

JULY 2022

# Consultation paper: Proposed standard conditions for financial institution licences

## About this consultation

The Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI Act) will introduce a new regulatory regime for the conduct of registered banks, licensed insurers and licensed non-bank deposit takers. If you are currently operating as a registered bank, licensed insurer or licensed non-bank deposit taker providing relevant services<sup>1</sup> to consumers (collectively, financial institutions) or you may do so in the future, this will affect you.

Once the new regime comes into force, you will need to operate under a licence relating to the market service of acting as a financial institution (financial institution licence) issued by the FMA in order to continue providing relevant services to consumers in New Zealand.

We are considering imposing six standard conditions on financial institution licences. All holders of financial institution licences and each of their authorised bodies will need to comply with the standard conditions. The standard conditions we are proposing are consistent with those imposed on other licences issued by the FMA, such as the standard conditions that are imposed on financial advice provider licences.

We welcome your feedback on the proposed standard conditions discussed in this paper. Please use the feedback form to provide us with any comments. We are seeking general feedback, as well as responses to the specific questions in this paper. If you have queries about this consultation, please email [questions@fma.govt.nz](mailto:questions@fma.govt.nz) or call us on 0800 434 566 (+64 3 962 2695).

### **Submissions close at 5pm on Wednesday 7 September 2022.**

After this date, we will consider all submissions and finalise the standard conditions we may impose on financial institution licences. We will publish the final standard conditions on our website.

### **About this consultation:**

This consultation is for potential financial institution licence applicants, their authorised bodies, and interested parties.

It seeks feedback on proposed standard conditions for financial institution licences.

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<sup>1</sup> Relevant services are defined in [section 446F\(1\)](#) of the CoFI Act.

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# New conduct regime

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## Background

The CoFI Act will introduce a new regulatory regime for the conduct of registered banks, licensed insurers and licensed non-bank deposit takers. If you are currently operating as a registered bank, licensed insurer or licensed non-bank deposit taker providing relevant services to consumers (collectively, financial institutions) or you may do so in the future, this will affect you.

If you are a registered bank, licensed insurer or licensed non-bank deposit taker, but you do not provide relevant services to consumers, then you will not require a financial institution licence.

## What is changing?

### New licensing requirement

When the new regime commences, you will need to hold, or operate under, a financial institution licence to provide relevant services to consumers in New Zealand. A financial institution licence will be issued by the FMA under the Financial Markets Conduct Act 2013 (FMC Act).

You can hold your own financial institution licence, or be authorised (as an authorised body) to act as a financial institution under another entity's financial institution licence. Only related bodies corporate of a licensee are able to be authorised bodies under that entity's licence.

Financial institution licences will come into effect on the start date of the new regime, which is expected to be in early 2025. We are expecting to start accepting licence applications in mid-2023, about 18 months prior to the new legislation coming into force. Once a specific date is determined this will be communicated.

We are currently developing the licence application form and preparing a guide with details on how to apply. Once the form and guide are finalised, we will publish these on our website.

If you are currently a registered bank, licensed insurer or licensed non-bank deposit taker who is in the business of providing one or more relevant services to consumers, you will require a financial institution licence to continue providing these services from the date that the legislation comes into force. We will provide further guidance on the application process and timeframe in due course.

## New fair conduct principle

The CoFI Act sets out an overarching fair conduct principle, which is that a financial institution must treat consumers fairly. The requirement to treat consumers fairly includes, but is not limited to:

- paying due regard to consumers' interests
- acting ethically, transparently, and in good faith
- assisting consumers to make informed decisions
- ensuring that the relevant services and associated products that the financial institution provides are likely to meet the requirements and objectives of likely consumers (when viewed as a group)
- not subjecting consumers to unfair pressure or tactics or undue influence.

## New fair conduct programme requirement

The CoFI Act imposes duties for financial institutions to establish, implement, maintain and comply with fair conduct programmes comprising effective policies, processes, systems and controls that are designed to ensure they comply with the fair conduct principle.

The requirement to have a fair conduct programme is a way for financial institutions to operationalise the fair conduct principle through policies, processes, systems and controls across every relevant part of their business, from the governance level to day-to-day interactions with consumers. The CoFI Act specifies minimum requirements for fair conduct programmes. The FMA will provide further information regarding fair conduct programmes when we publish the Financial Institution Licence Application Guide.

## New requirements relating to incentives

The CoFI Act requires financial institutions and intermediaries involved in the chain of distribution to comply with regulations for incentives. These regulations will be able to prohibit sales incentives based on volume or value targets, for example, soft commissions such as overseas trips, bonuses for selling a certain number of financial products, or leader boards. Additional information is available from the [Ministry of Business Innovation and Employment](#).

A broader overarching obligation around the design and management of incentives is also contained in the CoFI Act. This obligation is for financial institutions to have effective policies, processes, systems and controls in their fair conduct programmes for designing and managing incentives to mitigate or avoid actual or potential adverse effects of incentives on the interests of consumers, so far as is reasonably practicable.

## Further information

You should refer to the FMC Act (as amended by the CoFI Act) and regulations made under the FMC Act (FMC Regulations) for further details of the obligations that will apply to you.

You can find further information about the new regime on the [website](#) of the Ministry of Business Innovation and Employment.

# Proposed standard conditions

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## Overview

Licence conditions can be imposed by legislation or regulations, or by the FMA when we issue a licence. Conditions are obligations that licence holders, and those authorised under a licence, must comply with. Licence conditions can be standard (i.e. apply to all licences) or specific (i.e. apply to an individual licence holder or authorised body).

## Why licence conditions are necessary

Licence conditions may impose limits or restrictions on the services that are covered by the licence, or impose conditions in relation to the licensing requirements. Conditions are necessary to ensure licence holders continue to meet those requirements, and to help us effectively monitor the licensed population. We comment in more detail below on why we think these proposed standard conditions for financial institution licences are needed.

## Proposed standard conditions for financial institution licences

The standard conditions are proposed to apply in respect of the market service of acting as a financial institution (the “financial institution service”). In the following proposed standard conditions, unless the wording explicitly indicates otherwise, ‘you’ and ‘your’ means the entity that holds the licence and each of the licence holder’s authorised bodies. In all instances, ‘us’ and ‘we’ means the FMA.

We are considering imposing six standard conditions on financial institution licences relating to the following:

1. Ongoing requirements
2. Notification of material changes
3. Regulatory returns
4. Outsourcing
5. Business continuity and technology systems
6. Record keeping

You can see the full details of the proposed standard conditions below.

## 1. Ongoing requirements

**Condition:** You must at all times continue to satisfy the requirements set out in section 396 and, if applicable, section 400 of the FMC Act.

**Explanatory note:** Sections 396 and 400 of the FMC Act specify the requirements in respect of which the FMA must be satisfied in order to grant a licence, or authorise a related body corporate as an authorised body.

The requirements under section 400 include that, if you have authorised bodies on your licence, you, as the licence holder, must continue to have arrangements in place to ensure you will maintain appropriate control or supervision over the provision of the financial institution services provided by those authorised bodies.

This condition confirms that the licensing requirements must continue to be satisfied at all times while you hold the licence, not just at the time the licence is issued. Given that there is no expiry date for your licence, it is critical that the requirements continue to be satisfied at all times. This condition does not prevent you from making changes to your business or the scope of your financial institution service, provided you can continue to meet the requirements.

You will need to ensure you keep your policies, processes, systems and controls (including those that form your fair conduct programme) up to date, and that they take into account any changes you may make to your business or service arrangements. Where you make changes to your business or service arrangements, you will need to ensure that they support, and do not hinder, the fair treatment of consumers and compliance with your fair conduct programme.

You will also need to ensure that your directors and senior managers, and any other relevant parties, are and remain fit and proper persons to hold their respective positions.

For further information in relation to licensing requirements see the Financial Institution Licence Application Guide.

### ***Our comments***

At the time of licensing, the FMA assesses whether we are satisfied that you meet the licensing requirements set out in section 396 and, if applicable, section 400 of the FMC Act.

The purpose of this standard condition is to ensure that all financial institutions continue to meet the licensing requirements on an ongoing basis. It does not prevent you from making changes to your business, provided you can continue to meet the licensing requirements.

When published, the Financial Institution Licence Application Guide will provide more information about the licensing requirements that licence applicants need to meet.

## 2. Notification of material changes

**Condition:** You must notify us in writing within 10 working days of implementing any material change to the nature of your financial institution service.

**Explanatory note:** Sections 410 to 412 of the FMC Act and regulation 191 of the FMC Regulations require certain matters to be notified to us. This applies to all FMC Act licences.

This standard condition is in addition to those statutory notification obligations. It applies where you materially change the nature of your financial institution service.

The purpose of this standard condition is to ensure that we are informed of any material changes that you make to your business, whether or not they may have an adverse effect on your ability to provide your financial institution service, and whether or not they relate to the licensing requirements being satisfied.

By *nature of your financial institution service*, we mean whether you are a registered bank, a licensed insurer or a licensed non-bank deposit taker, and whether you are in the business of providing one or more relevant services to consumers. An example of a material change in this context would be changing the form of your business from a licensed non-bank deposit taker to a registered bank. Other examples of material changes in this context would be ceasing to be in the business of providing any relevant services to consumers, or an insurer moving its business into run-off.

You are not required to notify us if you change the relevant services and associated products you provide to consumers (except in the situation where the change results in a change to the nature of your financial institution service, as described above) or if you change the methods by which your relevant services and associated products are provided to consumers (distribution methods). You may be requested to provide us with information regarding these changes in regulatory returns (refer to standard condition 3).

### ***Our comments***

After licensing, a financial institution may wish to make changes to its financial institution service, as permitted within its licence. This condition requires the FMA to be notified when a financial institution makes material changes to the nature of its financial institution service. In this case, the financial institution will need to ensure that changes to its business are reflected in its fair conduct programme, and may need new or updated policies, processes, systems and controls – which may not have been assessed by us at the time of licensing.

The notification will enable us to understand the risk profiles of the financial institutions that we have licensed, and to appropriately target our supervision efforts to ensure that financial institutions continue to be capable of effectively providing the financial institution service they are licensed for.

The proposed condition includes an explanation that certain less-significant changes are not required to be notified to the FMA, as we anticipate these types of changes will be tracked through annual regulatory returns.

### 3. Regulatory returns

**Condition:** You must provide us with the information we need to monitor your ongoing capability to effectively perform the financial institution service in accordance with the applicable eligibility criteria and other requirements in the FMC Act. This will include updated information on your fair conduct programme and the nature, size and complexity of your financial institution service.

Information must be provided in accordance with the requirements issued by the FMA, following prior consultation with industry.

**Explanatory note:** In future, you will be asked to provide information to the FMA on a periodic or ongoing basis, or on request, in accordance with the requirements issued under this condition. These requirements may be 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 in the FMC Act 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. The regulatory returns are likely to require reporting of factual business information, such as relevant services and associated products provided to consumers, numbers of consumers, numbers and types of breaches, and complaints information. You will also be asked for information about the implementation and maintenance of, and compliance with, your fair conduct programme.

The FMA will consult with industry prior to publication of the requirements for regulatory returns, including any Regulatory Return Framework and Methodology, that will form part of the standard conditions.

#### ***Our comments***

The purpose of the condition is to enable us to obtain updated information from financial institutions from time to time – for example annually – to identify any changes in risk profile after licensing. This is in addition to information that is reported to the FMA under other reporting obligations including standard condition 2 – notification of material changes.

Recurring reporting to us will be based on requirements we issue under this condition that describe the ongoing information to be provided. These requirements may be set out in a document that we publish, or in a formal Regulatory Return Framework and Methodology issued under subpart 4, part 9 of the FMC Act. We will consult with industry prior to setting the requirements for regulatory returns.

## 4. Outsourcing

**Condition:** If you outsource a system or process necessary to the provision of your financial institution service, you must be satisfied that the provider is capable of performing the service to the standard required to enable you to meet your market services licensee obligations.

**Explanatory note:** This condition only covers those outsource arrangements where you rely on the outsource provider to meet your market services licensee obligations as they relate to your financial institution service (licensee obligations).

Important matters that you should consider when conducting due diligence on a proposed outsource provider include:

- the outsource provider's previous experience
- public reports and information about their service
- reported complaints about them, and their complaints handling procedures
- their operating jurisdiction and any protections/controls imposed in that jurisdiction
- the business continuity and critical technology system arrangements the outsource provider has in place to meet the standard in standard condition 5 – Business continuity and technology systems

Other important information you should consider in respect of your outsource arrangements includes:

- being satisfied that each provider is, and remains, capable of performing the service to the standard required to enable you to meet your licensee obligations
- having contractual arrangements with each provider that enable you to effectively monitor their performance and take appropriate action for non-performance, and having suitable termination provisions to enable you to continue to meet your licensee obligations at all times
- ensuring that any records held by providers pertaining to your licensee obligations are readily available to you and to us in accordance with standard condition 6 – Record keeping
- regular reviews of your outsource arrangements, at a frequency appropriate to the risk involved
- recognising that outsource arrangements and business continuity and technology systems are often interrelated. (Refer to standard condition 5 – Business continuity and technology systems)

### ***Our comments***

Financial institutions may enter into, and change, outsourcing arrangements relating to core functions that the financial institutions would typically perform themselves. The purpose of this condition is to ensure that

financial institutions monitor and regularly review their outsource providers and associated arrangements, as responsibility for meeting licensee obligations remains with the financial institution.

Examples of arrangements captured by this condition include outsourcing:

- hosting of technology that supports the provision of relevant services and associated products to consumers
- processing of insurance claims to a specialist claims management company
- record keeping to a records management company.

We would not expect typical distribution arrangements where a third party is involved in distributing the financial institution's relevant services and associated products to consumers to be an outsourcing arrangement.

Outsourcing of activities unrelated to the market service of acting as a financial institution, such as office cleaning, is not covered by this condition.

If a related body corporate will perform part of the financial institution service, you can choose to either set up a formal outsourcing agreement with them, or include them as an authorised body on your licence. If you decide to include them as an authorised body on your financial institution licence, this outsourcing condition does not apply to the parts of the financial institution service that you outsource to the authorised body. However, you must have oversight of the authorised body to ensure your group as a whole meets the standard conditions.

## 5. Business continuity and technology systems

**Condition:** You must have and maintain a business continuity plan that is appropriate for the scale and scope of your financial institution service.

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

Your business continuity plan and your technology systems must be established, implemented and maintained in a way that supports compliance with your fair conduct programme.

**Explanatory note:** Your *business continuity plan* includes the documented procedures that guide you to respond, recover, resume and restore a pre-defined level of operation, following disruption. This plan should provide for the continuity of your financial institution service generally – not just the recovery of your technology systems. It should also encompass any outsource arrangements.

Your plan should consider the loss of availability of your key resources, including staff, records, systems, suppliers and premises. The extent of your business continuity plan should reflect the size and complexity of your financial institution service, operational arrangements and exposure to disruptive events. A small financial institution with simple processes and technology may only need a relatively brief plan covering a more limited range of likely disruptive events.

A larger or more complex financial institution, relying more extensively on technology systems and possibly operating from multiple locations, will need to consider a wider range

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.

of disruptive events and reflect this in a more comprehensive business continuity plan.

Irrespective of the complexity of your circumstances, it is important that your business continuity plan is maintained, reviewed and regularly tested – at least annually. Your business continuity plan must also be updated immediately if there is a material change in business location, structure or operations. When establishing, implementing and maintaining your business continuity plan and technology systems, you will need to ensure that they support, and do not hinder, the fair treatment of consumers and compliance with your fair conduct programme.

*Critical technology* is that which supports any activity, function, process, or service, the loss of which would materially affect the continued provision of your financial institution service or your ability to meet your licensee obligations.

This condition requires that you maintain the operational resilience of your critical technology. This includes:

- a) regularly identifying and reviewing your operational risks, including cyber risk and threats; and
- b) implementing measures that maintain the level of operational resilience necessary for your risk profile; and
- c) having effective processes that monitor and detect activity that impacts your operational resilience; and
- d) setting out in your business continuity plan your predetermined procedures for responding to, and recovering from, events that impact on your operational resilience.

The operational resilience of your critical technology systems should be managed within the risk tolerance set through your governance processes. We recommend that you use an appropriate, recognised framework for this purpose.

You must have arrangements in place to notify us of any technological or cyber security event that materially disrupts or affects the provision of your financial institution service, or has a material adverse impact on consumers. 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 financial

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institution service, and has not had a material adverse impact on consumers.

You need to provide details of the event including the affected systems, the impact on your financial institution service and consumers, 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, and we may specify the format or additional requirements for notifying events to the FMA.

### ***Our comments***

The purpose of this standard condition is to ensure that financial institutions have suitable arrangements in place to be able to manage disruptions to their business. By doing so, consumers will have the security of continuity of the relevant services and associated products they receive from financial institutions.

The condition requires all financial institutions to have an appropriate and regularly tested business continuity plan that enables them to respond to and recover from an event that disrupts their financial institution service. The condition does not prescribe the scope of such a plan and allows for flexibility. The requirement to have a suitable business continuity plan is wider than just disruptions to technology systems. All financial institutions must consider their own structures and arrangements, and the disruptive risks that could impact them.

Where a financial institution relies on technology systems as a core part of providing its service or to meet its licensee obligations, the condition requires that those critical technology systems must be secure, reliable and addressed as part of business continuity planning.

The standard condition requires that you 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. We note the 72 hour period is shorter than the notification period in the similar standard condition imposed on financial advice provider licences (which is a 10 working day period). The shorter 72 hour notification requirement recognises the critical nature of financial institutions' technology systems to the maintenance of a sound and efficient financial system and insurance sector.

## **6. Record keeping**

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**Condition:** You must create in a timely manner and maintain adequate records in relation to your financial institution service.

Your records:

- a) must be kept in a form (which may be electronic) and manner that ensures the integrity of the information and

**Explanatory note:** Records will be adequate if they demonstrate how you have:

- established, implemented and maintained an effective fair conduct programme that complies with section 446J of the FMC Act; and
- taken all reasonable steps to comply with your fair conduct programme and with all of your market services licensee obligations.

<p>enables it to be conveniently inspected and reviewed by us;</p> <p>b) may be in any language, providing that for records kept in a language other than English, if required by us, you provide in a timely manner a full translation of the record into English by a translator approved by us;</p> <p>c) must be available for inspection by us at all reasonable times;</p> <p>d) must be readily available to you, and in any event within 10 working days or as otherwise agreed by us when requested; <b>and</b></p> <p>e) must be kept for a period of at least 7 years from the later of:</p> <ol style="list-style-type: none"> <li>i. the date the record is made; and</li> <li>ii. the date the activity to which the record relates; and</li> <li>iii. the date any later record is made that refers to or relies upon information in the record; and</li> <li>iv. the date of the conclusion of the life of the relevant service or associated product that the record relates to.</li> </ol>	<p>Your records should include (without limitation):</p> <ul style="list-style-type: none"> <li>• your fair conduct programme</li> <li>• records that demonstrate how you have established, implemented and maintained your fair conduct programme</li> <li>• records that demonstrate how you have taken all reasonable steps to comply with your fair conduct programme</li> <li>• records that demonstrate you have regularly reviewed your fair conduct programme, and that any deficiencies identified have been promptly remedied.</li> </ul> <p>Records available for inspection and review may be reviewed by us at your premises or elsewhere. For example, we may request copies of records and review these at our offices. Your arrangements must ensure that your consumers consent to us viewing or obtaining your records.</p> <p>Records may be kept by another person (including any outsource provider) on your behalf, providing you ensure that person complies with this condition and that you can retrieve the records if required.</p>
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***Our comments***

Businesses already need to keep adequate records. Financial institutions have various obligations to maintain records in relation to their activities and for financial reporting purposes. This standard condition requires you to have arrangements in place so that we can inspect your records without unnecessary delays. You will be required to provide us (on request) with the records we need to monitor your ongoing capability to effectively perform the financial institution service.

This licence condition will promote transparency about the conduct of financial institutions, for supervision and enforcement purposes.

# Questions

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## Condition 1 – Ongoing requirements

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (e) Do you have any other comments on the proposed standard condition or how it is drafted?

## Condition 2 – Notification of material changes

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (e) Are there any material matters other than those detailed in the explanatory note that should be notified to the FMA?
- (f) Do you have any other comments on the proposed standard condition or how it is drafted?

## Condition 3 – Regulatory returns

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (e) Do you have any other comments on the proposed standard condition or how it is drafted?

#### **Condition 4 – Outsourcing**

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) What core services that will be related to your financial institution service do you currently outsource?
- (c) We are proposing that any parts of your financial institution service that are performed by an authorised body on your financial institution licence will not constitute an outsourcing arrangement for the purposes of this condition. Do you agree or disagree with this proposal? Please provide your reasons.
- (d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (g) Do you have any other comments on the proposed standard condition or how it is drafted?

#### **Condition 5 – Business continuity and technology systems**

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Do you currently have a documented business continuity plan?
- (c) Will you rely on critical technology systems to deliver the market service of acting as a financial institution? If not, why do you not consider any of your technology systems to be critical?
- (d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (g) Do you have any other comments on the proposed standard condition or how it is drafted?

#### **Condition 6 – Record keeping**

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (e) Do you have any other comments on the proposed standard condition or how it is drafted?

