



Memorandum of Understanding between the Financial Markets Authority and the New Zealand Financial Markets Association

2016

Memorandum of Understanding between the parties dated

6th October

2016

between (1) the **Financial Markets Authority** (the FMA)
and (2) the **New Zealand Financial Markets Association**
(the NZFMA)

1 Background

- A. The FMA is an independent Crown entity established under section 6 of the Financial Markets Authority Act 2011 (FMA Act). The FMA's main objective, as set out in section 8 of the FMA Act, is to promote and facilitate the development of fair, efficient, and transparent financial markets.
- B. The FMA has statutory functions under the FMA Act and the Acts listed in Schedule 1 of that Act. The FMA enforces securities, financial reporting, and company law as they apply to financial services and securities markets.
- C. The NZFMA is an incorporated society that is an industry body for wholesale banking and financial markets. NZFMA represents the interests of its members in over-the-counter markets, including through self-regulation, advocating for the industry, education, and developing professional standards for financial markets organisations and their staff.
- D. NZFMA manages, calculates and distributes New Zealand official market reference rates and pricing services.

2 Purpose

- 2.1 The purpose of this memorandum is to record how the FMA and the NZFMA will work together on matters of common interest, and particularly how the parties will share information.

3 Roles and responsibilities in areas of common interest

- 3.1 The FMA and the NZFMA recognise that both parties have a common interest in promoting and facilitating the development of fair, efficient, and transparent financial markets, and particularly wholesale markets.
- 3.2 The FMA's main interest in the NZFMA's functions and activities is in carrying out the FMA's functions as a conduct regulator.
- 3.3 An intended consequence of the engagement between the FMA and the NZFMA is to provide for an exchange of information about the NZFMA's formulation and design of

relevant operating rules and principles for the generation of benchmark rates so these can better achieve the joint objective of promoting and facilitating the development of fair, efficient and transparent markets.

4 Principles

- 4.1 The FMA and the NZFMA will work together in a spirit of cooperation.
- 4.2 The FMA and the NZFMA anticipate that cooperation will be primarily achieved through on-going information-sharing, discussing concerns and understanding each other's approach to issues of common concern.
- 4.3 The FMA and the NZFMA will conduct themselves in relation to all matters arising out of this memorandum in an open, honest and timely manner, and respond promptly to requests by the other.

5 Information to be shared

- 5.1 The parties will keep each other informed, and exchange information and views, in areas relevant to each other's functions, subject in all cases to clauses 5.5 and 8 of this memorandum.
- 5.2 The NZFMA will inform the FMA:
 - (a) when recommendations are being considered by the appropriate Committees in relation to the benchmarks (including changes to calculation methods, governance and other matters);
 - (b) about all suspected breaches of the practice standards detailed in the relevant market Operating Rules & Principles tabled for consideration by the Benchmark Oversight Committee. NZFMA will also provide the FMA with information about any resolution of the issue by the Committee;
 - (c) about all instances of suspected manipulation of a benchmark tabled for consideration by the Benchmark Oversight Committee, and any views of the NZFMA or its Committees in relation to that suspected manipulation.
- 5.3 The NZFMA will share trading data requested by the FMA within 5 working days, to the extent that the information is captured and stored by the NZFMA.
- 5.4 The FMA will:
 - 5.4.1 use its best endeavours to meet with the Benchmark Oversight Committee at least quarterly.
 - 5.4.2 notify the NZFMA of any complaint that relates to its Benchmark Administration responsibilities, unless the FMA considers it inappropriate to do so.

5.4.3 make public the existence and the terms of this MOU on its website.

5.5 NZFMA acknowledges that the FMA's ability to share information with NZFMA described in section 59(3) of the FMA Act is limited by the provisions of that section which prohibits the FMA from publishing or disclosing information or documents that are supplied or disclosed to, or obtained by, the FMA under the FMA Act or any financial markets legislation (as defined by the FMA Act) unless the publication or disclosure of the information or document is to certain persons (as set out in section 59(3) of the FMA Act). Such persons include a person who the FMA is satisfied has a proper interest in receiving the information or document. The FMA will therefore only disclose or supply other information to the NZFMA under this memorandum where the disclosure is permitted under section 59 of the FMA Act. Furthermore, the FMA may, by written notice, impose any conditions on the NZFMA in relation to the publication, disclosure, or use of information or documents provided to it by the FMA in accordance with section 60 of the FMA Act.

5.6 This memorandum may be made available on both the FMA's and the NZFMA's websites.

6 Meetings

6.1 The FMA and the NZFMA will meet quarterly to discuss issues of common interest and concern, and as required to give effect to the requirements of this memorandum.

6.2 To facilitate information flow, the NZFMA may from time to time invite the FMA to meet with its board and/or any committee and/or attend any meetings of those bodies as an observer.

6.3 The FMA may from time to time request additional meetings with such bodies and/or request that it attends meetings of those bodies as an observer.

6.4 The NZFMA will give the FMA appropriate notice of the details of these meetings and the FMA will give notice to the NZFMA of its intention to attend.

7 Contact persons

7.1 The primary points of contact between the FMA and the NZFMA will be the Head of Conduct in the FMA and the Chief Executive of the NZFMA or such other person as may be notified by either party from time to time.

8 Maintaining confidentiality

8.1 For the purposes of this memorandum, "Confidential Information" includes all information relating to any engagement between the parties pursuant to this memorandum and all information provided by a party in accordance with this memorandum, other than information that:

- (a) is in or comes into the public domain through no fault of the relevant party or any of its officers, employees, agents or contractors;

- (b) was and can be demonstrated to have been, lawfully in the relevant party's possession or known to the relevant party before its disclosure; or
- (c) is disclosed to the relevant party by a third party having no obligation of confidence in relation to that information.

8.2 Each party agrees:

- (a) to keep confidential all Confidential Information; and
- (b) to use the Confidential Information solely for the purposes of performing its functions.

8.3 The parties will abide by all relevant privacy obligations and legislation and not disclose any personal information which it is not permitted to disclose to the other party, or which the disclosure of, would amount to a breach of any privacy obligations or legislation or governing rules that apply to that party.

8.4 Nothing in this memorandum will prevent the disclosure of information that is required or permitted to be disclosed by law. Where either party is required by law to disclose information obtained under this memorandum or intends to disclose information obtained under this memorandum which it is expressly permitted by statute to disclose in the particular circumstances, the disclosing party will notify the other party in writing as soon as practicable.

9 MOU not binding

9.1 This MOU is intended to be facilitative only and to assist the parties in the performance of their respective functions, and is not intended to create legally enforceable rights or obligations.

9.2 Nothing in this MOU is intended to limit or affect the independence of either body.

9.3 Nothing in this MOU limits or affects the statutory powers of the FMA or the FMA's ability to perform its functions and act where necessary in the public interest.

10 Term of memorandum

10.1 This memorandum remains effective unless terminated by either party (by giving 30 days written notice) or by mutual consent.

10.2 All confidentiality commitments between the parties will remain in effect despite any termination of this memorandum.

10.3 This memorandum may be amended at any time during its term by written agreement between the two parties.

11 Issue resolution

- 11.1 Both parties will use their best endeavours to resolve any issue in a timely manner and in the way that best supports the delivery of the parties' objectives.
- 11.2 In the event of issues arising between the parties, the parties will work together to resolve them as quickly as possible by mutual agreement.

Signatures



Robert Everett
Chief Executive
Financial Markets Authority



Paul Atmore
Chief Executive
New Zealand Financial Markets Association