



NOVEMBER 2022

Regulatory Impact Statement:

Standard conditions for financial institution licences

This document is for financial institutions, their advisers, and interested parties. It discusses standard conditions for financial institution licences.

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Executive summary and background

Document purpose

This Regulatory Impact Statement (RIS) discusses standard conditions for financial institution licences, to be imposed by the FMA. The conditions will apply in respect of the market service of acting as a financial institution¹ (the “financial institution service”). We considered imposing six standard conditions on financial institution licences, and after consultation have decided to impose these conditions, 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

This RIS summarises the problems we are seeking to address, our objectives, the options and their associated impacts, and the consultation process we undertook before deciding to impose the conditions. In this RIS we also consider whether imposing the conditions would be consistent with, and promote, objectives that align with some of the statutory purposes of the Financial Markets Conduct Act 2013 (FMC Act), as outlined on page 6.

Standard conditions imposed

After carefully considering both regulatory and non-regulatory impacts, we decided to impose the six standard conditions as set out in the Schedule. This document sets out our considerations in relation to each condition.

Background

The Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI Act) will amend the FMC Act to introduce a new regime for regulating the conduct of banks, insurers and non-bank deposit takers (NBDTs). When the new regime comes into force, which is expected to be early 2025, registered banks, licensed insurers and licensed NBDTs (collectively, financial institutions) will need to hold, or operate under, a financial institution licence to provide relevant services² to consumers in New Zealand.

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

¹ ‘Financial institution’ is defined in section 446E of the CoFI Act.

² ‘Relevant service’ is defined in section 446F(1) of the CoFI Act.

holder or authorised body). Conditions are necessary to ensure licence holders continue to meet those requirements, and to help us effectively supervise the licensed population. We comment in more detail in this RIS why we think the final standard conditions that will be imposed are needed.

On 20 July 2022, we released a consultation paper [Proposed standard conditions for financial institution licences](#), seeking feedback on our proposal to impose six standard conditions on financial institution licences. Please refer to that paper for the wording of the proposed standard conditions that we consulted on.

Objectives and relevant stakeholders

Objectives

The following statutory purposes of the FMC Act were chosen as appropriate objectives against which to measure the possible options, as they were the most relevant in developing the standard conditions for financial institutions.

- Avoiding unnecessary compliance costs.
- Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets.
- Promoting and facilitating the development of fair, efficient, and transparent financial markets.

Relevant stakeholders

The standard conditions will require entities who are granted a financial institution licence to comply with obligations in respect of their licence. This will impact registered banks, licensed insurers and licensed NBDTs that apply for a financial institution licence. In considering the options, we considered the interests of stakeholders, including consumers.

Problem definition, options and impact analysis

We considered two options in relation to each problem identified:

- Option 1: Imposing a condition
- Option 2: Not imposing a condition (status quo)

Option 1 (imposing a condition) was the selected option for all six of the proposed standard conditions.

Condition 1: Ongoing requirements

Problem definition

Under section 414 of the FMC Act, the FMA is able to take action in certain circumstances, including if a financial institution no longer meets the requirements set out in section 396 (and if applicable, section 400) of the FMC Act. This includes eligibility and other requirements that must be satisfied at the time of licensing. However, without a positive obligation requiring financial institutions to continue meeting these requirements, there is a risk that the importance of continuing to satisfy these requirements after licensing is overlooked.

Option 1: Imposing a condition

Description

Impose a licence condition on financial institution licences that requires financial institutions to continue to satisfy the requirements set out in section 396, and if applicable, section 400, of the FMC Act.³

Impact analysis

Avoiding unnecessary compliance costs

Most submitters agreed in principle with a standard condition requiring licensing requirements to be satisfied on an ongoing basis. A few submitters commented that they require the Financial Institution Licence Application Guide (the Application Guide) to be issued for them to determine the extent of any

³ See the Schedule for full details.

additional compliance costs associated with the condition. Only one submitter stated that compliance with the condition would result in increased compliance costs.

This condition reiterates a financial institution's ongoing eligibility and capability requirements under the FMC Act and the Financial Markets Conduct Regulations 2014 (Regulations). There are costs associated with complying with these ongoing requirements. However, there are no additional compliance costs associated with this condition given that the obligations already apply to financial institutions under the FMC Act and its Regulations. Therefore, this option avoids imposing unnecessary compliance costs.

Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets

The condition confirms a financial institution's ongoing eligibility and capability requirements under the FMC Act and its Regulations. Requirements imposed by this condition, coupled with those under the FMC Act and its Regulations, promote confident and informed participation of businesses and consumers in the financial markets by ensuring that licensed entities continue to meet the threshold requirements for licensing on an ongoing basis. Most submitters did not think that this condition will create a barrier to enter the market.

Promoting and facilitating the development of fair, efficient, and transparent financial markets

The purpose of the standard condition is to ensure that all financial institutions continue to meet the licensing requirements on an ongoing basis. Publishing these requirements in the form of a standard condition increases transparency because it increases their accessibility for financial institutions. It does not prevent firms from making changes to their business, provided they can continue to meet the licensing requirements.

The condition will apply to all financial institutions, ensuring fairness.

A few submitters commented that their final determination in this regard was dependent on the Application Guide. However, generally it did not appear from the submissions that this condition would result in adverse impacts on financial institutions' businesses.

Option 2: Not imposing a condition (status quo)

Description

Do not impose an ongoing eligibility and capability requirement as a licence condition.

Impact analysis

On balance, this option is more likely to result in poor consumer outcomes and undermining the fair conduct principle.⁴ The FMA assesses eligibility at the time of licensing and is able to take action where a financial institution no longer satisfies those licensing requirements.⁵ Publishing these requirements in the form of a standard condition increases their accessibility for financial institutions, confirms their importance and ensures these obligations remain front of mind.

We consider it important to confirm that licensing requirements must continue to be satisfied at all times while a financial institution holds a licence, not just at the time the licence is issued. We note this option

⁴ See section 446C of the CoFI Act.

⁵ See section 414(1)(b) and 414(3) of the FMC Act.

should not impose additional compliance costs on financial institutions (over and above already having to comply with section 396 and 400 of the FMC Act), but reiterates their obligations in this regard.

Condition 2: Notification of material changes

Problem definition

After licensing, a financial institution may wish to make material changes to its financial institution service. In this situation, the financial institution will need to ensure that the changes to its business are reflected in its fair conduct programme, and may need new or updated policies, processes, systems and controls – and these may not have been assessed by the FMA at the time of licensing.

The FMA will not be notified of these material changes unless they are adverse as described in section 410 of the FMC Act, because notification requirements applying to financial institutions are limited to those set out in section 412 of the FMC Act and regulation 191 of the Regulations. There is no requirement for financial institutions to notify the FMA of a material change in circumstances unless that change adversely affects their ability to provide the financial institution service or means they no longer meet the requirements in section 396 or section 400 of the FMC Act (see section 412 of the FMC Act).

Without a broader notification requirement, which this standard condition introduces, it is more difficult for the FMA to effectively supervise a financial institution's capability and to ensure compliance with the FMC Act. A lack of effective supervision and enforcement may contribute to poor conduct and unfair treatment of consumers.

Option 1: Imposing a condition

Description

Impose a licence condition on financial institution licences that requires notification to the FMA within 10 working days of a financial institution implementing any material change to the nature of its financial institution service.⁶

⁶ See the Schedule for full details.

Impact analysis

Avoiding unnecessary compliance costs

The standard condition applies where a financial institution materially changes the nature of its financial institution service. Less significant changes are not required to be notified to the FMA, as we anticipate these types of changes will be notified in regulatory returns. Most submitters agreed with the condition.

Where a financial institution materially changes the nature of its financial institution service, notifying the FMA of this should not be a costly or burdensome exercise in the context of implementing the change. The majority of submitters did not think this condition will result in additional compliance costs for their businesses.

Given the importance of this information to the FMA in effectively monitoring financial institutions under the CoFI regime, we consider that any costs associated with the notification requirement are reasonable and necessary when contrasted with the overall benefits of a well-regulated market.

Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets

Timely notifications of material changes to businesses are critical to the FMA's effective monitoring of financial institutions and enforcement of the CoFI Act. Notification under this condition is essential to enable us to understand the risk profiles of the licensed population. This enables us to appropriately target our supervision efforts, ensuring financial institutions remain capable of effectively providing the financial institution service they are licensed for.

Most submitters did not think that this condition will create a barrier to enter the market.

Well-regulated financial markets benefit businesses and consumers, and promote confident and informed participation in the market.

Promoting and facilitating the development of fair, efficient, and transparent financial markets

The majority of submitters did not think this condition would result in adverse impacts to their businesses.

This licence condition will promote transparency about financial institutions and their ongoing capability, for monitoring and enforcement purposes. Subjecting all financial institutions to this condition ensures fairness.

A well-regulated market resulting from better information from which the FMA can effectively monitor and enforce, promotes efficiency within the licensed population.

Option 2: Not imposing a condition (status quo)

Description

Do not impose a notification of material changes requirement as a licence condition. After licensing, a financial institution may make material changes to the nature of its financial institution service. Unless the change adversely affects the financial institution's ability to provide the financial institution service or if they no longer meet the requirements in section 396 or section 400 of the FMC Act, the FMA will not be notified.

Impact analysis

This option is more likely to result in poor consumer outcomes. Following a material change, a 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. Without the condition, it is likely to be more difficult and require more resources for the FMA to monitor compliance with and enforce the new CoFI regime.

Lack of effective monitoring and enforcement is more likely to lead to poor conduct and poor consumer outcomes, and could undermine the overarching fair conduct principle that financial institutions must treat consumers fairly. It could also lead to less transparency around the relevant services provided to consumers by financial institutions.

Without effective regulation of financial institutions under CoFI, it is likely that confident participation by businesses and consumers in financial markets will suffer. Not having to notify the FMA of material changes under this condition may curtail compliance costs (although some reporting of changes will still need to be done under the FMC Act).

However, not having up-to-date information available to help inform an effective monitoring and enforcement approach may result in negative effects on the financial markets. We consider that potential lower compliance costs are outweighed by these negative effects.

Condition 3: Regulatory returns

Problem definition

There is no requirement under the FMC Act or its Regulations for financial institutions to provide information to the FMA on a periodic or ongoing basis.

Under section 412 of the FMC Act, financial institutions have obligations to report various matters to the FMA as soon as practicable, including any material change of circumstance. However, this requirement does not cover the breadth of information needed by the FMA to understand the profile of a financial institution's business, and to implement an effective risk-based supervision approach.

If financial institutions are not required to provide information on a periodic or ongoing basis – known as regulatory returns – it will be more difficult for the FMA to prioritise and focus its resources appropriately when supervising financial institutions, and therefore to effectively monitor compliance with and enforce the obligations under the FMC Act. Lack of effective supervision and enforcement is likely to contribute to poor conduct and the unfair treatment of consumers.

Without the legal requirement to provide regulatory returns, the FMA's ability to obtain relevant and timely information about financial institutions will be compromised. It will therefore be more difficult for the FMA to identify any changes in the risk profiles of financial institutions after licensing, and to identify broad industry trends, hindering our ability to implement effective intelligence-led, risk-based supervision of this sector.

Option 1: Imposing a condition

Description

Impose a licence condition on financial institution licences that requires financial institutions to provide information to the FMA on a periodic or ongoing basis, or on request, in accordance with the requirements issued by the FMA⁷, similar to the condition imposed on other market service licences.⁸

Impact analysis

Avoiding unnecessary compliance costs

Many financial institutions will already be experienced in providing some level of regulatory returns, and we do not expect the information required to be overly burdensome or complex. To minimise duplication of data collection we will aim to understand what information is collected via returns to other regulators and to the FMA (e.g. under other market services licences).

Although most submitters agreed with imposing a licence condition requiring regulatory returns, submitters commented that there may possibly be additional compliance costs in this regard. This, it was submitted, will depend on the requirements for regulatory returns, which are still to be developed by the FMA.

The information provided by regulatory returns will help the FMA understand the licensed population we regulate and is essential to determine the focus and priority of our monitoring activities. We therefore consider any associated compliance costs to be reasonable and necessary when contrasted with the overall benefits of a well-regulated market.

In developing the requirements for regulatory returns for financial institutions, we will consider the associated compliance costs and weigh these against the information we consider necessary to ensure our ability to effectively monitor the licensed population. The FMA will consult with industry prior to publication of the requirements for regulatory returns that will form part of this standard condition.

Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets

Regulatory returns are a key tool the FMA uses to assess risk in the industry and respond with appropriate monitoring and enforcement activities.

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. Having up-to-date information about the nature, size and complexity of financial institutions' businesses, compliance performance and potential risks is important in the effective conduct regulation of financial institutions.

Well-regulated markets are key to promoting confident and informed participation of businesses, investors, and consumers. We will also use the information obtained to inform our policy work, and communicate trends, risks and other information that may be useful to the industry or the general public.

Most submitters did not think the condition will create a barrier to enter the market.

⁷ See the Schedule for full details.

⁸ For example, see Standard Condition 3 of the [Standard Conditions for Financial Advice Provider licences](#) and Standard Condition 5 of the [Standard Conditions for managed investment scheme manager licences](#).

Promoting and facilitating the development of fair, efficient, and transparent financial markets

This licence condition will promote transparency about the financial institution services provided by the licensed population and their ongoing capability, which is relevant for monitoring and enforcement purposes.

Only one submitter asserted that compliance with the condition would result in an adverse impact on its business, however the submitter could not indicate the extent of the impact without the requirements for regulatory returns being determined.

All financial institutions will be subject to the same regulatory return requirements, ensuring fairness.

Having better information from which the FMA can effectively monitor and enforce will result in well-regulated markets that promote efficiency.

Option 2: Not imposing a condition (status quo)

Description

Do not impose a condition requiring financial institutions to provide information to the FMA on a periodic or ongoing basis, or on request, in accordance with requirements issued by the FMA.

Under section 412 of the FMC Act, financial institutions will still have obligations to report various matters to the FMA as soon as practicable. This includes any material change of circumstance that adversely affects the financial institution's ability to provide the financial institution service or a change which means they no longer meet the requirements in section 396 or section 400 of the FMC Act.

The FMA also has a general information gathering power under section 25 of the Financial Markets Authority Act 2011.

Impact analysis

This option is more likely to result in poor consumer outcomes.

Regulatory returns are a key tool the FMA uses to assess risk in the industry and respond with appropriate monitoring and enforcement activities. Without the information provided in regulatory returns, it is likely to be more difficult and require more resources for the FMA to monitor compliance with, and enforce, the new CoFI regime.

Lack of effective monitoring and enforcement is likely to lead to poor conduct. This could affect the quality and transparency of relevant services provided to consumers, and lead to the market being less fair because our risk-based approach will be compromised. Consequently, our response may not be proportionate or focused on the highest-risk areas. Without a well-regulated market, confident participation of businesses and consumers will suffer.

Although section 412 of the FMC Act contains some reporting obligations, these do not cover the level of information needed to inform an effective risk-based monitoring approach by the FMA. Relying on the FMA's information-gathering power in section 25 of the FMA Act would make it more difficult and require more resources for the FMA to obtain up-to-date information from financial institutions. This will in turn affect our ability to effectively monitor and enforce compliance with the CoFI regime.

Not requiring regulatory returns would result in less compliance costs for financial institutions. However, we consider that lower compliance costs are outweighed by the negative effects that would result from the FMA not having adequate information available to inform an effective monitoring and enforcement approach, and the overall effect that would have on the financial markets.

Condition 4: Outsourcing

Problem definition

Although financial institutions are responsible for meeting their licence obligations, they may enter into and change outsourcing arrangements relating to the provision of their financial institution service. There are no specific requirements around these outsourcing arrangements in the FMC Act or its Regulations. We note that other FMC market services licences include a condition relating to outsourcing.⁹

If financial institutions are not required to be satisfied with an outsource provider's capability, oversight of these arrangements may be ad hoc and inadequate. A lack of oversight of outsource providers and associated arrangements means financial institutions may not have enough information to ensure their licence obligations are being met.

Where financial institutions rely on outsource providers to meet their market services obligations, it is important that the financial institution is satisfied regarding the capability of the provider, or consumers may experience unfair treatment and the financial institution may not meet its licence obligations.

Option 1: Imposing a condition

Description

Impose a licence condition on financial institution licences that requires the financial institution to be satisfied that the outsource providers it engages are capable of performing the service to the standard necessary to enable the financial institution to meet its market service licensee obligations.

Note that this condition would only apply to outsource arrangements relating to the licensed business where the outsource provider is being relied on to meet market service licensee obligations.¹⁰

Impact analysis

⁹ For example, see Standard Condition 4 of the [Standard Conditions for Financial Advice Provider licences](#) and Standard Condition 3 of the [Standard Conditions for managed investment scheme manager licences](#).

¹⁰ See the Schedule for full details.

Avoiding unnecessary compliance costs

Most submitters appear to disagree with this proposed condition on the basis that the Reserve Bank of New Zealand (Reserve Bank) also imposes obligations in relation to outsourcing. Some submitters suggested that financial institutions should therefore be exempt from the condition. Most submitters also think that the condition will result in additional compliance costs.

However, having due diligence and oversight processes in place when engaging outsource providers is a sound business practice and essential to ensure the fair treatment of consumers.

Further, compliance with this condition can be tailored to the individual financial institution's business and the type of outsourcing involved.

We consider any associated compliance costs are necessary and reasonable considering the importance for a financial institution to have the requisite oversight of outsource arrangements.

Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets

A few submitters held the view that the condition may create a barrier to enter the market. However, the condition promotes the confident and informed participation of investors and consumers in the financial markets.

Consumers can be assured that financial institutions will have the requisite oversight of outsourcing arrangements to ensure that their licence obligations will continue to be met.

Financial institutions will have clarity about important matters and information they should consider regarding their outsource arrangements to ensure the appropriate level of oversight, which promotes their confident and informed participation in the financial markets.

Promoting and facilitating the development of fair, efficient, and transparent financial markets

This condition imposes the same outsourcing requirements on all financial institutions, ensuring fairness.

It promotes efficiency by enabling financial institutions to outsource activities to external providers who can provide that service more efficiently, for example, through economies of scale. Appropriate and well-functioning outsourcing arrangements improve efficiency in financial markets by ensuring specialised resources can be leveraged where suitable. Therefore, effective outsourcing arrangements may also reduce financial institutions' operating costs, promoting efficiency.

Option 2: Not imposing a condition (status quo)

Description

Do not impose a licence condition on financial institution licences in relation to outsourcing arrangements. The responsibility for meeting licence obligations would remain with the financial institution, but there would be no regulatory requirements relating to those outsourcing arrangements.

Impact analysis

This option is more likely to result in poor consumer outcomes.

If financial institutions are not required to be satisfied of an outsource provider's capability, oversight of these arrangements is likely to be ad hoc and inadequate.

A lack of oversight of outsource providers and associated arrangements could affect the quality of services offered by financial institutions. Further, without assurance that financial institutions will have the requisite oversight of outsourcing arrangements, investor and consumer confidence is likely to be affected.

We anticipate that many financial institutions would complete their own due diligence before appointing outsource providers and have their own systems and processes for oversight. However, without specifying a condition relating to outsourcing, these arrangements may not all provide the level of oversight necessary to ensure the licensed population meets its obligations.

Without effective outsourcing arrangements, efficiency in the financial markets may also be affected. Compliance costs may be reduced if financial institutions do not have to comply with a condition around outsourcing arrangements (noting costs associated with individual due diligence and oversight processes may still be incurred even in the absence of a condition requiring these processes). However, lower compliance costs are outweighed by the negative effects that the risk of insufficient oversight of financial institutions' outsource providers and arrangements would have on the financial markets.

Condition 5: Business continuity and technology systems

Problem definition

There is no requirement in the FMC Act or its Regulations for financial institutions to have and maintain a business continuity plan, or to ensure the operational resilience of their critical technology systems is maintained. Financial institutions may already provide for business continuity and technology systems, for example in response to obligations imposed by the Reserve Bank in relation to their registration as a bank, or their insurer or NBDT licence. However, those obligations do not relate to the financial institution service.

Appropriate and regularly tested business continuity plans enable financial institutions to respond to and recover from an event that disrupts their licensed service, including (but not limited to) disruptions to technology systems. Lack of provision for business continuity is likely to result in the inability to effectively manage business disruptions, and to respond, recover, resume and restore to the requisite level of operation following disruption. This may mean that consumers are not provided with timely information about, or access to, the financial institution's relevant services and associated products, or the appropriate level of support for a period of time.

Further, the risk to consumers if the operational resilience of critical technology systems is not maintained is high, e.g. compromised security of information held about consumers or the relevant services and associated products received.

Option 1: Imposing a condition

Description

Impose a licence condition on financial institution licences that requires financial institutions to have and maintain a business continuity plan appropriate for the scale and scope of the financial institution service, which includes maintaining the operational resilience of critical technology systems, and a requirement to notify the FMA of events that materially impact the operational resilience of critical technology systems.¹¹

Impact analysis

Avoiding unnecessary compliance costs

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.

Having an appropriate business continuity plan that is maintained, reviewed and regularly tested is good business practice. An appropriate and regularly tested business continuity plan enables financial institutions to respond to and recover from an event that disrupts their licensed service, which supports the fair treatment of consumers during any period of disruption.

We anticipate that many financial institutions will already have a business continuity plan in place, given it is generally regarded as good business practice, and to meet other obligations such as those imposed by the Reserve Bank. Most submitters appear to disagree with the proposed condition on the basis that the Reserve Bank also imposes obligations in relation to business continuity. A few submitters asserted that compliance with this condition will result in additional compliance costs.

The condition is not likely to require financial institutions to create a new business continuity plan if they already have one in place, but they will need to ensure that it meets the requirements of the standard condition, taking into consideration matters mentioned in the explanatory note to the condition. We do not expect the costs of doing so to be significant for financial institutions.

We also note that the condition allows for flexibility and does not prescribe the scope of the plan, minimising compliance costs. The extent of a business continuity plan should reflect the size and complexity of the financial institution, and its operational arrangements and exposure to disruptive events. We therefore expect compliance costs to be proportionate to the size and complexity of the business.

Similarly, the operational resilience of critical technology systems (the disruption of which would materially affect the continued provision of the financial institution service) should be managed within the risk tolerance set through a financial institution's governance processes. This is flexible and able to be right-sized for the relevant business.

From a conduct regulation perspective, any compliance costs associated with having and maintaining an appropriate business continuity plan and ensuring the operational resilience of technology systems will therefore be reasonable and necessary.

¹¹ See the Schedule for full details.

Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets

This standard condition requires financial institutions to have suitable arrangements in place to ensure they are able to manage disruptions to their business. By doing so, consumers will have the security of continuity of the services and products they receive from financial institutions. This gives consumers confidence that they will be treated fairly in the case of unforeseen events.

Business continuity plans, including ensuring the operational resilience of critical technology systems, enable financial institutions to be more resilient to disruptions to their business, which promotes the confident and informed participation of businesses, investors, and consumers in the financial markets.

Critical technology systems must be secure, reliable, and addressed as part of a business continuity plan. This promotes confident and informed participation in the financial markets, especially in light of increasing risks to technology systems.

The requirement to notify the FMA enables the identification of cross-market threats and the ability to monitor events that may affect a number of licensees, promoting the confident participation of businesses and consumers in the financial markets.

Most submitters did not think that this condition will create a barrier to enter the market.

Promoting and facilitating the development of fair, efficient, and transparent financial markets

All financial institutions will be subject to the same requirement to have an appropriate business continuity plan and to ensure the operational resilience of critical technology systems, which promotes fairness.

An appropriate and regularly reviewed business continuity plan enables a financial institution to effectively respond to and recover from an event that disrupts their licensed service, and therefore promotes efficiency within the financial markets. A business continuity plan enables issues to be dealt with more quickly, by having an established plan ready to follow. The condition however allows for flexibility, as business continuity plans can be tailored to suit the size and nature of the business, further ensuring efficiency.

Notifying the FMA of events that materially impact the operational resilience of a financial institution's critical technology systems enables an overall view of emerging market threats to be monitored and acted on when necessary, promoting transparency and efficiency in the financial markets.

A few submitters raised concerns that compliance with the standard condition would result in an adverse impact on its business. Some submitters were of the view that the 72-hour reporting timeframe for events that materially impact the operational resilience of critical technology systems is too short. We consider this timeframe is appropriate given the critical nature of financial institutions' technology systems to the maintenance of fair, efficient and transparent markets.

Option 2: Not imposing a condition (status quo)

Description

Do not impose a business continuity and technology systems requirement as a licence condition. Many financial institutions will already have business continuity plans, including ensuring the operational resilience of critical technology systems is maintained, as part of good business practice and to meet other obligations such as those imposed by the Reserve Bank. However, without the regulatory requirement to do

so, not all financial institutions will have a business continuity plan that responds to the impact of a disruption to their business on the fair treatment of consumers, and some may be ad hoc and inadequate.

We note that many financial institutions already have to comply with obligations relating to business continuity and technology systems imposed by the Reserve Bank. However, these obligations relate to prudential regulation and may not consider the impact of a business disruption on the fair treatment of consumers.

Impact analysis

This option is more likely to result in poor consumer outcomes.

If a financial institution is not able to effectively manage disruptions to their business and to respond, recover, resume and restore their operations, this may mean consumers are not provided with services and products by financial institutions. This may possibly result in unfair treatment of consumers.

Further, the risk to consumers if the operational resilience of critical technology systems is not maintained is high, e.g. compromised security of the information held about them or about the services and products received, and vulnerability to cyberattacks.

Lack of provision for disruptions to financial institutions leads to less resilient businesses and reduces confident and informed participation in the financial markets, in respect of both businesses and consumers. This is especially the case in ensuring the operational resilience of critical technology systems, without which confident participation is compromised.

Without a regulatory requirement to have a business continuity plan, efficiency in the financial markets will be reduced in respect to responding to business disruptions (for example, responses are more likely to be reactive and disorganised).

Further, without the requirement to notify the FMA of material breaches to critical technology systems, transparency is reduced.

Compliance costs may also be reduced if a business continuity plan is not required. However, the costs associated with business disruptions or the compromised security of critical technology systems are likely to be much higher where no business continuity plan is in place.

When considering the overall effect on the wider financial markets of businesses being less able to effectively respond to and recover from an event that disrupts their licensed service, costs associated with implementing a business continuity plan are reasonable and necessary.

Condition 6: Record keeping

Problem definition

The CoFI Act requires financial institutions to keep records to allow an assessment to be made of their performance in complying with the fair conduct principle. However, the CoFI Act, the FMC Act and Regulations do not contain specific record-keeping requirements for all

relevant records under the CoFI regime, for example records that demonstrate how financial institutions have established, implemented and maintained their fair conduct programme.

If financial institutions are not required to keep records about their financial institution service for those areas not expressly provided for in the legislation and regulations, then it will be difficult for the FMA to effectively monitor compliance with and enforce the obligations under the CoFI regime. Lack of effective monitoring and enforcement may lead to poor conduct and unfair treatment of consumers.

Option 1: Imposing a condition

Description

Impose a licence condition on financial institution licences that requires financial institutions and their authorised bodies to maintain relevant records needed for the FMA to monitor their ongoing capability to effectively perform the financial institution service, in a form and manner that enables them to be conveniently inspected and reviewed by the FMA.¹²

Impact analysis

Avoiding unnecessary compliance costs

Some submitters agreed with this condition, however a few submitted that there may potentially be additional compliance costs. The CoFI Act already requires financial institutions to maintain fair conduct programmes in writing and maintain records that are sufficient to allow an assessment to be made of the financial institution's compliance with the fair conduct programme, therefore any additional compliance costs created by a record-keeping condition would be expected to be minimal.

Financial institutions can use the method of record keeping they consider most efficient, provided the records are kept in a way that ensures the integrity of the information and enables it to be conveniently inspected and reviewed by the FMA, thereby minimising compliance costs.

We do not consider associated compliance costs to be unnecessary when compared to the benefits derived from keeping adequate records. We note that several submitters were concerned that the scope of documents they are required to keep is very wide, for example, one interpreted that they are required to keep records of every interaction between staff. We have not prescribed this in the condition; we expect financial institutions to have assurance processes to assess the effectiveness of their fair conduct programmes and to monitor their own compliance. This means that financial institutions will need to determine what records they need to maintain to comply with the standard condition.

We therefore do not think the associated compliance costs will be high or unnecessary.

¹² See the Schedule for full details.

Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets

Effective record keeping is a good business practice and is also critical for monitoring and enforcement. Well-regulated markets benefit businesses and consumers, and promote their confident and informed participation in those markets.

Promoting and facilitating the development of fair, efficient, and transparent financial markets

The licence condition will promote transparency about the services and products provided by financial institutions, for monitoring and enforcement purposes. Financial institutions will have clarity of record-keeping requirements. This promotes fairness but will also be flexible enough to suit the size and nature of individual financial institution businesses, maintaining efficiency.

Option 2: Not imposing a condition (status quo)

Description

Do not impose a formal record-keeping requirement as a licence condition. This would mean that while financial institutions would still need to comply with the new conduct regime requirements in the FMC Act and its Regulations, they would not be legally required to keep all relevant records under the CoFI regime, and to demonstrate through their records how they met the CoFI regime requirements in those instances not specifically provided for in the legislation and regulations.

Impact analysis

This option is more likely to result in poor consumer outcomes.

It is likely to be more difficult and require more resources for the FMA to monitor compliance with and enforce the CoFI regime if financial institutions do not keep adequate records and provide the FMA with access to them. This may make it difficult to hold financial institutions accountable for poor conduct and could undermine the overarching fair conduct principle that financial institutions must treat consumers fairly.

Lack of records would also reduce the transparency of services and products offered by financial institutions. This is likely to negatively impact consumers (e.g. if they rely on a financial institution having information or if they change financial institutions).

In a dispute, financial institutions and consumers may be adversely affected by a lack of records or inadequate records. This may mean it would be difficult to establish how the service was provided or what advice was given. It will also be more difficult for financial institutions to operate effectively and comply with their obligations if they do not have adequate records.

Lack of adequate records would undermine confidence in the services and products being provided, as well as reduce the amount of information available for ongoing services and any disputes, meaning confident and informed participation of market participants is reduced.

While compliance costs may be reduced, costs would still be incurred to demonstrate how a financial institution has complied with its obligations under the CoFI regime. We consider that any reduction in compliance costs would be outweighed by the negative impact on financial institutions' services overall.

Summary assessment of options against objectives

We have assessed the options against the criteria below:

KEY:

- ✓✓ Meets the policy objectives
- ✓ Partially meets the policy objectives
- ✗ Does not meet the policy objectives

Criteria	Avoiding unnecessary compliance costs	Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets	Promoting and facilitating the development of fair, efficient and transparent financial markets
Condition 1: Ongoing requirements			
Option 1: Condition (preferred)	Although there are costs associated with complying with ongoing requirements, there are no additional compliance costs associated with this condition, given that the obligations already apply to financial institutions under the FMC Act and its Regulations. ✓✓	This condition confirms and reiterates a financial institution's ongoing obligations under the FMC Act and its Regulations, which promotes confident participation of businesses and consumers in the financial markets. ✓✓	Reiterating a financial institution's ongoing requirements under the FMC Act and its Regulations will increase transparency in relation to the market service of acting as a financial institution. The requirement applies to all financial institutions, ensuring fairness. ✓✓
Option 2: No condition (status quo)	No additional compliance costs. ✓✓	This option does not promote confident participation in the financial markets because a financial institution's ongoing obligations are not explicit. However, the FMA can still take action if a financial institution no	This option does not promote transparency, as a financial institution's ongoing obligations are not explicit. However, the FMA can still take action if a financial institution no longer satisfies the licensing requirements in section

Criteria	Avoiding unnecessary compliance costs	Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets	Promoting and facilitating the development of fair, efficient and transparent financial markets
		longer satisfies the licensing requirements in section 396 (and section 400 if applicable) of the FMC Act. ✓	396 (and section 400 if applicable) of the FMC Act. ✓

Condition 2: Notification of material changes

Option 1: Condition (preferred)	The requirement only applies to material changes to the nature of financial institution services and the compliance costs will not be significant in the context of implementing the change. We consider any costs associated with notification to be reasonable and necessary in the context of the information it provides to the FMA. ✓✓	Timely notifications of material changes to businesses are critical to the FMA’s effective monitoring and enforcement of the CoFI Act. Well-regulated financial markets benefit businesses and consumers, and promote their confident and informed participation. ✓✓	Notifications of material changes will promote transparency about financial institutions and their ongoing capability, for monitoring and enforcement purposes. The same requirements will apply to all financial institutions, ensuring fairness. ✓✓
Option 2: No condition (status quo)	No additional or unnecessary compliance costs associated with this option. ✓✓	Without the information provided by these notifications, it will be more difficult for the FMA to monitor compliance with and enforce the new CoFI regime. With a lack of effective regulation of the financial markets, it is likely the confident participation by businesses and consumers will suffer. ✗	Less transparency around services being provided by financial institutions. Financial institutions will still have some notification requirements under the FMC Act. ✗

Criteria	Avoiding unnecessary compliance costs	Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets	Promoting and facilitating the development of fair, efficient and transparent financial markets
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Condition 3: Regulatory returns

Option 1: Condition (preferred)	We consider the associated costs reasonable and necessary when compared to the overall benefits of well-regulated markets, and the important contribution regulatory returns information makes towards that. ✓✓	Regulatory returns are a key tool the FMA uses to inform its monitoring and enforcement activities. Effective regulation of the financial markets is key to promoting the confident and informed participation of businesses, investors, and consumers in the financial markets. ✓✓	Information collected through regulatory returns will promote transparency around financial institutions and their ongoing capability. Regulatory returns information helps the FMA to effectively monitor the financial markets; and well-regulated markets promote efficiency. ✓✓
Option 2: No condition (status quo)	No additional compliance costs by not requiring regulatory returns information, however, may be consequential costs associated with a less-informed monitoring and enforcement approach by the FMA. ✓✓	Regulatory returns information is an important part of enabling the FMA to effectively monitor financial institutions and enforce financial markets legislation. Without a well-regulated market, confident participation of businesses and consumers will suffer. ✗	Without regulatory returns information, there may be less transparency around the provision of services by financial institutions. The market may be less fair because the FMA's risk-based approach will be compromised, and our response may not be proportionate or focused on the highest risk areas. ✗

Condition 4: Outsourcing

Option 1: Condition (preferred)	Completing due diligence before engaging an outsource provider, and overseeing them, is a good business practice and we anticipate that many financial institutions will	Consumers can be assured that financial institutions will have the requisite oversight of outsource arrangements to ensure that their licence obligations will continue to	Appropriate and well-functioning outsource arrangements can improve efficiency in markets by ensuring specialised resources can be leveraged where suitable. The
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Criteria	Avoiding unnecessary compliance costs	Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets	Promoting and facilitating the development of fair, efficient and transparent financial markets
	<p>already do this. Associated costs are necessary and reasonable to provide adequate oversight of outsource arrangements, and financial institutions may be able to at least partially rely on existing arrangements to comply with this condition, which avoids unnecessary compliance costs. ✓✓</p>	<p>be met. Financial institutions will have clarity about the important matters and information they should consider regarding their outsource arrangements. This promotes confident and informed participation in the financial markets. ✓✓</p>	<p>same requirements will be imposed on all financial institutions, ensuring fairness. ✓✓</p>
<p>Option 2: No condition (status quo)</p>	<p>Compliance costs may be reduced, although liability for market service obligations still rests with the financial institution. There may be consequential costs associated with ineffective oversight of outsource arrangements. ✓✓</p>	<p>Without a regulatory requirement around outsource arrangements, oversight over these is likely to be ad hoc and inadequate, and confidence in the financial markets may be affected. ✗</p>	<p>Different financial institutions will have different levels of oversight of outsourcing arrangements, and ineffective outsourcing arrangements decreases efficiency in the market. ✓</p>

Condition 5: Business continuity and technology systems

<p>Option 1: Condition (preferred)</p>	<p>A business continuity plan can be proportionate to the size and complexity of the financial institution's business. The plan can be flexible and right-sized to be appropriate for the financial institution. Financial institutions typically already have a business continuity plan in place, and therefore any costs associated with ensuring the plan meets the</p>	<p>Business continuity plans give consumers confidence they will be looked after in the case of unforeseen events. They enable financial institutions to be more resilient to disruptions to their business, which promotes the confident and informed participation of business, investors and consumers in the financial markets. ✓✓</p>	<p>A business continuity plan promotes efficiency in the market by enabling a financial institution to effectively respond to and recover from an event that disrupts its business. All financial institutions will be subject to the same requirement to have a business continuity plan, promoting fairness. ✓✓</p>
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Criteria	Avoiding unnecessary compliance costs	Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets	Promoting and facilitating the development of fair, efficient and transparent financial markets
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condition, such as ensuring it is consistent with the fair conduct principle, will be reasonable and necessary. ✓✓

Option 2: No condition (status quo)

No additional or unnecessary compliance costs, but there may be consequential costs in the event of a disruption to a financial institution's business. ✓✓

Lack of provision for disruptions to financial institutions' services leads to less-resilient businesses, and to reduced confident and informed participation in the financial market, in respect of both businesses and consumers. ✗

Many financial institutions may already have some kind of business continuity plan. However, without a regulatory requirement, not all financial institutions will have a plan that considers the impact of business disruption on consumers. This means efficiency in the financial markets may be reduced in respect of responding to business disruptions. ✓

Condition 6: Record keeping

Option 1: Condition (preferred)

Many businesses already keep records. A technologically neutral and principles-based flexible approach will minimise compliance costs. Benefits for consumers, financial institutions and the market generally outweigh any additional compliance costs and are considered necessary. ✓✓

Record keeping is key to ensuring good conduct and culture, and also critical for effective monitoring and enforcement. Well-regulated financial markets promote the confident and informed participation of businesses and consumers in those markets. ✓✓

Records will provide information for effective monitoring and enforcement, promoting fair and transparent markets. Technology-neutral language and a principles-based approach will allow requirements to be tailored to the size and nature of a business, promoting efficiency. ✓✓

Option 2: No condition

No additional compliance costs to establish or change record-keeping

Lack of adequate records would undermine confidence in the

Without adequate records there will be insufficient information for

Criteria	Avoiding unnecessary compliance costs	Promoting the confident and informed participation of businesses, investors, and consumers in the financial markets	Promoting and facilitating the development of fair, efficient and transparent financial markets
(status quo)	processes, but there may be other costs demonstrating compliance with new CoFI regime requirements. ✓✓	financial institutions' services being provided, as well as reduce the amount of information available for ongoing services and any disputes, meaning confident and informed participation of market participants is reduced. ✗	monitoring and enforcement. This will impair development of fair and transparent financial markets in terms of services offered by financial institutions. ✗

Consultation

On 20 July 2022, we released a consultation paper [Proposed standard conditions for financial institution licences](#), seeking feedback on our proposal to impose six standard conditions on financial institution licences.

We received 13 written submissions from a range of stakeholders including industry bodies, banks, insurers and one law firm. We have carefully considered the feedback we received, and the final conditions incorporate some changes that are a direct result of that feedback.

The final conditions can be found in the Schedule to this RIS. A summary report setting out the key themes raised in submissions and our response, as well as copies of the individual submissions, will be published on our website.

Conclusion and reasons

Having carefully considered regulatory and non-regulatory impacts, and submissions received in consultation, we have decided that option 1 (imposing conditions) in every case addresses the identified problems and will best achieve the stated objectives. The relevant reasoning has been set out under the consideration of each standard condition in this RIS.

For all six of the proposed standard conditions, option 2 would not achieve the stated objectives and would continue the current environment. The status quo would impose a disproportionate burden on FMA resources to supervise compliance with the CoFI regime. Consumers may also not necessarily have assurance that a financial institution has the capability and systems in place to treat them fairly when providing core banking and insurance services.

Our preferred options will add compliance costs in some cases, but these are not expected to be high, and we consider them to be necessary. The costs will be outweighed by the FMA having an improved ability to monitor and enforce compliance, contributing to well-regulated financial markets.

Imposing these six standard conditions strikes the best balance of stakeholder interests in achieving the desired objectives and supporting the development of robust systems to achieve fair treatment of consumers. The conditions will promote the confident and informed participation of businesses, investors and consumers in the financial markets and the development of fair, efficient and transparent financial markets. Most importantly, the conditions will encourage conduct aligned with the overarching fair conduct principle that financial institutions must treat consumers fairly.

Schedule

Final standard conditions

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. For example, the FMA must be satisfied that:

- any prescribed criteria are met
- your directors and senior managers are fit and proper persons
- you are capable of effectively performing the service
- there is no reason to believe you are likely to contravene your obligations
- you are registered on the Financial Service Providers Register.

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.

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 requirements for issue of a licence 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 entire business into run-off.

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

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.

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 requires you to be satisfied regarding the capability of your outsource providers. This is intended to ensure that consumers are treated fairly, even when you outsource a system or process necessary to the provision of your financial institution service.

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 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).

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.

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.

Explanatory note: This condition requires you to have suitable arrangements in place to be able to manage disruptions to your business. This is intended to provide consumers with the security of continuity of relevant services and associated products they receive from financial institutions, and to ensure that consumers are treated fairly during a business disruption.

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 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 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.

6. Record keeping

Condition: You must have systems and processes to maintain relevant records in relation to your financial institution service. You must provide us with the records we need to monitor your ongoing capability to effectively perform the financial institution service in accordance with the licensing criteria in section 396 of the FMC Act.

Your records:

- (a) must be kept in a form (which may be electronic) and manner that ensures the integrity of the information and enables it to be conveniently inspected and reviewed by us; and
- (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.

Explanatory note: This standard condition requires you to have systems and processes to maintain relevant records in relation to your financial institution service, and to have arrangements in place so that we can inspect your records without unnecessary delays.

Records will be relevant 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.

Your records should include (without limitation):

- your fair conduct programme
- records that demonstrate how you have established, implemented and maintained your fair conduct programme
- records that demonstrate how you have taken all reasonable steps to comply with your fair conduct programme
- records that demonstrate you have regularly reviewed your fair conduct programme, and that any deficiencies identified have been promptly remedied.

Inspection and review of records may be undertaken by us at your premises or elsewhere. For example, we may request electronic copies of records and review these at our offices. Your arrangements must ensure that, if reasonably practicable, your consumers consent to us viewing or obtaining your records.

Records may be kept by another person (including any outsource provider) on your behalf, providing you can retrieve the records if required (refer to standard condition 4 – outsourcing).

