why do you not consider any of your technology systems to be critical?	IG AU relies on multiple critical technology systems in order to deliver its products and services to the market.
Question 4: Do you agree with our intention for the proposed standard condition for current or new licensees to be effective three months after publication of our decision (if we decide to impose a standard condition)? Please provide your reasons.	IG AU supports the FMA's intention for the proposed standard condition to be effective three months after publication of your decision.
Question 5: Would the proposed standard condition create any other adverse impacts on the business? If so, please describe what these would be.	IG AU does not expect the proposed standard condition will create any other adverse impact on its business.
Question 6: Does the proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	<p>IG AU takes the operation and security of its business very seriously and has dedicated substantial resources to ensuring it has robust arrangements in place to handle any possible disruption to its market services.</p> <p>IG AU strongly believes licensees should have robust and documented procedures in place to guide how they will respond to and recover from any possible disruption to its market services. IG AU agrees with the FMA's view that by doing so, consumers and investors will have the security of continuity of the relevant services and associated products they receive from market services licensees. Therefore, IG AU does not believe the standard condition creates any unreasonable barrier to enter the market.</p>
Question 7: Do you have any other comments on the proposed standard condition or how it is drafted?	No further comment from IG AU.
Feedback summary	



Please note that IG Australia Pty Limited's response is private and confidential.

By way of brief background, IG Australia Pty Ltd (**IG AU**) deals in over-the-counter (**OTC**) contracts for difference (**CFDs**) on a broad array of financial instruments to retail investors in New Zealand.

IG AU is regulated by the Financial Markets Authority (**FMA**) as a Derivatives Issuer and is a wholly owned subsidiary of an ultimate parent company, IG Group Holdings plc (**IG Group**). IG Group is a market leader in on-line trading. IG Group has a primary listing on the London Stock Exchange where it is an established member of the FTSE 250.

IG AU welcomes the opportunity to comment on the proposals outlined in the consultation document which we largely support.

31 August 2023

Introduction

1. This submission is made in relation to the proposed standard condition the Financial Market Authority (**FMA**) intends to introduce certain market service licence types. The FMA is seeking feedback on the proposed business continuity and technology systems standard condition as set out in the consultation document labelled Consultation: Proposed standard condition on business continuity and technology systems (**Consultation Document**).
2. The submission is made on behalf of Lifetime Asset Management Limited (**LAM**). LAM is a manager of registered managed investment schemes including the Lifetime Retirement Income Fund, the Garrison Bridge Superannuation Scheme, and the Superannuation Master Trust.
3. If you have any questions on our responses, please contact [REDACTED] and [REDACTED] or on 0800 254 338.
4. We have set out our responses to the questions in the Consultation Document.

Response

Question number	Our response
1	<p>Do you agree or disagree with the proposed standard condition? Please provide your reasons.</p> <p>We agree with the FMA's view that it is necessary to ensure financial services licence holders like managers of registered schemes meet minimum business continuity and technology standards. The FMA's rationale for proposing to introduce a new standard condition seems appropriate, especially since this proposed condition is similar to relevant conditions set</p>



Question number	Our response
	on financial advice providers and financial institutions. Therefore, we agree with the proposed standard condition.
2	<p>Do you consider you will need to make material changes to your existing business continuity plan as a result of the proposed condition?</p> <p>No material changes will need to be made to our business continuity plan as a result of the proposed condition.</p>
3	<p>Do you rely on critical technology systems to deliver your market service? If not, why do you not consider any of your technology systems to be critical?</p> <p>Yes – we rely on critical technology systems to deliver our market services. Some of these we deal with inhouse and others we outsource.</p>
4	<p>Do you agree with our intention for the proposed standard condition for current or new licensees to be effective three months after publication of our decision (if we decide to impose a standard condition)? Please provide your reasons.</p> <p>We are of the view that sufficient time should be provided so that an organisation can make any changes necessary. This includes going through appropriate internal processes and governance procedures to ensure that it complies with the new standard condition. More time may be required for organisations whose service delivery involves third parties. We appreciate the FMA’s preference is for the condition to take effect shortly after a decision is published. However, given that it may take some time for market service licensees to make any necessary changes to align with the level of compliance expected to meet the requirements of the proposed new condition (especially when third parties are involved), a timeframe of no less than nine months from the date the FMA publishes its decision would give market service licensees sufficient time to ensure they meet the standard condition from day one.</p>



Question number	Our response
5	<p>Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.</p> <p>Yes – any additional compliance measure will create additional compliance costs for our business. In this case, the cost would be increasing the workload of existing employees to ensure the organisation operates in accordance with the proposed standard condition. The increased workload will consist of ensuring systems are in place to comply with the proposed standard condition and that there is appropriate monitoring so notification deadlines can be met.</p>
6	<p>Would the proposed standard condition have any other adverse impacts on your business? If so, please describe what these would be.</p> <p>No - we do not anticipate any other adverse impacts on our business because of the proposed standard condition changes.</p>
7	<p>Does the proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.</p> <p>In our view, any increased compliance burden will create a barrier to enter the market. However, we appreciate that the benefits of imposing the proposed standard condition is likely to outweigh the increased compliance burden. We appreciate that the proposed standard condition benefits all market participants including market service licensees and investors.</p>
8	<p>Do you have any other comments on the proposed standard condition or how it is drafted?</p> <p>We make the following additional comments on the proposed standard condition:</p> <ul style="list-style-type: none"> We suggest amending the ‘within 72 hour’ deadline to ‘within three working days’. Almost all market service licensees’ operate during typical business hours (Monday to Friday 9am-5pm). With the currently proposed deadline, it will make a significant difference for an organisation where the notifiable event occurs on a Friday versus if it occurred on a Monday or Tuesday. We are mindful that there



Question number	Our response
	<p>may be some organisations that may have resource constraints outside of typical business hours. A 'within three working days' will help those organisations.</p> <ul style="list-style-type: none">• While we generally support the proposed standard condition, the additional compliance costs create challenges. We are committed to continuing to lower our costs. However, we have no real way to pass on additional compliance costs onto unitholders and scheme members. Simply increasing our fees to maintain economic relativity as may be possible with other industries is not as possible in this industry.



Feedback form

Consultation: Proposed standard condition on business continuity and technology systems

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 condition on business continuity and technology systems: [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 September 2023**

Date: 24/07/2023

Number of pages: 1

Name of submitter: [REDACTED]

Company or entity: **Milestone Financial Services (Southern) Limited**

Organisation type:

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
1. Do you agree or disagree with the proposed standard condition? Please provide your reasons.	<i>Yes, we agree the standard condition is reasonable to implement.</i>
2. Do you consider you will need to make material changes to your existing business continuity plan as a result of the proposed condition?	<i>No, our BCP is robust.</i>
3. Do you rely on critical technology systems to deliver your market service? If not, why do you not consider any of your technology systems to be critical?	<i>Yes.</i>
4. Do you agree with our intention for the proposed standard condition for current or new licensees to be effective three months after publication of our decision (if we decide to impose a standard condition)? Please provide your reasons.	<i>Yes, this is a reasonable timeframe.</i>
5. Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	<i>No.</i>
6. Would the proposed standard condition have any other adverse impacts on your business? If so, please describe what these would be.	<i>No.</i>
7. Does the proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	<i>No.</i>
8. Do you have any other comments on the proposed standard condition or how it is drafted?	<i>No.</i>

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

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

Feedback form

Consultation: Proposed standard condition on business continuity and technology systems

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Date: 24/08/2023 Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: Milford Asset Management Limited

Organisation type: Asset Manager

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED]

Question number	Response
1	Agree. Requiring that licensees ensure that service recipients face minimal disruption is entirely sensible
2	No. This proposed condition doesn't impose requirements additional to those we already have in terms of having BCPs, keeping our systems that support our services up and running and reporting material disruptions to the FMA.
3	Yes
4	Yes - As per comment 2 above
5	No
6	No
7	No
8	<p>1. Drafting error? The explanatory note says <i>"You need to provide details of the event including the affected systems, and the impact on your market service and recipients of the service. This should also include projected recovery timelines and remediation activity. If some of the details are not available at the time you <u>discover</u> the event, you will need to provide these details to us as soon as possible"</i></p> <p>We wonder if the word <i>"discover"</i> should be replaced by the words <i>"notify us of"</i>. Our thinking is that a licensee may not know projected recovery times at the moment of discovery, but the licensee will (should) have a better understanding at the time it notifies the FMA.</p> <p>2. Reporting template. The explanatory note explains that the FMA may specify the format for notifying events to the FMA. We would welcome a template for reporting.</p> <p>Having a template a licensee can quickly complete knowing it will provide the FMA with the information it requires will be helpful in the middle of a BCP event.</p> <p>3. Consistent licence conditions. FMA now has a similar licence condition across three different licence types (FAPs, CoFI and all the rest). Similar but different. Conditions worded differently but trying to achieve the same broad outcome are not entirely helpful (especially in terms of the description of materiality in each condition). Some licensees will hold more than one licence and it will remove uncertainty if the framing of the condition for each licence is consistent. It would be helpful if FMA could:</p> <ul style="list-style-type: none">▪ Revisit the FAP condition to make it the same, or▪ Include some commentary in the explanatory note to confirm that where an entity is captured by the "same but different" condition, what the sequencing priority should be.

4. **Materiality.** Determining what is material and what is not can be challenging. Determining materiality in the middle of a BCP event even more so. Consequently, greater clarity on expectations from the FMA on materiality and reporting would be welcome. Our view on what is a material disruption for recipients of our service may be different to what the FMA view that to be (or most importantly, what those recipients view that to be). Is a few hours material? If it's longer on a weekend does that matter? A solution would be to encourage licensees to have a framework in place that considers the condition and helps them to make a decision on what would be material to their business and recipients of their service.

Also, we recommend a small change to the proposed wording because the current drafting allows for two different interpretations on materiality because of subtle changes in the proposed wording of what should be the same sentence. Consider these two sentences – both lifted from your explanatory note:

a. Sentence 1 – “.....any technological or cyber security event that materially disrupts or affects the provision of your market service, or has a material adverse impact on recipients of the service.”

This sentence suggest that a reportable event might be **Either** an event materially disrupting or affecting your service, **OR** an event that materially impacts recipients of the service.

b. Sentence 2 – “.....i.e. has not materially disrupted or affected the provision of your market service, and has not had a material adverse impact on recipients of the service.”

This sentence offers a view that both criteria must be met for it to be reportable (i) the event must materially disrupt or affect the provision of your service, **AND** (ii) there must be a material adverse impact on service recipients.

We would be grateful if you would clarify the language to remove any interpretation uncertainty.

If revisiting the wording to provide clarity to the point above, the FMA may wish to consider redrafting the paragraph to reduce duplication and place more emphasis on the provision of the market service, and less on the technology (which would be consistent with the explanation FMA have provided elsewhere in the document – i.e. to focus the condition on continuity of service and less on cyber events). I.e. move the last sentence up to the top.

Current wording	Proposed Change.
<p>“You must have arrangements in place to notify us after discovering any event that materially impacts the operational resilience of your critical technology systems. This includes any technological or cyber security event that materially disrupts or affects the provision of your market service, or has a material adverse impact on recipients of the service. You do not need to notify us of minor events, such as receiving a ‘phishing’ email that is not successful i.e. has not materially disrupted or affected the provision of your market service, and has not had a material adverse impact on recipients of the service.”</p>	<p>You must have arrangements in place to notify us of any event (including any technological or cyber security event) that:</p> <ul style="list-style-type: none"> a. materially disrupts or affects the provision of your market service, or b. has a material adverse impact on recipients of the service.

5. **Rename the condition** – The FMA have proposed the name of the licensed condition as ‘Business continuity and technology systems’. We recognise that you are wanting to be consistent across licence types but, considering how the FMA have already drafted them to read slightly differently, perhaps the FMA would also consider renaming the condition to something clearer? We think “Continuity of Services” or “Service Continuity” as a heading much better explains the content and purpose of the condition.

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

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

Feedback form

Consultation: Proposed standard condition on business continuity and technology systems

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Date: _____ Number of pages: _____

Name of submitter: [REDACTED]

Company or entity: Public Trust

Organisation type: Supervisor Independent Trustee

Contact name (if different): _____

Contact email and phone: [REDACTED]

Question number	Response
1	<p>Yes, Public Trust agrees with the intent of the proposed standard condition for the following reasons:</p> <ul style="list-style-type: none">• <i>Implementing a comprehensive strategy for business continuity and technology system resilience ensures that all market participants are well-prepared to mitigate potential risks and maintain operations, particularly in the face of unexpected situations such as technology glitches, natural catastrophes, or cybersecurity intrusions.</i>• <i>Uninterrupted access to services is critical for investors to manage their portfolios effectively. By implementing the proposed standard condition, market participants can minimise disruptions and reduce the potential for financial loss or harm to investors.</i>• <i>The proposed standard condition would help minimise disruptions in services, which can lead to a decrease in investor confidence in the market.</i>• <i>The proposed standard condition can provide certainty during times of crisis, reduce downtime and service disruptions, and establish a minimum level of standard for the Part 6 license types mentioned in the consultation document.</i>• <i>In our view, the proposed standard condition would help to mitigate risks associated with allowing Part 6 license types to establish their own standards, thereby enhancing investor confidence in the use of such services.</i>• <i>Public Trust believes that the proposed standard condition will support risk management and investor protection, and further stability, integrity, and resilience for investors when using such services.</i> <p><i>Public Trust notes that the addition of a standard condition for licenced participants does crystallise an impost upon those participants to oversee third party service providers not themselves subject to such conditions. Public Trust notes that there are alternative mechanisms that the FMA should consider to address the key risks sought to be mitigated by the proposed standard condition. In particular, there remains an opportunity to instigate a licensing regime for key market service providers that currently remain unlicenced. Specifically, there would be considerable benefit in a licencing framework that encompassed administrators,</i></p>

	<p>custodians and registrars given the critical nature of their service both for individual market participants and in their role as a key point of failure risk for the sector. It is worth highlighting that in 2017 the International Monetary Fund (IMF) included in their Financial Sector Assessment Program (FSAP) technical note that consideration should be given to reviewing the perimeter of regulation in order to capture custodians. The paper noted that most other regulatory regimes require custodians to be licensed, authorised or approved and be subject to some form of ongoing regulatory oversight. Public Trust would support this being prioritised as an area for the FMA to progress.</p>
2	<p>Public Trust is a licensed FMA Supervisor for certain Part 6 licence types through its Corporate Trustee Services business unit. As a Supervisor of licensed entities, we supervise the functions of the Manager and subject to the adoption of proposed standard condition it will become part of the function of the Manager which will be considered in our supervisory practices. We have already identified IT generally and cyber security in particular as high risk areas for the Manager and have been proactive in reviewing this area through thematic reviews.</p>
3	<p>Public Trust is a licensed FMA Supervisor for certain Part 6 licence types through its Corporate Trustee Services business unit and does not rely on the proposed standard condition.</p> <p>Public Trust does rely on critical technology and has adopted processes to mitigate the commensurate with the risks.</p>
4	<p>Yes, Public Trust agrees with the proposed standard condition to be effective 3 months after publication, however we'd suggest the following approach.</p> <ul style="list-style-type: none"> • An initial three month preparatory period would provide a sufficient period for those affected to prepare for any necessary changes to their existing business continuity and technology systems. This timeframe will enable us as Supervisors to identify any necessary changes during our quarterly meetings with affected market participant clients. This would effectively be a review and readiness assessment period for participants. • A subsequent three month transition period would enable participants to transition to the new standard and provides leeway that takes in to account the complexity of their systems and third party relationships. • If material changes are necessary for existing business continuity and technology systems, the two-staged approach would allow for assessments of these systems and enables participants to allocate resources and testing towards any required changes, minimising disruption to services.
5	<p>Public Trust is a licensed FMA Supervisor for certain Part 6 licence types through its Corporate Trustee Services business unit. As Supervisor there is expected to be some additional cost to monitoring our supervised entities with respect to the standard. This resource and cost will need to be absorbed by supervisors.</p>
6	<p>Public Trust is a licensed FMA Supervisor for certain Part 6 licence types through its Corporate Trustee Services business unit and the standard will not apply.</p>
7	<p>Public Trust is a licensed FMA Supervisor for certain Part 6 licence types through its Corporate Trustee Services business unit.</p> <p>Whilst the standard will not apply to Public Trust we do think it will extend the barrier to entry slightly but this needs to be weighed against the heightened overall risks to investors where the standard is not complied with.</p>

8	<ul style="list-style-type: none"> • <i>The three-month lead time for implementation may give appropriate time for timely compliance. However, for each participant, the ability to comply may vary depending on the resources and complexity of the systems used.</i> • <i>The proposed condition considers both new and existing licensees which creates a consistent regulatory approach.</i> • <i>The explanatory notes are sufficient to ascertain what constitutes appropriate business continuity plans and technology systems for the proposed condition</i> • <i>The proposed standard condition demonstrates risk management and operational resilience.</i> • <i>In Public Trust's view the requirement to notify within 72 hours of any event that materially impacts the operational resilience of critical technology systems will be problematic, in practice for the following reasons and should be reviewed:</i> <ul style="list-style-type: none"> ○ <i>There is no guidance as to what is considered material, we think the standard needs to have guidance on materiality to ensure consistency of approach across managers; and</i> ○ <i>The timeframe is inadequate for the following reasons:</i> <ul style="list-style-type: none"> ▪ <i>It will take time to identify the extent of the event in some cases and to decide whether it is material. The condition should be revised such that a requirement exists for notification 72 hours after it is considered material (assuming there is guidance on materiality).</i> ▪ <i>Participants (in particular fund managers) often outsource critical functions such as unit pricing to third parties. The third party may themselves identify an issue wherein the fund manager remains reliant on the actions of the third party to deal with the matter. Practically the primary market participant can only do so much (for example, in accordance with existing contractual terms or relative influence as a customer of the third party provider) in this situation. Ultimately the participant could change their provider if the outsource provider is not able to provide sufficient assurance of capability to meet the 72 hour notification threshold, however that is quite theoretical argument due to the time to transition for a new provider and the lack of competition due to the relative lack of scale in the market for certain services in New Zealand. We think that investors interests would be significantly improved if the FMA required that the standard applied to the outsource providers, for example through a direct licencing regime, and the FMA therefore had direct oversight of this.</i>
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Feedback summary – Public Trust supports the proposed standard condition on business continuity and technology systems. The proposed standard condition of implementing a comprehensive business continuity and technology system condition will help ensure market participants are well-prepared to mitigate risks, maintain operations during disruptions like technology issues or cyber threats, and secure uninterrupted access to services for effective portfolio management. The proposed standard condition would therefore help minimise disruptions, reduce potential financial losses or harm to investors, and enhances investor confidence by providing certainty during crises. Public Trust notes that the addition of a standard condition for licenced participants does crystallise an impost upon those participants to oversee third party service providers not themselves subject to such conditions. Public Trust suggests priority should be given to instigating a licensing regime for key market service providers that currently remain unlicensed such as

administrators, custodians and registrars given the critical nature of their service both for individual market participants and at a sector level.

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

1 September 2023

Financial Markets Authority,
Level 2 Grey Street,
Wellington 6140
By email: consultation@fma.govt.nz

Tēnā koe FMA,

Securities Industry Association submission: Proposed standard condition on business continuity and technology system (July 2023)

The Securities Industry Association (**SIA**) appreciates the opportunity to submit on the FMA's "Proposed standard condition on business continuity and technology system" consultation.

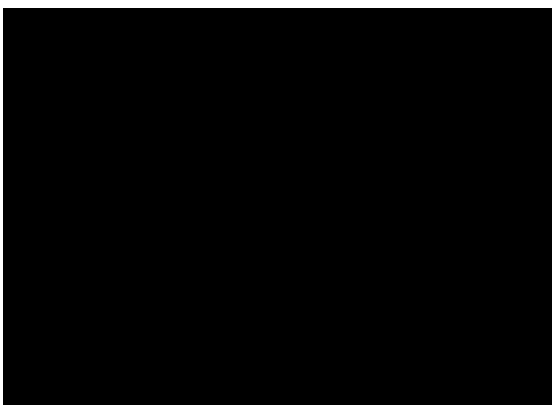
Please find our submission attached. No part of this submission is required to be kept confidential.

About Securities Industry Association (SIA)

SIA represents the shared interests of sharebroking, wealth management and investment banking firms that are accredited NZX Market Participants. Our members employ more than 500 accredited NZX Advisers, NZDX Advisers and NZX Derivatives Advisers, and more than 500 Financial Advisers nationwide. Our members work with over 300,000 New Zealand retail investors with total investment assets exceeding \$80 billion, including more than \$40 billion held in custodial accounts. Members also work with local and global institutions that invest in New Zealand.

Thank you for the opportunity to present our comments on this proposal. Please get in touch should you have any questions about this submission or require further information.

Nāku noa, nā



Feedback form

Consultation: Proposed standard condition on business continuity and technology systems

Date: 1 September 2023

Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: Securities Industry Association

Organisation type: Industry Body

Contact name (if different):

Contact email and phone: [REDACTED]

Feedback summary

1. The Securities Industry Association (**SIA**) thanks the Financial Markets Authority (**FMA**) for the opportunity to respond to the “Proposed standard condition on business continuity and technology systems” consultation.
2. In principle, SIA agrees with the proposed standard condition on business continuity and technology systems. However, we outline our concerns regarding its workability and suggest how it could be approached to be both effective and efficient in its deployment.
3. SIA supports aligning the proposed standard condition on business continuity and technology systems with related legislation. We agree businesses need to have business continuity and technology systems, processes and plans that ensure a level of operational resilience, including cyber resilience, is maintained to a level appropriate for the scale and scope of a market service. We support that these need to be documented and regularly reviewed and tested to ensure they are fit for purpose with respect to changes to a business and the evolution of risk or threats in the environment. This reduces risk to, and impacts on, customers should an incident occur.

A high-level approach leads to unclear reporting expectations

4. We believe that the proposed standard condition is high-level; therefore, businesses will need to interpret how the standard applies without specific examples or scenarios. It is unclear what the reporting expectations are for a business that experiences an event that materially impacts its operational resilience of critical technology systems. We seek clarity on whether FMA expects businesses to provide a notification on the issue versus a full report within 72 hours.
5. We support delivering sensible and workable compliance outcomes and good customer outcomes. If an incident is identified, it is dealt with immediately, and we agree with advising FMA as soon as possible within a reasonable timeframe. However, we expect this notification to be relatively brief at that stage, as providing a full report early on may be quite unworkable in a time-critical situation. In practical terms, businesses should be committing resources to solving the issue rather than averting resources to focus on reporting.
6. We appreciate the detail that minor events such as unsuccessful phishing emails do not need to be reported; however, there may be some circumstances where it is appropriate to report these scams to CERTNZ or FMA for broader public awareness.

Notification period

7. SIA acknowledges the ten working days notification period of the Financial Advice Providers process as a generous timeframe and appreciates and supports FMA proposing a briefer period in this instance due to the critical role of technology in these circumstances.

72-hours vs. three working days notification period

8. However, SIA has concerns with the proposed 72-hour notification period. We submit that the standard condition should not create a compliance burden for businesses, and this timeframe will likely do that. We believe resolving the issue as quickly as possible, ensuring customer protection, and resuming services is where the focus should be.
9. We advise that a 72-hour notification timeframe may be unworkable in some scenarios and that most businesses do not run a 24-hour operation. For example, a 72-hour notification may be unworkable where an incident occurs on a Friday afternoon or outside of business hours, followed by a long weekend. Therefore, we suggest that this could be revised to a 'working days' timeframe, i.e. three working days.

Two-step notification period

10. We suggest that a more workable and practical approach of a two-step notification and reporting process should be implemented to enable businesses to deal with the immediacy of any issues that have arisen or may arise.
11. We suggest that the first step should be notifying the FMA of the issue within three working days, and the second step includes providing a more detailed report within a further five working days.
12. The first notification would provide FMA with a succinct notification of the issue. This would ensure that businesses are taking a customer-first approach and are focused on assessing, understanding and addressing the issue with immediacy and allocating full resources to the issue. Making the notification within three working days would mean that FMA receives information that the business has identified and is dealing with the issue and that, if required, any critical details could be shared more broadly to customers, the public or more widely to market participants or parts of the sector that may be potentially impacted or at risk.
13. The timing of the second step to provide a report within five working days would enable businesses to have a better understanding of the issue and be able to provide a more fulsome explanation, such as more detail on the issue, an update on actions taken to date and planned, a full assessment on customer impact, remedial activity, communications to customers or other stakeholders. In some circumstances, businesses may have assessed that a more detailed report is unnecessary.

Next steps following notification

14. We seek clarity on the expected timeframe for the FMA to respond to the notifications they receive and any standard processes/next steps that would be expected to follow.

Implementation timeframe

15. Should the standard condition be imposed, SIA agrees with the proposed timeframe of three months after the date the decision is published.
16. SIA thanks FMA for the opportunity to provide feedback from the industry, and we welcome further discussion if there are any questions or if additional information is required.

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.



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1 September 2023

Financial Markets Authority – Te Mana Tātai Hokohoko

By email only: consultation@fma.govt.nz

**Submission by Smartshares Limited on Proposed Standard Condition on
Business Continuity and Technology Systems**

Smartshares Limited FSP26531 (**Smartshares**) submits this response to the Financial Markets Authority's Consultation Paper *Proposed standard condition on business continuity and technology systems* (**Consultation Paper**).

Smartshares is a licensed manager of registered investment schemes and a wholly owned subsidiary of NZX Limited (**NZX**), which operates New Zealand's equity, funds, derivatives, energy and carbon markets.

Smartshares welcomes the Financial Market Authority's discussion around the proposed new standard condition.

Our further detailed comments on particular questions from the Consultation Paper are set out below. Thank you for the opportunity to provide this feedback.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

Feedback form**Consultation: Climate-related disclosures timing mismatch**

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 condition on business continuity and technology systems: [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 September 2023.**

Date: August 31, 2023

Number of pages: 4

Name of submitter: [REDACTED]

Company or entity: Smartshares Limited

Organisation type: Financial Services Provider

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
1. Do you agree or disagree with the proposed standard condition? Please provide your reasons.	<p>Smartshares agrees with the proposed standard condition (subject to our other submissions).</p> <p>Smartshares, under its existing full Financial Advice Provider (FAP) licence, is already subject to a condition that is broadly equivalent to the condition proposed under the consultation, being standard condition #5 for FAP licences (Business continuity and technology systems).</p> <p>Smartshares considers it appropriate for there to be a standard licence condition for Managed Investment Scheme (MIS) Managers regarding business continuity and technology systems. Maintenance of a robust business continuity plan and information security for technology systems is crucial for fund managers, especially sophisticated, large-scale fund managers such as Smartshares.</p>
2. Do you consider you will need to make material changes to your existing business continuity plan as a result of the proposed condition?	Smartshares does not consider that the proposed new condition, if imposed, would require Smartshares to make material changes to its existing business continuity plan.
3. Do you rely on critical technology systems to deliver your market service? If not, why do you not consider any of your technology systems to be critical?	Smartshares relies on critical technology systems to deliver its market service. Smartshares is a wholly owned subsidiary of NZX Limited and, as such, a member of the NZX Group. In the provision of its market service, Smartshares relies in part on business continuity and technology services provided by NZX Limited under a comprehensive, fully documented, arm's-length outsourcing arrangement with NZX Limited. Smartshares also relies on third party providers e.g., for IT technology systems and custodial and registry services.
4. Do you agree with our intention for the proposed standard condition for current or new licensees to be effective three months after publication of our decision (if we	Yes. Smartshares considers that a three-month lead-in period would be appropriate for the proposed standard condition. Smartshares considers it could manage the transition to the new condition, within such a three-month period, and other MIS licence holders ought to be able to manage the transition within that period as well. Smartshares expects

decide to impose a standard condition)? Please provide your reasons.	that a majority of MIS licence holders are also FAP licence holders, and as such are already subject to a standard condition that is broadly equivalent to be proposed MIS standard condition.
5. Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	<p>The only significant difference between Smartshares' existing FAP licence standard condition for business continuity and technology systems and the proposed new MIS licence standard condition is the period within which Smartshares would have to notify the FMA of any event that materially impacts the operational resilience of its critical technology systems, and provide details of the event and impact on its market service and recipients of the service. Under the equivalent FAP licence standard condition, a FAP licence holder must notify the FMA within 10 working days of discovering any event that materially impacts the information security of its critical technology systems and provide details of the event, the impact on its financial advice service and clients, as well as remediation activity.</p> <p>Under the proposed new MIS licence condition, the applicable FMA reporting period is as soon as possible and, in any case, no later than 72 hours, after discovering the relevant event.</p> <p>If the shorter period of 72 hours is to be adopted, Smartshares would obviously have to adjust its internal processes to ensure it can notify the FMA of any applicable event, within that period. Such adjustment will involve compliance costs, both one-off and ongoing, and may not in fact be feasible (as indicated below).</p> <p>In Smartshares' submission, the FMA should consider defining the period within which a MIS licence holder is required to notify the FMA by reference to working days (as with the FAP licence standard condition). 72 hours may not be a feasible period within which MIS licence holders can be required to provide details of the event and the impact on the licence holder's market service and service recipients. For example, if a potential event occurs early on a Friday, it may not be feasible (taking into account of the practicalities of co-ordinating the relevant tasks over a weekend) for a MIS licence holder to notify before Monday morning. In particular, Smartshares emphasises that, in relation to any event, Smartshares is likely to have to obtain information from, and otherwise communicate with, external third-party providers, which would be potentially time-consuming and complex.</p> <p>For the above reasons, Smartshares submits that a more realistic notification period should be a period of at least 5 working days.</p> <p>Further submissions on "materiality" are below in 8. Do you have any other comments on the proposed standard condition or how it is drafted?</p>
6. Would the proposed standard condition have any other adverse impacts on your business? If so, please describe what these would be.	No.
7. Does the proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	If the condition does create a barrier to entry, then the barrier would arguably be justified. Modern funds management is a sophisticated and technological business activity. A MIS licence holder ought to be required to have robust business continuity and technology systems.

<p>8. Do you have any other comments on the proposed standard condition or how it is drafted?</p>	<p>“Materiality” features in two respects in the proposed condition: (1) an MIS licence holder must ensure the operational resilience of any technology system the disruption of which would materially affect continued provision of the market service and (2) an MIS licence holder must notify the FMA within 72 hours after discovering any event that materially impacts operational resilience of critical technology systems.</p> <p>Adoption of materiality criteria without further objective definition is undesirably vague. In Smartshares’ submission, the FMA should endeavour to bring more certainty to materiality (what qualifies as a major incident), and ideally publish appropriate guidelines or incorporate appropriate definitions of materiality in any new MIS standard condition.</p> <p>In formulating guidelines/definitions on materiality, the FMA could, for example, usefully have regard to the European Banking Authority’s Guidelines on Major Incident Reporting under PSD2, dated 10 June 2021 (section 4), a copy of which accompanies these submissions (PSD2 Guidelines).</p> <p>The explanatory note for the proposed condition provides, in relation to requirement to “provide details of the event and impact on your market service and recipients of the service” that:</p> <p style="text-align: center;"><i>This should also include projected recovery timelines and remediation activity. If some of the details are not available at the time you discover the event, you will need to provide these details to us as soon as possible. We may also request additional information about the event. We may also specify the format or additional requirements for notifying events to the FMA.</i></p> <p>While helpful, in Smartshares’ submission the FMA should endeavour to provide, in any finalised explanatory note, additional granularity as to what details of an event must be provided and as to the process and timeframes for provision of those details (and any follow-up details).</p> <p>Smartshares encourages the FMA to have regard to the PSD2 Guidelines in refining the proposed condition and accompanying explanatory note, particularly with regard to the following:</p> <ul style="list-style-type: none"> • Clear thresholds for determining what is material and reportable (table 1 on page 20 of the PSD2 Guidelines); and • Clear expectations on what will be initially reported and later in the intermediate and final reports (see pages 21-23 of the PSD2 Guidelines). <p>Smartshares considers that the PSD2 Guidelines thresholds are feasibly transferable to a MIS manager (number of transactions, number of customers, service downtime, breach of security, financial impact, reputational impact, etc).</p> <p>The proposed condition and explanatory note should, in Smartshares’ submission, detail clear expectations on what must be reported at each stage – describe headline level information in the initial report, an intermediate report when things are back to normal and the final report when the root cause analysis is completed.</p>
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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.

Personal information gathered in this consultation will be handled in accordance with our Privacy Statement on our website www.fma.govt.nz.

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

