

7 June 2019

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation and Employment
Wellington 6140
New Zealand

By email: FinancialConduct@mbie.govt.nz

NZX Limited Submission: Conduct of Financial Institutions

NZX Limited (**NZX**) refers to the consultation paper '*Conduct of Financial Institutions*' (**Consultation Paper**). NZX would like to thank the Ministry of Business, Innovation and Employment (**MBIE**) for providing us with the opportunity to provide this submission.

Background

NZX is New Zealand's Exchange and a licensed market operator of certain financial product markets, including the NZX Main Board and the NZX Debt Market. NZX supports vital sectors of New Zealand's economy and lowers the cost of capital for listed New Zealand companies, delivering \$2.4billion of value to the New Zealand economy¹.

NZX also wholly owns Smartshares Limited, the manager of certain registered managed investment schemes, including the: SuperLife KiwiSaver Scheme, SuperLife Workplace Savings Scheme, SuperLife Invest and Smartshares Exchange Traded Funds.

Summary

NZX acknowledges that the banking and insurance industries are a part of the critical infrastructure of New Zealand's finance sector and broader economy and supports MBIE's objective that conduct and culture in the financial sector is delivering good outcomes for all customers.

As NZX does not have expertise in the banking and insurance sector we have limited our submission to the question raised in Part 4 of the Consultation Paper, as to whether the proposed conduct obligations should apply to financial institutions such as managed investment schemes (**MIS**) (including non-bank KiwiSaver providers) and discretionary investment management service (**DIMS**) providers.

We do not support the extension of the proposed conduct obligations to DIMS providers and MIS managers. We consider that there is no clear evidence of poor customer outcomes that

¹ Refer to the New Zealand Institute of Economic Research Report "[The economic contribution of NZX](#)" dated February 2018.

warrant the imposition of additional conduct obligations for these providers, who are already subject to significant regulation, as outlined further below.

Regulation of DIMS Providers

DIMS providers must be licensed by the FMA. The FMA requires an applicant for a DIMS licence to demonstrate appropriate character and capability, and to have appropriate governance arrangements, and operational and financial resources. Once licensed a DIMS provider is required by the Financial Markets Conduct Act 2013 (**FMCA**) to act to a professional standard of care, honestly, equitably and in the best interests of investors².

In addition, for DIMS providers who are providing personalised DIMS to retail clients, conduct obligations exist under the Financial Advisers Act 2008 (**FAA**). These include obligations to comply with the Code of Professional Conduct for Financial Advice Services³, which set out a broad suite of conduct obligations relating to ethical behaviour and client care.

Some licensed DIMS providers are NZX Client Advising Participants. These providers are required to comply with conduct obligations under the NZX Participant Rules, including to:

- maintain standards of objectivity and professionalism;
- put the interests of the client first;
- ensure confidentiality of client information;
- protect client assets from unreasonable risk of the participant's own business activities; and
- take all reasonable steps to properly protect client assets and separately identify those assets.

These duties, as well as other obligations under the NZX Participant Rules, provide significant additional protections for DIMS investors. NZX Regulation may take enforcement action if an NZX Client Advising Participant does not comply with the requirements of the NZX Participant Rules, including by referring a breach to the New Zealand Markets Disciplinary Tribunal, which is an independent adjudicative body.

Regulation of MIS managers

Under the FMCA, MIS managers must be licensed by the FMA. The FMA requires applicants to demonstrate appropriate character and capability, and to have appropriate governance arrangements, and operational and financial resources (which are the same considerations that apply to DIMS licensing).

Once licensed, MIS managers must comply with the conduct obligations set out in Part 4 of the FMCA. These obligations require a manager to act to a professional standard of care, honestly

² Section 433 and 435 of the FMCA.

³ The current Code is [here](#). The Code will soon be updated when the Financial Services Legislation Amendment Act comes into force, the revised code is available [here](#).

and in the best interest of scheme participants and to treat scheme participants equitably⁴ (reflecting the general conduct obligation that applies to DIMS). In addition, managers are subject to a number of specific conduct requirements including:

- an obligation to maintain adequate and effective procedures to monitor dealings in scheme assets⁵;
- an obligation to maintain governance and compliance arrangements that are substantially the same, or better than those in place at the time of licensing⁶;
- prohibitions on entering into related party benefit transactions, unless such transactions fall within certain safe-harbours (for example; they are at arms' length)⁷; and
- prohibitions on voting on a resolution of scheme participants in which the manager has an interest⁸.

MIS managers are subject to front-line oversight by a supervisor (for example: Smartshares' supervisor is Public Trust) that must be licensed by the FMA, and secondary oversight by the FMA.

NZX does not support the extension of the conduct regime

NZX does not support the Consultation Paper's proposal to extend the proposed conduct obligations to DIMS providers and MIS managers because the existing regimes in which such providers operate (as described above) are sufficiently robust to ensure good conduct and customer outcomes.

The proposed conduct obligations are premised on the need to act fairly, with integrity and to ensure customers receive suitable advice. NZX considers that these principles also underpin the conduct obligations already imposed on DIMS providers and MIS managers, who must act honestly, equitably and in the best interests of their customers. We consider that the existing obligations are sufficient to meet MBIE's objectives under the proposed new regime.

We are concerned that imposing an additional set of overarching conduct duties will overwhelm providers with regulatory compliance, and potentially cause confusion where there are subtle differences between the regimes.

⁴ Sections 143 and 144 of the FMCA.

⁵ [MIS Standard Condition 2](#).

⁶ [MIS Standard Condition 7](#).

⁷ Sections 172 to 175 of the FMCA.

⁸ Section 163 of the FMCA.



We hope these comments are helpful, as MBIE works to determine the appropriate regulatory capital settings for New Zealand's financial services sector.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kristin Brandon', is written in a cursive style.

Kristin Brandon
Head of Policy and Regulatory Affairs
NZX Limited

PROACTIVELY RELEASED