

11 December 2024

Mr [REDACTED]

By email: [REDACTED]

### Official Information Act 1982 Request (OIA) – Outcomes-focused consultation

I refer to your email to the FMA on 5 November and subsequently on 13 November 2024, in which you requested the following under the OIA (information from June 1 2024 to 5 November 2024):

1. Copies of all submissions the FMA received following the OFR consultation
2. Communications and correspondence between the FMA, the Minister, and MBIE in relation to OFR
3. Communications and correspondence between FMA staff and the FMA's board concerning OFR
4. Internal communications and correspondence among FMA staff in relation to OFR matters

### Consultation Update

To keep stakeholders informed, we will publish the submissions received on our fair outcomes consultation, along with the following update, on our website at the end of this week.

A strategic objective for the FMA is evolving its regulatory approach to focus more on the outcomes that matter for consumers and markets. This involves a maturing of our processes that means we will be more forward-looking and will prioritise our work based on our assessment of risks to consumer and market outcomes. This will also allow us to streamline our approach and reduce unnecessary regulatory burden on providers. An outcomes-focused approach also means our enforcement work focuses on conduct that is harmful to consumer and market outcomes.

This approach is in line with good regulatory practice in New Zealand and overseas. It represents a shift in how we undertake our core function of supervising our regulated population. We will make full use of our regulatory toolkit (such as guidance, exemptions, and designations) to remove unnecessary regulatory burden and to promote and facilitate the development of fair, efficient, and transparent financial markets.

Examples of this new and developing approach can be seen in recent FMA work such as our *Financial Advice Provider Monitoring Insights* report, which focused on gaps that could lead to poor outcomes for customers and highlighted areas of good practice to raise standards. Similarly, our recent liquidity risk management guidance was published in response to a survey of providers that we believe showed low maturity (and over-confidence) in funds managers' liquidity risk management practices. The guide highlights the importance of good liquidity risk management to ensure that investors are treated equitably, as well as playing an important role in supporting orderly and stable markets.

The fair outcomes consultation sought industry feedback on the outcomes that the FMA had identified as important for consumers of financial services and for New Zealand's financial markets. There was support in the feedback for the intention of using customer and market outcomes as a basis for prioritising our work. However, submitters also expressed a range of concerns, including that the focus on detailed outcomes statements gave an impression that these would be treated as new rules or compliance obligations for firms and that it was unclear how the FMA would operationalise an outcomes focus in practice.

We have taken time to consider this industry response to our consultation. We agree that it would be beneficial to explain the FMA's regulatory approach so that providers and other stakeholders understand how we intend to use an outcomes focus to prioritise and carry out our work. We intend to publish this at the end of Q1 2025.

### **Information requested**

We have considered your request pursuant to the OIA and based on the review of the records and information we have available in our system.

### **Request 1 – submissions**

Please find attached a copy of all the submissions the FMA received in relation to the outcomes-focused regulatory approach. Please note that some parts of the submissions have been withheld pursuant to the following grounds under the OIA:

- **Section 9(2)(a):** Personal information within the documents may be appropriate to withhold to protect the privacy of individuals for example submitter's staff name and personal contact details.
- **Section 9(2)(ba)(i):** Often it is appropriate to withhold correspondence with, or material provided by, regulated entities in relation to regulatory matters where it has been obtained from them on a confidential basis and release may prejudice the future supply of information from those entities, or other entities we regulate. In some parts of the information the submitters asked the FMA to withhold the information. It is important to the FMA's regulatory effectiveness, and so in the public interest, that the FMA continue to be able to engage frankly with market participants and the public on policy consultations.
- **Section 9(2)(b)(ii):** Some information may be appropriate to withhold to avoid unreasonable prejudice to the commercial position of the person who supplied or who is the subject of the information.

### **Request 2 – communications between FMA, MBIE and Minister**

Please see appendix A (**attached**), a timeline and summary of all the documents the FMA holds in relation to its communications with MBIE and the Minister in relation to the outcomes-focused regulatory approach. The period covered included discussions with the Minister and MBIE on the FMA's Statement of Intent, including feedback from the Minister under the [Crown Entities Act](#).

Some discussions about the outcomes-focused regulatory approach are integrated into monthly meetings or as part of the discussion about the FMA's statement of intent (SOI). Where information in the documents

does not relate to the FMA's outcomes-focused work, this information has been redacted as it is not in the scope of your request.

### **Request 3 – communication between FMA's staff and FMA's board**

From 1 June to 5 November 2024, the Board received updates through various documents and discussions, including the Quarterly Policy Update, the Chief Executive Officer's Report, and the Quarterly Board Report. As the information is quite scattered and located in several documents, the relevant excerpts related to the outcomes-focused regulatory approach that were reported and communicated to the Board are compiled in the table **attached** as Appendix B. Please note that one extract mentions a name an independent external consultant, the name has been redacted pursuant to **section 9(2)(a)** of the OIA to protect the privacy of the individual.

### **Request 4 - Internal communications and correspondence among FMA staff**

As this matter is still ongoing and we are still considering and making decisions about the outcomes-focused regulatory approach consultation, we have decided to withhold internal communication and correspondence among FMA staff pursuant to **section 9(2)(g)** of the OIA. This is to maintain the effective conduct of public affairs through the free and frank expression of opinions by FMA staff and employees in the course of their duty. It is important that FMA staff are able to have full and frank discussions until a final decision is made about the outcome-focused regulatory approach.

However, we have decided to disclose a summary of FMA's internal staff interaction and correspondence in relation to this matter. We consider this will assist in meeting your interest (and more generally the public interest) by providing an understanding of the nature of the matters concerning the OFR and FMA's staff consideration of these matters. **Attached** as Appendix C is a copy of the summary.

### **Conclusion**

If you have any questions, please contact me at [ariarna.hakaraia@fma.govt.nz](mailto:ariarna.hakaraia@fma.govt.nz).

We also note that you have the right to complain to the Ombudsman regarding our assessment of your OIA request, in accordance with section 28 of the Official Information Act. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or phone 0800 802 602.

Yours sincerely



Ariarna Hakaraia  
**Manager, Internal Governance**

**Enc: Link to download all documents (in a separate email)**

**Appendix A: timeline of communication between the FMA, MBIE and the Minister**

<b>Time</b>	<b>Doc. No.</b>	<b>Communication</b>
2 May 2024	1, 1.1	The FMA had a meeting with the Minister's Office and MBIE.
21 June 2024	2	FMA Briefing for Minister meeting
24 June 2024	3, 3.1	The FMA had a monthly meeting with MBIE and one of the topics discussed was in relation to the OFR.
25 June 2024	4, 4.1	<p>Letter from FMA CE including copies of SOI/SPE material for tabling. E-mail from FMA External Relations manager detailing how the FMA has changed the SOI in response to feedback from the Minister.</p> <p>The SOI is available publicly at: <a href="https://www.fma.govt.nz/library/corporate-publications/statement-of-performance-expectations/">https://www.fma.govt.nz/library/corporate-publications/statement-of-performance-expectations/</a></p> <p>The SPE is available publicly at: <a href="#">Statement of Intent   Financial Markets Authority</a></p>

## Appendix B - Communications between Board and staff on OFR, 1 June – 5 Nov 2024

Date	Source	Extract of communications and/or correspondence
25 June 2024	Risk-based outcomes focussed supervision approach paper for 2 July Board meeting	<p>In this paper, staff advised the Board that:</p> <p>“Following our consultation last year on our proposed regulatory outcomes, we are now working towards a publication that will set out our proposed regulatory approach. This document will place less emphasis on the specific outcomes and be clear that it does not introduce new rules for firms to comply with. The publication will be intended to explain to industry how we intend to carry out our regulatory work with a focus on the results that regulation seeks to achieve for markets and consumers. This approach will also support our decision-making and a risk-based approach to supervision and other regulatory activities.”</p>
25 June 2024	Quarterly Policy Update paper for 2 July Board meeting	<p>In this paper, staff advised the Board that:</p> <p>“Following our consultation last year, we are now working towards a publication that will set out this transformation of our regulatory approach. This document will place less emphasis on the specific outcomes and be clear that it does not introduce new rules for firms to comply with. Essentially this will be a guide to how we regulate the sector with a focus on the results that regulation seeks to achieve for markets and for consumers and how this approach will support our decision-making and risk-based approach to supervision and other regulatory activities.”</p>
2 July 2024	Chief Executive’s Report for the 2 July Board meeting	<p>In this report, the CE advised the Board that:</p> <p>“Intervention Design is working on drafting the FMA’s outcomes-focused regulatory approach, considering feedback from last October’s public consultation. We intend to place greater emphasis on how an outcomes focus will support the FMA’s transformation into a forward-looking data and risk based regulator focused on those matters that will best support delivery of our statutory objectives. Our response will make it clear that adopting this approach will not mean new rules for firms and is consistent with our existing statutory objectives and functions.”</p>
2 July 2024	Board meeting minutes	<p>At the board meeting members asked staff what an ‘outcomes-focused’ approach is. Staff advised that:</p> <p>“An outcomes-focused approach is a forward-looking, risk-based approach, as compared to a backwards-looking compliance approach, and one which relies heavily on external and internal data and research. The Board agreed that this messaging provided the necessary clarity.”</p> <p>The Board further advised that “clear communication to the market on the outcomes-focused approach is critical. Staff noted that the FMA intended to publish its response to the OFR consultation in late September. The Board expressed their desire to be involved in framing the external messaging.”</p>
6 August 2024	Quarterly Board Report, Q4 FY24	<p>In this report, staff provides updates to the Board on the FMA’s Strategic Objective – Evolving out outcomes-focussed approach as follows:</p>

		<p>“Update: Fair Outcomes Consultation and OFR engagement plan - Developed outline for a future regulatory publication explaining the FMA's regulatory approach, with expected publication in September/October 2024.</p> <p>Risks: Managing the messaging on our evolution to an outcomes focused -approach to stakeholders, and specifically the industry challenge of clarifying that the key changes are for the FMA</p> <p>ELT seeking direction/input: Key messages/clarification that industry needs to hear from the FMA in the regulatory approach publication.”</p>
6 August 2024	Board meeting minutes	<p>Member comments on discussing with staff SO1, Evolving our outcomes-focused approach:</p> <p>“In terms of the messaging for the outcomes-focused guidance document, staff should consider:</p> <ul style="list-style-type: none"> <li>- Crisp definition on what outcomes focused means for the market.</li> <li>- If necessary, amending the SO1 wording. Although ‘outcomes-focused approach’ is an international phrase, we should ensure the language we are using is contextualised for NZ.”</li> </ul>
24 September 2024	Chief Executive’s Report for the 24 September board meeting	<p>In this report, the CE advised that Board that:</p> <p>“We are currently developing a ‘Regulatory Approach’ publication as a follow up to our consultation on Outcomes Focused Regulation which will communicate to external stakeholders how FMA intends to evolve its supervisory and enforcement activities to enable better outcomes for consumers and markets. It will reflect some of the outputs from the visit by Aute Kasdorp on what this means for our end-to-end regulatory approach and clarifying that this does not mean new rules for those we regulate. We have been clear to industry that we have been taking the time to reflect on their previous feedback to consider the way forward. We will release a revised publication in the new year.”</p>
4 November 2024	Board Strategy Day	<p>The FMA Board had a Board Strategy Day. In the Powerpoint presentation the following information was noted about OFR:</p> <p>“The Board noted that overall we are focused on the right things with a sustainable pace, and it was good to have endorsement from [consultant] that our strategy to become more outcome-focused is the right one for a modern conduct regulator, in line with international best practice.</p> <p>On outcomes focused regulation, Board feedback is that we will need to do more engagement with the industry to build their understanding....</p> <p>Outcomes focused regulation will mean we will be increasingly focused on enforcing the things that we think matter, and we will</p>

		need to be explicit on this. Signaling what is going to matter is important.”
5 November 2024	Chief Executive’s Report for the 5 November board meeting	In this report, the CE advised that Board that:  “The team is continuing to develop our ‘Regulatory Approach’ publication to communicate to the sector how we want to evolve so that our supervisory and enforcement activities focus on enabling better outcomes for consumers and markets.”
5 November 2024	Quarterly Board Report, Q1 FY25	In this report, staff provides updates to the Board on the FMA’s Strategic Objective – Evolving out outcomes-focussed approach as follows:  “Update: Fair Outcomes Consultation and OFR engagement plan – Drafting is ongoing for a future regulatory publication explaining the FMA’s regulatory approach, with expected publication in March 2025. This has been deferred from initial plans to publish in September 2024, so that we can engage further internally and take account of [consultant’s] recommendations for our regulatory approach.  Risk: Managing the messaging on how our regulatory approach is evolving to be more outcome-focused and intelligence-led with stakeholders, particularly industry.”

## **Appendix C: summary of internal staff communication about OFR between 1 June to 5 November 2024**

From 1 June to 5 November 2024, FMA staff mainly had internal correspondence and communications about:

- The submissions received
- how we develop and work towards a future publication and response to the previous consultation.
- Consideration on how an outcomes focused regulation model would work for the FMA including in relation to how we carry out our monitoring and supervisory activities.
- Raising awareness and understanding with our staff on outcomes focused regulation, what it could look like in general and how it might be implemented within the FMA.

Strategic Objective 1 in our published Statement of Intent is *Evolving our Outcomes-Focused Approach* and states that 'The FMA's supervisory and enforcement activities focus on enabling better outcomes for consumers and markets.' Given this, it is an important part of our internal discussions as we work towards how an outcomes focused approach operates and it touches on a number of FMA work areas.