



27 NOVEMBER 2023

Briefing to the incoming Minister

**FMA Briefing to the Incoming Minister of
Commerce and Consumer Affairs**

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Executive summary

The Financial Markets Authority (FMA) – Te Mana Tātai Hokohoko – is an independent Crown entity and New Zealand’s principal conduct regulator of financial markets. Our statutory duty is to promote and facilitate the development of fair, efficient, and transparent financial markets; and to promote the confident and informed participation of businesses, investors and consumers in financial markets. Well-regulated financial markets are a cornerstone of a successful New Zealand economy and the financial wellbeing of New Zealanders.

New Zealand’s financial markets regulatory regime is based on the ‘twin peaks’ model, with the FMA administering conduct regulation and the Reserve Bank of New Zealand (RBNZ) administering prudential regulation. Most countries around the world have implemented a twin peaks model as international best practice, including Australia and the UK. Twin peaks gives equal weight to each facet of regulation, to ensure both receive sufficient priority.

The FMA was established in 2011 as part of reforms to restore investor confidence in the wake of the global financial crisis, and in response to the finance company collapses that caused significant financial harm to thousands of Kiwi investors and damaged confidence in and credibility of the financial system.

A review of New Zealand’s financial system by the International Monetary Fund (IMF) in 2017 found that this reform of securities market regulation significantly improved the regulatory framework by governing how financial products are offered, promoted, issued and sold, and introducing licensing for providers of certain financial products and services, including managers of retail funds. At the same time the IMF recognised there were risks with wholesale asset managers and custodians, while conduct regulation in the insurance sector needed to be enhanced.

The FMA’s own work has also highlighted weaknesses in the conduct of consumer financial services. Indeed, our observations demonstrate that the industry has significant amounts of work to do to uplift its practices around incentive structures, product design, product reviews, core processes, and product marketing.

A notable example of this is the findings from the FMA and RBNZ’s joint Conduct and Culture reviews of banks and life insurers in 2018 and 2019, carried out following concerns raised by the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The findings demonstrated that banks and insurers had poor conduct risk management, and weak systems and processes for identifying and managing poor customer outcomes. The reviews underlined the need for proactive regulation of bank and insurer conduct. Total remediation payments made to customers of banks and life insurance firms as a result of these reviews, spanning both large and small providers, has now exceeded \$150 million – a clear tangible benefit of a conduct and culture focus for regulation. This work has helped deepen our understanding of the banking and insurance sectors and heightened our engagement with these sectors on their conduct maturity.

The FMA has a range of tools to support, guide and enforce – to provide help where it’s needed and to require firms to act where necessary. This broad toolkit is a critical enabler of our outcomes-focused approach. This is a regulatory approach that centres on providers prioritising fair outcomes for consumers and markets, rather than being more prescriptive and compliance based. This approach requires strong engagement with industry and other stakeholders, to help raise standards of conduct and focus on fair outcomes for the benefit of all New Zealanders. It allows the FMA to take proactive steps to prevent

conduct problems from happening in the first place, and has been strongly supported by industry as it ensures better outcomes for markets and consumers alike.

Well-designed regulation is important to support confident participation in the financial system and the effective functioning of markets. To ensure successful transformation into a modern outcomes-focused regulator, the FMA is drawing lessons from other regimes that have implemented conduct regulation and outcomes-based approaches.

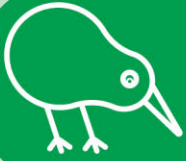
While engagement is central to outcomes-focused regulation, this does not mean our stance on enforcement is changing. It is important that where we see egregious behaviour we do not hesitate to intervene. This is paramount not only for consumers and trust in the financial sector, but also for the many providers who are already focused on delivering fair outcomes. To this end, a recent outcome of our enforcement activity saw the highest penalties imposed to date for contraventions of the market manipulation and disclosure provisions in the Financial Markets Conduct Act 2013 (FMC Act) – with the two defendants ordered to pay \$1.3m and \$760,000 respectively.

As another example, earlier this year we made a permanent stop order to prevent Validus and its associated persons from promoting a scheme with misleading offers of financial products (that did not exist). Harmful activity on our regulatory perimeter, especially when it originates overseas, stretches the FMA to the limits of our powers and jurisdiction. Our actions in this case demonstrate that we are willing to take up this challenge to protect the interests of New Zealand consumers.

Since our inception, the FMA has focused on fostering greater regulatory coherence in the financial sector, being consistent with international standards but importantly right-sizing these for New Zealand. This has seen the FMA's mandate expand, with the progressive rationalisation of supporting legislation under the FMC Act. A recent example of this was the introduction of the new financial advice regime, which the FMA successfully implemented through a high-engagement and consultative approach.

In an increasingly globally connected economy, credibility and alignment is essential in ensuring consistent, effective and efficient regulation. We work and engage closely with domestic and international agencies and regulators to address risks to consumers and markets, making full use of remit and regulatory tools and broader influence through, for example, the Council of Financial Regulators (CoFR). This is critical in a complex and dynamic environment with emerging issues relating to frauds and scams, emerging channels for information delivery to consumers (such as social media), and investments in speculative asset classes (such as cryptocurrencies).

Engagement both domestically and internationally on areas of mutual interest can benefit New Zealand by making it easier to do business and reducing burdens and red tape. A recent example is our Memorandum of Understanding in September with the UK's Financial Reporting Council allowing auditors with professional qualifications in either the UK or New Zealand to apply for reciprocal recognition of their qualification and audit rights.



\$93.7 billion

total KiwiSaver funds under management (at March 2023)

3,254,336

KiwiSaver members (at March 2023), almost two-thirds of NZ's population



\$88.8 billion

total funds under management by non-KiwiSaver managed investment schemes (at March 2023)

\$47 billion

total funds under management by Discretionary Investment Management Services (at June 2023)



\$158.7 billion

NZX market capitalisation (at October 2023)



\$698 billion

total assets held by registered banks (at June 2023)



\$11.2 million

in penalties awarded against entities from January to October 2023



\$150 million

returned to a total of 1.5 million customers by banks and insurers as a result of issues requiring remediation identified since the FMA/RBNZ Conduct & Culture reviews in 2018/19

Our licensed and regulated population includes:



- 1,417 Financial Advice Providers
- 66 Managed Investment Scheme Managers



- 631 FMC reporting entities
- 143 domestic licensed auditors
- 1,050 FMC audits



180 Climate Reporting Entities

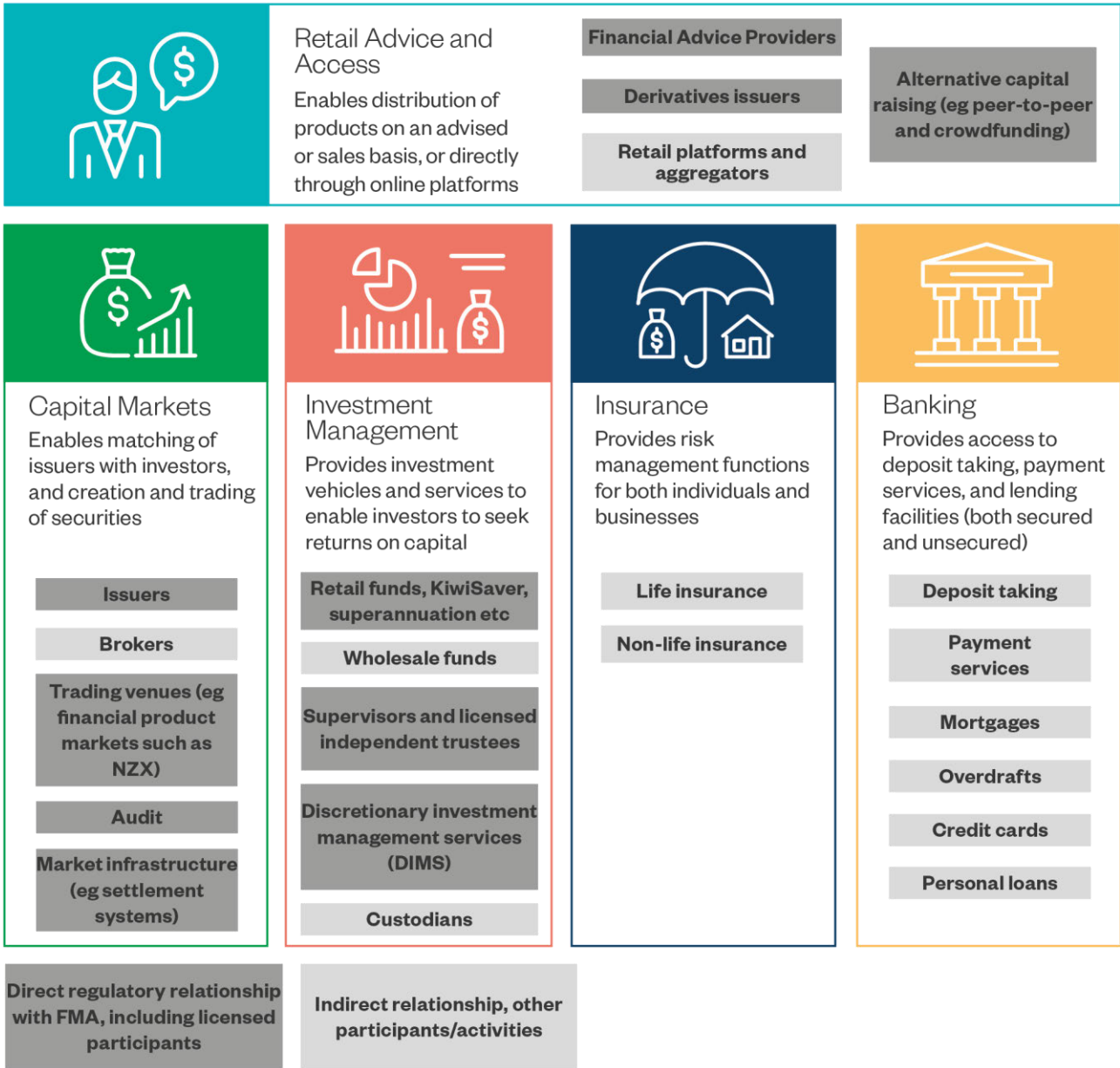


1,366 AML/CFT reporting entities

Overview

Key contacts	Chair – Mark Todd Chief Executive – Samantha Barrass
Established	Financial Markets Authority Act 2011
Status	Independent Crown Entity
Statutory duty	To promote and facilitate the development of fair, efficient, and transparent financial markets. To promote the confident and informed participation of businesses, investors, and consumers in the financial markets.
Our role	<p>As New Zealand’s principal conduct regulator of financial markets, we have a range of functions:</p> <ul style="list-style-type: none">• Licensing of a range of firms and professionals to provide certain financial products and services.• Monitoring and supervision of the industry to ensure it complies with the law and prioritises fair outcomes for consumers and markets.• Investigation and enforcement activities that aim to raise standards of behaviour, deter misconduct, and hold to account those whose conduct harms the operation of our financial markets.• Policy and guidance that assists firms and professionals to set expectations and comply with the law. We keep under review the law and practices relating to financial markets and participants.• Information and resources to help consumers make better investment and financial decisions.• Environmental scanning to identify the most significant risks to and opportunities for promoting our priorities.
Annual budget (Opex)	\$69.689 million (2023/24) \$73,003 million (2024/25) \$76,401 million (2025/26) \$5 million litigation fund (year to June 2024) See ‘Funding’ (page 17) for further detail.
Staff	343 total staff, based in Auckland (67%) and Wellington (30%) and Christchurch (3%)

Who we regulate



Strategic priorities

Outcomes-focused approach

The FMA is evolving towards an outcomes-focused approach that prioritises fair consumer and market outcomes in our interactions with providers.

Examples of fair outcomes are:

- Consumers have access to appropriate products and services that meet their needs.
- Markets enable sustainable innovation and growth.

Focusing on outcomes will assist providers to meet their legal obligations more easily in a way that achieves the purpose of those obligations. For the FMA, taking this approach will change how we supervise and engage with our regulated population. The practical benefit of this approach is it will allow for more flexibility and innovation as well as minimise unnecessary regulatory burden.

Importantly, it allows compliance effort to be right sized for market and firm circumstances, so that our regulation is really focused on the end results that matter to consumers and markets. It also emphasises the importance of viewing rules not as an end in themselves, but in their broader context, considering the purpose of the legislation, and as a means to achieve fair outcomes.

While this has already started a fundamental shift and rethinking of how the FMA operates, it is a long-term, evolving project that will require greater engagement and mutual understanding between the FMA and industry to be successfully implemented.

We are consulting with industry on our outcomes focused approach and proposed fair outcomes from November to March.

Implementing new regimes

New Zealand is going through a period of significant change in terms of how its financial sector is regulated, which has seen the FMA's mandate increase significantly.

Financial advice

The Financial Services Legislation Amendment Act 2019 (FSLAA) came into effect on 15 March 2021. Its aim is to improve access to quality financial advice for all New Zealanders.

From 16 March 2023, anyone who provides regulated financial advice to retail clients needs to hold or operate under a Financial Advice Provider (FAP) full licence granted by the FMA. The FMA invested considerable time and effort to help prepare the sector for this new regime.

As of 17 March, more than 2,500 FAPs are either directly licensed or operating as an Authorised Body, including sole operators as well as small firms and large entities employing multiple advisers.

Financial market infrastructures (FMIs)

FMIs provide channels through which payments, securities, derivatives or other financial transactions are cleared, settled or recorded. As joint regulator of FMIs with the RBNZ, we progressed implementation of the Financial Market Infrastructures Act 2021, including publicly consulting on and finalising the standards that

will be the framework for the regulation of FMIs operating in New Zealand. The standards were signed off in July 2023.

The FMI Act comes fully into force on 1 March 2024 and the old regime will be repealed.

Climate-related disclosures

The intention of the world-leading Climate-Related Disclosure regime (CRD) is to bring transparency to large entities' climate-related risks and opportunities so these become routinely considered in business and investment decisions, contributing to the efficient operation of New Zealand's financial markets.

From 2024, some organisations (known as Climate Reporting Entities or CREs) will have to make mandatory annual climate statements covering governance arrangements, risk management, strategies, and metrics and targets for mitigating and adapting to climate change impacts. The regime will capture approximately 180 entities, including:

- registered banks, credit unions, and building societies with total assets of more than \$1 billion
- licensed insurers with total assets over \$1 billion or annual gross premium revenue over \$250 million
- managers of registered managed investments schemes with greater than \$1 billion in total assets under management
- large listed issuers where equity/debt issued exceeds \$60 million.

The FMA is responsible for independent monitoring and enforcement of the regime, providing guidance about compliance expectations, and reporting on monitoring activities and findings. Monitoring will ensure CREs file statements on time that are accurate and not misleading, and retain appropriate records.

The FMA has made good progress with implementing and preparing to oversee the CRD regime.

Our focus in 2023/24 is on:

- supporting reporting entities and encouraging the development of good practice
- developing and implementing our monitoring and risk assessment approach
- consulting on and developing FMA exemptions
- integrating CRD reporting requirements into our IT systems and continuing to build internal capability, systems, and processes.

Once the first climate statements are released in March-April 2024, the FMA will be focused on reviewing as many as possible, to give timely feedback and encourage the development of good practice.

As the regime matures in 2025 and 2026, the FMA will update guidance and settle into a steady state of monitoring, proactively assessing and sampling climate statements.

Conduct of financial institutions

The Financial Markets (Conduct of Financial Institutions) Amendment Act 2022 (CoFI) sets out a framework for the FMA to license and monitor registered banks, licensed insurers, and non-bank deposit takers (NBDTs), collectively 'financial institutions', in respect of their conduct towards customers.

CoFI requires financial institutions to comply with a 'fair conduct principle' to treat consumers fairly. This is operationalised through a requirement to establish and comply with a 'fair conduct programme', by having appropriate policies and processes in their businesses to support delivering good outcomes to consumers.

CoFI is a principles-based regime and is not prescriptive about what fair conduct programmes look like. Institutions have flexibility to design and implement fair conduct programmes that are fit for purpose and

right-sized for their own businesses. For example, fair conduct programmes can take into account factors such as the nature, size, and complexity of the institution's business, the types of products and services offered, the distribution channels used and types of consumers they deal with.

CoFI also requires financial institutions and intermediaries to comply with regulations that prohibit sales incentives based on volume or value targets.

Under CoFI, financial institutions must apply for a licence. The licensing regime provides the FMA with a full range of monitoring, supervision and enforcement tools to ensure institutions comply with their obligations. These tools include requiring reporting from entities, and the ability for the FMA to give a censure, require an action plan, give a direction, suspend a licence, or vary conditions of a licence.

Licensing opened on 25 July 2023 and the regime will come into force 31 March 2025. It is estimated approximately 100 institutions that provide services to consumers will seek a licence. The sector includes systemically important institutions that are large and complex, as well as small and mid-size firms.

The FMA has made good progress with implementing and preparing to oversee this regime, including phased funding to expand our teams to support the licensing, monitoring and supervision of financial institutions, recruiting for key roles and the development of the online licence system.

The FMA will continue to engage with financial institutions to ensure they are well-supported throughout the licensing window until 31 March 2025.

The CoFI regime aims to facilitate fair outcomes for consumers through proportionate and principles-based regulation of institutions.

Watchlist issues

Tackling financial frauds and scams

The FMA seeks to take preventative and disruptive actions to tackle financial frauds and scams. We do this through several channels, including work to identify imposter schemes and websites, issuing stop orders and warnings, and raising awareness through communications activities. In the year to June 2023 we issued 89 alerts about suspected scans, unregistered businesses, fake regulators and imposter websites. The approach to dealing with frauds and scams requires coordination with multiple agencies, regulators and the Police; as well as initiatives being developed by the banking and telecommunications sector. Other jurisdictions have found the need to coordinate efforts and bring work together to make tangible progress. The FMA has put a proposal to the Council of Financial Regulators to strengthen coordination and effectiveness of anti-scam efforts in New Zealand, and we have offered to take a lead role in this work.

Impact of weather events on insurance

The weather-related events (Auckland floods and Cyclone Gabrielle) are among the largest insured events to occur in New Zealand's history, resulting in more than 100,000 claims totalling over \$2 billion. The FMA has actively engaged with government bodies, insurers, banks, financial advisers, industry bodies and consumer organisations to ensure policyholders' claims are being assessed and paid as per policy requirements. At the same time, we are carefully monitoring the length of time claims are taking. Longer-term work is underway to ensure all participants within the insurance sector are better equipped to manage outcome expectations. This includes joint messaging with Commerce Commission on vulnerable customers, and work with insurers on policyholder settings (such as customer communications).

Greenwashing

Financial products labelled or marketed as being sustainable, ethical, green, etc have grown in number and popularity in recent years. Making misleading or false claims about social or environmental benefits or impacts goes to the heart of fair dealing, and the overall impression provided by marketing materials is critical.

We know investors choose funds based on marketing and what they think the fund invests in, and how. Those same investors can also be prepared to pay higher fees and/or accept lower returns for a fund they believe better fits their values. If the fund's investments don't line up with what they believe they are investing in, that is a misleading value proposition.

In 2020, the FMA published guidance saying if a fund is claiming green or sustainable credentials, that claim must come with sufficient detail to articulate and substantiate that story. And the detail must be high-quality, lucid, and easy to find.

The FMA is sharpening its focus in this area to better understand the extent of greenwashing in New Zealand's financial sector and build internal expertise and experience in understanding and addressing greenwashing behaviour. There are broader policy and consumer tailwinds for claims to be articulate, accurate and meaningful. Mandatory climate reporting standards are here; broader sustainability standards are in the wings and consumer expectation is growing.

Credit union sector

The FMA continues to work closely with other CoFR agencies, in particular the RBNZ, to monitor developments in the credit union sector. Recent years have seen consolidation within the sector continue, with challenges being faced around capital adequacy, profitability and operating costs, which have sometimes been beyond what is sustainable for the businesses.

While some credit unions have adapted to changes in the market and regulatory environments and remain relatively stable, others have become vulnerable to changes or economic shocks. This has led to further industry consolidation.

New Zealand now has four remaining credit unions, and the FMA has been engaging with these institutions to prepare for licensing under the CoFI regime.

Digital financial reporting (DFR)

The FMA considers it is important for New Zealand to adopt digital financial reporting (DFR) as soon as practicable. DFR is a form of machine-readable financial reporting that transforms accessibility and use of the information contained in financial statements. New Zealand, unlike most developed countries, does not allow or require DFR – while major market economies around the world have adopted voluntary or mandatory DFR.

DFR allows investors and government to extract, compile and use information instantly and at scale to make informed decisions about policy, regulatory intervention, and investments. It involves the production and lodgement of financial statements in a machine-readable business reporting language, using computer code to identify and classify disclosures in accordance with a relevant accounting taxonomy. The Companies Office currently requires businesses to file in traditional formats (PDF, physical filing, etc).

There is also an opportunity to use digital reporting to maximise the benefits from climate-related disclosures. Protocols for using digital reporting for climate-related disclosures are being actively considered overseas. The FMA raised the potential role and benefits of DFR with MBIE and XRB in May 2023. Legislation may not be necessary.

Law reform priorities

The FMA supports the design of a regulatory system that provides robust protections to consumers – particularly the vulnerable – while also promoting market efficiencies and minimising unnecessary regulatory burden. This design is critical for a more engaged and dynamic system that creates more choice for consumers, and fosters competition and innovation in our financial markets, products and services.

Review of consumer credit

The FMA considers that a review of the Credit Contracts and Consumer Finance Act (CCCFA) 2003 is warranted. Aspects of the current consumer credit regime are built on prescriptive requirements, and strict process-based penalties. Consumers and business alike find the rules disproportionate. This has led to instances of conservative lending decisions, sub-optimal consumer outcomes, restricted discretion where it matters (e.g. emergency lending during recent weather events) and some barriers to innovation. At the same time, aspects of the legislation, which is regulated by the Commerce Commission, appear to have been successful in tackling the significant harms that can arise from poor conduct in consumer lending. It will be important to ensure that any review retains these benefits while seeking to reduce unnecessary burden.

The FMA, as a member of CoFR, was involved in the investigation last year into the impacts of recent CCCFA changes. We have also informed MBIE of our view that any review of the regulatory settings for credit contracts and consumer finance should consider the merits of aligning all aspects of financial markets conduct by, for example, having a single regulator (such as the FMA) or harmonised regulatory approaches to financial products and services. The aim would be to reduce complexity and uncertainty for businesses and improve consumer outcomes.

Progression of the Insurance Contracts Bill

The draft Insurance Contracts Bill addresses several insurance law issues, rationalises New Zealand's various insurance statutes into one and, importantly, modernises insurance contracts law to ensure a well-functioning insurance market, in line with the UK and Australia where similar reforms have been enacted. It would give the FMA new supervisory and enforcement tools that we can utilise in relation to a range of new matters including unfair terms in insurance contracts, duties on insurers to inform policyholders about what information policyholders are required to disclose and the consequences for failing to do so, and duties to assist policyholders to understand insurance contracts. It complements developments to improve overall conduct in financial markets, which is particularly important for the insurance sector where consumer confidence is low. Ultimately our aim is to drive positive industry behaviour and culture change by putting consumers at the forefront of institutions' decisions and actions.

Strengthening regulatory settings for custodians and critical third parties

We have been considering the regulatory settings for custodians and critical third parties involved in the flow of money and information for investors. These settings relate to persons who hold on trust managed investment scheme property, investor money or property held under a discretionary investment management service, or client money or property on trust.

We recently published a report on the lessons learned from the ponzi scheme operated by Barry Kloogh, a Dunedin financial adviser, which resulted in losses of around \$18 million from his clients, over up to 20 years. Mr Kloogh was convicted of multiple Crimes Act offences in 2020, and is currently serving a jail sentence. The FMA's report focused on how this fraudster utilised the services of legitimate financial services companies, including banking, platform, and custody service providers, to exploit the trust and goodwill of his clients. We consider the circumstances and findings outlined in the report justify

reconsideration of the regulatory settings in our system in relation to the safekeeping of money and assets. These issues were also identified in a 2017 recommendation from the IMF's Financial Sector Assessment Programme. We anticipate putting forward recommendations to MBIE on where regulatory change might be needed.

Considering regulation of virtual assets

During 2023, four global regulatory organisations issued clear expectations for all jurisdictions to have fit-for-purpose virtual asset and virtual asset service provider (VA and VASP) regulation.¹

The core themes relate to the necessity for globally aligned action to regulate, supervise and respond to the unique risks posed by VAs and VASPs, particularly for retail investors, which have recently materialised with prominent examples like the collapse of FTX. Their consensus recommendations are for jurisdictions to apply the regulatory standards of securities markets to the trading of VA.

The FMA supports a fit-for-purpose VA and VASP regulatory regime and has signalled to MBIE that primary legislation is necessary to put in place an effective framework with appropriate tailoring for domestic VASPs and VAs (as New Zealand is predominantly a recipient of offshore services). In the interim, we are looking at how we take a more active role relating to VAs and VASPs that provide financial services in New Zealand.

¹ These organisations are the International Monetary Fund (IMF), International Organization of Securities Commissions (IOSCO), the Financial Stability Board, and the Financial Action Task Force (FATF).

Enforcement

The FMA has a range of powers and remedies to respond to misconduct or potential harm with more flexibility than litigation. Civil or criminal proceedings remain an option under our legislation. We currently have a substantial pipeline of enforcement work which, given the current market and broader economic conditions, we expect to increase further.

Likely areas of focus in coming years

- Misconduct on our perimeter (e.g. unlicensed entities undertaking regulated activity; entities registering on the Financial Service Providers Register without intending to offer services here; entities offering services into foreign jurisdictions illegally).
- Trading misconduct (e.g. insider trading and market manipulation, particularly where board members or senior executives are involved).
- Misleading and deceptive conduct (enforcing fair dealing provisions of the Financial Markets Conduct Act 2013), including greenwashing (i.e. ascribing environmental or ethical benefits to financial products in a misleading manner).
- Failure to meet Anti-Money Laundering/Countering Financing of Terrorism (AML/CFT) requirements.

Key ongoing enforcement cases

CBL Corporation (in liquidation)

Two separate proceedings are underway against CBL (CBLC), its six directors and its CFO alleging multiple breaches of the FMC Act. The FMA is seeking declarations of contravention and civil pecuniary penalties.

- The initial public offering (IPO) proceeding concerns alleged breaches of the FMC Act in relation to disclosures by CBLC as part of its IPO in September 2015, and the continuous disclosure (CD) proceeding arises from conduct after CBLC was listed.
- In addition to the FMA's actions, two sets of shareholder class action proceedings, and proceedings taken by the liquidators of CBL Insurance, were filed. The High Court ruled that the FMA's two proceedings and the shareholder proceedings should be heard together as the claims are sufficiently similar in nature.
- Following that ruling the FMA has reached an in-court resolution with five of the defendants to the CD proceeding. The penalty hearing for that is scheduled for December 2023. Three defendants remain in respect of the CD proceeding with a case pending in 2024.
- Due in part to the resolution reached with the FMA, both sets of shareholder proceedings were also able to reach agreement on terms satisfactory to the shareholder plaintiffs. Accordingly, the Court approved the discontinuance of the shareholder plaintiffs' proceedings.
- The SFO has laid charges against two of the CBL directors (who also face FMA proceedings). That trial was heard in April 2023 and in September 2023 the defendants were acquitted on all charges. The SFO is appealing the decision.

- A hearing for the FMA's IPO proceeding and for the remaining defendants to the CD proceeding is scheduled to start in June 2024 for 4 months.

Insider trading case involving the trading of Pushpay shares

In 2022, the FMA filed proceedings against two individuals for alleged insider trading in relation to the sale of shares in Pushpay Holdings Limited. The individuals have ongoing name suppression.

One defendant faced a criminal charge and was convicted after a trial by jury in August 2023. In November the defendant was sentenced to six months community detention and must pay a fine of \$100,000. The individual is appealing the conviction. The FMA is considering the sentencing judgment.

Both defendants face civil proceedings filed in the High Court, which were stayed until the outcome of the criminal trial. [REDACTED]

Market manipulation cases

The FMA has two market manipulation cases before the Court against individuals, one involving close price manipulation and one involving information-based market manipulation.

Morrison and Blackwood v FMA and Attorney-General

Mr Morrison and Mr Blackwood were prosecuted following the failure of two finance companies, Viaduct Capital and Mutual Finance Limited. The first trial was aborted because of errors by the prosecution, and both were awarded some costs after the aborted trial.

Mr Morrison was not included in the second trial and Mr Blackwood was convicted on some charges.

Mr Morrison and Mr Blackwood filed proceedings against the FMA and the Attorney-General and are seeking to recover damages of \$1,485,000 for legal costs incurred in the FMA's prosecutions.

The matter was heard in the Wellington High Court in October 2022. The High Court dismissed the arguments against the FMA, but the plaintiffs succeeded in their claim against the Attorney-General for a breach of the Bill of Rights Act 1990. The Attorney-General is appealing the finding against him. The FMA's involvement in the matter has concluded and the FMA is seeking costs against the plaintiffs.

Fair dealing

Following the 2018 and 2019 Conduct and Culture reviews, the FMA has taken action in respect of a number of self-reported issues where breaches of the FMC Act's fair dealing provisions arose from system and process issues at banks and insurers. The FMA has now received judgment in respect of six of the seven cases filed.

There is one matter currently before the Court (summarised below) [REDACTED]

- The FMA filed civil proceedings against AA Insurance Limited (AAI) for failing to apply multi-policy and membership discounts, and guaranteed no-claims bonuses to eligible customers' premiums, resulting in \$11.12 million in overcharges. The proceedings were filed in the High Court in Auckland.

The most recent judgment handed down by the Court involved proceedings against Medical Assurance Society New Zealand Limited (MAS) for fair dealing breaches under section 22 of the FMC Act. The FMA claimed that between 2014 and 2022, MAS failed to apply the correct inflation adjustments on its customer policies, failed to apply multi-policy discounts and no-claims bonuses, and underpaid life and disability

claims to eligible clients. In September 2023 MAS admitted to the breach and in November the High Court ordered a final pecuniary penalty of \$2.1 million.

Since June 2020, the FMA has brought seven civil cases under the fair dealing provisions of the FMC. All these cases point to system errors and process failures that for the most part date back prior to 2014, when the FMC Act came into effect. While we have acknowledged in each case the efforts companies have made to remediate customers for these issues, the length of time taken to identify and resolve the mistakes in the first place was a key factor in commencing civil court action.

How we operate

Governance and accountability

The FMA was established as an independent Crown entity under the Financial Markets Authority Act 2011. This Act sets out the FMA's main objective and functions, and provides for certain general information-gathering and enforcement powers.

Board of Directors

The Board is the governing body of FMA. It is appointed by the Minister of Commerce and Consumer Affairs. The Crown Entities Act 2004 sets out the collective and individual duties of the FMA Board and its members. The Board's focus is generally on the critical strategic and regulatory policy issues that determine the overall success of FMA.

The Board has two advisory committees:

- The Audit and Risk Committee considers internal controls, accounting policies, and risk management. It also approves financial statements, and helps with the scope, objectives and functions of external and internal audits.
- The People, Performance and Remuneration Committee oversees FMA's performance, remuneration, development and engagement systems, including setting the Chief Executive's remuneration and key performance indicators.

In accordance with the State Sector Commission guidelines, the Board periodically reviews its own role and overall performance, its processes and procedures, the use of supporting Committees and Divisions, and the performance of each Board member.

For more information see Appendix: Board and Executive Leadership Team profiles.

Our Executive Leadership Team

The FMA announced a new enterprise leadership team structure in September 2022 as part of its programme to evolve and transform the way it operates.

For more information see Appendix: Board and Executive Leadership Team profiles.

Accountability and reporting

Letter of Expectations

Each year the Minister of Commerce and Consumer Affairs issues a Letter of Expectations to the Board to communicate the Government's strategic and performance expectations for the FMA. See the [Annual Letter of Expectations for 2023/24](#).

Annual Report

This is our yearly report of progress against the Statement of Intent, results against the Statement of Performance Expectations, and an overview of key activities and achievements. Copies of the FMA's Annual Report 2022/23 have been sent to your office.

Statement of Intent

Our [Statement of Intent 2020-2024](#) (SOI) outlines our outlook and performance measures to show what success will look like over a four-year horizon for the FMA, market participants and investors. The FMA is due to provide you with a new SOI in April 2024.

Statement of Performance Expectations

Our [Statement of Performance Expectations 2023/24](#) (SPE) sets out our financial forecast for the financial year 1 July 2023 to 30 June 2024. It is prepared in line with the Crown Entities Act 2004 and should be read together with the FMA's Statement of Intent 2020-2024. The FMA is due to provide you with a new SPE in April 2024.

FMA Outlook

The [FMA Outlook 2023/24](#) is a one-page summary outlining the FMA's interim strategic objectives and intended programme of work for the financial year.

Funding

In 2021, MBIE and the FMA initiated a [review](#) of the FMA's funding requirements and the FMA levy. The review was commenced in response to the FMA's expanding remit under three new legislative regimes: Conduct of Financial Institutions (CoFI), Insurance Contract Law (ICL) and Climate-Related Disclosures (CRD).

Following the consultation, decisions regarding funding for ICL were deferred to allow more policy work to take place.

In relation to the CoFI and CRD regimes, Cabinet agreed to increase the FMA's operational funding by \$15.596 million per annum in 2025/26 and outyears. This will result in an increase to the FMA's total annual operating funding, from \$60.805 million to \$76.401 million in 2025/26. This increase is being phased in over four years and the figures are not adjusted for inflation.

Crown/levy split

When the FMA was established in 2011, the split of its operational funding was approximately 30% Crown funded and 70% industry levy funded. As the FMA has grown, the percentage of industry levy funding has increased to more than 80% and is to increase to 84% of the FMA's funding in 2025/26.

Litigation fund

The FMA has a \$5 million per annum appropriation for its external litigation expenses. The current appropriation and funding agreement with MBIE means the FMA is well placed to respond to misconduct that requires an enforcement response.

The FMA's litigation fund appropriation is held by MBIE. The FMA may retain up to \$3 million in the fund on its balance sheet at any point in time. At the end of each financial year, the FMA must return to the Crown the amount needed to ensure the amount held in the fund does not exceed \$3 million.

From 2023/24, any unspent amounts from the fund appropriation will be returned to the Crown at the end of each financial year.

Council of Financial Regulators (CoFR)

We are a co-chair, together with the Reserve Bank, and a member of CoFR, responsible for joint stewardship of a healthy and efficient financial system that benefits all New Zealanders. The function of CoFR, as set out in the Reserve Bank of New Zealand Act 2021, is to facilitate co-operation and co-ordination between members of the council to support effective and responsive regulation of the financial system in New Zealand.

CoFR comprises the Financial Markets Authority, the Reserve Bank of New Zealand, the Treasury, the Ministry of Business, Innovation and Employment, and the Commerce Commission.

We work collaboratively with our CoFR partners to ensure we face challenges in the financial sector head on and are transparent and accountable for our activities as regulators.

CoFR publishes a [Regulatory Initiatives Calendar](#), which provides stakeholders with a broad quarterly overview of all regulatory initiatives by CoFR members. Each CoFR member has agreed to consult the calendar when undertaking planning activities so that each agency's plans are informed by those of the other agencies. Several of the current initiatives are multi-year commitments that had their origins in expectations set by international standard-setting bodies.

CoFR has identified the following priority themes, for which we work together to identify issues and find solutions:

- climate-related risks
- cyber resilience
- digital and innovation
- inclusion
- regulatory effectiveness.

CoFR has several sub-committees and stakeholder engagement groups, including:

- The Banking Forum, which helps coordinate work related to the regulation of banks and includes CoFR members as well as the Ministry of Justice, the Inland Revenue Department and the New Zealand Banking Association.
- The Insurance Forum, which aims to contribute to the efficiency and coordination of insurance sector regulation by providing a space to discuss risks, issues, and ongoing and upcoming regulatory matters relating to licensed insurers, and includes the Financial Services Council (FSC), the Insurance Council of New Zealand (ICNZ) and the Financial Services Federation (FSF).
- The Monitoring and Coordination forum, between the FMA, the Reserve Bank and the Commerce Commission, to promote and enable effective sharing of information on regulated entities, to assist and enable increased coordination and prioritisation of licensing, monitoring, and enforcement activity, and to achieve increased regulatory efficiency for regulated entities through improved information sharing and monitoring perspectives/insights.

Our legislation

Some of our key legislation is highlighted below.

Financial Markets Authority Act 2011

Established the FMA as an independent Crown entity, provides the FMA's main objectives and functions, along with general information-gathering and enforcement powers.

Financial Markets Conduct Act 2013 (FMC Act)

The FMC Act governs how financial products are created, promoted and sold, and the ongoing responsibilities of those who offer, deal and trade them. It lays the groundwork for the FMA to provide high-quality regulation in capital markets and financial services.

The purpose of the FMC Act is to promote and facilitate the development of fair, efficient, and transparent financial markets, and to promote the confident and informed participation of businesses, investors and consumers.

It is the core legislation that sets out our licensing, monitoring and enforcement powers for financial markets. Recent changes to our mandate for financial advice, climate-related disclosures and conduct of financial institutions have been introduced through amendments of the FMC Act.

Financial Markets Supervisors Act 2011 (FMS Act)

Covers supervisors appointed to look after investors' interests for debt securities, registered schemes including KiwiSaver schemes, specified managed funds and superannuation schemes, and retirement villages.

Provides for FMA licensing and statutory duties for supervisors, aimed at ensuring supervisors have appropriate capacity, industry knowledge and experience, and sufficient powers to carry out their role; and provides for appropriate regulatory oversight by the FMA, and effective remedies against poorly performing supervisors. Has the purposes of protecting investors' interests and enhancing investor confidence in financial markets.

KiwiSaver Act 2006 (Part 4 and Schedule 1)

KiwiSaver encourages a long-term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to those in pre-retirement. The Act aims to increase individuals' wellbeing and financial independence, particularly in retirement, and to provide retirement benefits. To that end, this Act provides for KiwiSaver schemes to facilitate individuals' savings, principally through the workplace.

The FMA's primary role in KiwiSaver is to license, monitor and supervise all KiwiSaver providers, including default providers, and their supervisors. Schedule 1 sets out the terms that are implied into all trust deeds of KiwiSaver schemes. The rules include that fees must not be unreasonable, that employee members must contribute a minimum amount, and that fund managers must release funds as required under legislation and allow withdrawals for first home purchases.

Auditor Regulation Act 2011

Established a co-regulatory oversight regime between the FMA and the professional accounting bodies to regulate auditors and audit firms that undertake audits of FMC reporting entities, to promote quality, expertise and integrity in the audit profession.

Financial Market Infrastructures Act 2021

The FMI Act establishes a comprehensive regulatory regime for financial market infrastructures (FMIs), which are multilateral systems (such as payment systems and central counterparties) that enable electronic payments and financial transactions.

Under the FMI Act, the FMA and the Reserve Bank will act jointly as the regulator, except for pure payment systems, where the Reserve Bank is the sole regulator.

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act)

Places obligations on New Zealand's financial institutions, casinos, virtual assets service providers, accountants, lawyers, conveyancers and high-value dealers to detect and deter money laundering and terrorism financing. It provides a regime for supervising, monitoring and enforcing the Act by three supervisors – the FMA, the Reserve Bank and the Department of Internal Affairs.

Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act)

The FSP Act requires all financial service providers to be registered and, if they provide services to retail clients, to belong to an approved dispute resolution scheme. In 2014 the FSP Act was amended to give the FMA greater powers to prevent registration and to deregister financial service providers, to prevent misuse of the Register by offshore entities.

Key dates

Upcoming key dates for the FMA:

2023

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| November | <ul style="list-style-type: none">• FMA quarterly meeting with the Minister (date TBC)• Consultation on Outcomes-Focused Regulation (until 1 March) |
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| December | <ul style="list-style-type: none">• FMA Annual Report 2022/23 published (first week) |
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2024

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| February | <ul style="list-style-type: none">• FMA Annual Review 2022/23 – Economic Development, Science and Innovation Committee |
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| March | <ul style="list-style-type: none">• First climate statements due from reporting entities under the Climate-Related Disclosures regime• FMA half-year report sent to Minister and MBIE |
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| April | <ul style="list-style-type: none">• Draft Statement of Performance Expectations (SPE) and Draft Statement of Intent (SOI) sent to Minister |
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| May | <ul style="list-style-type: none">• Estimates process |
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| June | <ul style="list-style-type: none">• NZX Market Operator Obligations Review published• Final SPE and SOI sent to Minister |
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Appendix: Board and Executive Leadership Team profiles

FMA Board

Mark Todd, Chair

Mark has over 25 years' experience in financial markets regulation, including as a partner at a major law firm and through holding governance roles with both listed and unlisted companies. He co-founded Anti-Money Laundering Solutions and chaired Mint Asset Management. He was also the Customer Advocate at Westpac New Zealand.

Current term ends May 2024

Sue Chetwin

Sue has more than 12 years' experience working for and on behalf of consumers and is the former CEO of Consumer New Zealand. She is a strong supporter of financial regulations that encourage innovation while protecting consumer interests. She chaired the Government's review of drug buying agency Pharmac and was a member of the Law Society Independent Steering Group Committee considering the terms of reference for the statutory framework for legal services. She is chair of an independent consumer panel assisting Chorus to prepare its investment proposals to be presented to the Commerce Commission in 2023 and onwards. She is also a director of Food Standards Australia NZ. Her experience includes 25 years in journalism including editing the Sunday News, Sunday Star Times and Herald on Sunday.

Current term ends November 2025

Prasanna Gai

Prasanna is Professor of Macroeconomics and Head of the Departments of Economics, Accounting & Finance, and Property at the University of Auckland. He brings over 25 years of experience in financial market issues from academic and high-level policy roles. Prasanna is a Senior Research Fellow at the Deutsche Bundesbank and an Academic Adviser to the Bank of Canada. He has previously served as Special Adviser to the Governor of the Bank of Canada, Senior Adviser at the Bank of England, and Member of the Advisory Scientific Committee of the European Systemic Risk Board. He was also Professor of Economics at the Australian National University and a Visiting Fellow of All Souls College, Oxford.

Current term ends June 2028

Vanessa Stoddart

Vanessa is a Director of Channel Infrastructure, OneFortyOne Plantations Pty Ltd and a member of the board of Te Whatu Ora. She also holds other charitable and advisory governance roles. She was previously a senior executive at Air New Zealand and CEO of Carter Holt Harvey Packaging Australia.

Current term ends February 2024

Christopher Swasbrook

Christopher has more than 25 years' experience in stockbroking and funds management. He is currently the Managing Director of Elevation Capital Management Limited, Director of NZX-listed New Zealand Rural Land Company, Director of Bethunes Investments Limited, McCashin's Brewery Limited, Ruapehu Alpine

Lifts Limited and SwimTastic Limited. He is also a Member of the NZX Listing Sub-Committee (since 2008) and a Member of the Auckland Art Gallery Toi o Tamaki Advisory Committee. He was previously a Partner at Goldman Sachs JBWere.

Current term ends June 2024

Kendall Flutey

Kendall is the co-Founder and co-CEO of Banqer, a financial education company that delivers experiential software to develop financial literacy and capability in their learners. She is also a Commissioner to the Insurance & Financial Services Ombudsman Scheme, and a former member of the dissolved Digital Council for Aotearoa.

Current term ends February 2027

Mark Weenink

Mark is an experienced corporate lawyer and director. He is currently Group General Counsel of Todd Corporation and director of several companies. Prior to joining Todd Corporation, Mr Weenink held various positions including General Counsel at Westpac New Zealand, Managing Partner at MinterEllisonRuddWatts, and Head of Legal at Challenger Asset Management in Sydney.

Current term ends February 2027

Steven Bardy

Steven is a senior executive with extensive experience over 30 years as a regulator and adviser in financial services and financial services regulation. He consults on financial services regulation to governments and regulators in emerging markets through the World Bank and is a senior advisor to Principia Advisory, a European based global leader in ethics consulting. He was previously Managing Director of Promontory Australia, an IBM company, and a senior executive leader at the Australian Securities and Investments Commission. He was also the inaugural chair of the Assessment Committee of the International Organization of Securities Commissions (IOSCO) and an ASIC representative on the IOSCO Board. His earlier career included working in the finance and tax practices of an international law firm in Australia and the US, holding ministerial advisor positions across a number of portfolios in the Victorian Government, holding senior risk and compliance positions in an Australasian Bank, and strategy consulting in both Australia and Europe.

Current term ends February 2027

Executive Leadership Team

Samantha Barrass: Chief Executive

Samantha has extensive international regulatory experience, most recently as Chief Executive of UK's Business Banking Resolution Service, a dispute resolution scheme for banks and business customers. Prior to that she was Chief Executive of the Gibraltar Financial Services Commission, which oversees the prudential and conduct regulation of Gibraltar's financial services sector.

She has held a number of other senior roles at finance regulators and industry associations, including the UK's Financial Conduct Authority and the London Investment Banking Association.

Samantha grew up in Christchurch and studied Economics at the University of Canterbury and Victoria University of Wellington, before beginning her career as an economist at the Reserve Bank of New Zealand.

Clare Bolingford: Executive Director, Regulatory Delivery

Clare is responsible for directing, planning and delivery of the FMA's core regulatory functions across licensing, engagement and supervision of regulated individuals and firms. She is leading the FMA's implementation of the new conduct regime for banks, insurers and non-bank deposit takers, the new financial advice regime, and the Climate Related Disclosures regime.

Clare's experience includes almost 20 years with the Financial Conduct Authority in the UK, in a variety of policy, change implementation and supervision roles, including oversight of large banking groups and financial advisers. She also spent two years at the UK Treasury, leading capital markets and prudential policy.

Paul Gregory: Executive Director, Response & Enforcement

Paul is responsible for overseeing the strategic approach and appropriate response to the actions and behaviour of market participants that pose risk or harm, including the investigation and enforcement of misconduct cases.

Previously, Paul has held leadership roles with the FMA as Director for Investment Management, Acting Director, Capital Markets, and Director for External Communications and Investor Capability

His experience includes Chief Operations Officer at PIE Funds, positions in the investment and communications teams at the New Zealand Superannuation Fund, and communications management roles at Macquarie Group, SKYCITY and Westpac.

Liam Mason: Executive Director, Evaluation & Oversight, and General Counsel

Liam is responsible for a broad range of audit, risk, legal and governance matters along with evaluating the effectiveness of regulatory interventions and activity. He remains the FMA General Counsel.

Liam has been with the FMA since its inception. He has extensive experience in securities law and corporate governance matters, advising on securities and financial services law and policy, Crown entity governance and legal compliance.

Liam has previously led frontline teams overseeing the FMA's compliance frameworks, licensing, knowledge management and intelligence, and fintech functions.

Sharon Thompson: Executive Director, Transformation & Operational Delivery

Sharon is responsible for the strategic direction of the FMA's operations and capability functions, including technical operations, project management, data engineering, IT security and architecture, customer relationship management, knowledge management, business improvement, people and capability, finance, business support and transformation. This group provides internal support to enable the whole of the FMA.

Sharon has extensive senior leadership experience in both the New Zealand public sector and financial services industry. Previously she was Deputy Commissioner for the Customer and Compliance Services (Individuals) group at the Inland Revenue - Te Tari Taake.

Prior to Inland Revenue, Sharon held senior roles at ASB Bank and Westpac, and holds a Masters in Management from Massey University.

Daniel Trinder: Executive Director, Strategy & Design

Daniel is responsible for leading the strategy and direction setting for the FMA, ensuring a clear view of the systems, priorities and regulatory design is developed and communicated across a broad range of external stakeholders.

He has extensive experience in developing and delivering strategic direction, capability and planning, implementing policy and legislative changes, while leading successful and diverse teams at a global level.

He has over twenty-five years' experience in strategy, policy and regulatory affairs including senior roles at HM Treasury in the UK, the IMF, international investment banking firms, as an adviser to central banks and international organisations, and as a consultant on strategy, policy, and governance to several firms and institutions. His most recent role was at Binance and he has also held senior global roles at Deutsche Bank and Goldman Sachs.

