

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

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	Milford Asset 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?*

We express no comment on Phase One. In relation to Phase Two we agree that the proposed criteria are appropriate in ensuring that the “twin peaks” model are clear and effective.

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)?*

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

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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?*

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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?

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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?

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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?*

We agree that there are many efficiencies that would be gained by the FMA issuing a single conduct license. The issue is more one for the FMA – will they be able to offer a co-ordinated one shop stop service with the necessary levels of experience and expertise?

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.*

See above – unless properly staffed by the FMA it could result in the same levels of work and effort by licensed firms if they need to deal with experts in separate parts of the FMA.

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

What happens if licenses are held within different companies in the same group (with perhaps a common authorised body across the licences)?

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.*

Yes – in areas where the RBNZ has previously undertaken a similar assessment to that which the FMA is engaging in, particularly in respect of the same licensed entity.

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- conduct

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?*

Co-ordinated approach to other areas with more than one regulator, like AML.

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.

Yes, to not allow reciprocal rights cuts across the arguments for a twin peaks regime and undermines the FMA and the importance of conduct. The FMA should have the same powers as the Reserve Bank, albeit any assessment should be done vis a vis the licensing criteria in the FMC Act.

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?

Just to firms licensed under Part 6 of the FMC Act – other supervisors are responsible and better placed to make the determination for non-Part 6 firms

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.

Yes, the conduct of those providing financial services directly affects the consumers of those services and non-compliance with the financial market's legislation can negatively impact customer's and call into question the integrity of our markets. For these reasons the FMA should have the ability to act quickly and independently. As per other answers we have provided why should it be different to the Reserve Bank? Additionally, this has always been the intention, the failure to this occur has only been because of imprecise legislative wording.

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?

All

27

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

Those as set out in paragraph 114 of the Consultation Paper.

28

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

No

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.

Yes, it is not possible for the FMA to have experts available internally on every topic (particularly very specialised and new ones) and at all times when required. However, given the costs involved it should be used sparingly and with regard to the ability of a participant to pay.

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?

It should apply to all regulated firms. Why should they be treated any differently?

31

What safeguards should there be for an expert report power?

We are not sure what you mean by this. It will obviously be important to ensure that the expert is truly an expert and is independent. The report produced would also need to be carefully reviewed by the FMA to ensure it sensibly addresses the issues and if necessary, a second opinion contained.

32

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

It depends on the circumstances. If the report is being provided in relationship to a subject that the wider industry and/or consumers will benefit from it seems fair that the government should pay for this. However, if it is in relation to a very specialised or new area only affecting one participant and its customers the participant should have to pay.

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?

Other comments