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Financial Markets
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ASB response – MBIE consultation on fit for purpose financial services conduct regulation

ASB Bank Limited (**ASB**) welcomes the opportunity to provide feedback on MBIE's consultation on fit for purpose financial services conduct regulation (**Consultation Paper**). ASB engaged with both the Ministry of Business Innovation and Employment (**MBIE**) and the Financial Markets Authority (**FMA**) during the design and implementation of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (**CoFI / CoFI Act**) and supports the intent behind the legislation to bring the New Zealand financial services sector in line with international best practice conduct regulation.

However, we urge policymakers and regulators to consider the overall effect of regulation, bearing in mind the high degree of overlap between the CoFI and Financial Advice Provider (**FAP**) regimes (as one example) and the regulatory oversight commonalities now seen between FMA and Reserve Bank of New Zealand (**RBNZ**) on climate change, fraud and scams and cyber security.

While ASB supports all moves to review the effectiveness of regulation and ensure it is "right-sized" for the New Zealand market, it is important to recognise the huge amount of work already completed or underway by financial institutions in preparing their Fair Conduct Programmes (**FCPs**) and preparing and applying for their conduct licences. We are therefore concerned that the review of CoFI may be ill-timed and should be undertaken once the CoFI regime has been fully-implemented and embedded. At that time the industry will have a clearer idea of which parts of the regime or its licensing are causing unintended or unforeseen harm or disproportionate compliance costs or burden.

ASB's general comments to the proposals outlined in the Consultation Paper are set out in more detail in Appendix 1 to this letter and our responses to the Consultation Paper's specific questions are set out in Appendix 2.

In summary, ASB submits:

- ASB supports proposals to remove some of the prescriptiveness from the CoFI Act. We also support a more fulsome review of CoFI but consider it would be more appropriate to undertake such a review, two years post implementation of the regime. Such a review and its timeframe should be stipulated in the CoFI Act.

- We support the preferred Option A1, being the removal of and amendments to the minimum requirements for FCPs on the basis that doing so would reduce prescription and provide greater flexibility for financial institutions; and
- We do not support maintaining the status quo of keeping the definition of the fair conduct principle open-ended. We support Option B2, to make the fair conduct principle definition exhaustive, to provide certainty for financial institutions;
- We support the options to consolidate financial market conduct licences, and allowing a regulator to rely on another regulator's assessment. We also believe this reform prompts an even greater opportunity to revisit and assess current arrangements for coordination between the financial markets regulators; and
- We do not support the FMA being granted additional powers to require its approval before changes in control take place, we also question the value of expert reports on conduct, given its subjectivity and principles-based nature.

ASB welcomes the opportunity for further discussions or clarifications on our submissions. If you have any questions or wish to discuss our submission, please reach out to Kristina Kilner, Head of Government Relations and Regulatory Affairs Privacy of natural persons

Yours faithfully

Privacy of natural persons

Adam Boyd
EGM Personal Banking, ASB

Appendix 1 – ASB's general comments on the Consultation Paper's proposals

1. **We support removal of some prescriptiveness but question the effectiveness of reviewing CoFI before its implementation**

In terms of reforming the CoFI Act, ASB is of the view that the CoFI Act requires a reasonable level of prescriptiveness to ensure that the interpretation of the 'fair conduct principle' and the requirements of FCPs are not changed on ad hoc basis. Any changes to the regime should only be set by way of regulations or formal amendment to the CoFI Act, with limited exposure to the risk of requirements being changed to meet regulator expectations. This ensures financial institutions have the degree of certainty necessary to effectively manage the compliance burden created by the CoFI Act's requirements.

While removal of some prescriptiveness will be helpful going forwards where it is unnecessarily duplicative or unhelpful, the proposals to remove or amend the minimum standards now will do little to alleviate the compliance burden or reduce costs for financial institutions, given the extent of the work already undertaken by financial institutions who are in the process of implementing or have already implemented FCPs and other associated internal processes in preparation for compliance with the current requirements set by the CoFI Act.

As such, ASB recommends that beyond rectifying some unnecessary prescriptiveness, any further consideration of changes that could be made to the CoFI regime should be deferred until after the regime has been fully implemented. We have expressed our views on the proposed and preferred options in our responses to MBIE's questions in Appendix 2.

2. **New Zealand's regulatory landscape is overly complex and requires greater coordination between the regulators**

We are pleased to see the recognition of the complex nature of New Zealand's financial markets regulatory framework, and the Government's commitment to streamline the 'twin peaks' model to improve regulatory effectiveness for financial markets regulation. However we do not view the discussion and current proposals in the Consultation Paper as going far enough to effectively address the issues identified.

ASB acknowledges that regulation is important for financial stability and ensuring the fair treatment of customers, however we think there is an opportunity among policymakers and regulators to consider the overall effect of regulation and better sequence and coordinate the timing of various regulatory changes. While ASB is generally supportive of the purpose of much of the regulatory change proposed, the volume, pace and sequencing of initiatives makes it difficult to operationally comply and limits capacity to pursue strategic and innovation objectives. This creates less optimal outcomes than could otherwise be achieved for our customers and increases operational risk.

The role of CoFR in coordinating and aligning regulators

One regulatory coordination arrangement that we view worth considering, in light of these proposed reforms, is the statutory framework for the Council of Financial Regulators (**CoFR**). CoFR was

established in 2011 and is currently made up of government agencies and regulators: the RBNZ, the FMA, the Commerce Commission, MBIE and Treasury (together the **CoFR Members**). The statutory function of CoFR is to 'facilitate co-operation and co-ordination between members of the council to support effective and responsive regulation in the financial system in New Zealand'.

The current relationship between CoFR Members is governed by a Memorandum of Understanding (**MoU**). The MoU provides that the purpose of establishing CoFR is to "facilitate consistent cooperation and mutual assistance" between the CoFR Members, by "the exchange[s] of information, ideas and expertise". CoFR Members meet quarterly to "discuss regulatory issues, risks and priorities for financial markets".

We believe there is an opportunity to better support the strategic level of cooperation the MoU contemplates than currently occurs among its Members. Alignment on future state, clear sequencing and clarity on prioritisation is crucial to ensure benefits for New Zealanders are realised by ensuring an appropriate balance so that regulated entities can prioritise resource to innovation.

ASB believes improvements to the design and purpose of CoFR are needed, to ensure regulators can deliver a coordinated and appropriately sequenced regulatory agenda, aimed at optimising the execution of regulatory objectives. This could be achieved by updating the CoFR Charter, MoU and industry forum terms of reference to outline the roles and responsibilities of each CoFR Member, identify areas of overlap and analyse inefficiencies, duplication or blurring of the lines under the twin peaks model and require a rolling 2 – 5 year strategic plan for delivering regulatory change efficiently. This could be supported by a greater level of statutory accountability for the Members of CoFR in relation to their efforts to ensure efficient and effective regulation of financial markets.

3. CoFI Act reform – our views of the proposed options

If the minimum requirements for FCPs are to be changed, we support MBIE's preferred option to reduce or amend some of the minimum requirements on the basis of reducing prescription that does not allow for flexibility and avoiding duplication.

However we strongly support the fair conduct principle being amended to provide an exhaustive list of considerations, rather than remaining an open-ended concept. Providing a level of certainty is important for minimising the ongoing compliance burden for financial institutions.

4. Options for regulatory framework and powers – our views on providing the FMA with 'effective tools'

We do not support granting the FMA additional powers to require its approval before changes in control may take place, and the ability to commission an expert report. There is no need for the powers granted to the FMA to mirror the respective statutory powers of the RBNZ.

The remit of the FMA differs to that of RBNZ. In relation to the change in control approval requirement proposal, RBNZ approval to change in control is already required for the financial institutions it licences. The creation of a duplicate requirement for FMA-licensees will only hamper normal business activity. The proposal is also opposed to the objectives of the reforms, by creating an additional regulatory burden for financial markets participants.

Appendix 2: Responses to discussion document questions

	Introduction
1	*Do you agree the proposed criteria are appropriate, given the objectives? Are there other criteria which should be considered?*
	We agree with the three main criteria identified for assessing the options raised in the review. We are particularly pleased to see the express inclusion of making obligations more certain and avoiding duplication of requirements. The extent to which the current regulatory requirements do not meet that criteria places an unhelpful burden on the internal resources of market participants. Notwithstanding the appropriateness of the criteria identified for the review, we consider that a more fulsome review of the CoFI Act should be undertaken once the regime has been fully implemented and embedded. This will allow the industry to have a clearer picture of which parts of the regime or its licensing requirements are causing unintended or unforeseen harm or disproportionate compliance costs or burden on financial institutions. We are concerned about the risk that additional issues and opportunities for streamlining the requirements will only come to light once the regime is in full effect, raising the spectre of a further round of changes being proposed. The prospect of a second round of reform proposals makes the timing of this review contrary to its stated objectives. Assessing the options for the regulatory framework against the criterion of promoting a clear and effective twin peaks model is also an approach we strongly support. However, we feel the options raised could go much further in addressing this criterion. In considering the regulatory framework for FMA, we think there is greater opportunity among policymakers and regulators to consider further avenues of coordination, such as ensuring CoFR has a greater role in contributing to the efficiency of the regulatory framework and has greater statutory accountability for achieving efficient outcomes. Please refer to Appendix 1 for further discussion on this.
	1: Options for CoFI Act reform **A. Options for amending minimum requirements for fair conduct programmes** *Option A1: Remove/amend some minimum requirements for fair conduct programmes*
2	*Do you support removing or amending some of the minimum requirements for fair conduct programmes? What are the advantages and disadvantages of this option?*
	We support the proposed removal of and amendments to some of the minimum requirements for FCPs on the basis that doing so would reduce undue prescription and provide greater flexibility for financial institutions. However, it will be important to retain clarity on intent and expectations, to ensure the right balance can be struck. We would support a more fulsome review of the CoFI Act once the regime has been fully embedded. Regulators would be in a better position to review the statutory requirements and appropriate settings for FCPs at least two years after implementation of the CoFI regime.

3	*Which requirements should be removed or amended, if any? Please explain what changes you would like to be made.*

The comments below relate to the proposals for refining section 446J(1) of the CoFI Act.

We support the removal of paragraph (a). We agree this introduces unnecessary duplication in documenting processes required to comply with obligations under other pieces of legislation.

We support the removal of paragraph (c)(i) and (c)(ii). We agree that sub-paragraph (i) is obvious and is not required to be specified as part of the minimum requirements for an FCP. Sub-paragraph (ii) overlaps with the record keeping obligations provided in the FMA's Standard Conditions for financial institution licences, and we believe those obligations are best left to financial institutions to address without requiring them to be covered in the FCP . While we think paragraph (c)(iii) is a reasonable expectation, we recommend removing the requirements for involvement of the board or governing body, and instead allow firms to determine the right level of reporting within their own governance structures. Doing so would be in line with the fluidity in design of FCPs the CoFI Act allows.

We support adjusting or consolidating paragraphs (e) to (h) as noted in the Consultation Paper, and in addition recommend the following changes:

- Paragraph (e) should be amended to apply solely to agents. The reference made to obligations on employees under this paragraph is duplicated in the successive paragraphs.
- Paragraph (f) should be retained, however we do not consider its sub-paragraphs (i) and (ii) necessary for inclusion.
- Paragraph (g) should be adjusted to remove the requirement of checking that employees have completed their training. Completion of training is implied by requiring initial and ongoing training for employees at paragraph (f).
- Paragraph (h)(i) should be removed as it is duplicative with the requirement under paragraph (g) of checking the reasonable understanding of the employees.
- Paragraph (h)(iv) should be removed as it is duplicative with paragraph (d), in that the identification of conduct that fails to comply with the fair conduct principle means the monitoring of whether consumers have been treated in a manner that is consistent with the fair conduct principle is already implied.
- Paragraph (j) should be adjusted to further clarify the scope of what is required to meet the requirements for communications. Is it intended to be similar to what is required for employee conduct (i.e. a requirement to set expectations, to identify instances of misconduct and to have processes for dealing with it) as opposed to the lighter requirement in sub-paragraph (e) to require agents to follow processes. The broadness of this current requirement could create undue compliance burdens for firms that interpret the requirements at a higher level of expectation than what was intended.

  In addition, this requirement would benefit from further clarity as to the scope of what is covered by the concept of "communication" – e.g., does it extend to advertising? In particular, a carve-out for prescribed disclosure obligations from this requirement could be included to clarify paragraph (j) does not override other regulatory obligations that dictate the nature and form of communications.

	• Paragraph (k) may be removed, on the basis that it duplicates the general requirement to maintain an effective FCP under s 446C(1) – although paragraph (k) does not subject financial institutions to any additional compliance burden.
4	*What would be the impact of removing or amending particular requirements (for example, on compliance costs for businesses)?*
	As noted in Appendix 1, the timing of these reforms means any unintended effects or undue burdens of the CoFI Act on financial institutions are yet to be determined. Again, we maintain that the regulator would be in a better position to review the CoFI Act at least two years after its implementation.
5	*Do you have any other comments on the minimum requirements for fair conduct programmes?*
	As a general principle it would be helpful if the level of prescription was made consistent across all requirements.
Option A2: Potential additions to minimum requirements for fair conduct programmes	
6	*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to fees and charges?*
	The option of adding further minimum requirements generally to the CoFI Act would go against the stated intent and purpose of this review, being to reduce overly prescriptive requirements. We do not support the inclusion of an express minimum requirement for FCPs relating to applying, disclosing and reviewing fees and charges. Market forces should dictate what is fair and reasonable in regards to pricing. Any further regulations as to the disclosure of fees or charges could result in overlap with other areas of financial markets law with an already established set of disclosure obligations (such as the financial advice provider regime under the FMC Regulations and product disclosure statements for managed investment products).
7	*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to complaints processes?*
	As noted in our response to question 6, any option that adds further minimum requirements generally to the CoFI Act would go against the stated intent and purpose of this review. While ASB considers it already has sufficiently robust complaints processes and thus would be in a strong compliance position, we do not support the inclusion of an express minimum requirement for FCPs relating to complaints processes. The regulatory requirements for complaints processes are already sufficiently robust without adding a further layer to the requirements. The resulting duplication would run directly counter to one of the stated criteria against which any reform options should be assessed.
8	*Do you consider that financial institutions already need to cover fees and charging arrangements and/or complaints processes in their fair conduct programmes under the current requirements?*

	Yes. The overarching fair conduct principle already encapsulates this with the inclusion of section 446C(2)(a) – being 'paying due regard to consumers' interests'. The current flexibility provided for FCPs in how they address this requirement ensures financial institutions are able to take a proportionate approach and tailor the content of their FCPs for the size and nature of their business. In this context, that includes being able to factor in the extent to which appropriate systems and processes are already in place for fees and charges and complaints processes, without needing to duplicate a description of those processes in their FCPs.
Option A3: Remove all minimum requirements for fair conduct programmes	
9	*Do you support removing all of the minimum requirements for fair conduct programmes from the legislation? What are the advantages and disadvantages of this option?*
	We do not support the removal of all minimum requirements for fair conduct programmes. Minimum requirements are necessary for providing baseline consistency among financial institutions as to how the fair conduct principle should be interpreted and applied in practice. It will also ensure there is consistency of approach from the regulator as time goes on, reducing the likelihood of further obligations being introduced through subsequent guidance where there may be less industry consultation, because of the ambiguity of the primary legislation.
Option A4: Retain minimum requirements for fair conduct programmes without change	
10	*Do you support retaining the existing list of minimum requirements for fair conduct programmes without any changes? What are the advantages and disadvantages of this option?*
	We suggest a more fulsome review of the CoFI Act should be scheduled for two years post-implementation, which will allow engagement with the industry to reveal any unforeseen effects or unintended consequences of the implementation of the CoFI Act.
Proposal: proceed with Option A1 (remove/amend some minimum requirements)	
11	*Do you support the proposal to remove and amend some of the minimum requirements for fair conduct programmes and not to proceed with the other options? Why/why not?*
	Yes, subject to a more fulsome review being undertaken as noted in our response to question 10 above.
B. Options for amending fair conduct principle	
Option B1: Keep the fair conduct principle open-ended *Option B2: Make the fair conduct principle definition exhaustive* *Proposal: retain status quo (Option B1)*	
12	*Do you support the proposal to maintain the status quo in the definition of the fair conduct principle? What are the advantages and disadvantages of this option?*

	We do not support the proposal to maintain the status quo in the definition of the fair conduct principle. We support Option B2, the proposal to make the fair conduct principle definition exhaustive. An exhaustive list of considerations for what is required in order to treat consumers fairly, for the purposes of the CoFI Act, would provide greater certainty when developing and maintaining FCPs. This would also reduce potential risks of further obligations or requirements being imposed based on the FMA's understanding or interpretation of the fair conduct principle as a result of its open-endedness, which may not align with the interpretations of the principle by the financial institution or the wider industry.
13	*Are there any additional clarifications that could be made to the definition of the fair conduct principle, or matters that you consider should be included or removed? Why or why not?*
	If our recommendation to adopt Option B2 is accepted, a further amendment to ensure that the concept of what is fair has some flexibility to respond to a changing environment, could be to add a further limb to an otherwise exhaustive test, and provide for fair treatment to also include any other considerations prescribed by regulation. That would avoid the challenge of needing to amend the CoFI Act itself should an additional element be identified, while still providing the industry with certainty and ensuring an appropriate regulatory process is followed before such a fundamental aspect of the regime is changed, as opposed to it being left to being expanded at the whim of the FMA. Other than the above, we believe the current set of considerations for the fair conduct principle is appropriate, and do not believe anything additional should be included.
14	*Do you have any other suggestions or comments in relation to the fair conduct principle?*
	No comment
15	*Do you have any comments in relation to other areas of the CoFI Act that have not been covered in this section?*
	There is a disconnect between s 446M(1)(a) of the CoFI Act and regs 237G(2)(a)(ii) and 237H of the CoFI Regulations. These requirements should be aligned. Section 446M(1)(a) references an incentive being offered to a person in connection with that person directly or *indirectly* being involved in the provision of relevant services and associated products. This appears to be contradicted by the subsequent regulations which concern prohibited incentives for 'relevant employees', who are defined as having *direct* contact with customers. More broadly, the proposed reform could be expanded to address any additional amendments that are required to be made to better align the CoFI Act with the accompanying Regulations, or provide further clarification. We also suggest MBIE consider whether s 446J(2) requires greater prescription of being a legislative requirement, or should be left to regulated entities to consider and apply to their organisations, having regard to their size and complexity. The requirement for a financial institution to 'have regard' to the paragraphs under subs (2) is unclear, and risks imposing increased compliance burdens for firms by putting in place processes to document and demonstrate that such regard was had.

	2. Options for regulatory framework and powers **C. Consolidating financial market conduct licences** *Option C1: Amend the FMC Act to require the FMA to issue a single licence covering different classes of market service*
16	*Do you support the FMA being required by legislation to issue a single conduct licence covering one or more market services? What are the advantages and disadvantages of this approach?*
	We support the consolidating of market conduct licences under Part 6 of the FMC Act. However it is critical that the requirements associated with each of the current market conduct licences also be streamlined to further encourage efficiency in financial markets regulation – these include the requirements imposed during the licensing process (such as 'fit and proper' assessments), annual reporting requirements, and the 'standard conditions' imposed by the FMA for the different market services.
17	*Could consolidating existing licences into a single conduct licence give rise to any unintended consequences or costs for existing licensed firms? If so, please explain with examples where relevant.*
	Multiple Licences Under a consolidated conduct licensing regime, ASB will likely still need two conduct licences with its current business structure, as different entities within the ASB corporate structure hold different licences. On its face, it means ASB would likely not fully benefit from the proposed efficiencies given there will still be duplicated requirements. We suggest the FMA adopt a similar approach as for the AML/CFT regime, whereby a DBG type system allows all relevant businesses to be included. **Rewording obligations** There are a number of obligations under the FMC Act which would need re-wording as a result. E.g. section 412 - *Every licensee must ensure that there are in place effective methods for monitoring the licensee's <u>compliance with the market services licensee obligation.</u>* **FAP Licence Class** Currently, licence classes apply to the way regulated financial advice may be provided by the FAP. Licence applications were assessed based on this class. Classes are incremental from 1 to 3 with each incremental class of licence incorporating and permits all service classes below it. ASB has the highest level (Class 3) which enables the licence holder to engage any number of nominated representatives (NRs). Consideration will need to be given to ensure the licence class carries over to the services permitted. **Authorised Bodies** Many FAPs will have contractual arrangements with authorised bodies who will operate under the FAP licence. Considerations will need to be given as this could have a material impact to costs associated with the changes.
18	*Are there any other matters that should be considered around market services conduct licensing?*

	We welcome consultation on the potential to streamline requirements under standard conditions. Whilst there would be short term compliance burden, it would likely save compliance time and efforts over time. We believe providing relief for financial market service licensees when implementing the licence consolidation contemplated by the reforms is critical, to avoid imposing further compliance burdens on financial institutions. No additional licence application should be required, with existing licences automatically rolled up into a master licence unless the licensee chooses to opt out of the process.
	D. Enabling reliance on another regulator's assessment
	Option D1: Amend legislation to enable the FMA and RBNZ to rely on an assessment by the other regulator where appropriate
19	*Should the FMC Act be amended to enable the FMA to rely on the RBNZ's assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.*
	We support the ability for the FMA and RBNZ to rely on the assessments undertaken by either regulatory body, to facilitate the decision-making of each of them. Doing so would encourage greater coordination between the two regulators. However, any drafting of such provisions will need to have regard to any existing coordination arrangements, such as CoFR, which already enables its Members (of which include both the FMA and RBNZ) to share information and collaborate on regulatory changes, setting priorities, and identifying risks. We note further in Appendix 1 above that the current reform proposals give rise to the opportunity to revisit such arrangements to enhance the collaborative function of CoFR to improve efficiency in cooperative regulatory change, supervision, and monitoring. Any additional supervisory backing to the collaborative roles of the FMA and RBNZ will need to be drafted in a way that does not impede on the functions of such existing arrangements
20	*Should there be equivalent provisions enabling the RBNZ to rely on the FMA's assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.*
	Yes. Please see our response to question 19 above.
21	*Are there any other improvements that could be made to the way the FMA and the RBNZ work together to reduce compliance costs and regulatory burden?*
	As noted above at Appendix 1, we think there is opportunity to revisit the design and purpose of CoFR to further provide for alignment and collaboration of its Members. This should be aimed at optimising how Members engage and work together on regulatory change, supervision and monitoring of emerging issues and threats. Adding a statutory accountability obligation, to require CoFR to report on its efforts in ensuring efficiency and effectiveness, would be a welcome enhancement to the framework.
	E. Ensuring the FMA has effective tools

Option E1. Introduce change in control approval requirements	
22	*Should change in control approval requirements be introduced into the FMC Act? Please explain your answer, including why the current approach does or does not work.*
	We do not support the introduction of change in control approval requirements into the FMC Act. The need for FMA approval should not be added into the commercial processes for arranging a change of control. The current reporting conditions under reg 191 of the FMC Regulations already allows for the FMA to have oversight of any change of control to ensure it has no concerns with any proposed change from a conduct or compliance perspective. It already has opportunity to take action if it believes that the change in control of a licensed entity means it is no longer likely to discharge its licensee obligations, which should be its sole consideration. In contrast, RBNZ's existing formal approval process for a change in control is required to ensure RBNZ has an opportunity to consider the impacts of the proposed ownership change on a financial institution's governance, risk management and solvency. These matters are subject to objective standards and requirements relevant to a prudential licence, whereas an assessment from the FMA's view are based on relatively subjective considerations of what would constitute fair customer outcomes and conduct expectations. We consider adding additional FMA approval would act as an unnecessary and duplicative step which could have the adverse impact of deterring the involvement of foreign investors entering the New Zealand market.
23	*Should change in control approval requirements apply only to firms licensed to act as financial institutions, or to all firms licensed under Part 6 of the FMC Act? Why?*
	No comment
24	*Do you have any other feedback on the change in control requirements option?*
	The requirement to introduce a change in control approval requirement is contrary to the objectives of the current reforms, and is inconsistent with the Government's criteria for review.
Option E2: Introduce on-site inspection powers for the FMA	
25	*Should the FMA have the ability to conduct on-site inspections without notice? Please explain your answer, including why the current approach does or does not work.*
	We would only support the ability of the FMA to conduct without notice on-site inspections if such powers are only able to be used where there is a legitimate and evidenced belief that providing notice would prejudice the FMA's investigation on the firm, or put relevant evidence or information at risk of destruction, or for the purposes where a firm may be perverting the course of justice.
26	*Should an on-site inspection power apply only certain firms or in certain circumstances, e.g. to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?*

	No comment
27	*What safeguards should be in place for on-site inspections without notice?*
	As noted in our response to question 25, any such powers should only be used where there is a legitimate and evidenced belief that providing notice would prejudice the FMA's investigation on the firm, or put relevant evidence or information at risk of destruction, or for the purposes where a firm may be perverting the course of justice. Further, the procedures that accompany such inspections should be clearly established, such as the condition that interviews should only be conducted with suitably qualified staff.
28	*Do you have any other feedback on the on-site inspection option?*
	Nothing to submit.
Option E3: Introduce an expert report power for the FMA	
29	*Should the FMA have the ability to commission expert reports? Please explain your answer, including why the current approach does or does not work.*
	We do not support the ability of the FMA to commission expert reports. The engagement of third-party experts for conduct matters is inherently difficult given the subjective and variable nature of the conduct. This could lead to the validity of such reports or qualification of such experts being exposed to challenge, which would hinder the efficacy of such a tool. It would also add additional compliance costs which may not be reasonable in the event the validity of the report is challenged. We consider the FMA should possess relevant in-house expertise to provide direction and advice to regulated firms as part of its supervisory or enforcement duties.
30	*Should an expert report power apply only to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?*
	Nothing to submit.
31	*What safeguards should there be for an expert report power?*
	Nothing to submit.
32	*Is it appropriate that the firm concerned bear the cost of the expert report? Why / why not?*
	See response to question 29 above.
33	*Do you have any other comments on the expert report power option?*
	Nothing to submit.
3*:* Limitations and constraints on analysis	
34	*Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?*

We do not believe the proposed reforms will appropriately alleviate any compliance burdens or costs imposed on financial institutions as stipulated by MBIE. Despite any changes to its minimum requirements (such as those to mitigate duplication), FCPs of financial institutions will be largely unchanged as a result of such reforms being implemented, with many financial institutions already having implemented FCPs and associated internal procedures in preparation for compliance with the CoFI Act. Further, any unintended effects or undue burden on financial institutions as a result of the requirements of the CoFI Act are still largely unknown.

We also note the FMA's proposed direction to 'outcomes-focused regulation' – including fair outcomes for consumers and markets – places the CoFI Act at risk of yet another round of reforms once fully implemented and its effects on consumers are known as a result of the FMA's monitoring of its outcomes. The current proposed reforms may be 'doubled up' by such a review once the CoFI Act is implemented, which poses the risk of a high cost without a commensurate benefit.