

Briefing to the Incoming Minister

Financial Markets Authority

October 2020

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FINANCIAL MARKETS AUTHORITY
TE MANA TĀTAI HOKOHOKO
AOTEAROA - NEW ZEALAND

Executive summary

The Financial Markets Authority (FMA) is an independent Crown entity established in 2011 under the Financial Markets Authority Act. We work towards growing 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 risks to investors and the development of fair, efficient and transparent financial markets.

The FMA has responsibility for enforcing securities, financial reporting and company laws that apply to financial services and securities markets. We also regulate securities exchanges, financial advisers, frontline regulators, KiwiSaver and superannuation schemes. Together with the Reserve Bank of New Zealand we are responsible for overseeing designated settlement systems.

Since its establishment, the FMA has seen its mandate increase significantly. This began with the Financial Markets Conduct Act 2013 (FMC Act). The regulatory regime set out in the FMC Act came fully into force at the end of 2016. Changes to the regulatory regime for financial advisers through the Financial Services Legislation Amendment Act 2019 will now come into force in March 2021. A Bill considered by the 2017-20 Parliament, the Financial Markets (Conduct of Institutions) Amendment Bill (CoFI) would expand the FMA's remit to cover conduct regulation of banks, insurers and non-bank deposit takers. A select committee report on the Bill was published in August 2020.

The CoFI bill was drafted following the findings of the FMA/RBNZ Conduct and Culture reports into banks and life insurers, which were published in 2018 and 2019 respectively. These reports were carried out by the FMA and RBNZ in response to concerns about public confidence in financial institutions. Confidence in the sector was damaged by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in Australia, which ran from December 2017 to February 2019.

This briefing aims to provide you with an overview of this period of regulatory change, how the FMA is responding to COVID-19, and our focus on KiwiSaver. The impact of COVID-19 means that the FMA anticipates it will have to adjust and flex its work programmes and how it allocates resources over the next 12 to 18 months.

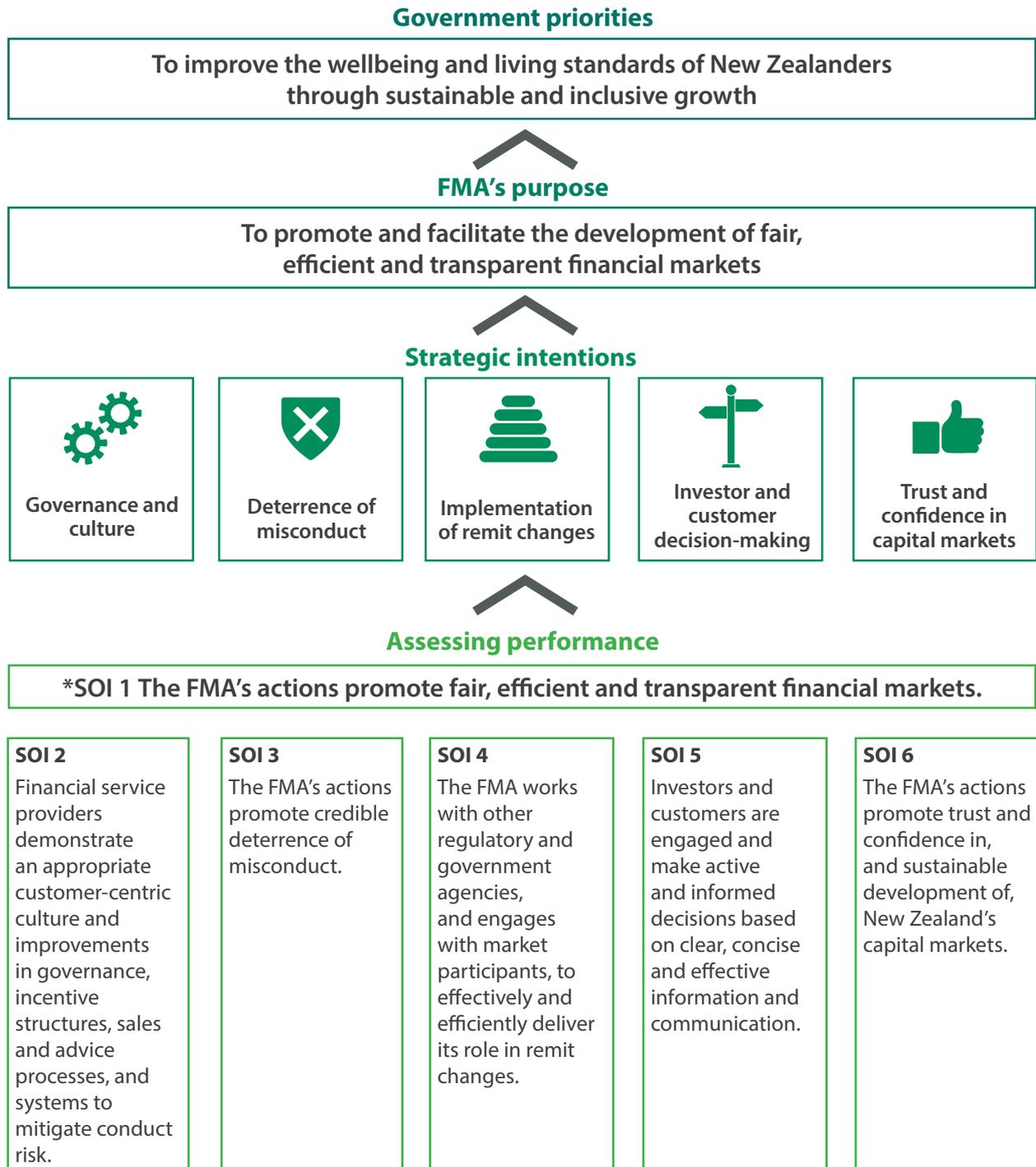
Our key reference documents, which we will provide you, are listed below. These are also available on our website www.fma.govt.nz

- 2020-2024 Statement of Intent
- 2020-21 Statement of Performance Expectations
- COVID-19 priorities
- 2019 Strategic Risk Outlook
- Annual Report 2019/20

Section 1: About the FMA

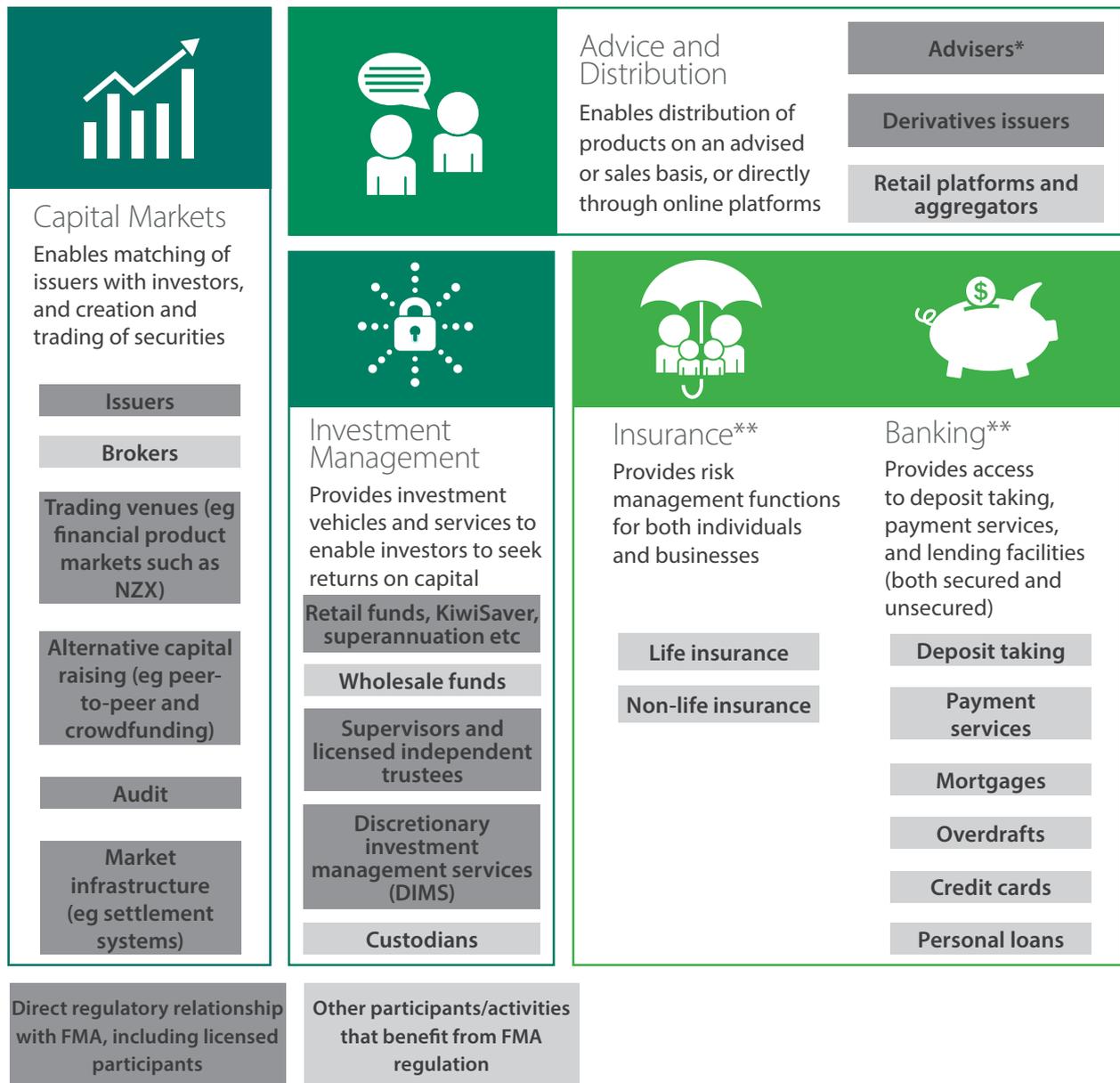
Established	Financial Markets Authority Act 2011
Status	Independent Crown Entity
Purpose	Promote and facilitate the development of fair, efficient and transparent financial markets.
Key legislation	<ul style="list-style-type: none"> • Financial Markets Authority Act 2011 • Financial Markets Conduct Act 2013 • Auditor Regulation Act 2011 • Financial Advisers Act 2008 • Financial Services Legislation Amendment Act 2019 • Financial Markets Supervisors Act 2011 • KiwiSaver Act 2006 (Part 4 and Schedule 1) • Anti-Money Laundering and Countering Financing of Terrorism Act 2009 • Financial Service Providers (Registration and Dispute Resolution) Act 2008 • Part 5C of the Reserve Bank of New Zealand Act 1989
Annual budget	\$48.5 million (2020/21)
Office locations	Auckland, Wellington
Staff	241 total staff, including 213 permanent staff. Staff are based in Auckland (72%) and Wellington (28%)
Board chair	Mark Todd
Chief executive	Rob Everett

Purpose



* Statement of Intent (SOI) measures

Who we regulate



* Authorised Financial Advisers (AFAs), Registered Financial Advisers (RFAs), Qualifying Financial Entity (QFE) advisers, and, under the new regime, Financial Advice Providers

** In scope of CoFI Bill – currently limited oversight

What do we do?

As New Zealand's principal conduct regulator of financial markets, we focus on protecting investors, customers and the integrity of markets through influencing how participants behave towards their customers, investors and each other.

Our activities include:

- **Policy and guidance** - We engage and provide information and guidance that assists firms and professionals to comply with the law. We keep under review the law and practices relating to financial markets and participants.
- **Information and resources** - We provide information and resources to help investors and customers make better investment and financial decisions.
- **Licensing** - We license a range of firms and professionals that meet the requirements in law.
- **Monitoring and supervision** - We monitor and assess conduct, compliance and competency of market participants.
- **Investigations and enforcement** - Through our investigation and enforcement activities we aim to raise standards of behaviour, deter misconduct, and hold to account those whose conduct harms the operation of our financial markets.
- **Environmental scanning** - We scan the environment to identify the most significant risks to and opportunities for promoting our priorities.

In delivering our functions we work and engage closely with the Government, fellow [Council of Financial Regulators](#) (CoFR) agencies, industry, investors and customers.

Regulatory approach

The following principles underpin our regulatory approach and guide our regulatory decisions.

- **Intelligence-led and harm-based:** we use intelligence to identify and assess the areas of greatest harm to investors, customers and financial markets, and the drivers of that harm.
- **Outcome-focused:** we focus our resources on where we have the greatest opportunity of achieving desired outcomes and reducing harm. We consider the most appropriate action for each situation, recognising the limits of our powers, and considering regulatory burden and potential unintended consequences of our actions.
- **Effective and efficient:** we regularly review the use of our resources to enhance our effectiveness and efficiency.
- **Consistent and transparent:** we clearly communicate our intentions and expectations to market participants, and explain our actions.
- **Flexible and responsive:** we have an operating model that enables us to adapt and respond quickly to changing market conditions. We seek and act on feedback, and learn from our experiences.
- **A systems view:** we promote an integrated and coordinated approach to financial markets regulation in New Zealand.

Planning and reporting framework

Strategic Risk Outlook

Medium term (3-5 year) view of regulatory risks and issues, strategic priorities that reflect our key focus areas, and the regulatory outcomes we seek to achieve.

Statement of Intent

Outlook and performance measures to show what success will look like over a four-year horizon for the FMA, market participants and investors.

Annual Corporate Plan

Outlines activities for the coming year that will promote our strategic priorities, address regulatory risks and deliver sector outcomes.

Statement of Performance Expectations

Annual performance targets and financial forecast showing how we intend to perform the services we receive funding for.

Annual Report

Yearly report of progress against the Statement of Intent, Statement of Performance Expectations, and overview of key activities and achievements.

Section 2: Current issues

Response to COVID-19

The COVID-19 pandemic has seriously impacted the global economy, with economic disruption expected to continue into 2021. The FMA's focus is to ensure the financial sector is well positioned to respond to these future challenges and support their customers.

In July 2020, the FMA published its immediate priorities for the COVID-19 response and recovery, outlining our priorities and focus for the remainder of 2020.

This includes:

- providing ongoing support to entities and working with firms to ensure they are prepared to address and adapt to change
- identifying and addressing misconduct, including scams and other predatory practices related to COVID-19
- swiftly responding to market disruptions and significant events
- setting out our expectations on good conduct, particularly in relation to the treatment of vulnerable customers
- highlighting risks and issues to investors and customers.

The FMA will focus on these key regulatory risks:

- Investor/customer confidence and decision making
- Fair, efficient and transparent capital markets
- Corporate and financial sector resilience
- Reintroduction of regulatory activities
- Treatment of customers and investors
- Scams and frauds

Vulnerable customers

As part of our wider conduct review, we have identified practices among firms in relation to customers in vulnerable circumstances as a key piece of work. We have established an internal working group overseeing the project and have, with input from CoFR, issued an information note asking firms to review their vulnerability practices in response to COVID-19.

We have recently engaged with a wide range of stakeholders from various sectors including Government, NGO's, industry bodies, industry, international regulators and CoFR to understand what further guidance is required and what format this guidance should take.

This project will provide sufficient support to firms to ensure consistency in developing and assessing their vulnerability practices. This, in turn, will feed into our supervisory monitoring.

NZX Technology Review

The FMA licenses the NZX as a market operator. Every year the FMA reports on whether the NZX is meeting its licence obligations.

This year's report noted issues with technical disruptions in April 2020, which sat outside the 2019 calendar year reporting period. The FMA announced it would review the underlying causes of the disruptions and consider the appropriateness of the NZX's response, as well as the NZX's strategic management and governance of technology. The FMA expects to publish this report before the end of the year.

In late August and early September, the NZX suffered a series of Distributed Denial of Service (DDOS) attacks. No NZX systems other than

its website were affected or compromised. However, the NZX halted trading as investors were not able to access its website where announcements by listed companies were published.

NZX was able to construct an alternative mechanism for making issuer announcements and trading has been uninterrupted since 28 August.

The FMA has widened its technology review to include additional assessments of NZX's cyber-security and 'multiple lines of defence' capability, including its crisis/risk management plans. The FMA has enlisted outside expertise for its technology review. A report on the review is anticipated before the end of the year.

KiwiSaver

KiwiSaver has become a significant part of New Zealanders' wealth. It plays a central role in funding New Zealanders' retirements and helping members into their first homes. As contributions and balances grow, KiwiSaver's importance to New Zealand's financial sector will only increase.

We have responsibilities under the KiwiSaver Act, our supervision framework, our investor capability role, and the Default Provider Panel. The scope of our KiwiSaver work influences providers, investors, supervisors, infrastructure, and partner agencies.

The FMA is focused on the value for money KiwiSaver providers offer their members, including the fees they charge. As part of this work, the FMA commissioned an independent report to test the extent to which providers were active or passive managers of their funds,

whether this aligned with any claims they made and how this compared to the fees being charged.

The FMA is engaging with those managers where fees were high and the level of active management was low. The FMA will also produce industry guidance covering expectations around KiwiSaver fees. There is a statutory requirement for fees not to be unreasonable.

Upcoming work on KiwiSaver

- KiwiSaver fees industry guidance on expectations.
- Reviewing online retirement projection calculators to see if further clarification of FMA expectations is required.
- Preparing guidance for KiwiSaver providers on how they disclose information about their investment styles and factors such as ESG.
- Conducting research to understand switching behaviour during COVID-19 and what impact communications and interventions from providers had on switching levels.
- Conducting a longitudinal study on whether the inclusion of forecast retirement balances influences member actions such as fund choice or contribution rates
- Developing a monitoring framework for default providers in line with new policy settings.

KiwiSaver default provider review

Providers of default KiwiSaver funds are reviewed every seven years, and the terms for the current nine providers are set to expire on 1 December 2021. MBIE and the Treasury reviewed the settings for default funds and following public

consultation in 2019 have set new requirements aimed at providing better outcomes for members of these funds and KiwiSaver in general. The FMA has engaged closely with MBIE and the Treasury throughout this process.

Ministers agreed to change the investment mandate of default funds from conservative to balanced, and exclude investments in illegal weapons and fossil fuel production. Default providers will have to maintain a responsible investment policy that is published on their website. The design of the appointment process is intended to put pressure on fees and ensure fees are simple and transparent. Following the new appointments, non-active choice default members of any provider that is not reappointed will be transferred to one of the appointed default providers.

A Request for Proposals has been released to the market with the aim of appointing new default providers by May 2021. The Minister for Commerce and the Minister of Finance must seek the advice of the FMA in deciding on the appointment of default providers in accordance with the KiwiSaver Act 2006.

The FMA is responsible for monitoring the appointed default providers' compliance with their appointment obligations, which include new minimum member engagement obligations at key life stages to help members make informed decisions about their retirement savings. Providers will also be required to comply with the instructions of Inland Revenue and the FMA during the transition process.

KiwiSaver figures at a glance

	2020	2017
KiwiSaver members	3.02 million (March 2020)	2.72 million (March 2017)
KiwiSaver assets under management	\$62 billion (March 2020)	\$40.7 billion (March 2017)
Total managed funds assets under management	\$210.5 billion (June 2020)	\$155.4 billion (June 2017)
KiwiSaver combined fees revenue (annual figure)	\$538 million (March 2020)	\$348.7 million (March 2017)
Members in default funds who haven't made an active choice	381,034 (March 2020)	446,534 (March 2017)

Response to the Conduct and Culture reviews of banks and life insurers

The FMA and RBNZ continue to receive six-monthly updates from banks and life insurers detailing the progress they are making on their plans responding to the conduct and culture reviews of banks and life insurers in 2018 and 2019. Updates are reviewed and feedback provided by the FMA and RBNZ.

The FMA continues to see an increase in self-disclosure from institutions on issues they identify as part of their internal reviews of products and systems. While it is positive that entities are focusing more on identifying issues, the continued identification of issues indicates that more work needs to be done to ensure issues are systematically identified and remediated.

The FMA is considering the application of Part 2 of the Financial Markets Conduct Act (the fair dealing provisions) in relation to these identified conduct issues.

Section 3: A period of regulatory change

New Zealand is going through a period of significant regulatory change in the financial sector. This section aims to provide further detail on the changes either proposed or being introduced.

Financial advice and financial service providers – regulatory reforms

The Financial Services Legislation Amendment Act 2019 (FSLAA) aims to improve access to quality financial advice for all New Zealanders. Anyone providing regulated financial advice to retail clients will need to operate under a licence granted by the FMA and a code of professional conduct, and will be subject to competence requirements that include a duty to give priority to clients' interests.

The new regime starts on 15 March 2021, and includes a two-year transitional period allowing existing advisers who do not meet the new competence standards to continue to provide their pre-transition services. The previous 29 June 2020 start date for the new regime was delayed due to COVID-19.

The FMA has invested considerable time and effort in preparing for the new regime, and continues to work closely with MBIE, the Companies Office and the Code Working Group in the spirit of cooperation to get the regulatory framework right.

This includes a significant focus on engaging with the sector through a range of education, communications, information management and consultation. Our immediate aims are to do what we can to ensure everyone providing a financial advice service is licensed in time, and to remove any regulatory uncertainty for this newly regulated population.

This reform will significantly increase the FMA's

remit over the financial advice sector.

Technology has played a major part in streamlining and simplifying applying for a licence; we are developing a fully online tailored system based on the complexity of the business to be licensed.

As at 26 October 2020, the FMA has approved 1,101 transitional licences that cover 7,729 financial advisers, 7,908 nominated representatives and 418 authorised bodies.

Industry engagement

FMA staff have worked closely with professional bodies such as Financial Advice NZ and the Financial Services Council to help develop and foster professional behaviour, culture and standards within the industry.

The engagement strategy has focused on effective consultation utilising a wide range of tools, workshops, seminars, speeches and information on our website.

The FMA is running a series of campaigns between now and the end of March to connect with those who have not yet applied for a licence.

The FMA continues to look to engage with single-adviser businesses to offer as much as it can to assist them in preparing for the new regime.

Consultation

A consultation on three different classes of financial advice provider licences and eight standard conditions closed in August 2020.

The three different classes of advice provider were designed to streamline the licence application and assessment criteria. This allows providers to choose a licence class that best

suits their circumstances. Standard licence conditions look to impose standards on all licence holders and cover issues such as record keeping, complaints processes and outsourcing arrangements.

50 submissions were received during the consultation. Issues raised included a proposed requirement for professional indemnity insurance and how different licence classes should be named.

The FMA expects to confirm standard conditions for licensing and its licence application guides in November.

Conduct of financial institutions regime

The Financial Markets (Conduct of Institutions) Amendment Bill is currently progressing through Parliament. The Bill will introduce conduct licensing of banks, insurers, and non-bank deposit-takers (NBDTs) by the FMA and require those institutions to have systems and processes in place to ensure they treat consumers fairly. This is the legislative response to the joint FMA-RBNZ Conduct and Culture Reviews of banks and life insurers conducted in 2018, which identified significant weaknesses in the governance and management of conduct risks and a lack of focus on good customer outcomes.

The Bill establishes a baseline standard of expected conduct for these institutions in legislation and addresses a current gap in New Zealand's regulatory settings. The new regime represents a significant expansion in FMA's remit by giving it direct oversight of the 'entity-level' conduct of these financial institutions and providing FMA with formal supervisory and enforcement tools to support good conduct that comes with licensing.

Although the number of banks, insurers and

NBDTs is relatively small (currently comprising 87 insurers, 27 banks, and 20 NBDTs), this includes a number of systemically important institutions. It will also require the FMA's focus as a conduct regulator to broaden from investors, to consumers, a significantly larger population.

As the Bill has not yet been passed by Parliament, the timeframes for implementation are uncertain. The funding increase from 2020/21 included a limited increase in funding to enable the FMA to begin to prepare for the new regime. It did not provide for oversight of the new regime. The FMA will need to seek additional funding to support implementation of the new regime in due course and this is understood by industry participants.

The FMA will also work closely with MBIE on the development of regulations needed to support the Bill.

Insurance contract law review

The previous Government completed a review of insurance contract law in 2019 and found the current law is outdated, and many insurance policies are complex and difficult to follow. In response, the previous Government committed to making changes to allow people to more easily understand their policies, place responsibility on insurers to ask consumers the right questions when processing new insurance policies, and address unfair contract terms.

The FMA will be responsible for monitoring and enforcing compliance with the new requirements.

The next step to progress these changes is the release of an exposure draft of the legislation. The FMA will stay engaged with MBIE on the development of this.

Climate-related financial disclosures

In October 2019, MBIE and MfE sought submissions to implement a climate related financial disclosures regime on a mandatory 'comply or explain' basis. These disclosures provide information to investors, lenders, insurers and others on the impact of climate change.

Cabinet determined to proceed with the regime in August 2020, and an announcement was made by the Minister for Climate Change on 15 September 2020. Disclosures would be required from 2023 at the earliest. New Zealand is the first country in the world to require this type of disclosure.

The entities covered by the regime will be:

- Listed issuers on the NZX
- Registered banks, credit unions, building societies and managers of registered schemes (e.g. KiwiSaver fund managers) with assets over \$1 billion
- Licensed insurers with assets over \$1 billion or premium or annual premium income over \$250m.

The FMA proactively engaged with MBIE and MfE on the development of the proposed new regime. It was considered that the FMA was best placed to be the agency responsible for monitoring, enforcing and reporting on the quality of these disclosures. The External Reporting Board will set the relevant standard or standards for the disclosures.

The additional funding put in place for the FMA from 2020/21 did not include any funding in relation to the FMA's role on climate-related financial disclosures. Funding for this work will be sought in a future budget bid.

Financial Market Infrastructures (FMI) Bill

Financial Market Infrastructures are infrastructures that enable the making of electronic payments and transactions involving financial products. They include payment systems, securities settlement systems and central counterparties.

The Bill establishes a new regulatory regime that will be jointly administered by the RBNZ and the FMA. It will provide the regulators with information-gathering and investigative powers in respect of FMIs, and a broader set of regulatory powers in relation to a special class of "designated" FMIs. This includes powers to oversee the rules of these FMIs, set legally binding standards, and manage their disruption or failure.

The Bill is currently before Parliament and will replace the current regulatory regime in Parts 5B and 5C of the Reserve Bank of New Zealand Act 1989.

Financial benchmark administrator licensing regime

The Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 establishes an opt-in licensing regime for administrators of financial benchmarks under Part 6 of the Financial Markets Conduct Act 2013. It is intended to be commenced by Order in Council towards the end of 2020 at the time the regulations setting eligibility criteria and licence conditions are expected to be made.

The FMA have worked closely with MBIE on the development of the legislation and licensing requirements. The requirements reflect what is required by the EU Benchmarks Regulations and

the IOSCO Principles for Financial Benchmarks in order for New Zealand's regulatory regime to be granted formal equivalence status under the EU Benchmarks Regulations.

It is anticipated that New Zealand Financial Markets Association (NZFMA), administrator of the Bank Bill Benchmark Rate (BKBM), will be the only administrator seeking a licence. BKBM is the main interest rate benchmark in New Zealand. It is used by market participants to calculate the amounts payable under various financial instruments.

Phase 2 of the Reserve Bank Act Review

Phase 2 is a wide-ranging review of the Reserve Bank's financial stability role and broader governance arrangements that is set to replace the Reserve Bank of New Zealand Act 1989 with two separate Acts – an 'Institutional Act' and a 'Deposit Takers Act'. New Zealand operates a "twin peaks" model of financial regulation where a number of entities are regulated and supervised by both the Reserve Bank and the FMA. The FMA has been engaging with the review throughout the policy development process, given the mutual regulation and interface between the prudential and conduct regulatory regimes. Key matters of interest to the FMA include:

- Treatment of finance companies under the proposed Deposit Takers Act.
- Reserve Bank information gathering and sharing powers, and its new functions to facilitate co-operation and co-ordination with other regulators including the FMA.
- Supervision and enforcement powers for the Reserve Bank, including aligned on-site inspection powers for the Reserve Bank and the FMA.

- Proposed integrated prudential-conduct executive accountability regime.
- Statutory recognition to the Council of Financial Regulators (CoFR). The function of CoFR is to facilitate co-operation and co-ordination between its members to support effective and responsive regulation of the financial system in New Zealand.

Certain details of the Deposit Takers Act, including deposit insurance, will have flow-on impacts on the FMC disclosure settings.

How is the FMA responding?

The Minister's Letter of Expectations to the FMA for 2020/21 set out that the FMA should be:

"Effectively planning and preparing for the significant organisational transformation challenge with upcoming changes to the FMA regulatory environment"

In September 2020, the FMA launched its Readiness Review. This review aims to identify what the FMA needs to do to get ready for its expanded remits and ensure the FMA has robust plans in place. An internal review similar to the Performance Improvement Framework adopted across the public sector has been completed. This work is currently being reviewed by two external reviewers. The outcome of the review will feed into our strategy setting process and business planning to ensure the FMA is well positioned for the expansion of its remit.

Section 4: System co-ordination and the Council of Financial Regulators

Many of the proposed changes to the regulatory system rely on different regulators such as the FMA, Reserve Bank of New Zealand and the Commerce Commission working effectively together. Government and financial services businesses expect regulators to co-ordinate, to remove duplication and minimise unnecessary regulatory burden.

This co-ordination occurs in two ways:

- Regulators and policymakers engaging with each other bi-laterally
- The Council of Financial Regulators (CoFR)

Members of CoFR are the Reserve Bank of New Zealand, the FMA, the Commerce Commission, Treasury and MBIE.

CoFR set out its vision last year, identifying and responding to issues of cross-agency relevance. A number of workstreams were also launched, with work ongoing. The FMA currently chairs two CoFR workstreams: Conduct and Governance, and FinTech.

Heads of CoFR agencies meet on a quarterly basis, although there were more frequent meetings during the onset of the COVID-19 pandemic. CoFR also provided regular reporting to Ministers on the financial system during COVID-19 Alert Levels 2, 3 and 4.

Effective financial markets and system regulation are central to the four capitals (natural/social/human/financial and physical capital) of the Treasury's living standard framework, and to the broader Government economic strategy. The FMA is committed to supporting New Zealand's transition to an integrated financial system that looks beyond financial returns and incorporates consideration of non-financial factors.

We are working closely with other CoFR agencies to better coordinate our work which will have the benefit of increasing efficiency across the system. The regulators are focused on ensuring industry has certainty about regulatory change, issues around barriers to entry, and ensuring an appropriate balance between economic growth against consumer protection. There will be a need to ensure new regulations are implemented well and the system as a whole is cohesive.

Section 5: FMA funding

PWC review of FMA efficiency and effectiveness

An external baseline funding review, and efficiency and effectiveness review of the FMA was commissioned by MBIE and carried out by PWC in late 2019. The report was published in January 2020 to inform consultation with industry on the FMA's funding and levies.

The PWC report noted that the FMA is a high-performing organisation that delivers a lot for the funding it receives, with good alignment between its activities and its main statutory objective. The report also noted that the FMA's financial resources were constrained, with multiple pressure points across the organisation.

The review did not consider the FMA's funding needs for the regulatory regime proposed under the Conduct of Financial Institutions Bill or in relation to the FMA's role on climate-related financial disclosures.

Outcome of the funding and levy review

A consultation with levy payers took place in February 2020.

49 submissions were received. Nearly all submissions expressed support for the review of the FMA's funding. The vast majority also agreed that the FMA's funding was under pressure and that the FMA required additional funding to continue to meet its responsibilities and the greater expectations placed upon it.

In April 2020 Cabinet agreed to increase the FMA's funding:

Financial year	Increase from 19/20 baseline	Total appropriation
2020/21	\$12.5 million	\$48.5 million
2021/22	\$17.5 million	\$53.5 million
2022/23 (and ongoing)	\$24.8 million	\$60.8 million

The original increase in funding was proposed over two years, however due to COVID-19, the increase will be phased in over three years.

Crown/levy split

When the FMA was established, the split of its operational funding (excluding the litigation fund) was approximately 30% Crown and 70% industry levies. An increase to the FMA's funding announced in 2016 meant that the split moved to 25% Crown and 75% levy.

By 2022/23, the percentage of the Crown/levy split will be 17% Crown and 83% levy funded.

Litigation fund

The FMA has a \$5 million per annum appropriation for its external litigation expenses from FY2020/21, with any unspent funds remaining in a central litigation fund. This is to enable the FMA to always be in a position to bring litigation in response to serious breaches of the law and misconduct.

The litigation fund was previously \$2 million per annum, with any unspent funds being returned to the Crown.

Section 6: Investor capability

The FMA works alongside other agencies including the Commission for Financial Capability (CFFC) to build investor capability. The FMA is currently engaging in the consultation process being run by the CFFC as that agency reviews and reinvigorates the sector-wide National Strategy for Financial Capability. The CFFC is seeking active sector engagement to ensure the strategy's success and the FMA will actively support this where we can in our engagement with the industry.

Our two agencies intend to align their investor capability work after the National Strategy work is relaunched to ensure consumer messages are consistent and activities are aligned to avoid duplication and extend total reach.

The FMA's investor capability strategy is currently being reviewed, but broadly encompasses two streams of work:

1: Capability building by communicating directly with investors.

Recent examples include:

World Investor Week (Early October 2020)

The FMA participated in this global campaign organised by the International Organization of Securities Commissions (IOSCO). FMA targeted messaging at first-time users of the Sharesies, Hatch and InvestNow platforms, who have seen significant growth since the beginning of the year. An [investment guide authored by Mary Holm](#) was also launched.

KiwiSaver statements campaign (June 2020)

A campaign to encourage New Zealanders to 'take a looksee' at their annual member statements. The campaign highlighted the new estimates of retirement savings balances at 65 that the FMA and CFFC had pushed to include in statements. A survey following the campaign showed that of those who saw the projections in their annual statement, 37% planned to increase their KiwiSaver contributions.

2: Capability building by working with policy makers and industry to ensure products are fit for purpose and working as intended.

Examples of this work include:

Default KiwiSaver provider tender – additional engagement requirements

Recommending to MBIE a suite of new engagement requirements that will see future default KiwiSaver members supported across the life of their KiwiSaver product. The requirements are informed by behavioural insights.

KiwiSaver fund choices

The current default KiwiSaver providers have an obligation to help their members make an active fund choice. Monitoring their efforts, sharing best practice, and publicly highlighting results in the KiwiSaver annual report saw active fund choices rise to a high of 52,000 members in 2019, up from an average of 24,000 members per year in the prior three years. 43,000 members made active fund choices in 2020 (affected by COVID-19 in the final quarter).

Section 7: Upcoming and ongoing enforcement matters

The FMA has a range of powers and remedies to respond to misconduct or potential harm with more flexibility than litigation. Civil or criminal proceedings remain an option under our legislation. We currently have a substantial pipeline of enforcement work.

Areas of particular focus in coming years are likely to include:

- Trading misconduct (eg insider trading and market manipulation)
- Misconduct on our perimeter (eg unlicensed entities undertaking regulated activity; entities registering on the Financial Service Providers Register without intending to offer services here; entities offering services into foreign jurisdictions illegally)
- Failure to meet AML/CFT requirements
- Misleading and deceptive conduct (ie enforcing fair dealing provisions of the Financial Markets Conduct Act 2013)

Key enforcement cases

- December 2020 – Former Authorised Financial Adviser Barry Kloogh to appeal his sentence for running a Ponzi scheme at the High Court in Dunedin. The FMA assisted the SFO in its investigation. Kloogh was sentenced to eight years and 10 months imprisonment in July 2020. Kloogh stole more than \$15 million from his clients.

Other key cases

- June 2020 – The FMA filed civil High Court proceedings against CLSA Premium New Zealand Limited (formerly KVB Kunlun)

for alleged breaches of the Anti-Money Laundering and Countering Financing of Terrorism Act. In September 2020, the FMA imposed conditions on CLSA that prevent the firm from making an offer to, or receiving further funds from, retail investors.

- June 2020 – The FMA filed High Court charges against ANZ Bank alleging the bank charged some customers for credit card repayment insurance policies that offered those customers no cover.
- December 2019 – The FMA filed civil High Court proceedings against CBL Corporation Limited, its six directors and chief financial officer alleging multiple breaches of the Financial Markets Conduct Act. Two separate class actions have been filed in relation to CBL, and CBL’s liquidators have also commenced civil proceedings. The Serious Fraud Office laid criminal charges of theft by a person in a special relationship, obtaining by deception and false accounting against the former chief executive and another individual in December 2019. The civil cases are continuing through case management in the Auckland High Court

Ongoing investigations

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Section 8: Calendar

The following dates are indicative and relate to key FMA reports or guidance

November	<ul style="list-style-type: none"> ● Consultation on KiwiSaver unreasonable fees guidance ● FMA confirm financial adviser standard licence conditions ● FMA Annual Report ● Anti-Money Laundering monitoring report ● Audit Quality Review report
December	<ul style="list-style-type: none"> ● NZX Technology Review due by the end of the year
Q1 2021	<ul style="list-style-type: none"> ● Half-year report to the Minister ● New financial advice regime begins on 15 March ● Review of MIS liquidity and stress-testing practices ● Refresh of Guide to Good Conduct

Section 9: FMA Board

FMA Board

Mark Todd, Chair

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 and chaired Mint Asset Management. Mark was also the Customer Advocate at Westpac New Zealand.

Current Term expires May 2024

Sue Chetwin

Sue has 12 years' experience working for and on behalf of consumers and is the former CEO of Consumer New Zealand. She is a member of the Law Society Independent Steering Group Committee. Sue edited the Sunday News, Sunday Star Times and Herald on Sunday during a 25 year career in journalism.

Current term ends September 2022.

Prasanna Gai

Prasanna is Professor of Macroeconomics at the University of Auckland. He brings over 20 years of experience in financial market issues from academic and high-level policy roles. Prasanna was Special Adviser to the Governor of the Bank of Canada, Senior Adviser at the Bank of England, and Member of the Advisory Scientific Committee of the European Systemic Risk Board.

Current term ends April 2023.

Elizabeth Longworth

Elizabeth has over 20 years' commercial legal experience and international governance expertise. As the Executive Director of UNESCO, Paris, Elizabeth had strategic and oversight responsibilities across the organisation. She was the Director of the UN office for disaster risk reduction, Geneva. Previous roles include Sector Director at Industry New Zealand and In-house Counsel at the Reserve Bank.

Current term expires July 2023.

Ainsley McLaren

Ainsley has over 25 years of broad financial services experience including investment management, fixed interest and financial markets. Her experience includes various senior roles at ASB Group Limited in both investment management and financial markets. Ainsley is currently leading clients and communications at Harbour Asset Management.

Current term expires September 2021

Vanessa Stoddart

Vanessa is currently an Independent Director for NZ Refinery and OneFortyOne Plantations Holdings Pty Limited, and Deputy Chair of King's College. Prior to her governance career Vanessa was Group General Manager of Technical Operations and People at Air New Zealand and Chief Executive Packaging Australia for Carter Holt Harvey – having started her career in the legal profession.

Current term expires June 2021.

Christopher Swasbrook

Christopher has more than 25 years' experience in stockbroking and funds management. He is currently the Managing Director of Elevation Capital Management Limited, Chairman of Bethunes Investments Limited, a Member of NZ Markets Disciplinary Tribunal (since 2013) and a Member of the NZX Listing Sub-Committee (since 2008).

Current term expires June 2024

Tia Greenaway

Future director – observing

Tia Greenaway is a Principal Analyst at the Climate Change Commission and has broad experience in the Māori sector due to her various roles on Trust Boards and as an adviser. Tia has a Masters in Professional Accounting, and is a member of Chartered Accountants Australia and New Zealand.

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