

Submission on discussion document: *Fit for purpose financial services conduct regulation*

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	Fisher Funds Management Limited
Contact details	Privacy of natural persons

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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?

Fisher Funds Management Limited and its related entities (Fisher Funds) supports a focus on good client outcomes and acknowledges the intention of the fair conduct principle underpinning the Financial Markets (Conduct of Institutions) Amendment Act 2022 (the CoFI Act).

Fisher Funds is not a financial institution under the CoFI Act but is interested in and endeavours to engage in discussions which have the potential to materially impact participants in the wider financial services sector.

We note with some concern the comments on page 32 of the discussion document that it was prepared *'under time constraints'* and that the *'options and analysis presented in this report are largely based on qualitative evidence'*.

The CoFI Act is a significant piece of legislation with a 31 March 2025 commencement date, meaning that most financial institutions will have substantively progressed work on their fair conduct programmes and be well-advanced with preparation for holding a CoFI licence.

This means that the proposed changes in the discussion document will have only limited effect on the financial institutions expected to apply for a licence and the nature and scope of their programmes.

Having regard to the stated time constraints and the need for financial institutions to hold a licence from 31 March 2025, Fisher Funds recommends that proposed changes to the CoFI Act be restricted to those essential to give it enhanced effect and that the more far-reaching amendments are postponed unless or until sufficient time and resources are available to consider any consequential impacts, particularly on market participants not currently within the CoFI Act's ambit e.g. managed investment scheme managers / discretionary investment management service providers, and financial advice providers regulated and licensed by the Financial Markets Authority (FMA) but outside the CoFI Act's definition of financial institutions.

In particular, the proposal to extend the powers of the Financial Markets Authority (FMA) to:

- pre-approve changes in control
- conduct on-site inspections without notice
- require reports to be completed by a suitably qualified person approved by the regulator

should be the subject of separate consultation(s) in order to provide non-CoFI financial institutions sufficient awareness of the proposed changes and an adequate opportunity to provide feedback.

Notwithstanding the above, Fisher Funds endorses the twin peaks model of financial regulation and supports proposals presented in the discussion document for greater role clarity and responsibilities as between the prudential regulator (Reserve Bank) and the conduct regulator (FMA).

Otherwise, as Fisher Funds is not a party to the CoFI regime, we will limit our comments to areas of relevance to Fisher Funds.

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?*

Fisher Funds supports Option A1 on the basis that it is being advanced as reducing prescription and providing greater flexibility for financial institutions to comply with their obligations.

We note however that the CoFI regime will have come into force prior to the proposed changes in Option A1 being passed into legislation. Further, financial institutions intending to apply for a conduct licence will have materially advanced their preparations on the basis of the current law.

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

No comment.

4 *What would be the impact of removing or amending particular requirements (for example, on compliance costs for businesses)?*

No comment.

5 *Do you have any other comments on the minimum requirements for fair conduct programmes?*

No comment.

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?*

No comment.

7 *What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to complaints processes?*

No comment.

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?*

No comment.

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?

No comment.

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?

No comment.

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?

No comment.

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?

No comment.

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?

No comment.

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?

No comment.

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?*

Noting the acknowledged time constraints under which the discussion document was prepared, it would seem more appropriate to limit the focus of the proposed changes to the terms and conditions of the CoFI Act and the twin peaks split rather than the current omnibus approach.

Fisher Funds view is that the limited regulatory changes being proposed to the CoFI Act (e.g. section 446 and subs-sections) should be prioritised over separate considerations relating to the structure of the twin peaks model, its features and additional powers being granted to FMA.

This would enable appropriate consultation with parties not defined as financial institutions and enable an important sector of the financial services to sector to contribute in a more meaningful way to the discussion.

On this basis, Fisher Funds supports the status quo for the timebeing.

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.*

No comment.

18 *Are there any other matters that should be considered around market services conduct licensing?*

No comment.

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.*

No comment.

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.*

No comment.

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?

No comment.

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.

Fisher Funds is concerned that a discussion document primarily predicated on changes to oversight of the CCCFA and the CoFI Act and its effects on financial institutions (as defined), is also the vehicle for consultation on other topics potentially impacting entities in the financial services sector not defined as financial institutions.

In particular, the proposal to extend the powers of the FMA to:

- pre-approve changes in control
- conduct on-site inspections without notice
- require reports to be completed by a suitably qualified person approved by the regulator

Fisher Funds' view is that these topics should be the subject of separate consultation(s) in order to ensure non- CoFI financial institutions are sufficiently aware of the proposed changes and have an adequate opportunity to provide feedback.

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?

See comments in section 22.

24

Do you have any other feedback on the change in control requirements option?

See comments in section 22.

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.

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Fisher Funds' view is that these topics should be the subject of separate consultation(s) in order to ensure non- CoFI financial institutions are sufficiently aware of the proposed changes and have an adequate opportunity to provide feedback.

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?*

See comments in section 25.

27 *What safeguards should be in place for on-site inspections without notice?*

See comments in section 25.

28 *Do you have any other feedback on the on-site inspection option?*

See comments in section 25.

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.*

Fisher Funds is concerned that a discussion document primarily predicated on changes to oversight of the CCCFA and the CoFI Act and its effects on financial institutions (as defined), is also the vehicle for consultation on other topics potentially impacting entities in the financial services sector not defined as financial institutions.

In particular, the proposal to extend the powers of the FMA to:

- pre-approve changes in control
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- require reports to be completed by a suitably qualified person approved by the regulator

Fisher Funds' view is that these topics should be the subject of separate consultation(s) in order to ensure non- CoFI financial institutions are sufficiently aware of the proposed changes and have an adequate opportunity to provide feedback.

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?*

See comments in section 29.

31 *What safeguards should there be for an expert report power?*

See comments in section 29.

32 *Is it appropriate that the firm concerned bear the cost of the expert report? Why / why not?*

See comments in section 29.

33 *Do you have any other comments on the expert report power option?*

See comments in section 29.

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?*

Having regard to the stated time constraints and need for financial institutions to hold a licence from 31 March 2025, Fisher Funds recommends that changes to the CoFI Act be limited to those essential to give it enhanced effect and that more far-reaching amendments are postponed unless or until sufficient time and resources are available to consider any consequential impacts, especially on market participants not currently within the CoFI Act's ambit.

4: Implementation

35 *Do you have any comments on implementation of these reforms?*

Having regard to the stated time constraints and need for financial institutions to hold a licence from 31 March 2025, Fisher Funds recommends that changes to CoFI be limited to those essential to give it enhanced effect and that more far-reaching amendments are postponed unless or until sufficient time and resources are available to consider any consequential impacts, especially on market participants not currently within the CoFI Act's ambit.

Other comments