JULY 2024

Submissions report:

Guide for providers of client money or property services

Summary of themes from submissions made on the draft client money or property services guide as part of our consultation

FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TĀTAI HOKOHOKO

Contents

Executive summary

Between September and November 2022, the Financial Markets Authority – Te Mana Tātai Hokohoko (**FMA**) consulted on a draft guide for providers of client money or property services.

The draft guide described how client money or property service providers and custodians may meet their obligations under the Financial Markets Conduct Act 2013 (FMC Act).

We thank all 8 submitters for their feedback, which provided helpful observations and insights.

This document summarises the key themes raised in those submissions and our comments about what changes have been made to the guide. It also collates the written submissions. These may withhold some information in accordance with the Official Information Act 1982 and the Privacy Act 2020.

The final version of the guide is now published on our website.

Feedback themes

The feedback is grouped into the following themes:

1. **Protection of client CSNs, SRNs and FINs** – concerns that this was out of date.
2. **Deducting margins from client money** – clarity regarding the basis on which margin can be deducted.
3. **Naming and notification of client money trust accounts** – clarity in regard to whether client money trust accounts should reference that they are trust accounts.
4. **Reporting to clients** – providing clarification around client reporting.
5. **Identification of wholesale clients** – providing clarification on this section.
6. **Defining non-bank insurance intermediaries** – setting out our views on whether non-bank insurance intermediaries are subject to the client money or property services regime.
7. **Defining 'client address'** – setting out our view of what 'client address' means in the context of the client money or property services regime.
8. **Electronic addresses** – clarifying our views on how electronic addresses should operate.
9. **Custodian assurance testing** – that custodian assurance testing should test client addresses.

We have clarified the guidance to address these points as follows.

1. Protection of client CSNs, SRNs and FINs

Submissions

Submitters noted the existing commentary did not reflect current market practice.

Changes to the guidance

After discussions with market participants, we have updated this section to reflect current market practice.

2. Deducting margins from client money

Submissions

Some submitters noted that section 431ZG of the FMC Act does not require the informed consent of clients, and that the taking of margin only needs to be communicated to clients to avoid misleading them.

Changes to the guidance

We have clarified that the FMA's view is that there should be express, clear and unambiguous disclosure to clients before deductions are made, which includes the value of the deduction, and the purpose for which the margin is taken.

3. Naming and notification of client money trust accounts

Submissions

Submitters noted that section 431ZC of the FMC Act does not require bank account names to contain the words identifying the account as a trust account or client funds account.

Changes to the guidance

We have modified the wording to reflect these comments but note the FMA considers it best practice to include wording to this effect as it will alert banks that the account is a trust account. We also consider that providers should obtain written confirmation from third parties acknowledging the status of the accounts as trust accounts.

4. Reporting to clients

Submissions

Submitters were concerned that the draft guide stated that reporting to clients had to be at least quarterly, when this is not what the law says.

Changes to the guidance

We have noted that the relevant statutory provision requires 6 monthly reporting, but we encourage providers to report on a quarterly basis to provide clients with the opportunity to review their portfolios more frequently.

5. Identification of wholesale clients

Submissions

Submitters were concerned about the requirement to 'opt out' of receiving retail protections.

Changes to guidance

We have changed the wording to clarify what we consider meets the requirements under clause 5 of Schedule 5 of the FMC Act. We note that in our view this reflects the legislative requirements.

6. Defining non-bank insurance intermediaries

Submissions

Submitters focused on ensuring it was clear that a non-Insurance Intermediaries Act 1994 (IIA) broker is not subject to the client money or property services regime.

Changes to guidance

We have outlined our view that a non-IIA broker is not providing a client money or property service. We outline that we are taking a purposive interpretation in this respect.

Some submitters considered the wording around intermediaries using premiums to fund their own businesses was incorrect and should be removed. We note this has been in the earlier guidance since 2014, and other submitters agreed with the FMA view. We have retained this wording.

Similarly, wording in respect of insurers wishing to increase oversight of intermediaries was set out in the original guidance. We note it is merely a recommendation and we consider it appropriate in respect of our view on intermediaries not using premiums to fund their own businesses.

7. Defining ‘client address’

Submissions

Some submitters noted that a strict legal interpretation of client address meant that the client can decide who can receive client reports, which includes any party involved in the transactional chain (such as a financial adviser).

Changes to guidance

We consider that a purposive interpretation should be adopted rather than relying on a strict legal interpretation. This reflects the underlying policy basis for the client money or property services regime, the legislative history of the regime, and the purposes of the FMC Act. This approach provides greater protection for clients by ensuring that they, or a nominated representative that is independent of the parties in the transactional chain, receives and can review the reports to determine the accuracy of the client’s investments.

8. Electronic addresses

Submissions

Submitters generally sought clarification about the framing of this section.

Changes to guidance

We have updated the guidance to clarify what we consider an electronic address to be, including that some parties in the transactional chain will provide services to the client that may include providing the custodial report to clients. Where this is the case, we consider this is acceptable provided that the report and

information cannot be altered by any party, and that the custodian satisfies itself that appropriate systems and controls are in place to ensure the reports and information cannot be altered by the platform provider or any other party.

We also suggest providers and custodians take all reasonable steps to ensure client electronic addresses are those of the client or the client's nominated parties, and are not those of the parties involved in the transactional chain (taking into account the comments in the above paragraph). We expect custodians to address this for new clients but acknowledge it may take time to effect this in relation to existing clients. We expect this would occur when the custodian interacts with a client or by requesting that other parties in the transactional chain are notified that a client's address must be updated to reflect the guidance.

9. Custodian assurance testing

Submissions

Submitters were generally negative regarding custodian assurance testing including testing of client addresses.

Changes to guidance

We confirm our view that assurance testing should include testing of client addresses. We note that we consider the current assurance reporting regulations provide sufficient scope to enable this testing. We also note that where electronic facilities are utilised for client reporting, testing should be applied where this is appropriate or possible.

Appendix: Submissions received

- ANZ Bank
- Booster Financial Services Limited
- Dentons Kensington Swan
- FNZ
- InvestNow
- IBANZ
- ICNZ
- Securities Industry Association

Feedback form

Consultation: Proposed guidance for client money or property service providers

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance for client money or property service providers - [your organisation's name]'in the subject line. Thank you. **Submissions close on 1 November 2022.**

Date: 1 November 2022 Number of pages: 3

Name of submitter: [redacted]

Company or entity: ANZ Bank New Zealand Limited ("**ANZ**")

Organisation type: Registered Bank

Contact name (if different):

Contact email and phone: [redacted] [redacted]

Question number	Response
1.	We don't have any feedback on this question.
2.	We don't have any feedback on this question.
3.	We agree with the FMA's expectations in regard to identifying the provider responsible under the FMC Act and FMC Regulations. However, we think some aspects of the guidance in this area could be clarified. Please refer to our response to question 8 for more information.
4.	We agree with the FMA's interpretation and generally agree with the limited circumstances in which the definition may be broadened. However, we consider that there will be circumstances where it may not be pragmatic/sensible to send custodian reports to the customer as well as the nominated person i.e. when that customer is not competent or does not have legal capacity. Therefore, care needs to be taken that the guidance does not create an undue compliance burden. It is likely that industry will need to consider client documentation, on-boarding processes and systems in this regard. We consider that providers should still be able to satisfy this obligation by allowing clients who do not wish to receive physical or electronic copies of the reporting, to receive information via notification to the electronic address that the report is available within an online portal. Please see our response to question 6.
5.	The review of client addresses is not currently included as a specific requirement in our assurance testing. We currently place reliance on existing onboarding processes and customer instructions regarding the maintenance of addresses. We do not yet have a view on the likely additional cost or time requirements that would be incurred, in order to include this review.
6.	We agree with the FMA's interpretation.

	We consider this reflects the growing trend that we are seeing with clients requesting electronic (paperless) reporting and the ability to receive information via access to an online portal, rather than via post.
7.	***Identification of wholesale clients (page 6)*** In our view, the section of the guidance relating to the exercise of their opt-out rights should be clarified. We are not aware of any legal basis why a client who has been verified as wholesale by a provider for the purposes of one service could not be treated as retail by the provider, for a different service. An example could be where a provider's existing wholesale client wished to utilise a service typically promoted to retail clients (such as a DIMS). It is not clear to us why a wholesale client would need to 'opt-out' of wholesale status in this instance. The provider would be treating them as a retail client in the same way as any other user of the service. The provider would also be complying with the FMC Act requirements which apply to the provision of the service to retail clients (including any prescribed disclosure). In this scenario, we cannot see why requesting an opt-out for the retail service is necessary, nor how a wholesale client could be 'misled' if they were not advised by the provider to opt out.
8.	***Outsourcing of client money and property services to third parties / Identifying the provider (pages 4 and 8)*** In our view these sections of the guidance should be clarified. The guidance is unclear which party bears the regulatory obligations, particularly in outsourcing situations. The guidance (at page 4) states that the provider remains responsible to the client for the client money or property services even where those services are outsourced to another business (e.g., a custodian). This presumably reflects section 431ZI of the FMC Act. However, this appears to conflict with section 431W of the FMC Act which states that all custodians are client money or property service providers. It would be helpful for the FMA to clarify if it considers the outsourcing party, the outsourced party, or both parties to be subject to the client money and property regime in these situations. We don't believe that clearly identifying the providers and roles of the parties necessarily resolves this conflict (although it will be useful for the client's understanding of how the relevant product or service operates). Subject to clarifying the apparent conflict between sections 431ZI and s431W, it would be helpful for the guidance to contain examples of where the FMA considers a client money or property service is being provided by a person (A) on behalf of the business of another (B) such that it is B (rather than A) that is treated as the provider. ***Brokerage fees (page 15)*** ANZ is generally supportive of a move to increased disclosure of brokerage fees. However, we believe this is best achieved by way of amendment to the FMC Regulations, given that these specifically exclude trading expenses, instead of FMA guidance. Consistent with the ongoing disclosure of brokerage fees in DIMS client reports, we believe the DIMS Investment Proposal disclosure should also include % estimates of brokerage charged for directly traded securities to ensure investors are aware of the brokerage that they may be charged prior to agreeing to be a client of the DIMS service.

9.	No
10.	No

Feedback summary – *if you wish to highlight anything in particular*

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback–we appreciate your time and input.

Feedback form

Consultation: Proposed guidance for client money or property service providers

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance for client money or property service providers - [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 November 2022.**

Date: 3 November 2022 Number of pages: 2

Name of submitter: [redacted]

Company or entity: Booster Financial Services Limited

Organisation type: Provider of a WRAP service.

Contact name (if different): N/A

Contact email and phone: [redacted]

Question number	**Response**
4. Do you agree with our interpretation of what meets the threshold for a 'client address', and the limited circumstances in which this definition may be broadened? If no, please explain why. **5. Does your assurance testing include reviewing client addresses to ensure the independence of recipients? If not, please explain why, including whether extending the scope of your assurance testing to include this review is likely to incur any significant additional costs or time requirements.**	Some clients share an email address, most often with another member/s in their household, and consent to receiving their information to that shared email address. If a client wants to use a shared email address, and the client acknowledges that for the purpose of c229Q of the RMC Regulations, that should be accepted on the basis it is, in the client's view, deemed to be their personal email address. This is no riskier than when the same reports are sent to the client's postal address, where more than one household member can gain access to that mailed information.
6. Do you agree with our interpretation that a client's 'electronic address' may include access to an online portal through which reporting is provided? Please state the reasons for your view.	The proposed guidance implies that the FMC Act or the FMC Regulations do not account for an "online portal" already. Six monthly reporting to clients is required under c229Q, with an alternative means of delivery under c229R of the FMC Regulations. C229R allows for the information in c229Q to be provided via an electronic facility which requires the client to agree to receiving reporting via that electronic facility and that the client has been given access to it. In our view an electronic facility is an online portal. In our view the proposed guidance suggest that this electronic facility does not account for an "online portal". Could we please have clarification on this in the guidance.
7, Are there any sections of the guidance you do not agree with?	**Naming and notification of client money trust accounts** To ensure compliance with section 431ZC of the FMC Act, the proposed guidance suggests the actual bank account name must contain the words 'trust' and/or 'client funds account' to clearly reflect the status of the account.

	Section 431ZC does not prescribe the naming convention of the bank account, rather than the bank account must be for the purpose of a client money trust account. Additionally, Schedule 21C, c5(1)(b) of the FMC Regulations already requires the provider to obtain from the bank the status of the trust account (being it is a trust account). This confirmation should be sufficient and provides the credibility of the nature and purpose of the account. There is the potential for an account to include 'trust' in its name or for someone to represent that it does, but it may not be a trust account.

Feedback summary – *if you wish to highlight anything in particular*

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

大成DENTONS KENSINGTON SWAN

Dentons Kensington Swan
89 The Terrace
PO Box 10246
Wellington 6140
New Zealand

dentons.co.nz

Financial Markets Authority
Level 2, 1 Grey Street
PO Box 1179
Wellington 6140

By email: consultation@fma.govt.nz

1 November 2022

Submission on proposed guidance for client money or property service providers

1 This is a submission by Dentons Kensington Swan on the FMA's *Proposed Guidance for Client Money or Property Service Providers* consultation paper dated September 2022 ('**Consultation Paper**').

About Dentons Kensington Swan

2 Dentons Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Wellington and Auckland. We are part of Dentons, the world's largest law firm, with more than 12,000 lawyers in over 200 locations.

3 We have extensive experience in financial services law issues, with a specialist financial markets team acting for established major players as well as boutique providers and new innovative entrants to the market. We assist a number of financial advice providers, client money or property service ('**CMPS**') providers and custodian service providers with their regulatory obligations.

General comments

4 Our populated feedback form responding to each of the consultation questions is attached.

5 We welcome the initiative taken by the FMA to update its guidance for CMPS providers. We are aware of some confusion amongst market participants as to the extent of their obligations, and in particular financial advice providers who manage clients' premium payments to insurers. That confusion extends to uncertainty as to whether or not they should even regard themselves as a CMPS provider. Clarifying the FMA's views as to the scope of the applicable regulatory regime, as well as its expectations as to best practice compliance, is a good thing.

6 Our main concern with the guidance proposed in the Consultation Paper is the extent to which the FMA's expectations as to best practice are conflated with representations made as to strict legal obligations. There are a number of statements made as to what CMPS providers 'must' do that are not supported by legal obligations. In our view, the final guidance released by the FMA would benefit from clearly delineating which aspects of the guidance are strict legal obligations from those that reflect the FMA's view as to good conduct or best practice, as well as expand on its rationale for some of the potentially contentious aspects.

7 The above comments aside, we believe the guidance proposed under the Consultation Paper is comprehensive in its coverage, and commend the FMA for this initiative. Our detailed comments in respect of the areas where we have concerns are set out below.

Outsourcing

8 The opening section of the Consultation Paper talks about the outsourcing of CMPS to third parties, and goes on to refer to the outsource provider as not having any CMPS obligations 'if it is acting on behalf of the other provider's business'.

9 There is some confusion around what constitutes 'outsourcing' in this space. The Consultation Paper risks adding to that confusion. We recommend the opening paragraph be expanded to clarify the FMA's view as to what is actually captured by the concept of outsourcing in this context: is it just the engagement of a sub-provider with the original provider outsourcing some or all of its CMPS obligations to that sub-provider, or is the FMA intending to capture any third party arrangement that the provider with the primary relationship with the client sets up to provide those clients with CMPS?

10 It is only where a party with existing CMPS obligations outsources some or all of those CMPS obligations to a third party that the third party is not directly responsible for discharging those obligations under the Financial Markets Conduct Act 2013 ('**FMC Act'**). However, the proposed guidance is ambiguous as to the extent of the arrangements that the FMA envisages are covered here. The fact that a provider with the primary relationship with a client may arrange for a third party to provide CMPS for the client, and that third party does so on 'behalf of' the original provider in the sense that it is doing so pursuant to an agreement with that provider, does not necessarily mean that it is taking on CMPS functions as an outsource provider.

11 The primary situation where this might occur that we have experienced is where a financial advice provider arranges for a client's investment to be held by a third party custodian. We would welcome clarification of the opening section to spell out the fact that the outsourcing being discussed only occurs where a CMPS provider is arranging for some or all of its own CMPS obligations to be undertaken by another business on its behalf.

Deducting margins

12 The opening paragraph under the heading 'Deducting margins from client money' states that 'the law requires providers to obtain the necessary informed consent from the client before making such deductions'. We recommend expanding this representation to clarify the specific law that the FMA has in mind to support this statement. In our view, the subsequent reference to section 431ZG of the FMC Act is an insufficient basis for asserting a need to obtain informed consent. All that is required under section 431ZG is an express direction from a client (either generally or specifically) to support the deduction made.

13 Clarification should also be provided to support the statement that 'the purpose for which the margin is taken must be associated with the services provided to the client'. There is no legal basis for asserting that the purpose for which a margin is taken must be associated with the services provided. Other than the need to comply with sections 431ZA-431ZH of the FMC Act, the only legal obligation is to ensure the practice of taking a margin is clearly communicated to the client to avoid misleading or deceiving them. Sections 431AZ-431ZH do not require an association to be made. That is simply a commercial matter.

Naming and notification of client money trust accounts

14 An assertion is made that providers 'must' obtain written confirmation from third parties with whom they hold client money, acknowledging the status of the accounts as trust accounts. There is no legal authority for this assertion. While we agree that third party recording of client money accounts as 'trust accounts' is best practice, no legal obligation is breached by a failure to obtain written confirmation from them. A more appropriate comment would be to tell CMPS providers that they

must clearly and ambiguously identify client money as being held on trust, in a separate trust account, with best practice being to obtain written confirmation from the third party with whom that account is held.

Reporting to clients

15 We agree that regular client reporting is an important part of CMPS. However, we do not believe that a failure to report appropriately automatically leads to a contravention of section 431ZA of the FMC Act, as asserted. This section requires providers to exercise the care, diligence and skill that a prudent person engaged in the business of providing the service would exercise in the same circumstances. The statement that for most portfolios 'providers should be reporting trading activity to clients at least quarterly' is contrary to the custodian regulatory obligation, which contemplates six-monthly reporting. If more stringent and frequent reporting is to be imposed upon CMPS providers, the appropriate place to do so is the regulations as opposed to guidance.

Identification of wholesale clients

16 We recommend rephrasing the discussion provided under the heading of 'Identification of wholesale clients'.

17 Technically, it is correct to say that wholesale clients who do not opt out of that status do not benefit from all the protections the law affords to retail clients. However, there is nothing to prevent a CMPS provider from contracting with its clients to provide them with a retail level of protection, irrespective of their strict regulatory status. This is simply a matter of contract between the parties. It is incorrect to state that CMPS providers who do not advise wholesale clients of the need to opt out will be 'misleading' their clients, if that is the contractual burden to which they commit themselves.

18 For some providers, offering all clients the same level of protection reduces the extent of their regulatory burden by overcoming the need to delineate clients and treat one cohort differently to another – coupled with a potential need to rationalise that different treatment as being consistent with good conduct. Offering a retail standard for all seems desirable from a good conduct outcomes perspective and should be encouraged, on the assumption that providing the protections the law affords to retail clients across to all clients is indeed a good outcome. We do not support the proposed guidance pushing CMPS providers in a different direction when they are free to contract with their wholesale clients as they see fit.

19 The only regulatory constraint is that CMPS providers must not assert that wholesale clients automatically enjoy the regulatory protections provided to retail clients, unless they go the extra step and require wholesale clients to expressly opt out. In our view the proposed guidance should be adjusted to make that clear. Given the limited obligations placed on CMPS providers, the point about wholesale clients needing to expressly opt out to enjoy retail client regulatory protections is perhaps better directed at financial advice providers.

Registration of nominee companies on the FSPR

20 We recommend this paragraph be expanded to clarify that the nominees of custodial service providers do not have regulatory obligations themselves, and only need to register as providers of CMPS. This would help clarify the position for custodians as a useful extension to the current limited commentary in relation to nominee companies.

Non-broker insurance intermediaries

21 Clarifying the interplay between obligations under the FMC Act and the Insurance Intermediaries Act 1994, and the extent to which intermediaries who process insurance-related payments for their clients might be caught as CMPS providers as a consequence, is a very valuable part of the proposed guidance. We strongly support the FMA clarifying its expectations in this regard.

22 We recommend the guidance flesh out the rationale for the FMA's view that money received by a 'non-IIA broker' relating to premiums or claims (and money otherwise paid under or in relation to a contract of insurance) will not constitute a CMPS. We believe the legal arguments are finely balanced in this regard, and are concerned that providers may take the unqualified guidance too far.

23 In particular, we believe the guidance would be enhanced by the FMA spelling out the legal rationale for it considering insurance-related money received by a non-IIA broker is not 'held', 'paid' or 'transferred' in the sense contemplated. A discussion of the appropriate interpretation of the definition of 'client' in these circumstances would be beneficial. A key risk and potential unintended consequence of the proposed guidance is that intermediaries may hold on to money received under or in relation to a contract of insurance for an extended period of time and rely upon the guidance issued by the FMA as a basis for not treating themselves as a CMPS provider.

Regulated client money or property service and exemptions

24 While we agree it is appropriate for the proposed guidance to spell out the Schedule 5 exclusions, we recommend the FMA add colour to the discussion by clarifying the practical limits on the occupation-related exclusions. In particular, the fact that many providers in a particular occupation might undertake a particular activity does not necessarily mean the activity should be regarded as an ancillary part of that occupation, yet that is an argument that is raised reasonably frequently. The proposed guidance presents an ideal opportunity to clarify how the occupational exclusions are intended to work.

Custodian's obligations

25 There is some confusion as to the point at which CMPS providers need to regard themselves as providing a custodial service and registering as custodians. We welcome the guidance clarifying that the provision of execution-only services to clients will not result in the provider being a 'custodian'.

26 The only concern we have with the discussion in this regard is the qualifier made to the statement that execution only services do not count as a custodial service, by going on to indicate that this is the case if they are provided on a 'T+3 (trade date plus three days)' basis. There is no legal authority for that qualifier. We believe it is unhelpful and should be deleted.

27 Instead, we recommend the guidance avoid referring to any particular timeframe, and include additional comment to the effect that where execution-only services are delayed for any reason outside the ordinary course of business, a provider will still not be regarded as providing a custodial service, unless money or property is held for purposes other than execution.

Client's address

28 The identification of an appropriate address to use when reporting to clients is an interesting one. While we agree with the desirability of a client specifying their own address for the purposes of custodial reporting, and believe this to be best practice, we do not believe there is a statutory obligation to this effect. Rather than stating that the address specified by the client 'must' be the

client's own address, the assertion should be softened to stating that the address 'should' be the client's own address.

29 The related discussion about the address provided being able to be that of somebody nominated by a client flies in the face of definition of 'address' in regulation 5 of the Financial Markets Conduct Regulations 2014 ('**FMC Regs**'), which explicitly provides for an address being that specified by the client for the relevant purpose. Further, the definition and interpretation of 'address' applies to a range of obligations under the FMC Regs. Modifying that definition via this narrow focused guidance risks a raft of unintended consequences for issuers and licensees regarding their reporting and confirmation obligations and the addresses where such information is to be sent.

30 There is nothing in the FMC Regs that places a constraint upon the ability of a client to specify an address for any regulatory purpose, and it is inappropriate for the guidance to indicate otherwise. Stating that the nominated person 'must be independent from the transactions that are being reported on' does not have any legal authority, and places an undue burden on custodians. Again, that independence may be desirable as a matter of best practice, but is not the law. We strongly disagree with the guidance proposed in this regard.

Co-mingling

31 We support the guidance addressing the thorny issue of co-mingling client money with the provider's own money. However, we believe it would be beneficial for the FMA to provide further guidance as to its expectations in this regard to help guide CMPS providers as to best practice in this space. While NZX participant providers have an additional layer of obligations and might be expected to have a greater degree of sophistication in this regard. Other providers in this space may not be as well versed as to the appropriate processes to put in place. We would welcome further guidance to flesh out the regulatory obligations under section 431ZC(4) of the FMC Act and regulation 229ZC.

Further discussion

32 Thank you for the opportunity to submit. We would welcome the opportunity to discuss any of the points we have raised, and look forward to this important piece of guidance being finalised.

Yours faithfully

[redacted]

[redacted]

Feedback form

Consultation: Proposed guidance for client money or property service providers

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance for client money or property service providers - [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 November 2022.**

Date: 1 November 2022 Number of pages: 3 plus 5 (cover letter)

Name of submitter: [redacted]

Company or entity: Dentons Kensington Swan

Organisation type: Lawyers

Contact name (if different):

Contact email and phone: [redacted]

Question number	Response
Non-broker insurance intermediaries 1. Do you agree with our overall approach to provide clarification in respect of the interaction between the Financial Markets Conduct Act (FMCA) and the Insurance Intermediaries Act (IIA)? 2. Are there any potential unintended consequences for insurance intermediaries (including sub-agents), consumers (e.g. policy holders), and/or insurance providers, in applying FMA's proposed view?	We support the clarification provided by the FMA in relation to the interplay between the two legislative regimes for intermediaries' money-handling obligations. However we believe the guidance would benefit from the FMA clarifying its rationale for the view taken. We believe there is a risk of unintended consequences of insurance intermediaries applying the FMA's views in wider contexts than intended. Our recommendation that the FMA expand on its rationale should help address that unintended consequence. See our more detailed discussion at paragraphs 21-23 of our cover letter.
Identifying the provider 3. Do you agree with our expectations in regards to identifying who the provider is and documenting the nature of the arrangement? Are there any other aspects you consider it would be beneficial to include to assist with clarifying provider arrangements?	We have no specific comment to make on this aspect. Responsibility for CMPS obligations will be a question of fact in each case. While it is not a strict legal obligation for the contractual documentation to clearly identify who is responsible for discharging obligations, we are comfortable with the way the FMA has articulated the risks arising if responsibilities are not clearly identified.
Reporting 4. Do you agree with our interpretation of what meets the threshold for a 'client address', and the limited circumstances in which this definition may be broadened? If no, please explain why.	No. Regulation 5 places the specification of an address entirely in the hands of the client. While the guidance can recommend best practice and highlight the risks of certain address specification practices, the limits proposed are inconsistent with the law. See paragraphs 28-30 of our cover letter.

5. Does your assurance testing include reviewing client addresses to ensure the independence of recipients? If not, please explain why, including whether extending the scope of your assurance testing to include this review is likely to incur any significant additional costs or time requirements.	We not believe it is appropriate to place an additional regulatory burden on CMPS providers to ensure the independence of recipients. That is not a legal requirement, and providers are unable to lawfully reject a client's directions in this regard. All that should be required is that the provider is satisfied that the address they use for each client matches the address specified by the client.
6. Do you agree with our interpretation that a client's 'electronic address' may include access to an online portal through which reporting is provided? Please state the reasons for your view.	We agree that a client's address may include access to an online portal for reporting purposes, in lieu of sending reports to an alternate destination. However, flowing on from our earlier comments and as outlined at paragraph 30 of our cover letter, there is no legal basis for prohibiting an alternative electronic reporting platform being provided by a person involved in the transactions being reported on, and no requirement to maintain independence in this regard. A significant additional burden may be placed on providers if the FMA were to insist on this aspect of the guidance being followed. A law change would be required to support that position, notwithstanding the policy merits of the approach proposed.
General questions 7. Are there any sections of the guidance you do not agree with? If so, please state what these are and explain why you disagree.	Please refer to our cover letter.
8. Are there any aspects of the guidance you think need to be improved or clarified? If so, please state what these are and explain what changes you would like to see	Please refer to our cover letter.
9. Are there any other areas related to client money or property service providers that you think should be included in the guidance? If so, please state what these are.	We would like the FMA to clarify its rationale for the view expressed in relation to intermediaries handling insurance contract-related payments, practical guidance on the ability to rely upon the occupational exclusions, and further elaboration of the FMA's discussion of co-mingling. Please refer to our cover letter for further discussion on these points.
10. Do you have any other comments on the guidance?	Please refer to our cover letter.

Feedback summary – We welcome the issuance of guidance in relation to client money or property services that reflects the law as it now stands. Our main concern with the guidance proposed in the Consultation Paper is the extent to which the FMA's expectations as to best practice are conflated with representations made as to strict legal obligations. There are a number of statements made as to what CMPS providers 'must' do that are not supported by legal obligations. In our view, the final guidance released by the FMA would benefit from clearly delineating which aspects of the guidance are strict legal obligations from those that reflect the FMA's view as to good conduct or best practice, as well as expand on its rationale for some of the potentially contentious aspects.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Feedback form

Consultation: Proposed guidance for client money or property service providers

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance for client money or property service providers - [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 November 2022.**

Date: 1 November 2022 Number of pages: 4

Name of submitter: [redacted]

Company or entity: FNZ Limited and FNZ Custodians Limited

Organisation type: Provider of client money or client property services, including custodial services

Contact name (if different): [redacted]

Contact email and phone: [redacted]

Question number	Response
Question 4	1. We do not agree with the interpretation of what meets the threshold for "client address" or the suggested limited circumstances in which that definition may be broadened. 2. Set out below is a brief overview of FNZ's business and the reasons why we do not agree with the guidance. **FNZ** 3. FNZ is a provider of client money or client property services, including custodial services. 4. FNZ provides a technology platform. It enters into custody and administration agreements with wholesale clients pursuant to which it allows the wholesale clients to access the platform. 5. Under its agreements with wholesale clients, FNZ also agrees to provide custodial services for and on behalf of the wholesale clients for the benefit of the clients of the wholesale clients (the "**end investors**"). 6. The end investors, in their client service agreements with wholesale clients, authorise their financial advisers to give instructions and receive reports on their behalf. 7. The wholesale clients may, in turn, allow financial advisers that they have contracts with to access the platform. Financial advisers are given access to the platform by wholesale clients in order to give "authorised instructions" on behalf of their clients, the end investors. Authorised instructions can include instructions to buy or sell financial products. **Submissions** 8. In summary, we do not agree with the interpretation in the guidance of what constitutes a "client address" because: (a) the interpretation is inconsistent with the clear and unambiguous definition of "address" in the Financial Markets Conduct Regulations 2014 ("**FMC Regulations**"); (b) other legislation is explicit where an address must be a person's "own" address;

(c) the interpretation would have implications for the interpretation of "address" in other similar instances in the Financial Markets Conduct Act 2013 ("**FMC Act**") and FMC Regulations;

(d) it would impose additional obligations (and costs) on custodians; and

(e) it would be inconsistent with, and potentially negate the effect of, the licensed managing intermediaries exemption under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("**AML Act**").

Definition of "address"

9. Regulation 229Q(2)(b) of the FMC Regulations provides that the information that is required to be provided under sub-regulation (1):

> (b) must be provided to the client not later than 20 working days after the last day of each reporting period by giving it to the client or delivering or sending it to the client's address.
>
> (emphasis added)

Importantly, this regulation does not state that the client's address for this purpose must be the client's own address.

10. Regulation 5 of the FMC Regulations defines "address" as follows:

> **address**, of a person (A), means—
>
> (a) the address (including an electronic address) specified by A for the relevant purpose; or
>
> (b) the actual or last known address (including an electronic address) for A, if—
>
> (i) paragraph (a) does not apply; or
>
> (ii) the sender knows that the address referred to in paragraph (a) is not correct

11. The starting point in the definition of "address", under paragraph (a), is that a client's address for the purpose of receiving client reporting will be the address *specified* for that purpose. This paragraph does not refer to the client's own address and clearly contemplates that a client may specify an address other than the client's own address. This is further supported by paragraph (b), which refers to the client's actual address and only applies where a client has not specified an address for the purposes of paragraph (a) or the sender knows the address so specified is not correct.

12. The implications of the interpretation of address in the guidance would be to effectively read in the word "own" in regulation 229Q(2)(b). We do not consider it is appropriate to read in this requirement in the context of a clear and unambiguous definition and for the further reasons set out below.

Other legislation is explicit where an address must be a person's "own" address

13. The Companies Act 1993, in section 2(5)(a), defines "address", in relation to an individual, as the full address of the place where that person usually lives. Similarly, section 12(2)(b)(ii) of that Act specifically states that the address given for a director of a company must be the director's "residential" address. If Parliament intended that a similar meaning be given to address in the FMC Regulations, it would have done so.

Other uses of "address" in the FMC Act and FMC Regulations

14. There are a range of circumstances in the FMC Act and FMC Regulations where a person is required to deliver or provide information to an investor or client's address. To read in the requirement that "address" means "own" or "independent" address in the context of client money or client property services would imply the same approach should apply generally in the Act and Regulations and effectively render the definition of "address" in regulation 5 redundant.

Imposition of additional obligations on custodians

15. The FMC Regulations, as drafted, permit a client to specify an address for the purpose of receiving client reporting from the relevant custodian. This approach allows a client (ie an end investor) to specify in the terms that they enter into with a financial adviser that the client's address for the purpose of communications from the custodian (with which the client does not have a direct contractual relationship) as being the address of the financial adviser. This is on the basis that the financial adviser will provide the necessary communications to the client. This approach avoids duplication of client reporting and allows a client to have a single source of reporting (ie rather than from the financial adviser and multiple custodians), and reduces the risk of a client being confused by receiving multiple reports in respect of the same subject matter.

16. If a custodian is required to provide client reporting directly to each client's own address, this would require a custodian to have a direct relationship with each client and to obtain the actual address of each client. We consider that this would be likely to lead to the following consequences:

    (a) significant additional costs for custodians which would be passed on to clients through fees (an example of this is discussed below in relation to verification);

    (b) increasing the barrier to entry to the custodial market; and

    (c) inefficiencies through duplication of client reporting.

17. Imposing a requirement for a custodian to obtain each client's own address would also necessitate that the custodian verify the client's address. Without verification of address, a custodian would not be certain it was complying with the obligation. In many cases, we would expect that the address provided by a client would be the client's own email address. This would create difficulties for custodians because email addresses are not easily verified from independent sources, contrary to the position for other identify information, such as name and residential addresses (eg for the purposes of conducting customer due diligence under the AML Act). Developing solutions for email address verification (if even possible) will create additional costs for custodians, which would need to be reflected in the fees charged to clients.

18. In addition, the requirement to verify a client's own residential or email address and deliver reporting to that address would limit the ability for custodians to use online reporting platforms. The development of these platforms is intended to meet growing client expectations, increase custodian efficiency to reduce costs for clients and (in the case of residential addresses) lead to a more sustainable solution by reducing the need to deliver physical reports to clients.

19. The arguable benefit of requiring custodians to obtain a client's own address, verify that address, and send reporting directly to each client, is to mitigate the risk of a rogue financial adviser entering into fraudulent transactions ostensibly on behalf of the adviser's clients. We query whether this approach would actually mitigate this risk (eg the custodian is still required to carry out transactions on behalf of the client as directed by the financial adviser, and those instructions may be fraudulent). In addition, we suggest that it is not

	proportionate to impose additional obligations on custodians to address a relatively low risk of fraud by financial advisers. *Custodians are entitled to rely on intermediaries in other contexts* 20. The AML Act has a specific class exemption for reporting entities (such as custodians) whose customers are licensed managing intermediaries (such as financial advisers) ("**LMIs**") from the requirement to conduct customer due diligence on the customers of the LMIs.[1] The rationale for that exemption, set out in clause 5 of the exemption, includes that LMIs already operate in a heavily regulated environment and that to impose customer due diligence requirements on the reporting entity would lead to duplication, increased costs and would be disproportionate to the risk it would be seeking to address. We consider the rationale for that class exemption is equally applicable in the context of custodian client reporting and to read in a requirement to provide communications to a client's own address would be contrary to that rationale and potentially render the exemption redundant.
Question 5	No. For the reasons set out above we do not consider that assurance testing requires the review of client addresses to ensure independence and to do so would impose significant additional costs and time on FNZ and clients.
Question 6	Yes. We consider this interpretation is consistent with the definition of "address", which allows a client to have flexibility in determining what the client's address is for a particular purpose. Such an interpretation is also consistent with evolving market practice and client demand.
Feedback summary – N/A.	
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
Thank you for your feedback – we appreciate your time and input.	

[1] See Part 5 (Reporting entities whose customers are licensed managing intermediaries) of the Anti-Money Laundering and Countering Financing of Terrorism Class Exemptions Notice 2018.

Feedback form

Consultation: Proposed guidance for client money or property service providers

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance for client money or property service providers - [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 November 2022.**

Date: 1 November 2022 Number of pages: 3

Name of submitter: [redacted]

Company or entity: InvestNow Saving and Investment Service Limited

Organisation type: Online investment platform

Contact name (if different):

Contact email and phone: [redacted]

Question number	Response
	Answers on following pages

Feedback summary – *if you wish to highlight anything in particular*

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

1. *Do you agree with our overall approach to provide clarification in respect of the interaction between the Financial Markets Conduct Act (FMCA) and the Insurance Intermediaries Act (IIA)?*

   N/A

2. *2. Are there any potential unintended consequences for insurance intermediaries (including sub-agents), consumers (e.g. policy holders), and/or insurance providers, in applying FMA's proposed view?*

   N/A

3. *Do you agree with our expectations in regards to identifying who the provider is and documenting the nature of the arrangement? Are there any other aspects you consider it would be beneficial to include to assist with clarifying provider arrangements?*

   We agree with the expectations communicated in the proposed guidance regarding identifying the provider. We believe it would be beneficial to provide more detail around the application of audit and assurance obligations in scenarios where custodial functions are outsourced – for example, in relation to Financial Markets Conduct Regulations 2014, rr 229U and 229V, which provider is responsible for each control objective, and whether an end customer can request a copy of the assurance report for a sub-custodian. Outsourcing can provide real benefits for the customer, however this should not be at the expense of transparency.

4. *Do you agree with our interpretation of what meets the threshold for a 'client address', and the limited circumstances in which this definition may be broadened? If no, please explain why.*

   Yes.

5. *Does your assurance testing include reviewing client addresses to ensure the independence of recipients? If not, please explain why, including whether extending the scope of your assurance testing to include this review is likely to incur any significant additional costs or time requirements.*

   We provide reporting to clients via an online portal on a continuous basis, so reviews of physical addresses and email addresses would not be specifically relevant to ensure the independence of recipients.

6. *Do you agree with our interpretation that a client's 'electronic address' may include access to an online portal through which reporting is provided? Please state the reasons for your view.*

   Yes, as this is an increasingly common way for clients to access investment information and the expectation is for reporting to be available on an ongoing or "real-time" basis rather than received in the mail every six months. However, the guidance around reporting via an online portal is vague, for example around using an outsourced platform to deliver reporting it states "before adopting this approach custodians should consider the following" followed by a list of questions, without stating any specific requirements or expectations, in contrast to the very detailed rules around providing reports by mail.

7. *Are there any sections of the guidance you do not agree with? If so, please state what these are and explain why you disagree.*

   No.

8. *Are there any aspects of the guidance you think need to be improved or clarified? If so, please state what these are and explain what changes you would like to see.*

   We believe that greater clarity is needed around "Deducting margins from client money".

   We 100% agree with the requirement for clear and unambiguous disclosure. We understand this to mean (for example) if a transaction account is non-interest bearing, this is clearly and unambiguously disclosed the customer. As a second example this also means if a transaction fee is charged, then this is clearly disclosed in an unambiguous way to customers.

   This disclosure should be considered differently from how an entity makes its income as the provider of a platform. For example, income can be derived when customers make investments in third-party products where a distribution fee is collected from the fund manager. This approach has not changed the fee the customer pays in the managed fund, and should therefore not be considered as a margin (as the customer is not paying a higher fee, or experiencing a lower return).

   Similarly, if residual funds/money which have not yet been invested in a managed fund or term deposit investment sits in a non-interest-bearing transaction account for whatever reason, and the provider then earns interest on these funds, this should not be considered a fee or margin taken from the customer. We believe that this is no different to a non-interest bearing transaction account at a bank.

   If however a transaction account is deemed to be interest bearing, the interest rate payable should be disclosed in a clear and unambiguous manner.

9. *Are there any other areas related to client money or property service providers that you think should be included in the guidance? If so, please state what these are.*

   No.

10. *Do you have any other comments on the guidance?*

    We welcome the additional clarity from the regulators around the requirements for custodians, but we believe that a more prescriptive and detailed approach for custodians – ideally involving licensing of custodians – would be beneficial for investors.

    Licensing requirements for custodians should address issues such as (non-exhaustive but illustrative list):

    - whether custody assets are held in NZ
    - whether the underlying custodian is independent of the investment provider
    - who audits the custodian and any sub-custodians
    - who can view the audit reports
    - rules around whether custodians should be able to prevent clients transferring assets from the custodian to their own name via off-market transfer

This would add another level of security for retail investors, who usually do not have a detailed understanding of custody rules.

31st October 2022

Financial Markets Authority
Level 5, Ernst & Young Building,
2 Takutai Square, Britomart,
PO Box 106 672,
Auckland 1143

By email: consultation@fma.govt.nz

Consultation – Proposed Guidance for Client Money or Property Service Providers: Insurance Brokers Association of New Zealand Inc submissions

1. Please find attached the submissions of the Insurance Brokers Association of New Zealand Inc (IBANZ) on the Proposed Guidance for Client Money or Property Service Providers:.

2. IBANZ has over 100 member firms operating in the general (non-life) insurance market. IBANZ members employ approximately 5,000 staff of which approximately 2,500 staff are currently financial advisers.

3. IBANZ members place general insurance cover equating to approximately 50% of all general insurance premiums ($3.7 billion) for approximately 1 million New Zealand customers and for approximately 14 of the 30 general insurers operating in New Zealand. The total New Zealand gross written general insurance premiums in the 12 months to 30 September 2021 were more than $7.4 billion.[1]

4. Please let us know if you would like us to expand on any of the submissions made by IBANZ.

5. Our detailed submissions are below.

General submissions

IBANZ supports the intentions of the Guidance, and particularly the new guidance on non-broker insurance intermediaries. IBANZ agrees that non IIA brokers do not provide a client money or property service under the FMC Act.

Use of premiums by insurance intermediaries: IBANZ requests that the paragraphs relating to the use of premiums by insurance intermediaries (pg 7) be clarified and aligned with applicable law.

As the FMA may know, the use of insurance broking client account by insurance intermediaries is currently the subject of consultation by MBIE as part of the 'Exposure draft Insurance Contract Consultation'. MBIE summarizes that "section 15 of the IIA allows the intermediary to invest the premium and other money held in insurance broking accounts and keep any profits made on such investments." The criteria in section 15 requires that "the insurance broking client account may be invested in accordance with

[1] Insurance Council of New Zealand Market Data. An additional approximately $400 million of cover was placed through Lloyds.

the Trusts Act 2019, except that no money may be invested in equity securities within the meaning of that term in section 8 of the Financial Markets Conduct Act 2013."

The Proposed Guidance for Client Money or Property Service Providers states that "the IIA does not permit intermediaries to use premiums held for insurers to fund their own businesses and related premium funding companies. An insurance intermediary's right to invest premiums held in the client account is subject to the obligation to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others. If an intermediary uses premiums to fund its own businesses in contravention of the IIA, this raises concerns about the solvency of the intermediary."

IBANZ submits that section 431ZA does not apply to investing the insurance broking client account by insurance intermediaries. Section 431ZA applies when the provider is providing "a regulated client money or property service". Section 431W defines a "regulated client money or property service" is "the receipt of client money or client property by a person and the holding, payment, or transfer of that client money or client property; and includes a custodial service, "if it is not excluded under any of clauses 19 to 23 of Schedule 5". Investing the insurance broking client account by insurance intermediaries is outside this scope. There is a difference between "holding, payment, or transfer of that client money" which is governed by sections 431ZA and 431ZB, and investing the insurance broking client account which is governed by the IIA and the Trusts Act requirements.

Provided any investment of the insurance broking client account is compliant with the Trusts Act, it is legal, even if the funds are invested in the insurance broker's own business or premium insurance companies. The FMA wrongly suggests that insurance brokers can not invest client money prudently in their own business or premium insurance companies.

Accordingly, IBANZ submits that the FMA should rewrite the 'Use of premiums by insurance intermediaries' paragraphs in the Proposed Guidance for Client Money or Property Service Providers, so that:

- references to the obligation to "exercise the care, diligence and skill that a prudent person of business would exercise" are removed, when they are applied to investing insurance broking client accounts;
- instead, reference is made to the obligation to comply with the Trusts Act for investments of insurance broking client accounts;
- the paragraph acknowledges that sections 431ZC to 431ZH do not apply to investing insurance broking client accounts;
- the sweeping and misleading statement that the IIA does not permit intermediaries to use premiums held for insurers to fund their own businesses and related premium funding companies is removed or qualified so that it is clear the prohibition applies only if the investment is imprudent in terms of the Trusts Act;
- the reference to concerns about the solvency implications of the intermediary are removed, as they are not supported on an evidentiary basis;
- the recommendation to cease any use of premiums to fund their businesses and related premium funding companies are removed or qualified so that it is clear the prohibition applies only if the investment is imprudent in terms of the Trusts Act; and

- the baseless suggestion that insurers may wish to increase their oversight of intermediaries' management and investment of premiums is removed.

Yours sincerely,

Feedback form

Consultation: Proposed guidance for client money or property service providers

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance for client money or property service providers -
[your organisation's name]' in the subject line. Thank you. **Submissions close on 1 November 2022.**

Date: 31st October 2022 Number of pages: 3

Name of submitter: IBANZ

Company or entity: entity

Organisation type: Incorporated Society

Contact name (if different): [redacted]

Contact email and phone: [redacted]

Question number	Response
1	IBANZ agrees with the clarification relating to non-broker insurance intermediaries. IBANZ questions the accuracy of the 'Use of premiums by insurance intermediaries' section, and submits the section should either be removed or amended so that: • references to the obligation to "exercise the care, diligence and skill that a prudent person of business would exercise" are removed, when they are applied to investing insurance broking client accounts; • instead, reference is made to the obligation to comply with the Trusts Act for investments of insurance broking client accounts; • the paragraph acknowledges that sections 431ZC to 431ZH do not apply to investing insurance broking client accounts; • the sweeping and misleading statement that the IIA does not permit intermediaries to use premiums held for insurers to fund their own businesses and related premium funding companies is removed or qualified so that it is clear the prohibition applies

	only if the investment is imprudent in terms of the Trusts Act; • the reference to concerns about the solvency implications of the intermediary are removed, as they are not supported; • the recommendation to cease any use of premiums to fund their businesses and related premium funding companies are removed or qualified so that it is clear the prohibition applies only if the investment is imprudent in terms of the Trusts Act; and • the baseless suggestion that insurers may wish to increase their oversight of intermediaries' management and investment of premiums is removed. .
2	There is no unintended consequence arising from the non-broker insurance intermediaries guidance. The 'Use of premiums by insurance intermediaries' section wrongly suggests that insurance brokers can not prudently invest their insurance broking client accounts in their own businesses or premium insurance companies. It also indicates that intermediary brokers who do so may have questionable solvency and that insurers should investigate them. These statements are inaccurate and should be removed. See IBANZ general submission for a more detailed explanation.
7	IBANZ does not agree with the 'Use of premiums by insurance intermediaries' section, and submits the section should either be removed or amended in the manner referred to above. See IBANZ general submission for a more detailed explanation.
8	The 'Use of premiums by insurance intermediaries' section, needs to be improved and clarified in the manner referred to above. See IBANZ general submission for a more detailed explanation.

Feedback summary – *if you wish to highlight anything in particular*	
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
Thank you for your feedback – we appreciate your time and input.	

Yours sincerely,

[redacted]

[redacted]

Feedback form

Consultation: Proposed guidance for client money or property service providers

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance for client money or property service providers - [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 November 2022.**

Date: 1 November 2022 Number of pages: 2

Name of submitter: [redacted]

Company or entity: Te Kāhui Inihua o Aotearoa/The Insurance Council of New Zealand (ICNZ)

Organisation type: Industry body

Contact name (if different): [redacted]

Contact email and phone: [redacted]

Question number	Response
1. ***Do you agree with our overall approach to provide clarification in respect of the interaction between the Financial Markets Conduct Act (FMCA) and the Insurance Intermediaries Act (IIA)?***	ICNZ supports the FMA's view that a non-IIA broker does not provide a client money or property service when they receive money relating to premiums, claims, or monies otherwise paid under or in relation to a contract of insurance.
2. ***Are there any potential unintended consequences for insurance intermediaries (including sub-agents), consumers (e.g. policyholders), and/or insurance providers, in applying FMA's proposed view?***	In relation to the section on use of premiums by insurance intermediaries, ICNZ agrees that intermediaries should not be permitted to use premiums held for insurers to fund their own businesses and related premium funding companies. We acknowledge the FMA's comment on page 8 of the Proposed Guidance that insurers may wish to increase their oversight of intermediaries' management and investment of premiums. However, insurers' ability to do this is very limited in practice. Indeed, some of our members do not have any ability to influence or oversee how the intermediaries that they work with manage and invest premiums unless there is an issue that presents itself via credit control processes, as an example. ICNZ believes that there are obvious issues with the current process for the payment of premiums by an intermediary under the IIA (which we note is intended to be carried over to the Insurance Contracts Act and which ICNZ has consistently recommended

	amending[1]). It both increases the costs of providing insurance (by deferring cash flow of premiums for risks already being underwritten by the insurer) and opens the door for the potential for the misuse of premiums paid to intermediaries. However, as the management of this process is governed by the IIA/FMA, and because the funds are likely held for the benefit of multiple insurers, our members are of the view that it is not appropriate for this issue to be addressed by individual insurers. It would make sense for the FMA to exercise this oversight, as they have a greater ability to ensure both compliance and consistency of oversight. As a result, and for the reasons set out above, our members are of the view that this sentence should be deleted.

Thank you for your feedback – we appreciate your time and input.

[1] For example, ICNZ's submission on the Insurance Contracts Bill recommended a reduction of the relevant period an intermediary can retain the insured's premium before it must be paid over to the insurer from 50 days to 20 days.

1 November 2022

Financial Markets Authority,
Level 2 Grey Street,
Wellington 6140

By email: consultation@fma.govt.nz

Tēnā koe Financial Markets Authority,

Securities Industry Association submission: Proposed guidance for client money or property service providers

Please find attached the submission prepared by the Securities Industry Association (**SIA**) in response to the Consultation paper: *Proposed guidance for client money or property service providers (September 2022).*

Thank you for the opportunity to present our comments on this consultation paper.

About SIA
SIA represents the shared interests of sharebroking, wealth management and investment banking firms that are accredited NZX Market Participants.

SIA members employ more than 500 accredited NZX Advisers, NZDX Advisers and NZX Derivatives Advisers, and more than 400 Financial Advisers nationwide. The combined businesses of our members work with over 300,000 New Zealand retail investors, with total investment assets exceeding $80 billion, including $40 billion held in custodial accounts. Members also work with local and global institutions that invest in New Zealand.

Some SIA member firms may submit an individual firm submission based on issues specific to their firm's business. Those issues and views may not be reflected in this submission. No part of this submission is required to be kept confidential.

Please get in touch should you have any questions about this submission or require further information.

Nāku noa, na

[redacted]

[redacted]

SECURITIES INDUSTRY ASSOCIATION
[redacted]

SIA | SECURITIES INDUSTRY ASSOCIATION

Feedback form

Consultation: Proposed guidance for client money or property service providers

Date: 1 November 2022 Number of pages: 8

Name of submitter: [redacted]

Company or entity: Securities Industry Association (SIA)

Organisation type: Industry Association

Contact name (if different):

Contact email and phone: [redacted]

Question number	Response
Non-broker insurance intermediaries 1. Do you agree with our overall approach to provide clarification in respect of the interaction between the Financial Markets Conduct Act (FMCA) and the Insurance Intermediaries Act (IIA)? 2. Are there any potential unintended consequences for insurance intermediaries (including sub-agents), consumers (e.g. policy holders), and/or insurance providers, in applying FMA's proposed view?	Not applicable.
Identifying the provider 3. Do you agree with our expectations in regards to identifying who the provider is and documenting the nature of the arrangement? Are there any other aspects you consider it would be beneficial to include to assist with clarifying provider arrangements?	**Outsourcing the provision of services to third-parties** SIA broadly agrees with the expectations to identify a provider and document the nature of the arrangement.
Reporting 4. Do you agree with our interpretation of what meets the threshold for a 'client address', and the limited circumstances in which this definition may be broadened? If no, please explain why.	**Reporting - client address** SIA supports the interpretation of what meets the threshold for a 'client address'. However, we note the unfettered power of a client to specify any address for this purpose under Regulation 5. Please also refer to our response to Question 5.

	We note that NZX Market Participant Firms (**Firms**) can only act on the authority of a client. In the exceptional circumstances where the original address provided by the client becomes incorrect, a Firm could not start sending client information there unless the client had authorised it to do so and the request was on file. We refer to our comments regarding 'Gone No Address' clients in the Feedback Summary below.
5. Does your assurance testing include reviewing client addresses to ensure the independence of recipients? If not, please explain why, including whether extending the scope of your assurance testing to include this review is likely to incur any significant additional costs or time requirements.	**Reviewing client addresses** SIA agrees that advisers should not have reports /contracts sent to themselves; however, it should be at a client's discretion if they choose to have all documents sent to another nominated party, for example, their accountant. It would be a significant administrative burden for firms to assurance test whom the client has requested that their reports be sent. Assurance testing to review client addresses and custodian controls would need to be incorporated into auditors' standard audit review processes. **Independence of Recipients** SIA agrees that advisers should never be the only ones receiving client statements. However, testing the "independence" of recipients is well beyond the authority of the provider. The guidance states this should be done by "exception". However, defining the criteria for an exception across the market would be difficult, apart from when an Enduring Power of Attorney (EPOA) is on file. It is not for a Firm to decide if a client is competent to appoint another person to receive their statements. Firms have an obligation to protect vulnerable clients to the best of their ability; however, having this as a blanket obligation would be impossible to manage and outside its authority. Furthermore, it is unrealistic to expect entities to be able to check that the email address is the address relating to the client, as email addresses can be anonymised or be for family groups.

	Additionally, it is unrealistic for a custodian to refuse to accept the address of a third party (for example, an accountant or spouse) when the client is competent to determine whether they wish to be the recipient. Clients may choose to monitor their accounts through web portals provided by the custodian (even if those portals do not meet all the details of the FMCA reporting) instead and rely on their accountant, spouse or staff member to use the reports that meet the FMCA requirements, for example, to do tax filings. We believe the guidance on client vulnerability is sufficient to protect clients and does not need to be supplemented by such a prescriptive requirement. As noted above, advisers remain alert to clients' vulnerabilities and seek to clarify whether an alternative address is appropriate in those circumstances.
6. Do you agree with our interpretation that a client's 'electronic address' may include access to an online portal through which reporting is provided? Please state the reasons for your view.	**Client's electronic address** SIA agrees with the interpretation that a client's 'electronic address' may include access to an online portal through which reporting is provided and that sending reports in this way would meet the requirement to send a report to a client's 'address' under regulation 229Q(2)(b). We note, however, that the guidance suggests that a client must first opt-in to receiving reports at such addresses. It would be helpful if the FMA could please explain why such opting-in is required, given that there does not appear to be any express requirement to obtain a client's consent to send a report to their address in regulation 229Q(2)(b) (rather consent is only required where information is to be provided by alternative means in accordance with regulation 229R). SIA also welcomes the FMA's confirmation that delivery of reports may be via an electronic platform provided by another party and generally agree with the matters a custodian needs to consider before using such a portal. However, we are concerned that the blanket requirement that an "electronic platform cannot be provided by a person who is involved in the transactions that are being reported on" may be overly restrictive. Many of our members provide a suite of services to clients via different group companies and/or

	outsource providers, including advice, brokerage and custody services, and wish to offer clients a single online portal for accessing those services and the related investment information. On its face, the proposed restriction may prevent a member's custody provider from delivering reports via such a portal as the member is likely to have been involved in the relevant transactions in some other capacity – plainly, this would have adverse impacts in terms of client experience, operational efficiency and industry innovation. While we understand the policy intent behind the restriction – i.e. ensuring the independence and integrity of custodial reporting to clients – we submit that the other considerations listed in the guidance (including the need for custodians to have oversight controls in place) should be sufficient to meet that objective, while also allowing use of a single portal in appropriate circumstances. Alternatively, if the FMA is still minded to include the condition, we propose that it be modified to provide that an "alternative electronic platform ~~cannot be~~ may only be provided by a person who is involved in the transactions that are being reported on where the custodian is satisfied that appropriate systems and controls are in place to ensure that the reports and any information in them cannot be altered by the platform provider or any other party".
General questions 1. Are there any sections of the guidance you do not agree with? If so, please state what these are and explain why you disagree.	**Reporting to clients** In terms of reporting trading activity, trading-only (broking) clients receive a contract note for every trade and generally only receive a list of transactions if requested. SIA seeks clarification on the reporting timeframe referred to in the 'Reporting to Clients' section of the guidance (page 6), which states, "For most portfolios, providers should be reporting trading activity to clients as least quarterly." It is our understanding that in accordance with section 431ZF "Provider must report on client money and client property" of the Financial Markets Conduct Act 2013, the timeframe for custodial service reporting for is already prescribed as a six-monthly period in

	regulation 229Q "Custodian must provide information to clients" as outlined below, noting any shorter period to be determined by the custodian. (3) In this regulation, **reporting period** means— **(a)** each period of 6 months (or any shorter period determined by the custodian) for which the person is a client of the custodian; or **(b)** if the person ceases to be a client of a custodian on a date within that period, the shorter period ending on that date. **Identification of wholesale clients** For advisers to be required to have an initial meeting to determine whether a client was wholesale or not and then ask them to opt out of the regime to receive the retail protections appears to have the reverse effect of protecting investors. This is not practical in a business sense, and we understand that it's not currently common market practice to require wholesale clients to opt out of the regime. We submit that all advice clients should have the retail protections unless they elect to be treated as wholesale, which seems to be a better way of protecting all clients. SIA seeks further detail on the perceived client benefit of performing the opt-out process.
2. Are there any aspects of the guidance you think need to be improved or clarified? If so, please state what these are and explain what changes you would like to see	**Protections of client CSNs, SRNs and FINs (page 4)** SIA's members have long practised encryption or redacting a Faster Identification Number (**FIN**). It is common practice for share registries to send Customer Service Numbers (**CSN**s) to Clearing and Settlement Participants via email. A CSN cannot be used without the FIN. Therefore, we do not believe there should be limitations on emailing CSNs. **Reconciliations (page 14)** SIA agrees that monitoring for unusual patterns in transactions is an obligation of the custodian; however, as this is already covered by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, we seek clarity for why this is required.

	Discretionary investment management service (DIMS) providers - Brokerage Fees (page 15) SIA agrees that brokerage should be disclosed to clients, and this is included on the contract note. Typically, when the client receives their DIMs report cash statement, the impact of brokerage will have already been taken into account. We seek clarification on the intention of this guidance as it appears to be confusing client money reconciliations with client reporting.
3. Are there any other areas related to client money or property service providers that you think should be included in the guidance? If so, please state what these are.	-
4. Do you have any other comments on the guidance?	-

Feedback summary – *if you wish to highlight anything in particular*

A related issue that has been raised with FMA is the large number of "Gone No Address (GNA) clients" that present an ongoing issue. The situation arises when:

i. clients with securities or money in custody have moved without notifying their broker of their new postal address (e.g. mail is returned to sender).
ii. clients who receive reports by email change their email address without updating their contact details (e.g. email bounces back).

Despite the best and ongoing efforts to contact and track down clients (which can be ongoing over months and years), there are many GNA clients across the industry. Firms have developed their own comprehensive procedures for identifying and dealing with Gone No Address client accounts. An account is typically marked GNA after exhausting all search and locating options, for example, but not limited to, searching all previous contacts provided, Companies Office website, White Pages, BANCS, Share registries, LinkedIn, accounting firms, Google search, social media, the Births, Deaths and Marriages Register and electoral role. Firms then have further processes to manage the account following its GNA status.

In 2020, a survey of 5 SIA firms identified 675 GNA accounts at a total value of around $9m. Some were identified in the previous 12 months, and some were as old as 5-7 years. Firms have exhausted all channels of trying to find the account holders. These accounts are typically not large in asset value, around $9,000 (a mix of securities and cash). Still, they are assets that remain in a Firm's custody and are managed accordingly.

The custody regulations require reports to be sent to custodial clients periodically at the address they have specified for that purpose. However, this potentially creates a fraud risk when the address or email is no longer current.

SIA | SECURITIES INDUSTRY ASSOCIATION

We suggest that the guidance could be expanded to address the following:

i. the approach to reporting requirements in GNA circumstances
ii. explain 'reasonable steps' for contacting clients
iii. explain 'reasonable steps' for firms to undertake if they no longer have a client's current contact details.

SIA welcomes the opportunity to engage further or provide information on this issue.

Thank you for your feedback – we appreciate your time and input.

AUCKLAND – Level 5, Ernst & Young Building | 2 Takutai Square, Britomart | PO Box 106 672 | Auckland 1143
WELLINGTON – Level 2 | 1 Grey Street | PO Box 1179 | Wellington 6140

fma.govt.nz