

January 2017

Submissions Report

Guide to the FMA's View of Conduct

A summary of submissions on the draft Guide to the FMA's View of Conduct. Individual submission papers are appended.

www.fma.govt.nz

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Executive summary

We would like to thank all 29 submitters for their feedback on the Guide to the FMA's View of Conduct (the guide). We received 27 written and two verbal submissions. They provided an excellent insight into the New Zealand financial services industry's views on conduct in general and in particular its regulation in New Zealand. We acknowledge the points raised and the effort put into the submissions.

This document contains a summary of the key themes raised in submissions, with individual written submission papers appended. Not all submissions are included as some were confidential. The themes are:

1. How respondents say they intend to use the guide
2. Querying whether the guide introduces new obligations (or stating that it does)
3. The market is a better determinant of whether products and services meet customer need
4. A bad outcome is not the same as bad conduct
5. Approach to willing compliers should be signalled
6. Too much prescription (and/or not enough)
7. What is reasonable to discuss or disclose about fees and costs
8. Conduct toward wholesale vs. retail customers.
9. Other suggestions.

The following summaries of each theme include our responses to them.

Feedback themes

How respondents say they intend to use the guide

Submitters to the guide said they intended to use it in various ways, including:

- Evaluating the current approach to, standards for, and performance relative to conduct expectations (the organisation's own expectations and the FMA's expectations)
- An input to culture and conduct framework design
- Challenging existing thinking, or assisting them to frame new discussions, on culture
- Informing reviews of operations
- Helpful not only to own business, but to developing monitoring plans and risk assessments for the entities supervised by the business (in particular, their governance and culture)
- Input to training staff and risk-assessment of new hires
- Good addition to global discussion of conduct risk
- Focus on results, customers and the clarity and logic of the good conduct profile framework. Good principles for businesses to learn from and adopt.

Querying whether the guide introduces new obligations (or stating that it does)

Conduct is at the core of the Financial Markets Conduct Act (FMC Act). The FMC Act sets new standards for conduct. It adds weight to the FMA's existing statutory mandate to monitor conduct and compliance with financial markets legislation in New Zealand's financial markets.

We attempted to be very clear in the draft guide, and have made more explicit in the final document, that the guide does not create, replace, or even supplement, existing legal obligations. It signals how we will use conduct as a 'lens' for looking at how providers behave when meeting their existing obligations to their customers. And for shaping how we interact with them in the general course of business and if we encounter poor conduct.

We think this transparency is useful for the industry, and note that the guide is actually a response to a request from smaller players in the industry for precisely this insight.

The market is a better determinant of whether products and services meet customer need

We find this view worryingly complacent about the amount of harm that can be caused to customers before the market eventually 'solves' the issue. The harm suffered by investors in finance companies, or more recently Youi customers, are relevant examples.

Our view is that signalling a view of conduct increases the ability of a market to determine what services and products are appropriate. It does this primarily by increasing the ability for customers (the constituents of the market) to ask

this question of their providers, critically evaluate the response, and avoid whatever seems inappropriate. Ideally, they would also share that evaluation with others, including the FMA.

A bad outcome is not the same as bad conduct

A bad outcome, which may be driven by market movements or how a product performs in a certain time period, is not the same as bad conduct.

We agree this is an important distinction and have included it in the guide. A good outcome is not signified only by positive returns (in a product sense). It is also signified by returns falling within a range of potential outcomes appropriate to the product that have been clearly explained to, and understood by, the customer. We note the reverse also applies – a good result is not necessarily the result of good conduct.

Approach to willing compliers should be signalled

We do not think it is wise or even possible to signal in advance how patterns of willing compliance would shape our engagement, if at all. But it's common sense that a pattern of defensiveness and defaulting to black-letter law will require a greater amount of a different type of regulatory attention than does open, candid engagement. Particularly if a customer issue is, or becomes, part of the context of the engagement.

Too much prescription (and/or not enough)

The guide states that conduct is particular to each business or person and to their circumstances. We appreciate that some people have already thought deeply about this, and others are still coming to grips with it. In either circumstance, a regulator cannot and should not attempt to prescribe appropriate conduct for any business.

The guide clarifies that it is not intended as a checklist or manual. We expect the guide will prompt regulated businesses and individuals to examine how they approach good conduct, to ensure they consistently deliver good outcomes to their customers. It is something they are (and should be) doing anyway, as part of standard business procedure.

We will provide examples, within our annual Conduct Outcomes Review and elsewhere as appropriate, of both good and poor customer outcomes as a result of their provider's conduct, and what involvement we have had. While this may add value for providers and customers, it is not intended as guidance.

The true test of any provider's approach to conduct will not be how much it sounds like what is in the guide. It will be whether they can show customers, and the FMA if necessary, that what they do is consistently effective at producing good customer outcomes.

What is reasonable to discuss or disclose about fees and costs

A number of views were expressed in submissions about what is reasonable to discuss or disclose about fees and costs. These can be summarised as:

- 'Reasonable cost' means what is reasonable relative to the market, not relative to the cost to the provider of the service or product
- Other than for KiwiSaver, explaining why fees and costs are reasonable goes beyond the legislative remit

- The key test of reasonableness for customers is whether fees and costs are transparent. It is not necessarily appropriate or helpful for customers to understand how fees are calculated or whether that is reasonable.

As is appropriate, the guide does not present a view on what is a reasonable fee to charge. Instead it focuses (as does the relevant legislation) on what it is reasonable to disclose about fees. Specifically, the guide states that providers should be able to explain why their fees and costs are reasonable, including the reasonableness of how they are calculated.

We think this is just common sense. Especially when we also strongly encourage consumers to ask providers about their fees and critically evaluate their provider's response - including their willingness to discuss fees.

Providers who hold the views expressed above are of course free to share those views with their customers. But we think that may be a more uncomfortable discussion to have with a customer than it is to express in a consultation submission.

Conduct toward wholesale vs retail customers

We agree that obligations owed to wholesale customers may be different to those owed to retail customers, and have updated the guide to reflect this. But we have also noted that wholesale customers have the same right to expect good conduct from their providers as retail customers.

We also note that in the 2016/17 financial year we have initiated work focussed on identifying risks and potential harms to clients within the wholesale markets, and better understanding wholesale market conduct more generally. Further guidance may arise from this work.

Other suggestions

In response to other submissions the FMA will:

- publish consumer-focussed material setting out what conduct they are entitled to expect from their financial services providers
- continue to share and discuss the guide with other regulators (New Zealand and offshore regulators)
- integrate the guide with our programme of formal and informal engagement with industry and other stakeholders
- acknowledge within the guide the relevance to, and alignment with, the work of other frontline regulators (such as good governance principles developed by both the NZX and Institute of Directors)
- acknowledge within the guide the value of customer metrics, such as mystery shopping and customer satisfaction surveys, to evaluating conduct
- keep the guide under review to ensure it remains fit for purpose and appropriate for New Zealand financial markets. This includes digital client interactions and changes such as robo-advice.

Appendices

- AMP Financial Services NZ
- ANZ
- ASB
- Auckland Financial NZ Limited
- BNZ
- CFA Society and INFINZ Joint Advocacy Group
- Chapman Tripp
- Craigs Investment Partners
- Financial Dispute Resolution Service
- Financial Services Council
- First NZ Capital
- Foresight Financial Planning
- Forsyth Barr
- Guardian Trust - Corporate Trust
- IG Markets Limited
- Institute of Directors
- Insurance Council of New Zealand
- KPMG
- Mercer NZ
- Milford Asset Management
- New Zealand Bankers' Association
- New Zealand Law Society
- NZX
- Public Trust
- Sovereign Assurance Company Limited
- Trustees Executors Limited
- Westpac

Feedback: A guide to the FMA's view of conduct

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: A guide to the FMA's view of conduct' and your entity name in the subject line. Thank you. **Submissions close on Monday 31 October 2016.**

Date: 28 October 2016

Number of pages: 3

Name of submitter:

Company or entity: AMP Financial Services NZ

Organisation type: QFE (two: AMP Services (NZ) Limited and Spicers Portfolio Management Limited), FMCA licensed provider (AMP Wealth Management New Zealand Limited), DIMS licensed provider (AMP Services (NZ) Limited) and licensed insurer (two: AMP Life Limited and The National Mutual Life Association of Australasia Limited)

Contact name (if different):

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you eg during monitoring and supervision.

Questions:	Comment	Recommendations
1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?	The guidance seems to be, at a high level, aligned with global trends and the contemporary topic of conduct generally.	It would be useful for the guide to provide a 'related documents' or 'further reading' page after the glossary to assist market participants to access material that the FMA sees as particularly on point or influenced FMA's thinking (if applicable) in the preparation of the FMA's guidance.
2. Is the guidance useful for your business, sector and industry? How might you use it?	The guidance is useful in its current form. However, we think its usefulness could be enhanced. It provides good high level/principles direction and will be useful as a starting point for design of systems that could be used to channel, foster and measure conduct but is less helpful on real examples that would be useful to market participants as providing instances where FMA has identified good, or deficient, conduct.	Some market participants have fewer resources, or less capability than others, to consider how they might adapt their operational frameworks to meet a highly principles-based guidance document. We believe the guidance is likely to have superior adoption if it provides clear and relevant examples of both good and poor conduct FMA has observed (or if not observed expects to see or not see).

Questions:	Comment	Recommendations
<p>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</p>	<p>The guide is useful in that it provides a lot of areas identified (on pp 8 and 9) as "our focus". So, yes, in terms of themes and focus, but the guidance provides less so in respect of the particular sorts of actions/processes, etc. FMA expects to see.</p>	<p>More detail on these points would improve the guidance usefulness. We consider that, examples of where organisations have been found to be market-leading in specific areas and the processes and systems they have in place to achieve that would really help. Similarly, examples of where organisations have been found wanting, with real life anonymised examples would be similarly useful.</p> <p>It would be useful for the note to provide commentary on how poor conduct FMA observes will be investigated by it, assessed (in a principles based framework) and enforced.</p>
<p>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</p>	<p>Yes. The general nature of the guidance provides inherent flexibility.</p>	<p>One improvement to consider is to join the guidance to checklists and tools that could be used to create a "conduct scorecard" or similar dashboard type tools. Whilst we are not presuming that the checklists are an end point, and appreciate that we cannot expect FMA to provide examples that would have universal market application, we nevertheless think this would provide some greater insight into FMAs expectations. Our concern is that in the absence of more tangible tools only the willing compliers may take the next step and have measurement systems in place. Accordingly it would be useful if the FMA's guide provided some sample toolkits for businesses to use. In our view that would make it more likely that the guide will be practically applied.</p> <p>We are concerned that some of FMA's expectations are not realistic, particularly in larger organisations. We consider it unlikely that <i>all staff are comfortable raising concerns with the board and senior management</i> (page 11). In our view there is staff in any organisation that would be uncomfortable having any discussion at all with such groups – it is not reasonable to expect a market participant to achieve this standard. Here a non-absolute adjective would be more appropriate.</p>
<p>5. Is there anything further you would like the guidance to cover?</p>	<p>The "glossary and useful concepts" outlines many concepts (including "compliance assurance programme", "Control environment", "Governing guides", "internal audit, "Key risk indicators", "Net promoter score", and Risk and control self-assessment and attestations) but then does not make any mention at</p>	<p>The guide should provide conceptual and practical examples of where the concepts, processes and mechanisms identified as <i>useful concepts</i> (page 13) could be deployed to aid good conduct. FMA clearly considers these to be important, to have included them in the glossary; therefore, we think it would be useful for these to be talked to in the guide, illustrating how they will form part of a programme that will drive good conduct. For example, the guide might be amended to include a statement in the main document about a company's <i>risk and control self-assessment and attestations</i> noting it might be a baseline component of a <i>compliance assurance programme</i> (itself a glossary</p>

Questions:	Comment	Recommendations
	all of these practices/tools, etc. anywhere within the paper itself.	term that is not used in the main document). Similarly <i>net promoter score</i> now is a very common tool for measuring customer advocacy (and when used appropriately enables inferences to be drawn concerning treatment of customers. However it too has no mention within the body of the document for where it may be appropriately deployed in order to measure good conduct customer outcomes.

Feedback summary – if you wish to highlight anything in particular

Conduct is a difficult area insofar as, as noted in the guide, “[it] is particular to each business” and “a regulator...should not...prescribe how that happens”. This raises concerns that enforcement of what may be assessed by FMA as poor conduct, if it’s technically legal, may not be practicable? If FMA does not have concerns in that regard (i.e. that is it is confident of its enforcement capabilities in this space) being explicit on this point may be desirable.

Those participants who are willing to comply only where strict legal requirements or enforcement is a potential outcome may take the guidance less seriously than they should. That risks the guide being taken seriously mainly by willing compliers and being potentially ignored by those who the FMA is likely most interested in effecting behavioural change. To mitigate this potential outcome the FMA could provide indicators of the positive benefits regarding how FMA engages with those that commit resources to building, maintaining and demonstrating good culture versus those who continue with a more black-and-white/legalistic tick-box approach to compliance and have less regard to culture. Highlighting this distinction in the guidance note may encourage more participants to increase their efforts.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.



31 October 2016

Financial Markets Authority
1 Gray Street
Wellington 6012

By email: consultation@fma.govt.nz

To whom it may concern,

Submission on the consultation: A guide to the FMA's view of conduct

Thank you for the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on the FMA's proposed Conduct Guide (**Conduct Guidance**).

ANZ supports publication of the Conduct Guidance. It is a helpful publication from FMA in light of the global focus on 'conduct risk' as it sets out FMA's general view of its expectations of certain market participants' behaviour.

ANZ has several key messages in response to the Conduct Guidance, set out in more detail in Appendix I:

Key messages

- 1. ANZ supports principles based Conduct Guidance, as opposed to prescriptive. ANZ suggests FMA make it clearer what the 'principles of good conduct' are**
- 2. ANZ submits that the guidance should clearly articulate that it does not create new legal obligations or set out FMA's interpretation of specific legislative obligations, rather it supports FMA's view of how licenced participants behave when discharging legal obligations owed to retail customers**
- 3. ANZ considers that the Conduct Guidance should clearly recognise that obligations owed to retail customers may be different than those owed to wholesale customers**

ANZ's responses to FMA's specific questions about the Conduct Guidance consultation are set out in Appendix II.

About ANZ

ANZ is the largest financial institution in New Zealand. The ANZ group comprises brands such as ANZ, UDC Finance, ANZ Investments New Zealand, OnePath Life, ANZ New Zealand Securities and Bonus Bonds.

ANZ offers a full range of financial products and services including a significant range of financial advisory services, personal banking, institutional banking and wealth management products and services. ANZ and its subsidiaries will hold a variety of market services licences under the FMC Act regime.

Appendix 1 – Key Messages

1. ANZ supports principles based Conduct Guidance, as opposed to prescriptive. ANZ suggests FMA make it clearer what the 'principles of good conduct' are

As noted, ANZ considers the Conduct Guidance is a helpful publication from FMA setting out its general view of its expectations of certain market participants' behaviour. ANZ also supports the Conduct Guidance being principles based, as opposed to prescriptive. This is particularly important because, as FMA has noted, conduct is particular to each businesses or person and a regulator cannot, and should not, prescribe how that happens.

Rather, as a regulator, FMA has a mandate to issue guidance and in the Conduct Guidance, FMA sets out what it considers the core principle of good conduct is - being a consideration of whether the financial service providers FMA regulates have the interests of their customers at their heart. In this context, ANZ notes its view that the Financial Markets Conduct Act gives FMA a mandate to focus on conduct that is limited to the application of Part 2 and its articulation of fair dealing requirements. This is distinct from other legislation, such as the impending amendments to the Financial Advisers Act, which may give rise to other broader conduct considerations, including financial service providers needing to meet any relevant legal test of having the interests of their customers at their heart.

FMA further clarify what good conduct is by referring to 'focusing on' and achieving 'good customer outcomes'. ANZ also suggests that the test of good conduct being 'good customer outcomes' is too subjective and too limited (under **"What is good conduct"** on page 6). What is good customer outcome must be considered relative to an appropriate point in time and its effect (e.g. the point at which a financial product was sold to that customer. Providers cannot bear responsibility for a significant change in customers' circumstances that there was no reasonably foreseeable evidence of). ANZ's view is that good conduct, while it requires a focus on customers, means acting fairly and doing what you say you will do. To this end, ANZ considers that how a provider achieves 'acting in the customer's interest' is only one element of the required action and that the customer also bears some responsibility (see bullet point 2 under *How the provider does it* on page 6). That is, a consideration of whether alignment between providers' and customers' interests occurred should not be limited solely to the 'provider actually acted in the customer's interest', provided that the customer has made an informed choice. For example, a customer may choose to proceed with a transaction to purchase an unsuitable product from a provider on a fully informed basis, simply because they wish to. ANZ suggests that that the references to alignment are deleted, and instead the relevant considerations for providers are simply:

- that the provider has made any arrangements with, and effect of any arrangements with, associated parties clearly transparent
- that the provider has appropriate policies, systems and processes to ensure good conduct, from the leadership down
- that the provider will act with integrity, fulfil their responsibilities and obligations, and act honestly and fairly.

In line with these comments, ANZ suggests that the reference to 'giving customers what they want to help the business succeed' under "What this means for boards and senior management" on page 9 is amended to 'giving customers what they want on a fully informed (i.e. fair and transparent) basis'. Otherwise the statement is contradictory to the above position (customer/provider alignment) on the basis that a customer can deliberately make a fully informed choice even where a provider does not believe it is in the customer's interest.

Finally, ANZ notes that the Conduct Guidance often refers to 'principles of good conduct' despite neither the Conduct Guidance nor the law expressly stating what these are. ANZ assumes that the five areas set out in the 'good conduct profile framework' (on page 7) are the principles and suggests these references are more clearly linked together. This is important so that providers can understand whether these are principles that they should assess their activities against and need to be in a position to address when questioned by FMA or they should making disclosure against in annual reporting, or both. If relevant to annual reporting, ANZ suggests it should be made clear that these principles are guidance providers might want to consider when reporting on conduct, but are not prescriptive categories that require statements to be included covering each area.

2. ANZ submits that the guidance should clearly articulate that it does not create new or replace existing legal obligations or set out FMA's interpretation of specific legislative obligations, rather it supports FMA's view of how licensed participants behave when discharging legal obligations owed to retail customers

On the basis of discussions with FMA officials, ANZ understands that the FMA's intention behind the guidance note is to explain how FMA intends to examine the behaviour of firms as part of FMA's risk assessment and monitoring framework and engagement programme. ANZ further understands that the guidance is not intended to replace or supplement legislative obligations, rather it signals FMA's intention to look at the extent to which firms develop and promote a culture that supports good outcomes for customers and to enable FMA to assess the risk that a firm poses to these outcomes (primarily under the Financial Markets conduct Act (FMC Act)).

Having this understanding, ANZ therefore considers that the Conduct Guidance should clearly articulate that it does not create new or replace existing legal obligations, nor set out FMA's interpretation of specific legislative obligation. This will assist with alleviating any misinterpretation of requirements or concepts expressed in the Conduct Guidance that do not directly reflect the wording used in any relevant legislation (e.g. reference to the term 'benchmark', 'fair value' or use of the phrase 'professional standards of care' (page 8)).

Further, the Conduct Guidance should clearly state its purpose is to support FMA's view of how relevant market participants' behave when discharging legal obligations owed to retail customers. This is important, as ANZ understands that FMA intends to publish further Wholesale Markets Guidance in 2017 relating to market conduct, which will set out FMA's expectations in terms of market participants' behaviour in light of wider market integrity obligations, as opposed to customer outcomes. This approach aligns with the definition of *Conduct Risk* contained in the Glossary, however, in this context

the definition of *Good Conduct* in the Glossary requires amendment to delete references to investors and shareholders. To further support this distinction, ANZ suggests that the reference to 'market misconduct' is deleted from the final bullet point (on page 5) under the heading "**How we will achieve it**".

Although the guidance stipulates it applies to FMC licensees in the context of risks licensees' pose to the objectives of the FMC Act, ANZ also understands it is intended to signal FMA's approach to licensed populations it supervises under relevant legislation it oversees (for example, the Financial Advisers Act, Securities Trustees and Statutory Supervisors Act). ANZ considers the "**Who should read this guide**" section could more clearly articulate this application to licenced populations generally in addition to the general reference to audience of the Conduct Guidance as the wider "financial services industry", which appears to be an 'of interest only' application.

3. ANZ considers that the Conduct Guidance should clearly recognise that obligations owed to retail customers may be different than those owed to wholesale customers

In light of ANZ's comments in Key Message 1 above about ANZ's understanding that the Conduct Guidance is intended to set out FMA's expectations in terms of how firms' behaviour affects customer outcomes, ANZ considers that the Conduct Guidance should clearly reflect that obligations owed to retail customers, particularly under the FMC Act, may be different to those owed to wholesale customers. An appropriate place to articulate this is under the section "**Why we talk about customers**".

This is because wholesale customers are largely excluded from specific legal obligations – other than Part 2 – of the FMC Act on the basis that they have sufficient knowledge or experience to understand the benefits or risks they are taking and because the basis of a firm's relationship with such customers is largely contractual (i.e. negotiated directly between the parties).

Appendix II – Consultation Questions

ANZ submits the following in relation to the variations posed by FMA in the targeted consultation.

#	Question	ANZ response
1	We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?	Yes. ANZ considers the Conduct Guidance is a helpful publication from FMA in light of the global focus on 'conduct risk' as it sets out FMA's general view of its expectations of market participants' behaviour.
2	Is the guidance useful for your business, sector and industry? How might you use it?	<p>Yes. ANZ is the largest financial services firm in New Zealand and its activities span much of the legislation FMA oversees. ANZ, or members of the ANZ Group, also hold FMC licences.</p> <p>One of the ways that ANZ intends to use the Conduct Guidance is as a means of evaluating ANZ's current performance, standards, and approach to conduct as against the expectation of the regulator.</p>
3	Does the guidance explain the FMA's expectations of you when we assess your conduct?	ANZ considers the guidance is generally helpful to explain FMA's expectations of firms when assessing firms' conduct. Please refer to our Key Message 1 as to how we consider expressing the intention behind the guidance could be further enhanced.
4	Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?	Yes.
5	Is there anything further you would like the guidance to cover?	<p>ANZ has the following targeted comments on the guidance:</p> <ul style="list-style-type: none"> On page 4 under "What we want to achieve", there is a reference to providers disclosing to investors and the public how they are meeting their regulatory obligations and the principles of good conduct. Given neither the Conduct Guidance nor the law establish 'principles of good conduct' ANZ queries whether this should be amended to refer to how providers are meeting the 'good conduct profile framework' (set out on

page 7) which establishes five areas that FMA is intending to assess conduct against and provides criteria/topics for what providers could report against? (see Key Message 1). Additionally, ANZ assumes that the reference to this disclosure, given it refers to it being made to investors and the public, is intended to tie to disclosures made by providers in annual reports and the guidance provided in the *Corporate Governance in New Zealand: Principles and Guidelines* handbook (in particular, Principle 1: Ethical Standards). ANZ considers this should be clarified so that providers are clear they do not need to include 'conduct' disclosure in other forms of disclosure they make, or are required to make, to customers (e.g. in Product Disclosure Statements), and who are the focus of activities referred to in the Conduct Guidance.

- On Page 8 under Conflict, disclosures about staff pay and incentives should be linked more directly to obligatory disclosures (e.g. those required by legislation, such as company annual reports, or financial adviser disclosures). Each product and industry may be different, and in some cases, these aspects may appropriately be commercially sensitive. ANZ supports FMA's view that incentives are likely to influence conduct and that it is entirely appropriate for FMA to test this with providers it regulates. However, this does not mean that disclosure of these aspects to customers is always necessary or appropriate.
- On Page 8 under Culture, ANZ suggests that the reference to "regardless of what it has said" needs reframing, with 'regardless' amended to 'in line with'. We believe what FMA are suggesting here is that providers actually deliver on any stated cultural promises or representations made (as opposed to not offering any commitments in this space but having a good culture anyway). Customers ultimately expect providers to meet all contractual commitments. There is no obligation on providers to do more than this (they may choose to, but they are not required). Rather, the context of where mis-selling or misconduct can arise is directly related to what has been said, during the sales process. By this, even if a provider has clear contracts and has met all terms, it is in fact what is said to the customer that may result in a mismatch between these two things and, therefore, give rise to the

failure to achieve good conduct.

- We believe the questions set out on Page 10 under Capability are intended to provide additional clarity to the bullet points under "Our Focus" on Page 8 under Capability. However, the Page 10 questions appear heavily focussed on the capability of staff to determine whether products and services meet their customers' needs/how well they know their customers. Accordingly, we suggest that "The purpose of the services and products should be clear. It should also be clear what the benefits and risks are to customers" in the first bullet point on Page 8 fits better as a focus area under "Our Focus" on Page 9 under Communication. This could be replaced with something such as "How the provider supports employees' understanding of the purpose, benefits and risks of products and services and what is suitable for different types of customer. How the provider ensures customers' needs and expectations are understood and addressed."
- Further, on Page 10 under Capability, ANZ notes the example questions are heavily focussed on investment products. ANZ invites FMA to consider providing some questions focused on insurance products, to reflect the broader range of activities/products/legislation this guidance is intended to cover. For example, ANZ suggests questions such as:
 - How staff can ensure the customers understand the health and lifestyle questions in relation to insurance products (ie the disclosure questions) so customers respond as accurately as they can?
 - How does the provider determine whether the insurance products meet their customer needs? Do they have capability to analyse the claims ratio and lapse rates?

ANZ also wishes to note that not all products and services are about 'investment' and 'return'. Therefore references to these terms, including 'costs' relating to those are not meaningful in the context of products sold for financial risk management purposes (e.g. Regulated Offers of certain derivatives which are used for hedging).

		<ul style="list-style-type: none">• On Page 10 under Conflict ANZ considers there may be no correlation between growth and conduct given the wide number of factors that impact growth at any given time in any given market (for example, the cyclical nature of the economy may lead to 'growth' in a 'low risk' product because customers view that preferable due to economic conditions). ANZ therefore considers this question is very limited in the context in which it might apply in practice and that a more relevant articulation may be tying the question to a consideration of conduct relating to sales practices that are driving fast growth.• ANZ notes that the Glossary & Useful Concepts attached to the guidance on Pages 13 and 14 refers to a number of terms that are not used in the guidance and that this is confusing. ANZ considers the Glossary should be separated from Useful Concepts, and Useful Concepts should be framed in terms of how FMA sees them applying to the rest of the Guidance (e.g. explaining why or how a firm might use a Net Promoter Score, in addition to what a Net Promoter Score is and how it is calculated).
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2 November 2016

ASB FEEDBACK: A GUIDE TO THE FMA'S VIEW OF CONDUCT

ASB Bank Limited (ASB) welcomes the opportunity to provide feedback in relation to the proposed conduct guidance for financial service providers licensed by the Financial Markets Authority (FMA) under the Financial Markets Conduct Act 2013 (FMC Act).

We acknowledge that ASB's submission could be made publically available by being published on the FMA's website.

Note, we have contributed to the New Zealand Banker's Association (NZBA) submission and endorse all the points made therein.

If you have any questions relating to this submission, or would like a follow up discussion in person, please do not hesitate to contact me.

ASB SUBMISSION

ASB considers good conduct a cornerstone of our business, and we are committed to ensuring our decisions and activities support good outcomes for customers and the orderly and transparent operations of markets. We believe a good practice culture rather than a focus on compliance is the key foundation for good conduct and we welcome the principles based, non-prescriptive approach of the guide.

Question 1: We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?

We consider the guidance makes a valuable contribution to the on-going global debate. Global regulatory developments have seen increasing emphasis towards the role of culture in conduct, a point that is strongly emphasised in the guidance. The guide not only directly states the importance of culture, it also consistently refers to “conduct” as opposed to “conduct risk”. This directly aligns to ASB’s approach. We strongly believe that a cultural, “ground up” approach to conduct is much more likely to produce a level of active engagement via business unit ownership and accountability, and our move away from the word “risk” signals that conduct should not be a compliance led activity.

Question 2: Is the guidance useful for your business, sector and industry? How might you use it?

The guidance is useful as it helps us to refine and sense check our current approach to conduct with due regard to the local environment and regulatory expectations. There are two main limbs to our conduct agenda; good outcomes for our customers and the orderly and transparent operation of markets, both underpinned by a good practice culture. We consider the guidance is particularly useful with respect to the good customer outcomes and the culture aspects of our conduct agenda. Although the guidance states that it is aimed at financial service providers licensed by the FMA under the Financial Markets Conduct Act 2013 (FMC Act), we consider it a relevant and useful guide to inform our approach to conduct generally.

Question 3. Does the guidance explain the FMA’s expectations of you when we assess your conduct?

Overall, we believe the guidance is constructive and useful in explaining the FMA’s expectations in relation to the customer outcome and cultural components of our conduct framework. We submit there are some aspects of the guidance that would benefit from further consideration, outlined below.

1. Many of our customers self-identify (or receive independent advice) as to which financial product will meet their need, and do not need or necessarily want a confirmation from the product provider that it is suitable. We submit that if the product’s purpose is made clear to the customer (for example what need the product meets), and the product itself actually meets the identified need, then the customer should be free to make their own choices without interference from the provider. As such, any requirement for a provider to

demonstrate that products meet customer needs¹ must to be able accommodate these consumer practices.

2. Requiring providers to deliver the outcomes customers want² is problematic (note this distinct to delivering the product or service they want in order to meet their needs, as in point 1 above). Our experience is that some customers may want outcomes that are not economically viable or rational in some circumstances. Therefore, we consider that a more appropriate focus would be a requirement that product providers have the tools and information available to ensure customers understand the services and products they are offering so they can make a free and informed choice.
3. We submit that questions that imply that providers need to have robust knowledge and understanding of their competitors' products should be removed³. We do not consider such requirements to be appropriate, practical, or desirable. Customers would not expect to be advised on competitors' product(s) when they approach a specific provider. In any event, we submit that product comparison advice across competitors would be more suitably covered by specific independent personal advisory services.

The guidance would also benefit from some redrafting and clarification in places. Suggested revisions to address these and the above matters are set out in the NZBA submission to which we have contributed.

Question 4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?

Yes. The guidance clearly states that it is not intended to be a checklist or a manual and is principles-based guidance on how the FMA views conduct. As such, we believe that it provides adequate flexibility for us to demonstrate good conduct.

Question 5. Is there anything further you would like the guidance to cover?

It would be useful to know whether FMA has anticipated what good conduct will look like for digital client interactions as these become more prevalent, and given that Cabinet has recently approved recommended changes to the Financial Advisors Act that facilitates the provision of robo-advice.

¹ See Page 10 under heading "Capability": "How do you know your products and services can meet, and are meeting, your customers' needs?"

² See Page 4 under heading "What we want to achieve": "are demonstrably delivering the outcomes their customers want"

³ See Page 10 under heading "Capability": "...including that their needs may be better met by a product or service you don't offer?" and "How do you know that customers will have the same or better outcome with your services and products as they would have with similar services and products offered elsewhere?"

Feedback: A guide to the FMA's view of conduct

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: A guide to the FMA's view of conduct' and your entity name in the subject line. Thank you. **Submissions close on Monday 31 October 2016.**

Date: 29/07/2016 Number of pages: 2
 Name of submitter:
 Company or entity: Auckland Financial NZ Limited
 Organisation type: AFA
 Contact name (if different): Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you eg during monitoring and supervision.

Questions:	Comment	Recommendation
1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?	Yes, but it can be simplified	All the time there is the ability to 'bury' features like commission in large documents, there is going to be a problem. This extends to 'gifts' etc.
2. Is the guidance useful for your business, sector and industry? How might you use it?	Yes	All such reminders are always useful
3. Does the guidance explain the FMA's expectations of you when we assess your conduct?	Partially	'putting the client first' is a principle which, all the time there are gifts and commissions available, will be a problem
4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?	Yes	It is a very positive step, however, it could be more direct
5. Is there anything further you would like the guidance to cover?	Yes	I'm a trained Therapist as well as an AFA. The principles of non-maleficence and beneficence are my guiding principles. Financial advisers would do well to understand what these mean.

Feedback summary – if you wish to highlight anything in particular

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our

website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Feedback: A guide to the FMA's view of conduct

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: A guide to the FMA's view of conduct' and your entity name in the subject line. Thank you. **Submissions close on Monday 31 October 2016.**

Date: 26th September 2016

Number of pages: 4

Name of submitter:

Company or entity: Bank of New Zealand

Organisation type: Bank

Contact name (if different):

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you e.g. during monitoring and supervision.

Questions:	Comment	Recommendation
<p>1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?</p>	<p><i>The guide brings focus to the topic of conduct and could help an organisation to develop its own strategies / framework for managing conduct.</i></p> <p><i>There is also a balancing act between customer and business interests - there are some complex scenarios that exist which businesses have to consider in terms of conflicts of interest and the cost of doing business. This is a useful guide, but specific scenarios can be more complex.</i></p> <p><i>Determining 'how' an organisation manages and monitors its conduct is an important issue for organisations – just having policies and procedures in place is not enough. How does an organisation know its reporting is accurate and that what it says it does and what it actually does, are aligned? How this is done</i></p>	<p><i>It would be good to make clear the link between good conduct and good business (currently mentioned on page 5 'Why we talk about customers' referring to 'poor business outcomes'). Addressing how customers are treated is good for businesses and in their interests to consider.</i></p> <p><i>Perhaps some specific scenarios or case studies (local or international) could be beneficial in support of this guide to show how conduct and fair treatment of customers play out and how it applies to large vs small businesses.</i></p> <p><i>The front page of the guide refers to directors and executives but later in the document (page 5 – who should read this guide) it refers to directors, senior managers, leaders and other managers –</i></p>

	<p><i>needs to be culturally driven from the top and the resulting KPIs and reporting must be meaningful, taking into account both leading and lagging indicators of potential, emerging and crystallised conduct risks.</i></p>	<p><i>the guide is relevant to a wide range of business people. As such, it would be good to draw out the different perspectives for Boards and management – what is relevant for Boards and what is relevant to management levels when considering Conduct?</i></p>
<p><i>2. Is the guidance useful for your business, sector and industry? How might you use it?</i></p>	<p><i>The guide is helpful to all organisations. Mature businesses could use this as a reference to check in with current practices and challenge the status quo. Small or new businesses could use it to help structure their own strategies / frameworks and helps to structure conversations around conduct.</i></p> <p><i>We can see the guide as being used to check-in on our own processes and challenge our own thinking on how well we are doing things.</i></p> <p><i>Whilst we understand this is not a checklist, we could see this providing a helpful reference point, particularly in respect of FMA's attitude and approach.</i></p>	
<p><i>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</i></p>	<p><i>The types of questions listed in the guide provide a good indication of the types of questions the FMA would ask. However, it will be a challenge to know what the FMA's expectation is on how this would be evidenced, particularly where there is references to 'it should be clear to customers...' or 'communicate clearly' and demonstrate if customers have actually understood.</i></p>	<p><i>Where an organisation's products or services do not fit under legislation for which FMA is the regulator, how does this guide apply? Good conduct is pertinent to all aspects of a provider's business not just regulated products and services. Perhaps the guide could explain that it could be used for all parts of a business.</i></p>
<p><i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i></p>	<p><i>The guide is at a high enough level to be flexible but not provide detail around 'how' an organisation considers conduct, which would be unique to each organisations own situation.</i></p>	<p><i>Is there any guidance that could be given on the most important things to do? Or describe what good conduct looks like? Refer earlier comments in question (1) for case studies also.</i></p>

5. Is there anything further you would like the guidance to cover?

Feedback summary – if you wish to highlight anything in particular

Regulatory guidance is crucial in providing market participants with clarity about how regulators expect them to behave and undertake their businesses. Given the weight placed on this guidance, it is important that it is framed carefully so as not to introduce obligations that are not supported by the associated legal framework. It is appreciated that providing guidance is not an easy task given the fluid nature of concepts such as conduct and the ‘right’ behaviours. As set out in our response to question 1, placing an obligation to put a customer’s interests first at all times for example is a new and untested legal concept. It requires clear definition or safe harbours in order to be practicably workable. It is important that market participants have a clear understanding of the regulators interpretation of this obligation and the parameters applying to safe harbour conduct.

Tensions exist with any supplier / customer relationship. Each party aims to strike a bargain that is favourable in some form, to that party. Regulatory guidance needs to cover how such conflicts should be disclosed and managed. This includes that the supplier is selling its own products / services and that other suppliers might offer products that better meet the customer’s needs. Given the range of products / services available, it would not be reasonable to expect a supplier to have analysed the entire market when assessing what might be suitable for the customer. There are therefore some natural limitations that need to apply when understanding the obligation to act in the customer’s interests. For market participants such as banks, good conduct should be satisfied by offering a customer a product that it is suitable for the customer even if that product is not the best available in the market. We acknowledge the FMA may have implicitly contemplated such a limitation, but thought could be given as to how this might be reflected in the guide.

We also have some further questions:-

- 1. We understand there is guidance being drafted around Markets – how do the two guides fit together?*
- 2. We anticipate the Financial Advisers Act 2008 (FAA) will be amended to place specific emphasis on conduct. Will the FAA be issuing separate guidance in respect of the conduct requirements under the amended FAA?*
- 3. Can you expand on the detail in the Communication section (page 9, bullet point 1 and page 12 bullet point 5) around the FMA’s expectation around pricing / fees and demonstrating that prices and the way they are calculated are fair and reasonable and how this fits with CCCFA guidance?*
- 4. Can you expand on the detail in the Capability section (page 10 bullet point 3) around how you know that customers will have the same or better outcome with your services and products as they would have with similar services or products offered elsewhere? What is the FMA’s expectation on this? For example, the BNZ has multiple products within categories such as home loans, credit cards etc. BNZ believes that good conduct requires that it offer products and services that are suitable for its customers, not that they are necessarily the best available in the market as there is no way our staff can know whether there is not a better product available elsewhere. What is the FMA’s expectation for us to provide competitor product information for market participants such as banks?*
- 5. The glossary covers terms not used in the guidance. Are these the other “useful concepts?” – can you clarify by separating out the terms used in the Guide from the useful concepts?*
- 6. How do the guidelines and the FMA view how a business should deal with retrospective changes to align with this guidance vs forward looking changes from this point in time? Is there a step change in expectations on future practices or is the expectation that all historic practices are reviewed against this guidance?*

7. *How does Australian conduct regulation play into the FMA guide?*

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

31 October 2016

Financial Markets Authority (FMA)
1 Gray Street
Wellington 6012

Email: consultation@fma.govt.nz

By email

Feedback: A guide to the FMA's view of conduct – CFA Society and INFINZ Joint Advocacy Group

Thank you for the opportunity to provide feedback to the FMA on your draft of *A guide to the FMA's view of conduct* (the "Guidance").

A transparent and engaged market regulator is a key facet in helping to create strong financial markets in New Zealand. As such, we particularly welcome the opportunity to engage with the FMA on this initiative.

We have set out our responses to your feedback questions in the Appendix to this letter.

About the Joint Advocacy Group

This feedback is provided by the Joint Advocacy Group (JAG) that has been formed by the CFA Society NZ (CFANZ) and the Institute of Finance Professionals NZ (INFINZ) in order to provide a 'whole of market' perspective on key matters affecting the New Zealand financial markets. The JAG has the primary goal of the raising standards of NZ's investment industry. Collectively, the combined membership base of both organisations exceeds 1,500 members across all aspects of the financial services sector. Globally, CFA membership exceeds 140,000 investment professionals considered to represent the highest standard of professionalism.

Both INFINZ and CFANZ share a common mission to uphold the highest standard of ethical behaviour and professional conduct of their respective members. As such, the JAG aims to work with government, regulators, and industry, with a collective voice to develop and uphold the highest standards of individual and corporate practice across the NZ's financial sector.

We would welcome further discussion

Our feedback has focused on high level points. We would welcome the opportunity to discuss any of these matters further and answer any questions which you might have with respect to this feedback.

Appendix – Response to Requests for feedback

We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?

At the submission phase, it is right to view the Guidance as a contribution to a debate. It is clear that the FMA and the industry share the same aims and we particularly commend the focus on customer outcomes. We are grateful for the opportunity to engage on how the Guidance can be framed to best serve those outcomes. In that respect, we have assessed the Guidance from the perspective of how it may come to be used or interpreted once finalised.

In the Guidance, the FMA states:

“The FMC Act gives us a mandate to focus on conduct.”

This is true, but equally must be understood and conditioned by the legislative scheme of the Financial Markets Conduct Act 2013 (FMCA). In this regard, the “conduct” provisions that anchor the legislation are the Fair Dealing provisions in Part 2, which prohibit false, misleading or deceptive representations or conduct. This is significant because these provisions are aimed at underpinning disclosure and informed consumer choices.

It is equally instructive to consider available regulatory paths lawmakers have chosen not to take in the FMCA. With some specific exceptions, the legislation does not feature:

- Broadly-defined ‘general conduct’ obligations, such as those applying under Australian Federal legislation (most notably in section 912A of the Corporations Act 2001 and 12CA-CC of the ASIC Act 2001).¹
- Extensive prescription of processes and outputs, such as those associated with the EU MiFID and related Directives, which can result in inflexibility, increased barriers to entry and high compliance costs.

To the extent that the Guidance describes principles and outcomes, it is a valuable tool for market participants both in framing their compliance and delivery programmes and in engaging with the FMA. For example, the section headed “*Good conduct profile framework*” is clear and consistent with the stated principles and objectives of the FMCA.

We think that the Guidance potentially becomes more problematic in parts where it calls for “demonstration” of a range of particular matters (particularly in the “*Good conduct in practice*” section and also in some of the content under “*Our view of good conduct behaviour*”). There is a risk that these are interpreted as amounting to prescription of specific outputs or processes, which would not be consistent with the stated aims of the Guidance or in many cases with the provisions and overall scheme of the FMCA. It is important to ensure that the Guidance is focused on the principles underlying the FMA’s approach to its role, rather than becoming an independent and extra-legislative source of particular outputs required of licensees.

¹ The closest analogies are the obligations of licensed DIMS providers in section 39 of the Financial Advisers Act 2008 and of MIS managers in section 143 of the FMCA, which are carefully circumscribed both as to their content and application.

Is the guidance useful for your business, sector and industry? How might you use it?

Yes, we think that the concept of Guidance of this nature provides a helpful basis for engagement between the FMA and the industry on meeting the objectives of the FMCA. What we found useful in the Guidance in this regard are:

- Its outcome orientation.
- The focus on customers.
- The clarity and logic of the *Good conduct profile framework*.

We think the Guidance loses some force where it strays from the focus on higher level principles about conduct and the clear statement of FMA's expectations in that regard. For example:

- **Prescription:** The Guidance is expressly intended to be principles-based and not to "be seen as a checklist or manual". Yet, as it proceeds, it falls more and more into detail on particular outputs or processes that will be expected of licensees, both in relation to governance and in relation to product design and delivery. Although we doubt that these expectations could be, or are intended to be, "one-size-fits-all", this is difficult to reconcile with the fact that they are expressed as requiring demonstration, in the sense of evidence of compliance.
- **Expansion of legal requirements:** To the extent the FMA wishes to include particular matters in the Guidance that go beyond principles and desired outcomes, we submit that they should be appropriately anchored in a legislative standard or rule, in order to avoid potential inconsistency and confusion and to respect choices made by lawmakers.

For example, the Guidance states: "*It should be clear to customers what they are paying in fees and expenses, how these are calculated, and why the provider believes this is reasonable.*" The first aspect of this is the subject of detailed disclosure requirements designed to promote transparency and comparability. The second part appears to go beyond the current legislative remit, other than in the particular case of KiwiSaver schemes.²

Does the guidance explain the FMA's expectations of you when we assess your conduct?

At a high level, we agree that the Guidance is effective in explaining the FMA's expectations – and in particular that the focus is on outcomes (walking the talk) and on customers. At the level of detail, we consider that particular requirements should be more clearly anchored in relevant statutory obligations.

Other things that would improve the Guidance in its stated aims would include:

- More clearly distinguishing between matters expected of all licensees (such as governance requirements) and those that may be called for in relation to particular products or services.
- Recognition of proportionality in terms of both the scale of the licensee and the particular nature of the product, customer segment, or risk in question.

² Refer under clause 2 of Schedule 1 of the KiwiSaver Act 2006.

- In the “*Good conduct in practice*” section in particular, expressing the matters in terms of outcomes with an acknowledgement that there may be a number of different ways of achieving them (particular processes would be better expressed as suggestions or case studies of best practice approaches the FMA has seen).
- Deleting unused definitions in the Glossary, particularly “Compliance assurance programme”, “Control environment”, “Internal audit” and “Risk and control self-assessment and attestations”, which are not used and seem more suited to Governance guidance.
- Tightening up language which is vague or discretionary.

Does the Guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?

The concept of “demonstrating” relevant matters is pervasive in the Guidance, defined in the Glossary as “*To show with evidence.*” We are concerned that this takes the Guidance away from its stipulated basis in principles toward being, in potential effect if not in intent, a prescription of processes or outputs.

In addition, in relation to managed investment schemes in particular, the FMCA reflects a new approach to investor disclosure, targeted to the nature of the product and the needs of investors. The MIS disclosure regime is the most heavily prescribed of the financial products, and emphasises simplicity, comparability and frequent performance reporting. There are stringent restrictions on both the length and content of regulated disclosure documents (including PDSs, quarterly fund updates, and annual reports).

This reflects deliberate legislative choice. For example, it avoids information overload and focuses on key matters relevant to customers (product features, investment strategy, competitive points of difference and performance). As such, it is difficult to see what would be the appropriate home for disclosure to customers of the various compliance and other matters referred to in the Guidance, or whether this sort of disclosure is likely to have benefits which exceed its cost. It is also important to ensure that additional customer-facing disclosure does not detract from the tight disclosure disciplines required under the new regime.

While the key elements of the new disclosure regime are still being bedded in, which has required significant investment from both the industry and the FMA, we consider that the legislation has been well designed to improve customer outcomes and confidence.

As a result, we think it is important to separate the two facets of this question, to avoid confusion between what is demonstrated to customers and what is demonstrated to the FMA as market regulator. We believe it would benefit the Guidance to do so more clearly.

A separate aspect of this the potential interpretation that licensees should be in a position to *demonstrate* the broad range of matters referred to in all instances, whether to the FMA or to customers. We do not think that is the intention, but equally it is not clear how a licensee would determine in advance which “questions” to which they need to be in a position to have evidenced an appropriate process or substantive response and which might be omitted, or achieved differently, in the circumstances of their relevant product or customer segment.

This is potentially amplified by:

- the wide range of potential products, services, business models and customers segments to which the Guidance might apply;
- the breadth of the matters covered in the “*Good conduct in practice*” section in particular (including, for example, questions about alignment of overall business strategy, customer satisfaction methodologies, outsourcing arrangements, and board’s evaluation of their governance effectiveness); and
- definitions in the Glossary of “Compliance assurance programme” and “Risk and control self-assessment and attestations” (not otherwise used in the Guidance), which imply extensive and specific requirements and (particularly if required to be undertaken by an external organisation) expensive ones, whose development, implementation, maintenance and demonstration may take resources away from actual delivery of good customer outcomes.

This is potentially an important factor in the success of the Guidance against its stated aims, as any confusion or over-reach in this regard could detract from customer focus or undermine the statutory purposes of avoiding unnecessary compliance costs and promoting innovation and flexibility.

We would welcome engagement with you on more detailed suggestions, but think there could be some relatively straightforward improvements to clarify the intent of this part of the Guidance:

- Stating that the Guidance does not apply to wholesale customers or market conduct (which we understand are likely to be the subject of separate guidance).
- More clarity in the preamble to the “*Good conduct in practice*” section, for example distinguishing between matters expected of all licensees and matters that may be relevant depending on the particular product or circumstances.
- Focusing on outcomes, with particular processes put forward solely on an illustrative basis as suggestions or case studies.
- Clarifying that “demonstrate” does not mean creating self-serving red tape, but means showing awareness relevant matters have been satisfactorily addressed (or showing why they are not relevant).
- Distinguishing between what is expected to be demonstrated to customers and what must be demonstrated to the FMA as market regulator.

Is there anything further you would like the guidance to cover?

No, we think the focus on conduct and customer outcomes is appropriate and is supported by other guidance and materials that are published elsewhere (and some of which are referred to in the Guidance).

7 December 2016

Financial Markets Authority
1 Gray Street
Wellington 6012

To whom it may concern,

SUBMISSION ON CONSULTATION: A GUIDE TO THE FMA'S VIEW OF CONDUCT

- 1 Thank you for the opportunity to consult on the Financial Markets Authority's (*FMA*) draft *Guide to the FMA's View of Conduct* (the *Guidance*).
- 2 The FMA is to be commended for producing a Guide on the FMA's view of conduct it supports. The guidance should be welcomed by regulated issuers and financial service providers who do business in New Zealand (*regulated entities*).

Key messages

- 3 We have offered feedback below with the goal of improving the Guidance, which we consider should be:
 - 3.1 appropriately anchored to a legislative standard or rule;
 - 3.2 useful, in the sense of clearly distinguishing between mandatory and recommended behaviours, and not unreasonably burdensome; and
 - 3.3 focussed on outcomes, rather than being excessively prescriptive.
- 4 We have also made suggestions for revisions to the Guidance which, in our opinion, would assist regulated entities to understand their obligations and the FMA's expectations in relation to market conduct.

The Guidance is a useful contribution

- 5 Overall, we believe that the FMA's draft Guidance could be a useful contribution to New Zealand's evolving regulatory landscape under the Financial Markets Conduct Act 2013 (*FMCA*), and its approach to achieving clarity and transparency is commendable.
- 6 We agree with the FMA's overall approach to good conduct and its focus on customers and achieving good customer outcomes. Almost all regulated entities will agree that the customer's best interests lie at the heart of everything they do as a provider — conduct is not special in this respect.
- 7 The FMA's stated focus in the Guidance on the five areas of capability, conflict, culture, control and communication are appropriate for regulated entities to focus on in order to achieve good conduct outcomes for their customers.

8 We have chosen to provide constructive feedback in response to the FMA’s questions, which we hope will assist the FMA to achieve the purposes of the draft Guidance.

Overview of our submissions

9 In the body of our submissions, set out in the **Schedule**, we have made the following key submissions on the draft Guidance which, in our view:

9.1 should be anchored to legislative standards or rules, not unduly burdensome, and focussed on outcomes, rather than prescription;

9.2 occasionally refers to topics that are, or ought to be driven by market, not regulatory processes;

9.3 could better clarify how and when it will be applied for small and large entities;

9.4 should more clearly distinguish between legal obligations, the FMA’s expectations, and options or recommendations;

9.5 could reframe questions as answers to achieve greater clarity; and

9.6 may at times be too prescriptive, and may be used as a benchmark or list of rules, expectations or criteria for regulated entities, rather than as recommendations or options that regulated entities should consider.

Contact for submission

10 We would welcome the opportunity to discuss our submissions. Please contact Ross Pennington in the first instance to discuss the content of our submissions. Please also free to contact any partners listed in the key contact details below.

11 Once again, we thank the FMA for the opportunity to consult on the Guidance.

SCHEDULE – RESPONSES TO THE FMA’S CONSULTATION QUESTIONS

Our responses to the FMA’s consultation questions are set out in detail below:

We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?

The Guidance should be anchored to legislative standards or rules, not unduly burdensome, and focussed on outcomes, rather than prescription

- 1 We agree that there is ongoing debate about governance, conduct and regulation, in part reflecting different regulatory approaches in different countries and regions.
- 2 Managed investment schemes inherently involve creating and managing exposures to domestic and global financial assets. The opportunities and risks in this field are complex and fluid. Customer outcomes and confidence turn largely on the performance of the industry in taking those opportunities and managing those risks.
- 3 It is against that backdrop that we think the contribution of the Guidance should be measured. Specifically, regulatory systems reflect choices made by legislators about frameworks most likely to achieve the statutory purposes of the FMCA.
- 4 At the submission phase, it is right to view the Guidance as a contribution to a debate, which we welcome. Once finalised, however, the Guidance will be viewed as setting out the expectations of the regulator and licensor.
- 5 Whether those expectations, in the content and the way they are expressed, is a valuable regulatory resource in our view should be considered against whether the Guidance is:
 - appropriately anchored in a legislative standard or rule;
 - useful, in the sense of being comprehensible and not unreasonably burdensome; and
 - focussed on outcomes, rather than being excessively prescriptive.
- 6 The balance of our submission on the Guidance is framed in light of these three questions. We believe that if these matters are taken into account, the Guidance will provide a useful benchmark for regulated entities to use to ensure their own processes align with the five key principles the FMA has identified.

Is the guidance useful for your business, sector and industry? How might you use it?

- 7 We expect that the majority of our clients who are regulated entities will use the Guidance as one of several reference points from which to measure their own compliance policies and procedures.
- 8 As legal advisers, we welcome the FMA’s approach of providing greater clarity to regulated entities on its expectations in achieving good conduct outcomes.

Does the guidance explain the FMA's expectations of you when we assess your conduct?

Elements of the Guidance could be better anchored to legislative obligations

- 9 We consider that there is a need for the Guidance to be more clearly anchored to legislative standards or rules in the FMCA and elsewhere that regulate the conduct of regulated entities.
- 10 The FMCA reflects a set of deliberate policy choices which sought to avoid an overly prescriptive regime that does not seek to regulate all aspects of regulated entities' behaviour or market conduct, or to specify particular processes to achieve the Act's objectives.
- 11 In line with this deliberate policy choice, there are four areas of the FMCA that (to a deliberately narrow extent) deal directly with market conduct:
 - 11.1 Part 2 'Fair Dealing' prohibitions on misleading and deceptive conduct, unsubstantiated representations, and unsolicited offers;
 - 11.2 Part 3 'Disclosure' prohibitions in sections 82 and 427 and on false or misleading statements or omissions in regulated offer disclosure;
 - 11.3 Part 4 'Governance' general duties in sections 112, 143, 144, 153, and 314 for the exercise of licensed supervisors', managers' and market operators' functions; and
 - 11.4 Part 6 'Licensing' of regulated entities in sections 388 and 396, and licensing conditions and reports required by the FMA in notices issued pursuant to sections 402 and 411.
- 12 If the FMA's goal is to provide guidance on how it expects regulated entities to meet their conduct obligations, in our view, any Guidance on the topic should be anchored to the legislative and licensing obligations that regulated entities must comply with.
- 13 Many of the comments throughout and the questions at the end of the Guidance are not related to or linked directly to a legislative obligation or ongoing licence obligation that a regulated entity must comply with under the FMCA or other key financial markets legislation.
- 14 We would recommend that the FMA:
 - 14.1 articulates what it means by the phrase 'good conduct obligations' and links these to obligations under the FMCA or other legislation;
 - 14.2 limits and links the questions in the Guidance to specific legal or licensing obligations that regulated entities must comply with; and
 - 14.3 focuses some of the questions at the end of the Guidance on recommendations on how regulated entities might comply with their legal or licensing obligations.

- 15 We also note that regulated entities may have differing levels of legislative obligations or compliance requirements in relation to different classes of customers (such as retail and wholesale investors). We recommend that the Guidance better clarifies, that the conduct outcomes relate largely to retail, not wholesale, investors.

The Guidance occasionally refers to topics that are or ought to be driven by market, not regulatory, processes

- 16 Overall we think the questions offer valuable practical guidance for regulated entities on how they might meet the FMA’s expectations in relation to the principles of good conduct set out in the Guidance.
- 17 There are, however, some questions and/or expectations that we consider should be driven by market, not regulatory or compliance, processes in order to achieve good outcomes for customers.
- 18 Some examples of questions that we consider should be driven largely by market – not conduct or compliance – processes are set out in the capability and conflict questions below:

- How do you know your products and services can meet, and are meeting, your customers’ needs?
- How do you know that the performance of your products and services is consistent with good outcomes for customers? How do you know that customers will have the same or better outcome with your services and products as they would have with similar services and products offered elsewhere? And how do you communicate all of that?
- How do you demonstrate that your customer and business strategies are aligned?
- How do you demonstrate that the way leaders and staff are paid is aligned to customer outcomes.

- 19 In relation to each of these questions, in our view:

19.1 **Meeting customer needs:** A business that does not know how, and cannot readily ensure that, its products or services meet its customers’ needs will not last long. A business’ improvement in doing so ahead of the required standard is not something that the FMA should directly require (rather than encourage).

19.2 **Performance of products:** The relationship of the performance of financial products or services and good outcomes for customers is, predominantly but not entirely, linked to the performance of the product in the market, and its measurement will be derived largely from market metrics. This question might be better directed at asking whether regulated entities appropriately measure and communicate the performance of their products and services to consumers (in line with their obligations under the FMCA).

19.3 **Alignment of customer and business strategies:** A regulated entity’s customer and business strategies will demonstrably align while and to the extent that a financial product or service performs well in the market. It is

unclear from the question what misalignment would look like – and consequently how a regulated entity might demonstrate that its strategies are not misaligned. We would recommend that the FMA clarifies what is meant by alignment and how a regulated entity might go about demonstrating this.

- 19.4 **How leaders are compensated:** this is a matter for businesses to determine based on their own understanding of market compensation levels. The real question, in terms of achieving appropriate customer outcomes related to compensation, is whether leader compensation is tied to performance-based criteria that incentivise behaviour that might conflict with customer outcomes (e.g. compensation arrangements that incentivise insurance churn).
- 20 There is a tension in this area of the Guidance between the FMA’s stated goal of providing practical guidance on how regulated entities should achieve good conduct outcomes for their customers, and the fact that some of those desired behaviours or outcomes are far more likely to be driven by market processes or good corporate governance generally (something that the FMCA is not directly authorised to promote outside of its prohibitions on various types of misconduct).
- 21 We would recommend that the FMA considers confining the questions above to practical guidance or recommendations on how regulated entities could implement controls or take positive steps to avoid various types of prohibited behaviour or meet positive obligations under the FMCA.

The Guidance could better clarify how and when it will be applied for small and large entities

- 22 There may be room in the Guidance for the FMA to indicate that, while it expects regulated entities to achieve good conduct outcomes for their customers, the FMA’s expectations in relation to the way in which regulated entities achieve those outcomes will differ depending on the size and complexity of their operations.
- 23 This would go some way towards recognising that smaller regulated entities should not be held to the same expectations and accountability for their governance and risk management processes as larger, more sophisticated, regulated entities.
- 24 There is, for example, a difference, which cuts both ways, between the compliance systems that the FMA might expect of a large manager of one or more managed investment schemes, and the systems that might be expected of a peer-to-peer lender or a trustee of smaller-scale restricted schemes.
- 25 That difference of size, scale and complexity will influence both the level of contact that the board and management will have with frontline staff, the complexity of the controls they might implement to manage those conduct outcomes and risks, and their ability to react and resolve any conduct problems and customer outcomes that might arise.
- 26 The questions in the Guidance do, to a large extent, achieve this balance by referring, on occasion, to the nature and scale, or the resources of the business. What may be helpful is a more general statement in the body of the document that acknowledges that a business’ size, scale and complexity will be relevant to the way in which regulated entities ensure they achieve good conduct outcomes and manage

their conduct risks. A general indication of how the FMA's expectations vary in this regard might also be useful.

The Guidance should more clearly distinguish between legal obligations, the FMA's expectations and options or recommendations

- 27 The Guidance could clarify that they do not create or replace existing legal obligations or set out the FMA's interpretation of those specific legislative obligations.
- 28 Where possible, the FMA could specify that the practical questions in the Guidance contain recommendations or suggested steps that regulated entities could take in order to achieve better conduct outcomes for their customers. This might better align with the FMA's stated purpose in the document of providing helpful guidance, rather than a checklist or a manual.
- 29 The FMA might want to consider setting out a clear framework in the Guidance to distinguish between legislative obligations, the FMA's own expectations, options, and recommendations or best practices that the FMA believes regulated entities could adopt if they wish.
- 30 The Australian Securities and Investments Commission (ASIC) publishes guidance that clearly differentiates between legislative requirements and its own expectations of how regulated entities should comply with their legal obligations.
- 31 For example, in its recent Regulatory Guide 255 on *Providing digital financial product advice to Retail Clients*, ASIC noted as follows:¹

From our engagement with industry – including digital advice providers and prospective providers – it is clear that industry would like, and would benefit from, guidance about how the regulatory obligations apply to digital advice providers and certainty about what providers need to do to comply. We have therefore issued this guide, which aims to assist industry to understand ASIC's approach in regulating digital advice.

In this guide, we have deliberately used terms such as 'must', 'required to', 'expect' or 'should':

- (a) When we use the terms 'must' or 'required to', we are referring to obligations that you must comply with as a matter of law. For example, as an AFS licensee under the Corporations Act, you are *required to* have adequate risk management systems: s 912A(1)(h). However, this obligation does not apply in certain circumstances (see RG 255.56(j)).
- (b) When we use the terms 'expect' or 'should', we consider that these are the ways in which you should – and generally would – comply with your obligations under the law. For example, we *expect* AFS licensees to have a structured and systematic process for identifying and managing risks.

In most cases – and unless there are exceptional circumstances – AFS licensees will be able to comply with the law by adhering to the ways we think that you can

¹ ASIC Regulatory Guide 255, *Providing digital financial product advice to Retail Clients* (August 2016) at Paragraphs 255.12 to 255.14.

comply with the law. Failure to do the things we expect is more likely to result in further regulatory inquiry from ASIC. However, if you think you can comply with your obligations under the law in another way, we suggest that you contact us.

32 A third category, not used the ASIC Guidance, but that may be more useful in the context of the Guidance, would be for the FMA to identify options or recommendations that regulated entities might use (or that the FMA has seen others in the industry use effectively).

33 Without this clear delineation between these three categories, providers could be confused by the guide between what is mandatory behaviour and what is merely good or encouraged practice. Examples of matters beyond the requirements of the legislation, which appear to be expressed as more than recommendations, are:

33.1 references to fair value/reasonable cost/the same or better cost outcomes than competitors, for services or products other than KiwiSaver or through a related party transaction;

33.2 references to obligations to communicate or explain a range of matters; and

33.3 disclosure of staff pay arrangements, and salary alignment with customer outcomes.

The Guidance could reframe questions as answers to achieve greater clarity

34 On a stylistic note, the practical advice in the Guidance may be clearer for regulated entities if it was not substantially expressed as a series of leading questions.

35 We understand the FMA’s intention was to set out questions that “*reflect topics and questions that FMA staff are likely to ask when monitoring and engaging with those we regulate.*” At least some of these questions might, in our view, be better framed as positive statements, in order to give a clear sense of direction for regulated entities.

36 For example, the question “*How do you know whether your cross-selling strategies, and practices, are appropriate?*” could be framed as a statement with some constructive guidance on how a regulated entity might go about achieving a good conduct outcome, such as:

You could ensure that your cross-selling strategies, and practices, are appropriate, by ensuring, for example, that any incentives for cross-selling do not result in recommendations for financial products or services that do not meet the customer’s needs or wants.

37 Guidance of this nature would be helpful, in that it links a good customer outcome to a form of negative customer behaviour.

Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?

The Guidance may at times be too prescriptive

38 Aspects of the Guidance, particularly the example questions, may be interpreted by regulated entities as a list of prescriptive requirements that would be (arguably)

inconsistent with two of the FMCA's additional purposes of avoiding unnecessary compliance costs and promoting innovation and flexibility in the financial markets.

- 39 We understand that the FMA's goal is to ensure that the questions offer practical and helpful guidance, rather than read as a checklist or manual, and that it is for regulated entities to decide how they implement procedures to achieve appropriate outcomes.
- 40 The FMA will be conscious that any regulatory guidance it issues, unless clearly stated otherwise, will closely scrutinised and followed by regulated entities. There is often little distinction drawn between a regulator's expectations on the one hand, and what the regulated entity perceives as a compliance obligation, on the other.
- 41 In our experience, regulated entities are likely to read the questions as a list of additional criteria against which their compliance programmes and processes will be judged.
- 42 This unintentional prescription is compounded by the use of the term 'demonstrate', and the indication that FMA staff are likely to ask these questions when monitoring those they regulate. The use of the term 'demonstrate' shifts the Guidance away from a practical list of topics that firms may wish to consider, to a prescribed list of additional criteria against which firms will be judged. Often the criteria to be demonstrated are not the outcomes required by the legislation, but a means by which a desirable (sometimes unprescribed) outcome could be assured.
- 43 With that in mind, we think the Guidance – particularly the practical questions – should be carefully and neutrally worded as recommendations only, and should be drafted with an appropriate degree of flexibility for regulated entities to meet their obligations under the FMCA and other legislation as they best see fit.
- 44 As we have stated above, if the FMA's goal is to ensure that regulated entities do not see the Guidance as a list of prescribed criteria or rules, then more should be done in the body of the Guidance to clarify what aspects reflect the FMA's expectations of regulated entities' obligations under the FMCA, and what aspects reflect industry best practice or options that the FMA might recommend or approve of.

Is there anything further you would like the guidance to cover?

- 45 The good conduct profile framework set out on page 7 of the Guidance provides a good framework and should be moved forward in the paper to anchor the FMA's focus on board and executive management accountability for conduct outcomes.
- 46 The Guidance could also link the references throughout to 'good conduct principles' to the five headings in the 'good conduct profile framework'. If these two concepts are intended to mean the same thing, then the 'good conduct profile framework' could be renamed 'good conduct principles'.

Feedback: A guide to the FMA's view of conduct

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Date: 31 Oct 2016

Number of pages: 2

Name of submitter:

Company or entity: Craigs Investment Partners

Organisation type: Financial Service Provider

Contact name (if different):

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you eg during monitoring and supervision.

Questions:	Comment	Recommendation
1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?	<i>Given the very nature of the topic and the fact that "Conduct" does not always link directly back to hard coded legislation or regulation, it was always going to be difficult to deliver a guidance note that would provide the reader with a clear frame work which would help all the various types of business models that offer up the different types of financial services. However CIP believes this Guidance Note leaves the reader in no doubt about the FMA view and expectations on the subject. It is also pitched at the appropriate level i.e. it speaks to the Directors and senior executives of the firm whom are expected to set the tone at the top.</i>	<i>This guidance and the shift in the FMA focus could be supported by 'reaching out' to the Directors and senior executives of various firms. Obviously consideration needs to be given to maximising impact and penetration – but anything from attending company Board meetings through to abbreviated seminars / presentations would assist with traction for the subject.</i>
2. Is the guidance useful for your business, sector and industry?	<i>The Guidance note helps firms turn their minds to</i>	

<i>How might you use it?</i>	<i>what is expected of them, the key is building the appropriate frame work within each organisation that will ensure that the necessary culture is established to deliver the appropriate client experience.</i>	
<i>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</i>	<i>As explained in 1 we believe the Guidance Note gives a clear insight into the FMA expectations.</i>	
<i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i>	<i>The Guidance Note is pitched sufficiently high enough.</i>	
<i>5. Is there anything further you would like the guidance to cover?</i>	<i>No we believe the Guidance Note sufficiently covers issues as they stand today. We do however assume that with all things this document will need to evolve as significant / material changes occur within our industry.</i>	
Feedback summary – if you wish to highlight anything in particular		
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.		
Thank you for your feedback – we appreciate your time and input.		

Feedback: A guide to the FMA's view of conduct

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Date: 31 October 2016

Number of pages: 2

Name of submitter:

Company or entity: Financial Dispute Resolution Service

Organisation type: Dispute Resolution Organisation

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you eg during monitoring and supervision.

Questions:	Comment	Recommendation
<p><i>1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?</i></p>	<p>FDRS supports the FMA's work in this area and feels that the proposed guide gives practical and pragmatic information.</p> <p>However, some examples of good conduct could be helpful. For example, when considering the questions around good communication, perhaps some generic follow-up answers would make clear to the financial service provide what they should be considering.</p> <p>While we appreciate that giving examples may be problematic, we think there are some ways that the FMA can give examples without regulating conduct or prescribing culture.</p>	<p>One of the questions is whether the provider communicates proactively and often with customers. Does this mean individualised emails? Broadly-circulated newsletters? Both? We would recommend that the FMA include some generic examples of what it means by proactive communication.</p> <p>This kind of approach would be useful for all questions.</p>
<p><i>2. Is the guidance useful for your business, sector and industry? How might you use it?</i></p>	<p>Again, FDRS supports the FMA's work in this area and feels that the proposed guide gives practical and pragmatic information. We are not able to comment on how providers</p>	<p>FDRS recommends that there be ongoing conversations with providers about how this guide is used in action. Whether that's through quarterly forums or online communication, that will</p>

	may use it.	give the guide an even greater practical application.
<i>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</i>	Please see our response to question 1. We would also add that we are not able to comment on how providers may use the guide.	
<i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i>	FDRS has concerns that some of the information and guidance is aimed at large-scale organisations and that some of the guidance would not be as accessible to smaller organisations covered by the FMC. We think this can be dealt with by our response and recommendations to question 1	Please see our recommendations in response to question 1.
<i>5. Is there anything further you would like the guidance to cover?</i>	FDRS believes that there should be some discussion on what providers can rightly expect from consumers and what is 'reasonable'.	
Feedback summary – Overall, guides like this can only help. We support the work done by FMA in this regard.		
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.		
Thank you for your feedback – we appreciate your time and input.		

Feedback: A guide to the FMA's view of conduct

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Date: Sept 2016 Number of pages: 4

Name of submitter:

Company or entity: Financial Services Council

Organisation type: Advocacy and industry body

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience. The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you eg during monitoring and supervision.

Questions:	Comment	Recommendation
<i>1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?</i>	<i>Laudable initial contribution, but the emphasis on posing questions may limit the usefulness of this material</i>	<i>Do not proceed with this attempt. Consult regulated firms with the aim of providing a considerably more detailed explanation</i>
<i>2. Is the guidance useful for your business, sector and industry? How might you use it?</i>	<i>Provides some initial guidance, but limited by the emphasis on posing questions and providing few answers</i>	<i>Provide a considerably more detailed version, following consultation with regulated firms</i>
<i>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</i>	<i>No</i>	<i>As above</i>
<i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i>	<i>Yes – but too general</i>	<i>As above</i>

5. Is there anything further you would like the guidance to cover?	Considerably more detail – see submission below	As above
<p>Feedback summary</p> <p>The FMA’s proposal is a solid initial effort, in defining conduct that affects consumer outcomes. Nonetheless, we think the proposal is ambiguous in several key areas, notably the rationale, measurability, and practicality. Based on the document published to date, it will be very hard for the FMA to identify conduct – whether it is poor or good – and how it affects consumer outcomes. Equally, providers will have the same difficulty.</p> <p>We urge the FMA to consider this proposal in more detail, including consulting a sample of regulated firms and professionals, before publishing a further attempt. Specifically, we would like the link between conduct and outcomes made explicit, recognition that financial services products are often two-way agreements to share risk so that uncontrollable events may intervene, and recognition that ‘good outcomes’ vary between product types. Recognition of varying horizons – where good outcomes for some products are apparent over 20-25 years – would also be advisable. The role of auditors in ensuring compliance is mentioned in passing (glossary); so is the role of advocacy or industry bodies in promoting or encouraging improvements. We would encourage a complete view of a corporate or business system, and the role of all components in conduct.</p> <p>We would discourage implementing the proposal as it is currently published, given we think it will generate more confusion than benefits. We urge the FMA to reconsider the initial attempt, providing a more detailed one after consultation, and with a commitment to steadily add to guidance in this area as experience allows.</p> <p><u>Please note:</u> the FSC is willing to contribute – extensively – to any further consultation on this subject, including in-person consultation. We think this is a key consultation, where providers can assist the FMA to develop its proposal.</p>		
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>		
<p>Thank you for your feedback – we appreciate your time and input.</p>		

Financial Services Council – detailed response to FMA proposed conduct practices – Sept 2016

Aspect of proposal by FMA	FSC’s remarks	Other actions FMA could consider
<p>Rationale – does this proposal have a sound regulatory objective, which is easily understood by regulated firms and professionals</p>	<p>The FMA’s proposal provides general statements regarding conduct, but very few details. ‘Good customer outcomes’ is undefined, leaving considerable room for argument. The link between what a firm does, and what a consumer enjoys in outcomes, is ambiguous</p>	<p>The FMA could consider defining good customer outcomes in considerably more detail, including the link between provider conduct and consumer outcomes. Any definition must allow for decisions made by consumers – separately from what a regulated firm might provide or advise – and how that impacts outcomes. Definitions should recognise that ‘good’ outcomes vary between product type and may not be determinable in the short term (e.g. KiwiSaver, which has a 20-25 year horizon). Also, recognise the limits to control i.e. that in many instances, providers can’t guarantee a particular outcome, only that consumers understand the range of possible outcomes</p>
<p>Measurability – can providers measure their performance against the regulator’s expectations, and provide information that will support those measures</p>	<p>The FMA avoids providing measures that it regards as acceptable. While that approach provides latitude for providers to adapt existing measures, it is also ambiguous. It will be very difficult to compare ‘apples to apples’ when the FMA assesses the performance of regulated firms. Overall, we would like to see measures – even a provisional set – that allow providers to start gearing change to the regulator’s expectations</p>	<p>The FMA could provide considerably more detail on what measures it will accept, in what form, and at what regularity. Any set of measures should recognise varying scale of providers, and the specific nature of particular businesses. Even a set of clearly-worded principles – emphasising, say, the quality of information that consumers should receive - would be an improvement. Without such measures, the FMA can’t provide confidence, to the Government or to regulated firms, as to what it finds in its supervision work</p>

<p>Accountability – can Ministers, Parliament, and taxpayers determine whether the FMA is meeting its regulatory responsibilities in this area</p>	<p>The absence of measures, and a clear statement as to what are good outcomes, means the proposals lack the basics of accountability. Very unlikely that the legislature or the executive will be able to hold the FMA fully to account in this area. Ideally, the FMA would publish a regulatory impact statement (RIS) for this area of its work, in the next 2-3 years, so the anticipated results are publicly identified</p>	<p>The FMA could provide explicit measures, for Parliament and Ministers, so those parties can determine whether the regulator is raising conduct standards</p>
<p>Practicality – can firms change behaviour, and/or systems, in line with the regulator’s expectations, with a reasonable chance of achieving what is intended</p>	<p>The emphasis on posing open-ended questions in this proposal gives providers few means to make decisions. The proposal invites firms to enter a guessing game in many areas</p>	<p>The FMA could provide regulated firms and professionals with explicit statements in areas where it wants to see improvements, so firms can calibrate their efforts to provide results</p>
<p>Comprehensive – can firms identify all the components of their systems, and what those components should contribute</p>	<p>The role of auditors in ensuring compliance is mentioned in passing (glossary). Similarly, the role of change agents, such as industry bodies, in promoting improvements, is overlooked. The emphasis on the role of boards may generate systems’ gaps, elsewhere</p>	<p>The FMA should attempt as close to a comprehensive scheme as is possible, recognising the role of all the relevant professionals in good conduct, stating what their role is, and how that role may be effected</p>

Feedback: A guide to the FMA's view of conduct

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Date: 27 October 2016 Number of pages: 4
 Name of submitter:
 Company or entity: First NZ Capital
 Organisation type: Full service share broking and investment banking firm
 Contact name (if different): Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you eg during monitoring and supervision.

Questions:	Comment	Recommendation
<p>1. <i>We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?</i></p>	<p>The Board of Directors and Executive Management Committee at First NZ Capital (FNZC) consider the customer experience, conduct, to be a critical component in the culture of the Firm and success of the business. It is an area within the firm that attracts significant focus and financial investment.</p> <p>In response to question 1, following our review of the Guidance, we consider it to be a useful contribution to the conduct debate. However, we consider this contribution should be as a guide only, and not a mandatory prescription of conduct obligations for the financial services industry.</p> <p>The Financial Markets Conduct Act (FMCA) prescribes statutory conduct requirements that must be adhered to by all those regulated by the FMCA. It is our view that it is for the individual business to determine and employ practices that fulfil the FMCA conduct requirements.</p>	<p>We recommend that this Guidance is to be read and utilised by the FMA and service providers in the industry as guidance only. For this purpose, it is our view that the FMA re-visit and re-consider the form of the Guidance. In the present form the Guidance is clearly a check list or manual for the purpose of conduct assessments which is not applicable to all businesses. We recommend that the Guidance also include reference to the environment and context within which the business operates.</p> <p>We recommend that the FMA include in the Guidance the applicable FMCA statutory conduct requirements. This list should include reference to the sections within the legislation for completeness.</p> <p>We recommend that the Guidance include a forum for engagement between the service provider and the FMA.</p> <p>We recommend that the FMA include an acknowledgement within the Guidance that the FMA, as the regulator, is, in effect, looking to a change in culture and this will take time and expense. For completeness, it will take time for both the FMA and the service</p>

	<p>Following these comments, we maintain concerns that the Guidance, in particular the section entitled Good Conduct pages 10 and 11, will be considered to be a checklist or manual to be adhered to. We note that the Guidance specifically states that it is not a checklist or manual, but in the current form it is difficult to consider it in any other way.</p> <p>Further, in our view, to accurately assess conduct of any business, the assessor needs to be ensconced in that business and to liaise directly with all stakeholders of the business. For the FMA to carry out such an assessment of every service provider that it regulates is impossible. Accordingly, it is our view that a document such as this will, whether by default or necessity, become a checklist or manual for the assessment of conduct. Whilst not the apparent intention, it is the highly probable result.</p> <p>The Guidance does not encourage engagement between the service providers and the regulator, this again reinforces the checklist approach.</p> <p>We note that the Guidance acknowledges the shift in focus for the FMA, in essence from the factual to the behavioural. This will, by definition, necessitate a subjective assessment of those in the industry regulated by the FMA rather than the traditional objective assessment. We maintain concerns that the FMA will focus on what the FMA deems to be appropriate conduct in an isolated environment without considering the individual business and the environment within which that business operates. Context when assessing conduct will be fundamental and we do not consider that the Guidance provides for this. A change in mind set of both the FMA and those the FMA regulates will be required, in addition to a change in methodology for assessment. We wish to note that this will take some time to achieve.</p>	<p>providers in the industry. A transitional period is not necessary given that this is only a guide, but an acknowledgement would give service providers comfort.</p>
<p><i>2. Is the guidance useful for your business, sector and industry? How might you use it?</i></p>	<p>It is our view that the Guidance is particularly retail client focussed and bank focussed. Accordingly, it is not applicable to the financial services industry regulated by the FMA as a whole. To apply industry wide, the Guidance needs to be more generic.</p> <p>We consider that the Guidance is useful for parts of our business. We will be able to use the Guidance as a starting point for undertaking analyses of those particular</p>	<p>We recommend that the Guidance be more generic, less retail and bank focussed.</p> <p>Alternatively, or in addition to a generic Guidance (our preferred option) we recommend the FMA look to include guidance that encapsulates all areas within the industry such as wholesale clients and fund managers, including the role of supervisor for Fund Managers.</p>

	<p>parts of the business, with conduct front of mind. Given our views expressed within this submission, pending any changes to the Guidance of the nature that we have recommended, we will also use the Guidance as a checklist to ensure that we are compliant within the expectations of the FMA, where relevant to parts of FNZC's business.</p> <p>However, as a Firm, we maintain a full service business and accordingly offer services that do not align with a number of the factors noted in the Good conduct in practice section of the Guidance. We expect this will be an issue for a number of service providers.</p>	
<p><i>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</i></p>	<p>Following our comments above, we maintain concerns that the Guidance is looking to mandate a particular form of culture and conduct which will not be suitable for all in the industry. All businesses are different, all clients are different and it follows that the conduct and culture of each business will be different.</p> <p>The Guidance notes on page 10 that ultimately providers are accountable for ensuring good organisational conduct, however the establishment of FMA expectations within the Guidance is contrary to this. We would expect broad guidance to be provided by the regulator, with engagement where appropriate, for businesses to then interpret and adopt in a manner that is appropriate for their business. It is our view the Guidance needs to be malleable for all business types in the industry.</p> <p>Further, we maintain reservations with respect to whether the Guidance should impose expectations for conduct assessments. It is our understanding, that the Guidance is to be a guide only and designed to get business thinking about good conduct, however the very nature of this question suggests otherwise.</p>	<p>We recommend that the FMA change the current approach with respect to the Guidance. Establishing and producing "expectations" reaffirms our view that the Guidance is a checklist as opposed to the 'principles based guidance' that the Guidance is intended to be.</p>
<p><i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i></p>	<p>It is our view that the Guidance is, in its current form, too prescriptive. Further, it is likely to be unnecessarily restricting for some businesses within the industry. It is our view, therefore, that the Guidance is not flexible.</p> <p>As noted above, it is our view that the Guidance needs to be more generic and encapsulate the industry as a whole, not just the retail and banking sectors.</p>	<p>We recommend that the Guidance look to be more generic.</p>

	See also comments above with respect to the subjective assessment of any business for the purpose of determining conduct.	
5. <i>Is there anything further you would like the guidance to cover?</i>	For the purpose of the FMA view of good conduct behaviour, the Guidance refers to alignment of the provider's business interests with customer interests. We are of the view that this is inconsistent with the Financial Advisers Act and the Code of Professional Conduct for Authorised Financial Advisers that requires an Adviser to put the interests of the client first.	We recommend the FMA revisit this section and consider the inconsistency that it presents for Authorised Financial Advisers. We appreciate this is only one section of the industry, but it is significant.
Feedback summary – if you wish to highlight anything in particular		
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.		
Thank you for your feedback – we appreciate your time and input.		

Feedback: A guide to the FMA's view of conduct

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: A guide to the FMA's view of Conduct' and your entity name in the subject line. Thank you. **Submissions close on Monday 31 October 2016.**

Date: 28/07/16

Number of pages: 1

Name of submitter:

Company or entity: Foresight Financial Planning

Organisation type: AFA

Contact name (if different):

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers' experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you e.g. during monitoring and supervision.

Questions:	Comment	Recommendation
1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?	Yes it is potentially useful but only if the whole industry has the same set of rules (i.e. AFA, RFA, QFE) to abide by	One set of rules for the whole industry
2. Is the guidance useful for your business, sector and industry? How might you use it?	Not really as I am an AFA already so I have to take personal responsibility for my advice	
2. Does the guidance explain the FMA's expectations of you when we assess your conduct?	Yes	I don't think any of the banks that sell insurance or investment products over the counter (including KiwiSaver) meet your culture requirements when it comes to replacing existing policies
3. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?	I am already doing this as an AFA	
4. Is there anything further you would like the guidance to cover?		I remain sceptical to what the FMA will actually undertake with non-AFA advisers and the creation of a level playing field

Feedback summary – *if you wish to highlight anything in particular*

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Thank you for your feedback – we appreciate your time and input.

Feedback: A guide to the FMA's view of conduct

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Date: 31 October 2016

Number of pages: 2

Name of submitter: Forsyth Barr Limited

Company or entity: Company

Organisation type: Financial services provider

Contact name (if different): Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you eg during monitoring and supervision.

Questions:	Comment	Recommendation
<i>1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?</i>	Yes. It is helpful that the guidance states that the intention is not to prescribe how good conduct happens but rather to give a framework to assist businesses in how to think about conduct.	
<i>2. Is the guidance useful for your business, sector and industry? How might you use it?</i>	Yes, we think that the questions set out in the "Good conduct in practice" section are likely to be a useful starting point for our Board and senior management when asking themselves how they know that we are focusing on our customers.	
<i>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</i>	Generally yes, although we think some of the guidance could be clarified. For example in relation to whether customers are paying a reasonable price for services, we'd expect the focus to be market-based pricing (i.e. relative to the close competition), not some sort of cost allocation methodology where the profitability of each business line is assessed (which would be difficult and expensive).	

	Similarly in relation to knowing that customers will have the same or better outcome with our products and services as they will elsewhere, in our view the focus should be on close competitors rather than implicitly requiring some sort of market-wide survey.	
<i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i>	Generally yes, the guidance notes that it is not intended to be prescriptive or exhaustive.	
<i>5. Is there anything further you would like the guidance to cover?</i>	There has been a tendency for 'regulation' to become increasingly prescriptive. We encourage FMA to resist conduct becoming a matter for prescriptive and therefore inflexible regulation and remaining a qualitative matter subject to guidance such as this.	
Feedback summary – if you wish to highlight anything in particular		
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.		
Thank you for your feedback – we appreciate your time and input.		

Feedback: A guide to the FMA's view of conduct

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Date: 31/10/2016

Number of pages:

Name of submitter:

Company or entity: Guardian Trust & Covenant

Organisation type: Licenced Supervisor

Contact name (if different):

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you eg during monitoring and supervision.

Questions:	Comment	Recommendation
<p>1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?</p>	<p>Yes, we support the thrust of the proposed guidance. Good customer focused 'conduct' will generally result in better outcomes than any mandatory legislation and regulation. We suggest that the timing of the guidance note release should be carefully considered. We suggest that time needs to be given for entities post 1 December to step back to look at their business and to bed down current processes.</p>	<p>I think guidance needs to better recognise what you have alluded to in your question - conduct is an ongoing debate. In many ways there will be not be a right or wrong answer – at best we think you can only hope the guidance encourages organisations to consider carefully how their conduct results in good customer outcomes. The actual outcome is often subjective and will ultimately require customers and their advisers to make their own decisions. To do this a culture of transparency paramount – so financial advisers and customers can make their own decisions.</p> <p>If the FMA has strong views that there certain aspects of conduct that not negotiable or are paramount –then we suggest the guidance should be more specific with real life examples in that regard.</p>

		<i>Suggest release of guidance note needs to be delayed until second quarter of 2017 in order to have the most impact.</i>
<i>2. Is the guidance useful for your business, sector and industry? How might you use it?</i>	<p><i>Yes, as a business any discussion, guidance and debate in this area is useful. In terms of our corporate trust business it is useful in helping to generate discussion and policy as to how we conduct ourselves in performing our duties to underlying investors (our ultimate customer).</i></p> <p><i>However as a front line Supervisor it is also useful in helping to develop our monitoring plans and risk assessments for our supervised entities, We have a specific governance and culture section as part of our monitoring plan and risk assessment so this guidance will be useful in helping to perform our supervision functions particularly as it is often the most 'intangible' part of our overall risk assessment.</i></p>	<p><i>We would like to discuss further the FMA's conduct expectations in respect of the entities that we supervise.</i></p> <p><i>From a monitoring perspective where we consider an entity is not demonstrating good conduct it will likely result in more focus from us and increased monitoring and questions from us.</i></p> <p><i>We think supervisors and the FMA need to meet more regularly to discuss market conduct and where we believe through our supervisory activities there are areas of the market where we consider there is poor conduct and it has the potential for poor customer outcomes. This would be useful so that targeted thematic reviews and expectations can be undertaken or provided to the market. This would help support our supervisory functions.</i></p>
<i>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</i>	<i>It makes it clear that good customer/investor outcomes are the focus.</i>	<i>As mentioned above all else a culture of transparency is the key. A culture of 'we have nothing to hide' (to customers, supervisors, FMA etc). We think this needs to be a key theme of guidance.</i>
<i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i>	<i>Yes, it is principles based.</i>	<i>We suggest actual examples of poor conduct and/or good conduct could be included. This would help participants 'see' good conduct and bad conduct in action. We would be happy to discuss this.</i>
<i>5. Is there anything further you would like the guidance to cover?</i>		<i>While we fully support the intention of the guidance, we make the following observation: Issuers are businesses that offer</i>

		<p><i>financial products in order to ultimately make a profit and it is important for well functioning capital markets that they do and can. Ultimately whether a financial product meets a customers needs is determined by the customer. We believe the guidance needs to be careful not to imply that the issuer is responsible for the decisions and choices a customer and/or their advisor makes. If an investment due to market conditions ('investment risk') does not perform as well as similar investments and the customer's outcome from a financial return perspective is poor it will not necessarily follow that an issuer's conduct was poor. Perhaps the guidance note should specifically consider/define what does 'good customer outcomes look like?'</i></p>
<p>Feedback summary – <i>if you wish to highlight anything in particular</i></p>		
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>		
<p>Thank you for your feedback – we appreciate your time and input.</p>		



Consultation Paper: A guide to the FMA's view of conduct

Organisation: IG Markets Ltd – Derivatives Issuer, FSP 18923

Capability

Q1: How do you know your products and services can meet, and are meeting, your customers' needs?

IG Markets Ltd ("IG") is licensed by the FMA to issue contracts for different ("CFD") to New Zealand investors via our electronic trading platform. A CFD is a derivative product, which allows our clients to make a profit or loss by reference to fluctuations in the price of an underlying share or other instrument. Our parent company, IG Group Holdings plc ("the Group"), is listed as a FTSE 250 company on the London Stock Exchange with a strong balance sheet of net assets of over £600 million. IG does not have a presence in New Zealand and operates business for New Zealand investors through our office based in Australia.

IG has a strong track record of stability and has been in business for over 40 years. We strive to ensure that we understand our customers' needs and consistently deliver fair outcomes and positive experiences. Investment Trends, which is an independent and multi-national market research organization, conducts survey on our industry in different countries on an annual basis. IG has been rewarded by Investment Trends as the Australia's No.1 CFD provider by primary relationships in the past five consecutive years. In the latest May 2016 Investment Trends CFD report it is stated that IG has high overall client satisfaction leading to excellent client retention.

We continuously improve and personalise our service to customers by taking a more proactive approach based on data and alerts from our contact management tool. We regularly seek and review feedback from our customers. This enables us to develop our products and services specifically to meet the needs of active traders globally.

Based on active client and trade data, our global complaint volumes are extremely low and we surmise that our products do exactly what we say they will do and clients understand and enjoy them.

The very low level of complaints is one indicator to show that our customers feel fairly treated by us and our products and services are meeting their needs.



Q2: How do you know you are good at knowing your customers, including their level of financial sophistication? Are you good at helping the least sophisticated to identify their needs, including that their needs may be better met by a product or service you don't offer?

Our products are not appropriate for everyone, and we recognise that good conduct is particularly vital in relation to marketing and client recruitment to prevent poor customer outcomes.

Before we allow a prospective client to open an account, we carry out an assessment to determine whether our products are appropriate for them. We actively question applicants and must be satisfied that clients have the necessary knowledge or experience to understand the risks involved. To further assess whether our products could produce poor outcomes, we ask clients for details of their income and savings, both at account opening and in rolling reviews. Based on the results of these assessments, we may choose to provide an applicant with a clear warning about the appropriateness of the product or restrict them to a type of account where risk is limited. We may also decline to open an account, or indeed close an account if it has already been opened.

In the financial year 2015/2016 we have declined 26% of the total applicants from New Zealand due to their failures of our suitability assessment. Instead we suggested the relevant applicants to familiarise themselves with CFDs by going through the educational materials available on our website.

Typical IG clients are mature, successful and self-directing individuals with a relatively high risk appetite. We do not identify the least sophisticated customers or assess whether their needs may be better met by a product or service we do not offer. However, we assist all of our customers in limiting their losses. They can attach guaranteed stops to their positions so they know their maximum possible loss when they place a trade, while our close-out monitor seeks to automatically close clients' positions when their margin has been significantly reduced. In July 2016, we also introduced a limited-risk account to New Zealand investors. This is the default account we offer to less experienced clients or clients towards the lower end of the wealth acceptance scale. Clients can also request a limited-risk account, if they so wish.

Q3: How do you know that the performance of your products and services is consistent with good outcomes for customers? How do you know that customers will have the same or better outcome with your services and products as they would have with similar services and products offered elsewhere? And how do you communicate all of that?

After over 40 years in business, we understand that sustainable long-term returns stem from good conduct. We have a good understanding of our industry and we hold a market-leading position in many countries, including Australia, the UK and Singapore.

All new products and services must have a review against good conduct and approval from compliance which is focused on good client outcomes. As stated in our Annual Report, we



also use a number of indicators to measure performance against customer satisfaction including:

- Net Promoter Score (NPS) data is tracked by the Investment Trends studies and is a measure of how likely clients are to recommend IG to others. IG has improved its NPS scores in five out of six markets that Investment Trends measures. Further details are given in the KPIs section on page 29 of our Annual Report.
- During the financial year 2015/2016, the Group once again commissioned an independent study to conduct a 'mystery shopping' programme of IG and a number of competitors in the UK. The study consisted of ten cases being raised with each provider where they were challenged with the same questions or scenarios. Each case was scored against desired behaviours expected from the case handler. The result of the study shows that the Group performed consistently well in most categories and ranked once again first in the overall scoring.
- The Group continues to engage directly with its clients through focus groups, as well as performing in-depth research to assist in prioritising their needs. IG has taken significant steps to implement solutions to issues raised, including the improvements made with regards to the client onboarding process and the introduction of a new customer communication system.
- During the financial year 2015/2016, IG has also joined the Institute of Customer Services.

In Australia, IG co-founded the Australian CFD and FX Forum with some of our major competitors in order to continually raise standards in our industry. Members of the CFD and FX Forum are committed to setting high CFD industry service and client protection standards. We also monitor competitor's activities, pricing and operations through Investment Trend surveys.

Further details can be found in the Business Conduct and Sustainability section of our Strategic Report in our Annual Report (on pages 30 to 33).

Q4: How do you ensure you have effectively identified and addressed any capability gaps?

IG is a highly regulated global company with over 1,400 employees worldwide. It is necessary for the business to have sufficient HR frameworks in place to ensure that roles are clearly defined, all employees have the right skills and experience for their roles, they have sufficient ongoing training and support and that they have sufficient time and resources to carry out the responsibilities assigned to them. It is also vital for IG to recognise good behaviour and address poor performance effectively and professionally.

We have an extensive array of internal expertise at our disposal across the broad spectrum of our business areas. However, like all businesses, there will always be specialist areas of knowledge that will arise from time to time that are not covered by personnel or which are more efficiently dealt with externally. This is recognised and understood. In such cases, work will be scoped, quotes will be sought and approved for the provision of whatever professional / external advice is required. IG has historical budget spend on such advice which is used as a



guide. However, for exceptional costs (for example, new jurisdictions / licensing requirements) or for other changes to business situations, anticipated costs may increase and this will be dealt with in quarterly forecast exercises to ensure adequate budgets are approved.

IG is also heavily dependent on technology to enable its processes to operate effectively as well as providing products to its clients. We invest significantly in the technology infrastructure to ensure that our platforms are operationally stable, with system access being centrally controlled. We maintain and apply a Business Continuity policy, which provides a clear statement of our commitment to ensure that critical IG business activities can be maintained. It requires us to identify the critical business activities through business impact analysis on the events that could cause significant business disruption, and provide the resources needed for the establishment, implementation, maintenance and continual improvement of the Business Continuity Management System. The **Executive Risk Committee** (which will be further explained as in our response in Q26) also reviews our Key Risk Indicator on a monthly basis, a process which includes monitoring levels of core system uptime and deal latency.

Q5: How do you ensure you have the right capability before implementing growth strategies?

IG's **Executive Committee** (which will be further explained in our response to Q26) defines and allocates overall budgets and resources to ensure the organization has the capabilities and resources to deliver the objectives of our business plan, and oversees the control of costs.

Q6: How do you benchmark your capabilities? What standards do you use and why are they relevant and appropriate?

IG's primary regulator is the UK Financial Conduct Authority (FCA), who provides a training and competency regime which aims to ensure that customers in the regulated financial services markets deal with firm employees who are competent. Under this regime IG assesses the competency of its staff, maintains their competence (by identifying training needs for example) and that records regarding recruitment, training and supervision are kept for an appropriate duration. IG ensures its adherence to the training and competency regime by assessing the competency of its employees and ensuring that it employs the individuals needed within its business that employees receive ongoing training where appropriate and are able to keep up-to-date with changing financial and regulatory landscapes. Relevant records are also kept after an individual has ceased to carry out an activity relevant to the training and competency regime.

All of our IT and data security systems conforms to the ISO 27001:2005 Information Security management System standards. We believe these standards are relevant and appropriate to our systems as it formally specifies a management system intended to bring information security under explicit management control.



Conflict

Q7: How do you demonstrate that your customer and business strategies are aligned?

Our business model is to provide sophisticated retail clients who wish to actively trade the market with a transparent, technologically advanced and cost effective way of doing so. IG's 'strategy triangle' is illustrated as below. All four of IG's Values naturally lead to good outcomes for customers.



- Our emphasis on Hallmark Quality aims at ensuring clients receive the highest quality of service through IG;
- Our Passion for Progress means that we are always looking to improve the client experience, and not being satisfied with past success;
- Transparency in Dealing addresses the asymmetry of information between IG and our customers. We recognise it is vital for clients to understand how our products work and the associated costs;
- Meritocratic Opportunity helps to ensure that the right skills, attitude and approach are rewarded and help IG achieve our desired outcomes.

IG does not base its revenue generation around trading against its customers. We make our money from commission and spreads on trades, financing costs and internalising trade flow.



We hedge a significant volume of our market risk so as not to be exposed against our clients' positions – in these cases, if the client loses, IG loses and if the client wins, IG wins.

Our goal is to build lasting, valuable relationships with our customers. By maintaining absolute integrity, delivering excellent customer service and fast and reliable execution with transparent pricing, we strive to make our customers feel secure and confident in trading with us. This results in a more mutually profitable relationship and a closer alignment of business strategies to positive customer outcomes.

Q8: How do you demonstrate that the way leaders and staff are paid is aligned to customer outcomes?

We have undertaken an assessment of remuneration structures and have concluded that the remuneration schemes for client-facing sales employees are unlikely to lead to poor outcomes for customers.

Members of the incentives schemes have fixed basic salaries, reducing the incentive for undesirable behaviours. The percentage of bonus as a proportion of salary is reasonable. Bonuses are paid either quarterly or 6 to 7 months after they are earned and are not paid monthly. Any subsequently detected poor behaviours can lead to bonuses not being paid.

IG's Remuneration Committee approves a basket of non-financial measures for the directors' remuneration to ensure the way the directors are paid is aligned to customer outcomes. Specific non-financial criteria include system reliability, customer satisfaction, effective risk management, sustaining the company's excellent reputation and maintaining a good standing with regulators. Further details can be found in the Director's Remuneration Report section in our Annual Report (on pages 70 to 89).

Q9: How do you know whether your cross-selling strategies, and practices, are appropriate?

IG does not cross sell our products to New Zealand investors as we are licensed to offer CFDs only.

Q10: How do you demonstrate that fast growth is not at customers' expense?

IG's fast growth is not at customers' expense. As stated in our response to Q7, we do not base our revenue generation around trading against our customers. We want our customers to trade successfully as clients losing means we lose clients and this is counterproductive to us.

Furthermore, as stated in our response to Q6 above we plan for staffing and IT capacity to ensure we are satisfactorily resourced so that growth is not at customers' expense.



Q11: Are you comfortable that the risk your customers face is appropriate to their objectives and is properly compensated by the returns they receive? And are you also comfortable you have demonstrated that clearly to your customers?

Yes to both.

We offer all of our customers a range of risk management tools in limiting their losses. Internal data shows that more clients place winning trades and the average loss globally is an amount less than or comparable to the price of average TV subscriptions, gym memberships or even monthly coffee and snack costs.

Thus we are comfortable that the risk our customers face is appropriate to their objectives and we have communicated risks clearly to our customers.

We follow strict guidelines to ensure that we only promote our products to an appropriate target audience within appropriate sectors and demographic groups. We also conduct rigorous checks to ensure that all promotions are clear, fair and not misleading, and contain risk warnings so that risks are not downplayed compared to the benefits of our products. Our website and the product disclosure statements also have clearly disclosed the risks associated with our products.

Culture

Q12: How do you evaluate and reward good conduct and appropriate behaviour within your organisation? How do you address poor conduct, and how could you demonstrate that?

We put our customers at the heart of everything we do, and we believe the reward for good conduct is the mutually profitable relationship with our customer hence the sustainable long-term returns.

Our Conduct Risk Strategy sets out that a poor outcome for customers is an outcome that, because of IG's conduct, is unfair or disadvantageous for clients or an outcome that takes advantage of consumer's biases or heuristics or that takes advantage of the inherent asymmetry of knowledge or power between IG and its customers. Conduct Risk Training, which all staff receive, includes clear examples of what is a poor outcome for customers and what is not.

Our Conduct Risk Strategy also clearly states that we have a very low tolerance for poor consumer outcomes or for facilitating or contributing financial crimes or to behaviours that harm the soundness, stability or resilience of markets ("Unacceptable Outcomes"). We are committed to investing in process, training and culture to ensure that where possible Unacceptable Outcomes are prevented, even where the prevention of such has a negative impact on our revenue or costs. We accept that, notwithstanding our efforts, instances of Unacceptable Outcomes might occur, but we are committed to investing in monitoring



system so that when instances of the Unacceptable Outcomes are detected, swift action is taken to remedy and to prevent reoccurrence.

As illustrated below, we have developed and implemented policies around the key tenets of our Conduct Risk Strategy (i.e. our customers, the markets, financial crime, and our people), and the relevant monitoring and oversight to ensure the policies are effective and being complied with. This is done by the Compliance Department and Internal Audit. Both of these control functions will incorporate a specific Conduct Risk assessment into monitoring exercises. Conduct Risk Dashboard is presented to the Board of Directors on a monthly basis and helps them to identify if there are risks of client experiencing poor outcomes.

DETAILED POLICIES SUPPORTING THESE PRINCIPLES			
<ul style="list-style-type: none">Information Security PoliciesTreating Customers Fairly PolicyPricing CommitteeClient Money PolicyFinancial Promotions PolicyCompliance ManualAppropriateness and Wealth PolicyBest Execution PolicyComplaints PolicyProduct Governance PolicyThe Clients We Want – PolicyBrand Guidelines – Tone of VoiceBusiness Continuity PlanConflicts of Interest PolicyClient Categorisation PolicyCredit Risk Policy (COM)	<ul style="list-style-type: none">Market Abuse PolicyCorporate Governance PolicyLeaks PolicyBusiness Continuity PlanRisk Appetite StatementDMA PolicyShort Selling Policy	<ul style="list-style-type: none">Bribery PolicyGifts & Hospitality PolicyAML PolicyPeP and Sanctions PolicyFraud PolicySTR/Market Abuse PolicyPA Dealing PolicyAccount Opening PolicyInactive Clients PolicyClient Funding Policy (including 3rd Party Payment)	<ul style="list-style-type: none">Recruitment PolicyRemuneration PolicyTraining & Competence PolicyLearning and Development PolicyRecruitment PolicyApproved Persons GuidelinesWhistle BlowingAppraisal Policy and ProcessStaff Engagement Policy

Q13: If problems arise, do you have the right structures, capabilities and courage to address them, including at the board level? How would you demonstrate that?

IG operates a three lines of defence model where management control is the first line of defence, the various risk control and compliance oversight functions are the second line of defence, and independent audit/assurance is the third (details of which can be found in the Risk Management Framework in our response to Q26). The Compliance function forms part of the Control Pillar (details of which can be found in our response to Q25), however to ensure independence it reports directly to the Chief Executive Officer.

Incident and breach reporting is encouraged so that issues in the business can be identified and remedied and/or inappropriate behaviour addressed. We also maintain and apply a Whistleblowing policy (which will be further explained in our response to Q27).

All staff receive incident and breach reporting policy training which not only explains the policy and processes but also emphasises to all staff why reporting these issues is so important. Incidents are required to be formally reported to Compliance Department. Corrective actions will be managed to conclusion by trained compliance resources and solutions will be implemented to prevent further issues. Incidents and breaches are included in the quarterly compliance reporting and also discussed at the Executive Risk Committee, which reports to the Chief Executive Officer and Executive Directors who in turn report to the Board.



Q14: How do you know that all staff are comfortable raising concerns with the board and senior management?

We understand that it is important for the on-going good business of IG that any fraud, misconduct or wrongdoing by any employee of IG Group is reported and properly dealt with.

We maintain and apply an Incident and Breach Reporting policy and a Whistleblowing Policy. The process of raising issues is clearly explained in the compliance induction training to all staff. We encourage all employees to raise any concerns that they may have about the conduct of others in the business or the way in which the business is run.

Q15: How do you know you are good at challenging people, having difficult conversations, and providing constructive feedback to ensure accountability?

IG has an enduring governance culture which puts high ethical standards and fair client outcomes at the heart of all we do.

In the financial year of 2015/2016 we again delivered our employee engagement survey and achieved an 89% response rate. Highlights include the finding that over 90% of our employees feel that there is excellent cooperation and a strong sense of teamwork within their departments. They also report that IG shows a strong commitment to ethical business conduct, that managers treat their teams with respect and that senior leadership team is committed to providing high-quality products and services to clients.

The Non-Executive Directors are independent of management and their role is to advise and constructively challenge management, along with monitoring management's success in delivering the agreed strategy within the risk appetite and control framework set by the Board. The Board also reviews and challenges the system of internal control and risk management.

Q16: How do you know you learn lessons from your mistakes and failings?

As previously explained in our response to Q13, corrective actions for incidents or breaches will be managed to conclusion by trained compliance resources and solutions will be implemented to prevent further issues. Incidents and breaches are included in the quarterly compliance reporting and also discussed at the Executive Risk Committee.

Q17: How do you know that you stick to good conduct principles when under pressure?

We aim to put our customers at the heart of everything we do and we consistently deliver fair outcomes and positive experiences. As previously explained in our response to Q13, it is set out in our Conduct Risk Strategy that we are committed to investing in process, training and culture to ensure that where possible Unacceptable Outcomes are prevented, even where the prevention of such has a negative impact on our revenue or costs. We also have a



clear Conduct Risk Governance Framework, which will be fully explained in our response to Q18, to ensure that good conduct principle will be strictly followed when under pressure.

Controls

Q18: How do you know that the culture you claim to have is actually followed in the business? Do you have, for example, robust customer satisfaction methodologies?

We have the Conduct Risk Governance Framework as detailed below so we know the good culture is actually followed in the business.

- **The Board** will be responsible for setting and reviewing the Group's conduct risk strategy, for ensuring the strategy is implemented within the Group, and for ensuring that the Group's business, process and culture has consumer interests at its heart.
- The **Board Risk Committee** reviews reports on culture risks to ensure the Group's continued focus on positive customer outcomes. The Conduct Risk Dashboard is presented to the Board of Directors on a monthly basis. It allows them to see, at a glance, how IG have performed in certain areas which helps to identify if there are risks of customer experiencing poor outcomes.
- **Senior Management** will be the guardians of the conduct risk strategy within the Group, to ensure that the culture of the firm embodies the conduct risk strategy set by the Board, and to ensure that staff are focused on achieving good outcomes for customers. Senior Management will also be responsible for ensuring new strategy, products and initiatives are in line with consumer interests.
- **All staff** will be responsible for knowing and understanding what conduct risk is, and for putting consumers' interests at the core of what they do. Staff will also be responsible for knowing, understanding and complying with the detailed policies that support the conduct risk strategy.
- The **Compliance, Risk and Internal Audit Departments** will be responsible for regular monitoring of business units to assess conduct risk and to ensure compliance with the conduct risk strategy set by the Board. The Risk and Compliance Departments will be responsible for monitoring the Conduct Risk KRIs set by the Board and for providing the Board with a monthly report on Conduct Risk. In addition, the Compliance Department will be responsible for ensuring all staff know and understand what conduct risk is in the induction and ongoing training.

We use a number of indicators to measure customer satisfaction, as detailed in our response to Q3.

Q19: How do you ensure your perspective on your customers remains relevant? Do you use, for example, mystery shopping, customer call-backs, or surveys?

As previously stated in our response to Q3, we use a number of indicators to measure customer satisfaction to ensure our perspective on customers remains relevant. We use mystery shopping, customer call-backs and surveys.



Q20: Given your size and complexity, and your customer base and stakeholders, do you have the right skills, expertise and experience to provide the necessary oversight, challenge and action? How do you demonstrate that you have considered whether you need more or stronger capabilities by adding new board members and/or outsourcing?

As a highly regulated business IG has a high level of awareness that its directors and senior managers must not merely be competent leaders, but must also be fit and proper to perform their roles and uphold the necessary levels of honesty and integrity.

Appointment, recruitment and HR training and development processes are in place to ensure competence, skills and experience are assessed, met and maintained for directors and senior managers. Roles have a position description which outlines the minimum requirements and these are validated prior to commencement. IG's Responsible Manager Policy and Employment Screening Policy set out the minimum standards for all roles in the Australian office, being the office providing most of the business hours support to all NZ resident clients. The Employment Screening Policy determines a risk category for all roles based in Australia and both policies set out initial and ongoing requirements in relation to employment verification, qualification verification, criminal history checks, regulatory checks, credit and bankruptcy checks and reputational checks. Those who hold controlled function roles, Responsible Managers (Australia) and High Risk roles (as set out in the Employment Screening Policy) are re-screened periodically. Specific details of all of these matters are comprehensive and beyond the scope of this response but can be seen in depth within our policies, which are available upon FMA's request.

The Chairman of the Board ensures that the Directors continually update and refresh their skills and knowledge, and will consider if IG needs more capabilities by adding new board members. Further details can be found in the section of The Board in our Corporate Governance Report (on pages 58 to 68).

Q21: Given your resources and the risks you manage, how do you assess your controls and prioritise compliance activities?

The compliance plan is documented annually and sets out a risk based approach to compliance monitoring and testing. The plan is structured by business line and identified key risks and processes, the inherent risk, the controls and the residual risk.

Compliance tests are then developed and set out the particular objectives and test steps, document findings and results and give an overall rating for the process controls. Included in the test steps are any previous issues identified and/or reported incidents or breaches relating to that process to ensure these have or are being addressed.

All compliance tests are independently conducted by experienced and trained compliance resources and then reviewed and approved by the compliance manager. Compliance testing results are included in the quarterly compliance reporting and also discussed at the APAC Control Functions Committee and Executive Risk Committee, which reports to the Board.

Internal Audit conducts independent audits on a regular basis of the compliance function, and reports to IG's Audit Committee (details of which can be found in our response to Q26).



Q22: If you outsource your operational functions, how do you ensure you have the right monitoring mechanisms and controls in place to ensure you understand what your outsource partner is doing and how they are doing it?

We do not outsource our operational functions.

Q23: Does your board regularly assess its own effectiveness, and whether its role and objectives remain suitable for your operating environment?

Yes. The effectiveness of the Board is regularly reviewed to ensure that the Board has the right mix of skills and experience for constructive discussion and, ultimately, effective Board decisions. Further details can be found in the Effectiveness section of the Board in the Corporate Governance Report (on pages 63 to 66).

Q24: Do you have sufficient knowledge of, and insight into, what management is doing, from sources other than management? How do you know that good conduct principles are being put into practice, and that the right people are being held to account?

The main activities of the Board's committees and senior management have been disclosed in our Annual Report. Furthermore, our intranet publishes news and updates all staff on what the management is doing on a regular basis.

We have reviewed of all policies to ensure conduct risk is adequately covered and that the right people are being held to account. We have developed a Key Risk Indicator pack and established an escalation procedure of monthly conduct risk scoreboard. Training is provided to all staff including senior management.

Q25: How are you satisfied that there is a clear separation of accountabilities and an appropriate division of responsibilities amongst management?

We have determined the five key pillars for our business success: (i) Clients; (ii) Delivery; (iii) Returns; (iv) Control; and (v) People. Accordingly, we have aligned the organization to these pillars, with clear executive-level accountability.

- Chief Commercial Officer is the head of the Clients Pillar focusing on how to attract, on-board, address the needs of and deliver quality service to our customers.
- Chief Information Officer is the head of the Delivery Pillar focusing on how to efficiently and economically design, build and run super technology, marketing assets and websites for the Group.
- Chief Financial Officer is the head of Control Pillar focusing on the stewardship of company assets, statutory and regulatory reporting and investor relations, as well as providing focused, complete accurate and timely information to support decision-making and driving accountability for performance.
-



- Chief Analytics Officer is the head of Returns Pillar focusing on maximising returns from marketing and client flow, research-led platform and product enhancement, and continuous optimisation of our dealing practices and online spend.
- Head of HR is the head of People Pillar focusing on supporting the five pillars by managing IG's employee lifecycle and directing the people strategy.

As such, there is a clear separation of accountabilities and an appropriate division of responsibilities amongst management.

Q26: How are you satisfied you have spent sufficient time deciding how much risk you are prepared to tolerate? And that your parameters are supported with appropriate controls, such as early warning indicators and hard-stop mechanisms? And that these are sufficiently proactive and frequent?

The Board defines the Group's risk appetite, both on an individual risk and aggregate basis, in pursuit of its business objectives and strategic goals. Risk is assessed across the Group using a clearly defined Risk Management Framework as illustrated below. The Risk Management Framework provides the Board with assurance that we have evaluated and managed our risks as far as possible, within appropriate predefined boundaries.



THE BOARD

- Evaluates risk and determines risk governance arrangements
- Sets and reviews the risk appetite and the key risk indicators
- Reviews and challenges updates from the Board Risk Committee
- Reviews and challenges the system of internal controls and risk management
- Reviews and challenges capital and liquidity stress-testing
- Approves the Corporate Governance Report in the Annual Report

BOARD COMMITTEES

BOARD RISK COMMITTEE

- Evaluates risks and determines risk management arrangements
- Considers the risk appetite and KRIs for the current and future strategy and recommends for approval by the Board
- Reviews and challenges the Internal Capital Adequacy Assessment Process (ICAAP), Internal Liquidity Adequacy Assessment (ILAA) and Recovery Plan
- Ensures rigorous stress-testing and scenario-testing of the Group's business
- Ensures a sufficient level of risk mitigation is in place
- Reviews the Group's major risk exposures
- Considers the adequacy and effectiveness of the technology infrastructure and supporting documentation in the Risk Management Framework
- Provides input to the Remuneration Committee on the alignment of the remuneration policy to risk performance

REMUNERATION COMMITTEE

- Reviews the structure and level of remuneration throughout the business and assesses the impact of remuneration on risk

AUDIT COMMITTEE

- Receives annual reporting from the Board Risk Committee on the Group's internal controls and Risk Management Framework
- Reviews an assessment of the control environment, via internal audit reports, and progress on implementing both internal and external audit recommendations
- Monitors and reviews the internal audit function's effectiveness in the overall context of the Group's internal controls and risk-management systems

NOMINATION COMMITTEE

- Identifies and recommends suitable candidates for appointment to the Board to ensure that its composition meets Group's needs
- Ensures that succession plans are in place

EXECUTIVE COMMITTEES

EXECUTIVE COMMITTEE

- Sets out IG's Values
- Oversees the execution of the IG Strategy on behalf of the Board
- Agrees and recommends the Business Plan to the Board and manages the delivery of the agreed Business Plan
- Defines and allocates overall budgets and resources to ensure the organisation has the capabilities and resources to deliver the objectives in the Business Plan, and oversees the control of costs
- Ensures there is an effective management structure and organisation within the Group which is consistent with the effective delivery of the Business Plan
- Oversees performance across IG including performance against agreed Key Performance Indicators in all aspects of IG's operations
- Reviews and approves major change and key investment initiatives and, where required, submits for Board approval
- Discusses any matter which any member of the Committee believes to be of such importance that it should be brought to the attention of the Committee

EXECUTIVE RISK COMMITTEE

- Oversees the day-to-day risk management activity across the Group
- Evaluates the risks in the context of Group's risk appetite
- Maintains the Risk Management Framework
- Receives, analyses and evaluates risk MI
- Deals with specific risk issues as they arise
- Analyses the regulatory environment for forthcoming changes
- Evaluates new business transactions

ICAAP AND ILAA COMMITTEE

- Oversees the results of the ongoing stress-testing and scenario-testing process, ensuring that risks are continuously identified and assessed
- Considers the impact on capital and liquidity of changes in strategy or the operating environment
- Reviews the KRIs on a quarterly basis

CLIENT MONEY COMMITTEE

- Oversees the processes and controls over segregating client funds and the Financial Conduct Authority (FCA)'s client assets (CASS) operational oversight function
- Monitors and reviews the levels of prudent margin in the UK and buffers in client money pools outside the UK

CONTROL FUNCTIONS

Additional levels of assurance are provided by control functions, which are independent of the business operations – namely finance, risk, compliance, legal and internal audit. The control functions provide periodic reporting to the Board and Executive Committees as appropriate.

INTERNAL AUDIT | FINANCE | RISK | COMPLIANCE | LEGAL

BUSINESS OPERATIONS

In addition to the control functions, we have embedded risk management into our underlying business operations. Heads of departments are responsible for maintaining risk registers and, where necessary, taking action to mitigate risks and enhance the control environment. The risk and compliance control functions use these registers in coordinating the identification, measurement and monitoring of risk across the business.

INTERNAL CONTROLS IMPLEMENTED BY MANAGEMENT



Risk monitoring and reporting in IG is undertaken regularly covering key market, credit and liquidity metrics. Further details can be found in the Managing Our Risks section of the Strategic Report in our Annual Report (on pages 44 to 54).

REPORT/FORUM	FREQUENCY	CONTENT
EXECUTIVE RISK COMMITTEE DASHBOARD	WEEKLY	Market, credit, liquidity and operational risk exposures including stress testing results, review of high risk clients and summary of operational incidents.
BOARD RISK REPORT	MONTHLY	Capital and liquidity metrics; summary of market, credit and operational risk profile; conduct and regulatory risk summary; information security and cyber risk.
ICAAP/ILAA REVIEW	QUARTERLY	Review of regulatory capital and liquidity position of the Group, including review of Pillar 2 risks and temporary capital add-ons held in respect of specific risk issues.

We therefore are satisfied that our controls are sufficiently proactive and frequent.

Q27: Do you have an appropriate whistleblowing process, and how can you demonstrate its effectiveness?

Yes. We maintain and apply a Whistleblowing Policy which details the whistleblowing process. It is important for the on-going good business of IG that any fraud, misconduct or wrongdoing by any employee of IG Group is reported and properly dealt with. We therefore encourage all employees to raise any concerns that they may have about the conduct of others in the business or the way in which the business is run.

IG's Audit Committee, which reports to the Board of the Group, regularly review and agree the Group's whistleblowing policy to ensure its effectiveness.

Communication

Q28: Is your business model, and how you operate, open and transparent to your customers?

Yes. Our business model and how we operate is clearly disclosed in the section of "Our Clients and Business Model" of the Strategic Report in our Annual Report (on pages 14 to 15).



Q29: How do you ensure your staff understand the alignment between your business and customer outcomes, and their direct impact on that relationship? How do you ensure they deliver this?

Our conduct as a business is driven by our values of hallmark quality, passion for progress, transparency in dealing and meritocratic opportunity. These values have been an organic and fundamental part of our historic growth and success. However, with growth comes the challenge of maintaining that culture and with it appropriate conduct. For this reason, we decided to define our values clearly and communicate them to staff, giving our people a strong framework and direction to help them realise our overall vision. In this way we have embedded sound corporate conduct in the culture of the business, so it is not simply a risk or regulatory requirement.

Our strategic initiatives include producing monthly Key Risk Indicators and dashboards for conduct risk, with a rolling plan of thematic conduct risk reviews and formalised conduct consideration prior to project sign-off. In this way we ensure effective communication of the tone from the top throughout the organisation. We apply high standards across our businesses, and specifically in our corporate governance – as set out in the Corporate Governance Report and the Directors' Report in our Annual Report.

All staff receive regular conduct risk training via our internal online education system and all new staff are given face-to-face compliance induction training, during which we explain conduct risk and how sound corporate conduct is embedded in the culture of our business so it is not simply a risk or regulatory requirement.

All customer calls are recorded and our compliance team monitor these on a regular basis. In all of compliance control monitoring the level of conduct risk is rated separately. Where our monitoring detects an unfair outcome, we will act swiftly to remedy and prevent recurrence.

Q30: Is your disclosure to customers accurate, clear, concise, effective and timely? What about when things go wrong? Is that quality consistent across all your communication channels, such as your website, advertisements, statements, and brochures? How do you know this?

Yes.

Our Product Disclosure Statement (“PDS”) for New Zealand investors is prepared, maintained and registered in accordance with the Financial Markets Conduct Act and the Financial Markets Conduct Regulations. The PDS details requisite information about our product, features and key risks. Our regulated document change management procedures sets out the controls around issuing and changing the PDS and the approval process. Clients are notified of any material changes to the PDS within 10 days’ notice and the PDS is available on our website at all times. Compliance are kept informed of changes in the business and products and the PDS and any other relevant disclosure is updated on an as needs basis. A formal annual review of the PDS and disclosure obligations is also undertaken.



We also have a Financial Promotions policy which details all regulatory requirements including ensuring advertising material is not false or misleading and complies with fair dealing and other regulatory provisions. Staff involved in the preparation of customer communication materials are provided with relevant internal and regulatory trainings and have regular interaction with compliance team. All customer communication materials requires compliance approval, and all advertising requires both business and compliance approval.

Compliance ensures PDS and website disclosure is accurate, consistent and timely. The compliance monitoring of financial promotions is completed quarterly to ensure these processes are adhered to. All incidents are required to be formally reported to the Compliance team. Incidents are recorded and managed to conclusion, and solutions are implemented to prevent further issues.

Q31: How do you know whether your customer complaints management and feedback process is effective?

IG has a Complaints Policy that sets out how we deal with complaints through our Internal Dispute Resolution process and clients' access to the external dispute resolution. Complaints require a thorough and independent review and a detailed response by that internal reviewer. All such responses will be reviewed and approved by a manager. An overarching obligation in the way we treat all clients globally is Treating Customers Fairly, which provides an all-encompassing relationship experience based on fairness to our clients.

Complaint responses require a secondary review and approval and are analysed for potential systemic issues as well as client feedback and service improvement at both a country and global level. All complaints receive a documented analysis and complaints statistics and themes are recorded and discussed at the Control Functions Committee and the Executive Risk Committee.

Q32: Are your customers paying a reasonable price for your products and services, and how do you demonstrate to your customers – through disclosure and discussion – that the price and the way it is calculated is reasonable?

We are transparent about our fees and charges. We offer highly competitive margins and rates across our full range of markets, and they are clearly disclosed on our website. The calculation of our charges and fees can be found in both our website and our NZ Product Disclosure Statement.



Q33: Are you transparent about the costs passed on from associated parties, third-party suppliers, or outsourced providers?

Yes. We have disclosed the costs in trading with us on our website and details of costs are available to investors upon request.

31 October 2016

Financial Markets Authority
PO Box 1179
Wellington 6140

By email: consultation@fma.govt.nz

Feedback: A guide to the FMA's view on conduct

The Institute of Directors (IoD) appreciates the opportunity to provide feedback on [A guide to the FMA's view on conduct](#) (the guide).

About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to driving excellence in governance in all areas of business and society in New Zealand. We represent a diverse membership of around 8,000 members drawn from NZX-listed corporations, private companies, small to medium enterprises, public sector organisations, not-for-profits and charities.

Our chartered membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

General comment

Conduct has been gaining increasing global focus, especially in the financial services industry. Good conduct is vital to fair, efficient and transparent markets. In New Zealand, conduct is central to the Financial Markets Conduct Act and *governance and culture* is one of the FMA's seven strategic priorities.

The guide sets out what the FMA will focus on when examining how financial services providers demonstrate good conduct. It provides the conduct 'lens' the FMA will use to examine what providers do and how they do it.

We support the guide as a resource to help providers understand FMA's focus on and expectations about good conduct under its framework of *capability, conflict, culture, controls* and *communication*.

The board's role

We agree with the FMA that it does not, and should not, prescribe culture. It is the role of the board and senior managers to lead culture in the organisation and to 'set the tone'. It is the board's role to ensure that governance structures, control mechanisms and organisational culture support good conduct.

The IoD's [Code of Practice for Directors](#) provides guidance for directors to observe and foster high ethical standards. Directors 'set the tone' by demonstrating high ethical standards to positively influence the culture, behaviour and reputations of their companies.

Customer focus

The FMA states that good conduct, at its core, means focusing on customers and that the result is good customer outcomes.

We agree that customer focus is important, but behaviour and 'doing the right thing' is also at the core of good conduct.

We suggest FMA emphasise acting with integrity, honesty and fairness in the description of what good conduct is to help mitigate against the risk of a focus on customers that could include bad behaviours which still results in good customer outcomes.

Good conduct in practice - guidance only

The guide sets out a range of questions that FMA staff are likely to ask about the organisation's *capability, conflict, culture, controls* and *communication*. We agree with the FMA that these questions and the guide should not be seen as a checklist or manual.

It is important that organisations take responsibility for conduct and culture. This includes ensuring sound systems and controls, being disciplined about meeting compliance obligations, and good disclosure.

Conclusion

The IoD believes good corporate culture at board and management level is a critical foundation for ethical business and good conduct.

The guide should help directors and executives understand the framework (the 'lens') that FMA will use to examine conduct in financial services providers. This should also support boards to foster high ethical standards and lead an effective culture in their organisations.

We appreciate the opportunity to comment on behalf of our members and would be happy to discuss this with you.

Insurance Council of New Zealand

P.O. Box 474 Wellington 6140
Level 2, 139 The Terrace

Tel 64 4 472 5230

email icnz@icnz.org.nz

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2 October 2016

Financial Markets Authority

Emailed to: consultation@fma.govt.nz

To Whom It May Concern,

Feedback: a guide to the FMA's view of conduct

Thank you for the opportunity to provide feedback on the Guide. We provide this brief supporting submission for the Insurance Council of New Zealand ('ICNZ').

ICNZ has 28 members who insure approximately half a trillion dollars' worth of New Zealand's assets and liabilities. Those members are general insurers – that is, not life insurers or health insurers.

We welcome the Guide. We welcome proactive thought leadership by FMA as part of the global conduct debate. We also welcome transparent approaches to the development of FMA's thinking on conduct. We submit the Guide should be updated regularly to ensure its ongoing relevance and continued transparency of the positions FMA takes on conduct over time. Timely disclosures of any changes in FMA's thinking will be important for the industry.

We note the Guide is aimed at financial service providers who are licensed by FMA under the Financial Markets Conduct Act 2013 (FMCA). Our member insurers are not FMCA licensees. They are licensed to conduct insurance business by the Reserve Bank of New Zealand under the Insurance (Prudential Supervision) Act 2010 and are registered financial service providers under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Insurers are bound by the Part 2 fair dealing provisions of the FMCA. Notwithstanding the above, we understand the Guide is intended to be a more generally-applicable statement of how FMA goes about its business of regulating market conduct of financial service providers in New Zealand. We are also mindful that some of our members may become licensed entities if and when the proposed licensing regime in the updated Financial Advisers Act comes into force.

The Guide will therefore be very useful for its stated purposes – that is, to assist understanding of the "lens" through which FMA looks at the activities of regulated entities. Some of our members are

concerned about the possibility of regulatory creep, and that the Guide may become de facto law through overly rigid application. We note the Guide is not meant to be a checklist or manual, but also note the Guide's potential to develop into a checklist or manual over time. We believe this would not be a desirable outcome and would caution against myopia developing behind the lens. We encourage FMA to maintain an open mind about what good conduct can look like over time and as conduct issues arise.

We note that ICNZ requires high standards of conduct from its members through the Fair Insurance Code 2016. The Code is a rule of membership of ICNZ and is enforced through the independent external dispute resolution schemes Insurance and Financial Services Ombudsman and Financial Services Complaints Limited. Significant breaches of the Code are also addressed through ICNZ's independent Code Compliance Committee. We attach a copy of the Code for your reference, and invite you to compare the specific Code standards with FMA's Guide when considering conduct in the insurance industry. We will be doing the same.

Finally, we strongly support FMA's focus on financial service providers clearly identifying, managing and disclosing actual conflicts of interest, particularly regarding how staff are paid and incentivised. Whilst we strongly support transparency and disclosure of the existence of a conflict and the general nature of that conflict, we note that disclosure of the full details of remuneration may involve disclosure of information about commercially sensitive arrangements. This would be undesirable and needs to be approached on a careful, considered, case by case basis.

Feedback: A guide to the FMA's view of conduct

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: A guide to the FMA's view of conduct' and your entity name in the subject line. Thank you. **Submissions close on Monday 31 October 2016.**

Date: 31st October 2016

Number of pages: 5.

Name of submitter:

Company or entity: KPMG New Zealand

Organisation type: Professional Services Consultancy

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you e.g. during monitoring and supervision.

KPMG welcome the release of the FMA's guidance on their view of conduct and we are pleased to be given the opportunity to respond to this consultation. KPMG have been highly engaged in the global discussion on defining good conduct and have supported a number of clients to establish an effective and practical approach to managing conduct and delivering positive customer outcomes.

We consider this guidance will benefit the organisations you supervise and their professional advisers. Our observation is that it has been a challenge for the industry to understand how to achieve and demonstrate good conduct and the extent to which organisations need to go to embed its management into their business. This guidance will assist organisations in their understanding of good conduct, its wide ranging impact and how senior management can review whether they are consistently delivering good conduct. Furthermore it will assist in setting expectations as to the management, monitoring and mitigation of the risk of poor customer outcomes in organisations and the FMA's supervisory approach.

Questions:	Comment	Recommendation
1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?	Conduct driven regulation is a source of global regulatory focus and this guidance is a valuable contribution to ongoing discussions on the definition and practice of good conduct and culture not only within New Zealand but globally. KPMG's global experience of regulatory approaches to conduct risk shows that few other regulators have provided such practical guidance, which has driven uncertainty and sometimes a lack of focus in those markets as to the relevance, value and importance of good conduct. We believe therefore that with this	We would encourage the FMA to share this guidance with global regulators to further the global consideration of good conduct and in particular what it means to organisations on a practical level.

	<p>guidance the FMA are making a valuable contribution to the understanding of such issues by the local market particularly by emphasising that good conduct goes beyond disclosure and sales controls and is firmly rooted in senior management accountability and the establishment of a positive risk culture.</p>	
<p>2. <i>Is the guidance useful for your business, sector and industry? How might you use it?</i></p>	<p>For our clients and the organisations you regulate, this guidance will encourage them to take good conduct seriously and understand that it goes beyond simple ‘misselling risk’. Usefully, it makes clear the importance of managing conduct risk and customer exposures as part of an organisation’s enterprise wide risk management framework:</p> <ul style="list-style-type: none"> - It highlights to the C-suite it is important to appreciate what is required of organisation’s performance and the risk culture that needs to be engendered to drive appropriate behaviours that will ensure good conduct practice throughout the value chain resulting in the consistent delivery of positive customer outcomes; - Control functions will clearly understand the need to embed the consideration of conduct into their oversight and assurance programs; - Finally for KPMG and other professional advisors it provides enhanced clarity that allows us to help our clients establish embedded frameworks that proactively deliver good conduct and manages emerging customer risks and helps us to support the FMA in their focus to enhance the fairness, efficiency and transparency of the NZ financial services market. 	n/a
<p>3. <i>Does the guidance explain the FMA’s expectations of you when we assess your conduct?</i></p>	<p>We think the guidance is a useful contribution for organisations to understand the FMA’s approach to expectations regarding good conduct. We acknowledge that the FMA do not wish to prescribe how organisations should meet these expectations however there may be a lack of clarity as to <i>how</i> they will be expected to <i>demonstrate</i> good conduct to the FMA. We see this is of particular importance given that the guidance signals a shift to ‘positive assurance’ over</p>	<p>The FMA should consider including in the guidance what kind of evidence the FMA expect to see in relation to how an organisation is delivering good customer outcomes. Doing so will provide the industry with clear guidance from the outset in their efforts to formalise</p>

	<p>historical ‘negative assurance’ approaches. For example, it may be that the FMA will expect to see a suite of empirical qualitative and quantitative evidence that clearly indicates that customers are achieving the right outcome, the organisation is consistently meeting good conduct measures and that this is being regularly assessed and challenged within an organisation’s governance structure.</p>	<p>frameworks, strategies and policies.</p> <p>It may be useful to link this aspect to the statutory obligations the Guide seeks to build upon.</p>
<p><i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i></p>	<p>The guidance provides practical direction on delivering good conduct but remains flexible enough so that organisations can define and embed it in a way that is relevant and proportionate to the breadth and nature of their business. Nevertheless, and as we suggest in question three, an indicative description of the kind of evidence the FMA expects to see during supervisory visits to demonstrate how an organisation is delivering good conduct and good customer outcomes would be useful.</p> <p>Similarly to what extent do the FMA expect organisations to demonstrate good conduct to customers? In practice this should be demonstrated through customers’ day to day experience of an organisation’s products, sales and service but it is unclear whether the guidance places new obligations on organisations to formally disclose how they are managing conduct risk to customers</p>	<p>Clarify whether the guidance places additional customer disclosure obligations on organisations.</p>
<p><i>5. Is there anything further you would like the guidance to cover?</i></p>	<p>KPMG have identified some opportunities below to enhance the guidance which the FMA may be interested in considering. We are very happy to discuss these elements and any other elements of our thought leadership on conduct risk management with you further.</p> <p>KPMG recognises that in order to improve customer outcomes and good conduct practices it is important to provide those senior stakeholders who can influence organisational change with the appropriate accountability and right management information. The bullets in the section below provide examples of</p>	<p>See feedback summary points below</p>

	<p>how the FMA could promote good reporting and governance processes in order to effect the necessary cultural change to drive improved conduct practice.</p>	
<p>Feedback summary – if you wish to highlight anything in particular</p> <ul style="list-style-type: none"> ▪ Enhance focus on senior management accountability and delivery of good conduct through a customer centric business model and strategy <p>The good conduct profile diagram on page 7 of the guide illustrates the central role that board and executive management accountability plays in the delivery of good conduct. KPMG wholly agree with this and our thought leadership on conduct risk reflects this principle. We have further identified that in practical terms, good customer outcomes and good conduct is primarily driven through senior management fully understanding the regulatory framework, owning conduct, delivering a strategy that is customer centric and needs focused and communicating and demonstrating a clear tone from the top which sets culture, clear expectations of behaviour and drives individual commitment. In practice, the behaviour of first line sales employees is driven primarily by the expectations placed upon them by senior management strategy and how this is translated into business level targets, processes and metrics. This can drive poor behaviours and inappropriate customer outcomes even if this goes against the employees personal values.</p> <p>Although the 5 ‘C’s approach in the guidance is useful, the specific elements of the guidance is generally focused on processes, performance and behaviours further down the value chain (such as remuneration, oversight and disclosure) which cannot deliver good outcomes in isolation. Focusing on conduct being driven by behaviours and processes ‘down the line’ risks limiting senior managements’ ownership of conduct and their understanding as to how to embed good conduct. There is a risk that ownership of conduct therefore ends up residing in control functions or business level management or the conduct change is focused on a few ‘bad apple’ sales staff rather than going to the strategic root cause of poor behaviours and poor customer outcomes.</p> <p>The guidance would therefore benefit from enhanced emphasis on the role of the board and senior management in defining and driving good customer outcomes and a clear indication that embedding ‘Customer Centricity’ into the organisation’s strategy and business model is expected by the FMA and crucially is at the heart of driving good conduct.</p> <ul style="list-style-type: none"> ▪ Effective reporting processes to provide quality insight <p>For the board and all levels of management to drive good conduct and a positive risk culture they will need high quality insight as to the performance of the business against a range of conduct and customer outcomes metrics. This can only be done through the establishment of a broad suite of management reporting that clearly indicates how the organisation is delivering good conduct, managing their risks and which permits detailed challenge and early identification of emerging conduct risks.</p> <p>The guidance could make this expectation clearer which we believe will drive significant improvements in the quality of insight, risk management and accountability within the governance framework.</p> <ul style="list-style-type: none"> ▪ Culture and customer outcomes should be measured through a blend of metrics <p>In our experience customer satisfaction (such as NPS scores) and feedback can give an inappropriate level of comfort regarding delivery of good outcomes and as a measure of culture.</p>		

For example, in the UK those who had been missold a product would often provide positive feedback on their sales experience with the product's shortcomings or omissions in the sale only becoming apparent at a later stage. This could also be seen in the recent issue regarding interest rate swaps in NZ when limitations only became apparent as the result of a drop in interest rates.

We suggest that the reference on page 11 under Controls makes it clear that 'customer satisfaction' can be useful as one of a blend of a number of other internal and external metrics but should not be used as a standalone measure of culture or good customer outcomes. In our experience a balanced scorecard of a wide range of metrics from a number of sources that provides root cause insight is an effective way to provide a clear single dashboard of conduct performance. For example performance measures such as sales and profitability for a product should be shown with organisational metrics such as, sales governance/supervision failings and customer metrics such as, volume of cancellations and negative feedback from customers and staff, should be combined to provide detailed holistic insight into the delivery of good conduct over time and indicate clearly where senior management should focus their challenge and attention.

- Consider case studies or examples

The FMA may wish to consider including a small selection of case studies that demonstrate examples of 'good and poor conduct' and which may support the understanding of good conduct in practice and illustrate the benefits of good conduct to the organisation, customers, employees and the market as a whole.

Conclusion

In summary this guidance is a great addition to the global discussion on conduct risk and will provide additional clarity to the industry in New Zealand as to expectations on good conduct and delivering positive customer outcomes. We would hugely appreciate the opportunity to speak with you further regarding our submission and recommendations and to share our industry and global insight.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Feedback: A guide to the FMA's view of conduct

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: A guide to the FMA's view of conduct' and your entity name in the subject line. Thank you. **Submissions close on Monday 31 October 2016.**

Date: 28 October 2016

Number of pages: 2

Name of submitter:

Company or entity: Mercer (N.Z.) Limited

Organisation type: Licensed Manager of managed investment schemes

Contact name (if different):

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you e.g. during monitoring and supervision.

Questions:	Comment	Recommendation
1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?	<p>We submit that the guidance makes a useful contribution to the current debate regarding conduct risk.</p> <p>It's an informative document and conveys FMA's expectations of financial service providers as well as continuing the dialogue around the concept of conduct risk.</p>	
2. Is the guidance useful for your business, sector and industry? How might you use it?	<p>We regard the guidance as useful inasmuch as it presents key concepts around conduct and includes questions which can be used to challenge directors, senior managers and colleagues on both what good conduct means and how it can be evidenced.</p> <p>The guidance can also be used as the basis for a conversation with the above parties to help define their roles and determine their responsibilities in building, maintaining and enhancing good conduct.</p>	
3. Does the guidance explain the FMA's expectations of you when we assess your conduct?	<p>The guidance helps our understanding of FMA's expectations in respect of conduct and provides an initial conduct 'roadmap'.</p> <p>Mercer has a strong and consistent culture which is customer-centric and compliance oriented. We will look to use the Guidance Note as both general</p>	

	<p><i>guidance and also to explicitly address the 5 'c's of conduct by beginning a process of enquiry directed at our culture and Compliance Framework. We anticipate using the questions posed in the Guidance Note to challenge our current position.</i></p>	
<p><i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i></p>	<p><i>The guidance provides enough flexibility and direction to enable us to show FMA and our customers how we demonstrate good conduct.</i></p> <p><i>Whilst the early stages of FMCA have been about new governance and licensing regimes, and enhanced disclosures, the guidance note signals the step-change required of financial service providers under the new regime.</i></p> <p><i>In many cases, we will be able to demonstrate broad organisational understanding and commitment to good conduct but the challenge will be to integrate all of the different dimensions of conduct across the organisation so that we can be confident of the totality of the customer experience and our continuing compliance with regulatory obligations.</i></p>	
<p><i>5. Is there anything further you would like the guidance to cover?</i></p>	<p><i>I think that it would be useful as the concept of conduct develops and normalises that practical examples of good conduct are showcased so that best industry practice can be benchmarked.</i></p>	
<p>Feedback summary – if you wish to highlight anything in particular</p> <p>We consider that it is in the best interests of customers and providers that conduct expectations are clear and are practicable.</p> <p>We appreciate the fact that the guidance document has been expressed not as a single set of rules or prescriptive requirements but rather recognises that there is no universal definition of conduct applicable to all financial service providers.</p> <p>We expect that for most if not all providers, the conduct journey will be an evolving one as they look to integrate all as aspects of their business to ensure alignment with the customer's expectations and adherence to regulatory requirements.</p>		
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>		
<p>Thank you for your feedback – we appreciate your time and input.</p>		

Feedback: A guide to the FMA's view of conduct

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: A guide to the FMA's view of conduct' and your entity name in the subject line. Thank you. **Submissions close on Monday 31 October 2016.**

Date: 31/10/2016

Number of pages: 3

Name of submitter:

Company or entity: Milford Asset Management Limited

Organisation type: Fund Manager

Contact name (if different):

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you eg during monitoring and supervision.

Questions:	Comment	Recommendation
<i>1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?</i>		
<i>2. Is the guidance useful for your business, sector and industry? How might you use it?</i>		
<i>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</i>		
<i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i>		
<i>5. Is there anything further you would like the guidance to cover?</i>		

Feedback summary – if you wish to highlight anything in particular

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Rather than provide answers to the questions, which we felt could provide overlapping and repetitive answers, we have summarised our thoughts on the guide as a whole and some of the topics covered by the questions.

Overall our view is that the guide is a useful contribution to the debate on what constitutes good conduct and how to demonstrate it. However we think that the FMCA licensing minimum standards and frameworks that our organisation has had to demonstrate adherence to, to obtain a DIMS and MIS licence, already cover much of what is included in the guide. Despite this, some of the questions posed would provide a constructive challenge to how businesses deal with embedding positive, demonstrable conduct in practice.

Much is made in the guide to what customers care about. However, it is not clear how and when this information was gathered, the sample size or demographics covered. If providers could understand FMA's research in this area, we could overlay our own customer information, survey data and what we know about our average client profile to make the information more relevant to our organisation. On reading the guide, we found that there was overlap between the conduct focus areas, or that the focus areas were a little narrow or inconsistent with the statement around what the customer cares about. For example, in the Capability focus section on page 8 there was a point to consider how performance is measured. We could not see how this related to Capability.

We also think there should be more clarity around some of the statements made. From reading the guide there seemed to be a lean towards all clients receiving the type of service that would have been traditionally provided by an AFA. Based on interactions with new and existing clients, we would argue that this is not appropriate for all clients, and not wanted by every client every time either. Although the changes proposed by the FAA Review will have an impact here, currently we would resist any expectation from the regulator that this should be the process followed. We are keen to understand how you can gather this information on needs and objectives and if this information is used why that would not constitute advice. Bearing this in mind, the guide should be made clearer in the following examples;

a) Capability (page 8) – 'Whether the provider has the skills and experience to competently provide the right service or product'. We agree that an organisation should ensure its staff have the skills and experience to competently provide a service about their products, however this is not compatible with whether it is the right product, unless the client has also received financial advice to confirm this. And that will not be appropriate or wanted by the client in every circumstance. We do not think it is appropriate that FMA be prescriptive in expecting all clients to receive advice, as our experience shows that not all clients want advice.

b) Capability (page 10) – 'How do you know your products and services can meet and are meeting your customer needs?' Unless you are providing a financial advice service you may not have information on your customer needs, or your client may not wish to disclose it. Collecting information on customer needs would currently conflict with the class advice/ personalised advice distinction. It would therefore be problematic to collect this information if an organisation was providing a class advice or information only service.

c) Capability (page 10) – 'How do you know.... their level of financial sophistication?' This is a suitability concept considered by financial advisers when making recommendations to their clients

and unless all clients are receiving personalised financial advice then organisations are likely to be unwilling to make assessments of a client without a full needs analysis. In this case, the parameters of what constitutes financial advice and how it should be dealt with need to be clear. Alternatively, an acceptance that demonstrating clear communication of relevant information to clients, any tools your organisation can offer to assist decision-making and availability should suffice in being able to show that this area of conduct is being positively considered.

d) Capability (page 10) – ‘How do you know that customers will have the same or better outcomes with your services and products as similar elsewhere?’ We do not believe that an organisation like ours can ever know how our Funds will performance in future against others. It is a retrospective assessment. We could consider directing clients towards past performance to provide comfort, but this would need to be tempered against the disclaimer that past performance is not an indication of future returns. This would also be coupled with the need to fully understand other providers’ services and products in detail to be able to make the assessment confidently. We would argue that consumers, along with providers, also need to take responsibility for their own financial decisions.

e) Conflict (page 10) – ‘Are you comfortable that the risk your customers face is appropriate to their objectives.. .’ Again the advice/ non-advice line is blurred here and it is not clear how far FMA is expecting providers to go in collecting and analysing this information, whether the expectation is that financial advice is provided in every interaction, and who should be providing this service. We do not think that all clients want, or need, this level of support in making their investment decisions and so this should be borne in mind.

f) Capability and Conflict (page 10) – both mention questions regarding growth strategies and how to manage them. We believe it is just as important to ask questions of businesses whose growth is stagnating, declining or are small scale providers that may find it challenging to cope with the capability requirements associated with providing their products and services, especially in the future. Additionally are you asking questions of multi-product businesses, around whether they have enough dedicated focus and knowledge in each area of their business they operate and its growth. In larger multi-product business this growth may not be so obvious

Should FMA wish to discuss any of the responses above, please let us know.

Submission

to the

Financial Markets Authority

on

A guide to the FMA's view of conduct

2 November 2016

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fifteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - Bank of Tokyo-Mitsubishi, UFJ
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited.

Background

3. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on “A guide to the FMA’s view of conduct” (**Guide**), and commends the work that has gone into developing it.
4. NZBA supports the publication of the Guide, and considers it to be of particular assistance in light of the global focus on ‘conduct risk’, as it sets out the FMA’s general view of its expectations of market participants’ behaviour.
5. If you would like to discuss any aspect of the submission further, please contact:

Comments and amendments suggested by NZBA

6. A mark up of the Guide, with comments and amendments suggested by NZBA, is **attached**.

1 November 2016

Financial Markets Authority
PO Box 1179
Wellington 6140

By email: consultation@fma.govt.nz

A guide to the FMA's view of conduct, July 2016

1. The New Zealand Law Society welcomes the opportunity to comment on the *Guide to the FMA's View of Conduct*, July 2016 (Conduct Guide).

Purpose of the Conduct Guide

2. Unlike the Financial Advisers Act 2008 and the Code of Conduct for Financial Advisers, the Financial Markets Conduct Act 2013 (the FMC Act), does not have an express statutory mandate to create conduct obligations which apply to financial service providers. This seems to have been one of the outcomes of the 2010 securities law review. During this review, it was considered whether (in addition to the specific regulatory framework created by securities legislation) there should be a principle-based overlay – requiring providers of financial services to retail customers to provide services in a fair manner. However, this was rejected and instead, Part 2 of the FMC Act imposes requirements of “fair dealing” which target misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations.
3. The Law Society considers that the Conduct Guide is a useful document for directors and executives of licensed financial services providers. While this document will no doubt assist licensed financial service providers in providing better services to customers and in creating a culture of compliance (which is obviously a desirable outcome), the Law Society considers that it is important that the Conduct Guide provides a clearer description of its purpose at the beginning of the document and the consequences of not complying with it.
4. It should be made clear that the Conduct Guide does not introduce any new legal obligations and is not enforceable by the FMA or any other party. Without such clarification, the Guide could be seen as potentially expanding the obligations of licensed financial service providers without legislation or judicial mandate. For example, there are no general legal obligations under the FMC Act requiring the financial service provider to: ensure precise alignment of interests with the investor; to “assess whether the cost of the product or service significantly reduces the provider’s ability to meet the customer’s needs, by significantly reducing the

returns they get”; or to be “sensitive” to a customer’s financial capability.¹ Therefore, in many cases, a failure to meet the provisions set out in the Conduct Guide will not constitute a breach of statute triggering enforcement action by the FMA.

5. While the FMA has an educational role under the Financial Markets Authority Act 2011 in respect of the promotion and facilitation of the development of fair, efficient and transparent financial markets, it is ultimately up to financial services providers to determine how they discharge their obligations to their customers (provided they act in accordance with the law). The FMA can suggest that a profitable and successful financial services provider will ensure: best customer outcomes; that customer needs are met; and that the provider always acts in the customer’s best interests where appropriate. However, in the absence of a legal requirement, the FMA cannot convert these recommendations into obligations via the Conduct Guide.
6. It should therefore be clearly communicated that the aim of the Conduct Guide is to encourage market participants to take voluntary action to create a culture within the financial service provider which does not allow bad conduct to incubate.
7. The Law Society accepts that a serious failure to follow the principles outlined in the Conduct Guide could be a factor that the FMA might take into account in deciding whether a licensee should continue to be licensed. However, the failure to comply with the Conduct Guide cannot usurp the requirements for obtaining a license set out in the legislation.

Should the Conduct Guide have different sections which apply to different types of participants?

8. There is also other industry guidance which may need to be considered in drafting the Conduct Guide. For instance, in the case of banks, in addition to the capital adequacy measures that are a fundamental part of prudential supervision, there is industry practice on reducing ‘operational risk’. This is a very wide concept embracing the risk of loss resulting from inadequate or failed internal controls and the safeguards affecting the risks associated with people and systems or from external events. Consideration should be given to whether there are conflicting requirements between operational risk requirements and the Conduct Guide which may require separate sections for different financial service providers. Other types of financial service providers may have different potential risks which may require specific guidance. In addition, a number of general concepts of good conduct in the Conduct Guide may only be relevant to certain specific market participants.

Conflicts of interest and alignment

9. The Conduct Guide notes that there must be alignment of customer, business and (where relevant) shareholder interests (page 4). However, this may not always be possible. For instance, there may be times where a conflict of interest cannot be entirely eliminated but the customer is happy to agree to continue the engagement despite the conflict. In those circumstances, there may not be complete alignment between the customer and financial service provider.

¹ Conduct Guide, pages 5 and 6.

The emphasis on “demonstration” of good conduct

10. The Conduct Guide recommends that providers “demonstrate” actions that equate to good conduct. The Conduct Guide states (at page 4) that financial service providers may need to “think differently about what they do with their people and organisational culture, and their processes and controls, to show both us and their customers that they understand what good conduct is, and can habitually demonstrate it.”
11. There is a risk that this focus on “demonstrating” good conduct may lead to a focus on creating a paper trail of “good conduct” which can lead to increased costs for customers without much benefit. For instance, on page 9, the Conduct Guide states that the financial service provider should “be able to demonstrate a transparent and effective complaints and disputes resolution process”. It would be preferable if this instead stated that the “financial service provider should ... *have* a transparent and effective complaints and dispute resolution process and keep records of its processes for dealing with complaints and dispute resolution”.
12. Similarly, the Conduct Guide says at page 10 “how do you *demonstrate* that your customer and business strategies are aligned”. The Law Society submits that this should say “are your customer and business strategies aligned as far as possible?”, to recognise that total alignment might not be possible (as discussed at paragraph 9 above). There are a number of examples of this throughout the Conduct Guide which the Law Society suggests should be reconsidered.

Terminology

13. The Conduct Guide would be more accessible if some of the key concepts were described earlier in the document, as follows:
 - a. “Conduct risk” could be briefly described on page 4 as “the risk that conduct may contribute to poor outcomes for customers”. Currently this is only defined in the glossary.
 - b. “Good conduct” is not discussed until page 6. It could be briefly described on page 4, referring to the fuller discussion on page 6.
14. The Conduct Guide uses other phrases that would benefit from further explanation. For example:
 - a. What are “good outcomes”?
 - b. How does the FMA determine the outcomes the customers want / what the customer cares about?
 - c. Why must the interests of customers and other stakeholders always align? Is this realistic?

Conclusion

15. In summary, the Law Society considers that the Conduct Guide is a helpful guide to best practice which will assist financial service providers in considering areas for improvement and ways to reduce risks to customers. However, it would be desirable for the purpose and effect of the document to be more clearly stated.

16. The Law Society is happy to discuss the submission if that would be helpful.



18 October 2016

Financial Markets Authority
By email: consultation@fma.govt.nz

Consultation Paper: A guide to the FMA's view of conduct

We refer to the consultation paper titled "A guide to the FMA's view of conduct" ("**Consultation paper**") published by the Financial Markets Authority ("**FMA**"). We would like to thank the FMA for the opportunity to make a submission.

NZX Limited ("**NZX**") supports the FMA Consultation Paper. We consider the content sufficiently explains when and how the FMA exercises specific powers under legislation and describes the principles underlying the FMA approach. NZX considers this a piece of well-considered guidance.

NZX has two suggestions in respect of the Consultation Paper:

1. The FMA may wish to include a reference to NZX generally as a front-line regulator monitoring conduct in support of the FMA.
2. The FMA may also wish to explain how the guide fits with the upcoming 'NZX Corporate Governance Code' to be produced by NZX – this will future-proof the guidance note when the new code comes into force in Q1 2017.

NZX again thanks the FMA for the opportunity to submit comments on the Consultation Paper and is happy to discuss any of these comments further.

Feedback: A guide to the FMA's view of conduct

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: A guide to the FMA's view of conduct' and your entity name in the subject line. Thank you. **Submissions close on Monday 31 October 2016.**

Date:	31 October 2016	Number of pages:	4
Company or entity:	Public Trust	Organisation type:	Crown Entity, Trustee Corporation (statutory supervisor)
Contact name:			
Contact email & phone:			

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you e.g. during monitoring and supervision.

Questions:	Comment	Recommendation
<p>1. We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?</p>	<p>Public Trust welcomes the FMA guidance on how to determine whether or not financial service providers are demonstrating good conduct.</p> <p>Good conduct and a strong culture drive market confidence in a particular entity. Guidance on what good conduct looks like helps participants ensure they have the right culture and consistently deliver outcomes that achieve market confidence.</p> <p>We recognise the need for the market to move towards being 'outcome' driven regarding compliance rather than 'process' driven. We agree that good conduct should not only be about just complying with the law but also about doing the right thing by customers, including potential customers.</p>	<p>The conduct note would be of more use to Public Trust if it were to be made applicable to a wider audience, so that it covers what good conduct is in relation to:</p> <ul style="list-style-type: none"> • statutory supervisors; • other licensed financial service providers; • external providers to supervised entities; and • other non-banks.

Questions:	Comment	Recommendation
<p>2. <i>Is the guidance useful for your business, sector and industry? How might you use it?</i></p>	<p>The guide provides us with a good foundation to think about when setting/reviewing standards, policies, processes and controls in place to meet good conduct aims. We will use the guide to ensure our policies and procedures focus on customers, transparency and other suggestions in the guide.</p> <p>We understand the need to move away from a narrow checklist approach to a principles-based approach in terms of how the FMA views good conduct. This type of approach is new to the market and will require review and adjustment as we progress.</p> <p>As a statutory supervisor, it may be difficult to determine exactly what good conduct looks like in supervising the conduct of other entities, as there is a limit on what we can check regarding clients (e.g. p 10 of the guidance note refers to 'seek independent advice....including if appropriate, their supervisor'). More guidance on good behaviour expectations is necessary to be able to provide independent advice.</p>	<p>Guidance could be clearer as to what, as a statutory supervisor, we need to monitor and report on with regard to good or bad conduct.</p> <p>The guide would further assist statutory supervisors if the FMA had a firm view as to the key indicators we should have reference to in determining conduct, otherwise each supervisor may take a different interpretation. FMA could potentially facilitate supervisors achieving a consensus.</p>
<p>3. <i>Does the guidance explain the FMA's expectations of you when we assess your conduct?</i></p>	<p>This question is relevant both for our own conduct and for using the guide to assess the variety of entities we supervise in a range of circumstances.</p> <p>The guidance is not sufficiently detailed for certain types of financial service provider. We</p>	<p>We suggest tailoring the guidance on conduct objectives to specific types of market participant: e.g. bank vs non-bank issuers,</p>

	<p>acknowledge it is difficult to put in place a 'one size fits all' approach.</p> <p>Without more detail about the expected conduct of statutory supervisors, it may prove challenging to apply detail to a conduct policy set by our Board.</p>	supervisors, etc.
Questions:	Comment	Recommendation
<p>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</p>	Yes.	We recommend that the FMA consider adding guidance on how principles are to be applied or may be applied in assessing the conduct of financial service providers (i.e. retain flexibility but give further direction).
<p>5. Is there anything further you would like the guidance to cover?</p>	<p>The ultimate driver of good conduct is board and senior management setting the tone and parameters for what good conduct looks like. This requires an assessment of internal culture.</p> <p>Licensed entities look from the bottom up to assess whether those standards of good conduct are being applied effectively in their firm and supervised entities.</p> <p>The guidance note does not clarify exactly the process or consequence of some forms of misconduct. This creates a problem as investors seek to make statutory supervisors accountable to the FMA for circumstances of bad conduct which are beyond our control.</p>	<p>It would be helpful for the guidance note to include reference points for assessing internal culture in respect to conduct, both in policy-setting and in application.</p> <p>It would also be useful to describe responsibilities at each level of the provider in general terms – such as individuals, team leaders and senior managers, not just directors and executives.</p> <p>Guidance should indicate specific conduct objectives in a way that allows description of standards and then procedures internally to achieve those standards.</p>
<p>Feedback summary – FMA’s presentations on this subject also covered the questions of (i) whether the impact of the guidance note can be measured; and (ii) how this might be achieved.</p> <p>To begin with, a provider would need to take a stock take of its current ‘good practice’ behaviour against the factors outlined and describe how that is evidenced in its policy and actual behaviour. This can be used as a base to measure progress. Instilling good conduct and maintaining it is a continual process of staff training and senior people leading by example.</p> <p>We believe that the impact of the guidance note can be measured by observing changes in:</p> <p>a) indicators of culture leadership via board & senior management relevant policy-setting;</p>		

- b) achievement of internal standards which are linked to the FMA's guidance objectives;
- c) internal management, escalation and positive resolution of examples of poor conduct;
- d) external visibility of how good conduct indicators align to the FMA guidance objectives;
and
- e) relative preference of investors for entities evidencing good conduct per the FMA guidance.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

SOVEREIGN

A GUIDE TO THE FINANCIAL MARKETS AUTHORITY'S VIEW OF CONDUCT FINANCIAL MARKETS CONDUCT ACT 2013 (FMC ACT)

SUBMISSION BY SOVEREIGN¹

PART 1 Introducing Sovereign

PART 2 Responses to specific questions from the feedback form

Sovereign welcomes the opportunity to provide feedback on: *A guide to the Financial Markets Authority's view of conduct*. Sovereign does not seek confidentiality for any aspect of this submission (though, for commercial or privacy reasons, it may request confidentiality of any further supporting information that the Authority might seek).

Date: 31 October 2016

Number of pages: 5

Name of submitter: Sovereign

Company or entity: Sovereign Assurance Company Limited, Sovereign Services Limited, and associated entities

Organisation type: Financial Services

Contact name (if different):

Contact email and Phone:

¹ "Sovereign" is defined as Sovereign Assurance Company Limited, Sovereign Services Limited, and associated entities.

PART 1 – Introducing Sovereign

- 1.1. Sovereign is New Zealand's largest life insurance company protecting over 741,000² New Zealanders and their families through the provision of life and health insurance using a range of distribution channels. Sovereign insures total sums insured of over \$120 billion³ and last financial year paid out more than \$350 million³ in claims.
- 1.2. Sovereign has an A+ (superior) financial strength rating from AM Best. Our life insurance market share is 28.7%⁴ and our health insurance market share is 7.2%⁴.
- 1.3. Well established within the life insurance industry, Sovereign's vision is "*Being the difference in life's moments of truth by providing certainty and giving choice*". Our vision is fuelled by our values; *integrity* to build trust, *collaborate* to win together, *drive* to make it happen, *play* to explore possibilities and *wow* to impress our customers.
- 1.4. Sovereign is a Qualifying Financial Entity (**QFE**). Sovereign has approximately⁵ 715 employees and as at September 2014, 195-205 employee roles were permitted to provide class and/or personalised financial advice as QFE employee advisers.
- 1.5. Sovereign is a subsidiary of Commonwealth Bank of Australia and a related company of ASB Bank Limited.

² This includes policy owners, life assured, borrowers and workplace business

³ Sovereign internal reporting as at 30 June 2016

⁴ FSC (Financial Services Council) Market Share Report December 2015

⁵ An approximate is given as staff turnover results in vacant roles which can fluctuate on any given day

PART 2 – Responses to specific questions from the feedback form

Questions:	Comments
<p>1. <i>We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?</i></p>	<p>Sovereign believes the guide to the Financial Markets Authority's (FMA) view of good conduct establishes important principles to promote good conduct within the New Zealand insurance industry and the wider financial services sector.</p> <p>Sovereign recognises that conduct is an issue that can represent both a threat and an opportunity to organisational reputation and performance.</p> <p>Despite differing international regulatory environments, good conduct is at the core of best practice in the financial services industry globally. Sovereign recognises it is important for the local industry to have clear guidance from the regulator (FMA) on how it will interpret the law, when and how it will exercise specific powers under legislation, its underlying approach and how financial services providers (providers) need to comply and demonstrate conduct obligations.</p> <p>The industry as a whole has an important part to play instilling confidence with customers that their interests will be protected and that communication will be open, simple and transparent. Sovereign believes the FMA's guidance has an important role to play in helping guide industry-wide good conduct, but to be effective it needs to be practical and well understood by the industry.</p>

Questions:	Comments
<p><i>2. Is the guidance useful for your business, sector and industry? How might you use it?</i></p>	<p>Sovereign views conduct as a matter of utmost importance given the significant impact it can have on consumers, the organisation, and the industry as a whole. Based on this, Sovereign supports the principles based approach of the FMA's guide to good conduct.</p> <p>Sovereign agrees with the FMA that to be useful, the guidelines should not be prescriptive or used as a checklist but should rather be used as a principle based guide.</p> <p>Within Sovereign, good conduct is a core part of the organisation's culture, processes and people and Sovereign has a strong commitment to monitoring organisational risk and compliance through numerous controls and processes. Based on this, Sovereign will use the guidelines outlined by the FMA to inform its approach in these areas.</p>
Questions:	Comments
<p><i>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</i></p>	<p>Sovereign believes the guidelines provide a practical framework of how the FMA views good conduct and establishes the FMA's expectations of providers.</p> <p>Sovereign agrees with the principle based approach of the guidelines and that they should not be used as a checklist or a manual.</p> <p>This is important, because as acknowledged by the FMA, conduct is particular to each business or person and the regulator should not prescribe how that happens.</p>

Questions:	Comments
<p><i>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</i></p>	<p>Sovereign believes the guidance provided allows for Sovereign to demonstrate to the FMA and its customers how good conduct exists within the organisation.</p> <p>The guide isn't overly prescriptive and we believe this is the appropriate approach given the large variety of providers and individuals who span the financial services industry in New Zealand.</p>

Feedback: A guide to the FMA's view of conduct

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: A guide to the FMA's view of conduct' and your entity name in the subject line. Thank you. **Submissions close on Monday 31 October 2016.**

Date: 28 October 2016

Number of pages: 3

Name of submitter:

Company or entity: Governance & Investor Oversight Business Unit, Trustees Executors Limited

Organisation type: Licensed supervisor

Contact name (if different):

Contact email and Phone:

Summary: A guide to the FMA's view of conduct

The guide describes how conduct is the 'lens' through which the FMA will be looking at what providers do, and how they do it, and how that translates to what their customers experience.

The guide explains the FMA's view of why good conduct matters. It also sets out a number of factors, with associated questions, which will be the basis for how the FMA engages with you e.g. during monitoring and supervision.

Questions:	Comment	Recommendation
1. <i>We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?</i>	<p>Yes, the guidance is a useful signpost as it makes the concept and expectations of conduct, central to the FMCA, more tangible in a business context.</p> <p>It may not necessarily impose another layer of cost – it can be about doing things in a different way, such as culture change and recruitment choices, to achieve higher standards of conduct.</p>	<p>Regarding timing, we would suggest that the guide might receive better attention if published early next year, rather than pre -Christmas when many participants are focussed on the final stages of FMCA transition.</p> <p>We would also suggest consideration of an in-parallel communication targeting investors. For example so they don't interpret disclosure of something gone wrong by an issuer to automatically mean they should exit the product (which would discourage issuers from being transparent).</p>
2. <i>Is the guidance useful for your business, sector and industry? How might you use it?</i>	<p>Yes.</p> <p>For issuers it should help <i>management</i> understand how conduct translates operationally and practically. It should help <i>boards</i> mature in their questioning of management and thereby improve their governance</p>	

	<p>effectiveness in investor interests. It should empower <i>front line staff</i> to challenge up if they feel their approach to investors does not meet the expectations.</p> <p>For supervisors it gives us an even stronger mandate to initiate conversations about conduct, particularly with non-FMCA appointments or those appointments that take a black letter or bare minimum approach to compliance. It helps them to better understand our role as supervisor and supervisors to align our messaging with the FMA's.</p> <p>It also gives us another lens or tool to train our staff, risk assess our appointments and plan our monitoring foci.</p>	
<p>3. Does the guidance explain the FMA's expectations of you when we assess your conduct?</p>	<p>At a high level, yes. Understandably it does not prescribe where the conduct 'maturity bar' is for different businesses, nor the pace at which market participants are expected to achieve that bar.</p>	<p>We suggest close engagement between the FMA and supervisors on progress towards these expected levels of conduct to ensure no surprises on where the bar is set and how adequately we are maturing.</p>
<p>4. Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?</p>	<p>We believe so yes as, while it includes some practical applications, it's not overly prescriptive.</p>	
<p>5. Is there anything further you would like the guidance to cover?</p>	<p>No.</p>	
<p>Feedback summary – if you wish to highlight anything in particular</p> <p>We were also asked to comment on how the outcomes of this guidance could be measured. Cause and effect can be difficult to pin down and quantify. However over time, market participants should be able to evidence that focus on certain conduct elements has led to changes or improvements aligned to investor outcomes that are valued by staff, customers and owners and/or strengthen the business. For example, staff/customer surveys could be used to indicate whether/how conduct in customer interests is improving etc. Due diligence conducted by a potential investor in the issuer itself might also include such matters in order to assess customer retention (revenue risk), regulatory and reputation risk to the company.</p>		

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.



Westpac New Zealand Limited

Submission to the Financial Markets Authority on the
Consultation Document: *A guide to the FMA's view of conduct*

2 November 2016

1. INTRODUCTION

- 1.1 This submission to the Financial Markets Authority (**FMA**) is made on behalf of Westpac New Zealand Limited (**WNZL**) in respect of the Consultation Document: *A guide to the FMA's view of conduct (Guide)*. Thank you for the opportunity to provide feedback on the proposed guidance note.
- 1.2 WNZL's contact for this submission is:

Westpac New Zealand
Limited PO Box 691
Wellington

2. KEY SUBMISSIONS

- 2.1 WNZL is generally supportive of the Guide, but considers there are some aspects which require clarification and adjustment. WNZL also supports the submission provided by the New Zealand Bankers' Association. In terms of significant issues that the next version could helpfully focus on:
- (a) The literature delineates between conduct relating to customer outcomes, conduct relating to market integrity and a firm's culture. The Guide should be explicit that it is dealing exclusively with the first issue. It is important to ensure that the message regarding conduct is consistent across all legislative regimes it regulates (including in particular both the Financial Markets Conduct Act (**FMCA**) and the Financial Advisers Act (**FAA**)); and
 - (b) Where the Guide addresses concepts outside of the legislative framework (for example, consideration of the best interests of the customer, and the "reasonableness" of fees), these need to be carefully framed so as to avoid willing participants such as WNZL being held to a different standard than those who are only concerned with complying with the strict letter of the law.

3. RESPONSE TO QUESTIONS

Question 1: We appreciate that the subject of conduct is an ongoing debate globally. Is the guidance a useful contribution to that debate?

- 3.1 Generally yes. The Guide is intended to provide an overview of the types of issues the FMA is likely to consider when engaging with providers on matters

pertaining to conduct, with a particular focus on customer experience (as opposed to market integrity), under the FMCA.

3.2 It appears that the Guide is also partly aimed at educating providers across the industry around conduct risk. WNZL has undertaken significant work on conduct risk to date and welcomes the opportunity to provide feedback on this issue. Given the international focus on conduct risk, it is helpful to have an overview of this topic in a New Zealand context. Some clarification is needed as to the intended scope and application of the Guide, as well as any potential interaction with other conduct obligations, in the wider New Zealand legislative context. In particular:

- (a) The FMCA as a whole is identified as providing a mandate to focus on conduct. Where the Guide touches on specific legislative conduct obligations, it would be helpful for these to be identified.
- (b) The Guide indicates that it will also likely be relevant for non-FMCA licensed providers. However, in providing a general overview of conduct, the Guide does not contain any reference to other legislative conduct obligations in New Zealand (for example under the FAA). It is therefore unclear whether (and to what extent) the concepts outlined in this guidance will inform the FMA's approach outside of an FMCA context, or if the FMA anticipates adjusting or expanding this guidance in light of the upcoming changes to the FAA.
- (c) The Guide defines conduct risk as the risk that conduct may contribute to poor customer outcomes. In general terms, conduct risk is understood as being comprised of two core pillars – customer outcomes and market integrity. WNZL understands that the Guide is intended to address the former, with the latter possibly to be the subject of a separate guidance note. To avoid any possible confusion, it would be helpful either for this latter topic to be included in the Guide or removed entirely (and the distinction between the two made clear).

Question 2: Is the guidance useful for your business, sector and industry? How might you use it?

3.3 As noted above, WNZL has already undertaken significant work on conduct risk. However, the Guide will assist us in the further development of our conduct framework.

Question 3: Does the guidance explain the FMA's expectations of you when we assess your conduct?

3.4 The Guide provides a useful overview of the FMA's view of conduct in practice, by setting out some of the questions the FMA is likely to ask when engaging with providers on issues relating to conduct. The Guide as currently framed may result in willing participants (such as WNZL) being held to a different standard than those who are only interested in adhering to the strict letter of the law. In this context, there are some aspects of the proposed guidance that it may be helpful to clarify and/or outline in further detail.

Best interests of the customer and customer needs assessment

- 3.5 In considering and assessing customer needs, the Guide contemplates providers identifying that a customer's needs may be better met by a product or service that provider does not offer, and ensuring that customers have the same or better outcome as they would have with similar services and products offered elsewhere.
- 3.6 In order to be meaningful, this proposed test requires more clarity. It is important that this section is carefully framed and recognises the different obligations between product providers and those providing financial adviser services, to avoid any potential confusion and/or inconsistency with other legislative conduct obligations.
- 3.7 The Guide should not operate to imply that product providers have a duty to provide financial advice to customers. Likewise, the Guide should not seek to imply a duty on those providing financial adviser services to assess and speak to the full suite of products from across the market when advising customers. This should be made clear in the wording of the document for a number of reasons, including:
- (a) There is no legislative requirement under the FMCA for providers to provide financial adviser services;
 - (b) There is also no requirement under the FAA to assess and speak to the full suite of products from across the market when advising customers. The conduct obligation proposed as part of the upcoming changes to the FAA require that the customers' interests be put first by recommending the best product from within their suite, not from within the market as a whole (although there would be an expectation to identify when there are no genuinely suitable products available within their suite and advise the customer accordingly).¹ WNZL supports this approach and considers that it could be appropriately reflected in the Guide if necessary; and
 - (c) In practical terms, it is unclear what level of information providers would be expected to convey to customers in this context (for example, whether the assessment would relate to specific product characteristics, or if it may extend to issues of cost and pricing). It is also unclear how providers would be expected to obtain and verify this information from across the market and communicate this to customers.
- 3.8 If the Guide is intended to imply the duties set out above further industry engagement and discussion should occur to understand where such an obligation would be derived from and how it would be expected to operate in practice.

¹ Ministry of Business, Innovation & Employment, "Final Report: Review of the operation of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008", July 2016, pp 67-68.

Product suitability vs staff capability

- 3.9 The capability section of the Guide appears to deal with issues relating to staff training and capability, together with product development and suitability. Both issues play an important role in mitigating conduct risk and ensuring a strong, client-focused culture. However, they each raise distinct issues and it may be helpful to differentiate these topics in the Guide.

Conflict of interest

- 3.10 The Guide outlines the FMA's expectation that providers will clearly explain conflicts of interest and/or conflicted remuneration. In doing so, it identifies two key focus areas – staff incentives and payment, and arrangements with associated parties. These matters are relevant to good conduct. However, remuneration and reward are broader concepts than just staff pay and incentives, and conflict issues can arise in a wider set of circumstances than are currently outlined in the Guide.²
- 3.11 For example, it may be appropriate for the Guide to reflect a general expectation that providers clearly explain the manner in which they are remunerated and rewarded (whether that arises from staff pay, soft commissions, or from one or a series of different financial products or providers).

Controls

- 3.12 The questions raised in this section appear to largely duplicate issues addressed in existing FMA processes, such as the Adviser Business Statement (**ABS**) and licensing. Given the apparent overlap with measures already employed by the FMA, WNZL assumes that these questions would be used to address any gaps in the information already submitted by providers as part of the ABS and licensing process.

Glossary

- 3.13 The glossary provides a helpful overview of some of the key concepts covered in the Guide. However, there are a number of terms defined in the glossary which are not used in the Guide itself. For example, the following defined terms are not otherwise used in the Guide:
- (a) Compliance assurance programme;
 - (b) Control environment;
 - (c) Governing guides;
 - (d) Internal audit;
 - (e) Key risk indicators;

² See for example, MBIE Report (as cited at footnote 1), pp 72-73.

- (f) Material information;
- (g) Net promoter score;
- (h) Oversight functionality;
- (i) Risk and control self-assessment and attestations;
- (j) Risk appetite; and
- (k) Risk tolerance.

3.14 It is therefore unclear how these concepts are intended to interact with the substantive guidance contained in the body of the document, or whether (and to what extent) these concepts reflect any additional conduct expectations of the FMA. To avoid any potential confusion, the defined terms contained in the glossary should either form part of the guidance itself, or be removed from the document.

3.15 Conversely, there are some concepts not canvassed in the glossary which may be helpful to explain or define further. For example, part of the FMA's focus on conduct appears to lie with the extent to which providers calculate fees and pricing on a reasonable basis and communicate those matters to customers. It would be useful for the Guide to elaborate on the FMA's view of reasonableness in the context of fee and cost justification, and what is expected of providers from a conduct perspective.

Question 4: Does the guidance provide enough flexibility for you to show us and your customers how you demonstrate good conduct?

3.16 Subject to this submission, yes.

Question 5: Is there anything further you would like the guidance to cover?

3.17 As noted above, WNZL understands that there may be separate guidance on market integrity and wholesale conduct issues. Given that this is of equal relevance for FMCA license-holders, this topic should either be included in the Guide or addressed separately.