

Memorandum of Understanding

between

Financial Markets Authority

and

Reserve Bank of New Zealand

Memorandum of Understanding dated 13 August 2021

Between **Financial Markets Authority (FMA)**

And **Reserve Bank of New Zealand (RBNZ)**

Background

1. The FMA was established under the Financial Markets Authority Act 2011. The FMA's main objective is to promote and facilitate the development of fair, efficient and transparent markets. It enforces securities, financial reporting and company law as they apply to financial services and securities markets. The FMA also regulates securities exchanges, financial advisers, brokers, trustees and issuers, including issuers of KiwiSaver and superannuation schemes.
2. The RBNZ was established under the Reserve Bank of New Zealand Act 1989. The RBNZ is New Zealand's central bank and its main functions are to formulate and implement monetary policy to maintain price stability and support maximum sustainable employment, to promote the maintenance of a sound and efficient financial system and to meet the currency needs of the public.
3. The parties work together in areas of common interest. In particular, the parties must act jointly as the "regulator" for the purposes of the Financial Markets Infrastructure Act 2021.

Purpose

4. The purpose of this Memorandum of Understanding (MOU) is to formalise the relationship of cooperation between the FMA and the RBNZ, recording each party's commitment to cooperate in a manner that ensures the most effective and efficient regulation of the New Zealand financial system.
5. This MOU sets out the framework for cooperation. Schedules that accompany this MOU set out the protocols relating to specific activities.

Cooperation principles

6. The parties commit to:
 - a. Communicate in an open, honest and timely manner.
 - b. Respond promptly to requests by the other.
 - c. Exchange information and ideas to improve the efficiency and effectiveness of regulation of New Zealand's financial system.
 - d. Work together, so far as is practicable, to avoid duplication of expenditure of taxpayer funded resources.

- e. Forewarn each other of actions to be taken, or proposed to be taken, of which the other might reasonably expect to be advised.
 - f. Share training and staff development opportunities, and provide mutual operational support.
 - g. Co-ordinate activities such as stakeholder surveys, statistics collection, research work and sector consultation whenever possible and mutually beneficial to do so.
 - h. Where either party identifies a harm or potential harm falling within the jurisdiction of the other, to the extent permitted by law, pass all relevant information to the other party as a matter of urgency.
 - i. Work together in matters of information sharing, joint investigatory activity, referral of cases or any matters of major supervisory intervention, where mutually beneficial to do so.
 - j. Advise each other of any operational or policy concerns through the appropriate channels.
7. Having regard to regulatory and policy development, the parties commit to the following:
- a. Advise the other of any material proposed changes in regulatory policy, guidance or decisions on regulation that may impact on the objectives and/or functions of the other, allowing for appropriate time to consult.
 - b. If the implementation of regulatory policy, guidance or decisions on regulation by one party may impact on the objectives and/or functions of the other, that party will notify the other.
 - c. When appropriate and whenever it is practical or relevant to do so, both parties will consult each other in relation to relevant policy documents that may be of interest to, or will have an effect on, the other party.
8. Having regard to media releases and statements to third parties (excluding usual engagement with entities that are regulated by the parties, which shall be managed in accordance with the provisions relating to Joint Interest Matters), the parties commit to consult with the other before providing information or comment on a matter which falls within the other party's responsibility or in which the other party has an interest.

Joint Interest Matters

9. At times the parties may both have an interest in a matter according to their statutory objectives that they may choose to declare that matter a Joint Interest Matter.

10. When a matter is declared as such, the parties can record the operational protocols in regards to cooperation and information sharing specific to that Joint Interest Matter in a schedule to this MOU. That schedule may be determined confidential if appropriate.
11. Below is a non-exhaustive list of the types of operational protocols the parties may wish to cover in the schedule:
 - Key contact persons;
 - Provision of documents including method and mode;
 - Operational meetings including frequency and record taking;
 - Level of engagement including particulars about what will be shared;
 - Authority to disclose confidential information; and
 - Use, storage and retention of information.
12. A Joint Interest Matter schedule will be prepared by the parties in accordance with this MOU and the parties' empowering legislation. The information sharing protocols in Schedule 1 will apply unless the protocols in the Joint Interest Matter schedule expressly depart from them.
13. Schedule 2 provides a template schedule for a Joint Interest Matter.

Review of MOU and schedules

14. The parties will review the operational effectiveness of the MOU at least once per annum.
15. Modification or termination of the MOU and/or any of its schedules, and/or the addition of new schedules, may be undertaken by the mutual agreement of the parties.
16. Either party may terminate the MOU and/or any of its schedules by giving three months' notice in writing to the other party.

Issue or dispute resolution

17. All issues, disputes and differences between the parties about the interpretation or performance of this MOU will be resolved at the earliest opportunity by operational representatives or managers, wherever possible.
18. Only when matters remain unresolved or require further adjudication should they be referred to the parties' senior management representatives being the persons notified in writing by the parties from time to time.

Costs

19. Unless the parties mutually determine otherwise, each party shall meet its own costs of meeting the commitments of this MOU.

Legal

20. Nothing in this MOU shall make either party liable for the actions of the other or constitute any legal relationship between the parties.
21. Nothing in this MOU is intended to limit or affect the independence of either party or affect their statutory obligations.
22. The provisions in this MOU are to be read subject to any Chief Executive or Cabinet directives, and any enactment, regulations or rules.
23. 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 to re-negotiate any aspects of the MOU if necessary.
24. This MOU repeals and replaces all previous MOUs made between the FMA and the RBNZ.
25. The Third Schedule is made under section 11 of the Financial Market Infrastructures Act 2021 (and for the purposes of that Act constitutes the “memorandum of understanding” referred to in subsection (2)), and is included as a schedule for convenience and ease of reference.
26. The definitions used in the Financial Markets Infrastructure Act 2021 are only intended to be relevant to the Third Schedule and are not to be used as an aid to interpretation for any other part of this MOU.
27. The parties’ operational representatives for this MOU are:

FMA

James Greig, Head of Supervision

james.greig@fma.govt.nz

Telephone: 09 300 0421

RBNZ

Scott McKinnon, Manager, Banking and FMI Supervision

scott.mckinnon@rbnz.govt.nz

Telephone: 04 471 3937

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



Rob Everett

Date: 20 August 2021

Signed by the **Governor** of the **Reserve Bank of New Zealand**



Adrian Orr

Date: 13/08/2021

Schedule 1 Information Sharing

Between **Financial Markets Authority (FMA)**

And **Reserve Bank of New Zealand (RBNZ)**

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 Memorandum of Understanding (MOU) between the parties dated **18 March 2020**.

Principles

2. The parties agree to make relevant information available to the other, subject to any legislative requirements, in a timely and efficient manner.

Statutory Framework

3. Information provided by the FMA to the RBNZ under this MOU is pursuant to sections 30 and 59(3)(d) of the Financial Markets Authority Act 2011.
4. Information provided by the RBNZ to the FMA under this MOU is pursuant to:
 - Sections 105 and 156G of the Reserve Bank of New Zealand Act 1989;
 - Sections 54 and 55 of the Non-bank Deposit Takers Act 2013;
 - Sections 135, 136 and 137 of the Insurance (Prudential Supervision) Act 2010; and
 - Section 139 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Confidential information

5. Confidential information is information covered by confidentiality provisions in statute or subject to a confidentiality order or non-disclosure agreement.¹
6. When confidential information is exchanged between the parties, both parties agree to treat the information as the home party would, and commit to:
 - Keep the information secure; and
 - Only access the information for legitimate business purposes.
7. Both parties agree not to disclose confidential information to any third party without the consent of the other party unless such disclosure is required, authorised or permitted by law, subject to the following:
 - a. If a party is required by law to disclose to a third party, information that has been provided by the other party under this MOU, the party must, prior to

¹ Unless the specific terms permit it to be shared.

disclosure, *notify* the other party in writing with reasonable notice so as to enable the other party to determine what action, if any should be taken. Consent to disclose is not required.

- b. If a party is authorised or permitted by law to disclose to a third party, information that has been provided by the other party under this MOU, the party must, prior to any disclosure, *consult* with the other party before making any decision regarding the disclosure. If a party is minded to disclose the information, the party should notify the other of its proposed reasoning for doing so. Consent to disclose is not required.

Format and timing of requests

8. Requests for information from the other party will be made in writing to the following designated persons:

FMA

questions@fma.govt.nz Attention: *Relevant operational manager*

RBNZ

rbnz-info@rbnz.govt.nz Attention: *Relevant operational manager*

9. Oral requests may be made in emergency situations if any delay could have a substantial negative impact on the purpose for which the information is sought.
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; and
 - Any other relevant matters.
12. The parties agree to respond to requests for information as soon as is practicable, and in any event 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.

Sharing of other information

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

Use, storage and retention of information

14. Any shared information will only be used by the receiving party for legitimate business purposes and in line with the law and the party's policies, processes and systems.
15. The party providing the information will indicate the level of sensitivity that applies to the information or any part of the information, where appropriate.
16. 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.
17. 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.
18. 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.

Between **Financial Markets Authority (FMA)**

And **Reserve Bank of New Zealand (RBNZ)**

Purpose

1. The purpose of this schedule is to facilitate the effective and efficient cooperation between the parties by recording the operational protocols in regards to cooperation and information sharing relating to the Joint Interest Matter of *[name of matter]*.

Background

2. By Memorandum of Understanding dated 18 March 2020 (MOU) the parties set out that at times they may both have an interest in a matter according to their statutory objectives that they may choose to declare a Joint Interest Matter.
3. When a matter is declared as such, the parties can record the operational protocols in regards to cooperation and information sharing specific to that Joint Interest Matter in a schedule to the MOU.

Joint Interest Matter

4. The parties have declared *[name of matter]* to be a Joint Interest Matter and wish to record how they agree to cooperate and share information in respect of this matter in accordance with the MOU and the parties' empowering legislation.
5. The information sharing protocols in Schedule One will apply unless the protocols in the Joint Interest Matter schedule departs from them.

[Operational matter number 1 e.g., Provision of documents]

6. *The parties agree that all documentation will be exchanged between parties via a secure shared drop box facility. The documents will be stored in the shared dropbox and can/cannot be copied into the receiving party's information management system without prior approval from the sender party.*

Operational matter number 2 e.g., Particulars of information to be shared

7. *The parties agree to share all information received from third parties, all internal working papers and all internal and external correspondence on the matter.]*
8. Each party agrees to consult with the other before providing information or comment on a matter which falls within the other party's responsibility or in which the other party has an interest as noted below:

[insert any specific agreed requirements re stakeholders]

Schedule 3

Oversight of Financial Market Infrastructure

1. Background

- 1.1. The Financial Market Infrastructures Act 2021 (the Act) came into force on 10 May 2021. It provides for designation of Financial Market Infrastructures (FMIs) that are deemed systemically important or that apply for designation.
- 1.2. The RBNZ and FMA are jointly responsible for the designation and oversight of FMIs that are not a pure payment system, as set out in section 8 of the Act. The RBNZ is the sole regulator for pure payment systems.
- 1.3. The Act specifies four purposes. The RBNZ has greater interests in purposes a) and b):
 - 1.3.1. Promote the maintenance of a sound and efficient financial system (including by responding to threats to the stability of, or confidence in, the whole or a significant part of the financial system);
 - 1.3.2. Avoid significant damage to the financial system that could result from problems with an FMI, an operator of an FMI, or a participant of an FMI that threaten the stability of, or confidence in, the whole or a significant part of the financial system; and
- 1.4. The FMA has greater interests in purposes c) and d):
 - 1.4.1. Promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
 - 1.4.2. Promote and facilitate the development of fair, efficient, and transparent financial markets.

2. Purpose

- 2.1. The purpose of this Schedule is to enable the agencies to achieve the objectives set out in the Memorandum of Understanding between the parties dated 18 March 2020 (MoU) and in particular facilitate the effective and efficient cooperation between the parties by recording the operational protocols, and the high level framework under which the two agencies are committed to work together as the regulator of FMIs under the Act.

2.2. This Schedule replaces the MoU between the RBNZ and FMA dated 7 December 2011 on designation and oversight of settlement systems under Part 5C of the RBNZ Act.

3. Regulators' common core supervisory objectives

3.1. The RBNZ and FMA agree that the following are core supervisory objectives for designated FMIs:

3.1.1. Good governance. It is important that FMIs are well managed by appropriately skilled people. Governance arrangements should ensure that the views of all relevant stakeholders are considered;

3.1.2. Sound risk management. FMIs should have a comprehensive and up-to-date risk management framework covering legal, credit, liquidity, operational, cyber and other relevant risks;

3.1.3. Continuity of service. FMIs should operate continuously and are able to cope with potential disruptions like technical problems, the failure of a participant or stress conditions, with well tested business continuity programmes and systems;

3.1.4. Fair and open access. FMIs should have objective, risk-based and publicly disclosed criteria for participation that promote fair and open access with no unwarranted barriers to entry. Fair and open access should encourage competition between participants and innovation; and

3.1.5. Transparency. FMIs should publish all relevant rules and key procedures, and provide sufficient information to enable participants to have an accurate understanding of the risk, fees and other material costs they incur by participating in the FMIs.

4. Approaches of working together and sharing responsibilities and information

4.1. The agencies commit to working together when assessing and resolving supervisory and policy issues, in accordance with the purposes of the Act and the common supervisory objectives. The prioritisation and sharing of responsibilities are also guided by each agency's strategic priorities and based on each agency's respective expertise and capabilities.

- 4.2. In addition to the cooperation principles set out in the MoU, section 11 of the Act enables the two agencies to work together, including to rely on the work of the other to ensure the agencies focus on their core objectives while maximising efficiency.
- 4.3. The main approaches for working together include:
- 4.3.1. Both agencies undertake the analysis together, and decisions are made via a joint decision making framework.
 - 4.3.2. Both agencies undertake the same analysis individually, and decisions are made via a joint decision making framework.
 - 4.3.3. One agency leads by undertaking analysis that the other agency will rely on in accordance with section 11. Decisions are made via a joint decision making framework.
 - 4.3.4. The two agencies agree in accordance with section 11 that one of them will exercise a power individually in relation to
 - 4.3.4.1. A particular operator of an FMI, or a class of operators;
 - 4.3.4.2. A particular FMI, or a class of FMIs;
 - 4.3.4.3. Particular circumstances, or a class of circumstances; and
 - 4.3.4.4. An agreement on the above will be published on both agencies' websites.
- 4.4. There are instances that one agency takes a different emphasis on a certain issue from time to time. Regardless of which agency takes the lead, all information requested and provided by an FMI to the lead agency (except for those that are pure payment systems) is to be shared by the lead agency with the other agency, and the lead agency is committed to keep the other agency informed.
- 4.5. The information sharing protocols in Schedule 1 of the MoU applies.
- 4.6. The agencies are committed to responding to FMI requests and queries within reasonable time.

5. Supervisory approach

- 5.1. The agencies undertake to work together in a manner that is outcomes-focused, identifying responsibilities based on how an issue pertains to each agency's

respective remits, to the extent this is identifiable, as well as the skill and capacity of the agency to deal with a matter.

- 5.2. The agencies undertake to work together in a manner that maximises the efficiency and efficacy of its supervisory activity while minimising unnecessary compliance costs to FMIs.
- 5.3. Subject to the provisions of the Act, the agencies adopt the Principles for Financial Market Infrastructures (PFMIs), to the extent that they apply to the regulation, supervision and monitoring of FMIs in New Zealand and agree to act in accordance with those principles.
- 5.4. The agencies follow Financial Sector Assessment Programme (FSAP) recommendations, including conducting standardised assessments and monitoring of the FMI population.
- 5.5. In some cases one agency might prioritise certain issues, especially when it is consistent with its mandate, focus or risk assessment. The agency is to confer with the other agency on the action it intends to take (e.g. additional data collection, engagements, or assessment) and the reasons for that. The other agency is to respond in a timely manner, advising whether they will participate. In any event each agency will keep the other informed, as relevant, as work progresses.

6. Governance arrangements and joint decision-making framework

- 6.1. To support the cross-organisation collaboration and the agencies' decision making under the Act, the RBNZ and FMA have established internal governance arrangements and a joint decision-making framework for supervision and policy matters.
- 6.2. The regulators may form additional working groups and committees as appropriate.

7. Approach for FMIs that are pure payment systems

- 7.1. A pure payment system is a system or arrangement for the clearing or settlement solely of payment obligations.
- 7.2. As a first step of designation, agencies determine whether an FMI is a pure payment system using available information.

- 7.3. The RBNZ is to undertake all the work that is required to process an application which is considered to relate to a pure payment system.
- 7.4. The status of pure payment system is then determined jointly by agencies after assessing detailed information obtained from the FMI as part of the formal designation process.
- 7.5. Where a proposed system is confirmed by agencies to be a pure payment system, the RBNZ assumes full regulatory responsibility, and it may adopt a different approach with pure payment systems from the approach for other FMIs.

8. Review and modification of Schedule

- 8.1. The RBNZ and FMA will review this Schedule at least every five years and on any earlier date as agreed by the agencies.