



29 February 2024

By email: consultation@fma.govt.nz

Proposed fair outcomes for consumers and markets

I am writing to provide the submission of Chubb Life Insurance New Zealand Limited (**Chubb Life**) regarding *Fair outcomes for consumers and markets – a guide to outcomes focused regulation (draft guide)*.

Chubb Life is a market leading insurance provider in New Zealand with a broad range of products and product distribution channels. Our products and services include life, trauma, income protection and funeral insurance. As a licensed insurer, our key priorities include maintaining a sustainable entity and, in doing so, treating customers fairly. While conducting our business we recognise the importance of remaining responsive to the constantly evolving regulatory environment.

We welcome the opportunity to provide feedback on the draft guide and we wish to express our support for the submission made by the Financial Services Council (**FSC**). We consider that the points raised by the FSC are of paramount importance and warrant serious consideration by the Financial Markets Authority (**FMA**).

Thank you for the opportunity to submit on the draft guide. We trust that the FMA will carefully review the submission put forth by the FSC and we welcome the opportunity for any further engagement.

Yours faithfully

Chubb Life Insurance New Zealand Limited

1 March 2024

Financial Markets Authority
PO Box 1179
Wellington 6140

Email: consultation@fma.govt.nz

Dear Sir/Madam

Submission on Fair Outcomes for Consumers and Markets Discussion Document

BusinessNZ is pleased to have the opportunity to provide a submission to the Financial Markets Authority (FMA) on its consultation document entitled '*Fair Outcomes for Consumers and Markets*', published on 15 November.

While BusinessNZ generally supports outcomes-focused/principles-based regulation, we believe there are a number of issues that will need to be addressed before the outcomes concept is further progressed by the FMA, including the potential for regulatory creep and confusion for providers.

1. Introduction

The FMA is seeking feedback on embedding a guidelines approach that puts fair outcomes for consumers and markets at the heart of their work. In doing so, seven fair outcomes have been identified, which include:

1. Consumers have access to appropriate products and services that meet their needs.
2. Consumers receive useful information that aids good decisions.
3. Consumers receive fair value for money.

4. Consumers can trust providers to act in their interests.
5. Consumers receive quality ongoing care.
6. Markets are trusted based on their integrity and transparency.
7. Markets enable sustainable innovation and growth.

The Consultation Document states that *"This is not a replacement for, nor rewriting of our rule book"* and that *"they do not create, replace or even supplement existing legal obligations"*. Instead, *"they provide a focus for compliance and business efforts, supported by our existing legislative framework. Delivering these outcomes is the most effective way for good conduct to be demonstrated"*.

BusinessNZ has typically supported outcomes-focused regulation, also known as principles-based regulation, in the development of policy settings. While there are situations where prescriptive regulations dictating specific requirements, procedures or standards are appropriate, we believe outcomes-focused frameworks offer a more flexible, risk-based, and innovation-friendly approach to regulatory oversight. By focusing on desired outcomes rather than prescribing specific behaviours, these regulations can enhance regulatory effectiveness, promote innovation, reduce compliance costs, and adapt to changing circumstances more effectively than traditional approaches.

BusinessNZ believes the proposed seven fair outcomes for consumers and markets are in the right context relatively uncontroversial and worthy of merit. Most jurisdictions would typically aim for something similar in seeking an environment that can provide the best outcomes for all concerned. However, it is important to view these proposed outcomes-focused guidelines within the context of existing financial regulatory settings to better understand a picture of where they will sit and what unintended consequences could develop.

2. Relationship with Existing Legislation

Relationship with COFI

BusinessNZ is concerned that the proposed fair outcomes guidelines will create confusion with existing financial regulations that have already gone through an extensive consultation process. We note the proposed fair outcomes would represent a new concept, something that is neither legislation or regulation, nor guidance for applying a such a regulatory requirement. The status of this is not clear.

After attaining Royal assent, the Financial Markets (Conduct of Institutions) Amendment Act 2022 (COFI) will fully come into force on 31 March 2025. A number of BusinessNZ members were extensively involved in the consultation process regarding COFI, which will introduce a new regime requiring financial institutions to be licensed in respect of their general conduct towards consumers. This license will be a new type of market services license within a similar framework as that for other types of market services licenses.

COFI inserts a new subpart 6A into part 6 of the Financial Markets Conduct Act 2013 (FMCA), which principally requires financial institutions to prepare and comply with a fair conduct programme (in order to comply with the fair conduct principle) and comply with any restrictions on sales incentives.

The sheer scale of consultation, reporting and policy development over approximately four years from 2018 through to 2022 that ultimately led to COFI shows that issues around regulatory obligations need to be worked through carefully, particularly when potentially ambiguous terms such as 'fair' are included. Member feedback on the consultation process for COFI featured significant comment and debate about "treating consumers fairly" and we also recognise the new Government has announced it will explore refinements of the COFI framework.

Given the extensive consultative work involved with COFI, BusinessNZ questions how the fair outcomes guidelines proposed in the consultation will interact with COFI? COFI is not mentioned at all in the Consultation Document, yet both will have a significant impact on how 'fair' is viewed within the compliance requirements for providers. The proposed fair outcomes would substantially overlap COFI's "fair conduct principle" and its five specified elements.

The Consultation Document states that *"providers will need to take ownership of the fair outcomes and demonstrably embed them in the way they operate."* Furthermore, it states that *"these outcomes will guide the FMA's approach to exercising its regulatory powers and responsibilities, including our approach to monitoring and supervision"*. At the same time, providers will be going through a similar approach for COFI in advance of it coming into force in 2025.

BusinessNZ is concerned that the creation and monitoring of these fair outcomes guidelines would create a completely separate rulebook by the FMA that providers will have to follow in addition to specific legal settings already chosen by Parliament, such as COFI. From our perspective, duplication of financial regulations creates a complex regulatory landscape. Businesses that are required to comply must navigate a maze of rules and guidelines, each with its own set of requirements and reporting obligations. This complexity increases the likelihood of misunderstandings and errors in compliance efforts, as businesses struggle to interpret and adhere to numerous, sometimes conflicting requirements.

One could argue that the COFI regime is a clear case of formal regulatory practices, while the proposed fair outcomes guidelines are not and are more conducive to focusing the FMA's compliance and business efforts in relation to the regulatory instruments it administers. Transparency around the FMA's views in this area would be useful for the firms subject to the FMA's supervision. However, the reality for many providers will be that the way the fair outcomes are presented in the Consultation Document (i.e. "embed them") they would become a de-facto quasi-regulatory regime

by itself, particularly since the FMA have already indicated that any deviation or dereliction of these outcomes will be noted and discussed by the FMA.

Ability to Comply

The outcomes-focused guidelines that the FMA is proposing would, in all likelihood, create a noticeable level of disruption for those who must comply, which is acknowledged in the Consultation Paper. Page 5 states that *"we recognise that outcomes-focused regulation may be challenging for some providers. While it supports flexibility and creativity, it also requires a greater exercise of judgment, and for some, a change in how they approach compliance"*.

Duplication of requirements imposes a significant compliance burden on businesses. Complying with multiple sets of regulations requires substantial resources, including personnel, expertise and technology. Financial institutions must invest in sophisticated compliance infrastructure to monitor, track and report on their activities in accordance with various regulatory frameworks. These compliance costs can be especially burdensome for smaller firms, potentially stifling innovation and competition in the financial sector.

We are also mindful that the proposed fair outcomes have been unilaterally developed by the FMA and could presumably be simply altered and reissued by the FMA again at a later date. The ability for regulatory settings to be altered in this way creates additional uncertainty for regulated entities in comparison with the processes associated with developing legislation and regulation.

Quality Regulation?

BusinessNZ has consistently taken the view that the quality of regulation is a paramount factor in developing a productive and competitive economy. Any change or introduction of new requirement(s) will by its very nature cause some level of disruption and add compliance costs, but regulation that is of high quality should soon see such costs diminish, leading to an overall net benefit to the economy.

We note the newly formed Coalition Government has announced that improving the quality of regulation is a key focus, which BusinessNZ strongly supports. This will likely mean a series of new guidelines and practices that all Government departments will need to be conscious of when revising or creating regulations.

In addition, the soon-to-be-established Ministry for Regulation may take a keen interest in these outcomes-focused guidelines for their quality and clarity. The Ministry's purpose will be to ensure regulations abide by positive regulatory principles, including the rule of law, protection of individual liberties, property rights, appropriate taxation, and good lawmaking processes. Given the Ministry will be setting expectations around the quality of regulation, we would question where the outcomes-focused guidelines would sit in relation to expectations set out by the Ministry.

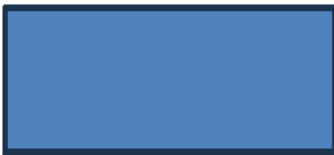
3. In Summary

BusinessNZ believes that any attempt to introduce these fair outcomes must first address questions regarding how they will fit with existing regulations to ensure no duplication or contradictory elements are at play amongst regulatory and non-regulatory instruments.

Unless there is a clear future pathway that sets out exactly where the fair outcomes will sit in comparison with existing and upcoming regulations that providers must adhere to, BusinessNZ does not support the introduction of the outcomes-focused guidelines.

Recommendation: Outcomes-focused guidelines do not proceed until issues including duplication and compliance costs have been resolved through further consultation with the sectors affected by the changes.

Yours sincerely





BusinessNZ



AIA House,
74 Taharoto Road,
Takapuna,
Auckland 0622
-
Private Bag 92499,
Victoria Street West,
Auckland 1142

Phone (Int.) +64 9 487 9963
Freephone 0800 500 108
-
enquireNZ@aia.com
aia.co.nz

1 March 2024

Financial Markets Authority
Level 5, Ernst & Young Building
2 Takutai Square
Britomart
Auckland 1010

By email: consultation@fma.govt.nz
Copy to: elroy.sequeira@fma.govt.nz; matt.lourie@fma.govt.nz

CONSULTATION - PROPOSED FAIR OUTCOMES FOR CONSUMERS AND MARKETS

This submission is made on behalf of AIA New Zealand Limited and its related entities (together **AIA NZ**). It relates to the Financial Markets Authority – Te Mana Tātai Hokohoko (**FMA**) November 2023 consultation paper (**Consultation**) on the proposed guide on Fair Outcomes for Consumers and Markets (**Guide**).

About AIA NZ

AIA NZ is a member of the AIA Group, which comprises the largest independent publicly listed pan-Asian life insurance group. AIA Group has a presence in 18 markets in Asia-Pacific and is listed on the Main Board of The Stock Exchange of Hong Kong. It is a market leader in the Asia-Pacific region (excluding Japan) based on life insurance premiums and holds leading positions across the majority of its markets.

Established in New Zealand in 1981, AIA NZ is New Zealand's largest life insurer and has been in business in New Zealand for over 40 years. AIA NZ's vision is to champion New Zealand to be the healthiest and best protected nation in the world.

AIA NZ offers a range of life and health insurance products that meet the needs of over 815,000 New Zealanders. AIA NZ is committed to an operating philosophy of *Doing the Right Thing, in the Right Way, with the Right People*.

AIA NZ is a prominent member of the Financial Services Council (**FSC**).

Key submission points

AIA NZ supports continuous improvement in conduct and continues to support the aims formalised under the Financial Markets (Conduct of Institutions) Amendment Act 2022 (**CoFI**). AIA NZ also broadly supports the shift to an outcomes-focused approach by the FMA, acknowledging that this requires a mindset shift for the industry.



Our full submission is set out in the attached feedback form. Our key points are summarised below:

- We think that the purpose and intention of the Guide is unclear. We note that there have been contradicting comments from FMA leadership around how the Guide will be operationalised and whether firms will be expected to specifically deliver the outcomes. We strongly believe that firms should not be expected to deliver the outcomes, and this needs to be explicitly stated and contradictory messaging removed.
- If the FMA does intend for firms to deliver the outcomes in the Guide, then we submit that the Guide is not needed at this time for the majority of firms who are already working on implementing CoFI. It is likely that implementing the Guide will distract from preparation for CoFI.
- We encourage the FMA to document throughout the Guide that it is intended to outline the FMA's approach to outcomes focused supervision, and that the Guide does not replace or extend existing regulation or legislation. We think that referring to existing legislation in the Guide would go some way to address this point.
- Finally, we think the Guide could benefit from additional practical examples of both good and poor outcomes. We think that examples for complex circumstances would be particularly helpful and believe that the FMA should avoid using examples of historic industry conduct that the industry has spent considerable time and effort addressing.

AIA NZ also contributed to and fully supports the submission from the FSC.

We would be pleased to discuss any questions you have on this submission, and we would welcome the opportunity to collaborate or consult further with the FMA as it considers the next steps.

Yours sincerely

[Redacted signature]

[Redacted name]

[Redacted title]

AIA New Zealand Limited

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: **8**

Company or entity: **AIA New Zealand Limited**

Organisation type: **Life Insurer**

Contact name (if different): **[REDACTED]**

Contact email and 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.	<p>AIA NZ supports the FMA's work to clarify the meaning of outcomes-focused regulation and we broadly support this shift in approach.</p> <p>We note the comments of the FMA Chief Executive Samantha Barrass at the FSC Outlook 2024 event on 31 January 2024 regarding the purpose of the Guide and its intention¹. In our view the current wording of the Guide does not reflect those comments regarding how the FMA intends to operationalise the Guide, specifically in terms of delivering the outcomes.</p> <p>We suggest that the FMA needs to be clear about whether firms are expected to directly deliver these outcomes. If it is the FMA's intention that firms deliver the outcomes (which we do not support given that certain outcomes are beyond our control e.g. outcome 7), then this needs to be expressed consistently and should acknowledge that delivering the outcomes places additional requirements for firms.</p> <p>If the FMA does expect firms to deliver the outcomes, then we submit that the Guide is unnecessary for financial institutions who will be subject to CoFI. The FMA should allow time for the CoFI regime to be embedded before adding additional requirements for firms to deliver.</p> <p>Similarly, if the Guide is intended not to impose additional requirements on firms, but rather to inform the FMA's focus then this should be explicitly stated throughout the Guide.</p> <p>AIA NZ supports the approach that the outcomes are not intended to create additional requirements and that firms should not be required to deliver the outcomes. Further to this, we question whether using the term "outcomes-focused regulation" might be confusing and if "outcomes-focused monitoring" or "supervision" would reinforce the position of outcomes in the Guide not being intended to create new rules or requirements.</p>

¹ Extract from Samantha Barrass' speech to the FSC Outlook 2024 on 31 January 2024, <https://www.fma.govt.nz/library/speeches-and-presentations/speech-by-samantha-barrass-to-fsc/>

"The FMA's focus on outcomes is in the first instance something for us. It is about our regulatory approach and the judgment we bring to our work as a regulator. It's about us leaning even further into our engagement-led approach. It is about forward looking supervisory judgement that is risk-based and outcomes-focused."

	<p>In addition, the Guide needs to explain more clearly each of the fair outcomes with multiple examples to aid understanding. To aid clarity the Guide should reference existing legislation, regulation and FMA guidance to provide firms with greater context.</p> <p>We support the position of the Guide to avoid 'tick box' compliance but we continue to be concerned that the current compliance obligations and structure of the New Zealand regulatory regimes requires so called 'tick box compliance'. For example, removing the requirement in license applications for firms to tick boxes confirming that they comply with the law would be a meaningful step away from tick box compliance.</p> <p>We would encourage the FMA to document throughout the Guide that it does not replace or extend existing regulation or legislation. Many financial products (including life and health insurance) are long term products which are not easily changed, and regulatory and social expectations can change over the life of a product.</p> <p>Finally, we think that the Guide struggles to address how financial advice providers (FAPs) and financial advisers can influence the outcomes. If the Guide is to apply to all firms supervised by the FMA then FAPs and advisers should have specific examples included which apply to them as their businesses and market position is unique to other firms.</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>AIA NZ's view on each of the purposed outcomes is detailed fully below. In summary we think that further work needs to be done to:</p> <ul style="list-style-type: none"> (i) provide more clarity around the outcomes and who is expected to deliver them; (ii) ensure terminology remains consistent with legislative obligations (so as not to create a new conflicting regulatory regime); (iii) acknowledge the exceptions that may arise and provide examples (e.g. contrary to Outcome 1, certain customers may not be able to access a certain level of insurance due to pre-existing conditions); (iv) provide more balance by setting out expectations of consumers (e.g. consumers should be expected to review and understand their policy wordings before signing); (v) ensure that the Guide does not stifle innovation and discourage new entrants to the market (who are put off by the regulatory burden or uncertainty of having to implement confusing and overlapping requirements). <p>For the above reasons we do not believe that the outcomes as currently drafted will bring benefits to consumers, providers and markets.</p>
<p>3. What are your views on Outcome 1: Consumers have access to appropriate products and services that meet their needs?</p>	<p>AIA NZ suggests rewording this outcome to clarify that product providers are not expected to design products and services which meet the needs or are appropriate for <i>all</i> consumers. It would be impractical for firms to cater for all potential consumers, especially in the life and health insurance sector where not all products are 'necessities' (such as health insurance). We prefer the wording of CoFI referring to likely customers for a product as this acknowledges that products and services should be appropriate for the target consumer and for the customers who purchase them.</p>

	<p>In addition, we propose rewording the access principle to focus on a broad range of products being available to prospective customers rather than a general access principle. While access to financial products is an important concept this should be balanced with the fact that customers will only purchase products which they perceive value in, and firms will only provide products that customers demand, and which are commercially viable.</p> <p>This outcome should reflect that firms are not expected to reconsider or regulate the advice of licensed FAPs. We think that the appropriateness section of this outcome should reference the role FAPs, or intermediaries may play when assessing whether complex products are suitable for a customer's needs.</p>
<p>4. What are your views on Outcome 2: Consumers receive useful information that aids good decisions?</p>	<p>AIA NZ considers that this outcome is too broad, subjective and introduces new concepts of requiring information to be both 'useful' and 'aids <u>good</u> decisions' that do not align with existing expectations.</p> <p>We believe that information provided to customers should aid 'informed' decisions as this is a more objective measure which reflects that customers have independence to make their own decisions. Informed decision making also aligns with expectations placed on financial advisers by the Code of Professional Conduct for Financial Advice Services.</p> <p>We think that the information principle should be reworded from "all communications" to "all product provider communications". Customers may receive information or communications from a variety of sources including media, comparison websites, advisers and other third parties all of which a product provider has little to no control over.</p> <p>We also submit that the expectations in the Guide should mirror the expectations under CoFI regarding communications with customers which are 'timely, concise and effective'. Subjective terms such as 'digestible', 'easily understood' and 'influence' should be avoided as these terms are difficult to evaluate.</p> <p>In our view this outcome needs to reflect that some products are complex by nature (such as life and health insurance) and necessitate the use of complex concepts such as medical terms in customer collateral. The Guide should acknowledge that there may be circumstances when it is not possible to produce information which is 'easily digestible' or 'easily understood' (noting our preference to use different wording). In these circumstances we think that the role of financial advisers should be included as they are critical for customer understanding.</p>
<p>5. What are your views on Outcome 3: Consumers receive fair value for money?</p>	<p>AIA NZ does not agree with applying this outcome to all firms and believe it should be removed from the Guide.</p> <p>While the concept of fair value for money may be understood by some sectors such as managed funds and KiwiSaver providers, other firms do not have an existing obligation in relation to fair value. By including the fair value concept in the Guide, it presents a significant new requirement for much of the industry.</p> <p>Pricing and value are particularly complex areas for life and health insurers and requires actuarial expertise to assess value. These assessments include complex calculations and technical analysis. In an insurance context, value must consider not only the upfront costs and ongoing premium but also the cost over the life of a policy, claims outcomes, solvency requirements and nature of insurance which</p>

	<p>provides a pooling of risk; meaning that an insurer needs to provide value across a pool of customers not just customers individually.</p> <p>We are also unclear as to how the FMA will assess if customers are receiving fair value given how subjective the concept is and how the expectations and needs of customers changing over time affects what they consider to be fair.</p> <p>In addition, we note that insurance pricing decisions are closely linked to solvency and monitored by the Reserve Bank of New Zealand under the Insurance (Prudential Supervision) Act 2010. In our view pricing decisions in an insurance context are primarily prudential matters, rather than conduct matters and including it in the Guide may be an extension of the FMA's remit.</p>
<p>6. What are your views on Outcome 4: Consumers can trust providers to act in their interests?</p>	<p>AIA NZ supports the outcome to act in consumers' interests as this reflects the existing legal obligations for FAPs to treat clients fairly² and the obligation on licensed insurers to give priority to policyholder interests³. We also note that this outcome aligns with the fair conduct principle under CoFI and therefore question whether this outcome is necessary for financial institutions already covered by CoFI.</p> <p>If the FMA decides to continue with this outcome, we suggest simplifying the concept of "acting in the consumer's interest" as it currently includes several broad ideas. In particular, we do not view the 'Trusted Provider' concept as suitable for this outcome. We think that trusting a provider is a broad concept and can often be impacted by a consumer's trust in the industry rather than just the individual firm.</p> <p>We agree that trust is an important market outcome; therefore, we believe it is more appropriate to incorporate Outcome 4 into Outcome 6.</p>
<p>7. What are your views on Outcome 5: Consumers receive quality ongoing care?</p>	<p>We support the overall purpose of this outcome and agree with the references to fairness in the description. As the Guide describes ongoing care as 'continuous fairness provided to consumers', the outcome should be simplified to remove 'quality' as fairness is already a central element, and it is not possible to determine what quality fairness would mean in this outcome.</p> <p>AIA NZ has concerns around describing complaints and claims handling as "effective". We think it should be clear that effective resolution should be objectively assessed from both the perspective of the firm and the customer, and it would be more appropriate to require firms to "appropriately handle" complaints and claims. For example, when a claim is resolved within a firm's ordinary turnaround times and in accordance with the policy wording, it is an effective resolution of the matter, even if the claim is declined, which most customers will not consider to be an effective resolution.</p> <p>We think that servicing expectations or guidelines from the FMA would be more practical and useful for firms to understand what the FMA expects in terms of ongoing care than the information provided in this outcome.</p>
<p>8. What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?</p>	<p>As mentioned in our response to question 6 on Outcome 4, we submit that the concept of trust of providers and trust of markets should be consolidated.</p>

² section 431K of the Financial Markets Conduct Act 2013

³ section 87 of the Insurance (Prudential Supervision) Act 2010

	<p>In terms of price transparency for life and health insurance this is a difficult concept. For similar reasons as explained in our response to question 5 (Outcome 3) pricing decisions for life and health insurance products are technical calculations that consider both current costs and future costs. In addition, firms' pricing of insurance and risk are commercially sensitive, and it would be inappropriate for these to be made completely public.</p> <p>We agree that consumers should be clearly informed about pricing. The concept of transparency for pricing in insurance should focus on breaking down policy fees and loadings and providing quotes to customers rather than providing customers with the ability to break down risk pricing and compare methodologies between firms.</p>
9. What are your views on Outcome 7: Markets enable sustainable innovation and growth?	<p>As submitted earlier, AIA NZ's preference is clear wording to reflect that this outcome is within the direct influence of the FMA and that there is no expectation that firms directly influence this outcome. Further examples are required to substantiate this outcome and address how it will be met.</p>
10. Is anything missing that should be included in the fair outcomes? Please explain.	<p>As submitted above, we believe that the Guide should be reworded to clarify its intended use and how the Guide interacts with the existing legislative obligations placed on firms.</p> <p>In addition, we believe that reference should be made to existing legislation and guidance to aid firms' understanding of the overlap between the Guide and existing legislative and regulatory obligations.</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>We note that according to the FMA's Chief Executive, Samantha Barrass, the outcomes of the Guide are not intended to be delivered by firms. As submitted earlier we encourage the FMA to make its position and the expectations for firms as a result of this Guide clearer.</p> <p>AIA NZ is currently working to implement CoFI. If the Guide were to be implemented at the same time, we expect the CoFI project would pick up any implementation work, starting with a gap analysis between CoFI and the Guide. This would then be added onto the CoFI work plan. Considering the extra burden this would place on an organisation's current compliance resources, we believe the Guide could be more user friendly if the Guide itself includes a mapping to the current regulatory regimes.</p> <p>In addition, implementing the Guide whilst financial institutions are working to implement CoFI will be a distraction, could lead to confusion around the expectations under CoFI and the Guide especially where there is misalignment.</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>In our view the Guide as currently drafted could be interpreted as a de-facto regulatory regime that creates a new set of regulatory expectations. This would create significant challenges for regulatory compliance and should be clarified, as suggested above.</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>As submitted above, we have concerns that the Guide could present a regulatory shift that does not consider the long lifespan of certain financial services products and the different legislation and regulatory expectations when a product may have been developed and sold. The FMA should take this into account when supervising firms.</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?	As submitted above, if the FMA's intention is for the Guide to be a framework for supervision then we suggest that "outcomes-focused supervision" may be a better term to express this than outcomes focused regulation.
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?	AIA NZ's view is that the Guide will not create an environment that supports flexibility and innovation. In our assessment the Guide will likely create a more rigid and complex regulatory regime which will limit innovation for the reasons explained above in our submission.
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?	N/A
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>AIA NZ submits that all outcomes in the Guide could benefit from more examples to make the Guide more relatable and understandable for all firms. We think that practical examples will be the most beneficial.</p> <p>We also believe that a range of examples, of both good and bad conduct would be more useful. Currently, the Guide only outlines instances where financial organisations have not met expectations or been subject to review or negative outcomes. Part of the FMA's role in building trust in the whole financial system in New Zealand should be to highlight when fair outcomes are being achieved, that is highlighting the good practices and the bad.</p> <p>In addition, we question if historic examples of bad conduct identified around the conduct and culture review provide meaningful guidance to the industry (for example the review of insurance replacement business practices is no longer relevant due to the changes in financial advice legislation). We think that historic examples which have been addressed should be removed to acknowledge the work and progress the industry has made.</p> <p>AIA NZ also believes that the examples should include complex situations and products where the fair outcome may not be obvious. We think that the current examples deal with obvious cases but do not explain how a firm should approach a circumstance in which, for example, the outcome may not be fair for all groups of consumers.</p>
18. Do you need any further guidance or support from the FMA in relation to outcomes-focused regulation or the fair outcomes?	We do not believe that any further guidance on the Guide is required.

Feedback summary – if you wish to highlight anything in particular

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

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

Feedback form

Consultation: 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: 3

Name of submitter: [REDACTED]

Company or entity: IG Australia Pty Ltd

Organisation type: Derivatives Issuer

Contact name (if different):

Contact email and phone: E: [REDACTED]

Question	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>IG is supportive of an outcomes-focused approach to regulation that is proportionate and well designed. The FMA's proposals appear to closely reflect a combination of the FCA's Consumer Duty regulation and Australia's Design and Distribution Obligations. IG Group's UK and Australian businesses are required to comply with these obligations and therefore we are very familiar with an outcomes-focused approach to regulation.</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>IG fully supports the FMA's continued endeavours to protect consumer outcomes and the integrity of the financial markets. To meet the high expectations of IG Group's global regulators, promote a strong culture and mitigate the risk of poor conduct, we have a developed product governance framework which focuses on our clients. We strive to ensure our products and services result in fair outcomes for both our clients and the financial markets. We're also mindful of ensuring we communicate effectively with clients, in a timely manner, and offer a high level of customer support. We firmly believe and support proportionate regulation that delivers fair client outcomes as we feel this leads to a better, long-term sustainable industry. However, it is our view that the FMA's proposed fair outcomes approach places an ever-greater regulatory burden of responsibility on firms when dealing with consumers. It risks creating a culture of fear among firms that they risk exposing themselves to record levels of complaints and litigation. We believe that the FMA should not only advocate for the consumer, but also for firms who are building a business in the right way. Any regulation that fails to recognise the need for firms to generate revenue and return value to shareholders will stifle innovation and reduce participation. In that regard, we question whether seven outcomes is too many and risks overcomplicating compliance. We note the FCA adopted four outcomes: Products and Services; Price and Value; Consumer Understanding; and Customer Support, and we are supportive of limiting of the number of outcomes to four in the interest of simplifying compliance while ensuring that meaningful consumer outcomes are addressed.</p>

<p>3. What are your views on Outcome 1: Consumers have access to appropriate products and services that meet their needs?</p>	<p>This outcome closely reflects ASIC's Design and Distribution Obligation objectives. We believe that firms should identify appropriate target and non-target markets for their products. IG Australia already maintains a target market and takes steps to ensure our products are distributed within the target market. Notwithstanding this, we strongly believe that consumers should be empowered to make their own financial decisions and choose the financial products and services they feel are most suitable for them. To achieve this, we support transparency of information. We agree that consumers need the right information, at the key points in the consumer lifecycle, to support sound decision-making. It should then be the responsibility of consumers to use that information and come to an informed decision about whether that investment or product is right for their circumstances, in particular their attitude to risk and financial standing. We believe the FMA should make it clear that the introduction of the fair outcomes approach should not stop consumers from remaining responsible for the decisions they make.</p>
<p>4. What are your views on Outcome 2: Consumers receive useful information that aids good decisions?</p>	<p>We support transparency of information. We agree that consumers need the right information, at the key points in the customer lifecycle, to support sound decision-making.</p>
<p>5. What are your views on Outcome 3: Consumers receive fair value for money?</p>	<p>We support this outcome, but it must be ensured that "fair" does not mean "free". Firms exist to offer products and services, many of which come at significant cost and complexity. We expect that the FMA is seeking to drive out pricing practices which are egregious and, by definition, unfair.</p>
<p>6. What are your views on Outcome 4: Consumers can trust providers to act in their interests?</p>	<p>All FMA regulated firms should have arrangements in place to manage conflicts of interest. We noted in question one that creating seven outcomes was perhaps unnecessary and we feel that this is an example of an outcome that the FMA should consider removing. There is a risk that the emphasis on firms to 'act in consumers interests' is problematic as we believe it would lead to unrealistic consumer expectations. Further, our concern is that rather than always acting in the consumers' interests, firms will instead act in the safest way from a legal perspective, and we do not believe this would equate to a good outcome for consumers or good choice. This approach could significantly heighten dispute and litigation risk for firms. Firms should of course put their consumers at the heart of their business, but ambiguous outcomes risk stifling innovation and participation if firms are reluctant to offer products and services for fear of dispute or litigation.</p>
<p>7. What are your views on Outcome 5: Consumers receive quality ongoing care</p>	<p>We are supportive of the intent but would be concerned with the current guidance for fear that it appears to create a 'duty of care' for firms. This was a concern raised by firms in the UK to the FCA who quickly clarified that this was not the case. The current wording needs to be revisited in a similar light and guidance to be issued that the FMA's intention here is not to create a duty of care where one does not otherwise already exist.</p>
<p>8. What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?</p>	<p>We fully support this outcome.</p>
<p>9. What are your views on Outcome 7: Markets enable sustainable innovation and growth?</p>	<p>We are supportive of the intention but believe that this outcome must be carefully reconsidered against the backdrop of the other outcomes to ensure they are mutually compatible, i.e., that there is appropriate balance intended (and created) between firms and consumers. As indicated in some of our earlier responses, "fair" does not mean "free" and creating a duty of care towards customers would almost certainly come and the expense of innovation, growth, and participation.</p>
<p>10. Is anything missing that should be included in the fair outcomes? Please explain.</p>	<p>No.</p>
<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>IG Australia has significant experience in managing regulatory change and we operate a combination of local and Group governance processes, which we would leverage for the implementation of this work.</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>Our concerns relate to the complexity of the regulation (seven outcomes) and the risk that it heightens dispute and litigation risk, as indicated earlier. We would welcome a simplified approach with fewer outcomes and clear guidance. The FCA implemented examples of good and bad practice, per outcome, which we found helpful and would welcome here (see: https://www.fca.org.uk/publications/good-and-poor-practice/consumer-duty-implementation-good-practice-and-areas-improvement).</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>We refer to our response to question 2.</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>No.</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>No, innovation could be at risk without a simplification of the approach as per our responses above. We think it unlikely that innovation will increase through the approach being proposed.</p>
<p>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?</p>	<p>n/a</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>As noted in response to question 11, the FCA implemented examples of good practice and areas for improvement, per outcome, which our UK business found helpful and would welcome here (see: https://www.fca.org.uk/publications/good-and-poor-practice/consumer-duty-implementation-good-practice-and-areas-improvement)</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>	

Nath Lostitmonton

From: [REDACTED]@wealthpoint.co.nz>
Sent: Friday, 1 March 2024 1:23 pm
To: Consultation
Cc: Compliance
Subject: Fair outcomes for consumers and markets: Wealthpoint Limited

Good Afternoon

This is a submission by Wealthpoint Limited on the FMA's draft Consultation: Fair outcomes for consumers and markets dated November 2023.

1. Wealthpoint is a co-operative company consisting of over 50 businesses and approximately 160 financial advisers across New Zealand.
2. Wealthpoint holds a Financial Advice Provider Licence and a DIMS licence.
3. The draft paper is described as a Guide yet we do not believe it provides clear guidance to market participants.
4. We do not believe the Guide will be helpful to market participants. If anything, the Guide provides less clarity to the market and increases the compliance burden the market faces.
5. We do not believe the Guide should be published.

Thank you for the opportunity to submit on the paper and we would welcome the opportunity to discuss our submission further.

Regards

[REDACTED]

[REDACTED]

[REDACTED]

308 Parnell Road, Parnell, Auckland 1052
PO Box 37451, Parnell, Auckland 1151
wealthpoint.co.nz

The logo for Wealthpoint, featuring the word "Wealthpoint" in a bold, blue, sans-serif font. The letter "i" in "point" has a small blue diamond shape above it.

Unauthorised Use

The contents of this e-mail (including any attachments) may be subject to copyright, legally privileged and confidential. Any unauthorised use, distribution or copying of the contents is expressly prohibited. If you have received this e-mail in error, please advise us by return e-mail or telephone and then delete this e-mail together with all attachments.

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: _____

Name of submitter: _____

Company or entity: Mindful Money

Organisation type: Registered Charity (No.CC51919)

Contact name (if different): _____

Contact email and phone: _____

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>We understand from the draft how the outcomes focus will be reflected <i>in theory</i> in the work of the FMA. However, we consider that application <i>in practice</i> by the FMA will make the principles clearer to market participants.</p> <p>In particular, we consider that the Guidance fails to provide an adequate definition of fair outcomes and fails to include any notion of fairness related to the outcomes of investment.</p> <p>1. On Page 5, the Guidance says that 'fair outcomes' means "products and services meet the needs of identified consumer groups". From annual surveys undertaken by Mindful Money and the Responsible Investment Association of Australasia 74% of consumers want their investment provider to invest responsible and ethically. This data has been consistent over the past 5 years of surveys (and preliminary results suggest that there has been an increase over the past year). It is also reflected in surveys undertaken by others, including FMA and the Retirement Commission.</p> <p>This data makes it clear that the needs and preferences of consumers includes ethical investing, with motivations such as avoiding harmful investment, investing in accordance with the individual's values and investing to contribute to a better world. However, the issue of ethical investment is not reflected in the Guidance as an important aspect of fairness for consumers.</p> <p>Recommendation 1: <i>We recommend that the page 5 of the Guidance include a paragraph under 'What is a fair outcome' explaining that, in the interests of the majority of consumers, products and services need to incorporate responsible investing for positive social and environmental outcomes. This aspect of fair outcomes should be integrated across the content of the rest of the guidance document.</i></p> <p>2. On Page 5, the Guidance also states that fair outcomes mean "providers ensure consumers have access to the knowledge and tools needed to make informed decisions and weigh consequences based on their individual preferences." Surveys referenced above reveal that consumers want to know which companies they invest in and the social and environmental outcomes of their investment.</p>

	<p>This basic transparency requirement is not reflected in the practices of investment providers or regulations for Managed investment Schemes. Six monthly filings with the Disclose Register are an inadequate mechanism for providing information to the consumer – the filings often include little more than the name of a wholesale fund, or a list of company names that mean nothing to consumers.</p> <p>Mindful Money was established to provide this missing transparency, but we consider this information should be provided by investment providers as a part of regulatory requirements to provide “the access to knowledge and tools needed to make informed decisions”.</p> <p>Recommendation 2: <i>We recommend that the page 5 of the Guidance include a paragraph under ‘What is a fair outcome’ explaining that “access to knowledge and tools needed to make informed decisions’ means that investment providers should inform their investors and potential investors about the full list of companies and entities they invest in, with adequate description to explain their main social and environmental characteristics, and the social and environmental outcomes of their investments.</i></p> <p>Recommendation 3: <i>The Guidance document should commit FMA to develop future guidance on enhanced portfolio disclosures (as in Recommendation 2) and clear information on the social and environmental outcomes of investment. This should be based on global taxonomies and disclosure standards being developed by the International Sustainability Standards Board (ISSB).</i></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>Mindful Money is a consumer-facing charity that aims to Make Money a Force for Good. We achieve change by empowering consumers, engaging investment providers and advocating for change. Our goal is to help consumers to achieve the outcomes of aligning investments with values, by avoiding companies that create harm and towards investments with more positive impact.</p> <p>We agree generally with the principles and see the potential for application of outcomes to bring benefits for consumers, providers, and markets. However, this will depend on the outcome principles being interpreted and applied in ways which will support the allocation of capital towards activities that are consistent with the trend towards higher global standards and the transition to a low-emissions, climate-resilient future.</p> <p>As stated in 1). above, the scope of fair outcomes needs to reflect the inextricably linked issue of sustainable outcomes.</p>
<p>3. What are your views on Outcome 1: Consumers have access to appropriate products and services that meet their needs?</p>	<p>We welcome that in the explanation of this principle (p8), the Guidance includes “values”.</p> <p>As shown above, surveys show that a large majority of investors expect their investments to be invested responsibly and ethically. This should be reflected in the requirements for ‘access to appropriate products and services that meet their needs’ under Outcome 1. We suggest that the ethical nature of the products and services are an integral part of consumer needs and preferences and should be explicitly addressed.</p> <p>Recommendation 4: <i>The explanation of ‘appropriateness’ under this outcome should explicitly mention ethical preferences as a component and ‘access’ should include access to ethical products and services.</i></p> <p>We also support that “appropriateness” is across the product’s entire lifecycle. As an example, products and services need to mitigate risks that may not yet be fully visible to consumers (e.g. the risk of stranded assets for fossil fuels investment).</p>

<p>4. What are your views on Outcome 2: Consumers receive useful information that aids good decisions?</p>	<p>We agree with this the aims of this outcome. We note that the information that is useful to consumers is not just financial information, but also information on the outcomes of their investment decisions. For example, in Mindful Money’s experience, consumers who see our portfolio analysis are typically shocked to find out that their investment may be in companies that are inconsistent with their values, such as in companies provide gambling services or violating human rights.</p> <p>Consumers want to know about the consequences of their investment decisions on the real world, not just the financial returns. This mirrors the recognition that business more broadly has responsibilities towards the climate, the environment and society, not just maximization of their profits.</p> <p>The application of ‘useful information that aids good decisions’ under this Outcome must be applied equally to both funds that identify as ethical investment and the wider investment universe. An investor in a fund which includes companies with poor ESG ratings or high carbon emissions should be made aware of the investment risks and the real world outcomes from these strategies.</p> <p>Currently, consumers are not provided with sufficient information on the companies or entities in their portfolios, and the consequences of their investment decisions on issues that the public considers important. We consider that this is “useful information that aids good decisions.” This should be spelled out specifically in the guidance document (see recommendation 2 above).</p> <p>As spelled out in Recommendation 3, this information should be reflected in regulatory standards and disclosure requirements.</p> <p>We believe useful information in investing is supported by:</p> <ul style="list-style-type: none"> • Highlighting the availability of tools (such as Mindful Money) that provide analysis of holdings. • The definition of consistent disclosure standards and taxonomies for defining different approaches • Ability to compare data across providers with consistent measurement standards
<p>5. What are your views on Outcome 3: Consumers receive fair value for money?</p>	<p>We agree with the principle when it considers the balance of the total value to the consumer over fees. However, we are concerned about unintended consequences if the focus is predominantly on low fees. This has been the case in the criteria for default KiwiSaver schemes and in widespread financial commentary.</p> <p>As outlined in Mindful Money’s recent report on Mainstreaming Impact Investment, an excessive emphasis on low fees is contributing to a restricted range of investment funds available to the public (dominated by low fee, passive funds) and lower after-fees returns. A wider range of asset classes, including private assets, could potentially increase after-fees returns and value for money, as evidenced by UK research for the Mansion House Accords. Larger allocations to New Zealand private assets may also play a role in addressing key challenges such as the transition to net zero.</p> <p>Further, as evidenced by our annual surveys, Responsible Investing is highly valued by consumers. Providers undertaking additional research and analysis to support ESG integration and positive impact investing will inevitably incur higher costs.</p> <p>There is extensive empirical evidence that responsible investing strategies can deliver higher returns after costs in the long run with lower volatility. These strategies should not be penalised by an excessive focus on the lowest fees.</p> <p>Recommendation 5: <i>The explanation for this outcome should explicitly recognise that fair value for money does not necessarily</i></p>

	<p><i>mean lowest fees, and that there are specific reasons why costs may be higher for some asset classes and investment outcomes, citing added value such as ethical investment and investing for positive impact.</i></p>
<p>6. What are your views on Outcome 4: Consumers can trust providers to act in their interests?</p>	<p>Mindful Money agrees with the aim of this outcome, and the examples provided in the guidance document.</p> <p>We suggest that the examples also include other pervasive conflicts of interest that are not so obvious in terms of conduct. An example is the drive for short term returns by fund managers or their staff, reflecting maximization of fee revenue and performance bonuses over long term returns to investors.</p> <p>A specific example has been the rapid increase of investment into fossil fuel companies when Russia invaded Ukraine and oil and gas prices rose. This is inconsistent with long term returns (eg. the US Oil and Gas Index has significantly under-performed the S&P500 over the past decade) and the high financial risk of stranded assets.</p> <p>Recommendation 6: <i>The explanation for this outcome should also include the potential conflict of interest related to short termism in investment.</i></p>
<p>7. What are your views on Outcome 5: Consumers receive quality ongoing care?</p>	<p>While Mindful Money agrees with the aim of this outcome, we suggest there is a risk of unintended consequences which could harm both consumers and NZ's development. Specifically, the description on (p10) mentions the ability of consumers to alter, switch or exit a product without encountering 'unreasonable barriers'. However, having low barriers to exit across all products and services may result in lower long-term returns for a consumer.</p> <p>Our recent research on Mainstreaming Impact Investing found growing interest by consumers in investing in companies that generate positive outcomes for people and the environment. The most direct benefits tend to come from unlisted assets. As outlined in Outcome 4 above, our research found that risk-adjusted returns and diversification may be higher from a more diversified asset base than the current focus on listed securities.</p> <p>There are also potential public benefits to NZ from higher investment inflows to meet NZ's challenges e.g. in social housing, renewable energy, climate change, nature regeneration. These investments can provide returns over the long-term horizons of many Kiwi investors as they save for retirement.</p> <p>However private assets generally are less liquid than listed securities and any approach that talks about exit without "unreasonable barriers" should take into account the characteristics of different asset classes.</p> <p>While we agree that a consumer should not be unfairly locked into a poor-quality product, we believe that there needs to be flexibility in approaches. The key is that the consumer understands the nature of the investment and optimal duration for the investment, and accepts the trade-offs between ease of access versus higher long- term returns and the potential for positive social and environmental outcomes.</p>
<p>8. What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?</p>	<p>We agree with the concept of integrity (and good market conduct).</p> <p>On transparency, we would support a wider view on transparency than solely "a more efficient market". Transparency is important for a wide range of reasons and motivations that consumers may have. This extends far beyond factors related to market efficiency.</p> <p>As noted in Outcome 1 above, the current level of transparency is low on issues other than a narrow set of financial measures. While enhanced transparency can be supported by organisations such as Mindful Money, New Zealand needs to keep pace with international</p>

	<p>developments in taxonomies and social and environmental reporting. Additional regulated transparency would not only provide the basis for informed decision-making by consumers but also fulfil the standards that are increasingly required by overseas portfolio investors.</p> <p>In the narrative (p.11) we are also concerned about the unintended consequences of a focus on “a more efficient market through price discovery and increasing liquidity”. The NZ economy is structurally illiquid, with a very small number of companies listed on the NZX and actively traded. We suggest there should be a balance between efficiency and the health of New Zealand's capital markets.</p> <p>Outcomes should recognise there are reasons to support investment in Aotearoa, and particularly meeting urgent domestic challenges of the transition to net zero, enhanced resilience, environmental protection and regeneration and social equity.</p> <p>Recommendation 7: <i>The explanation for this outcome should adopt a wider framing than efficient markets and ensure that consumers are provided with the information, knowledge and market structure that allows them to make informed decisions, rather than a focus on market efficiency defined in narrow financial terms.</i></p>
<p>9. What are your views on Outcome 7: Markets enable sustainable innovation and growth?</p>	<p>We welcome this outcome and the narrative focus (p.12) on greater availability of capital across the spectrum of investment stages. Our comments under Outcome 6 also apply equally here.</p> <p>We welcome the consideration of other outcomes, including taking a balanced approach between short-term and long-term (as noted in our response to Outcome 5 above). We welcome innovation from the regulator including the class exemption that encourages the development of a public market in small / medium sized businesses.</p> <p>There is a long and growing list of countries internationally, including most of New Zealand's capital providers, that have a strategy for sustainable finance. Neglecting sustainability as a desired as an outcome for consumers would be out of step with good practice internationally and within New Zealand.</p> <p>The New Zealand government, business and civil society have a long-standing strong commitment to sustainability as an attribute for society, the economy, and the financial system. A number of the recommendations of The Sustainable Finance Forum's 2030 Roadmap for Action towards sustainable finance have been recognized or implemented by government, the finance sector and stakeholders. The Centre for Sustainable Finance has been mandated to take this work forward. Ministers from Australia and New Zealand have agreed commitments to trans-Tasman alignment on sustainable finance.</p> <p>It would be unbalanced for this outcome to be solely about the aims of innovation and growth without also including sustainable development.</p> <p>Recommendation 8: <i>The wording for this outcome should be changed to read: “Markets enable sustainability, innovation and growth.” The explanation for this outcome should include the rationale for including sustainability as a key outcome that should be expected for consumers and financial markets.</i></p>
<p>10. Is anything missing that should be included in the fair outcomes? Please explain.</p>	<p>See recommendations</p>
<p>Q. 11 and 12</p>	<p>Not relevant to Mindful Money</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>We are concerned that the regulatory focus applied to ‘integrated financial products’ is currently overly focused on the risks of ‘greenwashing’. While we agree that responsible investments should deliver what they say, compliance action to target ad hoc examples of ‘greenwashing’ may not be fair to market participants, and has a chilling effect, potentially leading to ‘greenhushing’ and undermining consumer confidence in all responsible investments.</p> <p>Currently, there is uncertainty about what practices are consistent with terms such as ‘ethical, ESG, responsible and impact’ as noted by the FMA. Compliance should be built on a stronger framework of taxonomies, standards, labelling rules and enhanced disclosure.</p> <p>Internationally, regulators are engaged in providing clearer guidance, such as through the EU’s Sustainable Finance Disclosure Regulations.</p> <p>Recommendation 9: <i>We urge the FMA to work across government agencies, using the outcomes approach to accelerate the development of clearer measures, standards, and labelling for the real world outcomes of investments, and to promote sustainable outcomes from the finance system.</i></p> <p>We would therefore welcome a collaborative outcomes-focused approach to provide valuable feedback for MIS providers which will lead to improvements in practices and outcomes. As part of this we would welcome the FMA regularly sharing case studies as part of its supervision and monitoring roles.</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>Egregious misconduct by individual actors and entities must always be addressed and we welcome the potential for outcomes to support holding bad actors to account.</p> <p>However, outcomes inherently rely on judgement. There is a risk that consensus standards and expectations gradually rise over time which creates ‘in hindsight’ risk for entities. Outcomes in the future may be judged to higher standards than exist currently. As outlined in our response to Q.13, we favour collaborative approaches and regular feedback to providers to lift practices where a good entity has overlooked the potential risk of a sub-optimal outcome.</p> <p>In particular, to encourage innovation and development of high-quality Responsible Investing solutions, we believe that perfection cannot be the enemy of good. The role of the FMA in an outcomes approach should be to lift standards across the whole sector, not just targeting a few funds for misleading statements.</p>
<p>15.</p>	<p>Not relevant to Mindful Money</p>
<p>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?</p>	<p>Yes, as described above.</p> <p>Specifically, we would like to strengthen our cooperation with FMA and government agencies. The outcomes focus can be supported by the Mindful Money comparison website, fund analysis tools, research, and consumer education on responsible investing. We share common aims for building consumer knowledge and understanding on investment.</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>The examples are helpful to illustrate how outcomes can work. However, we feel there could be more examples to illustrate the practices and conditions that result in fair outcomes as highlighted in the Recommendations above.</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>	

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.

01 March 2024

Financial Markets Authority
Wellington

By email: consultation@fma.govt.nz

Re: Proposed Fair Outcomes for Consumers and Markets

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Financial Markets Authority's (**FMA**) consultation paper *Draft Fair Outcomes for Consumers and Markets Guide* (**consultation paper**). The consultation paper seeks feedback on the seven proposed fair outcomes for consumers and markets and the draft guidance setting out the FMA's approach as an outcomes-focused regulator.
- 1.2 This submission has been prepared with input from the Law Society's Commercial and Business Law Committee.¹
- 1.3 The Law Society has previously commented on the *Guide to the FMA's view of Conduct, July 2016*.²

2 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?

- 2.1 The Consultation Paper outlines a move by the FMA to outcomes-focused regulation through the implementation of seven proposed fair outcomes for consumers and markets. The draft guide (**the Guide**) provides these are not "rules" but rather an introduction to what the FMA considers financial providers should be working towards.
- 2.2 The Law Society considers the move to outcomes-focused regulation, and fair outcomes for markets and consumers, has merit. However, the introduction and implementation of the guidance to providers and consumers will be critical, and should clearly spell out the obligations of financial providers and their legislative basis.
- 2.3 In our view:

¹ More information about this Committee can be found on the Law Society's website, [here](#).

² See the Law Society's submission on the *Guide to the FMA's view of Conduct, November 2016*, copy available [here](#).

- (a) There is a risk that, while useful as an educational tool, the Guide may further complicate an already uncertain regulatory landscape and lead to enforcement of unlegislated matters. The adoption of “fair outcomes” that do not have a legal basis and do not match or link to the definition of “treating consumers fairly” in the Financial Markets (Conduct of Institutions) Amendment Act 2022 (COFI) may obscure the regulatory requirements further instead of clarifying them.
- (b) It is also unclear how the guide will be used in practice. The FMA states that the guide does not equate to rules but also provides that the Guide will be used as a measure for monitoring providers, including consideration of enforcement tools where outcomes are not reached. The FMA’s comment that the proposed outcomes do not “create, replace or supplement existing legal obligations” suggests that the FMA does not intend for there to be any legal consequences for a provider that does not achieve a specified outcome (but is otherwise fully compliant with its obligations under the relevant legislation).³ If this is the case, then it is not clear what this outcome-based regulatory approach adds, other than providing a point of reference for the FMA’s internal priorities. It is appropriate for the market to understand the FMA’s internal priorities but there is a risk that the FMA acts unlawfully if, through the guide, it seeks to regulate unlegislated matters.

2.4 The Law Society recommends that for greater clarity the FMA explicitly tie each proposed fair outcome to the statutory obligations under the Financial Markets Conduct Act 2013 (FMCA) or other related legislation such as COFI. If the outcome cannot be tied to a statutory obligation, it is unclear what lawful basis there is for the proposed outcome.

3 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?

3.1 While the Law Society agrees that the overall approach of the Guide is appropriate, we note that some outcomes are unable to be achieved by individual market participants, and query whether individual market participants should be measured against these outcomes. We discuss this in more detail below in the individual outcome subsections.

3.2 We note also that the FMCA does not provide an express statutory mandate to create wide-ranging conduct obligations that apply to financial service providers. For example, the FMCA provides limited conduct obligations in Part 2 of the FMCA where it imposes requirements relating to “fair dealing”, with the focus being on preventing misleading and deceptive conduct and false, misleading, and unsubstantiated representations. There is no requirement for providers of financial services to retail customers to provide services in a “fair” manner.

³ This issue arises because not all of the outcomes are linked to any legislative or licensing obligations.

4 *Outcome 1: Consumers have access to appropriate products and services that meet their needs*

4.1 This outcome should be encouraged, rather than required. When it comes to mandatory requirements, the Law Society considers that the focus should be on individual businesses complying with the obligations as set out in legislation rather than this outcome.

5 *Outcome 2: Consumers receive useful information that aids good decisions*

5.1 This outcome does not appear to be linked to any legislative or licensing obligations that a regulated entity must comply with.

5.2 The Law Society also considers that the term “useful” is too vague to provide meaningful guidance.

6 *Outcome 3: Consumers receive fair value for money*

6.1 The Law Society considers this outcome unclear.

6.2 The current drafting suggests a significant extension of the FMA’s regulatory remit such that scrutiny of value for money, pricing, and value becomes part of its focus. Pricing and value are not easy concepts to regulate, particularly in the absence of a detailed underlying legal regime.

6.3 As with the United Kingdom’s attempts to define and address “value for money” in the pension industry, any suggestion of extending the FMA’s remit for intervention in such an area requires careful consideration and primary legislation. The United Kingdom’s work in this area illustrates the complexity of the issue, the difficulties in reliably assessing whether consumers are receiving value for money, and the need for primary legislation to facilitate effective regulation.⁴

7 *Outcome 4: Consumers can trust providers to act in their interests*

7.1 The Law Society considers that “acting in the consumer’s interests” does not capture the intended concept of this outcome. Sometimes the interests of consumers and providers do not align.

7.2 Including data protection under this outcome also conflates the idea of protection, with that of “acting in the consumer’s interests”. These are separate obligations and concepts. There are times when a provider is required to disclose a client’s data with permission, for example, to a third-party supplier and the outcome as currently phrased does not adequately capture that.

7.3 This might be better phrased as “Consumers can trust providers to manage conflicts of interest”.

⁴ For further information on the United Kingdom pensions scheme “value for money” issues see [here](#) and [here](#).

8 **Outcome 5: Consumers receive quality ongoing care**

8.1 The Law Society considers that this outcome risks being misinterpreted as imposing an additional obligation on providers to provide this to consumers. The Guide does provide some parameters and the concept is important, but the phrase requires refinement and further clarification. For example, what constitutes “quality” and for how long?

9 **Outcome 6: Markets are trusted based on their integrity and transparency**

9.1 The Law Society considers that this outcome is more properly within the remit of the Commerce Act 1986. The Commerce Act is the legislation that administers the effect of various practices on the market, and this is out of place in a regulatory guide designed for financial services and providers.

9.2 Where matters are driven by market processes or good corporate governance, the FMCA is not directly authorised to promote this outside of its prohibitions on various types of misconduct.

10 **Outcome 7: Markets enable sustainable innovation and growth**

10.1 The Law Society considers this outcome is also outside of the FMCA’s remit.

11 **Is anything missing that should be included in the fair outcomes?**

11.1 With the above in mind, the Law Society recommends that the Guide:

- (a) be anchored to legislative standards or rules;
- (b) distinguish between mandatory and recommended behaviours;
- (c) clearly set out the purpose of the Guide and any consequences of not complying with the Guide at the *beginning* of the document. It should be made clear that it does not create any new legal obligations and is not enforceable by the FMA or any other party;
- (d) clarify how the outcomes fit within the wider legislative and regulatory framework applying to providers;
- (e) set out what action (if any) will be taken against providers that do not meet the outcomes; and
- (f) provide clear examples of how providers can prove that they have met the outcomes.

11.2 We also note that further guidance may be necessary on what these outcomes mean in practice for particular sub-groups of providers to whom not all outcomes will directly apply.

12 **Next steps**

12.1 We hope this feedback is useful. Should you have any questions, or wish to discuss this feedback further, please do not hesitate to get in touch via the [REDACTED] ([\[REDACTED\]@lawsociety.org.nz](mailto:[REDACTED]@lawsociety.org.nz)).

Nāku noa, nā



[REDACTED]

1 March 2024

Financial Markets Authority
Level 2, 1 Grey Street
PO Box 1179
Wellington 6140
Email: consultation@fma.govt.nz

Dear Sir or Madam

Bank of New Zealand's response to FMA Proposed Fair Outcomes for Consumers and Markets.

1 Introduction

- 1.1 Bank of New Zealand (BNZ) appreciates the opportunity to contribute to the consultation on the proposed fair outcomes for consumers and markets. BNZ acknowledges the FMA's role since its inception in helping develop fair and efficient markets in Aotearoa New Zealand, lifting conduct and practices across the financial sector.
- 1.2 We believe that much of the FMA's success has been driven by its constructive engagement approach, its focus on overall market and consumer outcomes, and willingness to innovate in response. Its approach has also reflected the relative sophistication and size of the market here, the social context, and ability in a small market such as Aotearoa New Zealand for regulators to achieve outcomes in efficient ways that may simply not be possible in larger more complex markets. It is against this backdrop that while we broadly welcome the shift towards a more formal footing for outcomes focused regulation, we urge caution in simply adopting a regulatory framework from overseas that may have been required to address market issues or societal issues in those jurisdictions, and which may not be present in Aotearoa New Zealand
- 1.3 We note that in the United Kingdom (UK) for example, which we see as leading much of the outcomes-based consumer regulation, the financial sector is arguably still paying a dividend to society for the significant bail-outs following the Global Financial Crisis. There was also egregious behaviour in the UK financial sector that required significant change and a commensurate regulatory response. In the context of the UK market, it may be entirely appropriate that consumer outcomes are more explicitly defined and help ensure that the social dividend is clearly delivered upon. In the context of the New Zealand market however, we submit that those social drivers to address the cost of taxpayer bail-outs and prior conduct issues do not exist. This was evidenced for example by the findings of the joint 2018 FMA/RBNZ Conduct and Culture Review which found that while the potential for such conduct issues to arise existed in New Zealand, there was no evidence that those same issues existed here. We therefore submit that a move to adopt an outcomes approach should be done cautiously, ensuring it is fit for purpose for

Aotearoa New Zealand, and in a way that does not undermine the open and constructive model that exists between FMA and regulated entities.

- 1.4 The remainder of our submission below sets out our response to the questions in the FMA consultation document. These responses should be read in the context of our observations and comments above.

2 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.

- 2.1 We understand the benefits of an outcomes-focused approach to regulating and are aligned with the FMA's aspirations of obtaining the best results for consumers and markets. We appreciate that the fair outcomes are not rules and are intended to assist firms to meet legal obligations in a way that achieves the purpose and intent behind them. Acknowledging this, we do think there is a risk of creating a parallel compliance regime noting the FMA's expectation that *"Providers will need to take ownership of the fair outcomes and demonstrably embed them in the way they operate"*. This suggests the FMA expects a similar level of compliance with the fair outcomes as with rules. Given the predominance of 'willing compliers' in the market and generally risk-averse approach to compliance, we expect this view of equivalence between fair outcomes and rules will be a market reality.
- 2.2 To assist this standard of compliance, it would be helpful to be clear about the existing legal obligations that these fair outcome statements are intended to support. Banks are subject to a raft of legal obligations that set conduct obligations including under the Financial Markets Conduct Act 2013, the Credit Contracts and Consumer Finance Act 2003, the Fair Trading Act 1986, the Commerce Act 1986, the Consumer Guarantees Act 1993, the Banking (Prudential Supervision) Act 1989 and related conditions of registration set by the Reserve Bank of New Zealand. The outcomes approach adds another layer of consideration to how we should comply with our legal obligations, and we consider it would be useful to have real clarity about what obligations these are, or at least which are the most relevant ones perhaps grouped under the outcome statements.
- 2.3 In addition, it would be helpful to have more specific guidance on how existing legal obligations work with the outcome statements given the potential for conflict. For example, some disclosure obligations are very prescriptive e.g. the wording of Product Disclosure Statements for financial products, the wording of financial advice disclosures, and the disclosure requirements for consumer credit contracts. In such cases financial providers have limited flexibility to change these requirements so would appreciate guidance that compliance with these requirements meeting the outcome of *"consumers receiving useful information"* in relation to those scenarios.
- 2.4 In relation to how the focus on outcomes will be reflected in the FMA's work, we appreciate that the FMA is seeking to create certainty about the specific results it is focused on, and we think this is appropriate. However, there is some uncertainty about how FMA will monitor adherence to these outcomes. Although the guidance states in several places that these are not "rules", it also provides that the FMA will be *"outspoken where it sees practices that are unfair and take enforcement action where appropriate."* We submit that enforcement action should not be an available option for failure to comply with the outcome statements. If enforcement action were to be taken it could lead to a very risk adverse financial services industry where innovation is likely to be

constrained in response. A better option would be public information on the FMA's expectations of financial providers and examples of where these expectations are not being met, similar to the Governance Thematic Review Report published by the RBNZ and the FMA¹ or FMA's Derivatives Issuer Sector Risk Assessment². In a market as small as Aotearoa New Zealand, guidance and follow on supervisory engagement is in our view, highly efficient, fit for purpose, and delivers the intended outcomes without adversely impacting the open and constructive engagement model.

- 2.5 As the FMA builds a clear picture of its expectations further examples of “what good looks like” for each of the outcome statements should be provided for both large and small entities, to ensure consistent approaches across the sector.

3 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 to consumers, providers and markets.

- 3.1 As aspirational statements the proposed fair outcome statements are uncontroversial and aligned with BNZ's values and strategic vision. However, in the context of the conduct maturity improvements across the financial sector since the Royal Commission of Enquiry into Banking in Australia³ and the subsequent FMA and RBNZ Conduct and Culture review⁴ in New Zealand (culminating in the passing of the [Financial Markets \(Conduct of Institutions\) Amendment Act 2022](#) (“CoFI”)), BNZ questions whether they will bring any further measurable benefits for consumers, providers, and markets - at least in respect to the products and services provided by the institutions that are subject to CoFI.
- 3.2 We also caution looking at other jurisdictions for regulatory guidance in this area. For example, based on their findings in the NZ Conduct and Culture review, the FMA and RBNZ did not consider that widespread misconduct or poor culture issues currently exist across banks in New Zealand. This contrasts with the outcome of the Australian Royal Commission. The context in the UK is also different following the severe impacts of the Global Financial Crisis in 2008. We would encourage the FMA to consider how conduct is being regulated in countries with high functioning and dynamic financial sectors e.g. Singapore and Scandinavia, rather than those that are still responding to prior market failures.
- 3.3 We also consider that the outcomes risk being misunderstood by consumers as creating “rules” and thus setting unrealistic consumer expectations in some situations. The FMA will have a role to play in ensuring the public, consumers, and approved dispute resolution schemes understand what the intention of these outcome statements are. We acknowledge the responsibility of financial service providers to focus on achieving fair outcomes for consumers. However, it must be clear that treating consumers fairly does not absolve consumers of responsibility for their own informed decisions or mean that they are not exposed to risk.

¹ <https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/regulation-and-supervision/thematic-reviews/rbnz-and-fma-governance-thematic-review-report.pdf>

² <https://www.fma.govt.nz/assets/Reports/Derivatives-issuer-sector-risk-assessment-v2.pdf>

³ <https://treasury.gov.au/publication/p2019-fsrc-final-report>

⁴ <https://www.fma.govt.nz/library/reports-and-papers/bank-conduct-and-culture-review/>

- 3.4 We discuss the number of outcomes in more detail below - our view is that seven outcome statements is too many. We consider outcomes 6 and 7 extend into areas that are less directly influenced by firm behaviour and should be removed. We do not think that consumers nor the wider financial market would benefit from the inclusion of outcome 3.

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

- 4.1 BNZ supports the view that financial providers should offer products and services that meet their consumers' needs. BNZ prides itself on helping consumers to "find a way" to achieve their goals by using BNZ's products and services.
- 4.2 There is a concern that this principle may be misconstrued to mean that all financial institutions need to provide a complete product suite and provide access to those products in numerous ways to meet all consumer needs. We believe that this cannot be the intention however, this should be made explicitly clear. There are legitimate reasons why financial providers cannot or do not wish to service particular consumer segments or offer particular products. We believe that financial providers need to retain the flexibility to provide, or not provide, certain products or services according to risk appetite, capability, or legitimate business strategies. For example, lenders may decide to stop offering specific car finance loans as part of a product simplification, even though for some customers a car finance loan may better suit their individual needs. Similarly, it is conceivable that a financial service provider may want to offer all products and services digitally and virtually, and we consider this should be an option open for them.
- 4.3 BNZ considers it would be helpful to provide context for this outcome statement as it is not feasible that financial providers can meet the needs of *all* consumers and offer *all* appropriate products. It is however appropriate that financial providers know what their target market for certain products and services are, and design and distribute them in accordance with that definition.
- 4.4 In the absence of a clear legal obligation to support this outcome, we submit that the FMA should provide guidance about how this outcome should be interpreted i.e. that providers must provide products and services that are appropriate and accessible to the target market of consumers they are designed for.
- 4.5 In addition, as drafted, we consider the definition of "access" is too wide by extending to consumers' "personal circumstances, preferences goals, risk tolerance and values". For example, we know there are consumers who do not want debit cards with PayWave technology and who prefer to use cash. However, these are aging technologies and being required to maintain the infrastructure to support these could be a barrier to wider innovation and meeting the needs of an evolving and innovative economy. This complex issue is recognised by the RBNZ, which currently has a workstream on the future of money which includes looking at issues facing the cash system.

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

- 5.1 We agree that our communications with consumers should be useful, easy to understand and reliable. Clear information is critical for a trusted relationship. BNZ is regularly

reviewing its product collateral to ensure it is written in “plain English” and can be widely understood by our consumers.

- 5.2 We submit that the word “good” should be changed to “informed”. We note the FMA uses the word “informed” when defining the term “useful” in the draft guidance i.e. *“Useful refers to easily understood and digestible information that is material, accessible, timely and reliable, to support informed decision-making”*. Requiring that the information given by financial providers aids “good” decisions, we submit, is too subjective and value dependent. The word “informed” provides a more objective standard and focuses on the aspects of a product or service acquisition that a financial service provider can control i.e. helping ensure a consumer has access to the right information to help their decision making. Entities cannot be accountable for consumers making good decisions. Entities should provide the right information, and the final decision, good or otherwise, ultimately rests with the consumer. This is particularly important given that significant amounts of information that financial providers are required to provide to consumers is prescribed by regulation. Given this we would expect that the FMA’s position is that where a provider is complying with its legal disclosure obligations it is meeting this outcome and guidance would be helpful to confirm that.
- 5.3 We note there is an increasing expectation on financial providers to bridge the gap in understanding across consumers of financial products and services and to mitigate the inherent behavioural bias short cuts that are a barrier to market wide informed decision making. While we commend this as aspirational, it should be subject to reasonable limits. It also suggests financial providers have a positive obligation to use consumer information to aid the design of the information for consumers, requiring financial providers to collect all relevant information on its consumers. We note that this contrasts with the Privacy Act’s data minimisation approach and submit that this potential conflict should be addressed through guidance and engagement across regulatory agencies, so the financial sector has clarity on what is expected of it.
- 5.4 Ultimately, if the expectations are set too high, it may push financial providers to offering to increasingly simple and commoditised products, reducing innovation, and limiting more consumer-focused products entering or remaining in the market. There are examples in overseas jurisdictions, arguably including the UK, where we have observed this trend, and we submit that we should be mindful of the impacts and potential unintended consequences of an outcomes-based approach on consumer innovation.

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

- 6.1 We do not support including this outcome in the final guidance given its highly subjective nature and inherent uncertainty. It is a significant extension of the current legal obligations relating to pricing - for example that KiwiSaver fees must not be unreasonable and that all credit and default fees charged under a consumer credit contract must be reasonable.
- 6.2 Whether a fee is reasonable can be assessed against established criteria. In contrast whether a product or service offers “fair value for money” is subjective. What constitutes fair value for money is likely to differ depending on a consumer’s personal circumstances, preferences, goals, risk tolerance and values. This leaves financial service providers with the difficult issue of how to assess what constitutes fair value for money for a diverse set of consumers. In the UK where a similar obligation applies, we have

noted that some financial service providers have managed this obligation by delegating the assessment of 'fair value' to third party consultants. This is costly and time consuming and we question whether this is the best use of a financial service providers resources which could be applied to innovation, increasing system resilience, greater fraud prevention, and reducing costs for consumers.

- 6.3 Fair value for money should result from a functioning competitive market and BNZ believes this is currently the case. We acknowledge this is currently being considered by the Commerce Commission in its 14-month long market study into whether competition for personal banking services in New Zealand is working well and, if not, what can be done to improve it. We consider that the FMA should await the outcome of that study before seeking to regulate in this area.

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

- 7.1 BNZ supports this outcome but suggests that it is reframed to be consistent with the drafting in clause 446C(d)(a) of CoFI i.e. "*Consumers can trust providers to pay due regard to their interests*". This would ensure consistency with the obligations of financial institutions and other providers of financial services.

8 What are your views on Outcome 5: Consumers receive quality ongoing care?

- 8.1 BNZ supports including this outcome statement subject to changing the term "care" to "service". Financial providers are fundamentally service providers – the focus of this objective should therefore be on service rather than care. Great customer service should ultimately provide all of the outcomes that we believe may be intended by the use of the word 'care'. We accept, as provided for in the Responsible Lending Code, that we should exercise *care, diligence, and skill* in the provision of our services. However, we consider using the word care in the context of an outcome is too broad and could be misinterpreted by consumers.
- 8.2 We also believe this outcome statement would benefit from guidance as to expectations. Financial providers need to balance consumer's privacy against the actions to provide ongoing quality services. For example, consumers going through medical events or relationship issues may not appreciate their financial provider intervening to assist even if this is well intentioned and for the ultimate benefit of the consumer.
- 8.3 It would also be helpful for the FMA to provide practical examples of what it considers to be *unreasonable barriers* to updating, altering, switching, or exiting a product. Many consumers find security and identity check measures unreasonable and, on the other hand, seamless quick services are often the ones that are most easily exploited by fraudsters. In some instances, particularly payments, the financial services industry is actively looking how it can insert friction to system to reduce the risk of fraud.

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

- 9.1 We agree that the markets should be trusted based on their integrity and transparency. However, BNZ does not support including this outcome in the final guidance. BNZ believes that this outcome can be achieved through adherence to the previous outcomes proposed. If all market participants meet the consumer outcome statements it will

ensure that the market is trusted. For example, outcome 4 relates to providers acting in consumers interests. Adherence to outcome 4 will ensure the following:

- a) *Trusted providers:* Providers demonstrate their commitment to consumer trust by safeguarding consumer assets and data, ensuring operational resilience, and honouring their promises with minimal, to no, disruptions. This assurance builds confidence among consumers that their interests are protected, and their transactions are secure.
- b) *Acting in the consumers interest:* Providers actively avoid or effectively manage conflicts of interest, ensuring that consumer needs and welfare are prioritised. By refraining from engaging in unfair practices or exerting undue influence on consumers, providers foster an environment where consumers feel respected, valued, and supported.
- c) *Consumer-centric culture:* A service provider culture that consistently places the consumer at the centre of decision-making and day-to-day activities reinforces consumer trust. Quite simply, it is also just good business practice. Transparent disclosure, robust governance, effective systems and controls, and financial stability further increase consumer confidence that the provider is acting in their interests.

9.2 Adhering to outcome 4 will ensure the above is achieved. This will cultivate a market where consumers feel informed and secure in their dealings with providers, leading to greater market trust based on integrity and transparency.

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

- 10.1 We welcome the encouragement of innovation and growth. Entities should be empowered to innovate, and customers should be comfortable that innovation has been considered with the relevant risk lens. However, as with outcome 6, BNZ believes that if all market participants adhere to the prior consumer outcomes, innovation and growth will result. It cannot be achieved by a single market participant.
- 10.2 For example, outcome 1 supports sustainable innovation and growth within the market by encouraging different ways of access to financial products and services to meet consumers diverse needs. The availability of diverse financial products and services tailored to meet the varying needs of consumers fosters innovation by encouraging market participants to develop new solutions to address previously unmet needs. Market innovation driven by the need for access can promote inclusion by reaching new market segments. Increased diversity of products and services encourages competition and drives efficiency. This will have the effect of lowering costs and spurring further innovation as providers seek to differentiate themselves and capture market share. By enhancing consumer experiences and satisfaction, improved access fosters loyalty, trust, and long-term relationships, supporting sustainable growth and market expansion.
- 10.3 Outcome 5 also supports this well by ensuring the suitability of financial products and services throughout their lifecycle promotes consumer confidence and trust. This lays the foundation for sustainable growth by reducing risks associated with misalignment of products with consumer needs. Robust review processes prioritise suitability and contribute to market stability and resilience. This mitigates the potential for consumer harm, complaints, and any requirement for regulatory intervention. Current consumer

protection measures prevent access to unsuitable products and safeguard consumer interests. This has the effect of preserving market integrity and enhancing overall confidence in the financial system. By aligning products and services with consumer needs fosters positive consumer outcomes, driving customer satisfaction, retention, and loyalty, which are essential for sustainable growth.

- 10.4 Overall, we support including outcomes 6 & 7 in the final guidance because they will be met by the consumer outcomes and their achievement is not something that can be controlled by an individual market participant.

11 Is there anything missing that should be included in the fair outcomes? Please explain.

- 11.1 We have no comments on this section.

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

- 12.1 BNZ will demonstrate ownership and delivery of the fair outcomes via its Fair Conduct Programme it is developing to comply with CoFI. The CoFI regime will help ensure registered banks treat consumers fairly.
- 12.2 Compliance with CoFI will be supported by BNZ's wider approach to the management of risk, using systems, policies, processes, and people. All material risks, including conduct risk, are governed through relevant risk committees and issues that require focus and attention are escalated to the management and Board Committees, as well as through regular risk reporting. The risk exposures are reported, discussed, and challenged at committees and remedial action is directed and taken if required.

13 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?

- 13.1 We have responded above to the particular areas where we have concerns.

14 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?

- 14.1 We have discussed above that we do not consider that strong enforcement action is appropriate for failure to comply with the outcomes. These should influence the FMA's supervision and monitoring approach to the extent they are consistent with existing powers and care should be taken to ensure that the existing strengths of the open and constructive approach taken between FMA and regulated entities are not compromised.

15 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?

- 15.1 We have discussed above that we do not consider that strong enforcement action is appropriate for failure to comply with the outcomes. These are not law and should not influence the FMA's enforcement powers.

16 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?

16.1 We have discussed above the tension between being conservative to meet certain fair outcomes, and the desire to innovate which may increase risk.

17 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?

17.1 BNZ does not have any specific comments from the view of a consumer or consumer group.

18 What are your views on the examples provided in the guidance? Are they helpful, and are there any examples we should include?

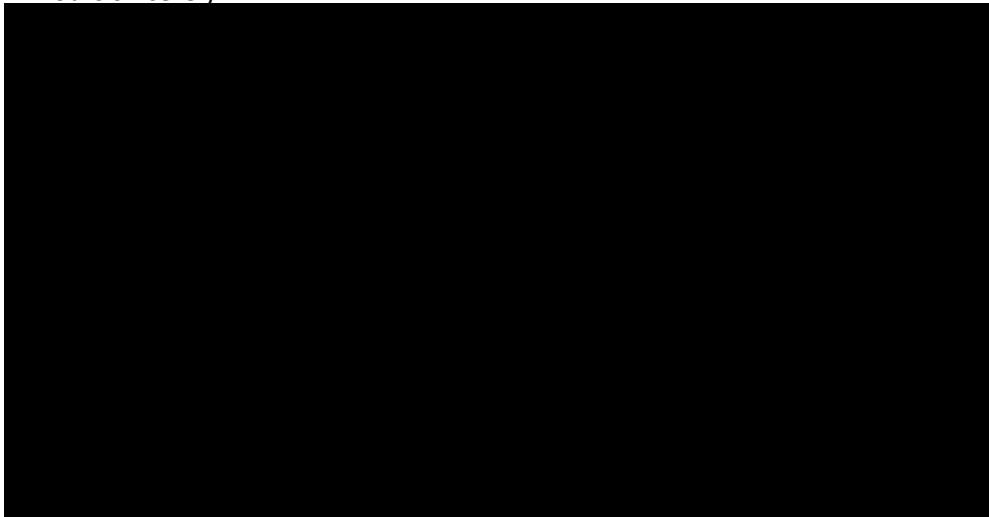
18.1 BNZ does not have any comment on this question at this time.

19 Do you need any further guidance or support from the FMA in relation to outcomes-focused regulation or the fair outcomes?

19.1 We have identified in our response above where we consider further guidance would be useful.

Should the FMA have any questions in relation to this submission, please contact Paul Hay on the details below:

Yours sincerely



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

By email: consultation@fma.govt.nz

1 March 2024

Submission on Consultation: proposed fair outcomes for consumers and markets

- 1 This is a submission by Dentons Kensington Swan on the Financial Markets Authority's ('FMA') draft *Consultation: proposed fair outcomes for consumers and markets* dated November 2023.

About Dentons Kensington Swan

- 2 Dentons Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Wellington and Auckland. We are part of Dentons, the world's largest law firm, with more than 12,000 lawyers in over 200 locations.
- 3 We have extensive experience advising a range of financial market participants and service providers that will be affected by the proposed guidance set out in the consultation paper and the *Draft guide – Fair outcomes for consumers and markets*.

General comments

- 4 It is difficult to criticise the overarching concept of fair outcomes. After all, as users of the very products and services we advise on we too want solid outcomes as consumers. And, as advisers on those products and services, we see market participants and service providers taking their obligations extremely seriously, devoting time and resources in order to comply with the various statutory rules and accompanying guidance.

Repackaging the Guide

- 5 We consider the draft guide should be reframed as an internal FMA document, one that guides the FMA in its approach to enforcement and monitoring. This simple repackaging would mean the outcomes fit more naturally in the regulatory landscape, being a lens the FMA can apply when considering if harm has occurred and what action to take. This leaves businesses to comply with existing clear and enforceable legal requirements.

Grounds to issue 'guide' in current form?

- 6 Stepping back from the content of the proposed 'guide' for a moment, we question the manner in which the draft guide has been developed. It is a stretch for the FMA to readily say it can produce such a document framed as it is at present. The FMA has broad powers to provide information about

Fernanda Lopes & Asociados ► Guevara & Gutierrez ► Paz Horowitz Abogados ► Sirote ► Adepetun Caxton-Martins Agbor & Segun ► Davis Brown ► East African Law Chambers ► Eric Silwamba, Jalasi and Linyama ► Durham Jones & Pinegar ► LEAD Advogados ► Rattagan Macchiavello Arocena ► Jiménez de Aréchaga, Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

its functions, powers, and duties including issuing guidelines. However, the exercise of those powers still needs to fall within the parameters of the relevant laws as they are enacted. In this case, a lot hinges on the reference to 'fair' in one of the main purposes of the Financial Markets Conduct Act 2013 ('FMC Act') and the main objective under the Financial Markets Authority Act 2011. Even then, fair is about markets more generally, rather than a specific consumer protection focus, and must be referred to in its proper context which is 'fair, efficient, and transparent financial markets'.

- 7 In its draft form the guide reads more like a white paper than a refined piece of guidance. Rather than clarifying the FMA's expectations as to the application of particular aspects of the financial markets regime, as guidance is generally intended to do, the draft guide comes across more as a think piece. And one that is not tethered to any underlying compliance obligations. Instead of guiding practical compliance and providing certainty for business, the draft guide mainly paints a picture of what the FMA would like to see if, in its view, the regulatory framework was operating effectively.

Broader focus than just consumers

- 8 Fundamentally, the FMC Act regime is not designed to function as a piece of consumer protection legislation. Nor is the FMA established to act as a consumer protection agency. The primary driver of the regime and the FMA itself is to facilitate capital market activity and assist businesses to fund growth and help individuals to reach their financial goals. Some 'bolt-ons' have client or customer focused elements, such as amendments relating to financial institutions and financial advice providers, but these are certainly not primary purposes.
- 9 The regime as a whole is designed to allow for efficient access to capital, improved confidence and willingness to invest, minimising compliance costs, and allowing for innovation. From a consumer perspective, the financial markets regime aims to improve information sets available to investors and to empower those investors to understand investment opportunities and risks. Consumer protection is not a specific purpose or objective of the regime. As mentioned, there is reference to fair in the context of promoting and facilitating the development of fair, efficient, and transparent financial markets but that is in relation to the market as a whole rather than just consumers.

Outcomes an important part but not the whole story

- 10 The FMA has always considered 'outcomes' as part of its supervisory and enforcement activities. But it has done so within the parameters of the law. Substantive matters such as harm, or risk of harm occurring, as well as the actual or likely outcomes have always been factored into supervision and monitoring planning on both a product and entity basis. Outcomes have also guided decisions regarding whether or not to take regulatory action, including what particular tool to use. For example, an interim stop order can be issued where bad outcomes are likely to occur, such as in the case of scams or non-compliant offers.
- 11 The concept as proposed in the draft guide needs to be flipped so outcomes are a practical lens through which the FMA looks at and assesses regulatory compliance, rather than being a new overlay imposing additional rules. We note the FMA says the draft guide does not create new rules, but the outcomes read very much like rules. The notion of 'outcomes', which the FMA is usefully attempting to clarify, should be updated in existing supervision and monitoring guidance as well as being fleshed out in the FMA's long-term approach to enforcement. Perhaps this could include clarifying that failing to comply with mere tick box elements will not readily lead to enforcement action if there is no bad outcome or harm arising from the technical non-compliance.
- 12 The draft guide and concepts contained within it, in whatever form that may end up being, need to be

reframed to make clear how the principles apply in practice, to specific regulatory obligations. The outcomes cannot function on a standalone basis but can work as a lens through which to assess regulatory compliance and whether or not to take action.

- 13 We are not suggesting the concept of 'outcomes' be ditched completely – the draft guide usefully expands on what the FMA considers desirable 'outcomes' to be. Putting aside the extent to which some of those outcomes may or may not be relevant to the FMC Act regime as designed, we suggest that the relevant outcomes would be more usefully and readily applied if they were set out against and aligned with the existing legal requirements. If there is no specific legal requirements underpinning a particular 'outcome' then the outcome may not be able to be 'imposed' by the FMA.

Specific comments

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?

- 14 There is a lack of clarity in the manner in which an outcomes-focused approach to regulation is discussed in the draft guide. What comes through in the guide is that 'outcomes' are being reverse engineered with the draft guide stating that 'the FMA is setting out the outcomes that regulation seeks to achieve'. This is not true. In practice the FMA is seeking to retrospectively apply outcomes to a set of pre-existing laws that were not developed with that lens in mind. New Zealand's regulatory regime for financial products and financial services is primarily a disclosure based one with related regulation and licensing elements. The guide fails to take this into account.

- 15 Further, the FMA is washing its hands of matters, stating that:

firms are better placed than regulators to determine what processes and actions are required within their businesses to achieve regulatory objectives. Instead of prescribing the processes or actions that firms must take we will ... step back and let firms find the most efficient way to achieve these outcomes.

So not only do businesses have to comply with their actual legal obligations they now have to develop their own programmes and actions to comply with what are, at best, a rough sketch of disparate ideas packaged as 'outcomes' that are not linked to actual regulatory obligations.

- 16 There also appears to be some sort of ongoing regulatory recoil to the concept of tick box compliance. The notion being that somehow ensuring technical compliance is a bad thing. It is certainly not the most exciting piece of work for those at the frontline of compliance but it is necessary. In fact, it is not technical compliance, it is just compliance. The law sets out clear requirements that need to be met before certain activities can be undertaken, such as raising capital from the public. Checking that the law has been complied with is of key importance. If the law has been effectively designed then compliance with that law will lead to the appropriate outcome. In the case of a capital raise, disclosure that complies with Part 3 of the FMC Act ensures investors are informed as to whether to invest or not. The information being provided in that case having been prescribed by statute and regulations.
- 17 The statement that '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' is a telling one. It raises two fundamental concerns:

- First, focusing on outcomes will not readily assist firms to meet their regulatory compliance obligations, given the regime was not designed with those particular outcomes in mind.
- Second, the imposition of outcomes that cut across the existing regime suggests that the existing regime is not, in the eyes of the FMA, fit for purpose. Rather than attempting to legislate via guidance, which raises its own constitutional and administrative law issues, perhaps the FMA should be advocating for law reform and seek development of an outcomes-based regulatory regime through the appropriate channels.

18 Ultimately, the guidance fails to clarify how an outcomes-focused approach will mix with the FMA's overarching obligation to enforce existing legal requirements. Therefore, we recommend that the draft guide at the very least be amended to set out how the outcomes-focused approach will be aligned with the existing regulatory regime. There are several ways that the FMA might be able to go about this, including:

- setting out of the specific regulatory requirements for each outcome listed in the draft guide by reference to each financial product and financial service captured by the FMC Act and related financial services regime (the Financial Service Providers (Registration and Dispute Resolution) Act 2008 ('FSP Act'));
- highlighting particular areas where the FMA would expect issuers of financial products and financial service providers to be applying the draft guide in respect of their particular products or services;
- setting out specific instances where the FMA itself will be applying the outcomes in its supervisory or enforcement capacities, and how this might influence its approach to regulating certain types of financial product issuers and financial service providers; and
- Illustrating how financial product issuers or financial service providers might encounter an 'outcome' or potential problems related to outcomes in day-to-day business, preferably commonly encountered scenarios, and how the outcomes might be best considered by the issuer or provider in engaging with or resolving particular scenarios.

19 Examples would be particularly useful to issuers and providers because they can be used to illustrate clear paths to best practice and meeting the FMA's evolving conduct expectations. We suggest that the FMA look to moor the concept of its outcomes-focused approach to concrete examples of industry behaviour – good and bad; case studies and hypotheticals.

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?

20 In general, the fair outcomes provide some aspirational standards for providers and financial markets. Whether those standards will bring benefits to those groups mentioned will depend on how those standards are applied and elaborated on by the FMA. At this stage it is difficult to assess, in isolation, any potential impact. It appears, for providers at least, that the outcomes add another layer of compliance costs that may not be supported by any real benefit for consumers.

21 Ultimately, this is really a question the FMA should be asking itself and should have known the answer before producing the draft guide. The key question is 'what value does this draft guide provide particularly given it is not enforceable?' If the value add is low, then the FMA should reconsider progressing with the draft guide, and in particular should weigh the relatively low value add against the higher compliance burden and uncertainty created for financial sector participants.

Let's not forget that an additional purpose of the FMC Act is to avoid unnecessary compliance costs.

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

- 22 This outcome should be removed from the draft guide. It is ill-conceived and ill-defined and fails to be applicable to a large set of product and service providers. There is no requirement for private businesses to provide access to products or services, particularly ones that are shown to be inefficient, unprofitable, or obsolete. Businesses simply cannot be forced to provide non-viable products and services and nor should the FMA force them to through guidance. The notion expressed via this Outcome 1 reads more like a description of a utopian market ideal than referencing any obligation for individual businesses. Ordinarily it would be the role of government to provide services that the market does not provide, as a sort of backstop, when there is a perceived need for that service.
- 23 If certain products and services are a necessity then that needs be addressed through the appropriate channels, such as regulatory reform or government backing. That said, very few financial products or services are actually necessities. Perhaps access to a bank account is fundamental, but again, legislative reform could go some way to dealing with such matters,
- 24 Under the notion of 'appropriateness', the draft guide refers to 'the suitability to a consumer of a financial product or service through its entire lifecycle.' Not all products or services have a lifecycle as such. An individual buying a share in a company on a secondary market can simply hold that share as long as they like until disposal. There is no need for the issuing company to be concerned with the suitability or not for the individual holding a share in the company. Likewise, there is no lifecycle for a simple foreign exchange transaction as it is a point in time transaction.
- 25 Even for a managed fund, the manager need not be focused on long term suitability per se. This is the role of professional financial advice tailored to individual circumstances. Failing that, individuals can take responsibility for their own decisions, including whether or not to seek financial advice, noting suitability can also be mentioned in the product disclosure statement ('PDS').
- 26 This also highlights why managers should be allowed to charge a fee to ensure unitholders have access to financial advice as and when needed. One of the disappointing outcomes from the value for money 'review' was the chilling effect it has had on managers providing ready access to advice. Such an outcome appears diametrically opposed to what the draft guide is aiming to achieve, yet it is an outcome created by the FMA's approach to regulating the market.
- 27 The only financial product for which suitability is a requirement at present is derivatives. Licensed issuers of derivatives are required to assess whether the derivative is suitable for the individual investor under a standard condition of their licence. Importantly, this condition is prescribed via the Financial Markets Conduct Regulations 2014 ('**FMC Regulations**'), which expressly provides that the conditions for derivative issuer licences can include a condition requiring the licensee:
- to have systems or procedures for assessing the suitability of a derivative for a retail investor or class of retail investors and for preventing the issue of a derivative to a retail investor where the derivative is assessed as not suitable under those systems or procedures.
- 28 No such regulations exist in respect of any other market service licence types. The legislative intent was therefore to prescribe suitability requirements only in respect of derivatives. The implication being that it was unnecessary for such a condition to be imposed on other licence types. If the FMA

wants to impose suitability requirements on licensees this can be done via a condition but only once the FMC Regulations have been amended to allow for such a condition to be imposed on each specific licence type.

- 29 We note that financial advice providers have to adhere to the Code of Professional Conduct for Financial Advice Providers which requires advice to be suitable for the client, having regard to the nature and scope of the financial advice. Of course, there is no lifecycle per se for advice as it can be one-off or continuous. Rather it must be suitable in the circumstances. This is the appropriate setting – a clear and specific requirement, rather than the vague manner in which Outcome 1 is described.
- 30 Finally, for insurers, banks, and deposit takers, the Financial Markets (Conduct of Institutions) Amendment Act 2022 ('CoFI') provides enough coverage of broad 'suitability' matters. Outcome 1 is superfluous for this cohort, given fair conduct programmes need to provide for design, distribution, and review.
- 31 What the above illustrates is that the various aspects of existing regulation have been carefully calibrated to only require a focus on suitability where deemed necessary. Any additional suitability requirements should only be imposed through the proper legislative channels.

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

- 32 The notion of useful information helping with decision-making sounds a lot like existing requirements for 'clear, concise and effective' disclosure. The FMC Act regime is a disclosure based one; this is built into the overall design. There are already clear requirements in place for disclosure in relation to each financial product, Discretionary Investment Management Services ('DIMS'), and those providing financial advice.
- 33 Those disclosure documents are heavily prescribed, often with length restrictions. They have been designed to be appropriate for consumers. Further, there is little room for providers to add additional material that may or could assist consumers within those documents given the tightly prescribed material and length restrictions.
- 34 Presumably then, this Outcome 2 is more focused on ancillary marketing material such as email communications about product changes or updates to prices. This seems more relevant to insurers and potentially banks and deposit takers and CoFI already requires them to 'assist consumers to make informed decisions'.
- 35 Given the FMC Act regime has carefully designed disclosure requirements in place for each financial product and the various market services we do not see Outcome 2 as adding much in the way of clarity or assistance for providers. In fact the risk is providers will be penalised for some perceived failure to fully meet the expectations set out in Outcome 2, even though they have complied with the express legal requirements regarding form and content of disclosure under the FMC Act and FMC Regulations. Perhaps there needs to be a carve out from Outcome 2 regarding all prescribed disclosure material.
- 36 One key element missing from the discussion of this outcome in the draft guide is what the FMA considers to be 'aiding good decisions'. What exactly is a good decision? A good decision could be made that still results in a financial loss, e.g. a fully informed decision to invest in a riskier product. If Outcome 2 is retained it would be best to remove the subjective element from the outcome so it simply refers to information that aids decisions, or is recast to refer to consumers being able to make properly informed decisions. At the very least the guide should include discussion of how the FMA

envisages consumers making decisions, what a good process for that might look like as compared to a poor process, and to what extent a provider might be held accountable for the individual choice of the consumer.

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

- 37 Although we agree that 'low prices do not always mean fair value' it is unclear here what the value add is intended to be from this outcome. The concept of 'value for money' as developed by the FMA has been tenuously built upon a misinterpretation of the law and the concept of what 'best interests of scheme participants' means in the context of managed investment schemes. That concept is one aimed at ensuring the interests of scheme participants are prioritised in the event of a conflict arising as between their interests and those of the scheme manager. It is not about value for money.
- 38 To seek to extend this concept to all products and services is flawed. Consumers are not tied to their providers – as a general rule, changing KiwiSaver schemes or exiting a managed fund is straightforward, as is moving between general insurers. A new advice provider can be easily found as can signing up to a new DIMS. The only product or service that really comes with some friction is changing health or life insurance providers and that is primarily related to exclusions that may apply under any new cover. CoFI together with reform to the insurance contracts regime should assist on this front. Ultimately consumers can choose to move. If a product is not, in their eyes, good value, they can readily show their dissatisfaction by exiting, cancelling, or moving to a new product or service provider.
- 39 Some products, in isolated instances, have never been of much use for some consumers. This is less a value for money problem than a bad sales one, such as the credit card insurance products mentioned in the draft guide. The problems that arose in respect of such products have more to do with fair dealing breaches and mis-selling than fair value set out in the guide.
- 40 Overall, there is no regulatory basis for Outcome 3. It does not link back to any specific rules in statute. Even the KiwiSaver Act does not mention fair fees. Rather, that Act provides that fees must not be unreasonable. Outcome 3, if retained, could be refocused on ensuring that providers do not misrepresent the value of their services. This has been shown to be a problem in recent penalty cases. It is also supported by the fair dealing provisions of the FMC Act which already captures all financial products and financial services.

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

- 41 This outcome is a mixed bag bringing together two disparate concepts – resilience and conflicts of interests. Prioritising client interests is already required for a number of products and services including financial advice, DIMS providers, scheme managers, and life insurers in respect of statutory funds. Incentives will also be addressed via CoFI. These 'conflict of interest' requirements have been imposed via specific statutory design where they have been deemed necessary, rather than the loose blanket coverage of the entire financial product and service industry that the draft guide purports to do.
- 42 Further, the concept of continuity and resilience is not connected to conflict of interest concerns. Rather such matters have been slowly developed by the FMA via the issuing of guidance and development of a business continuity and technology systems standard condition for various licence types. Insurers and banks have clear continuity and resilience requirements set by the Reserve Bank of New Zealand. Entities seeking licences from the FMA also need to show sufficient operational resilience and data security. In other words, there is sufficient coverage of such matters. Finally,

there are very clear requirements and penalties under the Privacy Act 2020 (**'Privacy Act'**) along with oversight by the Privacy Commissioner in respect of customer information and data.

- 43 We consider Outcome 4 is unnecessary given the clear and targeted legislative and regulatory requirements that are already in place for both the prioritising of client interests and resilience and data matters. Providers must broadly keep client information protected under the Privacy Act. Other providers also have express requirements to act in the best interests of clients. These are clear requirements regardless of whether a customer 'trusts' the provider.
- 44 We also consider that the use of 'trust' as a barometer of these two discrete concepts is unhelpful. The reference to 'trust' is too vague in this context. Providers may well have the best resilience and data protection measures in place and always prioritise client interests, but still a consumer may say they do not 'trust' the provider. That is a decision to be made by each individual consumer. And if they do not trust the provider then the customer can vote with their feet. After all, they are not usually tethered to particular providers.
- 45 If Outcome 4 is to be retained then the notion of client interests needs to be separated from data protection matters. Perhaps the data protection aspect can be dropped, noting the Privacy Commissioner has priority over such matters. But even then an outcome that simply provides that 'providers act in consumers' interests' does not provide much over and above existing requirements.

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

- 46 'Continuous fairness' is a strange turn of phrase. Even the concept of 'ongoing care' is strange in relation to financial products and services. Outcome 5 could be more applicable if it simply covered matters of ongoing service and ready access to service when required, if at all. A number of financial products and services do not require much in the way of ongoing service such as buying and selling shares, point in time transactions, and simple transfer services. In the event there was some concern about a service then ready access to internal and external dispute resolution processes are already required under the FSP Act.
- 47 It appears through the inclusion of 'quality' in Outcome 5 that the FMA has something more in mind than simply an avoidance of harm occurring to consumers. We question why that is and what the standard would be. 'Quality' in the context of the provision of financial services is an ambiguous concept that will differ significantly from provider to provider. 'Quality' care is often a useful price differentiator. That is, competition between providers will occur partly on the standard of care offered, with some providers offering a higher price point for better service. This is useful for consumers, as they can make the choice to trade off quality of service against price.
- 48 It is also telling that there is a direct reference to insurance products in this outcome. Why call out insurers? To date insurers have not been covered by New Zealand's conduct regime. If concerns with insurers have been driving the development of the outcomes in the draft guide then that approach is flawed. Using the least regulated product and service to craft such outcomes means those outcomes end up cutting across and undermining the clear conduct requirements that already exist for other products and services. It also fails to take into account that CoFI will require insurers to address the root causes of any previous fair dealing breaches.
- 49 The examples throughout the draft guide are also heavily focused on insurers and to a lesser extent banks. There is barely a mention of managed investment schemes and no mention of DIMS. It means the examples do not provide much in the way of value to the industry as a whole, noting the large variety of products and service providers that fall within the FMA's remit.

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

50 This outcome is one for the FMA and the FMA alone. It is the FMA's job to deal with insider trading and market manipulation. This outcome could be pursued by the FMA increasing its focus on fraud, scams, and non-compliant offers. In our view, this outcome should be removed from the draft guide, particularly if it remains a public facing document rather than an internal FMA one. Outcome 6 has next to no relevance to the vast majority of product and service providers.

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

51 Again, this outcome is solely for the FMA. It should be removed from the guide. If the FMA wishes to promote innovation and growth then so be it, it can. It is difficult to see what value Outcome 7 adds to the draft guide. The examples – exemptions, promoting reform, and working with other regulators – are all matters that are in the hands of the FMA. As with Outcome 6, this 'market' outcome is not a matter for product and service providers to concern themselves with in the context of outcomes. In fact, the listing of two FMA focused market outcomes detracts from the consumer focus of the rest of the draft guide. If, like Outcome 6, this Outcome 7 is designed mostly to assist the FMA in its monitoring role, then the FMA should consider whether the guide is the best vehicle for setting out these considerations.

Is anything missing that should be included in the fair outcomes? Please explain

52 If anything, the outcomes should be reduced with vague or ambiguous wording replaced with clearer and more precise concepts. Those concepts must be linked to specific regulatory obligations. The guide should also be clear that some outcomes do not apply to certain services and products given the nature of those services and products. Ideally, and for certainty, the guide would specifically note where an outcome was not relevant to a particular service or product provider.

How will outcomes-focused regulation help support regulatory compliance?

53 The draft guide is unclear on how outcomes focused regulation actually supports regulatory compliance. This is because the draft guide is too vague to be readily applicable and neglects to tie the high level 'outcomes' back to the any actual legal requirements. In reality, the draft guide will not and cannot support regulatory compliance at all because, as the guide itself sets out, it does not prescribe any rules. There is nothing to comply with.

54 In our view, the guide undermines compliance by adding a layer of what appears to be requirements but actually are not and which, in some cases, conflict with actual legal obligations. For example, a PDS may not contain all readily useful information that aids decisions but that is a reflection of the design of the PDS requirements and restrictions on length rather than a specific PDS itself. After all, PDS are meant to be readily comparable across funds and schemes rather than assisting solely with decisions in relation to the fund at hand.

55 As noted above, its not enough for the FMA to provide a set of aspirational outcomes if those outcomes are not going to be accompanied by a description of how they should (and would) be applied in practice. The draft guide, if advanced to be industry facing, should contain greater detail on how the FMA plans to make reference to the draft guide when policing regulatory compliance and how providers of financial products and services should take the draft guide into account in the course of their day-to-day decision making.

56 Perhaps, at the very least, the draft guide could provide examples of certain unfair outcomes and

overlay those outcomes with express regulatory breaches to show where and how the FMA may intervene. Such examples could set out the specific fair outcome which has not been met, the legal requirement to which it relates, and how the FMA would take the draft guide into account when engaging with the provider to address areas of concern.

- 57 Another suggestion, again if the guide remains 'industry facing', is that the FMA sets out various best practice examples of different products and service providers taking ownership of a fair outcome and demonstrably embedding it in the way the provider operates. Ideally this would involve identified regulatory requirements or issues which providers might encounter. The examples would then set out how providers might factor the draft guide into their decision-making.

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?

- 58 The FMA's supervision and monitoring approach should be as transparent as possible. This is so that providers in the financial sector have certainty as to how best comply with their obligations and serve their clients. If the draft guide is reframed as being an internal FMA guide then this becomes the key purpose of the guide – with consumer outcomes being the key factor for the FMA in determining its response to regulatory breaches. Otherwise, the outcomes, as framed at present, do not provide certainty. They undermine and confuse existing compliance obligations.
- 59 The outcomes also do not provide certainty for FMA staff and would likely lead to inconsistent approaches being taken by FMA staff where similar case scenarios arise. A lack of expertise and training as well as supervision within the FMA of its own staff, not to mention continued turnover, will likely exacerbate such problems.
- 60 It remains to be seen whether qualitative or quantitative data and analysis will be the focus for the FMA. A simple file spot check will be unlikely to suffice in really getting a proper picture of a product or service providers outcomes as a whole. There will be cases of complaints or mistakes being made. One-off occurrences that are promptly corrected do not mean a provider has failed. In fact, a well resolved complaint is an ideal outcome. Further, industry research will not also readily reveal whether a particular provider is falling foul of the fair outcomes. As noted in the draft guide, value takes many forms, and lowest is not always best. Thus it is not clear what the FMA will measure the outcomes against – industry norms and medians, international norms, complaints compared to customer numbers and the like.

What are your views on the link between outcomes-focused regulation and innovation? Will it provide increased flexibility to achieve business needs?

- 61 In our view, innovation occurs where financial product and service providers have certainty and greater capacity to innovate. An opaque regulatory regime raises costs for financial product and service providers and leaves less time to innovate. Concerns over any potential for consumer harm from what is otherwise a compliant new product innovation is likely to deter providers from pursuing that innovation, meaning consumers who may have benefited from the initiative will be denied the opportunity to do so.
- 62 The lack of certainty and transparency regarding the place of outcomes and the FMA's approach risks stifling innovation as existing providers and new players simply cannot afford the time and costs to jump through additional and uncertain regulatory hoops to develop new products or services. We see regulatory uncertainty and ever increasing compliance costs as a significant barrier for new entrants and for the development of new financial products that 'push the envelope'. This reduces

the potential for competition for consumers as well as potentially limiting access to, and the benefits of, developing technology.

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?

- 63 At its core, the FMA does not have a mandate to hold individuals and entities accountable for misconduct except where those individuals or entities have acted in breach of their legal obligations. The draft guide is very clear that 'these fair outcomes are not rules. They do not create, replace or even supplement existing legal obligations'. Reframing the guide as an internal FMA decision making guide would assist in delivering on that representation. Where an individual or entity has engaged in some misconduct the FMA can apply an outcomes lens to determine what action to take in those circumstances, such as whether to issue a warning, make a stop order, or file proceedings.

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

- 64 There is very little in the way of comprehensive examples in the draft guide, even relative to previous guidance provided by the FMA. Even then they are not really examples but rather cross-references to other reviews, studies, and guidance. Notably, as mentioned, a number of the so called 'examples' refer to insurers and banks rather than the core existing market services licensee types that the FMA has jurisdiction over.
- 65 We suggest the guide, in whatever form it finally takes, either internal or external facing, include numerous practical examples for the very wide range of services and products captured. This will assist to provide greater certainty for businesses. Those examples should include minimum requirements and examples of when an outcome may not be applicable to a service or product type. Such examples could include scenarios where the provider should act in a certain way or where the FMA would take a particular approach to regulation with reference to the guide. This would also assist FMA staff in applying the guide if it became an internal reference document.

Conclusion

- 66 The impression left when working through the proposed outcomes is that they have been designed without proper consideration of existing legal requirements. It also appears the draft guide is focused on insurers and to some extent banks. Both types of institutions to date have not been covered by the FMC Act regime but that is changing under CoFI. This renders the draft guide unnecessary as a public facing document imposing additional obligations on all providers.
- 67 Further, the outcomes do not and cannot apply across the board to all financial product issuers and financial service providers. At best the application of the draft guide would be a sort of 'pick n mix' scenario where only a few outcomes would apply to certain providers given the limited nature of their business and service or product. This may not be the FMA's intent or understanding but would be the only practical way for many providers to apply the guide.
- 68 With the above in mind, we reiterate our suggestion that the draft guide be reworded and reframed as an internal FMA guide only, one that assists with FMA recommendations following a monitoring visit or deciding whether or not to take enforcement action. Issuing the guide 'as is' would cut across clear and specifically designed legislative obligations, cause confusion in the market as to compliance obligations, and unnecessarily extend certain compliance obligations to all service and

product providers with little or no additional benefit.

69 We would welcome the opportunity to discuss any of the points we have raised regarding the consultation. Thank you for the opportunity to submit.

Yours faithfully

[Redacted signature]

[Redacted signature]

[Redacted signature]

1 March 2024

Introduction

1. This submission is made in relation to a proposed guide introducing the Financial Markets Authority's (**FMA**) 'fair outcomes' approach to regulation. The FMA is seeking feedback on the scope and content of the proposed guide labelled Fair outcomes for consumers and markets: A guide to outcomes-focused regulation (**Guide**).
2. The submission is made on behalf of Lifetime Asset Management Limited (**LAM**). LAM is a manager of registered managed investment schemes including the Lifetime Retirement Income Fund, the Garrison Bridge Superannuation Scheme, Future Lifestyle Plan, Personal Superannuation Scheme, and the Superannuation Master Trust.
3. If you have any questions on our responses, please contact [REDACTED] at [REDACTED].
4. We have set out our responses to the questions in the Consultation Document.

Response



Question number	Our response
<p>Preface</p>	<p>We reviewed the Guide.</p> <p>We found this to be thoughtful and considered, addressing a complex qualitative challenge in an environment where outcomes are measured using quantitative measures.</p> <p>We embrace an outcomes-based focus, endeavouring to apply similar values in all aspects of our business.</p> <div data-bbox="516 646 1219 1247" data-label="Diagram"> <p>The diagram consists of a central circle labeled Conduct with the text "Our customers trust and rely on the services we provide." It is connected to six surrounding circles, each representing a core value or practice:</p> <ul style="list-style-type: none"> Communication: <ul style="list-style-type: none"> • Education First • Simple • Practical Tools • Online • Self Directed Control: <ul style="list-style-type: none"> • Responsible SIPO • Surplus Solvency • Active Risk Management (MMRS) Culture: <ul style="list-style-type: none"> • Board participation in sales • Public Seminars • Inform, educate and assist Conflict: <ul style="list-style-type: none"> • Direct orientation • Customer focused promotion • No customer penalty • Self directed sales orientation Capability: <ul style="list-style-type: none"> • Board down • Out source to secure WBP • Sustainable • Constant improvement Accountability: <ul style="list-style-type: none"> • Strong board operational engagement (smaller business) • No information barriers </div> <p>Code of conduct:</p> <ul style="list-style-type: none"> • Our values: Honesty, integrity, and fairness in everything we do. • Our purpose: Develop and build retirement income products and services that enable New Zealanders to remain financially confident throughout their retirement life. • Our mission: We have an affinity and passion for developing transparent, low-cost, and high-value retirement income solutions that New Zealand retirees can have confidence in. • Our team: Committed to ensuring our customers trust, value, and enjoy their relationship with us.



<p>1</p>	<p>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 Fair Outcomes for Consumers and Markets Guide to Outcomes-Focused Regulation (Guide) defines a fair outcome as “the end result [the FMA] is seeking for consumers and markets, and embeds the concept of pono (doing what is right)”. This definition is not particularly clear but accept it must be broad by nature to be effective.</p> <p>Notwithstanding It will be useful if the FMA can provide more examples like this to help paint a better understanding of the FMA’s expectations and the behaviours it considers would lead to an unfair outcome.</p> <p>For example, where we had a customer aged 65 with \$NZ250k requiring us to calculate and manage a regular retirement income for life. We would assume the capital needs to last age 95 and would draw down the capital accordingly to pay this in regular fortnightly payments inclusive of investment returns.</p> <p>The customer may request us to calculate the income payments to age 85 to increase the value of fortnightly payments. In this situation, we would request the customer to sign a waiver confirming their instruction is outside our normal experience, making it clear that their expected life expectancy is in excess of age 85?</p> <p>Would the FMA consider our response fair or alternatively hold the view, that the customer directed request should have been declined?</p>
<p>2</p>	<p>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>We accept that all seven of the fair outcomes proposed by the FMA are outcomes that would benefit consumers, providers, and markets.</p> <p>A key understanding is that there is uncertainty of outcomes even if aiming for fair outcomes. In other words, taking steps to achieve the fair outcomes proposed by the FMA does not mean that consumers are insulated from risk or bad outcomes. In our view, the Guide should expressly address the FMA’s consideration of this. For example, where providers are making honest and</p>



	<p>reasonable efforts towards compliance, the FMA be less likely to take enforcement action.</p> <p>Please see our response to 1.</p>
3	<p>What are your views on Outcome 1: Consumers have access to appropriate products and services that meet their needs?</p> <p>No comments.</p>
4	<p>What are your views on Outcome 2: Consumers receive useful information that aids good decisions?</p> <p>In our view, this outcome (and what we assume to be the FMA’s intention) is better reflected in the title being renamed to ‘Consumers receive useful information that helps support informed decision-making’. Useful information should be provided so that consumers can make informed decisions, which may or may not necessarily be good decisions. From a consumer’s perspective, a decision is likely to be seen as being a good or bad one after it has been made (with the help of hindsight).</p> <p>For example, in the context of providing retirement income for life which may be for 30 years or more. Pre-sale information is important but moreover, product design is equally important. The product itself must contemplate changing circumstances and the need to recognise all manner of outcomes that could result over decades. The fundamental product construct should recognise long periods of time and the inherent uncertainty, and not preclude the product owner from having fair options should their circumstances change.</p>
5	<p>What are your views on Outcome 3: Consumers receive fair value for money?</p> <p>Consumers must receive fair value for money noting fair value is ultimately decided by the consumer.</p> <p>It would be helpful if the FMA could provide further advice on how it will access fair value for money in an environment where financial literacy is low and consumers’ perceptions of what constitutes value are so varied.</p>
6	<p>What are your views on Outcome 4: Consumers can trust providers to act in their interests?</p>



	No comments.
7	<p>What are your views on Outcome 5: Consumers receive quality ongoing care?</p> <p>Noting our response to comment to point 4.</p>
8	<p>What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?</p> <p>No comments.</p>
9	<p>What are your views on Outcome 7: Markets enable sustainable innovation and growth?</p> <p>Please see our response to question 15 below.</p>
10	<p>Is anything missing that should be included in the fair outcomes? Please explain.</p> <p>More examples of what the FMA would consider conduct that would lead to fair outcomes or behaviour/actions that would be inconsistent with the FMA's view of a provider taking a fair outcomes-focused approach.</p>
11	<p>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>For us, continuation of our focus on good customer outcomes. This includes our approach to servicing our customers, creating new innovative products, and compliance.</p> <p>We understand that our governance, leadership, management, and operations will need to understand how we can deliver fair outcomes in line with the proposed fair outcomes outlined in the Guide. Resources will need to be allocated accordingly. Any approaches taken will kept under review and adapted as circumstances in the market change.</p> <p>We are hopeful that our responses to the previous question sets out our belief in fair outcomes and our commitment to same.</p>



12	<p>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>In our view, regulatory compliance is objective and outcomes focused regulation is subjective. A challenge for both the regulator and the provider requiring mutual trust and respect. We are committed to this approach but ultimately need to evidence how the new regulatory application plays out in practice and the impact on operations, costs, and resourcing.</p>
13	<p>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>It would be helpful to understand what steps the FMA is taking to move towards a more outcomes-focused approach to regulation. Will there be a change in where the FMA allocates its resources between its teams? Will it hire staff with particular expertise in this type of regulatory approach (including staff with industry experience in delivering good customer outcomes), or train staff to better understand what regulating with a fair-outcomes approach means?</p>
14	<p>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>We would expect that if the FMA moves to a more outcomes-focused approach to regulation then it also considers its approach to how it holds individuals and entities accountable where a provider's conduct does not lead to a negative outcome.</p> <p>For example, there may be a situation where a provider discovers an error in the way it calculated fees or premiums. The provider conducts a thorough investigation, prepares a remediation plan, and self-reports the error to the FMA. The remediation plan ensures that customers are in a no worse-off position.</p> <p>We would expect the FMA to not take enforcement action in these circumstances. If the FMA would not act accordingly, can you please provide further clarity on how it intends to address and hold individuals and entities accountable for misconduct where there is no negative outcome.</p>



15	<p>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>We have direct and recent experience working with the FMA to release new innovate financial products. We found the process considered, constructive, and helpful. We believe the new outcomes focus will complement the process that currently exists.</p>
16	<p>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?</p> <p>Not applicable.</p>
17	<p>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>Examples are helpful. Including more examples cannot be understated. It provides clarity on the FMA’s expectations in this space.</p>
18	<p>Do you need any further guidance or support from the FMA in relation to outcomes-focused regulation or the fair outcomes?</p> <p>It would be helpful to know if following the Guide would be considered a ‘safe-harbour’ when FMA is considering actions taken by the market service provider. We appreciate the Guide has been intentionally left non-prescriptive. However, clarity on whether providers can expect the FMA not to take enforcement action where the provider follows an example in the Guide would be appreciated.</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: 28/2/2024 Number of pages: 4

Name of submitter: Company or entity: Mercer (N.Z.) Limited

Organisation type: Manager of registered schemes; Financial Advice Provider

Contact name (if different): ██████████

Contact email and phone: ██████████@mmc.com; ██████████

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>The proposed guidance is confusing and at times contradictory. On one hand it mentions the proposed fair outcomes "...do not replace or even supplement existing legal obligations...", and "These are not rules"; but on the other states "Our intention is that these collectively capture the key results we want providers to deliver for consumers and markets, and individually are sufficiently distinct to stand alone as the basis for our regulatory discussions and actions". Further comments include "it will not be enough to continue with the status quo".</p> <p>In other words, despite the introductory comments, these very much read as 'rules' that providers must be able to demonstrate otherwise enforcement action could be taken.</p> <p>It is also perplexing why this would be introduced at a time when many financial institutions have been preparing for the introduction of Fair Conduct Programmes under the Conduct of Financial Institutions (CoFI) legislation, and/or already have programmes that seek good outcomes for customers.</p> <p>Our view is the FMA can signal a focus on outcomes that relate to existing obligations, without the need to create confusion by layering additional requirements.</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>We would not expect any submitter to take issue with the ideals of seeking fair outcomes for consumers as they will be desired outcomes sought by industry participants. We also support the idea that monitoring should not simply focus on technical compliance.</p> <p>However, we believe this guidance is unnecessary, and in particular in our circumstance, for the managed investment scheme (MIS) sector. The draft guide is presumably written on the premise the existing regulatory settings are inadequate and that additional interpretation from the FMA is needed. CoFI followed the FMA's and RBNZ's review into the banking and insurance sectors, but it was not extended to the MIS sector due to an acknowledgement there were already strong protections in place. Similar consideration to who this guidance should be targeted at should also be given.</p> <p>The proposed Guide states "it sets out our view of fair outcomes and that they are the end results we want providers of products and services to focus on for consumers and markets". In our view this should be the preserve of the legislature or regulations, not the</p>

	<p>FMA to determine, regardless of the reasonableness of any proposal.</p> <p>The Guide also comments <i>“Whether or not fair outcomes are being achieved will also inform our conversations with the government and other regulators if we identify places where law reform may be required”</i>. This appears to be an acknowledgement that these outcomes are not legally enforceable, and we therefore question why the FMA’s focus is extending from those that are, particularly when the existing legislation is designed to protect consumers.</p> <p>We do see overlap and similarities to existing regulatory obligations, both outcomes focused and prescriptive obligations within some of the proposed Outcomes.</p> <p>We therefore question the need for this guidance for the managed investment scheme (MIS) sector as we do not believe this will provide any further benefit to consumers and will simply add to the ambiguity of what participants’ obligations are. While not intended to be ‘rules’, the evolution will be they could be accepted as such, further confusing the industry.</p> <p>While in our view the draft Guide is unnecessary, we recommend clarity be provided on the scope of the Guide. For example, it is labelled for “consumers” and “markets”, so it is unclear whether the intent is for wholesale customers to be captured as well.</p>
<p>3. What are your views on Outcome 1: Consumers have access to appropriate products and services that meet their needs?</p>	<p>The intent of this Outcome requires further clarification. Providers cannot be expected to provide access to products and services that cater for the needs of all consumers. For example, does this Outcome imply that a wide range of Funds should be offered by a MIS Manager? In some situations, this is not in investors’ best interests should a Fund be uneconomic to operate.</p> <p>A further challenge for many participants in meeting this proposed Outcome is that recommending or providing an opinion on when another product is more appropriate falls into the area of regulated financial advice.</p>
<p>4. What are your views on Outcome 2: Consumers receive useful information that aids good decisions?</p>	<p>We recommend this Outcome be targeted at market segments where the FMA has concerns. For investors in managed investment schemes, the Product Disclosure Statement is designed to be the key source of information for investor decision making. This is supported by other mandatory documents, both initial and ongoing. The settings under the FMC Act already balance providing useful, material and timely information, while being easily digestible for users. There are also the fair dealing provisions that ensure any information provided is not false or misleading and claims can be substantiated. There is no requirement for this Outcome to be specified for the registered MIS sector; if the FMA has a different view, this should be raised with policy makers given substantial consideration was given to user friendly disclosure when the Financial Markets Conduct Act was written.</p>
<p>5. What are your views on Outcome 3: Consumers receive fair value for money?</p>	<p>The proposed guidance acknowledges that value needs to be considered from many dimensions. We expect strong competition will assist keeping fees low, encourage innovation and improve service standards. It is in participants’ interest to demonstrate this to remain a sustainable organisation. In regard to KiwiSaver, there is already an existing legislative obligation that fees must not be unreasonable. In respect of managers of MIS’, the FMA has also previously released guidance and expectations on ‘value for money’, so we do not believe this is necessary for this group. Consequently, we do not believe there is a requirement for an explicit Outcome to be specified.</p> <p>We believe a more appropriate focus should be on identifying vulnerable customers, those who potentially do not have the capacity to make ongoing decisions on whether they are receiving</p>

	value for money. This is partly addressed in Outcome 5, and the FMA has existing guidance on this topic.
6. What are your views on Outcome 4: Consumers can trust providers to act in their interests?	MIS Managers already have a general duty to act in the best interests of scheme participants, and therefore we do not believe this is a necessary inclusion. Other existing obligations that the proposed Outcome appears to address includes avoiding conflicts of interests, fair dealing provisions, information security, and culture standards.
7. What are your views on Outcome 5: Consumers receive quality ongoing care?	We would argue the registered MIS sector is not the primary focus of this Outcome, given the obligations that already exist in relation to consumers. For example, we are not aware of any unreasonable barriers within the industry to updating, altering, switching or exiting a product, other than that imposed by law such as early withdrawal from KiwiSaver. Should providers receive complaints, there is also the incentive to speedily rectify these rather than to deal with them through costly external dispute resolution.
8. What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?	This appears to be a restatement of existing obligations that apply to all participants in the financial sector. We are therefore unsure what the purpose is, other than to highlight a priority for the FMA. This could be communicated through other publications.
9. What are your views on Outcome 7: Markets enable sustainable innovation and growth?	The examples provided demonstrate the FMA are already taking an outcomes-focused approach to regulation in some areas. We would expect this to be the modus operandi of a pragmatic regulator. There is no need for inclusion in any guidance note as it could be communicated through other publications such as the FMA Outlook. In general, we would also anticipate creating regulatory complexity would not be conducive to innovation.
10. Is anything missing that should be included in the fair outcomes? Please explain.	A clear alignment or mapping of the Outcomes to legal obligations should be included. Consideration should also be given to making clear how this sits alongside other existing guidance. Should the guidance proceed, this would substantially assist the industry in understanding and adopting it.
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?	It is suggested firms will be required to demonstrate how they achieve the Outcomes within the Guide. Presumably through documenting policies, procedures and controls. This will draw resources from similar or overlapping existing compliance programmes and operations. Given these are not 'rules', we would also like to understand whether the FMA expect Supervisors of MIS managers and debt security issuers to incorporate the Outcomes into their monitoring. We would expect adherence to this to add unnecessary complexity, compliance costs, and draw resources from complying with regulatory obligations.
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?	We support the FMA taking an outcomes-focused approach to regulation, but believe specifying the fair-outcomes will make compliance significantly more challenging. A risk is this will create quasi-regulation by stealth, and at times will confuse with the actual legal obligations that must be complied with. In attempting to assist with one of the purposes of the Financial Markets Conduct Act, it will contradict another, which is to avoid any unnecessary compliance costs.
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?	In our view the FMA has historically taken both a technical compliance and outcomes-focused approach to monitoring in many areas. We believe the existing regulatory obligations allow for an outcomes-focused approach to monitoring, without the need for

	incorporating additional views which are written for a generic audience.
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?	“Misconduct” in this context should mean in regard to breach of a legal obligation. Assuming the FMA wish to place less weight on technical compliance, we think there should be a test of investor harm that should be applied. We do not believe the proposed guidance is particularly useful in assisting decisions in relation to misconduct unless there is a demonstrable link to a compliance obligation.
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?	The examples provided demonstrate the FMA is already taking an outcomes-focused approach to regulation in some areas. There is no need for inclusion in any guidance note as in general adding regulatory complexity will not be conducive to facilitating 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?	<i>Not Applicable</i>
17. What are your views on the examples provided in the guidance? Are they helpful, and are there any other examples we should include?	Our view is MIS managers should be carved out from this guidance due to existing obligations and licensing requirements. However, if guidance is to extend to this sector, we would like to see more MIS sector specific examples, in particular for Outcomes 1, 2 and 5.
18. Do you need any further guidance or support from the FMA in relation to outcomes focused regulation or the fair outcomes?	The guidance creates uncertainty and requires further clarification to address the comments in this feedback.

Feedback summary – if you wish to highlight anything in particular

In our view the Guide is unnecessary. Should the FMA believe there are gaps in the regulatory environment, then a change in legislative settings should be sought. However, if the guidance proceeds, the MIS and financial advice providers should be excluded due to confusion and duplication this will cause.

We understand this guidance is for a broad audience, but do not believe it is necessary for product issuers that are already subject to regulation that provides significant consumer protections such as managed investment scheme managers. Financial Advice Providers also have existing ethical behaviour, conduct and client care obligations under the Code of Professional Conduct for Financial Advice Services. To some extent this is acknowledged in the Guide: “...For some this may be completely new, while for others it will be a continuation of their focus on good customer outcomes...”. For the industry participants where this is not new, and this overlaps existing requirements, this will add to regulatory ambiguity and complexity and potentially distract from compliance with regulatory requirements. It is unclear what issues the Guide is trying to solve for within these sectors.

The existing regulatory settings already provide outcomes that firms, supervisors and the FMA can monitor against, without the need to specify additional ones. Priorities also change, as the assessment of risk changes. We therefore believe the FMA can deliver on its aims by continuing to signal its outcome priorities (or risks it sees within certain segments) through its other existing periodic publications, while leaving the applicability of these to individual participants. As the consultation acknowledges, “firms are better placed than regulators to determine what processes and actions are required within their businesses to achieve regulatory objectives”. As many sectors already have clearly defined fair outcomes within their regulatory objectives, there does not appear to be a need for the FMA to create similar ones. If the FMA has concerns about inadequacies in the existing regulatory settings, we recommend this be raised with MBIE to facilitate changes that can be made on stronger regulatory footings.

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: 1 March 2024

Number of pages: 3

Name of submitter: [REDACTED]

Company or entity: Mainland Capital Investment Management Limited

Organisation type: MIS Manager

Contact name (if different):

Contact email and 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.	No comment.
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?	Mainland Capital Investment Management Limited believes that all market participants should experience fair outcomes and we understand what FMA is trying to achieve. What is a fair outcome is very subjective and may be viewed differently by different parties. An outcome might be achieved that the affected consumer and other market participant (financial adviser, fund manager, insurer) considers to be fair but that FMA does not consider to be fair. This is indicative of the difficulty in applying objective measures to fair outcomes.
3 - What are your views on Outcome 1 - Consumers have access to appropriate products and services that meet their needs	Existing legislation already has protections for investors. (Financial Markets Conduct Act (FMCA) – Offers that do not require disclosure, bank lending rules). If there are issues with the existing legislative protections, then changes should be legislated. Example 3 seems to go over and above the existing legal requirements (see discussion under question 17 below).
3 - What are your views on Outcome 2-Useful information that supports good decisions	The FMCA sets out the disclosure obligations for offerors and FMA has issued guidance around communications and documents with writing required to be "clear concise and effective". Outcome 2 is unlikely to provide further benefit to consumers, providers and the market due to existing regulation.
5 - What are your views on Outcome 3- Consumers Receive Fair Value for Money	The question of whether fair value for money has been provided will depend on a number of factors which are subjective. If whether something is fair value for money cannot be assessed objectively then it does not provide certainty to the markets, providers and consumers. If uncertainty exists this will increase compliance costs because market participants would need to spend additional money to clarify the position.

<p>6 - What are your views on Outcome 4: Consumers can trust providers to act in their interests?</p>	<p>NZ already has legislation governing conflicts of interest, data protection and privacy (FMCA, Privacy Act and Data Protection Act). MIS licenses issued under the FMCA are already required to have a business continuity plan, and there is existing FMA guidance around related party transactions.</p> <p>Cyber security example: If a financial service provider has taken all reasonable steps to protect itself against cyber events, it should not be exposed to the risk of FMA penalties if the breach or outage has resulted in a consumer having an unfair outcome. This would create more uncertainty in the market, which increases compliance costs.</p>
<p>7 - What are your views on Outcome 5: Consumers receive quality ongoing care?</p>	<p>The reference to <i>"Consumers should be able to update, alter, switch or exit a product without encountering unreasonable barriers"</i> is reflective of the one-size fits all approach in FMA's view of fair outcomes. Some fund managers issue investment products that are non-redeeming as a liquidity management tool. This wording implies that an investor should be able to switch out of a non-redeemable investment product. This is an example of the difficulty in applying a consistent view of fair outcomes across all market participants, which increases uncertainty in the market.</p> <p>Licensed MIS managers already belong to a Dispute Resolution Scheme so there are already avenues available to consumers who consider that their treatment has been unfair.</p>
<p>8 - What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?</p>	<p>This outcome is reasonable but allowing entities to operate outside of the regulatory regime, such as unlicensed property scheme operators, does not align with fair outcomes for consumers, particularly where there are well-publicised bad investor outcomes.</p>
<p>9 - What are your views on Outcome 7: Markets enable sustainable innovation and growth?</p>	<p>If objectives are for operators to provide investors with products that are suitable for all consumers, then this may result in a lack of innovation and growth in products that would suit a particular group of consumers.</p>
<p>10 - Is anything missing that should be included in the fair outcomes? Please explain.</p>	<p>FMA's view of fair outcomes is very general. It is a one-size fits all approach with many aspects that do not apply to all market participants. This makes it difficult to apply the principles of fair outcomes on a consistent basis.</p>
<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>No comment.</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>No comment.</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>FMA's function should be to uphold the existing legislation and not to overlay it with another set of rules.</p> <p>FMA's focus should be on bad actors whose negligence or malpractice causes bad consumer outcomes.</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>FMA's primary focus should be to take action against bad actors.</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>This is likely to decrease innovation. There will be greater compliance burden and this will increase the cost of new innovative products.</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>The examples create more uncertainty as they highlight the fact that the guidance is a one size fits all approach that does not take into account the different characteristics of many market participants. This is likely to increase compliance costs.</p> <p>Outcome 1 – Bullet point 3 –The FMCA already provides for certificates for Wholesale Investors. This example seems to indicate that a provider is expected to make an additional assessment on the qualification of the consumer. FMA’s view of fair outcomes should not create more obligations for providers that are over and above legal obligations.</p> <p>Outcome 2 – example. Bullet point one – talks about remaining in products that may no longer be relevant to them. This is not relevant to financial products where redemptions are not permitted. This example is only suited to managers and providers who advise investors and have an ongoing relationship with them such as a financial adviser or bank. There are market participants who this would not apply to because they do not provide financial advice. This is reflective of the difficulty in applying a consistent treatment of fair outcomes across all market participants.</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 comment.</p>

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

1. Guidance seems to be tailored as a one size fits all when there are many different financial market operators including MIS managers, kiwisaver providers, managed fund providers, financial advice providers, trustees, banks. The guidance seems to be geared towards products and services where the provider provides a range of financial services or products to the consumer and provides advice as part of those services. This makes it difficult to take a consistent and objective approach to fair outcomes, which creates uncertainty and will lead to increased compliance costs.
2. It is in the interests of all financial market participants that consumers have fair outcomes, but if the FMA guidance on fair outcomes results in another set of rules outside of what is legislated then this is not a fair outcome. It adds uncertainty into financial markets which would result in an extra compliance burden on participants.
3. What is a fair outcome is very subjective and may be viewed differently by different parties. An outcome might be achieved that the affected consumer and other market participant (financial adviser, fund manager, insurer) considers to be fair but that FMA does not consider to be fair. This is indicative of the difficulty in applying objective measures to fair outcomes.
4. FMA’s focus should be to target bad actors and the consequences of the bad action when looking at investor outcomes.

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 SERVICES FEDERATION

1 March 2024

Financial Markets Authority
PO Box 1179
Wellington 6140

By email to: consultation@fma.govt.nz

Dear Madam/Sir,

Re: Fair Outcomes for Consumers and Markets Consultation

The Financial Services Federation (“FSF”) is grateful to the Financial Markets Authority (“the FMA”) for the opportunity to respond on behalf of our members to the fair outcomes for consumers and markets consultation draft (“the Guide”).

By way of background, the FSF is the industry body representing the responsible and ethical finance, leasing, and credit-related insurance providers of New Zealand. We have over 90 members and affiliates providing these products to more than 1.7 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society, and business is attached as Appendix B. The FSF contains both Non-Bank Deposit Taking members and Credit Related Insurance members that are captured under the FMA’s Conduct of Financial Institutions (CoFI) regime.

Introductory Comments

We would like to begin by stating that we support the intent behind the Guide. The FSF and its members support delivering fair outcomes to consumers and continuing to ensure good conduct. We are also very keen to continue to engage with relevant teams and entities as to the architecture of the financial services regulatory system and how to ensure that the landscape accomplishes the above-mentioned outcomes without being overly burdensome or cost heavy.

We will now answer the FMA’s consultation questions.

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.

In general, the outcomes-based approach described by the FMA is clear. We especially support the idea of proportionality that comes through. We also support

that rather than creating a prescriptive regime the FMA is putting it back on entities to create their own fit for purpose conduct plan.

However, we do request further clarification on who the FMA are intending this to affect. It is not clear in the November 2023 draft consultation who this is targeted to. In the introduction of page 4 it states that it is relevant to '*anyone who provides financial products or financial services...*'. This suggests it applies to all providers of financial services whether regulated currently by the FMA or not. We submit that the FMA should specify who they intend this to apply to for the avoidance of doubt.

We also submit that it is important to allow the principles-based CoFI regime time to embed before assessing whether any additional response to a 'tick-box mentality' is required, which is what was said within the draft guide.

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?

Overall, the FSF and its members find that the expectations are set out in a clear and reasonable way that allows entities to understand exactly what the FMA's expectations for them are. However, we are confused by the lack of actual regulation. If you can't regulate firms on Fair Outcomes, then how is the Fair Outcomes focused regime enforced? Particularly in regard to those entities that may not fall under the Conduct of Financial Institutions regime.

As currently drafted, many providers will treat the Draft Guide as imposing additional compliance requirements, further increasing compliance costs which may ultimately be passed onto the consumer. Consumers may also be disadvantaged if there is a reduction in innovation, due to the fair outcomes stifling insurers from enhancing products and services.

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

We agree that this is an important indicator of customer experience particularly in terms of communication over the lifespan of longer termed products, it is important that the product remains suitable. However, we also note that with the rise in technology some new barriers have been put up in regard to certain subsets of customers accessing appropriate products. This is not the result of one institutions decision but rather the way New Zealand is progressing into a much more technological society.

An example of this is that there is still a lot of consumers who are excluded from reaching certain products as they struggle with alternate ways of banking. Once cheques disappeared there were a lot of consumers left afraid or not able to access internet banking. This may be because they may not have an appropriate device or

due to fear of the overwhelming amount of cyber fraud that is currently taking place. Many physical bank branches have also closed or are on reduced opening hours. This is something that the FMA needs to keep in mind when assessing an entity on this point.

We support the general proposition and aim of Outcome 1, however, CoFI already requires financial institutions to ensure that the relevant services and associated products that the financial institution provides are likely to meet the requirements and objectives of likely consumers (when viewed as a group). It is unclear how the proposed Outcome 1 interacts with this obligation and the associated minimum requirements for FCPs in s446J of CoFI.

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

As mentioned above we support the focus on communication through the life cycle. However, we also believe it is important to emphasise it is a two-way conversation between the entity and the customer. Despite communication being incredibly important a lot of customers still fail to read and/or understand terms and conditions or have barriers to doing this despite there being many legislative changes over the years. It is difficult to know if a customer has the ability to read and write let alone expect them to understand what they have signed up to. A customer will often say they understand something because they are too embarrassed to say otherwise/ are only interested in the asset/vehicle they have just purchased and will sign anything to get out the door. Regardless of whether it is actually suitable for their personal circumstances (that they may not have disclosed) or not.

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

We completely agree that consumers are entitled to receive fair value for money however we'd also like to see the word reasonable/ fair defined. We would also prefer to see a test outlined in regard to this.

Currently a consumer's purchasing ability or limitation is generally based on affordability/price. Loan criteria has gotten harder for those already marginalised, this can often drive those to a more expensive and less fair outcome focused organisation. This is an outcome of the legislation around the CCCFA but one that the FMA does need to be aware of in this context as there are multiple factors influencing what a consumer can actually have access to that are beyond the powers of the entities.

Outcome 3 would be a material new development in the FMA's regulatory agenda and without any explicit legislative underpinning (outside the regulation of KiwiSaver). CoFI does not make any reference to fair value for money as an explicit legislative outcome.

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

We agree that this is an important cornerstone of good customer outcomes however there is a lot of overlap between this point and the Conduct of Financial Services (CoFI) regime. All of the changes to conduct and advice in recent years have made it very difficult to provide any form of perceived advice or recommendations to a retail customer.

For businesses affected by CoFI the legislation is so all encompassing that a Business Continuity Plan must be in place to ensure the consumers receive their ongoing service in the event of any form of business interruption. Much of this section is already covered by parallel regimes, work that has already been undertaken by our members and the regulators show that volume-based sales targets are no longer appropriate. As a result, our members have made changes to their businesses to no longer act under that model.

Our members also have robust training in place for their staff that ensures they are fully up to date on all relevant legislation such as privacy, code of conduct for their privacy and data, CoFI and CCCFA.

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

As we discussed above there needs to be a two-way street for conversations between entity and customer. While there may be some indicators to an entity of a customer's situation change there also may not be. This area is also already heavily regulated through the likes of the CCCFA and CoFI.

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

It is important to protect market integrity for the avoidance of distrust in the market as a whole. Despite this it is proving difficult to get ahead of fraud even with all the changes to the AML/CFT regime over the last few years. NZX listed companies are expected to have Insider Trading Policies although not all FMA regulated entities will fall into this category.

It is also worth noting that the entities that the FMA regulates in this space all fall under different legislation. As above our members already have policies and training in place to deal with things such as scams, money laundering and the financing of terrorism.

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

We support innovation in the market as this creates competition and allows smaller players to be much more nimble than their larger counterparts. Alongside this it is important that the FMA allows innovation alongside legislation that guides the use of new technologies. Artificial Intelligence will be a prime example of this because of the privacy implications.

On the other hand, the Climate Related Disclosures regime will be a good example of this principle in action as it will allow consumers more choice in relation to sustainability.

10. Is anything missing that should be included in the fair outcomes? Please explain.

We do not believe there is anything missing that should be included.

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?

Predominantly through staff training and intermediary training in a similar way to how our members would manage any other risk/ their CoFI requirements. Some of our members have identified that they already have a standing item on board reports to update on conduct and culture.

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?

The Guide further enhances the importance of the control level over third party intermediaries. Entities already have in place a series of checks and balances for making sure the products that they're offering are fit for purpose, but the new guidance emphasizes the expectations of the FMA.

Unfortunately, in terms of challenges there are a lack of other government bodies who can investigate and ensure good behaviour for the intermediaries used by our members. All members who use intermediaries may find it challenging due to the scope of control they need to have over them.

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?

We have no comments on this question.

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 have no comments on this question.

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?

Higher compliance costs inhibit innovation as opposed to providing increased flexibility. The fair outcomes approach doesn't necessarily promote innovation as a result of this.

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?

From experience a number of consumer advocates have a very different understanding of what constitutes a fair outcome compared to our members. We recommend more education and clarification in the Guidance (possibly with examples) as to what is considered fair. We believe the FMA should question the quality of advice that some advocates give to consumers. Do they (the advocate) understand what the product is intended to do/ the value of the product?

The consumer advocacy sector exclusively deals with things that go wrong. They don't see the other 99% of instances where it goes well, and entities deliver good outcomes for their customers.

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

Most weren't relevant to our membership.

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

No, we're happy with the support we are currently being provided.

In summary while we do support the intent of the Guidance, we wish to see further clarification around certain points to ensure that it makes sense and isn't going to create an additional burden on our members.

The proposed outcomes set out by the FMA in the Guidance are in themselves desirable objectives in principle. However, it is not clear what role the outcomes are intended to mean for the application of the underlying law, specifically the CoFI regime.

Just to be completely clear, the concerns are specifically with how the outcomes would sit alongside other legislation and regulation, rather than with the desirability of the outcomes themselves.

Please do not hesitate to reach out if you wish for us to speak further on any of the points made in this submission.

Yours sincerely,

A large black rectangular redaction box covering the signature area.A small black rectangular redaction box covering the name.A black rectangular redaction box covering the title.

Financial Services Federation

Appendix A



FSF Membership List as at October 2023

Non-Bank Deposit Takers, Specialist Housing/Property Lenders, Credit-related Insurance Providers	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Affiliate Members	Affiliate Members contd., and Leasing Providers
<p>XCEDA (B)</p> <p>Finance Direct Limited > Lending Crowd</p> <p>General Finance (BB)</p> <p>Gold Band Finance > Loan Co</p> <p>Mutual Credit Finance</p> <p><u>Credit Unions/Building Societies</u></p> <p>First Credit Union</p> <p>Nelson Building Society</p> <p>Police and Families Credit Union</p> <p><u>Specialist Housing/Property Lenders</u></p> <p>Basecorp Finance Limited</p> <p>First Mortgage Managers Ltd.</p> <p>Liberty Financial Limited</p> <p>Pepper NZ Limited</p> <p>Resimac NZ Limited</p> <p><u>Credit-related Insurance Providers</u></p> <p>Protecta Insurance</p> <p>Provident Insurance Corporation Ltd</p>	<p>Auto Finance Direct Limited</p> <p>BMW Financial Services > Mini > Alpha Financial Services</p> <p>Community Financial Services</p> <p>Go Car Finance Ltd</p> <p>Honda Financial Services</p> <p>Kubota New Zealand Ltd</p> <p>Mercedes-Benz Financial</p> <p>Motor Trade Finance</p> <p>Nissan Financial Services NZ Ltd > Mitsubishi Motors Financial Services > Skyline Car Finance</p> <p>Onyx Finance Limited</p> <p>Scania Finance NZ Limited</p> <p>Toyota Finance NZ > Mazda Finance</p> <p>Yamaha Motor Finance</p>	<p>Avanti Finance > Branded Financial</p> <p>Basalt Group</p> <p>Blackbird Finance</p> <p>Caterpillar Financial Services NZ Ltd</p> <p>Centracorp Finance 2000</p> <p>Finance Now > The Warehouse Financial Services > SBS Insurance</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Harmoney</p> <p>Humm Group</p> <p>Instant Finance > Fair City > My Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Lifestyle Money NZ Ltd</p> <p>Limelight Group</p> <p>Mainland Finance Limited</p> <p>Metro Finance</p> <p>Nectar NZ Limited</p>	<p>NZ Finance Ltd</p> <p>Personal Loan Corporation</p> <p>Pioneer Finance</p> <p>Prospra NZ Ltd</p> <p>Smith's City Finance Ltd</p> <p>Speirs Finance Group (L &F) > Speirs Finance > Speirs Corporate & Leasing > Yoogo Fleet</p> <p>Turners Automotive Group > Autosure > East Coast Credit > Oxford Finance</p> <p>UDC Finance Limited</p> <p>Yes Finance Limited</p> <p><u>Insurance Premium Funders</u></p> <p>Elantis Premium Funding NZ Ltd</p> <p>Financial Synergy Limited</p> <p>Hunter Premium Funding</p> <p>IQumulate Premium Funding</p> <p>Rothbury Instalment Services</p>	<p>Buddle Findlay</p> <p>Chapman Tripp</p> <p>Credisense Ltd</p> <p>Credit Sense Pty Ltd</p> <p>Deloitte</p> <p>Experieco Limited</p> <p>EY</p> <p>FinTech NZ</p> <p>Finzsoft</p> <p>Happy Prime</p> <p>Consultancy Limited</p> <p>KPMG</p> <p>Loansmart Ltd</p> <p>LexisNexis</p> <p>Motor Trade Association</p> <p>Odessa Technology Inc.</p> <p>One Partner Limited</p> <p>PWC</p> <p>Sense Partners</p> <p>Simpson Western</p>	<p><u>Credit Reporting, Debt Collection Agencies,</u></p> <p>Baycorp (NZ)</p> <p>Centrix</p> <p>Credit Corp</p> <p>Debt Managers</p> <p>Debtworks (NZ) Limited</p> <p>Equifax</p> <p>Gravity Credit Management Limited</p> <p>IDCARE Ltd</p> <p>Illion</p> <p>Quadrant Group (NZ) Ltd</p> <p>Recoveriescorp NZ Ltd</p> <p><u>Leasing Providers</u></p> <p>Custom Fleet</p> <p>Euro Rate Leasing Limited</p> <p>Fleet Partners NZ Ltd</p> <p>ORIX New Zealand</p> <p>SG Fleet</p> <p>Total 95 members</p>



FINANCIAL SERVICES FEDERATION (FSF)

THE NON-BANK FINANCE INDUSTRY SECTOR - 2022



48%



of personal consumer loans are financed by the **non-bank sector** represented by FSF members.

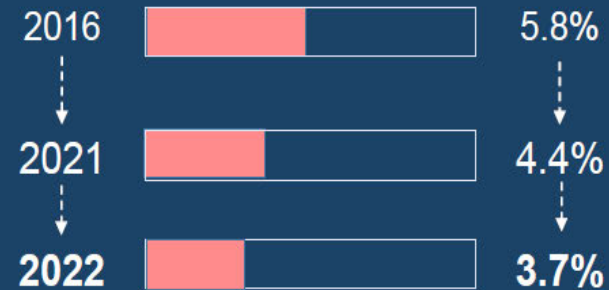
Setting industry standards for responsible lending, promoting compliance and consumer awareness.

Percent of Loan Requests Approved

46%



Percent of Loan Book in Arrears



KEY FACTS: THE NON-BANK FINANCE INDUSTRY SECTOR

FSF Members (as at 28 Feb 2022)

Number of Members	57
Number of Employees	3,561
Applications Processed	1,085,739
Loan Requests Approved	495,434
Percent of Loan Book in Arrears	3.7%

Bank Sector (as at 28 Feb 2022)

Value of Mortgage Loans	\$329B
Value of Consumer Loans	\$7.6B
Value of Business Loans	\$118B

Non-Bank Sector Share (as at 28 Feb 2022)

% of Total Mortgage Loans	0.4%
% of Total Consumer Loans	47.7%
% of Total Business Loans	5.9%

Insurance Credit Related (as at 28 Feb 2022)

Number of Employees	237
Number of Policies	311,409
Gross Claims (annual)	\$27.2M
Days to Approved Claim	20 days

Consumer Loans (as at 28 Feb 2022)

Total Value of Loans	\$8.1B
Number of Customers	1,699,683
Number of Loans	1,584,984
Monthly Instalments:	\$330M

Average Value of Loan:

Mortgage	\$171,932
Vehicle Loan	\$12,393
Unsecured	\$2,467
Other Security	\$5,754
Lease Finance	\$2,804

Average Monthly Instalment:

Mortgage	\$257
Vehicle Loan	\$463
Unsecured	\$144
Other Security	\$302
Lease Finance	\$241

Business Loans (as at 28 Feb 2022)

Total Value of Loans	\$7.3B
Number of Customers	136,830
Number of Loans	264,827
Monthly Instalments:	\$590M

Average Value of Loan:

Mortgage	\$443,784
Vehicle Loan	\$28,869
Unsecured	\$7,443
Other Security	\$32,374
Lease Finance	\$24,921

Average Monthly Instalment:

Mortgage	\$2,281
Vehicle Loan	\$1,064
Unsecured	\$799
Other Security	\$11,044
Lease Finance	\$939

Proposed Fair Outcomes for Consumers & Markets - Mosaic

Date: 1 March 2024
Number of pages: 6
Name of submitter: [REDACTED]
Company or entity: Mosaic Financial Services Infrastructure (Mosaic)
Organisation type: Financial Services Consultancy (Funds, Wealth, Banking & Insurance)
Contact email & phone: [REDACTED]

Mosaic Feedback

Question 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.

Our observations of market commentary and discussions to date suggest that the FMA's description of its outcomes-focused approach to regulation in the Proposed Fair Outcomes for Consumers & Markets guide (**Draft Guidance**) as currently drafted will increase confusion and ambiguity, particularly regarding how the Draft Guidance will interact with the actual legislative obligations of the financial institutions (**Providers**) themselves.

For example, the Draft Guidance (and general commentary from the FMA) states that the seven fair outcomes 'are not rules' and don't create, replace or even supplement existing legal obligations (which they legally can't).

However, the Guidance also states that over time, 'regulatory conversations with firms will be built around their efforts to achieve these outcomes'. Further, the Guidance states, 'Providers will need to take ownership of the fair outcomes and demonstrably embed them in the way they operate'.

The language and statements in the Draft Guidance as currently drafted give the impression that the Draft Guidance has a level of expectation from FMA that providers must comply with or achieve these outcomes.

The wording in the Draft Guidance should be amended to clarify how the FMA will use fair outcomes as part of its outcomes-focused approach to legislation.

In this regard, we suggest the Guidance would be better understood and accepted by Providers if it is presented as the FMA's current internal view on what general consumer and market outcomes they are aiming to achieve or support when performing their statutory duty duties (being 'to promote and facilitate the development of fair, efficient, and transparent financial markets; and to promote the confident and informed participation of businesses, investors, and consumers in the financial markets').

If the seven fair outcomes were clearly expressed as general consumer and market outcomes that the FMA will use as internal guidance when performing their statutory duties and assessing the overall success, or otherwise, over time of the legislative framework for consumers of financial services

in New Zealand, the seven fair outcomes will likely be seen as instructive (but not determinative) of how the FMA performs its statutory duties and exercises its judgement.

This approach will enable and encourage Providers to have regard for the seven fair outcomes when developing and providing products and services without requiring (or implying) that they need to expressly ensure the outcomes are embedded and always able to be demonstrated in the way an actual legal obligation or duty would ordinarily be embedded and demonstrated.

We consider that unless the tone and content of the Draft Guidance are amended in line with the above suggestion, it is in danger of being interpreted by Providers (particularly 'willing compliers') as a strict compliance obligation, adding costs and complexity to product and service development and delivery without providing any material benefits to consumers.

Question 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?

Subject to the comments above concerning the outcomes being used as internal guidance by FMA of the desired market and consumer outcomes that they are aiming to see achieved when performing their statutory duties, we broadly consider (subject to our comments below) the proposed fair outcomes to be reasonable outcomes for the FMA to expect that their regulatory activities will support the achievement of.

However, before releasing the Draft Guidance, we think that the FMA should first evaluate the Provider's response to the development and implementation of Fair Conduct Programmes under the Conduct of Financial Institutions Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI) and the recent embedment with Financial Services Legislation Amendment Act 2019 (FSLA).

We consider that the seven fair outcomes should, where possible, be accompanied by baseline research to highlight where, how and when New Zealand consumers (and markets) are not yet benefiting (receiving) the outcomes that the FMA would expect New Zealand's legislative framework and the FMA's statutory duties to deliver over time.

Further, we are unsure to what extent the FMA has considered or tested if the seven fair outcomes could give rise to unintended consequences for consumers, providers and markets.

As one example, we have observed that in response to the FMA's value-for-money guidance for managed investment scheme managers, rightly or wrongly, the market has interpreted the guidance as a need to offer lower fee products, which has resulted (in some cases) in a reduction in product innovation (including underlying investment opportunities) promotion of lower fees over returns. Potentially, this could lead to reduced investment (and innovation) to support members and enhance outcomes.

Our concern is that Providers could potentially expend significant resources to ensure they can demonstrate the achievement and embedment of fair outcomes to the FMA at the expense of resolving actual identified deficiencies or weaknesses in their business that are less tangible from a fair customer outcome perspective but are particularly important for fair customer outcomes over the longer term (e.g. ongoing service and product innovation and improvement).

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

This is a reasonable outcome that the FMA seeks to achieve when performing its statutory duties.

However, if included as an outcome, it should be expressed more as a general market outcome (e.g., the market provides consumers access to appropriate products and services that meet their needs).

We agree that financial service provider's products and services should be appropriate for the type of consumers they intend to offer them, and they should be able to access and use those products and services as they are offered and described to them.

However, financial service providers may choose not to offer or target their offer of products and services to specific groups or types of consumers for valid commercial reasons (e.g. the costs to service those consumers when balanced against the financial return to the Provider and the size of that consumer demographic).

This may result in some consumers or/ consumer demographics not having access to certain products or services even if they would otherwise be appropriate for them.

We suggest that the FMA clarify that access is a general market outcome as many stakeholders (not just Providers) will support the achievement of this outcome. This would be supported by the representation of the Guidance as FMA's internal view, as suggested above.

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

This outcome is very similar to other legislative disclosure and communication standards. We suggest using the same (or very similar) language to avoid confusion and ease of application. For example, 'Consumers receive timely, clear, and concise information that aids in making good decisions.' would align more closely with existing legislative standards.

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

We suggest that this outcome is not necessary. It should be a natural consequence of the other six outcomes being achieved. For example, suppose consumer outcomes 1,2,4 & 5, along with market outcome 7, are achieved. In that case, consumers will likely receive and have access to products and services that, for them, represent fair value for money.

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

We consider there are already legislative obligations, based on the product or service offered, that require providers to act to a prescribed standard when engaging with consumers or potential consumers.

So long as it is clear the Draft Guidance 'are not rules' and do create, replace or even supplement existing legal obligations and when monitoring individual providers, the FMA will have reference to the actual prescribed standard then a general consumer outcome from the performance of the FMA statutory duties being that consumers trust providers to act in their interests is not unreasonable.

Question 7 - What are your views on Outcome 5: Consumers receive quality ongoing care?

See response to Question 6. We consider this a reasonable outcome for a consumer to expect and for this to be a focus of the FMA when performing their statutory duties (with reference to the terms and features of the product or service offered by a Provider).

Question 8 - What are your views on Outcome 6: Markets are trusted based on their integrity and transparency?

This outcome aligns well with the FMA's statutory duty and, therefore, is a reasonable outcome that the FMA would seek to achieve when performing its statutory duties. Noting that many factors and stakeholders will influence the achievement of this outcome, not just Providers.

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

This outcome aligns well with the FMA's statutory duty and, therefore, is a reasonable outcome that the FMA would seek to achieve when performing its statutory duties. Note that many factors and stakeholders (including legislators and regulators), not just providers, will influence the achievement of this outcome.

Question 10 - Is anything missing that should be included in the fair outcomes? Please explain.

See response to question 1.

Question 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?

We suggest the Guidance would be better understood and accepted by Providers if it is presented as the FMA's current internal view on what general consumer and market outcomes it is aiming to achieve or support when performing its statutory duty duties, including being instructive of how the FMA will exercise its judgement when performing its statutory duties.

The above approach will result in Providers using the consumer-focused fair outcomes as a guide to the matters (amongst other matters) that they should be mindful of when developing and delivering products and services to their consumers without them needing to demonstrate at a granular or specific level how they have embedded a particular fair outcome across governance, leadership, management and operations.

We believe that if the FMA requires that each Provider demonstrate ownership and delivery and embedment of fair outcomes, you will likely see a largely tick-box approach with unnecessary duplication and 'activity for activity's sake' to 'demonstrate' delivery of the seven fair outcomes.

Question 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?

N/A, please refer to the responses above.

Question 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?

See responses above and below. An outcomes-focused approach to regulation by the FMA should guide the FMA as to the outcomes it hopes to achieve or support when performing its statutory duties and be instructive as to how it will exercise its judgment when performing its statutory duties. However, it should not be determinative or create the impression that the outcomes-focused regulatory approach is anything more than what the FMA would like New Zealand's legislative and regulatory framework to support the achievement of (unless, of course, the FMA consider they represent an actual breach of legislation).

Question 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 think an outcomes-based regulatory approach should be used to inform the FMA in performing its statutory duties and as a measure of the effectiveness of New Zealand's legislative and regulatory systems for consumers.

As mentioned above, the fair outcomes properly drafted could be helpful for market participants to understand the outcomes that the regulator (FMA) will be aiming to achieve when performing its statutory duties and could be a helpful guide for the FMA in how it exercises its judgement as to the type of enforcement action undertaken in respect of any suspected non-compliance with legislation.

Question 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?

We think the FMA will need to monitor closely to ensure that an outcomes-focused approach to regulation does not stifle innovation. If Providers treat these outcomes (in the current form) as primarily an FMA compliance obligation, we are concerned it could lead to less innovation and flexibility as Providers deprioritise other important initiatives, such as technology and service delivery innovation.

Question 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?

N/A

Question 17 - What are your views on the examples provided in the guidance? Are they helpful, and are there any other examples we should include?

We think the examples provided are mainly general in nature. We suggest some baseline research by the FMA to support the seven fair outcomes, which might be helpful for providers and consumers to highlight how and where, collectively, the financial service industry is falling short (or not) in meeting the proposed fair outcomes.

Question 18 - Do you need any further guidance or support from the FMA in relation to outcomes-focused regulation or fair outcomes?

We believe that the FMA will need to ensure that it can tangibly measure (within reason) how New Zealand's legislative settings and the activities of all stakeholders (including Providers collectively) are performing against the fair outcomes (in whatever way they are presented in the final guidance).

While the fair outcomes, as currently drafted, are relatively subjective, aspects of them are (or should be) measurable. We suggest that Draft Guidance should indicate how the FMA will track and measure performance against the fair outcomes on a market-wide basis (including providing a baseline starting position).

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: 3

Name of submitter: [REDACTED]

Company or entity: Consilium NZ Limited

Organisation type: Company

Contact name (if different): N/A

Contact email and phone: [REDACTED]

Question number	Response
1	<p>The explanation of an outcomes focused approach is reasonably clear. It is generally understood within the industry that participants act with client outcomes in mind. Many of the internal policies and procedures that regulated entities currently have in place are to that end.</p> <p>However, there is a lack of clarity regarding how an outcomes focused approach will co-exist with the current regulatory approach. The expectation seems to be that entities will be responsible for delivering fair customer outcomes, while also falling within existing, prescriptive regulatory regimes. There is a risk that this may lead to additional compliance cost within businesses and I am not sure the benefit of that additional compliance cost has been substantiated.</p> <p>Further, the stated purposes of the FMC Act are to promote the confident and informed participation of businesses, investors, and consumers in financial markets, and promote and facilitate the development of fair, efficient, and transparent financial markets. The fair outcomes consulted on already appear to fit within that purpose statement.</p>
2	<p>A focus on holistic fair outcomes should make it easier to set narratives regarding conduct expectations, within individual businesses and for consumers and the wider industry. This should make expectation setting simpler within regulated entities and for the sector as a whole. However, compliance programs will not be able to entirely refocus on fair outcomes as they will be subject to existing regimes. Compliance programs may pivot to incorporate fair conduct elements alongside existing compliance expectations that may be used to demonstrate elements of the fair outcomes that are sought to be achieved.</p>
3	<p>This, like other proposed outcomes, is described as a market-based outcome. We are not a large market participant; it is therefore unclear to us how we take responsibility for achieving market focused outcomes in isolation. We are therefore concerned by the wording that seems to expect individual entities play a part in ensuring appropriate products exist for all customers. Our expectation is that a fair and competitive market, as a whole, will provide for the diverse range of customer requirements needed, rather than individual businesses each providing for such requirements.</p> <p>It appears that this outcome, and others pitched in a similar way, are aimed at large industry players (such as large banks and insurers) that can provide products and services that cover a full range of diverse customer needs. We cannot do similar and are reliant on a functioning market to provide services that we cannot, or are unwilling to, provide.</p>
4	<p>It is already understood that consumers should receive useful information that aids good decisions. In our case, offer documents are already covered by very prescriptive regulation.</p> <p>There is a risk that a fair outcomes approach may contradict regulation in this area. If we think our documents can be better understood or presented in a better way that may advance fair outcomes, we would still be bound to provide documents that align to the existing regulatory regime. Clarity regarding how these competing expectations may interact would be appreciated.</p>

	There are sound legal expectations in place regarding other types of information, such as advertising.
5	<p>While we understand that the FMA's view is already that value for money be provided across the industry, in alignment with FMC Act expectations to act in clients' best interests, it seems this outcome may formally extend reach of the value for money regime into areas beyond managed investment schemes and KiwiSaver. This may therefore lead to additional formal compliance expectations in this area.</p> <p>The references to price as merely a consideration when determining value are welcome additions, indicating that the price of a good or service is not by itself an indication of fairness.</p>
6	Putting a consumer at the centre of decision making is a useful tool to encourage providers to act in consumer interests. This outcome broadly makes sense and is something we believe exists under the disparate legal and regulatory regimes we currently sit under that, in our case, include the FMC Act and FMC Regs, MIS and DIMS licensing conditions, and the Privacy Act.
7	We agree with this outcome. We also note that our products and services are typically provided by independent financial advisers rather than directly to clients, so the fair outcomes regime needs to consider how direct and indirect customer relationships may be differently impacted by this proposed outcome.
8	<p>Our overall response to questions 8 and 9 is that issues at a market level are beyond the control of individual market participants.</p> <p>Ensuring markets are trusted sits under both existing law/ regulation (prohibitions on scams and market manipulation) and existing guidance (Governance Thematic Review). I am uncertain about how those matters which currently sit under conduct guidance will be regulated and (perhaps) enforced under an outcomes-based regime and would therefore appreciate further guidance.</p>
9	The promotion of innovation and growth can at times be at odds with regulation. The FMA's regulatory approach and use of exemption powers are important contributors to finding the right balance.
10	Not applicable
11	I anticipate that we would need to take a more structured approach to demonstrating fair outcomes going forwards, rather than demonstrating isolated adherence to individual regulatory requirements that we are subject to. This would involve work to tie together and describe our compliance with existing regulatory regimes through a fair outcomes lens. Ongoing review and monitoring of that output would be required on a consistent basis. This would cut across all elements of our business from the board through management to operational staff and would require consideration as to how we adequately resource such a change in the knowledge that individual regulatory requirements still need to be met.
12	<p>I believe that taking a more holistic approach focused on outcomes and conduct may be beneficial for business wide buy in to compliance initiatives rather than taking a more prescriptive task based approach, although I note those two approaches will co-exist.</p> <p>I have concerns that the change in approach proposed will increase our regulatory burden and that there is uncertainty regarding how the new approach will be implemented alongside existing regulation.</p>
13	Supervision and monitoring should move towards a more holistic view of a business in line with the outcomes focus, rather than a prescribed box ticking approach. This would require an upskilling for frontline supervisory staff and would necessitate bridging the perceived gap in monitoring expectations between FMA senior management and the frontline staff that undertake monitoring.
14	I would expect accountability mechanisms to be unchanged as these arise from underlying laws and regulations. It is unclear how a finding that an industry participant has not met fair conduct expectations on a general level could be enforced without references to underlying breaches of regulation.
15	As all other regulation continues to apply, I do not think outcomes focused regulation will have an impact on innovation and flexibility. However, this is somewhat dependent on how the FMA ultimately implements an outcomes focused approach (see also response to question 9).
16	Not applicable
17	I am very supportive and appreciative of the inclusion of as many examples in the guidance as possible. However, at times the examples also demonstrate that the proposed outcomes are covered by existing regulation.

18	Further clarity regarding how the outcomes based approach sits alongside existing laws and regulations would be appreciated. Consistent guidance, outreach and opportunities for input will be important as the FMA further develops its approach to fair outcomes.
----	---

Feedback summary – Overall, fair outcomes are a good high-level, way of explaining and setting expectations. Much of what is included in the consultation document is not new and is generally covered by existing regulation.

Further clarity and guidance regarding the position of the proposed fair outcomes approach alongside existing regulatory regimes will be important. With sound regulation and guidance on most of the outcomes consulted on, it is somewhat unclear how the move from a prescribed regulatory focus to a holistic outcomes focus will be implemented.

A business such as ours is already highly burdened by the pace of regulatory change, particularly given our size, so the addition of further expectations will require time and resource to adapt to.

Additional point to note - The use of 'fair' is preferable to the 'good outcomes' terminology that has been used previously in relation to conduct, noting that fair outcomes are not always good. I would like to see the 'fair' terminology also used in the FMA's conduct guidance.

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