



Consultation on including an annual declaration of compliance in regulatory returns and updating the standard regulatory returns condition

All market service licensees excluding licensed independent trustees (**licensees**) are required to complete an annual regulatory return under their standard licence conditions. We have previously consulted on the detailed information we will ask for in those returns.

We propose licensees will also be required to make an annual declaration of compliance as part of the regulatory return. Licensees will be asked to confirm they have adequate systems, processes and controls in place to ensure compliance with their market services obligations under the FMC Act, and that they have operated effectively over the relevant period.

We are also proposing to update the wording of the market service licence condition that requires licensees to submit a regulatory return (the **standard regulatory returns condition**). This is intended to reflect the regulatory returns regime that has been put in place.

This consultation:

- outlines the proposal to require licensees to make an annual declaration of compliance as part of their regulatory return;
- outlines our proposal to amend the standard regulatory returns condition; and
- invites your feedback on these proposals.

We are interested in the views of licensees, industry advisers and current or potential licence applicants.

Submissions close on 14 May 2018.

About this guidance note:

This consultation is for all market service licensees and other interested parties.

It aims to gain feedback on our proposals for an annual declaration of compliance from licensees as part of regulatory returns, and changes to the standard regulatory returns condition.

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Annual declaration of compliance

In November 2015, we asked for feedback on an initial [proposal to add a new standard condition to market service licensees](#). This would require licensees to declare annually that they are in compliance with each condition of their licence and to tell us about any instances of non-compliance.

We followed this with a targeted consultation on an amended proposal and then reconsidered what we would require in light of all the feedback. In particular, we wanted to address concerns that the need for sign-off by a licensee's Board would impose a significant burden on licensees.

This has led to the following revised proposal:

- the oversight body (or the Board or individual licence holder if there is no oversight body) of a licensee can pass a resolution on behalf of the business, to say the licensee is satisfied it has adequate measures in place to ensure it complies with its obligations, and that the measures have operated effectively over the past 12 months;
- the licensee does not need to sign a declaration or confirmation online or in paper form. A delegated person can simply confirm online that the required resolution has been passed by the oversight body (or Board where applicable); and
- to reduce regulatory burden, the annual declaration will become part of the annual regulatory return rather than a new standalone condition.

This proposal applies to all licensees. If agreed, the annual declaration will be introduced beginning with regulatory returns for the 12-month period ending 30 June 2019 (or for licensed MIS managers, the most recently completed financial reporting year immediately prior to that date).

The proposed annual declaration for each licence type is set out in full in the attached Appendix 1.

Questions

1. Do you agree with the proposal that the annual declaration of compliance will be confirmed by resolution instead of by signed declaration (online or otherwise)? Please set out your reasons.
2. Do you agree with the proposal to make the annual declaration part of the regulatory return? Please set out your reasons.
3. Do you agree with the proposed wording of the annual declaration? Please set out your reasons.
4. Please describe any adverse implications for your business associated with providing the declaration in the manner proposed.

Changes to the standard regulatory returns condition

When the standard regulatory returns condition was drafted we had not yet developed the format and content of the regulatory returns. As this work is now almost complete¹, we are preparing to bring the condition up to date once the regime is in place.

The substance of the condition, which requires licensees to provide information in the form of a regulatory return, will not change. The proposed update will reflect the planned inclusion of the annual declaration in the returns.

We are also proposing to remove the reference to frameworks and methodologies. Licensees are currently required to provide their regulatory returns using any framework and methodology we issue. Frameworks and methodologies are subordinate legislation that detail applicable technical requirements. We are not required, by law, to introduce either, and at this time we don't believe they are necessary for the type of information we need from licensees.

Amendments to the explanatory note to the standard condition will reflect that we have consulted with the market on the information to be provided in the regulatory returns. It will also set a requirement for us to consult on any changes to that information in the future. Depending on the nature of any changes proposed we may consult in different ways; for example, targeted consultation with affected parties, or full public consultation.

The draft amended condition and the current condition are provided in Appendix 2 of this document.

Questions

5. Do you agree with the proposed changes to the standard regulatory returns condition? Please set out your reasons.

¹ We are currently considering feedback on the proposed content of the returns for licensed MIS managers, DIMS providers and DIs. Regulatory returns are already in place for crowdfunding and peer-to-peer services.

Next steps

How do I make a submission?

Please provide comments or feedback about specific information requested in the forms attached as Appendix 1 and Appendix 2.

Submissions close 14 May, 2018.

Please put 'Feedback: Annual declaration of compliance in regulatory returns and change to standards conditions' in the subject line.

Where can I find out more information?

If you have any questions about this consultation, please email consultation@fma.govt.nz.

Appendix 1: Annual declarations of compliance for market service licensees

Annual declaration of compliance for licensed derivatives issuers, operators of crowdfunding platforms and operators of peer-to-peer lending platforms

The reporting period for this regulatory return is each 12-month period from 1 July to 30 June.	
<p>a. Has the Board or Oversight Committee passed the following resolution in the past 12 months:</p> <ul style="list-style-type: none"> i. [It] had adequate arrangements, systems, processes and controls (“Processes”) in place to ensure compliance with [its] market services licensee obligations as defined in the FMC Act; and ii. the Processes operated effectively over the past 12 months <p>Note: if answer to a is yes, no further questions will appear for answering.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>b. Has the Board or Oversight Body passed the following resolution in the past 12 months:</p> <p>The Board or Oversight Body is satisfied that during the relevant period:</p> <ul style="list-style-type: none"> i. [It] had adequate arrangements, systems, processes and controls (“Processes”) in place to ensure compliance with [its] market services licensee obligations as defined in the FMC Act except as to [matters detailed below]; and ii. the Processes operated effectively over the past 12 months except as to [matters detailed below]. <p>Note: if answer to b is yes, question d will appear for answering, if answer to b is no, question c will appear for answering.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>c. How has the Board or Oversight Body satisfied itself that it has complied with its market services licensee obligations? <i>(please describe briefly below)</i></p> <p>Note: question c only appears if answers to a and b are no.</p>	
<p>d. What were the exceptions recorded by the Board or Oversight Body and what action has been taken to address these exceptions? <i>(please describe briefly below)</i></p> <p>Note: question d only appears if answer to question b is yes.</p>	

Annual declaration of compliance for licensed managed investment scheme managers

The reporting period for this regulatory return is for your most recently completed financial reporting year	
<p>a. Has the Board or Oversight Committee passed the following resolution in your most recently completed financial reporting year:</p> <ul style="list-style-type: none"> i. [It] had adequate arrangements, systems, processes and controls (“Processes”) in place to ensure compliance with [its] market services licensee obligations as defined in the FMC Act; and ii. the Processes operated effectively over the past 12 months <p>Note: if answer to a is yes, no further questions will appear for answering.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>b. Has the Board or Oversight Body passed the following resolution in in your most recently completed financial reporting year:</p> <p>The Board or Oversight Body is satisfied that during the relevant period:</p> <ul style="list-style-type: none"> i. [It] had adequate arrangements, systems, processes and controls (“Processes”) in place to ensure compliance with [its] market services licensee obligations as defined in the FMC Act except as to [matters detailed below]; and ii. the Processes operated effectively over the most recently completed financial reporting year except as to [matters detailed below]. <p>Note: if answer to b is yes, question d will appear for answering, if answer to b is no, question c will appear for answering.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>c. How has the Board or Oversight Body satisfied itself that it has complied with its market services licensee obligations? <i>(please describe briefly below)</i></p> <p>Note: question c only appears if answers to a and b are no.</p>	
<p>d. What were the exceptions recorded by the Board or Oversight Body and what action has been taken to address these exceptions? <i>(please describe briefly below)</i></p> <p>Note: question d only appears if answer to question b is yes.</p>	

Annual declaration of compliance for licensed providers of discretionary investment management services

<p>If the licensee is a corporation: The reporting period for this regulatory return is each 12-month period from 1 July to 30 June.</p>	
<p>a. Has the Board or Oversight Committee passed the following resolution in the past 12 months: The Board or Oversight Body is satisfied that during the relevant period:</p> <ul style="list-style-type: none"> i. [It] had adequate arrangements, systems, processes and controls (“Processes”) in place to ensure compliance with [its] market services licensee obligations as defined in the FMC Act; and ii. the Processes operated effectively over the past 12 months <p>Note: if answer to a is yes, no further questions will appear for answering.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>b. Has the Board or Oversight Body passed the following resolution in the past 12 months: The Board or Oversight Body is satisfied that during the relevant period:</p> <ul style="list-style-type: none"> i. [It] had adequate arrangements, systems, processes and controls (“Processes”) in place to ensure compliance with [its] market services licensee obligations as defined in the FMC Act except as to [matters detailed below]; and ii. the Processes operated effectively over the past 12 months except as to [matters detailed below]. <p>Note: if answer to b is yes, question d will appear for answering, if answer to b is no, question c will appear for answering.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>c. How has the Board or Oversight Body satisfied itself that it has complied with its market services licensee obligations? <i>(please describe briefly below)</i></p> <p>Note: question c only appears if answers to a and b are no.</p>	
<p>d. What were the exceptions recorded by the Board or Oversight Body and what action has been taken to address these exceptions? <i>(describe briefly below)</i></p> <p>Note: question d only appears if answer to question b is yes.</p>	

<p>If the licensee is an individual</p> <p>The reporting period for this regulatory return is each 12-month period from 1 July to 30 June.</p>	
<p>1. I am satisfied that during the relevant period:</p> <p>a. I had adequate arrangements, systems, processes and controls (“Processes”) in place to ensure compliance with my market services licensee obligations as defined in the FMC Act</p> <p>b. the Processes operated effectively over the past 12 months</p> <p>Note: if answers to a and b are both yes, no further questions will appear for answering. If the answer to either or both a and b is no, question 2 will appear for answering.</p>	<p><input type="checkbox"/>Yes <input type="checkbox"/>No</p> <p><input type="checkbox"/>Yes <input type="checkbox"/>No</p>
<p>2. If the answer to any part of 1 above was ‘no’, please insert an explanation including the actions you are taking to address the issues. <i>(please describe briefly below)</i></p>	

Appendix 2: Proposed amendments to the standard regulatory returns condition

Proposed standard condition (with key changes highlighted):

Regulatory returns

You must provide us with the information we need to monitor your on-going capability to effectively perform the [licence type] service in accordance with the applicable eligibility criteria in the Act. This includes updated information on the nature, size and complexity of your [licence type] service, **and statements as to your compliance with your licence obligations.**

Explanatory note: All licensees are required to complete an annual regulatory return, which **comprises a set of questions determined by the FMA following consultation with industry.** The regulatory return asks you to report factual business information, such as business volumes and service types, numbers of customers, numbers and types of breaches, and complaints information. The information in the return helps the FMA to understand the profile of your business and how your business is changing over time. This allows us to focus our activities and resources appropriately. **You are also asked to confirm that your business has adequate systems, processes and controls to ensure compliance with your market service licensee obligations.**

Under section 412 of the FMC Act you have obligations to report various matters to the FMA as soon as practicable, including any material change of circumstances. This standard condition is in addition to those reporting obligations and any other reporting obligations that may be imposed in regulations.

Current standard condition

Regulatory returns

You must provide us with the information we need to monitor your on-going capability to effectively perform the [licence type] service in accordance with the applicable eligibility criteria in the Act. This will include updated information on the nature, size and complexity of your [licence type] service. Information must be provided in accordance with any Regulatory Return Framework and Methodology we issue under subpart 4, part 9 of the Act.

Explanatory note: In future, all licensees will be asked to provide information to the FMA on a periodic or on-going basis or on request, in accordance with the requirements set out in a Regulatory Return Framework and Methodology. Under section 412 of the FMC Act you have obligations to report various matters to the FMA as soon as practicable, including any material change of circumstances. This standard condition is in addition to those reporting obligations and any other reporting obligations that may be imposed in regulations. The regulatory returns will help the FMA to understand the profile of your business and to focus its resources appropriately. This is likely to require reporting of factual business information, such as business volumes and service types, numbers of customers, numbers and types of breaches, and complaints information. FMA will consult with industry prior to publication of the Regulatory Return Framework and Methodology which will form part of the standard conditions.

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Please submit this feedback form electronically in **both PDF and MS Word formats**.

Email to: consultation@fma.govt.nz with 'Changes to Regulatory returns to include the annual declaration and standard condition' in the subject line.

Thank you. **Submissions close 14 May 2018 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
<i>You don't need to quote from the consultation document if you use question numbers. If you have feedback on specific information requested in the proposed regulatory returns, please use Appendix 1 and Appendix 2.</i>		
<i>You may attach extra pages - please label each page with your name and organisation name.</i>		
Q1		
Q2		
Q3		
Q4		
Q5		

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.