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Briefing to the Incoming Minister of Commerce & Consumer Affairs

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Executive summary

Promoting fair, efficient and transparent financial markets

The Financial Markets Authority (FMA) is an independent Crown entity established in 2011 under the Financial Markets Authority Act 2011. We are responsible for ensuring public confidence in our financial markets and supporting the growth of New Zealand's capital base through effective regulation. As a risk-based conduct regulator, we focus our resources on conduct that poses the most significant risk to the development of fair, efficient and transparent financial markets.

In 2014 we began working under a much wider mandate with the introduction of the Financial Markets Conduct Act 2013 (FMC Act). The FMC Act widened our regulatory mandate by bringing more businesses under the FMA's umbrella, providing us with new responsibilities and powers, and reforming the way in which financial services businesses respond to investors and consumers.

In October, Cabinet agreed to increase the FMA's funding in response to this expanding mandate and the growing financial sector in New Zealand. This new level of funding will take effect from 1 July 2017 and seeks to balance costs on market participants with an appropriate level of risk-mitigation against future failures in our financial markets.

We have identified seven strategic priorities that guide our operations. These priorities were published in our medium-term Strategic Risk Outlook (December 2014) and reflect the most significant risks and drivers of risk: governance and culture; conflicted conduct; capital market growth and integrity; sales and advice; investor decision making; effective frontline regulators; and FMA effectiveness and efficiency.

Within each of our priorities we have identified specific areas where we think we can most effectively minimise conduct risks, improve behaviour within our markets, benefit participants and investors, and help strengthen New Zealand's economy. The Strategic Risk Outlook is currently under review and a refreshed version is due for publication early in 2017.

As part of the "Twin Peaks" regulatory structure, the FMA's conduct regime is integrated with prudential supervision under the Reserve Bank. As a result around 50 of the main financial services providers in New Zealand, including the large banks, credit unions, and finance companies, are broadly-regulated businesses under both the FMA and the Reserve Bank.

This briefing provides you with an overview of the FMA's key personnel, operations, and strategic priorities.

Governance arrangements

FMA's board and chief executive

The FMA's Board is appointed by the Governor General on the advice of the Minister of Commerce and Consumer Affairs. The chief executive is appointed by the board. Current board members, and senior executives, are listed in the next section.

The Board is responsible for:

- setting the overall strategic direction of the agency, having agreed a statement of intent with the Minister,
- appointing the chief executive, who is responsible, in turn, for implementing the strategy approved by the board, and for the operations of the agency,
- taking decisions on significant issues of regulatory policy and on sensitive regulatory matters.

Sub-groups of the board, referred to as 'Divisions', make decisions on whether to pursue most of the FMA's enforcement proceedings. The Divisions also make decisions on other important regulatory matters, such as certain exemptions. This governance structure reduces some logistical complexity caused by a relatively large board, and also enables the management of potential conflicts of interest resulting from the presence of experienced and well-connected market practitioners on the board. This board composition is an important component of the FMA's strategic policy making and public messaging.

The Ministry of Business, Innovation and Employment (MBIE) monitors the performance of the agency on behalf of the Minister, to ensure it meets its statement of intent and that it does so within the revenue provided.

Who we are

Board

Murray Jack, Chair

Murray has over 30 years' experience as a management consultant, and was previously a member of the Securities Commission. He is also Chair of Chartered Accountants Australia & New Zealand and Education Payroll Limited. Current term expires April 2019.

Shelley Cave

Shelley is a professional Director who also sits on the Board of the Government Superannuation Fund Authority, and held roles on the Financial Markets Establishment Board and the Securities Commission. She was previously a lawyer for over 20 years. Current term expires April 2017.

Arthur Grimes

Arthur is Senior Fellow with Motu Economic and Public Policy Research Trust, Adjunct Professor (Economics) at Victoria University of Wellington and Chair of the Hugo Group strategy sessions. He was previously Southpac CEO and Chair of the Reserve Bank. Current term expires April 2019.

Mary Holm

Mary is a financial columnist, author and seminar presenter. She was a member of the Capital Markets Development Taskforce and the Savings Working Group, and has been a newspaper business editor and part-time senior lecturer at the University of Auckland. Current term expires June 2019.

Ainsley McLaren

Ainsley is a board member of the Government Superannuation Fund Authority and has more than 25 years' broad financial services experience including investment management, fixed interest and financial markets. She was previously Head of Investment Management for ASB Group Investments Limited. Current term expires June 2021.

William Stevens

William has over 25 years' experience as an investment adviser. He is an NZX adviser, is a Director of Craigs Investment Partners, and Chairs the Dingwall Trust for Children. He was previously Deputy Chair of the New Zealand Markets Disciplinary Tribunal. Current term expires June 2020.

Vanessa Stoddart

Vanessa is also a Director of NZ Refinery, Paymark (until September 2016), The Warehouse Group, and The Alliance Group, and a member of the Tertiary Education Commission. She was previously a Senior Executive at Air New Zealand and CEO of Carter Holt Harvey Packaging Australia. Current term expires June 2021.

Campbell Stuart

Campbell has 25 years' experience in stockbroking and funds management. He is also a Director of Aspiring Asset Management. He was previously Managing Principal at UBS New Zealand, was on the NZX Disciplinary Committee, and was Vice Chair of NZX. Current term expires June 2018.

Mark Todd

Mark has over 20 years' experience in financial markets regulation, and has held governance roles with both listed and unlisted companies. He co-founded Anti-Money Laundering Solutions, Chairs Mint Asset Management and is a Director of Westpac Life. Current term expires June 2020.

Executive Committee

Rob Everett, Chief Executive

Before taking up his role as Chief Executive in February 2014, Rob spent his career in investment banking, legal and risk management. After 17 years at Merrill Lynch in London, Hong Kong and New York in a variety of senior roles (including General Counsel and COO for Europe), he spent a year with regulatory consultants Promontory before moving to New Zealand at the end of 2013.

John Botica, Director of Market Engagement

John leads the FMA's market engagement activities. John is an experienced senior executive, director and consultant in the financial services industry. In previous roles he was co-founder of the Assure NZ Group, managing director at Guardian Trust and general manager wealth management at AXA.

Sarah Coleman, Director of People and Capability

Sarah's role includes recruitment, employment relations, organisational culture and performance management. Originally a lawyer, she has worked in a variety of HR roles. Her previous role was HR Director at Chapman Tripp.

Brad Edley, Chief Operating Officer

Brad leads the FMA's corporate services team which includes the strategic and day-to-day functions of our finance, facilities, technology and project management functions. He was most recently the Group CFO for the NZX listed company Finzsoft Solutions and has also held CFO roles for Mondelez International and Merck Inc.

Paul Gregory, Director of External Communications and Investor Capability

Paul leads the strategic management of our communications and investor capability team. His previous roles include in the communications and investment teams at the New Zealand Superannuation Fund, and communications for, Macquarie Group, SKYCITY, and Westpac.

Nick Kynoch, General Counsel

As well as advising the FMA Executive and Board, Nick leads our enforcement and litigation, policy and governance, corporate legal and internal audit teams. He has extensive international legal experience, including with Barclays Investment Bank and several international law firms.

Liam Mason, Director of Regulation

Liam leads licensing and supervision, and is also responsible for the FMA's compliance frameworks, contact centre, and intelligence functions. He has extensive experience in securities law, financial services law and policy, and legal compliance.

Simone Robbers, Director of Strategy and Risk

Simone oversees our regulatory strategy, strategic and operational risk management, corporate governance work, and government and industry relations. She has held senior legal, risk and compliance roles in the financial services industry in New Zealand and Edinburgh.

Garth Stanish, Director of Capital Markets

Garth's team oversees primary and secondary markets, continuous disclosure, market infrastructure, intermediary platforms, clearing providers and auditors. He has extensive dispute resolution experience, and is a former head of issuer regulation and acting head of regulation at NZX.

Purpose of the FMA

FMA's role

The Financial Markets Authority is an independent Crown entity. Our key objective is to promote and facilitate the development of fair, efficient and transparent financial markets. Our role is to strengthen public confidence in New Zealand's financial markets, promote innovation, and support the growth of New Zealand's capital base by providing effective regulation.

The FMA regulates conduct across New Zealand's financial markets and we administer or apply many statutes. The FMC Act is the most extensive of these, and sets the ground rules for financial services and capital markets in New Zealand.

Among other things, the FMC Act governs:

- offers of financial products (equity and debt offers, derivatives, and managed investments),
- directors' responsibilities in making public offers for financial products,
- mandatory disclosure to investors for offers of financial products,
- on-market dealing, including on the public exchange,
- financial reporting,
- licensing of firms and professionals.

The FMC Act also provides the FMA with tools to support market activity and protect market integrity.

Summary of operations

A huge amount of work has been undertaken since the FMA's establishment in 2011 to build the new regulator; to execute the legacy enforcement work relating to the finance company crisis; and to ensure that we are ready and able to accept the broad responsibilities placed on us.

As at 30 June 2016 the FMA employed 168 employees across offices in Wellington and Auckland. Our workforce is 57 per cent female, and 65 per cent are based in Auckland. The number of employees at the FMA has gradually increased since establishment to facilitate the transition to the FMC Act.

In the 2015/16 financial year the FMA received government funding of \$26.2 million alongside litigation funding of \$1.3 million and additional revenue of \$2.3 million. Our expenditure totalled \$33.9 million resulting in an operating deficit of \$4 million. The future of the FMA's funding is addressed in the subsequent section 'FMA Funding'.

Current issues and priorities

Financial Advisors Act review

MBIE led the five year statutory review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Consideration of legislative amendments to improve the Acts is currently before you. The FMA is the regulator for financial advice and the sale of financial products; therefore, the review of the law in this area is of significant interest to our strategic priorities. We contributed to the MBIE-led review and continue to discuss developments with them.

During the review, MBIE has assessed the performance of these Acts and consulted extensively with industry and consumers to identify any problems with the regulatory regime and opportunities for improvements. Cabinet has agreed to an amended regime which ensures consumers can access quality advice and which does not impose any undue compliance costs on industry or become a barrier to innovation.

The new financial advice regime will be refined further through consultation on an exposure draft of the new legislation, and testing with consumers and industry.

Once all decisions for the replacement regime have been finalised, the FMA will be able to assess the resource implications for us. For example, expanding the population of licenced advisors will require additional processing and oversight. We will report back to you on this issue in 2017.

Financial Sector Assessment Programme review

A Financial Sector Assessment Program (FSAP) is a comprehensive assessment of a country's financial sector by the International Monetary Fund (IMF). The goal of FSAP assessments is to gauge the stability of the country's financial sector, to identify any potential sources of systemic risk, and to assess its potential contribution to growth and development.

The IMF team recently completed their FSAP review of New Zealand and on 17 November 2016 presented their overall findings in an Aide Memoire and draft reports to all New Zealand agencies involved (FMA, RBNZ, MBIE and Treasury). This included a draft Technical Note on their review of the FMA and the regulatory framework for, and the FMA's supervision of, managed investment schemes (MIS).

Overall, the IMF has concluded New Zealand's regulatory framework for managed investment schemes is much improved from their last review in 2003. Feedback from the IMF is that the FMA has done a good job on the FMC Act transition, has a good range of enforcement tools, and makes good use of them. As expected, there are some areas where the IMF recommends the Government or the FMA direct further attention.

The Financial Sector Stability Assessment requires the approval of the IMF Board and is likely to be released in April/May 2017. At that stage, Ministers and government agencies will be able to make public statements about the content of the report and any actions to be taken as a result.

A separate briefing on the review has been sent to the Minister of Finance by the Inter-agency FSAP Steering Group. You have received a copy of this.

Financial Markets Conduct Act transition and monitoring

One of the major projects for the FMA in recent years has been managing the transition to the Financial Markets Conduct Act (FMC Act). The new law was put in place by the government to bring regulation of financial services in New Zealand in line with international standards. Due to the Act's size and complexity, there was a staggered commencement of the new law's requirements. The transition phase concluded on 1 December 2016 with the commencement of the final sections, primarily licensing of managed investment schemes.

The FMA has licensed 190 financial services firms since 2014, when the FMCA was introduced. These firms range from some of NZ's largest corporates, to SMEs in the fintech sector like equity crowdfunding platforms and peer-to-peer lenders, and also sole trading businesses such as independent trustees. This is in addition to the 1,800 authorised financial advisers who were already licensed by the FMA under the Financial Advisers Act 2008.

The new laws were designed to be both flexible and modern, to accommodate all sizes of business and new forms of services. The licensing framework laid out in the FMC Act sets us up before the next phase of transformation in financial services – embedding high standards of conduct in financial service providers that place investors' interests at the heart of their business models.

Maintaining the market integrity that will support investor confidence is a joint responsibility between regulators and service providers, so our focus on conduct within the industry and how investors are treated is at the heart of our mission.

FMA funding

The government established the FMA in 2011 with the objective of restoring confidence in financial markets regulation and in the regulator. However, our full mandate was not known at establishment and the initial funding was intended to be reviewed in 2014 following the passage of the FMC Act in late 2013. This review was delayed to link with a broader review of funding levies in 2016.

Since our establishment, New Zealand's markets have changed significantly; capital markets grown by over 50 per cent, significant new entrants into the listed market, new sectors developed such as crowd-funding and peer-to-peer lending, and newly regulated sectors such as funds management.

With the full costs of executing the FMA's mandate in the current financial markets environment now known and our cash reserves forecast to be depleted by June 2017, we embarked on a funding review in conjunction with MBIE earlier this year. Deloitte completed an external efficiency and effectiveness review as part of this process to provide an independent view of our operations and recommendations for operational cost savings.

A funding request was put together which allowed the FMA to meet its statutory obligations by balancing the costs of compliance with the appropriate level of risk-mitigation against future failures in our financial markets. The aim is to

build investor confidence, reduce the cost of capital to businesses, encourage saving, and attract more international investment.

In October Cabinet agreed to increase the FMA's total appropriation by \$9.8 million (37 per cent) from \$26.2 million to \$36 million effective from 1 July 2017 – this includes the \$2 million special litigation fund available to us. However, given recent FMA operational costs have been in the \$32 million region, resulting in the actual funding increase for the FMA being closer to \$5 million.

Strategic planning

The FMA's regulatory responsibilities have expanded over recent years, mostly due to the overhaul of New Zealand's securities law and expansion of the financial markets. The Financial Markets Conduct Act (FMC Act) was passed in late 2013 and gives the FMA a broad remit as the conduct regulator for financial services.

The FMA is currently working on a refreshed Strategic Risk Outlook (SRO) due to be published early in 2017. This document is the foundation piece in our strategic planning cycle. It describes the main drivers of risk to New Zealand's financial markets and identifies strategic priorities that will guide our operations over the next three years.

We are also currently working with our Board and management team to identify changes to core activities in response to funding certainty and in the context of responding to the risks it has identified in the SRO. The FMA's Board will set the strategic objectives for the organisation for 2017-18 and beyond in mid-March and resources will be allocated in alignment with those objectives during the business planning and budgeting processes that follow.

The FMA has already embarked on a project to review the way it measures and tracks performance and achievement of regulatory outcomes and these will be reflected in our Statement of Intent for 2017 onwards; and annual corporate plan for 2017-18, which will follow the business planning and budgeting decisions.

The FMA will receive increased funding from 2017-18 meaning there will be able to invest further in staff recruitment and development/training, can increase front-line activities in selected areas, and can focus on building a risk-based and intelligence-led approach to identifying and preventing harms before they occur. In particular, the FMA will be able to:

- proactively identify risks and regulatory gaps, and implement mitigating actions more quickly; for example, FSPR deregistration.
- continue to build capability to identify and assess harms.
- focus on aspects on our regulatory perimeter – such as conduct in the insurance and banking sectors.
- respond more quickly to a greater range of policy issues using legislative tools (exemptions, designations, etc.) and provide greater depth of advice to policy agencies on regulatory system enhancements and reductions of regulatory burdens.

The main change from 2017-18 will be the FMA's investment in data analytics and knowledge management tools, and building staff capability to utilise these tools to support its intelligence-led regulatory approach.