

## Proposal for annual declaration of compliance for Financial Markets Conduct Act 2013 licensees

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The Financial Markets Conduct Act 2013 (FMC Act) allows the FMA to add new conditions to market service licences. We are proposing to add a new standard condition that will require all FMC Act market service licensees to declare to us, on an annual basis, their compliance with each condition of their licence.

Prior to varying, revoking, adding to or substituting any conditions of licences, we must give licensees no less than 10 working days' written notice stating our reasons. We also need to give licensees or their representatives an opportunity to make written submissions on the matter within this notice period. This consultation satisfies these requirements. We are asking for comments and submissions from a wider audience than required under the FMC Act, and giving submitters longer than the minimum period required by the FMC Act to provide feedback.

In the future, the Regulatory Returns standard condition will require licensees to help us with information to verify their ongoing capability to perform their market service(s) based on what's required in the relevant eligibility criteria. We will consult with industry before confirming the requirements of the Regulatory Return standard condition, including whether the annual declaration should be included in that process.

We invite you to review our proposal and share your feedback with us

This consultation is for: all individuals or businesses who are FMC Act market service licensees.

It aims to: seek feedback from FMC Act market service licensees on a proposal requiring the licensees' governing bodies to declare, annually, they have complied with conditions for their licence.

## Document history

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This version was issued on 17 November 2015 and is based on legislation and regulations as at the date of issue.

**FMA document reference code 2776666**

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# Section 1: Annual declaration of compliance

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## What's being proposed

Under the proposal, we will add a new standard condition that will require all FMC Act market service licensees (**licensees**) to declare, annually, that they have complied with each condition of their licence.

All those granted an FMC Act licence have to meet various conditions. Some are conditions imposed by the FMC Act, others by the Financial Markets Conduct Regulations 2014. The FMA also imposes some conditions. Our conditions include the standard conditions (which apply to all licence holders) and specific conditions (which apply to specific licence holders). We must consult with industry prior to changing the standard conditions.

We invite you to review our proposal and share your feedback with us.

The proposal will affect all FMC Act market service licensees:

- 1) managers of a registered scheme
- 2) discretionary investment management services providers
- 3) derivative issuers
- 4) peer-to-peer lending services providers
- 5) crowdfunding services providers
- 6) independent trustees (corporate)
- 7) independent trustees (individual)

We believe this new condition will support and enhance our strategic objectives in the areas of governance and culture. The proposed condition ensures that compliance is on the agenda of licensees' governing bodies each year. It also supports and enhances our supervision and monitoring functions by ensuring we receive accurate information on a regular basis to confirm licensees are complying with the FMC Act.

An annual declaration means directors (or other members of a licensee's governing body) will have to pay attention to compliance matters on an annual basis, and take active steps to comply with their licensing obligations. We believe this is consistent with, and supportive of, governing bodies' existing efforts to set a 'tone-at-the-top' compliance culture which in our view should not impose significant additional compliance costs.

Directors are aware that knowingly making a false or misleading declaration is a criminal offence under the FMC Act. Also, a market licensee providing an inaccurate declaration could contravene their licensee obligations in a material way. This will mean the annual declaration is given an appropriate level of attention by licensees and their governing bodies.

In the future, market licensees will be required, as part of the Regulatory Returns standard condition, to provide us with information to help us verify their ongoing capability to effectively perform their market service(s) according to the applicable eligibility criteria.

We will consult with the industry before confirming the requirements of the Regulatory Returns standard condition, including whether the annual declaration should be included in that process.



### Standard condition

From 30 June 2016, you must complete an annual declaration of compliance, in the specified form and signed by your governing body, and provide that declaration to the FMA. The declaration must be received by the FMA within 3 months of your balance date each year. The declaration must certify that to the best of your knowledge, and after making due enquiry, you are satisfied that, except as otherwise specified in the declaration, in the period since your last declaration, you have complied with the conditions of your licence as imposed by section 402 of the FMC Act, and any Regulations, and as imposed by the FMA under section 403 of the FMC Act, together with all specific additional conditions (if any) set out in the grant of your licence.

This condition requires your governing body to confirm that you have complied with the conditions of your licence/s during the relevant period on an annual basis.

The declaration of compliance must be completed and signed by:

- two directors of the licensee (or if the licensee has only one director, that director) or
- for an independent trustee licensee, by the trustee; or for an individual licensee, by that individual.

If these options do not apply, it must be signed by person/s authorised to make the declaration on behalf of the licensee on matters covered in the declaration.

No declarations are required until 30 June 2016.

After that date, licensees must submit a declaration to the FMA within three months of their balance date annually until the licence/s expires. The first declaration will cover the period from the applicable effective date of the licence/s until the first balance date falling on or after 30 June 2016.

**Example 1:** A licensee with a balance date of 30 October and a licence that became effective on 30 November 2015 would submit its first declaration on or before 30 January 2017 for the period 30 November 2015 – 30 October 2016.

**Example 2:** Licensees with a balance date of 30 June and a licence with an effective date occurring earlier than 30 June 2016, must make a declaration on or before 30 September 2016. For example, a licensee with a balance date of 30 June and a licence with an effective date of 1 March 2016 would submit its first declaration on or before 30 September 2016 for the period 1 March 2016 – 30 June 2016. The second declaration will be for the period 1 July 2016 – 30 June 2017.

**Example 3:** A licensee with a balance date of 30 June and a licence with an effective date of 30 November 2016 would submit its first declaration on or before 30 September 2017 for the period 30 November 2016 – 30 June 2017. The second declaration would be for the period 1 July 2017 – 30 June 2018.

**Example 4:** A licensee with a balance date of 30 March and two licences, a DIMS licence effective 1 October 2015 and a MIS Manager licence effective 1 May 2016, would submit its first declaration on or before 30 June 2017 for the period 1 October 2015 – 30 March 2017 regarding DIMS licence compliance and the period 1 May 2016 – 30 March 2017 regarding MIS Manager licence compliance. The second declaration would be for the period 1 April 2017 – 30 March 2018 for both licences.

The proposed form of the annual declaration is set out in section two of this paper. The final form will be attached as an Appendix to the Standard Conditions for reference.

## Questions

1. Do you agree that the requirement to complete an annual declaration of compliance is consistent with the reasons stated above?
2. Who should sign the annual declaration? Should the directors personally be required to sign or is it more appropriate for it to be executed by management under a standing power of attorney?
3. Do you have any comments on the cost and business impact (including the impact on the governing body) of providing this declaration to the FMA?
4. Should the scope of the declaration be wider than stated? For example, should it cover **all** of the licensee's obligations under the FMC Act? Or all legislation regulated by the FMA? (Rather than only compliance with licence conditions).
5. Should the declaration be made as part of the Regulatory Returns standard condition in the future or should it remain as a standalone requirement? Is it relevant that the directors sign the declaration but management is likely to sign the Regulatory Return?

## Section 2: Proposed declaration form

Annual declaration for the Financial Markets Authority		
Licensee details	Full legal name of entity holding licence	FSP number
Market services licences	<i>Please specify the licence/s you are completing annual declaration for</i>	
	1. Crowdfunding service provider	<input type="checkbox"/>
	2. Peer-to-peer lending service provider	<input type="checkbox"/>
	3. MIS manager – for non-restricted and registered managed investment scheme/s	<input type="checkbox"/>
	4. DIMS provider – for discretionary investment management service/s	<input type="checkbox"/>
	5. Derivatives issuer	<input type="checkbox"/>
	6. Independent trustee (corporate) – for restricted scheme	<input type="checkbox"/>
	7. Independent trustee (individual)	<input type="checkbox"/>



## Certification

### Annual declaration by licensee

#### Certification

The licensee has been granted the market services licence(s) specified above by the Financial Markets Authority (**licence(s)**), pursuant to the Financial Markets Conduct Act 2013 (**FMC Act**).

The licensee certifies to the Financial Markets Authority (FMA) that:

- a. To the best of the licensee's knowledge at the time of certification, and after making due enquiry, the licensee is satisfied that, except as specified in paragraph b below, the licensee has complied with the conditions of their licence(s) imposed by:
  - o section 402 of the FMC Act
  - o any regulations under the Financial Markets Conduct Act Regulations 2014, and
  - o the FMA under section 403 of the FMC Acttogether with all specific additional conditions (if any) set out in the grant of the licence(s), (**conditions**).
- b. The following instances of non-compliance with the conditions have occurred since the date of the licensee's most recent declaration:
  - o **[insert "NONE" or describe the details of all instances of non-compliance with the conditions, and the actions taken by the licensee on becoming aware of that instance, as applicable]**



## Execution

To be signed by two directors of the licensee’s governing body; or if the licensee has a sole director, by that director; or for an independent trustee licensee, by the trustee; or for an individual licensee, by that individual. If none of these options apply, it must be signed by person/s authorised to make the declaration on behalf of the licensee on matters covered in this certification.

<b>Signature</b>	<b>Name</b>
<b>Date</b> day/month/year	<b>Position</b>

<b>Signature</b>	<b>Name</b>
<b>Date</b> day/month/year	<b>Position</b>

Under section 512 of the FMC Act every person commits an offence who, with respect to a document required by or for the purposes of the FMC Act, makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading and is liable on conviction to imprisonment for a term not exceeding five years, a fine not exceeding \$200,000, or both.

### Questions

6. Do you have any comments on the proposed form?
7. How should this form be provided to the FMA? What is your preferred method for submitting the form? (For example: electronic PDF, physical copy or other (please specify)).





## The next step

### How do I make a submission?

Please use the form on the next page which gives details of what you need to do. Forms must be submitted electronically in both PDF and word formats, and emailed to [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz). Please put 'Feedback FMC Act licences proposed additional condition of annual declaration of compliance' in the subject line.

Submissions close on Monday 21 December 2015 at 5pm.

### Where can I get more information?

You'll find more information about the changes to the conditions for our FMC Act licences on our website [www.fma.govt.nz](http://www.fma.govt.nz)

If you have questions about the consultation process, please get in touch on 0800 434 567.

AUCKLAND OFFICE  
Level 5, Ernst & Young Building  
2 Takutai Square, Britomart  
PO Box 106 672  
Auckland 1143

WELLINGTON OFFICE  
Level 2  
1 Grey Street  
PO Box 1179  
Wellington 6140

[www.fma.govt.nz](http://www.fma.govt.nz)  
November 2015



## Feedback: Proposed additional condition for FMC Act licences

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback FMC Act licences proposed additional condition of annual declaration of compliance' in the subject line. Thank you. **Submissions close Monday 21 December 2015 at 5pm.**

Date: \_\_\_\_\_ Number of pages: \_\_\_\_\_

Name of submitter: \_\_\_\_\_

Company or entity: \_\_\_\_\_

Organisation type: \_\_\_\_\_

Contact name (if different): \_\_\_\_\_

Contact email and Phone: \_\_\_\_\_

Paragraph or Question Number	Comment	Recommendation
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*You don't need to quote from the consultation document if you use part & paragraph numbers.*

*You may attach extra pages - please label each page with your name & organisation.*

Q1		
Q2		
Q3		
Q4		
Q5		
Q6		
Q7		

**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.**