New Zealand Banking Association
Te Rangapū Pēke

# Submission

to the

# Financial Markets Authority

on the

# Consultation: *Seeking feedback on current standard conditions*

25 July 2025

**NEW ZEALAND BANKING ASSOCIATION – TE RANGAPŪ PĒKE**
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## About NZBA

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

2. The following seventeen registered banks in New Zealand are members of NZBA:

- ANZ Bank New Zealand Limited
- ASB Bank Limited
- Bank of China (NZ) Limited
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- China Construction Bank (New Zealand) Limited
- Citibank N.A.
- The Co-operative Bank Limited
- Heartland Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
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- JPMorgan Chase Bank N.A.
- KB Kookmin Bank Auckland Branch
- Kiwibank Limited
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited

## Contact details

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## Introduction

4. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on the Consultation: *Seeking feedback on current standard conditions* (**Consultation**). NZBA commends the work that has gone into developing the Consultation.

5. NZBA supports the FMA's current priority, as noted in the recently released Financial Conduct Report, of removing unnecessary regulatory burden. The streamlining of licence standard conditions, if done effectively, is a key opportunity for the FMA to show action on this priority.

6. It is not clear whether the FMA intends to issue standard conditions that are the same for every market service, or if these standard conditions will be tailored. If the latter, this runs the risk of not reducing regulatory burden at all. We submit this review should take the opportunity to substantially streamline standard conditions by:

    6.1. Implementing a modular approach (i.e., a set of standardised core conditions that apply across all market services, plus service-specific requirements, where appropriate).

    6.2. Avoiding any overlap with obligations already imposed as part of a financial institution's Reserve Bank of New Zealand (**RBNZ**) licence. We note that this interplay is already recognised in the Conduct of Financial Institutions (**CoFI**) regime.

    6.3. Avoiding unnecessary duplication and / or potential conflict with other requirements (such as those in the Financial Markets Conduct Act 2013 (**FMCA**)).

    6.4. Ensuring the conditions align with the underlying statutory intent – i.e., to assess and ensure capability to provide the relevant service – without going further unnecessarily.

    6.5. Making the conditions workable in practice, and not unduly burdensome. This would include ensuring that where a common condition is to be amalgamated, the licence holder should have the most favourable of the amalgamated conditions.

7. Following high level engagement on the Consultation with the Financial Services Council NZ and Insurance Council of New Zealand, we agree that streamlining standard conditions of a single licence is a positive step towards reducing duplication and simplifying compliance. However, to achieve the full benefit, it must be supported by a single, streamlined regulatory return. Without this, financial institutions may still face unnecessary administrative burdens, limiting the impact of the proposed reform.

8. We have set out below our responses to each question posed in the Consultation. We would be happy to continue to engage with the FMA as this work progresses.

**Is there any overlap or duplication in the standard conditions applying to different market services licences that should be addressed?**

9. We consider there are significant overlaps and duplication in the standard conditions across a number of licences – in particular, the financial advice provider (**FAP**), financial institution (**FI**), managed investment scheme (**MIS**), discretionary investment management service (**DIMS**) and derivatives issuer (**DI**) licences.

10. Common areas of overlap can be seen in the areas of record keeping, regulatory returns and outsourcing across these licences.

11. As an overarching comment, we submit that differing or additional licence conditions for different market services under the new single licence regime should be retained only where there is a very compelling reason. In such cases, a modular approach (i.e., a set of standardised core conditions plus service-specific requirements, where appropriate), would be helpful.

12. We also note that, while there is an overlap between current licence conditions, the scope and point of application will differ for FIs. The CoFI regime applies at the institutional level across all relevant services; standard conditions under the FMCA apply at the market service level.

13. We submit that where appropriate, some conditions are superseded or consolidated under a single condition that avoids duplication of the same obligation. In respect of FIs subject to CoFI, we consider only one licence (with one set of standard conditions) is required, because the overarching obligation is to be fair to customers, including in the provision of advice.

14. We have set out detailed submissions on the relevant standard conditions below.

*Record Keeping licensing conditions should be standardised, or in some cases removed*

15. Most licences contain generic provisions in relation to record keeping. However, the FAP and FI Standard Conditions contain more detailed provisions in relation to advice records, and records relating to a FI's fair conduct programme (**FCP**).

    15.1. For example, FAP Standard Conditions include a requirement to keep records for a minimum of seven years, where no specific timeframes are explicitly mentioned in the conditions for the other licences discussed. Section 446J(1)(c)(ii) of the FMCA does not specify what constitutes an adequate retention period, nor does the FI licence.

16. We consider that, to the extent this condition is included in any licence, it should align with the more generic provisions contained in e.g. the MIS Standard Conditions, while retaining the difference in descriptions of the record types.

17. Further, we note that the requirements in the FI Standard Conditions duplicate s 446J(1)(c)(ii) of the FMCA but remove the discretion that is given to FIs under that section to develop what policies and processes they will have in place in relation to the maintenance of records. We consider that for FI licences, this condition should be removed entirely.

*Regulatory Returns licensing conditions should be consolidated*

18. Similar information is required across regulatory return conditions for multiple licences. We consider a single regulatory return would be more efficient – particularly where the information provided will be the same (for example, business information and governance structures). It would be preferable to provide one set of information on an entity-wide basis, rather than multiple returns with slightly different requirements.

19. Additionally, there will be cases where the scope of response to the same question will differ depending on the licence (for example, complaints). The FMA will need to consider how a FI would be required to respond to questions about specific services without duplicating effort.

20. If a single consolidated return is not practicable, then the consolidated standard conditions should require the FMA to have regard to / cross refer to similar responses provided by a licensee in a different return.

    20.1. For example, annual return questions related to complaint volumes and types in the annual return for the FAP and FI licences, which are duplicative and cover the same information.

*Business Continuity and Technology Systems licensing conditions should be standardised*

21. The FAP licence condition currently differs from the FI and MIS Standard Conditions in terms of the timeframe to provide notification (10 working days against 72 hours, respectively).

22. We submit that the timeline for reporting should be standardised across all licences.

*Outsourcing conditions should be considered against pre-existing obligations*

23. The FMA should take the opportunity to ensure this condition does not duplicate requirements under, and is consistent with, pre-existing regimes and regulatory obligations, such as the RBNZ's BS11 policy. We further submit that FIs that must comply with BS11 should be exempt from any FMA outsourcing conditions.

**Are there any aspects of standard conditions that could be clarified, either in the condition itself or in the accompanying explanatory notes?**

*Material Change*

24. There are requirements to notify the FMA of a "material change" under a number of conditions across several licences. As drafted, conditions regarding material change require licensed entities to exercise judgement over what constitutes 'material change', and organisational views and interpretations may differ.

25. We submit that these conditions should be clarified by reframing them as reporting conditions that are based on more objective change triggers. There are already statutory provisions requiring notification of material matters, so in this type of condition the FMA should simply set out a short, streamlined, exhaustive list of matters requiring notification.

26. For example:

    26.1. The FI and FAP Standard Conditions contain requirements to notify the FMA of a material change to "the nature of [its] financial institution service" or "the nature of, or manner in which [it] provides, [its] financial advice service". These are subtly different questions covering different focus areas. The conditions should be based on more objective change triggers, or otherwise refined to ensure the right materiality lens is applied for organisations who consider notifying under these licence conditions.

    26.2. The explanatory notes to the 'Governance' MIS and DIMS Standard Conditions should be clarified, particularly regarding what constitutes a "material change to … governance and compliance arrangements". It would also be helpful to understand the FMA's view of where a change to a licenced entity's governance and compliance arrangements means those arrangements would not be "substantially the same, or better than, those in place … at the time you applied for your licence".

*Complaints*

27. We note that the FAP Standard Conditions include a condition regarding complaints handling, but that others (e.g. the FI, MIS and DIMS Standard Conditions) do not.

28. The expectation to manage complaints is standard across all market service licences. It is unclear why the FAP licence explicitly includes this requirement. It would be helpful to understand the reasons for this inconsistency, given MIS, DIMS, FI and FAP licence holders are all expected to have an internal complaints process, and provide reporting on the complaints received into that process as part of their regulatory returns.

29. Complaints handling is a key part of a FCP, and FIs are required to track, manage and report complaints (including to the Banking Ombudsman Scheme). The FMA may wish to consider removing this condition for entities who have an FI licence. As part of this, there could be an expectation for FIs to maintain systems that filter and analyse complaints data by market service type, to ensure the FMA has visibility over complaints relating to specific market services without duplicating existing obligations.

*Information security*

30. The FAP Standard Conditions have a greater focus on information security (see, for example, Standard Condition 5), whereas the FI, MIS and DIMS conditions have a greater focus on operational resilience.

31. These two concepts are related but distinct. It would be helpful if these concepts were dealt with separately. This would ensure that firms treat each concept as a distinct area of governance and compliance.

*Regulatory Returns*

32. We submit that this condition should be reduced to a simple information gathering tool. The reference to s 412 of the FMCA is not related, and should be removed: reporting under that section relates to contraventions or adverse changes, not information gathering for monitoring capability to perform service(s).

**Are there any standard conditions that are no longer relevant? If so, please note what these are and explain why they are no longer relevant.**

33. We understand the purpose of this consultation is to identify licence conditions that may be streamlined, and to focus standard conditions on areas not already captured in legislation or other regulatory instruments.

34. On that basis, we consider that the following conditions should be removed:

    34.1. **Business Continuity and Technology Systems (third party systems)**: The requirement to have and maintain a business continuity plan, and to report any material incidents, makes sense and could be retained. However, having a further specific requirement on licence holders to ensure the operational resilience of a third-party system is impractical and should be removed from a single licence business continuity and technology systems standard condition. We consider this requirement could instead be drafted to require licence holders to take steps to be reasonably confident in the operational resilience of third-party systems. While a licence holder should prudently undertake due diligence on the business continuity of third parties, practically speaking, a licence holder is unable to control the operational resilience of an outsourced system.

34.2. **MIS / DIMS Standard Condition 1:** The Standard Conditions for MIS and DIMS contain provisions relating to "key people and managers", while other licences do not. We submit these conditions should be removed, as this information could easily be obtained through supervisory engagement.

34.3. **MIS Standard Condition 2:** This condition is unnecessary and should be covered under MIS Standard Condition 6, as the requirements of Standard Condition 2 duplicate existing requirements in the FMCA and FMC Regulations relating to Statements of Investment Policy and Objective and limit breaks, and investing is an integral part of the service being offered.

34.4. **DIMS Standard Condition 2:** We recommend removing this Standard Condition for those DIMS providers that are also licensed to provide a financial advice service, as this duplicates financial advice obligations.

34.5. **MIS / DIMS Standard Condition 6:** This is sufficiently covered by s 412(1) of the FMCA and should be removed.

34.6. **MIS / DIMS Standard Condition 7:** This is sufficiently covered by s 412(2) of the FMCA and should be removed.

**Are there any standard conditions that shouldn't be changed? If so, please note what these are and explain why they should not be changed.**

35. As noted above, we consider that many standard conditions will require amendment to take into account how they apply across different services, as the scope of the service determines the policies, processes, systems and controls that a licensed entity puts in place to manage that condition.

36. We consider MIS Standard Condition 8 should be retained, as maintaining sufficient Net Tangible Assets is important to ensure the ongoing financial integrity of the manager (given the lack of legislative solvency requirements).

**Is there anything else that should be taken into account when streamlining the standard conditions? If so, please provide details.**

37. To be consistent with the policy intent of this consultation, entities that are currently licensed for multiple market services should not be disadvantaged by combining existing market service licences into a single licence.

38. Standard conditions should be designed to complement (rather than duplicate) other regulatory requirements. This would mean referencing existing frameworks rather than restating them in the standard conditions. The FMA should consider areas of regulatory overlap where entities are subject to similar obligations from multiple regulators. There is an opportunity here to align reporting processes and definitions without compromising regulatory oversight. For example:

38.1. The current requirement to report business continuity plan or critical technology incidents to both the FMA and RBNZ.

38.2. Requirements to report on outsourcing to both the FMA and RBNZ (e.g. under BS11) could be streamlined.

39. Similarly, we encourage the FMA to review notification requirements that are similar to those from other regulators, such as:

39.1. Where banks must notify both the FMA and RBNZ of changes to directors and senior managers (FMCA Regulation 191, and BS10).

39.2. Fit and proper assessments for directors and senior managers should be aligned to the RBNZ regime to streamline reporting and oversight processes for regulated entities.

40. Streamlined standard conditions in the single licence should be sufficiently flexible to adapt to emerging risks, and / or the FMA could provide for a licence standard conditions review cycle that is designed to maintain relevance.

41. It would also be helpful to understand the potential impacts of the proposed changes on registration under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and annual licensing fees. Additionally, as a group may hold licences under different legal entities, further clarity on how the FMA intends to apply a single licensing approach under this structure would be useful.