

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

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	KPMG, a New Zealand partnership
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?

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?

3

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

4

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

5

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

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?

7

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

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?

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?

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?

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?

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?

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?

14

Do you have any other suggestions or comments in relation to the fair conduct principle?

15

Do you have any comments in relation to other areas of the CoFI Act that have not been covered in this section?

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?*

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.*

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

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.*

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.*

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?*

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.*

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?

24

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

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.

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?

MBIE’s discussion paper acknowledges that the FMA regulates a broad range of entities¹ and that the majority of regulated firms are *already* subject to a broad on-site inspection power². MBIE expects that most inspections would *still* be carried out with notice and consent.³

We understand that MBIE intends to adopt a proportionate, risk-based approach⁴ such that any surprise on-site inspection power would apply only in *limited* circumstances rather than to *all* entities regulated by the FMA; in particular, to address misconduct by certain financial market participants such as consumer-facing financial institutions or unlicensed firms⁵, *not* auditors of FMC Act reporting entities.

We are supportive of this approach.

However, if MBIE intends to apply this power to *all* firms regulated by the FMA including auditors, we would be keen to understand the nature and extent of the problem to be solved, and how surprise on-site inspection powers would be effective in addressing that problem. It would be helpful for MBIE to share any analysis/statistics about the exercise of this power by international conduct regulators and its efficacy in achieving the desired outcome in other jurisdictions.

¹ Paragraph 116 of the MBIE Discussion Paper ‘Fit for purpose financial services conduct regulation’ dated May 2024

² Paragraph 120 of the MBIE Discussion Paper ‘Fit for purpose financial services conduct regulation’ dated May 2024

³ Paragraph 115 of the MBIE Discussion Paper ‘Fit for purpose financial services conduct regulation’ dated May 2024

⁴ Paragraph 117 of the MBIE Discussion Paper ‘Fit for purpose financial services conduct regulation’ dated May 2024

⁵ Paragraph 116 of the MBIE Discussion Paper ‘Fit for purpose financial services conduct regulation’ dated May 2024

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

- Any power to conduct an on-site inspection without notice or consent should apply only to the entity whose potential non-compliance is in question. For example, the FMA should not exercise such powers to inspect an auditor’s records in order to *indirectly* collect information about the auditor’s clients.
- The scope of the inspection and the documents requested should be limited to the specific regulatory concerns being investigated, with appropriate safeguards to protect documents subject to legal privilege, including the publication of clear guidelines on how to claim legal professional privilege over documents during the FMA’s exercise of information-gathering powers. See [ASIC’s Information Sheet 165](#) as an example.

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

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 are supportive of the FMA having the ability to commission expert reports. With the ability to deep dive into complex technical issues, independent experts can provide objective analysis and insights, leading to more informed and effective regulatory actions to address market misconduct.

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?*

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

To provide confidence in expert reports, the selection process for independent, qualified experts should be transparent and rigorous to minimise bias and ensure objectivity.

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

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

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?*

4: Implementation

35

Do you have any comments on implementation of these reforms?

Other comments