

Feedback form

Consultation: Fair Outcomes for Consumers and Markets

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Fair outcomes for consumers and markets: [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 March 2024.**

Date: Number of pages: 3
Name of submitter: [REDACTED]
Company or entity: G3 Financial Freedom Limited
Organisation type: Financial Planning practice
Contact name (if different):
Contact email and phone: [REDACTED]@g3freedom.co.nz [REDACTED]

Question number	Response
3	<p><i>Outcome 1</i></p> <p><i>Your statement of 'Access' and 'Appropriateness' are fine however, in the examples you've shared, we have the following comments:</i></p> <ul style="list-style-type: none">- <i>Communities buying into riskier investments for Maori and</i>- <i>Hard to reach consumers not having accessing</i> <p><i>Both of the above in your 1st and 2nd examples, are not helped by Banks closing branches, not allowing payments by cheques, forcing consumers to use digital services, having huge wait time for call centres when calling, not supporting potential scam payments sufficiently. You mention that Maori communities buy into riskier investments such as cryptocurrency and may have lower trust in the banking sector however, for the former this results were only 1% higher than Pacific Peoples, Indian and 5% higher than Other Asian and Chinese, so our question is 'why are you pointing out Maori only?'. This report highlights differences across lots of ages, demographics and ethnicities so it is wrong to show only Maori in your example?!</i></p> <ul style="list-style-type: none">- <i>Your last bullet point example on derivatives may be accurate from the 2020 Insights Report you highlight, however, most public consumers do not purchase these type of investments so we question the evidence on this versus more mainstream investments and ask why you highlight derivatives as an example for this statement?</i>
4	<p><i>Outcome 2</i></p> <p><i>Yes we agree with this statement, however, SRI and 'ethical' investing is subjective and personal too and please be reminded of 'confirmation bias' in consumer behaviour – how will you consider this when looking at outcomes?</i></p>
5	<p><i>Outcome 3</i></p> <p><i>How will you determine 'fair value' exactly? How will this be judged by you? Fees need to be considered here and in the example bullet point 1 where it mentions trail commissions costs, KiwiSaver is an example where the fees/commissions have been prescribed so tightly that advisers are not paid sufficiently for the actual service, advice and ongoing monitoring they have to do under the FAP regime. You need to know that the advisers should be able to negotiate their own fees for the service and advice they provide and as long as this is outlined, surely this is sufficient. Is there not enough in the FAP regulations and Code currently, outlining how fees are to be disclosed to clients by advisers. This seems to focus on product again rather than advice, and whilst this statement mentions "price a consumer pays for product or service", I wonder if you understand where 'advice' fits in to this and where fees are charged that are not product related.</i></p>

	<i>Managed Investment Scheme fees, and actively managed investments trading fees, plus performance fees, should however, be looked at in detail as this is an area we are not favourable of and believe performance fees are unnecessary and unfair.</i>
6	<i>Outcome 4 What proof do you expect providers to share with consumers to prove this? What are you proposing over and above the current FAP licencing regulations advisers and providers have to adhere to?</i>
8	<i>Outcome 6 Your example bullet point 2 – we agree with this however, what you saying exactly? As what you shared is known based upon the 2023 Governance Thematic Review you mention. Why have this bullet point (what is it trying to achieve here?) Your example bullet point 3 – so who engages & trains the auditors?! These examples focus on the negatives and what has gone wrong/been found to break rules etc. Why don't you focus on the positive too? There is a lot of good coming out of the regulation and advice being provided and several studies to confirm this, yet these sound like you are complaining and dissing the financial services industry which is not helpful.</i>
11	<i>To answer this question, we just need to look at the raft of regulation and changes having taken place in past few years and what we as advisers and FAPs now have to comply with. We have to demonstrate and evidence so much already so what is this piece of work trying to achieve that the regulation we adhere to now, and the Code, is not?</i>
12	<i>Short answer to your question – it won't!!! We now have a raft of compliance rules and regulations around demonstrating, and evidencing good outcomes for clients so we do not see how this new proposal will work, and why it even needs to be here?!?!</i>
13	<i>Yes – remove it!! Whilst we fully agree that outcomes are beneficial for clients, the FMA needs to be more descriptive and specific on what their expectations are in certain situations, rather than just providing guidance notes. We already have a principles based regime where FMA assessment visits can over client outcomes amongst all other points needed to be adhered to under a FAP. Until precedent is set by the FMA and specifics provided in how the FMA will police, monitor and judge 'fair outcomes for consumers and markets', they run the risk of hanging a firm and/or an individual 'out to dry' so to speak through enforcement by hindsight.</i>

Feedback summary – as mentioned a few times in my comments above, what is the actual point of this? What is not already covered in legislation that firms and individuals need to adhere to now? This seems a 'fluffy' document with good intention however, nothing of substance to confirm how we are to provide evidence of good outcomes to that of which we are already doing under the current legislation. This needs a total revisit and right now, having read it many times, I am struggling to see what the objective of this is and cannot read any clear guidance from the FMA. What exactly is the FMA's definition of "fair outcomes for consumers and markets"? The FMA is very short sighted in it's social media posts, often focusing on clients do DIY approach and not engaging a qualified financial adviser. Where is the FMA's judgement a client's long term outcome when we do holistic financial planning that incorporates planning well beyond the next 5 years, looking at helping client's achieve long term retirement goals alongside intergenerational wealth consideration too, regularly spanning at least 20+ years from now. Client's goals and life changes, so outcomes change when ADVICE is given to match what is the best interest of the client at that particularly time – HOW IS THE FMA GOING TO JUDGE THIS SITUATION??

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

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Date: 13 February 2024

Number of pages: three

Name of submitter: ██████████

Company or entity: ████████████████████

Organisation type: Life and Health insurance product expert and advice coach to life and health insurance advisers

Contact name (if different):

Contact email and phone: email: ██████████@gmail.com mobile : ██████████

Question number	Response
Question 1	<p>I agree that your 'outcomes' focused approach is clear. It is the correct way to regulate any industry where the only opportunity to measure something as intangible as insurance, is an uncertain outcome. This is particularly true for Life and Health insurance.</p> <p>However, we must never lose sight that generally the best outcome for life and health insurance customers is that they never need to claim.</p> <p>Please see my comment under the feedback summary for a current and significant life and health insurance issue negatively impacting all your seven desired good outcomes.</p>
Question 2	<p>Using your desired outcomes approach to addressing the issues raised below in the feedback summary will remove an enormous injustice for many people who have taken the responsibility to insure themselves over many decades.</p> <p>This will also dramatically improve the trust in insurance providers leading to greater sustainability of the industry.</p>
Question 3	<p>Outcome 1 requires not only that certain products and services are available generally in the 'market' by some provider. In some cases, it is necessary that certain core products are provided by all providers, as is the case for trauma insurance in the example immediately below.</p> <p>Life insurance products are typically only available to people with acceptable health. This often means that once a provider has been selected and a policy issued, poor health prevents accessing products from another provider. Poor health can also prevent accessing new cover (new risk for the provider) from the existing provider too, but it should not prevent accessing a product with the existing provider where no insignificant increase in risk to that provider exists – for example a transfer of existing cover/risk from one product with that same provider, to another of that provider's products.</p> <p>Recently developments in Trauma Insurance (by one provider) allow customers to select trauma products that only pay for more severe trauma events and, which come at a very significantly reduced premium. Over time, as people age, the premium payable for 'comprehensive' trauma cover becomes prohibitive, while the need for cover for more severe trauma events becomes more acute. A transfer of cover from 'comprehensive' trauma cover to 'severe trauma cover' allows older people to afford cover against severe trauma events (the events that have a very significant financial impact) much later into life.</p> <p>Unfortunately, this very valuable option is currently not available to the vast majority of customers whose policies are with providers which do not offer 'severe' trauma cover. Considering that the need to access 'severe' trauma cover occurs in later life</p>

	<p>when poor health does not permit the acquisition of such a 'severe trauma' policy, customers of providers with no 'severe' trauma cover are denied the appropriate product to meet their needs.</p> <p>All providers should be required to include core life insurance products, such as 'severe' trauma cover, and allow conversion of existing cover from 'comprehensive' trauma cover to 'severe' trauma cover without further underwriting/health assessment. Failing which, a provider's product mix will make such provider unsuitable for adequate lifecycle protection and fail to provide the necessary ongoing care.</p>
Question 4	<p>Information is very important and needs to be provided before a life or health policy is applied for.</p> <p>All insurers should be obligated to provide access to all their policy wording on their websites, including previous versions. This will assist potential clients and the general public with making informed decisions about whether to buy or make a claim.</p> <p>In addition, simple English commentary about how policies work, generally when they pay benefits and when they don't, who might benefit from such policy etc. should be available to the public on an insurer's websites.</p>
Questions 5, 6,7, and 8	<p>These outcomes are critical to ensuring good outcomes and trust in insurance providers and insurance generally.</p> <p>Fair outcome principles are fine, but in some cases specific direction to providers will be required. This is true in the case of the issue I have raised in the feedback summary. This issue is an example increasingly of poor outcomes, the opposite of the 'good' outcomes you propose, and, has the ability to be significantly more harmful than the poor value credit card repayment insurance that the FMA identified a few years ago.</p>
Question 17	<p>Naturally I'd like the issue I have raised in the feedback summary to be dealt with specifically. I am fortunate in that, having spent 20 years in the life and medical insurance industry in senior product development and training and professional development roles, I am very aware of just how 'closed' product benefits can become out-of-date, leading to poor value for money and sub-par customer benefits/outcomes. A great many policyholders of such closed policies would likely be completely unaware of this.</p>

Feedback summary. This feedback significantly impacts every one of the seven desired outcomes, but especially outcome five. The issue relates to all life and health insurance 'closed' products (policies which are no longer available to new clients and thus cannot be recommended by financial advisers). Such 'closed' products are no longer subject to competitive forces and, as a result, the insurance provider concerned has no financial incentive to either:

- keep premiums reasonable relative to other similar products; or
 - ensure the product is developed and improved so that it may continue to provide suitable protection over its lifecycle.
- (in fact, there is a profit motive not to improve benefits and also to increase premiums to unaffordable levels as the closed (separated) pool of lives in the policy ages and claims rise)

Unfortunately for many holders of such 'closed' policies, moving their cover to another provider is impossible due to existing health conditions. Many such policy holders have paid premiums for decades and now find themselves trapped in a product that is becoming less and less fit-for-purpose every year! **This is certainly not an example of providing ongoing care, nor is it acting in consumers interests.**

Life and health insurance policies, by their very nature, are required to ensure they provide suitable, fit-for-purpose benefits over many decades. **'Continuous fairness' requires up-grading of policies to ensure they provide ongoing care and do not deliver 'sub-par' outcomes,** particularly when one considers that the premium payable for such 'sub-par' 'closed' policies is not typically different in any meaningful way from superior, up-to-date policies. **This is not fair value for money.**

_____ prior to the sale to NIB, this was a highly rated medical product which provided industry leading benefits. Today it is no longer competitive with virtually any other product available. Just for one example, the surgery benefit is limited to \$200,000 per annum, when other products surgery limits are \$600,000 per

annum or more. In fact, NIB have recognized this and are increasing limits on some of their products as a result. At this stage however, it is not clear whether this same benefit limit increase will be applied to Assurance Extra – Major Medical Cover. While relatively few policyholders would reach a limit of \$200,000 today, for the unlucky clients who do have serious medical treatment requirements, such a limit can be financially catastrophic and render their insurance totally inadequate. Medical inflation has been running at close to double digits for many years and this is unlikely to change. Over the coming years, as medical inflation reduces the real value of a \$200,000 limit, more and more **policyholders will likely find their insurance increasingly inadequate, notwithstanding significant premium increases each year.**

This poor value is made even worse if the pool of insured lives on such 'closed' policies is separated and excluded from sharing in the benefits of the insurer's wider pool of insured lives. Insurance is about spreading risk across as many people as possible, which is necessary to reduce risk and keep premium affordable. **When a section of policyholders is 'closed' and policyholders are excluded from participating in the benefits of being in the insurer's wider pool of insured lives, premiums will inevitably rise due to the lack of new healthy lives joining that pool.** People trapped in the closed policy not only see benefits reducing over time but also unacceptable increases in premium. **Very poor outcomes like this have the potential to damage the credibility of insurance and the industry as a whole.**

It is critical for the integrity of the industry that the most vulnerable insurance clients (those whose health prevents them from switching providers or products) are **suitably protected by their insurance providers over the full lifecycle** of the product and that all policyholders can trust that their providers will take care of their best interests regardless of whether a product is 'open' to new business or "closed".

Good conduct should require insurance providers to:

- either up-grade 'closed' policies or entitle policyholders of 'closed' policies to switch to more or less equivalent 'open' policies with that insurer, under the same underwritten terms and conditions **but without medical assessment.** After all, the insurer is already 'on risk' for such clients; **and**
- ensure premiums payable for such 'closed' policies do not significantly exceed the premium payable for comparative 'open' policies.

Please contact me if you would like to discuss any particular matter.

Thank you.

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.

Nath Lostitmonton

From: [REDACTED]@fscl.org.nz
Sent: Tuesday, 20 February 2024 3:38 pm
To: consultation@fma.govt.nz
Cc: [REDACTED]r@fscl.org.nz
Subject: Consultation: Proposed fair outcomes for consumers and markets
Attachments: image001.jpg; Draft-Fair-outcomes-for-consumers-and-markets.pdf

Kia ora,

Our short submission is that we consider the reference to complaints in the guidance about outcome 5 on page 10, should be strengthened. Our suggested wording is:

“Consumers should find it easy to access their providers when things go wrong or they need help, and a complaint should be promptly and effectively addressed by a provider through a robust internal complaints process (ICP). Consumers should also be told about access to the provider’s external dispute resolution service when the complaint is first received, and when the ICP finishes.”

Please feel free to contact me if you want to discuss our submission further.

Ngā mihi

[REDACTED]
Case Management Team
Leader

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Feedback form

Consultation: Fair Outcomes for Consumers and Markets

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Date: 21/02/2023

Number of pages: 4

Name of submitter: [REDACTED]

Company or entity: SHARE

Organisation type: Licenced Financial Advice Provider

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED]@sharenz.com- phone: [REDACTED]

Question number	Response
1. Is the way we have described our outcomes-focused approach to regulation clear, and do you understand how a focus on outcomes will be reflected in our work? Please explain.	Yes. The intention is clear. Doing what is right reflects the principled approach of the Code of Professional Conduct for Financial Services (the Code) that financial advisers have followed for many years. It is noted that the regulations remain and that fair outcomes are a good indication of good conduct.
2. What are your views on the proposed fair outcomes for consumers and markets? To what extent do you think the proposed fair outcomes will bring benefits for consumers, providers, and markets?	Prioritising equitable outcomes for consumers is a commendable objective and it's one that we work hard on every day for our clients. Nonetheless, the difficulty lies in integrating and objectively substantiating it. The interpretation of a 'fair outcome' may vary among stakeholders based on their vested interests and often the judgement of whether the outcome is fair is assessed with the benefit of hindsight, which was not available at the time. We understand this particularly with the psychology of a client, as they go through the emotions of life and the impact this has on their sense of relevance of a financial product or service.
3. What are your views on Outcome 1: Consumers have access to appropriate products and services that meet their needs?	The emphasis on services that are tailored to client's needs, objectives, risk tolerance and values are already intrinsically linked to the Code and the Advice Process, so it seems logical that it is included as an outcome. We note that the life stage/life cycle of some financial products are decades long and often the relationship that clients and our advisers have is also decades long. This really enhances the outcome of the relationship and the products and services provided.
4. What are your views on Outcome 2: Consumers receive useful information that aids good decisions?	This aligns with the principles of the Code, encompassing factors like suitability and client understanding, to name a few. Therefore, its inclusion appears to be a natural and logical outcome and

	emphasises the critical value of a human, trusted advice relationship.
5. What are your views on Outcome 3: Consumers receive fair value for money?	Value for money is always a desirable outcome for any product or service. The major challenge in the NZ financial advice space is how consumers perceive and value 'financial advice' and the role of their Adviser delivering advice services. The majority of NZ consumers who have a personal adviser do not pay directly for advice services, with their adviser being remunerated by the product/platform providers via commissions. Many advisers provide services that are holistic to provide context to the how, what, why of financial services and their role in assisting them through life. Reflecting on insurance for example, the customers receive valuable peace of mind while holding an insurance policy but typically may only realise "value" if they have a claimable event. Thus, making the measurement of "value for money" difficult and whether it is "fair outcome" for a customer to pay for a product for 30 years and never use it? Our view is simply that we must be careful not to be too judgemental with the privilege of hindsight.
6. What are your views on Outcome 4: Consumers can trust providers to act in their interests?	Managing conflicts of interest is already well addressed in the Code. The disclosure regulations also help to address some of these challenges. Clients trust providers with their data which is also addressed within the Privacy Act and the Code. Therefore, it is a natural inclusion into the concept of fair outcomes. Transparency protects all parties and could be extended to those entities that are not directly covered such as reinsurers.
7. What are your views on Outcome 5: Consumers receive quality ongoing care?	This appears to align with existing requirements for financial advisers. Ongoing monitoring of suitability of cover is important and linked to the 6-step advice process. Prioritising client's interests helps to remove unreasonable barriers. Additionally, timely and effective complaint management is also an existing licensing requirement.
8. What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?	This outcome fits into the existing requirements for Financial Advice Providers and should be required by markets also.
9. What are your views on Outcome 7: Markets enable sustainable innovation and growth?	This appears to be a logical outcome for markets to adopt, however we would add that technology and innovation is very expensive to design and implement. Some clients prefer to deal face to face with a real person. This is not innovative, but we believe leads to good outcomes.
10. Is anything missing that should be included in the fair outcomes? Please explain.	We believe that necessary issues are addressed.

<p>11. If you are a provider of financial products or services, how will you demonstrate ownership and delivery of the fair outcomes? What will be the implications for your governance, leadership, management, and operations, and how they work together?</p>	<p>Good client outcomes are embedded in our existing Compliance Assurance Programme and specifically addressed in our business risk policies. We will also address these concepts with our advisers through our training and development programmes and Quality Assurance (monitoring) procedures. These are areas that we can show a practical commitment to fair outcomes, though sometimes it's the manufacturers of products that are most able to influence and control a fair outcome.</p>
<p>12. If you are a provider of financial products or services, how will outcomes-focused regulation help support your regulatory compliance? Are there areas you will find challenging or where you have concerns?</p>	<p>The outcomes outlined in the consultation document are already encompassed by the Code and other existing obligations. However, the integration of fair outcomes with existing requirements is unclear. The overlay of a fair outcomes approach across existing regulatory requirements for advisers (FMCA 2013) could create some confusion as to what additional requirements providers of financial advice or services will need to demonstrate.</p> <p>Some ambiguity could occur with various interpretations of what constitutes a 'fair outcome.' For instance, a consumer dissatisfied with their KiwiSaver investment return performance might perceive the outcome as 'unfair,' even if the adviser and provider have conducted the process with integrity, transparency, and diligence. There is a real concern about the application of hindsight in assessing what is fair. Despite the FMA indicating that 'a focus on fair outcomes does not mean consumers are insulated from risk or that a product always makes money' we know that the onus of proof falls, somewhat unreasonably, on the performance of the product or the adviser, with the clarity of hindsight.</p>
<p>13. Do you have any comments in relation to how a move towards a more outcomes-focused approach to regulation should influence our supervision and monitoring approach?</p>	<p>Monitoring and supervision are an important tool of any regulator, and having a common-sense approach is the most effective. This approach is likely to offer the optimal chance for instigating cultural and behavioural shifts that lead to fair outcomes. We hope that the move toward fair outcomes will not create additional reporting requirements for FAP's, over and above current obligations e.g. Regulatory Returns. And some prescriptive way of demonstrating what are already contained in the Code of Professional Conduct.</p>
<p>14. Do you have any comments in relation to how a move towards a more outcomes-focused approach to regulation should influence how we seek to address and hold individuals and entities accountable for misconduct?</p>	<p>Many of the policies for good governance and monitoring which the FMA has implemented have led to identifying systemic risks and has led to improved products and services. Some determination of what is considered 'fair' may require the regulator to engage with consumers directly. We note from experience that the notion of fair can be emotional, and what is fair to one, may seem unfair to another. In all the areas we advise, lending, insurance, investments, and KiwiSaver, we are dealing with very emotional decisions being made by clients.</p>
<p>15. If you are a provider of financial products or services, what are your views on the link between outcomes-focused regulation and innovation? Will</p>	<p>It is demonstrably unclear as to the level of innovation that will result. On face value it will likely create some additional workload and cost for FAPs, particularly as for Advisers, there has been a</p>

it provide you with increased flexibility to achieve your business needs?	focus on the principle of fair outcomes and prioritising the clients interest for many years.
16. If you are a consumer or consumer group, do you understand the fair outcomes and are they relevant to your interactions with the financial sector?	Q16. If you are a consumer or consumer group, do you understand the fair outcomes and are they relevant to your interactions with the financial sector?
17. What are your views on the examples provided in the guidance? Are they helpful, and are there any other examples we should include?	Examples were helpful.
18. Do you need any further guidance or support from the FMA in relation to outcomes-focused regulation or the fair outcomes?	When the change occurs, guidance tools will be helpful, along with an understanding of any changes in expectations and obligation on Financial Advice Providers. We would also like to understand how the FMA will mitigate what we see as a very real risk to advisers being asked to demonstrate ownership and delivery of fair outcomes. Our advisers deliver advice that matters, but with products and services manufactured by insurers, banks, and other institutions.
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.	

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Date: 26 February 2024

Number of pages:

3

Name of submitter: [REDACTED]

Company or entity: Saturn Portfolio Management Limited (Parent entity of Saturn Advice Limited, Saturn Invest New Zealand Limited and National Capital Limited)

Organisation type: Registered Financial Service Providers

Contact name (if different):

Contact email and phone: [REDACTED]@saturnportfolio.co.nz; [REDACTED]

Question number	Response
1	<p><i>No, we don't understand how a focus on outcomes will be reflected in the FMA's work.</i></p> <p><i>The FMA says "We all know what fair is when we see it". That's not a definition of fair that provides measurable accountability. The FMA says "We...always expected firms to deliver fair outcomes". That being the case, why this initiative? The FMA states "our actions will be guided by doing what's right". Please define right and for whom?</i></p> <p><i>In its guide to outcomes- focused regulation the FMA states "These fair outcomes are not rules. They do not create, replace or even supplement existing legal obligations." If a business is meeting its legal (and regulatory) obligations, but in the FMA's opinion a business should or could do more to ensure fair outcomes for consumers, where does this leave the business? Will the FMA suspend or cancel the business's license to operate and on what grounds? What if the business disagrees with the FMA's opinion? Is it faced with significant legal bills to defend its position in a court of law? That's not an option for small businesses.</i></p> <p><i>In our opinion, the outcome focused approach will create more uncertainty for businesses in financial markets, stifle innovation and lead to additional regulatory burden and overreach.</i></p> <p><i>The FMA also refers to taking a risk-based approach. In our opinion, the FMA would be better to focus on those sectors of the financial services market or specific business or business models that represent a greater risk to consumers. For example, organisations:</i></p> <ul style="list-style-type: none"><i>• where a high proportion of remuneration is "at risk" and based on sales.</i><i>• that sell complex financial products direct to consumers without financial advice.</i><i>• that materially increase their insurance premiums year on year, especially when their products are essential for many New Zealanders.</i><i>• that have a chequered past when it comes to providing good products and services. E.g. those with high volumes of complaints to the FMA or dispute resolution scheme providers.</i><i>• that have a dominant market share.</i><i>• - that lock in clients either through T&Cs or because there is practically no alternative.</i>
2	<p><i>If we don't already consider fair outcomes, we will lose clients. Is the FMA suggesting consumers don't have choices or they are not educated so the FMA has to "protect" them? If so, why doesn't the FMA do more to educate consumers?</i></p> <p><i>We don't believe the fair outcomes approach will have any material benefit to consumers but it will be yet another layer of regulatory burden, especially for smaller businesses adding time and cost.</i></p> <p><i>In an open market, good businesses that are meeting their legal and regulatory obligations and have a client first approach by providing valued products and services are likely to succeed and</i></p>

	<p>grow over time. Those that are meeting their legal and regulatory obligations but don't provide their clients with good outcomes will likely suffer through losing clients.</p> <p>Any businesses that are not meeting their legal or regulatory obligations should/will be found out and held accountable with appropriate financial remedies, fines etc. by the regulator.</p>
3	<p>We think the outcome, and concept of access needs to be re-worded. It could be construed that providers of financial products and services are obliged to develop products and services that meet all consumer requirements. However, providers should have the right to develop products or services for segments of the market. It maybe they only provide products and services for a particular niche.</p> <p>We agree that products and services need to be suitable throughout their lifecycle and consumers should be proactively advised if they are no longer suitable.</p>
4	<p>Define "good decisions". We think there are significant overlaps between outcome 2 and existing regulatory obligations. For example, DIMS providers have obligations both at the point of onboarding clients and through ongoing reporting. There is also an obligation for communication to be clear concise and effective. Under the Code of Professional Conduct for FAPs, there is already an obligation to ensure clients understand the financial advice.</p>
5	<p>We struggle with the term "fair value for money" which we believe is a very subjective measure. We would suggest the FMA takes a risk-based approach by targeting sectors of the market and/or market participants where they believe the balance of power is heavily in the provider's favour. Providing consumers are free to exit a product or service without penalty and have choices to appoint an appropriate replacement provider of products or services, the consumer is best place to determine if they are getting value for money and they can vote with their feet accordingly.</p>
6	<p>If consumers don't trust providers, don't they risk losing clients? The concepts referred to in Outcome 4 are already requirements. For example, under the code of professional conduct, there are already obligations to act with integrity, provide financial advice that is suitable and protect client information.</p>
7	<p>What his quality? Again, referencing the concepts, they are already obligations under the respective licences (standard conditions and minimum standards).</p>
8	<p>Markets aren't trusted. People, providers, products and services are trusted. The concepts referred to are already obligations under the legislation/regulations and license condition and standards.</p>
9	<p>Why "markets" and not "participants"? We don't understand how this outcome directly relates to fair outcomes for consumers.</p>
10	<p>Define "fair outcomes".</p>
11	<p>We measure consumer satisfaction through client feedback, retention, new growth etc.</p> <p>The implications of overlaying existing regulatory and legal obligations with fair outcomes principles are, in our view, totally unnecessary for our business and add unhelpful complication and ambiguity to our risk and compliance framework.</p> <p>As stated above, we believe the FMA should take a risk-based approach and focus on sectors of the market, business models and specific businesses that represent the greatest risk of not providing fair outcomes to consumers, rather than taking a broad-based approach and thereby adding additional compliance burden to all regulated providers of products and services.</p>
12	<p>They won't. We are small financial services provider for 4 FMA licenses. We already have significant obligations associated with each of these licences and have a comprehensive and continually evolving risk and compliance framework and a dedicated risk and compliance manager to oversee this work. As referred to above, we believe there is significant duplication between the context provided for each outcome and our existing obligations. The overlay of proposed fair outcomes in our view is unnecessary and will only add ambiguity. At the heart of our business is impartiality. There are very few potential conflicts of interest with our business model and there are no financial incentives to sell or undertake activities that may negatively affect the clients.</p>
13	<p>What regulations are the FMA willing to drop? As mentioned above, we believe the FMA should take a risk-based approach and focus on the market sectors, business models and specific businesses where they believe there is the greatest risk of fair outcomes not being delivered and work with those businesses to reduce those risks.</p>

Feedback summary –

Page 2: As a kaitiaki of financial markets, *I want to ensure that the FMA's work is risk-based and focused on the issues that matter most to New Zealanders*, while ensuring that providers remain empowered to innovate and have flexibility in terms of their business needs.

Fair outcomes should be at the heart of everything we do – for the FMA as well as the industry.

We will need to engage with providers to understand how this regulatory approach aligns with their business model.

Page 4: We seek to be innovative and forward-looking, including in our use of regulatory approaches and ways of working, while being *conscious of unnecessary regulatory burden*.

A focus on rules alone can create conditions where risks are either missed or over-managed and consumer harm goes unaddressed, and can also prevent swift behavioural changes (for example in response to new technologies and innovations).

Page 5: A focus on fair outcomes does not mean consumers are insulated from risks or that a product always makes money. However, it does mean products and services meet the needs of identified consumer groups and are targeted accordingly, and that providers ensure consumers have access to the knowledge and tools needed to make informed decisions and weigh consequences based on their individual preferences.

These fair outcomes are not rules. They do not create, replace or even supplement existing legal obligations. Rather, focusing on the outcomes will assist firms to more easily meet those obligations in a way that achieves the purpose and intent behind them, as well as supporting regulatory compliance and helping to signal whether the regime is working as it should.

Providers will need to take ownership of the fair outcomes and demonstrably embed them in the way they operate. This will mean continually refreshing their understanding of consumer expectations and experience across all the products and services they offer and the demographics they work with, ensuring that fairness is prioritised across all contexts and circumstances.

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: Fair Outcomes for Consumers and Markets

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Fair outcomes for consumers and markets: [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 March 2024.**

Date: 9/2/2024 Number of pages:

Name of submitter: [REDACTED]

Company or entity: Massey University, Fin-Ed Centre

Organisation type: Higher Education Institution

Contact name (if different):

Contact email and phone: [REDACTED]@massey.ac.nz Tel [REDACTED]

Question number	Response
Q1	<i>The document is clear and provides sufficient information on FMA's outcome-focused approach and how it will be embedded in its work.</i>
Q2.	<i>The key thing will be the people who will implement/be responsible for monitoring and their own attitude towards this workplan. There needs to be a big mind shift to move to this approach.</i> <i>Entities may be required to conduct self-evaluation of their current practices, identify gaps (if any) and develop a time bound action plan to address the gaps.</i>
Q3	<i>Access should include language, format, font size/colour and cultural context.</i> <i>Derivatives are not the products for all consumers and require high level of financial capability and resilience. Hopefully this has been taken into account.</i>
Q4	<i>This area does need focused attention/approach and may be working with IFSO will help to inform FMA's work programme for this area.</i>
Q5	<i>Need to be emphasised that different approached should still have same outcomes and guiding principles.</i> <i>KiwiSaver is another area that requires simplification and greater active engagement of consumers to understand and apply best approach to investment for them.</i>
Q6.	<i>More cultural awareness/competency on the part of providers is needed so some consumers do not feel unnecessarily obligated to buy the product/service.</i>
Q7	<i>Information sheet is a really good idea. How are you going to assess that they have been put in place? This is an ongoing process and requires regular updating.</i>
Q8	<i>What will be excluded here? AML training in NZ is an example that we still follow American training model format for our compliance requirements. Massey's Anti Money Laundering Compliance Officer microcredit is an example of a gap identified in the market for compliance personnel to be appropriately trained and supported.</i>

	<i>Training needs to be aligned to NZ requirements. The trust of consumers is hard to gain and easy to lose.</i>
Q9	<i>Nothing to add to outcome 7.</i>
Q13	<ul style="list-style-type: none"> • <i>My assumption is that through research and evaluation of current practices, you already have sufficient information to guide your monitoring framework.</i> • <i>The key to this will be the people who will implement/be responsible for monitoring; and their own attitude towards this workplan. There needs to be a considerable mind shift to move from current practice to this approach.</i>
Q14	<ul style="list-style-type: none"> • <i>There is a good case for entities to conduct self-evaluation of their current practices, identify gaps (if any) and develop a time bound action plan to address the gaps.</i>
Q16	<ul style="list-style-type: none"> • <i>The understanding and confidence levels of various consumer groups will vary and that needs to be taken into account</i>
Q17	<ul style="list-style-type: none"> • <i>They are good examples and maybe some more examples can be added as needed.</i>
Feedback summary – if you wish to highlight anything in particular	
<p>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.</p>	
Thank you for your feedback – we appreciate your time and input.	

Submission

to the

Financial Markets Authority

on the

Consultation: *Proposed fair
outcomes for consumers and
markets*

1 March 2024



About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following eighteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - China Construction Bank
 - Citibank N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - KB Kookmin Bank Auckland Branch
 - Kiwibank Limited
 - MUFG Bank Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

████████████████████
██
████████████████████ [@nzba.org.nz](mailto:████████████████████@nzba.org.nz)

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██████████ [t@nzba.org.nz](mailto:██████████t@nzba.org.nz)



Introduction

4. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on its draft guide on fair outcomes for consumers and markets (**Guide**).
5. NZBA and its members support regulation that seeks to achieve fair outcomes for consumers and markets. We consider that being able to identify and understand the standards of fairness our customers expect, and monitor whether we are meeting those standards, are key elements to achieving fair outcomes for consumers.
6. Our detailed feedback is set out below. In summary, there are four key elements of the Guide that we think would benefit from further clarification or amendment.
 - 6.1. **Inconsistency with existing legislation:** It is not entirely clear what the legislative basis is for some of the FMA's proposed outcomes as set out in the Guide (**Outcomes**). In other cases, there appear to be inconsistencies with existing legislation.
 - 6.2. **Lack of clarity as to function / purpose:** In our view, the intended function of the Outcomes is unclear, and risks creating new rules that will function as legislation in all but name.
 - 6.3. **Risk of hindsight bias:** We submit that the FMA could make it clearer that the Outcomes won't be used as a tool to penalise financial institutions for outcomes that may seem unfair with the benefit of hindsight.
 - 6.4. **Use of examples in relation to Outcomes:** The use of examples risks undermining the purpose of the Guide by creating unintended prescription in relation to each Outcome.

Inconsistencies between the Outcomes and existing regulatory landscape

7. The FMA should be more explicit regarding which legislation specifically underpins the various Outcomes in the Guide. This will enable providers to look to the primary legislation for context and link the Outcomes to their plans for legislative compliance (particularly in relation to the Conduct of Financial Institutions regime (**COFI**)).
8. While the FMA point out that the Guide does not create 'rules', it will form an important part of the FMA's engagement / supervision model and we understand the FMA will take enforcement action if they need to. Where the Outcomes map directly onto a legislative power there is clear scope for the FMA to take enforcement action. However, where this is not the case (or where the Outcomes go beyond, or appear to be a reinterpretation of existing legislative requirements), the Guide risks increasing uncertainty. This may make it difficult to demonstrate how the Outcomes will be achieved in practice, or for the FMA to take action where Outcomes are not being achieved.



9. For example, for providers that are financial institutions (and therefore already subject to COFI), there are, in our view, inconsistencies and gaps between the Outcomes and those providers' existing legal obligations which may undermine COFI's 'principles-based approach' to conduct regulation. Concerns regarding inconsistency may likewise arise in relation to other regulatory frameworks, such as the financial advice regime.
 - 9.1. Outcomes 1, 2, 4 and 5 appear to be extrapolations of COFI's 'fair conduct principle', mapping partially, but not entirely, to some aspects of the fair conduct principle, but using different terminology to describe similar concepts.
 - 9.2. Outcome 1, for example, introduces the concept of "appropriateness" which is not used in COFI. We consider that the addition of 'appropriate' is not necessary and the concept is captured by "products and services that meet their needs", which is closer to the language used in COFI.
 - 9.3. The intent behind Outcome 2 appears to be very similar to the COFI requirement that financial institutions 'assist consumers to make informed decisions' but introduces new concepts. In our view, the COFI language is preferred, and more outcomes driven, as the COFI focus is on ensuring informed decision-making (as opposed to evaluating whether the information may or may not influence decision-making and the nature of the information).
 - 9.4. The COFI language also avoids a number of words used in Outcome 2 that are uncertain and would require further interpretation – such as 'receive', 'useful', 'information' and 'good'. The COFI language ('informed') also better aligns with other existing legislation, such as the Financial Services Legislation Amendment Act 2019.
 - 9.5. If the FMA's intention is to focus on the quality of the information itself, we would recommend adopting the COFI language that requires financial institutions to communicate with customers in a 'timely, concise and effective way'. Again, these COFI terms have a more clearly defined meaning when compared with the language in the Guide, the latter which we believe will create inconsistency, uncertainty and confusion.
10. This disconnect between the Outcomes and COFI (which is, presumably, one example of the 'supporting legislation') may increase uncertainty regarding what COFI requires and undermine the intention to create a principles-based and proportionate framework for conduct regulation, as opposed to assisting financial institutions to work towards delivering outcomes that comply with the fair conduct principle.
11. Principles-based regulation like COFI generally provides more flexibility for innovation compared with prescriptive regulation. However, COFI risks being undermined by further detailed guidance which duplicates requirements and introduces new expectations.



12. A further advantage of principles-focused legislation is its flexibility, which enables directors and management to develop a legislative compliance regime that is appropriate and proportionate for the size and nature of the organisation and its customers. Many financial institutions have already spent considerable time interpreting the meaning of the fair conduct principle in the context of their own organisations and in relation to their customers.
13. We are concerned that many financial institutions have already carried out significant work on their fair conduct programmes, given the COFI regime is coming into force early next year. There is a risk that fair conduct programmes will need to be reviewed and re-worked to ensure they align with the Outcomes as well as meeting COFI requirements, creating cost and inefficiencies. We would appreciate further clarity from the FMA as to whether the Guide, once finalised, will require further changes to fair conduct programmes for those institutions already working towards compliance with the fair conduct principle.

Lack of clarity as to function and purpose

14. We submit that the FMA's expectations regarding the importance of providers meeting the Outcomes are unclear, and risk creating a set of new quasi-regulations (i.e. legislation in all but name).
 - 14.1. On the one hand, the Guide is described as "embedding a regulatory approach". The Guide also states, "These outcomes will inform how we exercise our role as a kaitiaki of financial markets and approach our supervisory and enforcement work".
 - 14.2. On the other hand, the Guide states that "These are not rules. They do not change firms' obligations. They provide a focus for compliance and business efforts, supported by our existing legislative framework."
 - 14.3. The FMA has been clear that the Outcomes will provide the basis for monitoring and enforcement. This creates confusion as to whether the FMA will consider the Outcomes as obligations or as indicators that could lead to further conversations or investigations. It is difficult to reconcile how the Guide can drive enforcement if it does not create an obligation.
15. The FMA's expectations on individual providers for Outcome 7 are unclear to us. As the primary market regulator, we believe that the FMA is best placed to help create a market that sustains innovation and growth – an outcome likely shared among the other Council of Financial Regulators agencies – by influencing the creation of legislation that will enable providers to keep pace with future innovation and influencing the Government to retire or amend outdated legislation that inhibits innovation and growth.



- 15.1. We note and support the Government's stated intention to streamline regulatory requirements operating over financial institutions, and consider that reducing the volume and duplication of regulations will help to promote innovation and growth in financial markets.

Risk of hindsight bias

16. As most of the public commentary on the Guide points out, it creates a real risk of hindsight bias when assessing fair outcomes.
17. For example, a retrospective assessment of whether Outcome 3 (Consumers receive fair value for money) has been achieved in relation to a product may not accurately reflect whether that product was considered fair value for money at the time that it was provided.
18. We submit that the FMA should make it very clear in the "Setting the Context" section of the Guide that the Outcomes won't be used a tool to penalise financial institutions for outcomes that may appear unfair with the benefit of hindsight.

Use of examples in relation to Outcomes

19. We submit that generally, the use of examples in relation to each Outcome risks narrowing what financial institutions will view as compliant behaviour, which may undermine the purpose of the Outcomes being a move away from "compliance as a matter of form and prescription".
20. If retaining the use of examples, we believe the FMA should include examples that provide for situations where less is required due to the simplicity of a product, or no vulnerability is being experienced by a customer. The Guide has examples which focus on where more is required by firms. More balance is needed in terms of the range of examples used to empower providers to take a risk-based approach and do less or more, as appropriate.
21. Examples that reference issues that have already been addressed by legislation or regulatory guidance should in our view be removed from the Guide, as their inclusion is unnecessary and may cause confusion.



NEW ZEALAND'S EXCHANGE
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29 February 2024
Financial Markets Authority
Level 2, 1 Grey Street,
Wellington, New Zealand
by email only: consultation@fma.govt.nz

NZX Submission: Proposed fair outcomes for consumers and markets

1. NZX Limited (**NZX**) submits this response to the Financial Markets Authority (**FMA**) consultation on its proposed guidance on fair outcomes for consumers and markets (**Draft Guide**). We thank the FMA for the opportunity to provide this submission, and for meeting with us to provide context for the proposals.
2. NZX is a licensed market operator and New Zealand's exchange, with 206 unique listed issuers and a total market cap of \$221bn across the markets it operates¹. As a business, NZX is driven by our mission statement which establishes an organisational commitment to 'connecting people, businesses and capital every day'. As a licensed market operator under the Financial Markets Conduct Act 2013 (**FMC Act**), NZX has a longstanding relationship with the FMA as a regulated entity. We have responded to selected consultation questions which are relevant to NZX's position as a licensed market operator.
3. Nothing in this submission is confidential.

Response to Consultation

Q1. Is the way we have described our outcomes-focused approach to regulation clear, and do you understand how a focus on outcomes will be reflected in our work?

and

Q2. What are your views on the proposed fair outcomes for consumers and markets? To what extent do you think the proposed fair outcomes will bring benefits for consumers, providers and markets?

4. NZX broadly supports the promotion of an outcomes-focused approach to regulation, given that this shift in approach is consistent with global regulatory practice.
5. As a licensed market operator, NZX is currently required to comply with certain statutory obligations including those contained in section 314 of the FMC Act that require NZX, to the extent reasonably practicable, to do all things necessary to ensure that our markets

¹ NZX Shareholder Metrics – January 2024.

are fair, orderly and transparent. We consider that these obligations already impose outcomes-focused conduct obligations on NZX.

6. We consider that the Draft Guide would not change the manner in which NZX complies with its licensed market operator obligations, as we already take a conduct focused approach to our role as a market operator. One of NZX's core organisational values is Integrity, and our vision is that NZX is "a trusted New Zealand business, delivering sustainable wealth, value and opportunities for all" closely aligning to outcomes 6 and 7 contained in the Draft Guide. These considerations are fundamental for NZX when we consider our market operator obligations.
7. We understand that the FMA does not intend to create additional obligations through the Draft Guide, which includes statements that the 'fair outcomes are not rules', and that the outcomes 'do not create, replace, or even supplement existing legal obligations'. Therefore, we understand that the Draft Guide will not create any additional obligations for NZX as a licensed market operator, and that the FMA will continue to regulate to the standard of the existing legislative obligations rather than to the outcomes contained in the Draft Guide.
8. The Draft Guide states that providers will need to 'demonstrably embed the outcomes in the way they operate'. We are not sure what type of additional evidence the FMA would expect regulated entities to provide to meet this expectation.
9. We suggest that the FMA provide further clarity on how the outcomes will interact with regulated entities' existing regulatory obligations, and how financial providers can demonstrably show that the outcomes are embedded in their operations.

Q8. What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?

10. NZX agrees that market integrity and transparency are essential to ensuring investor confidence in New Zealand's financial markets, and as noted above in our response to questions 1 and 2, it is something which we currently promote throughout our organisation and which informs our approach to complying with our market operator obligations.
11. NZX Regulation Limited (**NZ RegCo**) is responsible for performing NZX's frontline market regulatory functions and plays a key role in promoting fair, orderly and transparent markets. It plays a key role in ensuring that our markets are 'trusted'. NZ RegCo's stated purpose is to "ensure that investors, issuers, and market participants have confidence in the integrity and regulatory oversight of NZX's markets". That purpose underpins the approach taken by NZ RegCo's board and management to the development of its strategic objectives and the development of its annual corporate plan initiatives, for delivery alongside its ongoing core activity. NZ RegCo's strategic objectives include: (i) compliant markets, (ii) market development and structure, and (iii) regulatory empowerment. Further details are set out in the appendix to this letter.

12. In addition, NZ RegCo's Enforcement Policy ('Approach to Enforcement') outlines NZX's enforcement goals, which include goals to:

- Promote and facilitate the operation of fair, orderly and transparent markets;
- Promote and uphold the reputation and integrity of NZX's markets;
- Provide tools that encourage a culture of compliance and contribute to the protection of investors;
- Educate participants in NZX's markets about the importance of complying with the Rules; and
- Effectively uphold the protections under NZX's market rules and deter future breaches. promoting and upholding the reputation and integrity of NZX's markets².

NZ RegCo seeks to achieve these enforcement goals by (i) assisting market participants to develop a compliance culture through proactive engagement and a focus on best practice, and (ii) investigating possible breaches of the Rules and, where necessary, taking enforcement action to respond to breaches by market participants in a manner that is fair, considered and consistent.

13. While NZX and NZ RegCo take a conduct and outcomes-based approach to enabling NZX to comply with its market operator obligations, we do have some concerns that Outcome 6 has the potential to create ambiguity by introducing new concepts which are not reflected in existing legislation. The term 'trusted' is a broad and subjective term which may be interpreted differently by different stakeholders. For example, prospective or less experienced retail investors may interpret this outcome to mean that because the markets can be 'trusted', their investments will be risk free, which we understand is not the FMA's intention. We re-iterate our earlier points that we expect that NZX will continue to be required to comply with its existing legislative obligations, and that the outcomes do not create new or additional regulatory standards.

Q9. What are your views on Outcome 7: Markets enable sustainable innovation and growth?

14. NZX's vision is to "deliver sustainable wealth, value and opportunities for all", which is strongly aligned with Outcome 7. We strive to identify and execute market development and innovation opportunities. We currently have a number of market initiatives that we are working to deliver in 2024, including NZX Dark and a refresh of the S&P/NZX 20 Index Futures contract, which have been designed to support and encourage innovation and growth for New Zealand's capital markets. NZX's long term growth strategy remains focused on delivering initiatives that will be beneficial to New Zealand markets in the years to come. NZX is also a member of the Sustainable Stock Exchanges initiative, a UN Partnership Programme designed to provide a global platform for exploring how exchanges can enhance performance on ESG issues and encourage sustainable investment.

² NZ RegCo Approach to Enforcement (May 2022), at 2.

15. We note that the Capital Markets 2029 Report (**CM29**) included a range of initiatives that are designed to support sustainable market development. The delivery of some of these initiatives will require the support of the FMA if we are to ensure that market settings enable sustainable innovation and growth. As an example, we note the CM29 recommendation One of these initiatives is the removal of the FMC Act requirement to provide prospective financial information (**PFI**) for first regulated offers. The preparation of PFI is an onerous and costly exercise and does not produce any meaningful information for investors. This is an area where New Zealand is out of step internationally, as PFI is not a requirement for IPOs in other major jurisdictions including Australia, the USA and United Kingdom³. We encourage the FMA to review outdated requirements like these which act as roadblocks to sustainable innovation and growth in New Zealand.
16. If New Zealand's financial markets are to be sustainable, there needs to be a focus on ensuring that New Zealand's regulatory settings remain competitive internationally. In particular it is important that due consideration is given to the macro-environment, where NZX issuers compete for capital with issuers listed in Australia. We note that ASX-listed issuers are no longer required to produce PFI for IPOs.
17. There is also a sense of a growing divide between the regulatory burden on listed entities and unlisted entities (for example: the new climate-related disclosures reporting framework). Caution is needed to ensure that regulatory compliance does not become overly burdensome on listed entities, particularly as approximately a third of NZX-listed issuers have a market capitalisation of less than \$50 million. Disproportionate settings between listed and unlisted entities will discourage issuers from remaining listed and from new entities coming to market, reducing innovation and growth more broadly.

Q11. If you are a provider of financial products or services, how will you demonstrate ownership and delivery of the fair outcomes? What will be the implications for your governance, leadership, management and operations, and how they work together?

18. We believe that NZX already demonstrates the ownership and delivery of fair outcomes. As mentioned in our response to Q9, our vision is to be 'a trusted New Zealand, business, delivering sustainable wealth, value and opportunities for all'. Included below is a diagram which visually outlines NZX's Purpose, Vision, Values and Strategy. This was developed by our people in 2022 with the goal of delivering better outcomes for New Zealand.

³ [Growing New Zealand's Capital markets 2029](#), at 36.



Q12. If you are a provider of financial products or services, how will outcomes-focused regulation help support your regulatory compliance? Are there areas you will find challenging or where you have concerns?

19. As a licensed market operator, NZX is required to comply with its legal obligations as a licensed market operator under the FMC Act. NZX is required to engage with the FMA on a regular basis, including through various scheduled meetings, quarterly regulatory reporting, and assisting the FMA with its annual NZX obligations review.
20. We believe that NZX is already focussed on fair outcomes in our engagement with the FMA, and in our general conduct as expressed in our response to Q11. Therefore, NZX does not expect there to be any change to its relationship with the FMA once the final guidance is released.

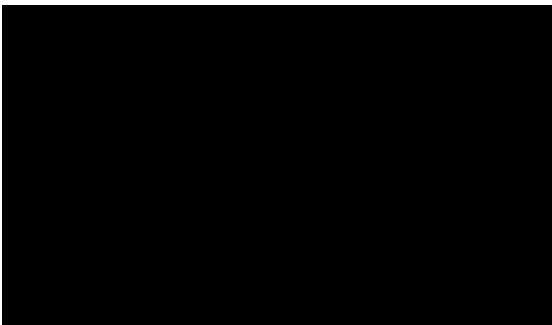
Q17. What are your views on the examples provided in the guidance? Are they helpful are there any other examples we should include?

21. As mentioned previously in our response to Q1 and Q2, we believe the FMA needs to provide further clarity on how the outcomes will affect the FMA's existing regulatory approach. We note that there are numerous references throughout the 'Relevant issues and examples' sections to guidance documents, which could be interpreted to mean that the FMA's enforcement approach will also be based on guidance rather than legislative obligations.

Next Steps

22. We would be happy to meet with you to discuss the matters set out above.

Yours sincerely,



NZX Limited

Appendix

MARKET DEVELOPMENT AND STRUCTURE

We promote regulatory settings that support market integrity and the ongoing development of NZX's markets and product suite

NZ RegCo contributes to the policy design and implementation process, in support of ongoing investor protections and the operation of fair, orderly and transparent markets.

NZ RegCo provides specialist technical support for:

- onboarding prospective issuers and participants
- the development of new markets and tradable financial products

We bring insights that draw from our frontline activities, and from our environmental scanning of domestic and international market, regulatory and legislative trends.

Outcomes sought

- Market settings that align with best practice, and reflect (i) NZX's position as a regional securities exchange and (ii) the evolving size of NZX's markets
- Regulatory policy strikes a balance between market development / innovation and investor protections

COMPLIANT MARKETS

We support a compliant NZX markets eco-system, through oversight and enforcement action

NZX's market rules set standards that underpin the operation of fair, orderly and transparent markets. NZ RegCo monitors and enforces the obligations of issuers and participants under NZX's market rules. NZ RegCo activity seeks to deter misconduct by reinforcing conduct expectations that apply under NZX market rules, guidance and market best practice.

We undertake surveillance of trading on NZX's markets to detect possible trading misconduct (insider trading and market manipulation), and we provide timely and effective support to the Financial Markets Authority with its investigation and enforcement of such misconduct.

Outcomes sought

- Issuers and Participants proactively meet their NZX market rule obligations, with behaviours aligned to best practice market expectations and guidance
- Risk-based oversight enables misconduct to be identified, and action to be taken in accordance with NZ RegCo's enforcement policy
- Proportionate enforcement action that advances regulatory outcomes – both punitive and educative
- Confident and informed participation in NZX's markets as a venue for raising and exchanging capital

Feedback form

Consultation: Fair Outcomes for Consumers and Markets

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Fair outcomes for consumers and markets: [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 March 2024.**

Date: 1 March 2024 Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: Consumer NZ

Organisation type: Consumer Advocacy

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]@consumer.org.nz

Question number	Response
1	<p>Yes, the way you have described your outcomes-focused approach to regulation is mostly clear. However, the use of the term "regulation" may cause confusion as it could be interpreted as meaning law, rather than 'oversight' or 'regulatory approach'. For example, the front page of the document states it is "A guide to outcomes-focused regulation". We acknowledge the guide states the seven outcomes are not rules and that they do not create, replace or supplement legal obligations. However, we recommend the guide is reviewed to ensure the use of the word 'regulation' doesn't create a false impression that new laws are coming into force.</p>
2	<p>Consumer NZ strongly supports the proposed fair outcomes for consumers and markets. We have repeatedly raised concerns about providers selling products that are inappropriate, don't meet the consumer's needs, are not fair value for money or not in their interests. We are also concerned consumers are not always provided with useful information and don't always receive ongoing care. We agree that adopting an outcomes-focused regulatory approach could benefit consumers. For example, they may assist consumers to engage with more confidence in the market and lead to better informed and fairer treatment of consumers. We also agree the outcomes-focused approach is likely to lead to lead to benefits for the markets.</p>
3	<p>We support outcome 1 which states consumers should have access to appropriate products and services that meet their needs. At Consumer NZ, we receive regular complaints from consumers about products they have been sold that don't always meet the needs of the consumer. For example, junk insurance policies, such as mechanical breakdown insurance, funeral insurance and credit card repayment insurance, continue to be sold to consumers. In our view, these policies offer little, or no, real benefits to consumers. However, if providers are required to ensure consumers have useful information to aid good decisions, access to products and services that meet their needs, and are good value for money, we are hopeful this will reduce the number of junk insurance policies on the market.</p>
4	<p>We support outcome 2 which states that consumers should receive useful information that aids good decisions. In our view, this doesn't always happen. For example, currently, many insurers do not advise consumers about premium increases when their policies are up for renewal. In the UK and Australia, insurers are required to display the past year's premium in renewal notices. However, the same requirement doesn't exist here meaning consumers may not appreciate how much their premiums have increased. We think this needs to change and 91% of respondents in our latest insurance survey also said they would find this information useful.</p> <p>Also, consumers often purchase products, such add-on insurance policies when purchasing a car, without realising they have done so. This demonstrates that consumers are not being provided with adequate information to make informed decisions.</p> <p>We question whether this outcome may be better worded as "Consumers receive the information they require to make informed decisions." The information should also be in plain language and easy to understand.</p>

5	<p>We support outcome 3 which states consumers should receive fair value for money. We know that consumers don't always receive fair value for money when purchasing products and services in the financial services sector. For example, in 2020, we wrote an article about an 85-year-old woman who had paid \$18,900 for funeral insurance worth just \$10,000 but was then refused a refund by Fidelity Life. This is not a fair outcome for the consumer, so we support outcome 3 requiring consumers receive fair value for money.</p>
6	<p>We support outcome 4 which states consumers can trust providers to act in their interests. We remain concerned that incentives lead to advisers acting in their own interests rather than customer's interests. In our latest insurance survey, only 16% of respondents agreed that insurance companies have their customer's best interests at heart.</p> <p>We are also concerned that many bank customers currently expect a higher standard of care from bank fraud detection systems than is provided by the banking sector. Banks are prioritising frictionless payments over investing in fit for purpose anti-fraud technology (like confirmation of payee). By failing to deploy this (and other) technology, banks are failing to act in the best interests of their customers.</p>
7	<p>We support outcome 5 which states consumers receive quality ongoing care. We are aware that this doesn't always happen. For example, consumers are often signed up to insurance policies but may receive little or no communication from their insurance company. When something goes wrong and the customer needs to make a claim, insurance companies are notorious for their 'delay, deny and defend' tactics. This often results in poor consumer outcomes.</p> <p>We have commented previously on the fact that the existence of four separate dispute schemes is not helpful for consumers in resolving disputes. Australia and the UK now both have only one dispute scheme. We consider a single dispute scheme could provide a more efficient and transparent process. We have raised this issue with the Minister of Commerce and Consumer Affairs.</p>
8	<p>We support outcome 6 which states markets are trusted based on their integrity and transparency. We agree issues such as fraud and scams, money laundering and the financing of terrorism need to be tackled. However, we are concerned banks are not doing enough to prevent scams and have publicly called for them to do more in this space. We believe the FMA is not currently doing enough to require banks to implement fit for purpose security systems to prevent their customers becoming victims. This is creating widespread harm in the community. Banks cannot be relied on to self-regulate. We welcome anything that encourages banks to take prompt action in this space.</p>
16	<p>Yes, we understand the fair outcomes but please see our response to question 1, above. The fair outcomes are very relevant to consumers' interactions with the financial sector.</p>
17	<p>We think the examples are useful and support these being included. However, we think more insurance examples should be included. There may also be more examples about banks/banking practice that could be included.</p>

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.

Financial Markets Authority
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29 February 2024

By email: consultation@fma.govt.nz

ASB response- Consultation on Fair Outcomes for consumers and markets

ASB welcomes the opportunity to provide feedback on the Financial Markets Authority (FMA) consultation on Fair outcomes for consumers and markets (Consultation).

ASB's purpose is to accelerate the progress of all New Zealanders. Good customer outcomes are at the heart of everything we do.

ASB's feedback on the proposed outcomes is outlined in the Appendix to this letter. Our views are provided on each of the outcomes, rather than responding to each of the consultation questions. The key points of our submission are:

- That the fair outcomes guidance is delayed until the outcome of a review of the Financial Markets (Conduct of Financial Institutions) Amendment Act 2021 (CoFI) is better understood.
- Multiple layers of legislation, regulation and guidance creates uncertainty. We encourage the FMA to maximise use of primary legislation as a vehicle to effect change and clearly outline the FMA's expectations of the sector in regard to fair outcomes for customers.
- There is currently extensive work underway to develop a Fair Conduct Programme (FCP) as is required under CoFI. It is not clear from the draft guidance whether meeting these outcomes should be included in the FCP, especially for those outcomes that aren't applicable to CoFI. If the outcomes are not included as part of the FCP, this would result in two separate approaches to training, monitoring and reporting to the FMA which would result in duplication and overlap.
- The draft guidance extensively references measuring outcomes. Measuring outcomes is complex and nuanced and it is not currently a legislative requirement. This document implies it will become an expectation for all providers. However, it is silent as to how this should be undertaken and what the FMA expects of providers. Further clarity here is required.

If you have any questions or wish to discuss any aspect of our submission further, please feel free to contact me at [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

APPENDIX

1. General feedback

We note that, since the Consultation opened, the new Minister for Commerce and Consumer Affairs has announced his plan to review and potentially combine CoFI with the Credit Contracts and Consumer Finance Act 2003 (CCCFA).

During his speech, Minister Bayly highlighted four areas which he considers are key to financial institution's Fair Conduct Programmes moving forward:

- How they engage appropriately with their clients and customers
- How they develop new policies and products to be fit for purpose and meet regulatory requirements
- Establishing transparent fee structures and charging arrangements particularly with intermediaries.
- Development of adequate complaints processes.

These focus areas appear to be slightly at odds with the Fair Conduct Principle in CoFI as outlined by Samantha Barrass in her speech, which followed shortly after Minister Bayly's at the same event:

- Paying due regard to a consumers interests
- Acting ethically, transparently and in good faith
- Assisting customers to make informed decisions
- Ensuring relevant services and associated products meet the requirements and objectives of likely consumers
- Not subjecting consumers to unfair pressure or tactics or undue influence.

While the different focuses may appear insignificant, we consider this may have an impact on how CoFI and the CCCFA are redesigned and redrafted and subsequently may have implications on how the reformed or new legislation may interact or conflict with the outcomes.

ASB is therefore of the view that given these uncertainties, this Consultation and the implementation of the fair outcomes guidance should be put on hold, and the outcomes factored into the review and reform of the primary legislation, to ensure the expectations of the conduct regulator are sufficiently clear, minimising ambiguity or conflicts and without need for reference across multiple layers of legislation, regulation and guidance.

2. What are your views on the proposed fair outcomes for consumers and markets? To what extent do you think the proposed fair outcomes will bring benefits for consumers, providers and markets?

ASB supports the fair outcomes guidance conceptually as the guidance makes conduct expectations on financial institutions easier to understand for consumers. However, we consider that as the guidance sits in isolation, with no link to existing legislation, this may cause confusion for consumers who may believe these outcomes represent specific legal obligations which may not necessarily be the case if they cannot easily be traced back to legislation. It also creates an additional administrative burden for banks to demonstrate compliance with primary legislation and then required to be accountable to the conduct regulator in a different way. We therefore recommend the outcomes guidance is incorporated into or otherwise linked to the primary legislation.

3. Outcome 1: Consumers have access to appropriate products and services that meet their needs.

The definition of “access” in the guidance outlines a broad range of criteria for financial institutions to take into account. Ascertaining a customer’s “*preferences, goals... values*”, is open to interpretation and could be read prescriptively. While these types of conversations are common practice in advice conversations, financial institutions are facing changing consumer behaviours and preferences for online digital solutions. This allows consumers to access financial products and services when it suits them, with some customers preferring this approach to meeting with an adviser or going to a branch. Specific reference to “values” would appear to go further than traditional advice processes.

Noting that the focus is on outcomes, we consider the level of prescriptiveness contained in the definition of “access” could have unintended consequences of hampering future innovative digital and other access solutions if financial institutions consider these factors need to be specifically baked into digital offerings to consumers. Further clarification on expectations on financial institutions to gather information on these specific factors would be appreciated. Alternatively providing examples of how financial institutions can be expected to ascertain customers preferences, goals and values when accessing financial products via digital “no advice” channels would be welcomed.

4. Outcome 2: Consumers receive useful information that aids good decisions

ASB supports the intent of this outcome and strives to provide easily digestible information for all our products and services. However, we are concerned with the use of the term “good decisions” in the outcome. Receiving useful and timely information or communication does not always ensure that every decision made by the customer is a “good” one, particularly in light of customer “preferences” and “goals” which will evolve over time. We consider the term “informed decisions” is more appropriate, particularly in the context of investment-related decisions where, even with the best of intentions or well-informed decision-making, a good result is not guaranteed. Such risks are factored into risk/reward conversations with the customer.

5. Outcome 3: Consumers receive fair value for money

ASB is supportive of the principle of fairness in terms of equity for customers, however the inclusion of language around "pricing and equity in exchange of value" may lead to unintended outcomes and may be difficult to quantify in the absence of underlying legislation. If it is the FMA's intent to set standards or expectations on pricing or value more broadly, this should be in the form of primary legislation, rather than guidance.

We also note that the guidance stipulates that 'value needs to be considered from many dimensions' and 'while price can be a consideration, it is not the only factor'. Examples of what ‘dimensions’ and ‘factors’ that the FMA considers relevant will aid in furthering the sectors understanding as to what to take into account.

We note the phrase “different approaches to different groups can be justified but they must be fair”. What is considered “fair” in this context needs further explanation. Credit products are provided to consumers on the basis of affordability provisions of the CCCFA and, as is widely known, are heavily

prescriptive in nature and have led to poorer outcomes for some of our most vulnerable customers, steering them towards predatory lenders for whom the CCCFA was intended to curtail. This outcome should be carefully considered and factored into the redesign and redraft of the CCCFA. For this reason alone we consider the outcomes guidance should be deferred until the outcomes of the CoFI and CCCFA reviews are complete.

6. Outcome 4: Customers can trust providers to act in their interests

ASB is supportive of the intent of this outcome and considers its synergies with Financial Advice Provider (**FAP**) and financial adviser obligations to prioritise customers' best interests is appropriate. It will help to ensure all parties work together to ensure fair outcomes for their customers. But ASB's view is that the current drafting and merging of expectations on financial institutions to safeguard consumers' assets and data, with being "operationally resilient (to keep their promises and avoid disruptions to consumers)" feels disjointed. Operational resiliency is, as the name suggests, operational in focus and does not seem a natural fit with broader expectations to act in a customer's best interests.

ASB considers that this outcome should focus on the expectation to act in consumer's interest while also noting the need to 'avoid or effectively manage' actual or potential conflicts of interest. Alternatively, this outcome could be combined with outcome 5, and amended to state "customers can trust providers to act in their interests and receive quality ongoing care".

We consider that the expectations on safeguarding consumer data and operational resilience would be better suited as a licencing condition or provision. Minister Bayly has indicated his intention to consolidate FMA licences as part of his review of CoFI. We therefore think the licensing provisions and expectations for appropriate business continuity planning under the existing FAP, DIMs and MIS licence arrangements could be consolidated and combined to establish obligations to protect customer data, ensure operational resilience and minimise service disruption. We further consider these conditions need to factor in growing risks of cyber fraud and scams.

7. Outcome 5: Customers receive quality ongoing care

While ASB has robust processes in place to support customers and identify those who may be in vulnerable circumstances, we note that vulnerable circumstances are not static and may change over time. Further, many of our customers are not "active" i.e. ASB may not be their main bank and so contact with these customers may be minimal or limited to online banking or digital interactions. We consider the drafting of this outcome should be considered carefully in that context. Ongoing care may in a large part be dependent on the customer's willingness to engage with their financial services providers and it may not be possible to accurately gauge vulnerability over time. As is typical for large financial institutions with large customer bases we analyse customer need at a customer group level. We would appreciate further guidance and examples on how aggregated customer data and its analysis can be relied upon to determine appropriate levels of ongoing care for those customers with whom there is limited engagement.

ASB notes the use of the term "switching" in this outcome. All major banks offer a free five-day switching service which includes moving customers' recurring payments such as automatic payments and direct debits. It is as simple as a customer advising their new bank they want to switch banks. The new bank then facilitates all of the switching for the customer. Not only is switching easy mechanically, but many customers already maintain accounts with multiple banks, given there are generally no monthly account fees.

In terms of potential barriers to switching, it is worth noting the extent to which AML verification impacts ease of switching for consumers. The RBNZ had indicated the requirement that customers be address verified as a component of AML compliance was likely to change for most or all customers by the middle of 2023. However, this has since been delayed as it requires a law change and no new timeframe has been communicated. ASB would like to see the removal of address verification fast tracked through the legislative process to shift the dial for New Zealanders to access banking services and facilitate switching.

8. Outcome 6: Markets are trusted based on their integrity and transparency

The outcomes framework references tackling “fraud and scams, money laundering and financing of terrorism”. We note there is currently no legislation in place governing fraud and scams, however we don’t believe this guidance is the appropriate avenue to allocate these responsibilities to the FMA. In our view the Police are a more natural home for fraud and scams given their operational skills, the formal powers they have to enact those skills and the relationships with Police in overseas jurisdictions. ASB would like to see the establishment of a National Anti-Scam Centre, situated within Police, which brings together the capabilities outlined above and which enables swift information sharing between banks, telcos, social media companies, government agencies and the police.

Further clarity is also needed to understand what the FMA would consider “tackling fraud and scams” looks like as well as enforcement options available to the FMA, noting, the Reserve Bank already regulates money laundering and financing of terrorism for banks and insurers. Under this proposed outcome, the FMA would also begin operating in this space which would lead to regulatory overlap and duplication.

9. Outcome 7: Markets enable sustainable innovation and growth

ASB is supportive of this outcome and has no specific feedback.

Feedback form

Consultation: Fair Outcomes for Consumers and Markets

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Fair outcomes for consumers and markets: [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 March 2024.**

Date: 29 February 2024 Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: CFA Society New Zealand

Organisation type: Incorporated Society

Contact name (if different):

Contact email and phone: [REDACTED]@russellinvestments.com

Question number	Response
Background	<p>The CFA Institute is a global, not-for-profit professional organisation that provides investment professionals with finance education. The institute aims to promote standards in ethics, education, and professional excellence in the global investment services industry.</p> <p>CFA Society New Zealand supports both CFA Institute and New Zealand finance professionals and seeks to promote the highest standards of ethics, education and professional excellence.</p>
Questions 1, 2, 4, 6 and 8	<p>We are encouraged by the FMA stating its objective to promote and facilitate the development of fair, efficient and transparent financial markets, however, we believe the outcomes focus alone, while well-intended, is unlikely to benefit the integrity, professionalism and transparency of New Zealand capital markets.</p> <p>A fair outcome focus without any underpinning investment performance standards will continue to allow a performance cherry-picking approach currently adopted by fund managers. We believe defining acceptable performance presentations as 'we'll know it when we see it' isn't helpful in giving guidance to firms on what is expected, how they can get there, and steps to ensure compliance with the regulatory framework.</p> <p>The lack of transparency and comparability across fund managers due to an absence of standards and disclosures will not allow investors to make informed investment decisions. Continued allowance to '<i>step back and let firms find the most efficient way to achieve these outcomes</i>' is a key failure of the New Zealand market. It should not be incumbent on investors to know that a manager has chosen an unsuitable (flattering) benchmark or the complexities of performance calculations and across which periods an investor should form a reasonable view. How is an investor to know whether a fund manager has taken on board the FMA's optional guidelines, or sought to ignore them?</p> <p>Only by having both a fair outcomes focus and clear and transparent detail on requirements for investment performance calculation and presentation will investors be equipped with sufficient information to make full and informed investment decisions. This transparency and comparability across managers and products will promote market integrity and result in fairer outcomes for investors.</p>

Questions 13 and 14

As above, we believe the desired outcomes can be met by also offering clear minimum standards and guidelines for investment performance calculation and presentation in conjunction with key disclosures.

As a global not-for-profit association of investment management professionals, CFA Institute offers the GIPS standards to help build market integrity, which are an investment industry standard for calculating and presenting historical investment performance. While we are most familiar with the GIPS standards, and over 1,700 organisations from more than 40 markets claim compliance with the GIPS standards, we implore the FMA to adopt any set of standards for calculating and presenting historical investment performance so that fair outcomes can be achieved for investors. The alternative will likely continue to allow naïve investors to be taken advantage of with impunity and result in suboptimal asset allocation and questionable fees for both retail and wholesale investors.

Similarly with respect to greenwashing, CFA Institute has introduced ESG Disclosure Standards for Investment Products which are designed to facilitate the communication of an investment product’s consideration of ESG issues in its objectives, investment process, or stewardship activities. These were designed to accommodate the full range of investment vehicles, asset classes, and ESG approaches offered in markets around the world. They were also introduced to address current gaps in regulation and helps harmonise disclosure practices in different markets.

When ESG approaches are fairly represented and fully disclosed, investors, consultants, advisors, and distributors can better understand, evaluate, and compare investment products. The scope of the Global ESG Disclosure Standards for Investment Products focuses on disclosure of the ESG approaches used in an investment product.

Many global investment markets have taken the above approach as a means to create transparent markets which allow comparability across investment managers and products and ensures investment performance is stated fairly. By communicating a minimum level of investment presentations and ESG disclosure, both the market and investors benefit – fund managers understand exactly what is required of them and what they must do to ensure compliance, and investors are given full and fair information to make their decisions. We believe this is the best approach to increase market integrity and generate fair outcomes for investors.

Feedback summary – *The fair outcomes focus should be operated in conjunction with clear investment performance and disclosure standards.*

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.

29 February 2024

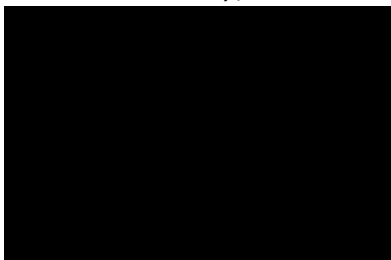
Financial Markets Authority
Level 2, 1 Grey Street
Wellington

By email: consultation@fma.govt.nz

Feedback: Proposed Fair outcomes for consumers and markets – Insurance Brokers Association of New Zealand Inc submissions

1. Please find attached to this email (in both PDF and MS Word format) the submissions of the Insurance Brokers Association of New Zealand Inc (*IBANZ*) on the proposed *Fair outcomes for consumers and markets, A guide to outcomes-focused regulation* (the *draft Guide*).
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 (\$4.1 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 2022 were more than \$8.2 billion.¹
4. IBANZ has provided its responses below to consultation questions contained in the FMA's Feedback form *Consultation: Fair Outcomes for Consumers and Markets*.
5. Please let us know if you would like us to expand on any of IBANZ's submissions.

Yours sincerely,



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

Feedback form

Consultation: Fair Outcomes for Consumers and Markets

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Fair outcomes for consumers and markets: [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 March 2024.**

Date: **29 February 2024**

Number of pages: 16

Name of submitter: [REDACTED]

Company or entity: **Insurance Brokers Association of New Zealand ('IBANZ')**

Organisation type: **Incorporated Society**

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
<p>1. Is the way we have described our outcomes-focused approach to regulation clear, and do you understand how a focus on outcomes will be reflected in our work? Please explain.</p>	<p>The draft Guide's description of an outcomes focused approach to regulation could be significantly improved for the reasons specified below.</p> <p>Further, as discussed below, IBANZ is concerned that the draft Guide will effectively create a new set of regulatory requirements, despite it stating otherwise.</p> <p>With the financial advice regime coming fully into effect a year ago, March 2023, IBANZ Members have, as FAPs, invested significant time and money to demonstrate, and ensure, they comply with their new obligations under the Financial Markets Conduct Act (FMC Act). Redoing this process to cover the FMA's additional layer of expectations around "fair outcomes" would add a further burden to financial advisers who have only recently had to adapt to the FSLAA requirements in the form in which they are now written in the FMC Act itself.</p> <p>The FMA does not have the mandate to change the law, so, to the extent the draft Guide seeks to impose further legal expectations, it would create confusion and uncertainty as to the legal landscape, which would be contrary to the FMA's purpose of promoting fair, efficient and transparent financial markets.</p> <p>Description of outcomes focused approach to regulation is unclear</p> <p>The draft Guide recasts the obligations under the FMC Act and its regulations (including CoFI) using terms that do not align with the specific wording of the corresponding FMC Act obligations. This will increase confusion about what the FMC Act and its regulations require.</p> <p>Specific instances of this are highlighted in the responses to the questions below. However, one of the notable instances is the draft Guide's inconsistent use of 'good outcomes', 'good conduct', 'good practices' and 'good governance' rather than 'fair outcomes' ('good' and 'fair' have different meanings in some subtle but important respects, including in particular 'fairness' has connotations of fair to each party, whereas 'good' focuses solely on the recipient e.g. in the context of an excluded claim where there is no cover – it is not a good outcome for the claimant but a fair one given the policy terms agreed to at the outset – the draft Guide should be clear that the FMA is not imposing a 'good outcome' objective in these circumstances and that fairness assessments have regard to all the circumstances).</p>

Another is the focus on ‘outcomes’ rather than ‘conduct’. The draft Guidance should state that only if ‘unfair outcomes’ arise from breaches of law, including of the CoFI ‘fair conduct’ obligations (when they commence), then the FMA may take the actions described in the draft Guidance.

The term ‘fair conduct’, which is the basis of requirements under FSLAA and CoFI is totally absent in the draft Guide.

‘Fair’ and ‘fairness’ meaning is unclear

The Code of Professional Conduct for Financial Advice Services (*the Code*) specifies what ‘treating clients fairly’ means in the financial advice context. CoFI contains a non-exhaustive definition of what the requirement to ‘treat consumers fairly’ includes with respect to the provision of relevant services and associated products by financial institutions.

The draft Guide extends the ‘fair’ concept to include matters that do not come within the scope of these existing fairness definitions and the relevant services and associated products to which they apply, specifically product access 1, fair value 3, ongoing care 5 and provider trust 4.

In the absence of an aligned definition in the draft Guide, what ‘fair’ means in these contexts is unclear and contestable. Different persons will have different views on the matter; customers can be expected to have very different views on what is ‘fair’ than providers.

Parliament, not the FMA, is the appropriate body to provide a suitable definition, and so its definition should be adopted.

The draft Guide should define specifically what ‘fair’ means in these contexts and in a balanced manner through appropriate weighing of the competing rights and interests of consumers, intermediaries and providers.

Positively, the FMA has acknowledged on a number of occasions elsewhere, that ‘fair’ is proportionate, balanced and requires consideration of the reasonable expectations and circumstances of all parties so this should be acknowledged more in the draft Guide.

The draft Guide also seeks to unfairly require that all financial product and service providers add tailored enhanced services, at no additional cost, for customers whose exceptional personal situations would benefit from accommodation by the relevant financial product and service providers. Cross subsidies of this nature would not ordinarily be expected or mandatory, but may be offered voluntarily by some financial product and service providers depending on the business case and target markets. Extending this principle from the second example in outcome 1 would create inefficiencies and distortions in the market and adversely affect the cost of products and services. In this case, the FMA is suggesting adding additional lines of communication to “hard-to-reach” consumers, when the most cost-effective means of communication (the internet) is not available. At what cost point for niche markets and even individual customers would the FMA intend the principle reasonably extracted from this example should cease to be applicable? Mass market activities can be undertaken at lower cost for the consumer, but the example seems to suggest that mass market activities cannot be undertaken without also catering for the entire market and its idiosyncrasies. Moving away from paper-based systems is resulting in greater efficiency and cost savings for consumers, apart from the environmental benefits, but

the FMA seems to be expecting that these efficiencies and their resulting cost savings and other benefits be undermined.

Market level outcomes is unclear

The draft Guide contains a mix of customer-level outcomes (Outcomes 1 to 5) and market-level outcomes (Outcomes 6 and 7).

It is unclear how (and why) providers are expected to achieve these market outcomes, over and above complying with their FMC Act obligations, including meeting the standard licence conditions.

Many providers (especially those who are not product manufacturers) have at best, limited influence over the products available in the markets, so should not be expected to be able to achieve these market-level outcomes.

As stated in our responses to Q. 8 and Q. 9, the achievement of those market outcomes is more properly the FMA’s function (rather than that of financial advisers) through it facilitating regulatory reform, providing needed guidance and granting exemptions and no action letters in appropriate cases.

It is suggested that the draft Guide be more specific as to whom the expectations apply by identifying when an expectation applies to a particular type of market participant. For example, claims related expectations should specifically apply to insurers and not financial advisers who are insurance brokers.

Draft Guide should consistently refer to ‘consumers’

The draft Guide uses the terms ‘consumers’, ‘customers’ and ‘retail investors’, which creates uncertainty about who is intended to be covered. It should instead refer to ‘consumers’ (as defined in the CoFI amendments to the FMCA in anticipation of that legislation coming into force) and be specific that this is using the definition in the FMC Act, who in the insurance context, means persons who acquire products or services ordinarily or predominantly for personal, domestic or household use or consumption (and not for trade, business or investment purposes).

Draft Guide effectively creates a new set of regulatory requirements

The draft Guide states (at p.5) that the fair outcomes are “not rules” and do not “create, replace or even supplement existing legal obligations”.

However, in the draft Guide, the FMA also states that “[p]roviders will need to take ownership of the fair outcomes and demonstrably embed them in the way they operate” (at p.5), and that the “outcomes will inform how we exercise our role as a kaitiaki of financial markets and approach our supervisory and enforcement work” (at p.3). Elsewhere, the draft Guide states “...it will not be enough to just continue with the status quo”, and “Over time, our regulatory conversations with firms will be built around the efforts they are making to achieve these outcomes” (at p. 13), and “the results we see in the market will alert us to where we need to have robust conversations about appropriate practices” and that it “will be outspoken where we see practices that are unfair and take enforcement action where appropriate” (at p. 4).

The above passages indicate that the draft Guide will effectively create a new set of obligations. The risk of ‘robust conversations’ occurring, and enforcement action being taken, where the ‘fair outcomes’ are not being achieved (in the FMA’s view) will likely compel providers to seek to comply with the finalised Guide as an additional layer of legal obligations. This means that the draft Guide will effectively create new regulatory

	<p>requirements despite saying otherwise. As discussed in the responses below, there are many instances where the draft Guide imposes expectations that exceed the FMC Act's requirements.</p> <p>The imposition of new regulatory requirements should be done only via legislation or regulations and, accordingly, subject to Parliament's scrutiny and legitimacy, and after sufficient stakeholder consultation has been conducted following a clearly identified need for the change.</p> <p>A failure to follow the draft Guide's specifications should not give rise to the threat of 'robust conversations' or enforcement action. These should occur only when a provider has not complied with the relevant legislation or regulations as interpreted in accordance with established statutory interpretation principles and not overlaid by an additional 'fair outcomes' concept.</p> <p>Providers should not be required to follow the draft Guide's specifications if they consider doing so is unnecessary in order for them to comply with the specific obligations imposed by legislation or regulations, or if they consider that an alternative approach is consistent with those obligations.</p> <p>As discussed in our responses to the questions below, the draft Guide contemplates providers doing things that are elevated above and/or beyond the legislation or regulations. In these cases, it should be up to the providers whether they decide to do so and there should be no risk of detrimental regulatory consequences should they choose not to.</p> <p>The draft Guide should be unequivocally clear that providers are not obligated to apply it where they reasonably consider that they can comply with their obligations under the legislation or regulations in another way or that it is not necessary for them to do so to meet their obligations. Accordingly, references to the FMA engaging in 'robust conversations' and taking enforcement action should be removed from the draft Guide.</p>
<p>2. What are your views on the proposed fair outcomes for consumers and markets? To what extent do you think the proposed fair outcomes will bring benefits for consumers, providers and markets?</p>	<p>The FMA should not proceed with the draft Guide. Even if the draft Guide is significantly improved, guidance of this nature is premature at this stage.</p> <p>Financial product and service providers have engaged in extensive changes as a result of the Conduct and Culture review and the coming into force of the financial advice regime. They are presently preoccupied with making further changes in preparation for the CoFI regime coming into force.</p> <p>The draft Guide will not have any material benefits for consumers. The draft Guide imposes expectations beyond the FMC Act obligations without the force of law, which introduces significant uncertainty as a result of recasting those obligations and extending the 'fair' concept to contexts not covered by legislation (as noted in the response to Q.1).</p> <p>If anything, there is the risk that the draft Guide will be detrimental to consumers through increasing providers' compliance burden, thereby increasing costs for consumers and potentially impeding innovation and the offering of new products and services; increasing the barriers for those who stand to benefit the most from the availability of independent financial advice and product innovation.</p> <p>The FMA should wait until providers have had an adequate opportunity to embed the CoFI requirements and it has reviewed how providers are complying with CoFI, the financial advice regime and other relevant FMC Act provisions.</p>

	<p>At that stage, the FMA would be in a better position to assess whether the FMC Act and its regulations should be amended, and what specific guidance would be helpful and assist providers to comply with their FMC Act obligations.</p>
<p>3. What are your views on Outcome 1: Consumers have access to appropriate products and services that meet their needs?</p>	<p>Access</p> <p>The “availability of financial products and services that meet diverse consumer needs” is a laudable outcome, but the FMC Act does not obligate providers to achieve this outcome.</p> <p>The FMA should not therefore be expecting providers to meet this outcome. Specialisation should be permissible. Financial product and service providers should not need to provide full range of services or cover the entire market.</p> <p>What products or services are made available is solely a commercial decision for each provider. Providers should be entirely free to decide that they will offer products or services to a limited class of consumers without the prospect of having to justify this decision to the FMA.</p> <p>The ‘access’ concept refers to the availability of financial products and services that meet diverse consumer needs, “including their personal circumstances, preferences, goals, risk tolerance, and values”. What exactly the FMA contemplates providers should be doing to achieve this outcome is unclear.</p> <p>It would be unrealistic to expect providers to identify and consider the “personal circumstances, preferences, goals, risk tolerance, and values” of New Zealanders as a whole (if this is what is intended). The draft Guide should be clear that this is not expected.</p> <p>Providers might be more realistically expected to identify and consider these matters with respect to the particular market or customer types they cater for, but even here there are practical difficulties.</p> <p>Market research and focus groups may provide only generalised information and depend on participants’ willingness to disclose potentially sensitive personal information. There is no guarantee that market research and focus groups will obtain sufficiently useful information that can be used to improve access.</p> <p>Conducting market research and focus groups should be a commercial decision for providers to make and can be expensive and time consuming. The FMA should not be imposing expectations in this regard.</p> <p>The reference to ‘values’ should be deleted. ‘Values’ are difficult to identify and assess, because they are inherently subjective and differ from one consumer to another. This is a further example of extending firms’ obligations well beyond those that apply to them in the legislation.</p> <p>Appropriateness</p> <p>The ‘appropriateness’ concept is an example of the recasting of FMC Act obligations noted in the response to Q.1.</p> <p>Code Standard 3 specifies that a person who gives financial advice must ensure that the financial advice is ‘suitable’ for the client, having regard to the nature and scope of the financial advice, with the Commentary specifying what Standard 3 requires in practice.</p> <p>CoFI provides that the requirement on financial institutions to treat consumers fairly includes “ensuring that the relevant services and associated products that the financial</p>

	<p>institution provides are likely to meet the requirements and objectives of likely consumers”.</p> <p>The first two sentences in the draft Guide describing the ‘appropriateness’ concept lack the clarity and nuance of the Code and CoFI requirements.</p> <p>Further, the first two sentences can be read as suggesting that financial advisers’ suitability obligations extend to advising on the insurance claims process (which would amount to an extension beyond the current legislative requirements for financial advisers. Financial advice on claims is not within the scope of the financial advice definition in the FMC Act).</p> <p>If the draft Guide is to be progressed further, ‘suitable’ (or “likely to meet likely consumers’ requirements and objectives”) should be substituted for ‘appropriateness’ to more closely align this outcome to the financial advice and CoFI requirements.</p> <p>The final sentence of the draft Guide’s discussion of the ‘appropriateness’ concept causes concern.</p> <p>While the FMC Act’s requirements (particularly the fair dealing rules in Part 2), along with the Consumer Guarantees Act 1993 and Fair Trading Act 1986, have consumer protection purposes, the specific wording of the consumer protection obligations they impose reflect Parliament’s balancing of the competing rights and interests of consumers and providers.</p> <p>The extent to which providers are obligated to protect consumers should be determined solely by the specific wording of the relevant legislation interpreted in accordance with established statutory interpretation principles (without any ‘fair outcome’ overlay on the FMA’s part).</p> <p>The reference to the ‘consumer protection element’ suggests that the FMA may seek to extend providers’ obligations beyond those contained in legislation. The inclusion, by way of example, of providers having “checks and balances to prevent consumers from accessing products and services that are not suitable for them” provides a basis for this concern.</p> <p>While the FMC Act prohibits providers of regulated financial advice from providing unsuitable financial advice when recommending that clients acquire financial advice products , it does not obligate providers to prevent consumers from accessing products or services that are not suitable for them if the consumers insist on doing so. There are clear opt out options. There may not be a product or service which is entirely “suitable” for a customer, but the customer would be better off with what is available than not receiving the product or service. This is particularly true in the insurance context. In that case, the consumer should be able to accept an “unsuitable” product or service rather than being rejected. It would be desirable to allow consumers the ability to opt out of the “suitability” protections the draft Guide is proposing, and express the core expectation as being “not unsuitable” rather than “suitable”,</p> <p>Consumers could well consider it unfair that they are unable to access products or services in such circumstances and object to providers taking such a paternalistic approach.</p> <p>Provided that the consumers have been provided with adequate information about the product or service that enables them to reach an informed decision, providers should not be required to prevent consumers from accessing products or services.</p>
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	<p>Obligating providers to restrict access to products and services to consumers in particular circumstances should be enacted via legislation or regulations and after adequate stakeholder consultation if it is to be imposed, which is not recommended.</p>
<p>4. What are your views on Outcome 2: Consumers receive useful information that aids good decisions?</p>	<p>Outcome 2 will not assist providers comply with their existing information disclosure obligations, and it should not be used by the FMA to impose additional information disclosure obligations.</p> <p>Financial advice providers are under existing obligations relating to the provision of information to clients, which are:</p> <ul style="list-style-type: none"> • the duty to take reasonable steps to ensure that the client understands the nature and scope of the advice being given, including any limitations on the nature and scope of the advice (section 431J of the FMC Act); • the duty to make prescribed information available in the prescribed manner when required to do so by the regulations (section 431O of the FMC Act) including to ensure that the information is presented in a clear, concise and effective manner (regulation 229H(1)(a) of the Financial Markets Conduct Regulations 2014); and • Code Standard 4 requires that “a person who gives financial advice must take reasonable steps to ensure that the client understands the financial advice”, with the Commentary specifying what this requires in practice. <p>Under CoFI, financial institutions also have obligations relating to the provision of information to consumers, which are:</p> <ul style="list-style-type: none"> • financial institutions are obligated to make publicly available summaries of their fair conduct programmes that include sufficient detail to assist consumers (amongst other things) “make informed decisions about dealings and interactions with the financial institution in relation to the relevant services and associated products that the financial institution provides” (section 446H of the FMC Act); and • financial institutions’ fair conduct programmes must include effective policies, processes, systems and controls for (amongst other things) “communicating with consumers about the financial institutions relevant services or associated product in a timely, clear, concise, and effective manner” (section 446J(1)(j) of the FMC Act). <p>In addition, further disclosure obligations are imposed on some providers:</p> <ul style="list-style-type: none"> • the Credit Contracts and Consumer Finance Act 2003 obligates creditors under consumer credit contracts to provide prescribed initial, continuing variation, and request and guarantee disclosures; • licensed insurers have financial strength rating and overseas policyholder preference disclosure obligations under the Insurance (Prudential Supervision) Act 2010; and • the Insurance Contracts Bill proposes obligating insurers to inform policyholders of their duty of disclosure, and of the extent to which the insurer may rely on third party information. <p>Read in the context of the above obligations, Outcome 2 will not assist providers to comply with these FMC Act obligations.</p> <p>On the contrary, Outcome 2 introduces terms – ‘useful’, ‘easily understood and digestible information’, ‘influence’, ‘material, accessible, timely and reliable’ and ‘informed decision-making’, that do not align well with the specific terms used in the above legislative obligations.</p> <p>These terms in the draft Guide will need to be interpreted and applied to different contexts, which will complicate providers complying with their FMC Act disclosure obligations.</p>

	<p>Accordingly, the Outcome 2 (if required) should be rewritten to align with the terms used in the FMC Act, which have more clearly defined meanings than the terms used in Outcome 2.</p> <p>The explanation of the ‘information’ concept is too broad in specifying that it includes “all communications received, through a variety of channels” that influences their decision-making. This can be read as indicating that the FMA may impose expectations on providers with respect to communications or other information received by consumers from other sources, including independent advisers (prompting unnecessary interference and an unnecessary overlaying of an additional tier of responsibility, for no benefit). The relevant Select Committee hearing on CoFI expressly directed MBIE to remove obligations in the CoFI legislation on product providers overseeing financial advisers’ performance of their financial advice functions and the CoFI legislation was amended accordingly. The draft Guide’s reference to the variety of channels should clearly specify that the variety of channels is referring solely to channels provided by the relevant provider.</p> <p>The FMC Act information/communication obligations do not impose any obligations on providers with respect to information or communications that are given by persons other than their agents or employees. Consistent with those legislative obligations, Outcome 2 should be amended to specify that it relates only to the information or communications that are received from the particular provider, and not intermediaries who are governed by their own legal responsibilities.</p> <p>That being said, Outcome 2 should specify that, when assessing whether they are meeting this outcome, providers may take into account any relevant information and communications that customers can reasonably be expected to receive from other providers. For example, product providers whose products are distributed only through financial advisers generally should be able to expect that customers will receive adequate information from the financial advisers that assists their decision making about whether to acquire or dispose of the product (consistent with the FMA’s Intermediated Distribution Guidance’s acknowledgement that financial advice providers can be relied on).</p> <p>Further, Outcome 2 should specify that the extent to which providers are expected to produce ‘easily understood and digestible information’ will depend on the relevant product or service. Producing ‘easily understood and digestible information’ may not be realistic for complex products or services, or where the products or services use complex concepts (such as medical definitions in life, health and income protection insurance).</p> <p>As with Outcome 1, the concern is that the FMA will use Outcome 2 to impose information provision requirements that go beyond those imposed by the FMC Act.</p> <p>Information disclosure obligations impose significant compliance costs for providers; they create operational complexities where providers must decide how to meet the disclosure requirements through different sales and communication channels.</p> <p>Providers are already finding it challenging to maintain customer engagement when providing the current financial advice service disclosures, particularly in the context of the increased disclosure that is now required under FSLAA. If information disclosure requirements are too long, many clients “switch off”, or struggle to properly understand the information provided due to experiencing cognitive overload or considering it not worth their time to review the information.</p>
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	<p>In some cases, the clients do not want to review comprehensive product information rather they contract (in return for the payment of increased fees) to have their financial adviser to review the product information and provide recommendations.</p> <p>Any additional information disclosure obligations should be imposed only via legislation or regulations after it has been properly assessed that the increased compliance costs are justified on the basis that the additional information can reasonably be assured to assist clients, and after adequate stakeholder consultation. Any change should be considered only for those sectors where it is identified with supporting evidence that there is an existing deficiency in the current statutorily required disclosures.</p>
<p>5. What are your views on Outcome 3: Consumers receive fair value for money?</p>	<p>Outcome 3 should be deleted.</p> <p>The FMC Act does not impose any specific obligations on providers to provide ‘fair value for money’ and, as such, the FMA is purporting to impose a new regulatory requirement. The sole requirement for reasonable fees applies to KiwSaver schemes, and not more generally. Accordingly, Outcome 3 should be applicable solely to that sector. Going further would be rewriting the law, which is the preserve of Parliament.</p> <p>The financial advice regime requires only that the provision of regulated financial advice that is ‘suitable’ for the client, having regard to the nature and scope of the financial advice, and requires persons who provide regulated financial advice to provide disclosures about fees, expenses and other amounts payable, and other matters relevant to the clients’ decision whether to obtain financial advice from the financial advice provider.</p> <p>CoFI will require that financial institutions ensure their relevant services and associated products “are likely to meet the requirements and objectives of likely consumers” and obligate them to provide communications about the product or service and associated costs and fees “in a timely clear, concise, and effective manner”.</p> <p>Underpinning these legislative requirements is Parliament’s policy decision that it is for consumers to decide whether a provider’s products or services represent fair value and, to that end, Parliament requires that consumers be provided with the information Parliament has determined is required to make an informed decision.</p> <p>This policy decision reflects that whether products or services represent ‘fair value’ is a complex matter. As the draft Guide recognises, “[v]alue needs to be considered from many dimensions” and that price is only one factor. Despite this, the draft Guide focuses only on ‘fair value’ from the consumers’ perspective and inadequately at that.</p> <p>The draft Guide fails to articulate that ‘fair value’ must also take into account the providers’ perspectives and, accordingly, its discussion of ‘fair value’ is unbalanced. For example, what is fair value from the providers’ perspective will include such matters as:</p> <ul style="list-style-type: none"> • the costs and risks the provider incurs in providing the product or service (including its financing and insurance costs, its reinsurance costs and risk appetite/tolerance); • market rates and charges for comparable products or services; • what differentiates the provider’s product or services from comparable products or services; • the providers’ customer retention and growth strategies; • the expected total amounts customers will pay over the duration of their relationship with the provider; and • its costs, including compliance costs, of doing business more generally.

	<p>While the FMA might be able to identify products or services that are clearly poor value and assist customers to make informed decisions by publishing its findings, the FMA has no mandate to adjudicate on fair value in other cases or seek to move the market.</p>
<p>6. What are your views on Outcome 4: Consumers can trust providers to act in their interests?</p>	<p>Outcome 4 conflates two separate outcomes.</p> <p>The ‘trusted provider’ concept discussion concerns capabilities and infrastructure, whereas the ‘acting in the consumer’s interest’ FSLAA duty (which applies only to financial advisers and FAPS, and not under CoFI) concerns providers’ conduct towards consumers, particularly with respect to managing conflicts of interest.</p> <p>While the providers’ capabilities and infrastructure may assist providers to act in the consumers’ interests, there is no necessary connection between providers’ capabilities and infrastructure and their conduct towards consumers.</p> <p>Infrastructure and capability requirements ensure that providers can deliver the products or services consumers have contracted to receive to the appropriate care and standard. These requirements are imposed by way of the standard licence conditions.</p> <p>Providers’ conduct obligations with respect to consumers (such as managing conflicts of interest and not engaging in unfair pressure or tactics or engaging in undue influence) are imposed separately by the FMC Act, notably:</p> <ul style="list-style-type: none"> • section 431K of the FMC Act (duty to give priority to client’s interests); • section 446C(2)(a) and section 446J(1)(i) of the FMC Act; and • section 431M requires persons who give regulated financial advice to retail clients to comply with the Code, which requires that persons who give financial advice take reasonable steps to protect client information against loss and unauthorised access, use, modification or disclosure (Standard 5). <p>It would therefore be better for the ‘trusted provider’ concept to be incorporated into Outcome 6, albeit in a fundamentally different guise to align it with the relevant legislative obligations to the extent they exist.</p> <p>The ‘trust’ concept is not contained in legislation and is too personal. It raises interpretative issues relating to how the requisite trust is to be assessed, and its inherent subjectivity. In the insurance sector, it overlaps, but with differences, the concept of “good faith” which applies to both the insurer and the customer. Accordingly, it is not necessary, and is unhelpful, in the insurance context to add an additional layer to the existing law through the draft Guide.</p> <p>The unqualified nature of the ‘acting in the consumer’s interests’ concept causes concern. Providers must often balance their legitimate interests (including protecting the interests of other consumers), against the interests of particular consumers. For that reason:</p> <ul style="list-style-type: none"> • section 431K of the FMC Act provides that, where there is a conflict, a person who gives regulated financial advice must take “all reasonable steps to ensure that the advice is not materially influenced” by that person’s own interests or the interests of a connected person; • section 446C of the FMC Act provides that the requirement to treat consumers fairly includes “paying due regard” to consumers’ interests; and • section 446J(1)(i) of the FMC Act provides that fair conduct programmes must contain effective policies, processes, systems and controls for designing and managing incentives to mitigate or avoid the actual or potential adverse effects of incentives on the interests of consumers “so far as is reasonably practicable”. <p>Accordingly, the ‘acting in the consumer’s interest’ should be qualified by the words ‘to the extent required by law’. Without such qualification, there is the concern that the</p>

	<p>FMA may be seeking to require providers to act in consumers’ interests to a greater degree than required by the FMC Act and its regulations.</p> <p>The final sentence should be deleted.</p> <p>The words “provider culture that consistently puts the consumer at the centre of decision-making and day-to-day activities” lacks precision and is potentially all-encompassing, so is not something that can be realistically reported on a regular basis.</p> <p>Disclosure, governance, systems, controls and financial strength requirements do not relate specifically to acting in the consumers’ best interests. Moreover, these requirements are imposed by the FMC Act (including the standard licence conditions), so the ‘appropriate’ qualification can be read as incorrectly suggesting that the FMA is seeking to impose an evaluative judgement over and above those requirements.</p>
<p>7. What are your views on Outcome 5: Consumers receive quality ongoing care?</p>	<p>Outcome 5 does not adequately reflect that whether customers receive ‘ongoing care’, and the quality of any such ‘ongoing care’ must be determined by the contract terms between the customer and the provider and the particular products and services customers receive. Outcome 5 significantly extends the current law by imposing expectations that have no basis under the current law.</p> <p>Providers’ pricing of their products and services reflects the nature and extent of any ongoing care that has been agreed to with the consumer.</p> <p>In some cases, customers may not want, want to pay for, or contract for, any ongoing care.</p> <p>Any requirement to provide ongoing care may not be appropriate in the fire and general insurance context where the product lifecycle is normally 12 months.</p> <p>Where contract terms have been adequately disclosed to customers and the providers have acted in accordance with those terms:</p> <ul style="list-style-type: none"> • there is no role for the ‘continuous fairness’ that is separate to the contract terms and any applicable requirement imposed by legislation or regulations; and • where the contract terms specify the circumstances, including any restrictions, on customers being able to “update, alter, switch or exit a product”, providers should not be required to demonstrate that customers do not encounter ‘unreasonable barriers’ (if those contracts are ‘standard form consumer contracts’, any such restrictions may be subject to the unfair contract terms in the Fair Trading Act 1986; but that is to be determined in accordance with the Fair Trading Act’s specific wording, not in accordance with the ‘unreasonable barriers’ concept). <p>Outcome 5 should expressly reflect the above.</p> <p>If Outcome 5 is to continue to refer to ‘continuous fairness’, it should expressly acknowledge that ‘fairness’ is to be assessed by taking account of, and balancing, both the perspectives of the customers and the providers.</p> <p>For example, the ‘ongoing care’ concept discussion refers to complaints being “effectively addressed” and to claims assessments by insurers that “result in fair, timely and effective resolutions for consumers”.</p> <p>Customers may consider that providers are not “effectively” addressing their complaints where providers do not uphold that complaint or provide an adequate remedy that is different to what the customer wanted. They may consider that</p>

	<p>insurers are not “effectively” resolving their claims when they are declined or paid out less than the full amount claimed but in accordance with policy terms and conditions.</p> <p>Outcome 5 should expressly specify that if a provider complies with its internal complaints handling process, including providing the required disclosures relating to the availability of the approved dispute resolution service, a provider has effectively addressed a complaint, and unless an approved dispute resolution service determines otherwise, but even then, if the provider complies with the determination, it should be regarded as having effectively addressed the complaint or resolved the claim.</p> <p>The specification that providers “take proactive steps to ensure sub-par outcomes are not repeated” is confusing. It is unclear what ‘sub-par outcomes’ means and how these are to be identified or assessed, so greater explanation is required.</p> <p>At the very least, ‘sub-par’ outcomes should not mean that providers are obligated to prevent normal commercial risks that have been adequately disclosed to customers before they contracted to receive the product or service.</p> <p>Finally, Outcome 5 is another instance where there is concern that the FMA will seek to impose requirements over and above those imposed by the FMC Act.</p> <p>The ‘continuous fairness’, ‘quality’, ‘unreasonable barriers’ and ‘proactive steps’ references discussed impose expectations that are more extensive than those imposed by the FMC Act and its regulations.</p> <p>In addition, the ‘ongoing care’ concept discussion provides that it also means “recognising when consumers are in vulnerable circumstances and responding appropriately.” No specific requirement is imposed by the FMC Act in this respect.</p> <p>When CoFI comes into force, financial institutions will be obligated to have regard to the types of consumers they deal with, including consumers in vulnerable circumstances, when considering what policies, processes, systems and controls are effective (section 446J(2) of the FMC Act), but this does not necessarily require financial institutions to have vulnerable customer policies, processes, systems and controls in all cases.</p>
<p>8. What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?</p>	<p>As noted in the response to Outcome 4, the ‘trusted provider’ concept should be appropriately amended and incorporated into Outcome 6. The ‘trusted provider’ concept concerns data protection and operational systems resilience, which are better considered as an aspect of the ‘integrity’ concept in Outcome 6.</p> <p>The ‘trusted’ concept is not contained in the FMC Act or its regulations and its usage raises interpretative issues relating to how it will be assessed and from whose perspective.</p> <p>The ‘transparency’ concept discussion is unhelpful, because it does not provide a general definition of what is intended to be covered. It merely states that it “includes” the “widespread availability and disclosure of corporate investor information that supports a more efficient market through price discovery and increasing liquidity”. This specific instance has limited relevance.</p> <p>The reference to “widespread availability and disclosure” appears to be more concerned with assessing whether the current regulatory disclosure requirements are adequate. It is not apparent how providers are expected to assist with the achievement of this outcome over and above meeting their disclosure obligations specified in Outcome 2. Instead, this particular outcome is more properly the FMA’s responsibility – i.e., if the FMA assesses that the regulatory disclosure requirements</p>

	are not adequate, it should recommend to government that additional disclosure requirements are imposed.
9. What are your views on Outcome 7: Markets enable sustainable innovation and growth?	<p>Outcome 7 should be deleted.</p> <p>How individual providers will be expected to act to achieve this outcome is not apparent. They have already adequate commercial imperatives to seek sustainable innovation and growth in their businesses without needing any regulator imposed expectations in this regard.</p> <p>Creating the environment conducive to sustainable innovation and growth in the market is more properly the FMA's responsibility, through facilitating regulatory reform, publishing needed guidance and issuing exemptions.</p>
10. Is anything missing that should be included in the fair outcomes? Please explain.	For the reasons specified in the response, the FMA should not progress this draft Guide further at this time.
11. If you are a provider of financial products or services, how will you demonstrate ownership and delivery of fair outcomes? What will be the implications for your governance, leadership, management and operations, and how they work together?	<p>IBANZ members are FAPs or operate under FAP licences and, accordingly, their demonstrable compliance with the current FAP licence responsibilities will already result in them providing fair conduct outcomes to the extent required under the law and the FMC Act. Requiring that financial institutions go further, would be a clear extension of the providers' current legal duties, amounting to a re-writing of the rules and a change to their obligations. Many providers may choose to do so, or will be doing so already, but imposing obligations that providers 'demonstrate' their ownership and delivery of a fair outcome objective would add another layer of bureaucracy and paperwork.</p> <p>If this draft Guide is not, prior to finalisation, substantially revised so it aligns clearly with the FMC Act and its regulations (as well as other applicable laws and obligations), the draft would create confusion, unreasonable expectations and overlay new requirements beyond those required by the existing law.</p> <p>IBANZ members should already have governance, leadership, management and operational processes embedded in their business framework which are designed to meet all relevant laws. To require that they recast them to fit another paradigm, which does not align squarely with the approach taken in the law, would unjustifiably increase IBANZ members' compliance burden without any demonstrable need nor benefits for customers, providers or the markets.</p>
12. If you are a provider of financial products or services, how will outcomes-focused regulation help support your regulatory compliance? Are there areas you will find challenging or	<p>If this draft Guide is not, prior to finalisation, substantially revised so it aligns more clearly with the FMC Act and its regulations, the draft Guide would not support IBANZ members' regulatory compliance but rather create confusion and overlay new requirements beyond those required by the existing law. The resulting increase in the compliance burden would consume compliance resources, thereby distracting IBANZ members' focus on complying with the FMC Act and its regulations as well as the advice and support they give to their clients.</p> <p>IBANZ is not contesting that 'fair outcomes' are desirable, but rather that the proper means to achieve them is through balanced and well-constructed legal requirements, developed through the Parliamentary process, which focus on behaviours, rather than outcomes, which can often be unpredictable or result from</p>

<p>where you have concerns?</p>	<p>random intervening events, and therefore do not readily convert into practical, proportional and efficient compliance programmes.</p>
<p>13. Do you have any comments in relation to how a move towards a more outcomes-focused approach to regulation should influence our supervision and monitoring approach?</p>	<p>While the fair outcomes might provide a useful lens through which the FMA examines whether the financial services regulatory framework is operating effectively (but noting that it should also consider efficiency and transparency as well, as required by section 8 of the FMA Act 2011), it should not of itself influence the FMA's supervision and monitoring approach.</p> <p>Rather that approach should be solely guided by the extent to which providers are complying with the FMC Act and its regulations interpreted in accordance with established statutory interpretation principles, without any 'fairness' overlay on the FMA's part.</p> <p>For the reasons specified in the response to Q. 1, the draft Guide in its current form will effectively create a new set of far-reaching obligations. The imposition of new regulatory requirements should be done only via legislation or regulations and, accordingly, subject to Parliament's scrutiny and after sufficient stakeholder consultation.</p>
<p>14. Do you have any comments in relation to how a move towards a more outcomes-focused approach to regulation should influence how we seek to address and hold individuals and entities accountable for misconduct?</p>	<p>Consistent with the response to Q 13, how the FMA seeks to address and hold individuals and entities accountable for misconduct should be solely guided by the extent to which providers are complying with the FMC Act and its regulations interpreted in accordance with established statutory interpretation principles.</p> <p>It is suitable to assess breaches of legislation based on the harm caused, intent, recklessness, culpability and a range of other substantive measures which could involve 'fairness' considerations. However, we expect 'fair outcomes' is already factored into any enforcement decisions, even if its influence is expressed in other ways.</p>
<p>15. If you are a provider of financial products or services, what are your views on the link between outcomes-focused regulation and innovation? Will it provide you with increased flexibility to achieve your business needs?</p>	<p>While increased innovation and flexibility are desirable, the draft Guide will not encourage innovation nor provide flexibility, rather it will be burdensome and discourage both because of the continuance and paramountcy of, and the draft Guide's misalignment with, the FMC Act requirements, and the spectre that the FMA will seek to impose additional requirements not contained in the FMC Act or its regulations or adopt novel interpretations of those requirements.</p> <p>The FMA can better promote innovation and achieve flexibility through facilitating regulatory reform, publishing needed guidance, updating publications such as the September 2020 Supervision Insights, and issuing exemptions in appropriate cases.</p> <p>Because pragmatically only material breaches of law are currently enforced, there is already some flexibility inherent in the existing legal structure, which would not be enhanced by a fair outcomes approach. Accordingly, IBANZ does not see flexibility or innovation benefits arising from the draft Guide.</p>
<p>16. If you are a consumer or consumer group, do you understand the fair outcomes and are they relevant to</p>	<p>This question is not applicable to IBANZ.</p>

<p>your interactions with the financial sector?</p>	
<p>17. What are your views on the examples provided in the guidance? Are they helpful, and are there any other examples we should include?</p>	<p>If the draft Guide is progressed to finalisation, it should contain more examples that show the application of the outcomes in the full range of different financial products and services, and differentiates between providers so it is clear which expectation applies to which provider class.</p> <p>The examples contained in the draft Guide all concern situations where the FMA expects the relevant providers to do more. In these cases, the draft Guide should include these expectations when they are supported by the law but, as importantly, the FMA needs to indicate limits as to how far the principle in the example should be taken (see IBANZ's comments on the second example in Outcome 1). To achieve balance, the draft Guide should also contain examples concerning situations where the status quo is considered adequate, or even where less is expected.</p>
<p>18. Do you need any further guidance or support from the FMA in relation to outcomes focused regulation or the fair outcomes?</p>	<p>No.</p>
<p>Feedback summary – if you wish to highlight anything in particular</p>	
<p>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.</p>	
<p>Thank you for your feedback – we appreciate your time and input.</p>	

1 March 2024

Financial Markets Authority,
Level 2 Grey Street,
Wellington 6140

By email: consultation@fma.govt.nz

Tēnā koe FMA,

Securities Industry Association submission: Fair Outcomes for Consumers and Markets (November 2023)

The Securities Industry Association (**SIA**) appreciates the opportunity to submit on the FMA's "Fair Outcomes for Consumers and Markets" consultation.

About Securities Industry Association (SIA)

SIA represents the shared interests of sharebroking, wealth management and investment banking firms that are accredited NZX Market Participants. Our members employ more than 500 accredited NZX Advisers, NZDX Advisers and NZX Derivatives Advisers, and more than 500 Financial Advisers nationwide. Our members work with over 300,000 New Zealand retail investors with total investment assets exceeding \$80 billion, including more than \$40 billion held in custodial accounts. Members also work with local and global institutions that invest in New Zealand.

Key submission points

In our submission, we make the following key points:

1. ***The dual-regulation model of market and legislative regulation needs to be recognised***

Fair customer outcomes are not new, and as an industry, we support fair outcomes for customers of financial services and products, as well as across the market as a whole. We are a sector that continues to raise the bar. In that regard, the market mechanisms of competition, trust and reputation, quality products and services, price, and innovation naturally underpin the conduct, sustainability and growth of businesses and sectors. A competitive market means businesses are judged by their customers. As noted, reputation is critical to business sustainability and is built on treating customers fairly. Customers are able to file a complaint, utilise a dispute resolution service or withdraw their business should a product or service not meet their expectations of being treated fairly or if poor conduct occurs. We submit that any further regulatory overlay with what already exists in terms of market and legislative regulation is unnecessary.

2. ***An evidence-based, legislative-aligned approach is needed***

We support FMA's remit to oversee and monitor the extent to which financial service and product providers meet the legal obligations contained within the relevant legislation. However, it is not clear how the seven stated outcomes fit alongside these legal obligations. SIA suggests that the FMA could demonstrate more clearly how the outcomes in the proposed guidance align with those legislative obligations. The consultation document presents the seven outcomes as a 'fait accompli' that providers must embed in the way they do business rather than exploring any alternative considerations, providing evidence or testing whether they are the right outcomes and taking the right approach to achieve them.

3. ***Clear regulatory boundaries are required***

SIA believes it is vital that the proposed guidance clearly explains the legal basis for each of the seven outcomes and how enforcing those outcomes helps the FMA achieve the stated functions of the legislation for which it regulates. There is a danger that guidance strays into becoming or being perceived as new regulation or additional enforceable law. For example, the guidance appears to act as an extension of the [Financial Markets \(Conduct of Institutions\) Amendment Act 2022 \(the COFI Act\)](#) to the broader sector when the COFI Act was intended to apply in a more targeted way, i.e. to banks and insurance companies (both of which were not previously regulated other than prudentially by the Reserve Bank and peripherally through Part 2 of the Financial Markets Conduct Act 2013), and that is where the cost/benefit of implementing the regime is realised.

Guidance should not be a mechanism by which the FMA's powers and remit are extended nor a tool to prescribe how the FMA will broaden its approach or undertake its work. Instead, the purpose of guidance is to explain in more detail how the legislation applies to specific circumstances through practical examples and scenarios and to ensure that there is a universally understood expectation of how the legislation should be interpreted in terms of plain language (noting that the FMA's views on this would still only be "guidance" and that any final determination regarding the interpretation of legislation is a matter for the Courts). If there are perceived shortcomings in how existing legislation has been drafted in order to meet its objectives, then it is a policy matter that ought to be addressed through legislative change, not through guidance.

4. ***Compliance costs will increase from additional monitoring***

We highlight that business compliance costs have continually risen over the past few years. Whilst we appreciate that there will always be a cost to compliance, those costs ought to be justified and necessary (as reflected in the stated purposes of the Financial Markets Conduct Act 2013, which include to "avoid unnecessary compliance costs"). We submit that the proposed guidance will impose more costs on firms through an additional and ongoing programme of providing evidence and reporting that will consume considerable personnel, information technology, systems, time, planning and administrative resources. The FMA has not provided a cost/benefit analysis, and therefore, it is unclear whether these additional costs are both necessary and justified – particularly in circumstances where there is no apparent link between the outcomes and a legal obligation. The SIA submits that embedding the outcomes will lead to an unavoidable cost burden and, in some circumstances, as these costs continue to escalate, they may indirectly affect customers. These costs are also a barrier to new entrants to the market and stifle investment in innovation and the ability to innovate. There needs to be clearly defined benefits for the additional imposed compliance costs.

5. ***Proposed approach: Press pause until COFI is reviewed then reframe***

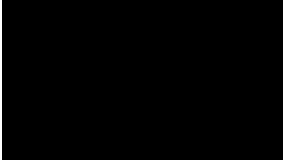
For some time, the financial services sector has operated in an environment of significant legislative change and uncertainty. In light of recent comments by the Minister for Commerce and Consumer Affairs, he intends to review the Conduct of Financial Institutions regime (COFI) and that uncertainty will remain. In our view, it makes no sense to progress further with the Fair Outcomes consultation until the position around COFI has been clarified. However, our view remains that the guidance should not be an extension of COFI by stealth beyond what Parliament intended (namely, applying to Banks and Insurers).

The role of the guidance document should be to provide clear guidance to Banks and Insurers for a Fair Conduct Programme as it relates to COFI and act as a benchmarking tool by providing best practice examples and approaches to scenarios. SIA suggests the proposed guide could be reframed as a best practice or conduct information sheet.

SIA's submission is attached for your information. It responds directly to the consultation questions and expands on the abovementioned points. No part of this submission is required to be kept confidential.

Thank you for the opportunity to present our comments on this proposal. Please get in touch should you have any questions about this submission or require further information.

Nāku noa, nā



Executive Director

SECURITIES INDUSTRY ASSOCIATION



Feedback form

Consultation: Fair Outcomes for Consumers and Markets

Date: 1 March 2024

Number of pages: 9 (cover letter p1-3, submission p4-12)

Name of submitter: Bridget MacDonald

Company or entity: Securities Industry Association

Organisation type: Industry Body

Contact name (if different):

Contact email and phone: bridget@securities.org.nz Mob 021 345 973

Question number	Response
1. Is the way we have described our outcomes-focused approach to regulation clear, and do you understand how a focus on outcomes will be reflected in our work? Please explain.	<p>1. The Securities Industry Association (SIA) supports the development of fair, efficient and transparent financial markets and the confident and informed participation of businesses, investors and consumers in financial markets.</p> <p>2. SIA agrees that providers of financial products and services ought to treat their customers fairly, and we agree that fair outcomes for customers should be at the heart of a business. A customer-centric approach ensures that customers are treated fairly in every aspect of their relationship with a financial services provider. However, it should also be recognised that in addition to consumer protections via legislation, the market itself also provides a mechanism of effective regulation.</p> <p>Good conduct and fair outcomes are products of a dual-regulatory model of market and legislative regulation</p> <p>3. Good conduct and fair outcomes are product of a dual-regulatory model of market and legislative regulation.</p> <p>4. But, fair customer outcomes are not new, and as an industry, we support fair outcomes for customers of financial services and products, as well as across the market as a whole. We are a sector that continues to raise the bar as the market mechanisms of competition, trust and reputation, quality products and services, price, and innovation naturally underpin the conduct, sustainability and growth of businesses and sectors. A competitive market means businesses are judged by their customers. Reputation is critical to business sustainability; reputation is built on trust and treating customers fairly. Customers are able to file a complaint or withdraw their business should a product or service not meet</p>

	<p>their expectations of fairness or if poor conduct occurs.</p> <p>5. It sometimes appears that it is overlooked that two parties are involved in the customer/product and service provider relationship. The assumption that providers are not already delivering fair outcomes or are seeking to deliver less than fair outcomes should not be the default position, especially where there is no evidence of a systemic issue in the broader sector.</p> <p>6. While our industry respectfully acknowledges and complies with its legislative obligations, SIA believes that firms are ultimately accountable to their customers, not the regulator, for delivering fair customer outcomes.</p> <p>An overlay to existing legal obligations</p> <p>7. The proposed guidance presents what appears to be another regulatory framework to overlay the existing legislation, as it indicates that firms will be required to provide evidence that they are complying and "<i>demonstrably embed them in the way they operate</i>". SIA believes it is vital that the proposed guidance clearly explains the legal basis for each of the seven outcomes and how enforcing those outcomes helps the FMA achieve the stated functions of the legislation for which it regulates.</p> <p>8. SIA advises that introducing an additional enforcement approach requiring ongoing reporting and evidence will significantly impact firms by imposing another layer of compliance costs, as there will likely be a cost to firms across the process resulting from implementing changes to the reporting or addressing any enquiries.</p> <p>9. Firms respect their role as trusted kaitiaki (guardians) of customers' financial assets. SIA believes licensed and already highly regulated financial services providers should be trusted to manage and deliver fair product and service outcomes for which the customer has engaged them. We submit that any further regulatory overlay with what already exists in terms of market and legislative regulation is unnecessary.</p>
<p>2. What are your views on the proposed fair outcomes for consumers and markets? To what extent do you think the proposed fair outcomes will benefit consumers, providers and markets?</p>	<p>Definition of fairness</p> <p>10. The <u>Code of Professional Conduct for Financial Advice Services (the Code)</u> guides expectations for fair outcomes through its standards. In particular, Code Standard 1. <i>A person who gives financial advice must always treat clients fairly.</i> It also ensures the suitability of the financial advice and that the client understands it.</p>

	<p>11. It should be acknowledged that fairness may mean different things to different people in different circumstances; however, 'treating consumers fairly' or 'fairness' is not described consistently across the Code, the <u>Financial Markets (Conduct of Institutions) Amendment Act 2022</u> regime (COFI) nor the proposed guidance.</p> <p>12. A robust conduct regime needs to target issues where issues exist and have continuity with any legislation it intersects with, including consistent definitions to ensure customers, businesses, and regulators have a shared understanding.</p>
<p>3. What are your views on Outcome 1: Consumers have access to appropriate products and services that meet their needs?</p>	<p>13. We are uncertain what this outcome seeks to achieve when the Code ensures that suitability must be taken into consideration with regard to the nature and scope of the financial advice to meet a customer's needs and personal circumstances. The draft guidance refers to '<i>the suitability to a consumer of a financial product or service through its entire lifecycle</i>'; however, this may not be practical nor appropriate for some products or services.</p>
<p>4. What are your views on Outcome 2: Consumers receive useful information that aids good decisions?</p>	
<p>5. What are your views on Outcome 3: Consumers receive fair value for money?</p>	<p>Fair value for money</p> <p>14. It is unclear how the FMA should determine and monitor what should be considered value for money or appropriate pricing for a customer. SIA questions whether this is a broadening of the regulator's remit.</p> <p>15. Furthermore, it would be difficult to determine whether some products, such as Managed Investment Schemes (MIS), were appropriately included in this regard due to how the products are managed and naturally perform.</p> <p>16. SIA is of the view that it should not be the regulator's role to determine if a product was a good or bad product, good or bad price, or if that product was good or bad value, and then impose costs on firms for doing so. Pricing and value are complex, and SIA believes numerous variables must be considered when evaluating a product or service, including the customer's financial situation, goals, needs, and risk profile. It has been widely acknowledged that regulators do not have the information or the resources to make decisions on the merits of financial products on behalf of investors. This is why Product Disclosure Statements and financial advice can have a role in informing investor decisions. The Code also ensures ethical behaviour, conduct, and client care</p>

	<p>partnered with competence, knowledge, and skill underpin delivering fair outcomes in this regard.</p> <p>17. In this regard, financial services businesses should not be accountable to the regulator; however, they are highly responsible and accountable to their customers. What is essential is that the financial services industry remains competitive, innovative and customer-focused and that customers have a choice. A dissatisfied customer is able to take their business elsewhere or make a formal complaint.</p> <p>18. A competitive market supports outcomes such as value for money or appropriate pricing. Regulation that supports a competitive market encourages innovation that can further deliver new and improved products and services with fair value for money and pricing.</p>
6. What are your views on Outcome 4: Consumers can trust providers to act in their interests?	19. Firms respect their role as trusted kaitiaki (guardians) of customers' financial assets. Licensed and already highly regulated financial services providers should be trusted to manage and deliver fair product and service outcomes for which the customer has engaged them. We do not believe further regulatory overlay with what already exists in terms of market and legislative regulation is necessary.
7. What are your views on Outcome 5: Consumers receive quality ongoing care?	20. It should be noted that some financial products and services, for example, buying and selling shares, are not necessarily long-term or ongoing. We do not believe further regulatory overlay with what already exists in terms of market and legislative regulation is necessary.
8. What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?	
9. What are your views on Outcome 7: Markets enable sustainable innovation and growth?	21. SIA appreciates industry examples of the Capital Markets 2029 report and class exemptions being included. However, it is unclear how markets or financial services will be empowered to innovate by this outcome.
10. Is anything missing that should be included in the fair outcomes? Please explain.	
11. If you are a provider of financial products or services, how will you demonstrate ownership and delivery of the fair outcomes? What will be the implications for your governance, leadership, management and operations, and how they work together?	

<p>12. If you are a provider of financial products or services, how will outcomes-focused regulation help support your regulatory compliance? Are there areas you will find challenging or where you have concerns?</p>	<p>Increased compliance costs</p> <p>22. There will be costs and consequences to this proposed guidance. While it is stated that the guide is "<i>not a replacement for, nor a rewriting of our rule book</i>", and "<i>These fair outcomes are not rules. They do not create, replace or even supplement existing legal obligations,</i>" and that "<i>the outcomes set expectations</i>", it appears the guidance goes beyond being a tool to set expectations or a guide to achieving fair outcomes. The proposal's implied requirements of "<i>providers will need to consider how they monitor and review their progress and how they articulate that to us</i>" would actually bring an additional regulatory burden to firms specific to the outcomes in addition to existing reporting requirements. This appears to be a broadening of regulatory scope that would impose costs on firms to set up and manage this additional reporting activity without any clearly identified benefits to consumers, businesses or regulators.</p> <p>23. One of the purposes of the Financial Markets Conduct Act 2013 is to "<i>avoid unnecessary compliance costs</i>". The proposed guidance will impose more costs on firms through an additional and ongoing programme of providing evidence and reporting that will consume considerable personnel, information technology, systems, time and planning resources. The FMA has not provided a cost/benefit analysis, and therefore, it is unclear whether these additional costs are both necessary and justified – particularly in circumstances where there is no apparent link between the outcomes and a legal obligation. This additional reporting would also introduce duplication and conflict with intermediary distribution and natural product lifecycles.</p> <p>24. Unfortunately, escalating business compliance costs can become a cost burden for everyone and may result in indirect costs to the consumer.</p> <p>25. Ever-increasing compliance costs are also a barrier to new entrants to the market and stifle investment in innovation and the ability to innovate. Legislation should be the tool to address New Zealand's market failures or encourage innovation by removing barriers to entry, which would encourage competition and quality products for consumers.</p>
<p>13. Do you have any comments about how a move towards a more outcomes-focused approach to regulation should influence our supervision and monitoring approach?</p>	<p>26. It is unclear what the monitoring process of outcomes would look like in practice. If it is principles- and risk-based, FMA should neither have a tick-box approach nor require reporting for reporting's sake. We agree that firms should be accountable for what they do and have appropriate</p>

	<p>systems and processes to support this, but they should not be required to report beyond the scope of what is required by legislation or explain everything they do in great detail.</p> <p>27. To gain real value from the information reported, the FMA should also monitor and assess fair customer outcomes. There needs to be more information on what this would look like, including transparency around how this will be measured, monitored, compared and reported, and clearly articulated what action would be taken.</p>
14. Do you have any comments in relation to how a move towards a more outcomes-focused approach to regulation should influence how we seek to address and hold individuals and entities accountable for misconduct?	28. SIA agrees that any unfair practices where businesses are not treating customers fairly should be called out, and the appropriate action should be taken. However, legislative and regulatory frameworks are already in place, for example, the <u>Financial Markets Conduct Act 2013</u> , the Code, and COFI.
15. If you are a provider of financial products or services, what are your views on the link between outcomes-focused regulation and innovation? Will it provide you with increased flexibility to achieve your business needs?	29. It is unclear how this outcome seeks to promote innovation. Given that the guidance also appears to challenge value for money and pricing, it could also imply that the financial stability and sustainability of a business are not good outcomes. A stable and sustainable business is likely successful because it operates effectively, efficiently, competitively, innovates and delivers fair customer outcomes. This also allows it to reinvest in that business and innovate. The draft guidance will impose additional compliance requirements, which will result in costs to businesses. Increasing operating and compliance costs stifle innovation.
16. If you are a consumer or consumer group, do you understand the fair outcomes, and are they relevant to your interactions with the financial sector?	30. Customers also have a role to play in achieving fair customer outcomes. There needs to be an alignment with any consumer financial education programmes to improve financial literacy, empower them as consumers, and teach them what to do should they deem they are not being treated fairly.
17. What are your views on the examples provided in the guidance? Are they helpful, and are there any other examples we should include?	
18. Do you need any further guidance or support from the FMA in relation to outcomes-focused regulation or the fair outcomes?	<p>What the guidance should do</p> <p>31. SIA supports the FMA's intention to identify fair outcomes for consumers; however, we firmly believe that the proposal essentially introduces new and additional regulation through the guidance and that this is an unacceptable mechanism for doing so. The legislation and regulations of other regimes, such as the FMCA Act or COFI, should be amended if they fall short of supporting fair consumer outcomes.</p>

	<p>32. The proposed Fair Outcomes guidance document should provide clear guidance to Banks and Insurers for a Fair Conduct Programme related to COFI and act as a benchmarking tool by giving best practice examples, scenarios or case studies.</p> <p>33. SIA appreciates that guidance and examples of what are considered fair outcomes for consumers are helpful tools to ensure businesses across the sector are operating to the same and consistently high standards. This manages the expectations of customers, firms, government and regulators.</p> <p>34. Given the Minister for Commerce and Consumer Affairs has recently signalled his intent to move to a "<i>tailored and proportionate</i>" approach to Fair Conduct Programmes <i>through "targeted reform to ensure that good conduct obligations are proportionate and fit-for-purpose"</i> then it would make sense to take the opportunity to ensure all fair conduct-related guidance and tools are considered in the context of that reform before proceeding any further.¹ We suggest that this proposed guidance should be aligned with legislation, including COFI's intention, purpose, a shared definition and understanding of fairness, and clear expectations of and guidance for what an appropriate Fair Conduct Programme for Banks and Insurers should look like. Therefore, we submit that the guidance is paused until the COFI review is completed.</p> <p>35. SIA further suggests the proposed guide could be reframed as a best practice or conduct information sheet.</p>
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Feedback summary

The Securities Industry Association (**SIA**) thanks the Financial Markets Authority (**FMA**) for the opportunity to respond to the "Fair Outcomes for Consumers and Markets" consultation.

1. Key concerns

In principle, SIA supports fair outcomes. However, we outline our key concerns regarding the workability and the unintended consequences of imposing another layer of regulation with reporting requirements on the sector through this proposed guidance.

(i) The dual-regulation model of market and legislative regulation needs to be recognised

Fair customer outcomes are not new, and as an industry, we support fair outcomes for customers of financial services and products, as well as across the market as a whole. We are a sector that continues to raise the bar. In that regard, the market mechanisms of competition, trust and reputation, quality products and services, price, and innovation naturally underpin the conduct, sustainability and growth of businesses and sectors. A competitive market means businesses are judged by their customers. As noted, reputation is critical to business sustainability and is built on treating customers fairly. Customers are able to file a complaint,

¹ <https://www.beehive.govt.nz/speech/speech-financial-services-council-outlook-2024>

utilise a dispute resolution service or withdraw their business should a product or service not meet their expectations of being treated fairly or if poor conduct occurs. We submit that any further regulatory overlay with what already exists in terms of market and legislative regulation is unnecessary.

(ii) An evidence-based, legislative-aligned approach is needed

We support FMA's remit to oversee and monitor the extent to which financial service and product providers meet the legal obligations contained within the relevant legislation. However, it is not clear how the seven stated outcomes fit alongside these legal obligations. SIA suggests that the FMA could demonstrate more clearly how the outcomes in the proposed guidance align with those legislative obligations. The consultation document presents the seven outcomes as 'fait accompli' that providers must embed in the way they do business, rather than exploring any alternative considerations, providing evidence or testing whether they are the right outcomes and taking the right approach to achieve them.

(iii) Clear regulatory boundaries are required

SIA believes it is vital that the proposed guidance clearly explains the legal basis for each of the seven outcomes and how enforcing those outcomes helps the FMA achieve the stated functions of the legislation for which it regulates. There is a danger that guidance strays into becoming or being perceived as new regulation or additional enforceable law. For example, the guidance appears to act as an extension of the [Financial Markets \(Conduct of Institutions\) Amendment Act 2022 \(the COFI Act\)](#) to the broader sector when the COFI Act was intended to apply in a more targeted way, i.e. to banks and insurance companies (both of which were not previously regulated other than prudentially by the Reserve Bank and peripherally through Part 2 of the Financial Markets Conduct Act 2013), and that is where the cost/benefit of implementing the regime is realised.

Guidance should not be a mechanism by which the FMA's powers and remit are extended nor a tool to prescribe how the FMA will broaden its approach or undertake its work. Instead, the purpose of guidance is to explain in more detail how the legislation applies to specific circumstances through practical examples and to ensure that there is a universally understood expectation of how the legislation should be interpreted in terms of plain language (noting that the FMA's views on this would still only be "guidance" and that any final determination regarding the interpretation of legislation is a matter for the Courts). If there are perceived shortcomings in how existing legislation has been drafted in order to meet its objectives, then it is a policy matter that ought to be addressed through legislative change, not through guidance.

(iv) Compliance costs will increase from additional monitoring

We highlight that business compliance costs have continually risen over the past few years. Whilst we appreciate that there will always be a cost to compliance, those costs ought to be justified and necessary (as reflected in the stated purposes of the Financial Markets Conduct Act 2013, which include to "avoid unnecessary compliance costs"). We submit that the proposed guidance will impose more costs on firms through an additional and ongoing programme of providing evidence and reporting that will consume considerable personnel, information technology, systems, time and planning resources. The FMA has not included a cost/benefit analysis, and therefore, it is unclear whether these additional costs are both necessary and justified – particularly in circumstances where there is no apparent link between the outcomes and a legal obligation. The SIA submits that embedding the outcomes will lead to an unavoidable cost burden and, in some circumstances, as these costs continue to escalate, they may indirectly affect customers. These costs are also a barrier to new entrants to the market and stifle investment in innovation and the ability to innovate. There needs to be clearly defined benefits for the additional imposed compliance costs.

2. Recommended approach

(i) Press pause until COFI is reviewed

For some time, the financial services sector has operated in an environment of significant legislative change and uncertainty. In light of recent comments by the Minister for Commerce and Consumer Affairs, he intends to review the Conduct of Financial Institutions regime (COFI) and that uncertainty will remain. It is SIA's view that it makes no sense to progress further with the Fair Outcomes consultation until the position around COFI has been clarified. However, our view remains that the guidance should not be an extension of COFI by stealth beyond what Parliament intended (i.e. applying to Banks and Insurers).

(ii) *Guidance should illustrate best practice*

The role of the guidance document should be to provide clear guidance to Banks and Insurers for a Fair Conduct Programme as it relates to COFI and act as a benchmarking tool by giving examples of best practices and approaches to scenarios. SIA suggests the proposed guide could be reframed as a best practice or conduct information sheet.

(iii) *Impact Statement required*

We suggest the FMA carefully considers industry feedback and publishes an Impact Statement in response to this consultation.

We feel strongly that it is important to ensure our regulatory framework and supporting documentation, such as guidance, is fit for purpose for all stakeholders concerned.

SIA thanks the FMA for the opportunity to participate in this consultation and welcomes the opportunity to provide additional information or discuss this submission further.

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.

1/03/2024

Financial Markets Authority
PO Box 1179
Wellington 6140

Submission on Fair Outcomes for Consumers and Markets

Tēnā koutou

Age Concern New Zealand He Manaakitanga Kaumātua Aotearoa welcomes the opportunity to submit feedback on the draft *Fair Outcomes for Consumers and Markets: A guide to outcomes-focused regulation*.

Age Concern New Zealand appreciates the work the Financial Markets Authority has carried out to develop the framework and outcomes.

Age Concern New Zealand supports the seven outcomes and the outcomes-focused approach.

Who we are

Age Concern is a trusted charity working in local communities throughout Aotearoa to support older people, their friends and whānau. Our values – Dignity, Wellbeing, Equity, and Respect for older people are our guiding lights and underpin everything we do. We aim to ensure older New Zealanders get the best advice and support no matter where they live in Aotearoa. With a network of 29 local Age Concerns operating in 40 locations, and a national office based in Wellington, we are the place to go for services and information about getting older.

We are proud of our heritage in standing up for the rights of older New Zealanders for more than 75 years. As an organisation, our focus is on contributing to the overall wellbeing of older New Zealanders. We work to prevent the abuse and neglect of older adults; improve their health and wellbeing; end loneliness and social isolation; and advocate for older people's rights.

Older New Zealanders are a diverse, resilient, and valued part of every community. The over 65 population is growing across all ethnicities with Asian, Māori and Pacific older populations growing at significant rates. This diverse older population deserve fair outcomes from their interactions with financial services.



Summary

Overall, Age Concern New Zealand supports the proposed outcomes and approach. We believe the outcomes identified are reasonable and would meet the expectations of consumers. Access to, and engagement with, financial services is an important part of older people's wellbeing and ageing well in their communities.

We emphasise the importance of accessible information and communication with consumers.

The issue we see is more with how effective implementation of the Code will be measured or assessed. Training and a monitoring framework of some form will be needed to ensure the Code lives up to its aim and intent.

We believe the success of the framework will be shaped by the approach of the Financial Markets Authority in their work with providers to meet the outcomes. The intent of establishing fair outcomes for consumers and markets is commendable, but implementation comes down to multiple providers interacting with a wide range of people, who may be under pressure at the time.

We would like to see a process developed for consumer and consumer advocate groups to share their experiences with the Financial Markets Authority after the regulations have been implemented and providers have started taking steps to meet the outcomes.

Closing comment

Age Concern New Zealand looks forward to seeing the outcomes bringing benefits for consumers, providers, and markets.

Thank you again for the opportunity to provide our submission on the draft *Fair Outcomes for Consumers and Markets*

Nāku noa, nā

[Redacted signature block]

[Redacted name]

[Redacted title]

Age Concern New Zealand

Feedback form

Consultation: Fair Outcomes for Consumers and Markets

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Fair outcomes for consumers and markets: [your organisations' name]' in the subject line. Thank you. **Submissions close on 1 March 2024.**

Date: 1 March 2024

Number of pages: 4

Name of submitter: [REDACTED]

Company or entity: Age Concern New Zealand

Organisation type: Charity

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
1	<p>The outcomes-focused approach and the decision to use this approach have been described clearly. The shift to align with global regulatory practice is sensible.</p> <p>It would be beneficial for consumers to know what kind of engagement and enforcement actions will be within the Financial Markets Authority's powers when providers are not implementing practices to meet the outcomes.</p>
2	<p>The seven outcomes appear appropriate and would be a reasonable expectation by consumers when engaging with financial services and products. We anticipate that the outcomes will bring benefits to consumers, providers, and the financial market.</p> <p>A large portion of the success of the outcomes approach will depend on the supervisory and enforcement work of the Financial Markets Authority. As the approach focuses on the end results, and does not prescribe actions, providers will need to be supported and equipped to make changes to meet the outcomes. Furthermore, providers will need to continually adjust their practices to meet consumer needs and enable sustainability and growth.</p>
3	<p>We agree that there are diverse consumer needs, including among older people. Inappropriate products and services that do not meet consumer needs have the potential to cause harm to consumers.</p> <p>The second example regarding hard-to-reach consumers, especially those with lower levels of technological capability, is an important topic for Age Concern. We strongly agree that multiple communication channels, including face-to-face, are essential to avoid excluding existing and prospective consumers. This is particularly crucial for financial services such as banking.</p>

4	Ensuring that information is up-to-date and consistent across all communication channels will help providers meet this outcome.
6	We strongly support the Financial Markets Authority's encouragement to remove incentives linked to sales measures. Such practices have the potential to create significant harm to consumers and their whānau.
7	<p>We agree that consumers should be able to easily access their providers for assistance and information.</p> <p>Consumer complaints should be promptly and effectively addressed. We strongly support that consumers are informed of the outcome if they believe their complaint has not been resolved. They also need to be advised of any other processes available to them.</p> <p>We strongly support the joint message and information sheet on ways to support customers through hardship and recognising customer vulnerability. We encourage the Financial Markets Authority to ensure financial service providers implement processes and policies to respond to customer vulnerabilities. We also encourage providers to implement staff training that will support the organisations to meet their obligations to consumers.</p>
10	We would like to see provision for consumers and consumer advocate groups to share with the Financial Markets Authority their experiences of the framework, outcomes, and actions taken by providers post implementation.
17	The examples are helpful to understand the practical and everyday impact of the outcomes and mahi of the Financial Markets Authority.
<p>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.</p>	
<p>Thank you for your feedback – we appreciate your time and input.</p>	

Feedback form

Consultation: Fair Outcomes for Consumers and Markets

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Fair outcomes for consumers and markets: [your organisation's name]' in the subject line. Thank you. **Submissions close on 1 March 2024.**

Date: 29 February 2024

Number of pages: 7

Name of submitter: [REDACTED]

Company or entity: NZ Financial Services Group Limited

Organisation type: FAP - Licencee

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED]

Question number	Response
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1.

The FMA's outcomes focused approach should drive the industry in the right direction. The seven outcomes outlined are clear in relation to FMA expectations at a conceptual level. However it is currently unclear how the FMA plans to measure the success of the focus on outcomes.

We all want fair outcomes for Consumers. An outcomes-focused approach will increase the viability of all those in the business of providing a financial advice service. It's also important that delivery of fair outcomes must be balanced against commercial reality and have measures in place. The FMA should set out how they plan to measure the success of the fair outcomes approach (for example, consumer surveys, monitoring complaints, arrears & defaults) and ensure that the industry knows that this does not replace existing legislation.

Fair outcomes can be subjective and measurement must take into account many factors. The industry has already taken many significant steps to deliver fairer outcomes for consumers. Examples are:

- *removal of sales incentives*
- *focus on policy replacement (risk insurance)*
- *removal of high commission regular savings products*
- *de-coupling of combined investment/insurance products which were complex to understand*
- *ensuring affordability of loan products (servicing calculators/CCCFA)*
- *monitoring consumer experience (NPS scoring)*
- *putting policy conditions in plain English*

Generally the seven Fair Outcomes make common sense. However commercially, in some situations, they may not be easily achievable and these could lead to unintended consequences. Examples are given in our answers to the questions that follow.

2.

Generally the proposed fair outcomes will bring benefits to consumers, providers and markets. However what is perceived as fair to one participant may be unfair to another.

The consultation document mentions resilience of the whole financial sector. It also mentions more broadly that financial services and products should be available to anyone who might need them. Distribution plays an important part of providing fair outcomes to consumers and we would like to see some reference to the legislation already in place to show the alignment of this to the adviser community. We believe this will help advisers understand how to meet duties and obligations.

To be resilient an insurer or lender needs to charge an interest rate or a premium that compensates them for the risk they are taking. Equally, a financial adviser who provides financial services needs to be remunerated to stay resilient and continue to offer a service to their consumers.

There are some obvious examples of where fair outcomes have not been achieved and the market participant has failed to take action.

A fair outcome can mean different things depending on the perspective from which it is viewed. A fair outcome to an individual claimant under a trauma policy would be for the claim to be paid. However if the condition suffered does not meet the policy definition, this can seem unfair to the claimant. From an insurer perspective, it would be unfair to pay the claim ex gratia as this could disadvantage other policyholders who may have increased future premiums as a result of ex gratia payment. The FMA may view the non-payment of such a claim as unfair, as a reasonable consumer might have expected to be paid if the claimant suffered the medical condition and the policy definition was too restrictive.

In measuring fair outcomes all these conflicting market influences must be taken into account. Fair outcomes for consumers as a whole may conflict with a fair outcome for an individual, and the financial sector providing the service.

The definition and measurement of fair outcomes must take all the above into account.

3. *The adviser market is critical in ensuring all consumers have access to a broader suite of lenders and products that meet their needs. This is particularly the case in areas in which branches are closing, and for demographics that may struggle to travel or use digital options.*

We obviously support the fact that consumers have this access, however in reality this can be difficult to achieve, as detailed below;

Access

Access can relate to the availability of products that meet diverse consumer needs, or the method of access. Method of access can be digital, through a financial adviser, or through a branch office.

Greater access can come at a cost that must be met by the provider, financial adviser or consumer. Banks have closed regional branches making it more difficult for some consumers to access products. The more elderly consumer who is not computer literate has been disadvantaged by this. The examples provided in the FMA guide refer to specific sectors of society.

The cost of providing and delivering a service means that distribution channels such as advisers may sometimes have to decline to provide a service putting a consumer in a situation where they don't have a choice but to use other channels.

Technology can assist with access and is embraced by younger generations who often prefer to purchase online. However financial products can be complex and are often better explained face to face, rather than information being provided online. Consumer verification for AML/CFT purposes often requires face to face meetings and identification documents to be sighted.

Tools such as Zoom/Google Meet can assist with access.

The FMA Guide refers to access such as the availability of financial products and services that meet diverse consumer needs. Providing a suite of products that meet all needs will come at a cost to the provider. We agree with the concept that market innovation could address accessibility issues. However it may not be practical for a provider to offer a full suite of products to meet all consumer needs. Instead we may see providers specialising in a particular market segment.

We also believe that accessibility is an issue that needs to be solved utilising resources outside the financial services industry. Examples of this could be:

- Government funding of more financial literacy programmes in schools and targeted communities. This has happened to a certain extent through the Retirement Commission, Sorted website etc.*
- Funding of financial advisers to offer services to those hard to reach communities.*
- Monitoring of private health providers to ensure their costs in relation to private health insurance claims are not excessive (resulting in more reasonable health insurance premiums).*

Lack of financial literacy of some consumers makes it more difficult for them to access financial services. They may not understand what it is that they need as they do not understand the complexities of products on offer. Affordability can also be an impediment to access. It may not be cost effective for the distributor to offer their services to those that are not financially literate.

Products that are simple to understand or access often have reduced benefits as a trade-off. For example health insurance products with a simple application form asking limited health questions had pre-existing conditions excluded for a period of time, resulting in consumer dissatisfaction at claim time.

Cost can limit access

Whilst products can be designed to meet consumer needs, the pricing of these may make them inaccessible to many consumers. A normal income protection policy with a 4 week waiting period might be

the best for a consumer's situation, but the cost may mean they can only afford a policy with a longer waiting period (therefore not meeting their immediate need and providing a perceived unfair outcome at claim time). Some distribution models may also question the suitability of the appropriate product to the consumer due to cost to distribute.

Appropriateness

We agree that appropriateness of a product should be re-assessed through the lifetime of the product through post sale interactions. Distribution channels / Financial Advisers need to review a consumer's needs and the appropriateness of products in place on a regular basis. If a product becomes inappropriate, there should be a strategy to move the consumer to a better product without penalty to the consumer (Example is a continuation option on a group insurance product where further underwriting is not required, or waiving of a break fee if the loan is no longer suitable due to changed circumstances).

In reality a consumer cannot always be matched to a product that completely fits all aspects of their needs due to affordability and their current situation. A fair outcome may be perceived as anyone who needs a loan or income protection insurance should be able to obtain these. However commercial reality means that a consumer may not be able to obtain a loan due to servicing ability, or a consumer wanting income protection insurance may either be unable to afford it, or afford only a product with restrictive terms resulting in a potential poor outcome at claim time.

Advisers often put in place loans containing a mix of fixed and floating rates to give the consumer greater hedging against interest rate movements. Or they can put in place a loan on a fixed term in the belief interest rates will rise. Markets can change quickly and if interest rates drop, a consumer may feel it was unfair to be locked in at the higher rate. Even though advisers explain the difference between fixed and floating rates at the outset, the consumer can still perceive that they have had a poor outcome.

Some insurance products are designed to provide maximum cover at a time of most need. For example, the rate for age life insurance means premiums are affordable at a younger age, but increase exponentially at older ages. The insurer factors in claims statistics to enable lower cost premiums at younger ages, with the expectation that premiums will become unaffordable at older ages when need for cover diminishes. However some consumers may perceive this as unfair. Level premium life insurance overcomes this but the premium increases substantially when the level premium term ends. Some insurers have combined these two different premium structures in one product, but such products are complex and harder to understand.

4. This is essential in promoting financial services. Information should be in "plain English" to aid understanding. This should apply to loan documents and policy conditions. Advisers play a critical role in explaining these documents and consideration should be given to how this will be solved for those that go via digital channels.

We are a multi-cultural society and colloquialism should be avoided in communications.

We agree that KiwiSaver funds should be reviewed regularly against the consumers risk profile.

Insurance Policy Replacement may not be high risk if done appropriately with full analysis of the reasons for it, full disclosure to the consumer, and the mitigation of any risks. In some cases it may be in the best interests of the consumer to do so.

5. The concept of this is correct, however it can be subjective.

We agree that if fees are charged to a consumer on the assumption an adviser is providing ongoing service and remunerated accordingly, then servicing should occur, or the ongoing remuneration should cease.

Clarity is required on what you mean by product providers considering different approaches for different groups of consumers. Caution should be exercised when categorising groups of consumers. Consumers can move from one group to another, much the same as a vulnerable consumer who may be considered vulnerable at one point in time, but move on from being considered vulnerable.

The servicing cost of a loan should be the same for all groups. However some payday lenders historically targeted a section of consumers with low financial literacy, charging exorbitant interest rates that were unaffordable. CCCFA was enacted to address this. With insurance, consumers are grouped according to risk and premiums are charged accordingly. For example smokers pay more for life insurance and house insurance is more expensive in a flood zone.

If an insurance policy is taken and a claim is never paid, some consumers may perceive this as poor value for money. Insurers offer no claims discounts to reward those who do not claim. However some consumers ensure they are paid for claims made at least equal to the premiums they have paid, even when the claim

	<p><i>is invalid. This then raises premiums for all other consumers. Value for money means different things for different consumers.</i></p> <p><i>Whilst fair value for money is a fair aspiration in relation to as an example, credit card repayment insurance, how is this measured in relation to an income protection or health insurance product? Premiums are calculated based on claims history, and a product that has high claims against it may not be considered fair value for money as the premiums are too high for the average consumer. However the product needs to be priced accordingly to remain commercially viable for the insurer, and to ensure sustainability of future claim payments for those consumers who have already purchased the product.</i></p>
6.	<p><i>This is paramount in building trust in the industry. We agree that operational resilience is very important, both in relation to cyber security and financial resilience to be able to deliver on promises in the future.</i></p> <p><i>We agree that sales incentives based on volume of business placed with a particular provider meant that there may have been motivation for financial advisers to have not acted in the client's best interests.</i></p> <p><i>For many consumers, the purchase of a financial product in relation to insurance or investment is discretionary spending and at the bottom of their list. An adviser needs the skill to educate a consumer that they are at risk of developing a health condition, or they may become disabled or die. Insurance can mitigate that risk. New Zealanders are underinsured and few consumers proactively seek this type of insurance. A financial adviser often needs to persuade a consumer that the purchase of an insurance product should be strongly considered. However an adviser using undue influence from a position of power is unfair.</i></p> <p><i>The FMA also has a role to play in the perception consumers have that industry providers can be trusted. If one or two providers are publicly censured for bad practices, then this creates suspicion and mistrust of all providers and distribution channels such as financial advisers. We do not believe this should be at the expense of consumers being insured, where it is appropriate for them.</i></p>
7.	<p><i>This is essential as most financial products have a longevity of several years. A consumer's financial situation changes as they establish a family, change houses, change jobs etc so it is essential that financial advisers keep abreast of this and recommend product changes or new products as necessary. Product providers will need to offer more options to consumers for a change in circumstance and not put up barriers if there is not increased risk.</i></p> <p><i>Ongoing care in relation to existing home loans can encompass debt reduction strategies, top ups for home improvement, review of loan structure.</i></p> <p><i>Some insurers offer pass back of revised policy terms to existing policyholders with a previous version of the same product. This is an example of ongoing care.</i></p> <p><i>House insurers/brokers offer building replacement calculators to ensure the home is constantly revalued so that it can be rebuilt to the same standard.</i></p> <p><i>During Covid the lenders and insurers introduced support initiatives in relation to vulnerable consumers. Consumers can move in and out of vulnerability situations so ongoing contact and consumer care is absolutely necessary.</i></p>
8.	<p><i>This is essential in promoting credible markets and consumer participation. We are advocates for full transparency and believe this is a key component of a healthy financial system.</i></p>
9.	<p><i>Participants need to have confidence to further invest in their businesses, therefore an over burden of compliance requirements may see investment into staff rather than the innovation to support consumers and their access to advice.</i></p> <p><i>We agree that sustainability of adviser businesses is essential in offering intergenerational services. Adviser businesses need to be sustainable and able to concentrate on servicing consumers as a priority rather than concentrating foremost on compliance requirements. They need to be able to develop businesses that have value and cash flow to make them attractive to new purchasers.</i></p> <p><i>The right environment needs to be created to encourage new companies to list. Compliance costs need to be minimised and some guidance from the FMA would be useful in reducing over compliance. Product disclosures need to be simple to understand.</i></p> <p><i>The FMA must recognise that there is a cost to implement some requirements (often based on interpretation of the regulations) and must work collaboratively to get us all to a place where businesses and the regulators are comfortable that we are operating within the law and delivering fair consumer outcomes. AI will play a part in improving oversight and compliance</i></p>

	<p><i>Technology will play an increasing part in delivery of financial services, however there will always be a need for face to face consultation, and smaller adviser businesses play a vital part in this. They must remain sustainable.</i></p> <p><i>There are many moving parts to sustainability and the way adviser businesses are remunerated is important. Ongoing cash flow by way of trail/renewal commission is essential in creating a viable business that can invest back into their businesses or be sold, thus ensuring an ongoing pool of adviser participants willing to see a future in financial services, and ongoing service to consumers.</i></p>
10.	<p><i>The consultation paper is titled “Fair outcomes for consumers and markets”. The “setting the context” page refers to fostering the resilience of the whole financial sector. However the seven fair outcomes are very focussed on the product providers and product design. Perhaps there could be more recognition that in order to meet fair consumer outcomes, all industry participants also need to be resilient and sustainable.</i></p> <p><i>The term “providers” in the document refers to providers of financial products. Perhaps there needs to be a reference to providers supporting the sustainability of the distribution channels and their businesses who form an important part in delivery of products to the end consumer, offering ongoing service, and assisting at claim time..</i></p>
11.	<p><i>We are a provider of services to Financial Advisers through their Authorised Bodies. We demonstrate ownership and delivery of fair outcomes including the following.</i></p> <ul style="list-style-type: none"> <i>- Oversight of all aspects of the Authorised Bodies and financial advisers.</i> <i>- Closer working relationships with product providers to provide feedback on consumers concerns, areas where product solutions are not meeting needs of consumers.</i> <i>- Providing an advice process that incorporates scope of service, fact find, statement of advice and review tools.</i> <i>- Ensuring our advisers only offer advice on products for which they are competent and qualified, and are covered under our licence.</i> <i>- Conducting file reviews to identify areas where the tools have not been used to full potential, or where there is potential consumer harm. An example is where we ensure there are full notes on file where replacement insurance business has been recommended.</i> <i>- Reviewing adviser websites and social media content.</i> <i>- Monitoring consumer complaints to identify concerns, trends and poor adviser conduct.</i> <i>- Acting immediately on concerns brought to our attention by product providers.</i> <i>- Consequence management policy to address poor conduct resulting in poor consumer outcomes.</i> <i>- Having an approved provider list for lending and risk insurance.</i> <i>- Having a Fair Dealing policy.</i> <i>- Having a Vulnerable consumer policy and process.</i> <i>- Having a Replacement Business policy.</i> <i>- Having an internal Code of Conduct that must be followed by advisers.</i> <i>- Ensuring our advisers identify and disclose any conflicts of interest.</i> <i>- Establishing a Risk & Compliance Committee involving senior management that monitors conduct, complaints and cyber security. This committee reports to the board. If there are issues involving unfair outcomes to consumers, these are addressed.</i> <i>- Monitoring adviser reporting on policy replacements and dealings with vulnerable consumers.</i> <i>- Auditing key controls associated with our CAP.</i> <i>- Introducing AI to the business to scrape keywords from adviser file notes to identify where unfair practices may exist.</i>
12.	<p><i>Whilst we are not a product manufacturer, we play a part in ensuring our advisers present products that are suitable to a consumer's specific circumstances. Further guidance on what ‘fair outcomes for consumers’ means by linking current legislation to examples from a distribution perspective would be useful in understanding FMA expectations. In addition, some guidance on how the FMA plans to measure the success of ‘fair outcomes for consumers’ as they relate to a distribution channel would be helpful.</i></p> <p><i>Fair outcomes can mean different things to different consumers. Being able to purchase a property of their dreams may be considered a fair outcome for a consumer. However if they miss out on the house of their dreams because of errors made by an adviser in a loan application, this would be unfair. Our role is to minimise this eventuality. The messaging is that the outcomes-focussed approach is not a tick box compliance system, however checklists help to eliminate human error that can result in an unfair outcome.</i></p> <p><i>Market forces can produce unfair outcomes and we can never get around this. We can identify the risk and take steps to mitigate these, however this may still result in what is perceived as an unfair outcome. The current interest rates demonstrate this. A consumer may have purchased the house of their dreams, and set a fixed interest rate of 3 years believing that interest rates would be stable. However with interest rate</i></p>

	<p>rises, they may be subject to a much higher rate at refixing, putting them under more financial pressure and the possibility of having to sell their house. Would a fair approach be for the mortgage adviser to recommend they purchase a lesser valued home at the outset, thus missing out on the house of their dreams? Determining what is fair and unfair can be very challenging and subjective.</p> <p>With insurance, fair outcomes are tested at claim time. Did the consumer receive the outcome they expected? Insurance products and policy wording can be complex. Insurer attitudes have changed to look at ways they can pay a claim under the policy conditions rather than looking for ways to decline a claim. For example, an innocent non disclosure of a medical condition, that had no impact upon a condition leading to a claim, should not be a reason to decline that claim. We believe that simplified product offerings may be good for understanding by the consumer but could limit the outcome for the consumers at claim time.</p> <p>It is a question of balance in determining what is a fair outcome. Paying claims ex gratia outside the policy conditions may then increase the premiums for all other policyholders in the pool, or threaten the sustainability of the insurer.</p> <p>The consultation paper calls for a mind-set change. We believe it is rather a natural progression of our current way of thinking. There have been many changes already in the industry and we are moving in the right direction.</p> <p>However any regulatory or principal based regime will never eliminate those individuals who may choose to act illegally in their own interests rather than those of the consumer.</p>
13.	<p>An outcomes-focussed approach needs to take into account all parties. The consumer needs to feel they have been fairly treated. The product or service provider needs to understand decisions made by the FMA. We have no argument with the FMA instructing a provider to put right something that the provider promised to do. Examples are where multi-policy discounts have not been applied correctly, or where fees on a product have been overcharged. However if the FMA acts in an intuitive way based on perception of a fair consumer outcome, that is contrary to loan or policy conditions, this can impact the provider financially to the detriment of other consumers.</p> <p>The FMA must also play a part in “promoting confident and informed participation of businesses, investors and consumers in financial markets.” Whilst we recognise that firms who do not embrace the FMA’s objectives and breach regulatory requirements should be held accountable, the way in which the FMA has communicated this to consumers in the past does little to promote confidence in the industry. Compliance action should be communicated in a way that reinforces the confidence in financial markets and encourages consumer participation rather than discouraging it. Headings appearing in FMA press releases as shown below create suspicion and distrust of insurers.</p> <p>Medical Assurance Society to pay \$2.1 million penalty for making false and misleading representations to consumers</p> <p>Vero to pay \$3.9 million penalty for making false and misleading representations to consumers about multi-policy discounts</p> <p>A more constructive approach would be to have a heading something like “XYZ insurer takes corrective action to improve systems following FMA penalty”.</p> <p>The FMA needs to have open and honest dialogue with providers and ensure it upholds its promises as outlined on p13 of the consultation paper to work with firms to understand their viewpoint, and communicate level of maturity on an ongoing basis. We all want to achieve the same thing and are willing to work towards this.</p>
14.	<p>As mentioned previously there need to be criteria by which misconduct in relation to unfair conduct is measured. Otherwise it is a judgement call open to interpretation.</p> <p>We would expect a consultative approach from the FMA as the fair outcomes approach is bedded in and the measures be published to ensure consistency across the marketplace prior to enforcement action being taken.</p>
15.	<p>We strongly believe that distribution of financial services by an adviser network is an essential part of making services more accessible to all consumers. Innovation from our perspective is about providing digital advancements to allow our adviser businesses to work more effectively with consumers, and to make it easier for consumers to access our services.</p>
16.	N/A

17.	<i>The examples provided in the guidance were helpful. However they were more investment/KiwiSaver focussed. Examples in relation to lending would have been helpful.</i>
18.	<p><i>More guidance would be very useful, especially in relation to Head Groups with a Class 2 licence and an Authorised Body/Financial Adviser structure. We do not manufacture products or deal directly with consumers. We want to influence fair outcomes for the consumers who are dealing with those under our licence.</i></p> <p><i>We would like to know more detail around how fair outcomes will be measured by the FMA.</i></p> <p><i>It would be useful to know what the FMA considers as unfair outcomes specifically relevant to the type of business we run.</i></p>
<p>Feedback summary – <i>if you wish to highlight anything in particular</i></p>	
<p>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.</p>	
<p>Thank you for your feedback – we appreciate your time and input.</p>	



**Social Policy &
Parliamentary Unit**
Working for the eradication of poverty in New Zealand

Consultation: Fair Outcomes for Consumers and Markets

Financial Markets Authority (FMA)

consultation@fma.govt.nz

The Salvation Army Te Ope Whakaora New Zealand, Fiji, Tonga, and Samoa Territory

01 March 2024

Summary

The Salvation Army (TSA) supports the FMA's proposed approach to embedding a regulatory approach that focusses on fair outcomes for consumers and markets. As a Social Service which provides financial mentoring our primary focus is on the wellbeing of vulnerable consumers. Whilst we support the fairer outcomes approach, we acknowledge that such theoretical approach needs to be able to translate to practical and tangible outcomes for vulnerable consumers. Therefore, we have used Payment Protection Insurance for motor vehicles as an example to how we view these proposed outcomes and approach and the potential of such approach to mitigate the harms created such detrimental products

Background

1. The mission of The Salvation Army is to care for people, transform lives and reform society through God's power. The Salvation Army is a Christian church and social services organisation that has worked in New Zealand for one hundred and forty years. It provides a wide range of practical social, community and faith-based services around the country.
2. The Salvation Army combined services support around 150,000 people annually. In the year to June 2023, these services included providing around 83,000 food parcels to 36,000 families and individuals, providing around 5,000 people with short-or long-term housing, some 2,900 families and individuals supported with social work or counselling, over 6,500 people supported to deal with alcohol, drug or gambling addictions, court and prison chaplains helped 5,000 people.
3. Our primary interest in engaging with the FMA is due to our work in the building financial capacity area. The Salvation Army provides financial mentoring across the country we have 41 staff at 29 locations. In the year ending June 2023, our financial mentors supported 3076 individuals through 7852 one on-one sessions. In addition, 5433 dependents of the people we saw benefitted indirectly. It is primarily through the work of our financial mentors we see the lack of regulation to safeguard vulnerable consumers.
4. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army in Partnership with Andrew Mitchell who is a Financial Mentor Team Lead for Royal Oak Community Ministries. The SPPU works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand. This

submission has been approved by Commissioner Mark Campbell, Territorial Commander of The Salvation Army's New Zealand Fiji, Tonga, and Samoa Territory.

Responses to the Consultation Questions

1. *Is the way we have described our outcomes-focused approach to regulation clear, and do you understand how a focus on outcomes will be reflected in our work? Please explain.*

As both a church and a social service provider, we support the outcomes-focused approach. We believe this method ensures that the intended outcomes drive the approach of the FMA, akin to a bottom-up strategy which we perceive as the most effective way to make long lasting benefits for communities.

We resonate with the following quote from Samantha Barrass -

“Fair outcomes should be at the heart of everything we do – for the FMA as well as the industry. It will likely require new ways of thinking and different approaches. This is a journey we need to go on together.”

We place particular emphasis on the final sentence, highlighting the necessity for this journey to be undertaken in partnership with communities.

2. *What are your views on the proposed fair outcomes for consumers and markets? To what extent do you think the proposed fair outcomes will bring benefits for consumers, providers and markets?*

TSA's primary focus is on the wellbeing of vulnerable consumers. We have seen a myriad of challenges our whanau have faced as consumers because the fair outcomes (1-5, 6 and 7 not applicable to many we support) are currently non-existent in certain products and services.

For the purposes of this consultation, we would like to focus on Payment Protection Insurance (PPI) sold by car dealers as a practical example of how the proposed fairer outcomes can make a difference to those we support. PPI is an add-on insurance sold by the car dealers on behalf of insurers or lenders at the same time finance options are used to purchase the car. Car bought on finance primarily impact poorer New Zealanders¹. This premium paid by the borrower is split roughly equally between the insurer and the car dealer. Over the life of the loan the finance company receives interest on the upfront premium.

3. *What are your views on Outcome 1: Consumers have access to appropriate products and services that meet their needs?*

Overall, we support ensuring access to financial products for all consumers particularly regarding financial products that are necessities to function in society like bank accounts. TSA provides reintegration services for people leaving prison and we have highlighted the

1

https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/sppu_addoninsurance_may2022_v4.pdf

challenges in regard to access to bank accounts as a challenge for ensuring successful reintegration².

However, we also highlight the consumer protection element of this outcome which we think is essential particularly in relation to PPI and such financial products. Consumers should be protected from financial products that provide no value for money. The probability of having a successful claim with PPI is about 1-2% - financial products such as these are a rip-off that disproportionately targets poorer consumers.

4. *What are your views on Outcome 2: Consumers receive useful information that aids good decisions?*

For many individuals we support the lack of understanding of what they have signed up for or the commitments required of them when accessing financial products results in them falling into debt. We have seen this in many areas such as accessing buy-now pay later schemes or uninvited direct sales.

Regarding PPI many of our clients are focused on buying a car. They generally don't look closely at the details of the loan contract, and often purchase PPI inadvertently. For many vulnerable consumers, lenders need to ensure consumers are aware of the risks and full costs of certain financial products. This currently does not happen.

5. *What are your views on Outcome 3: Consumers receive fair value for money?*

We agree that consumers should receive fair value for money. We highlighted previously that PPI is a very poor value product with only 1-2% having a successful claim. A report by the Commerce Commission³ showed that across 3 years consumers paid \$91m in retail premiums for PPI but only received \$7m in claims. These consumers ultimately are paying for a product that they will not be able benefit from be of the restrictive nature of claims.

6. *What are your views on Outcome 4: Consumers can trust providers to act in their interests?*

TSA supports vulnerable consumers and unfortunately those we support have low levels of trust for many providers because they are not concerned with the interest of consumers. Our clients receive very little value from purchasing PPI. The product serves the interests of the insurers, car dealers and finance companies, not the interests of our clients. We support outcome four overall, but we believe there is significant work that needs to be done to ensure that trust is developed with the most vulnerable consumers.

7. *What are your views on Outcome 5: Consumers receive quality ongoing care?*

We support this as we believe all consumers need to receive ongoing quality and care. We have many instances that we have seen where this is not the case. Many of our financial

2

https://www.salvationarmy.org.nz/sites/default/files/uploads/2023/10Oct/sppu_catch22_reintegration_nov2023_final.pdf

³ https://comcom.govt.nz/__data/assets/pdf_file/0037/269947/Motor-vehicle-financing-and-add-ons-review-10-November-2021.pdf

mentors are often struggling in their advocacy for our whanau with lenders who are not lenient or consider the complexity some consumers are facing.

In the case of PPI, the full PPI premium is paid at the beginning of the loan contract. There is no further contact regarding the product from either the insurer, the car dealer or the finance company.

We do also want to highlight what outcome five looks like when it is implemented successfully – Mercury has a Here to Help Team which supports their customers who are struggling to pay their bill – the bottom line is the lights will stay on as long as customers are able to let Mercury know they are struggling and work alongside them. This is ultimately a part of their consumer care policy – all providers should have a consumer care policy.

9. *What are your views on Outcome 7: Markets enable sustainable innovation and growth?*

The competitive aspect of the PPI market involves insurers competing against each other by offering higher commissions to the car dealers. Our clients do not seek out PPI as it is an add-on product, so there is not a competitive market in any sense.

14. *Do you have any comments in relation to how a move towards a more outcomes-focused approach to regulation should influence how we seek to address and hold individuals and entities accountable for misconduct?*

We believe an outcomes-focused regulation should be very effective in curtailing providers whose practice and products negatively impact consumers such as the sale of PPI. An outcomes focussed approach sets a benchmark for provider performance but also the level of consumer care required.

16. *If you are a consumer or consumer group, do you understand the fair outcomes and are they relevant to your interactions with the financial sector?*

The fair outcomes are very relevant to the interactions of those we support and with the financial sector. Although this approach in theory is high level, we believe the implementation of this approach will in turn translate to tangible changes in the financial sector that will benefit those we support.

17. *Do you need any further guidance or support from the FMA in relation to outcomes focused regulation or the fair outcomes?*

We would like to further discuss with the FMA about how the application of outcomes-focused regulation to the PPI market will lead to reduced sales of this harmful product and in turn safeguard many vulnerable consumers which we support.