



MARCH 2023

FMA briefing to the incoming Minister

Briefing to the incoming Minister of Commerce and Consumer Affairs

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Foreword

Congratulations on your appointment as Minister of Commerce and Consumers Affairs. Board Chair Mark Todd and I look forward to working with you.

This briefing aims to give you an overview of the FMA's key priorities over the next few years and our work to implement a number of new regulatory regimes in the financial services sector. It also updates you on the organisational changes the FMA is making in order to successfully deliver better outcomes for all New Zealanders.

The FMA is at an important juncture. From a base of protecting investors and promoting clean markets, our significantly expanding remit – into broader consumer protection – make our work relevant and important for all New Zealanders, not just those with money to invest. Our focus is to work with the financial services industry to make sure that more New Zealanders than ever have justified confidence that the sector is working well for them.

New Zealanders having justified confidence is our point of departure, the lens through which we view all of our work. To underpin this, we are expanding our use of behavioural insights, data analysis and research to inform our regulatory approach.

While the new financial advice regime and the conduct of financial institutions regimes are at very different stages of implementation, I've been encouraged by the way the industry and the FMA are working together to successfully deliver both. This relationship is key. The FMA's focus is on supporting and educating the industry as we work to deliver an outcomes-focused approach. This approach is about the regulator and regulated working together to deliver the right outcomes for all New Zealanders when they interact with financial service firms.

Delivering outcomes-focused regulation requires a fundamental shift and a rethink about how we operate. Our new operating model is a long-term, evolving project, not a single overnight change. And our commitment to, and practice of strong stakeholder engagement remains steadfast.

Internally, the FMA's focus for the last twelve months has been on the changes it needs to make to deliver the new regulatory regimes. In many cases New Zealand is decades behind other jurisdictions in terms of conduct regulation, but this has provided us with a unique opportunity, particularly for banking and insurance conduct, as well as financial advice, to learn from what has worked, and what has not worked, and respond accordingly.

We have undertaken significant work to prepare for this change. We've created new roles and introduced a leadership structure that enhances an innovative, forward-looking capability as well as underpinning a collaborative strategic approach to our core licensing, monitoring, and enforcement work. This is critical for a regulator which has grown significantly in recent years and has much to deliver.

Acknowledging these significant changes, in October 2022 the previous Minister of Commerce and Consumer Affairs, Dr David Clark, granted the FMA a one-year extension to the provision of the FMA's Statement of Intent (SOI) refresh until 2024/2025. This will enable the SOI and Statement of Performance Expectations to be revised simultaneously to reflect the renewed focus of the FMA.

The FMA will continue to operate its policy of credible deterrence of misconduct, applying a range of regulatory tools in our work with our licensed population. Maintaining a credible intervention and

enforcement function is necessary to promote integrity and confidence in markets and financial services. This includes legacy issues if customers are still affected, or out of pocket today, through systems that should have been fixed years ago.

Our priorities will be driven by the new regulatory regimes that are being introduced and setting up the FMA for the future in a time of rising interest rates and significant climate events. The obligation to treat customers fairly is an evergreen, ongoing requirement that is not subject to economic conditions. It is in moments of economic distress that protections need to endure and be applied equally to the experiences of Māori, Pākehā, Pasifika, all the peoples and cultures of Aotearoa.

Congratulations again on your appointment, and I look forward to meeting you in due course.

Samantha Barrass, FMA Chief Executive

Executive summary

The Financial Markets Authority – Te Mana Tātai Hokohoko (FMA) is an independent Crown entity established in 2011 under the Financial Markets Authority Act. Our statutory duty is 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 financial markets. We work towards growing public confidence in our financial markets and supporting the growth of New Zealand’s capital base through effective regulation. As a risk-based conduct regulator, we focus our resources on conduct that poses the most significant risks to investors, consumers and the development of fair, efficient and transparent financial markets.

The FMA has responsibility for enforcing securities, financial reporting and company laws that apply to financial services and securities markets. We also regulate securities exchanges, financial advisers, frontline regulators, and KiwiSaver and superannuation schemes. Together with the Reserve Bank of New Zealand we are responsible for overseeing designated settlement systems.

Since its establishment, the FMA has seen its mandate increase significantly. This began with the Financial Markets Conduct Act 2013 (FMC Act). The regulatory regime set out in the FMC Act came fully into force at the end of 2016. Changes to the regulatory regime for financial advisers through the Financial Services Legislation Amendment Act 2019 came into force in March 2021. The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (CRD) and the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI) will further expand the FMA’s remit covering banks, insurers, fund managers, large listed issuers and non-bank deposit takers.

The CoFI legislation was developed partly in response to the findings of the Conduct and Culture reports into banks and life insurers, which were published in 2018 and 2019 respectively. These reports and accompanying reviews were carried out by the FMA and RBNZ in response to concerns about public confidence in financial institutions. Confidence in the sector was damaged by the findings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in Australia, which ran from December 2017 to February 2019.

This briefing aims to provide you with an overview of the FMA’s work through a period of substantial change: both for the industry as it adapts to three new regulatory regimes, but also the FMA as it goes through substantial organisational change to ready it for the future.

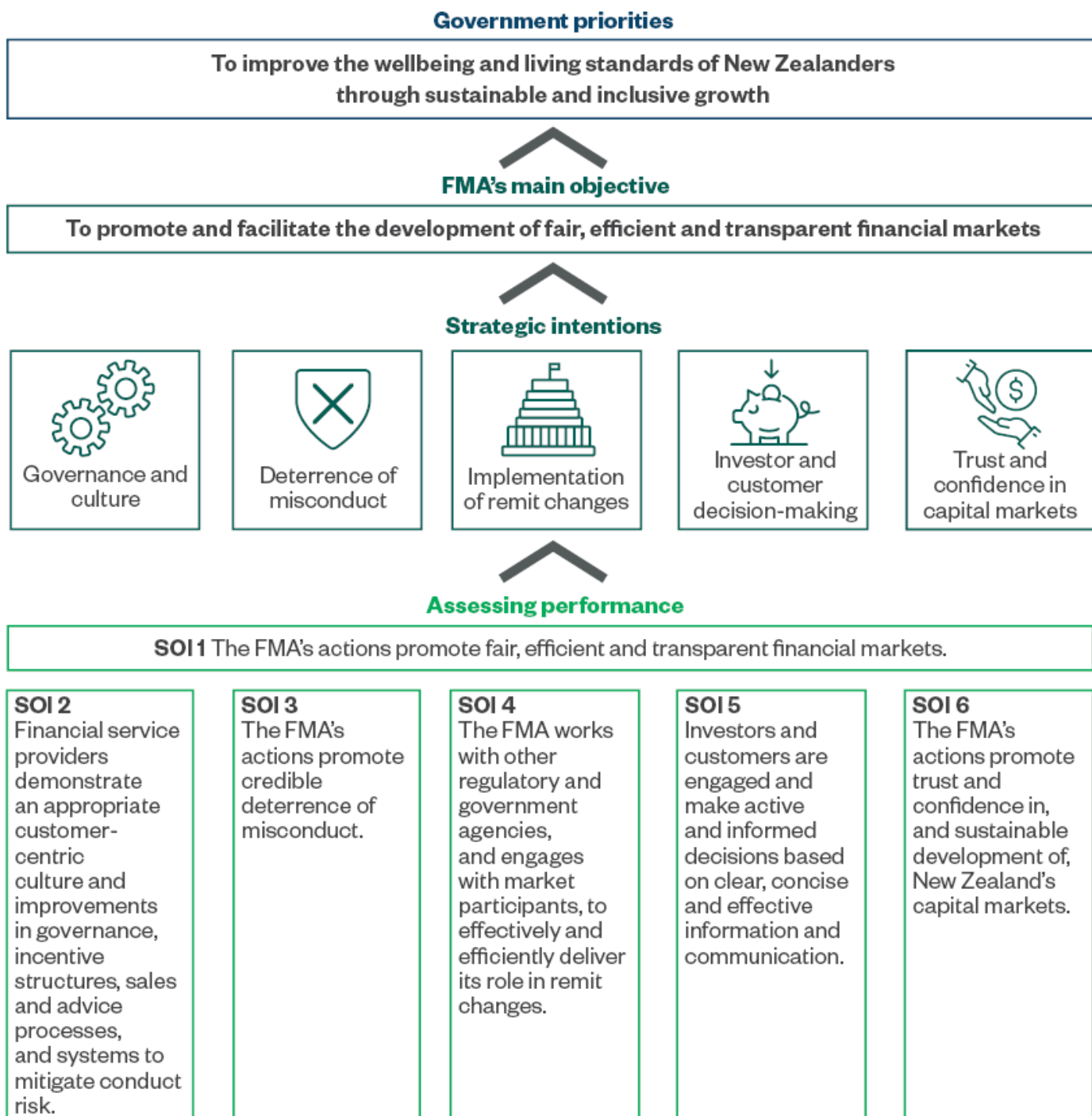
Our key reference documents, which we will provide you, are listed below. These are also available on our website www.fma.govt.nz

- [2020-2024 Statement of Intent](#)
- [2022-23 Statement of Performance Expectations](#)
- [Strategic Risk Outlook](#)
- [Annual Corporate Plan](#)
- [Annual Report 2021/22](#)

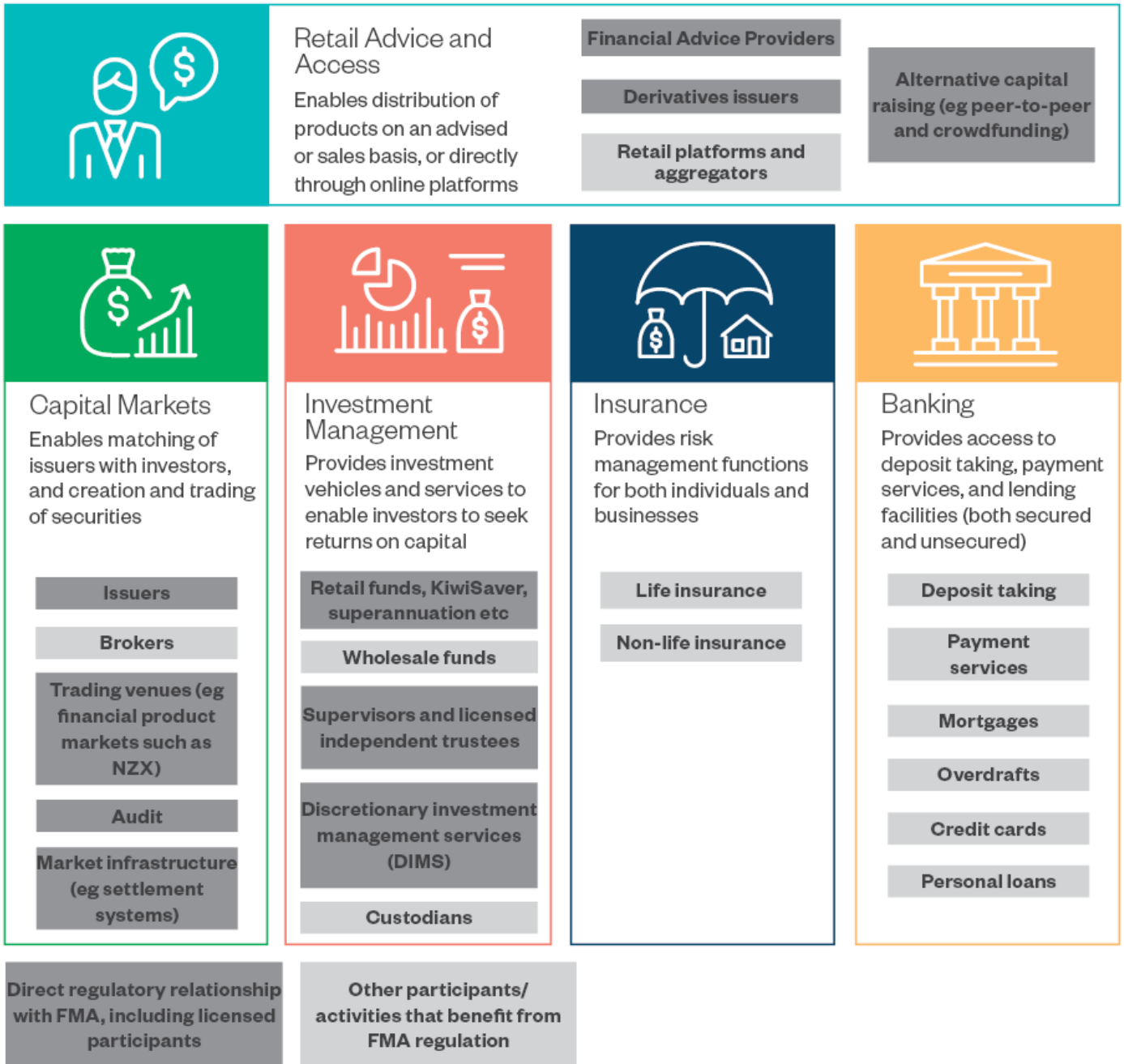
Section 1: About the FMA

Established	Financial Markets Authority Act 2011
Status	Independent Crown Entity
Main objective	Promote and facilitate the development of fair, efficient and transparent financial markets.
Key legislation	<ul style="list-style-type: none">• Financial Markets Authority Act 2011• Financial Markets Conduct Act 2013• Financial Markets (Conduct of Institutions) Amendment Act 2022• Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021• Financial Markets Supervisors Act 2011• KiwiSaver Act 2006 (Part 4 and Schedule 1)• Anti-Money Laundering and Countering Financing of Terrorism Act 2009• Auditor Regulation Act 2011• Financial Service Providers (Registration and Dispute Resolution) Act 2008• Part 5C of the Reserve Bank of New Zealand Act 1989
Annual budget (Opex)	\$67.6 million (2023/24) \$5 million litigation fund
Office locations	Auckland, Wellington and a small number of remote staff mainly based in Christchurch
Staff	311 total staff, including 267 permanent staff. Staff are based in Auckland (72%) and Wellington (26%) and Christchurch (2%)
Chair	Mark Todd
Chief Executive	Samantha Barrass

The FMA's strategic intentions and Statement of Intent:



Who the FMA regulates:



What do we do?

As New Zealand's principal conduct regulator of financial markets, we focus on protecting investors, customers and the integrity of markets through influencing how participants behave towards their customers, investors and each other.

Our activities include:

- Policy and guidance - We engage and provide information and guidance that assists firms and professionals to comply with the law. We keep under review the law and practices relating to financial markets and participants.
- Information and resources - We provide information and resources to help investors and customers make better investment and financial decisions.
- Licensing - We license a range of firms and professionals that meet the requirements in law.
- Monitoring and supervision - We monitor and assess the conduct, compliance and competency of market participants.
- Investigations and enforcement - Through our investigation and enforcement activities we aim to raise standards of behaviour, deter misconduct, and hold to account those whose conduct harms the operation of our financial markets.
- Environmental scanning - We scan the environment to identify the most significant risks to and opportunities for promoting our priorities.

In delivering our functions we work and engage closely with domestic and international agencies and regulators. This includes the New Zealand Government, fellow [Council of Financial Regulators](#) (CoFR) agencies, industry, investors and customers. Internationally, we anticipate an uptick in our liaison with global partners as regimes such as CoFI, and outcomes-focused regulation, bring New Zealand more into line with approaches already employed in other jurisdictions.

Regulatory approach

The FMA set out its move to an outcomes-focused approach – that is to be increasingly driven by the outcomes it is seeking to achieve rather than taking a more narrow, prescriptive based approach – in speeches to the Financial Services Council in [September 2022](#) and [January 2023](#).

An outcomes-focused approach will see the FMA driving a focus on the outcomes which need to be achieved, with compliance with rules a means to that end, rather than an end in itself. Wherever possible we will look to foster a strong relationship with the firms we regulate, working together to deliver the right results for all New Zealanders. The aim is to ensure customers get the right products, at the right time, and that they meet customers' expectations.

This requires a fundamental shift and rethinking of how the FMA operates. It is a long-term, evolving project which will require greater engagement and mutual understanding between the FMA and industry.

The FMA has an important role as a kaitiaki, a guardian, of financial services conduct in New Zealand. The FMA aims to ensure that everyone can access essential financial services, while securing strong protections for consumers. The approach is informed by the principle that the boards and management of

financial firms are far better placed than regulators to determine how to achieve fair outcomes in any particular business. It means both regulator and regulated must genuinely share the common purpose of a fair financial system that works for all, and a strong understanding of the outcomes needed.

We will continue to use the range of regulatory tools at our disposal. From influencing through well-placed conversations to adopting a stronger approach of holding firms and individuals to account for misconduct or egregious behaviours, our responses will continue to be balanced, proportionate and well timed. We also seek to move swiftly, wherever possible, to disrupt activity that is on the perimeter of our remit, that poses risks to New Zealanders.

Planning and reporting framework

Strategic Risk Outlook Medium term (3-5 year) view of risks, issues and strategic priorities that reflect our key focus areas, and the regulatory outcomes we seek to achieve.	Annual Corporate Plan Outlines activities for the coming year that will promote our strategic priorities, address regulatory risks and deliver sector outcomes.	
Statement of Intent Outlook and performance measures to show what success will look like over a four-year horizon for the FMA, market participants and investors. The FMA is due to provide you with a new SOI in 2024.	Statement of Performance Expectations Annual performance targets and financial forecast showing how we intend to perform the services we receive funding for.	Annual Report Yearly report of progress against the Statement of Intent, results against Statement of Performance Expectations, and overview of key activities and achievements.

Section 2: Delivering regulatory change

New Zealand is going through a period of significant change in terms of how its financial sector is regulated. This section aims to provide further detail on the changes either proposed or being introduced.

Financial advice and financial service providers

The Financial Services Legislation Amendment Act 2019 (FSLAA) came into effect on 15 March 2021. Its aim is to improve access to quality financial advice for all New Zealanders.

From 16 March 2023, all financial advisers must hold a Financial Advice Provider licence, or be registered to operate under someone else's, if they wish to continue offering advice to retail customers.

The past two years have been a transitional period allowing existing advisers who do not meet the new competence standards to continue to provide their pre-transition services. By 16 March 2023, anyone providing regulated financial advice to retail clients will need to hold or operate under a Financial Advice Provider full licence granted by the FMA. They will be subject to a code of professional conduct and competence requirements that include a duty to give priority to clients' interests.

The changes significantly increase the FMA's remit over the financial advice sector.

The FMA has invested considerable time and effort to help prepare the sector for the new regime. This reflects an industry with a broad range of participants, from single adviser businesses and SMEs to some of the largest financial institutions in New Zealand.

The FMA has used a range of tools to engage with the sector including individual meetings, roadshows, conferences, online seminars/webinars and direct-to-business communications.

Technology has played a major part in streamlining and simplifying applying for a licence.

As of 20 February 2023:

- 2,459 firms (8,801 individuals) now operate under a FAP full licence
- 28 applications are currently being assessed
- 383 transitional licence holders have not yet applied for a full licence. These are all small or sole operators and of these, 50% have expressed a desire to exit the industry or operate under another entity's licence. The remaining 50% are being actively pursued by the FMA.

In March 2021, immediately prior to the transitional licensing period, there were approximately 3,000 providers (9,300 individuals) operating in the market.

Conduct of financial institutions regime

The Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI) sets out a framework for the FMA to license and monitor registered banks, licensed insurers and non-bank deposit takers (NBDTs) in respect of their conduct towards customers.

This is the legislative response to the joint FMA and RBNZ Culture and Conduct Reviews of banks and life insurers conducted in 2018 and 2019, which identified significant weaknesses in the governance and management of conduct risks and a lack of focus on good customer outcomes.

CoFI is a principles-based regime intended to drive positive industry behaviour change, to ensure the fair treatment of consumers by putting them at the forefront of institutions' decisions and actions.

Requirements are intended to be flexible and non-prescriptive. It is not a rules-based regime that prescribes how outcomes must be achieved.

Under CoFI, financial institutions must comply with a "fair conduct principle" to treat consumers fairly, through the requirement to establish, maintain and implement a "fair conduct programme" and take all reasonable steps to comply with the programme. They must also comply with regulations that ban target-based sales incentives and regulate other types of incentives.

Licensing opens on 25 July 2023 and the regime will come into force in early 2025.

We have been preparing for the new regime by planning our licensing and monitoring approach, and engaging with the sector. This includes:

- developing a guide to making an application for a licence
- consulting on and publishing standard conditions for financial institution licences
- providing information to help entities with their fair conduct programmes.

We have held workshops with the sector on the role of intermediaries in the new regime and are consulting on proposed guidance on intermediated distribution.

We have also worked closely with MBIE on developing the regulations to support the regime.

We are undertaking a programme of engagement to help institutions that need to be licensed understand the requirements, what they need to do to prepare for licensing, and how to apply.

Regime	Scale
CoFI	<ul style="list-style-type: none">• Approximately 130 entities are prudentially registered:<ul style="list-style-type: none">○ 27 banks○ 16 non-bank deposit takers○ 87 insurers.• The FMA and MBIE estimate that 110 entities that provide services to retail clients may seek a licence under the CoFI regime.• Sector includes systemically important institutions that are large and complex.

Climate-related disclosures

From 2024 the Climate-Related Disclosure regime (CRD), a mandatory requirement for some organisations, will start to be introduced. Organisations covered (known as Climate Reporting Entities or CREs) will have to make annual disclosures covering governance arrangements, risk management, strategies, and metrics and targets for mitigating and adapting to climate change impacts. The requirement applies to the firms as per the table below:

Regime	Scale
CRD	<p>World-leading regime will capture approximately 200 entities. This includes:</p> <ul style="list-style-type: none">Registered banks, credit unions, and building societies with total assets of more than \$1 billion.Licensed insurers with total assets over \$1 billion or annual gross premium revenue over \$250 million.Managers of registered investments schemes with greater than \$1 billion in total assets under management.Large, listed issuers where equity/debt issued exceeds \$60 million.

The FMA is responsible for independent monitoring and enforcement of the regime, providing guidance about compliance expectations, and reporting on monitoring activities and findings. We are taking a broadly educative and constructive approach to the new regime, issuing high-level guidance on compliance expectations, then moving to a proactive regulatory role as the regime becomes more established.

The FMA's focus through 2023 and 2024 is to set its initial climate reporting expectations. The first climate statements will likely be lodged in early 2024. Our focus throughout this period will be on supporting reporting entities and encouraging the development of good practice. As the regime matures in 2025 and 2026, the FMA will update guidance and settle into a steady state of monitoring, proactively assessing and sampling climate statements.

The following initiatives, on insurance contracts and beneficial ownership, have not yet been introduced to Parliament but significant preparatory work has been undertaken by FMA staff working with partner agencies

Insurance contract law (ICL) review

In 2019, the Government completed a review of insurance contract law and found it to be outdated, with many insurance policies complex and difficult to follow. In response, the then-Commerce Minister, Kris Faafoi, committed to making changes to allow people to more easily understand their policies, place responsibility on insurers to ask consumers the right questions when processing new insurance policies, and address unfair contract terms.

A consultation on a draft Insurance Contracts Bill, to reform and update New Zealand's insurance contract law, was held between 24 February 2022 and 4 May 2022 and while the issues raised in submissions are currently being considered, the draft Bill has not yet been introduced to Parliament.

The FMA's view is that ICL is needed to address longstanding problems including the policyholders' duty of disclosure, which can result in poor consumer outcomes. ICL further supports the consumer-focused regime introduced by CoFI and the changes have been called for by both industry and consumer groups.

ICL provides the FMA with supervisory and enforcement tools to tackle unfair contract terms, duties to assist policyholders to understand insurance contracts, and duties on insurers to inform policyholders of their disclosure duty and its consequences.

The next step to progress these changes is considering issues raised in submissions on the exposure draft Bill and working on changes to the draft Bill before it is introduced to Parliament. The FMA will stay engaged with MBIE on the development of this legislation.

Once the Bill has received Royal assent, the FMA will be responsible for monitoring and enforcing compliance with the requirements of the new Act.

Beneficial ownership register

In March 2022, Cabinet agreed to establish a register of beneficial owners for companies and limited partnerships, as well as a unique identifier for directors, general partners, and beneficial owners. The register is intended to help identify the individuals who own, control and benefit from companies and limited partnerships, and allow the corporate history of those people to be traced, to protect New Zealand's international reputation for high levels of accountability and transparency in business practice and to deter the misuse of corporate entities for illegal activities.

A Bill has been drafted to implement these proposals, and the FMA understands MBIE aims to publish an exposure draft before proceeding to introducing the Bill to the House later in 2023. As one of three supervising agencies under the Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT) Act, FMA staff have been engaging with MBIE on the policy detail. The FMA provided comments and feedback on the draft bill at the end of 2022 and are keen to see the Bill progressed.

Section 3: Current issues

Insurance

The economic backdrop, as well as climate and natural events such as the recent Auckland floods and Cyclone Gabrielle, are having extremely significant impacts on New Zealanders and the firms who insure their property. The FMA is engaging with industry bodies, big insurers and large banks to understand what they and their customers are experiencing, how they are responding, any pressure points that the FMA can assist with, and longer-term systemic issues.

The trend towards further digitisation has continued after the COVID-19 pandemic prompted acceleration and there has been (and continues to be) significant consolidation occurring in the market, in particular with banks divesting their insurance business. Together with the RBNZ and our Council of Financial Regulator partners, the FMA regularly engages with the market to understand these impacts.

We saw some good practices around the pandemic, with business continuity plans being formulated swiftly and rolled out to ensure that customer service remained a priority despite staffing challenges.

We continue to remind firms that customers and good conduct practices need to be at the forefront of their business strategies. As we approach the licensing period for CoFI we are delivering consistent messaging on our expectations to industry bodies, boards and executive management teams, as well as the operational areas of the industry.

Cyber security

Cyber security is a constantly evolving issue that is concerning at an individual, national and global level. Financial services is one of the industries most commonly targeted by cyber criminals. In a recent survey of the FMA's stakeholders it was often referred to as the issue that keeps boards and executives in the industry 'awake at night'.

Sole trader financial advisers through to multi-national companies come under our regulatory remit and as a result, and unsurprisingly, there are wide variances of knowledge and maturity in cyber security and resilience. We produce educative material such as the [Cyber security and operational systems resilience guidance](#) and also regularly speak to the industry at both an operational level and through industry forums and events to signal our continued interest in their work in this area.

As part of CoFR's cyber-resilience community, the FMA has developed and signed up to both a domestic and trans-Tasman cyber security protocol and incident response framework. This framework will ensure a joined-up response in our support of financial services firms who may experience a cyber-attack.

KiwiSaver and value for money in managed funds

KiwiSaver is a key priority for the FMA.

KiwiSaver has become a significant part of New Zealanders' wealth. It plays a central role in funding New Zealanders' retirements and helping members into their first homes. As contributions and balances grow, KiwiSaver's importance to New Zealand's financial sector continues to increase.

We have responsibilities under the KiwiSaver Act, our supervision framework, our investor capability role, and the Default Provider Panel. The scope of our KiwiSaver work influences providers, investors, supervisors, infrastructure, and partner agencies.

The FMA's primary role in KiwiSaver is to license, monitor and supervise all KiwiSaver providers, including default providers, and their supervisors. A key focus is on the value for money KiwiSaver providers offer their members, including the fees they charge.

The FMA is required to report every year on statistical returns from KiwiSaver schemes as at the year to the end of March. You will receive a copy of this report by the end of September and your office will be required by Section 159 of the KiwiSaver Act to present it to the House of Representatives as soon as practicable.

Value for money (VFM) is the FMA initiative to ensure that Managed Investment Scheme managers, which includes both KiwiSaver schemes and non-KiwiSaver schemes, provide good value to investors relative to the fees they charge for the fund management service. VFM was specifically noted in our Letter of Expectations for KiwiSaver schemes, but we are applying the approach to all managed funds.

Providing value for money may often involve a reduction in fees but can also be reflected in the form of enhanced services or 'value' for investors.

This can take many forms, such as investment returns relative to an appropriate benchmark, client services (such as call centres and mobile applications), and financial advice. It can also extend to services that benefit the client even if they are not immediately apparent, such as system enhancements and investment in risk management.

VFM has been seen as contentious within some areas of the industry as some have claimed it as an attempt to reduce profit in the sector. It has prompted some reductions in management fees and removal of fixed administration charges (especially from large providers), improvements in performance fee benchmarks, a greater focus on the manager's value proposition, and greater transparency of advice services and how they are charged.

Fund supervisors are currently reviewing fees and value propositions and we will engage with fund managers – especially the outliers – as appropriate.

Cryptocurrency

The FMA does not regulate cryptocurrencies.

However, some activities concerning cryptocurrencies can fall within our regulatory remit, for example cryptocurrency issuers or service providers to the extent that the cryptocurrencies form part of a financial product being issued and/or the financial service being offered. We have paid close attention to providers including or trying to include cryptocurrency exposures within KiwiSaver.

The FMA's overall approach is to balance the safeguarding of investor interests with our role to facilitate innovation in New Zealand's financial markets. The FMA has looked to connect with the sector through the

CoFR FinTech forum. The forum has acted as a gateway to enable innovators to speak to policymakers and regulators.

The FMA also monitors international developments through the International Organisations of Securities Commissions.

The FMA submitted to the Finance and Expenditure Committee inquiry into Cryptocurrencies in 2021. The Council of Financial Regulators issued a joint statement on Crypto-assets in 2022.

Wholesale property offers

The FMA conducted a review of wholesale investments into property-related offers, which was published in October 2022. The most significant findings related to the use, confirmation and acceptance of eligible investor certificates. Some certificates were not confirmed by financial advisers, accountants or lawyers (as is required), while other certificates were confirmed and accepted by offerors with no grounds, or the grounds did not relate to the matters certified.

The FMA issued seven warnings as the immediate response to the findings of the review, but also:

- made referrals to the relevant professional bodies for the lawyers, accountants and financial advisers who confirmed the deficient eligible investor certificates; and
- opened several investigations into deeper aspects of some of the offers.

The investigations continue with the work, and associated potential for further FMA responses, likely to be a significant focus in coming months. This is particularly important in the current climate of macroeconomic volatility as the business models underpinning many of the property-related offers are sensitive to declining property prices and the cost of debt servicing. Compounding this, wholesale investors do not receive the same protections as retail investors such as monitoring oversight of a firm's financial resources (which is a feature of licensed investment managers) or regular, prescribed reporting on investment performance. Wholesale investors also do not have access to a dispute resolution service.

Barry Kloogh

Barry Kloogh was an authorised financial adviser based in Dunedin. In July 2020, he was sentenced to just under nine years in prison for running a Ponzi scheme that defrauded his clients of \$15.7 million. FMA inquiries into third parties involved with Mr Kloogh's businesses recognised the challenges in detecting, monitoring and legislating against wilful and sophisticated fraudulent activities. However, the way Mr Kloogh operated his Ponzi scheme does demonstrate potential gaps in New Zealand's regulatory regimes which, if closed, could provide greater protections for consumers and may help to detect and prevent future fraudulent activities.

The FMA continues to engage with MBIE about potential law changes that could close these gaps. The FMA is currently considering whether to publish a report on the findings from its inquiries into the Kloogh case, including details of gaps around the regulation of custodians.

Section 4: System coordination and the Council of Financial Regulators

Many of the changes to the regulatory system rely on different regulators, such as the FMA, Reserve Bank of New Zealand and the Commerce Commission, working effectively together. Government and financial services businesses expect regulators to coordinate, to remove duplication and minimise unnecessary regulatory burden.

This occurs in two ways:

- regulators and policymakers engaging with each other bilaterally
- the Council of Financial Regulators (CoFR).

CoFR is made up of five regulators and policy agencies:

- Reserve Bank of New Zealand
- Financial Markets Authority
- Commerce Commission
- Ministry of Business, Innovation and Employment (MBIE)
- Treasury.

The function of the council is to facilitate cooperation and coordination between members, to support effective and responsive regulation of the financial system in New Zealand. Heads of CoFR agencies meet on a quarterly basis to discuss regulatory issues, risks and priorities for financial markets. Meetings are held more frequently if needed, such as during the onset of the pandemic. The leaders of CoFR also meet with the Minister of Finance and the Minister of Commerce and Consumer Affairs once a year.

CoFR agencies also identify and respond to issues of cross-agency relevance via dedicated banking, insurance and monitoring forums.

CoFR's priority themes are:

- Climate risk
- Cyber resilience
- Digital and innovation
- Inclusion
- Regulatory effectiveness.

CoFR has a simple [website](#) to update interested stakeholders on its work. CoFR also publishes a [regulatory initiatives calendar](#) once a quarter to provide a 'best endeavours' overview of work across all the regulatory agencies.

Section 5: FMA funding

In 2021, MBIE and the FMA initiated a review of the FMA's funding requirements and the FMA levy. The review was commenced in response to the FMA's expanding remit under three new legislative regimes: Conduct of Financial Institutions (CoFI), Insurance Contract Law (ICL) and Climate-Related Disclosures (CRD).

Following the consultation, decisions regarding funding for ICL were deferred until a later date to allow more policy work to take place.

In relation to the CoFI and CRD regimes, Cabinet agreed to increase the FMA's operational funding by \$15.596 million per annum in 2025/2026 and outyears. This will result in an increase to the FMA's total annual operating funding, from \$60.805 million to \$76.401 million in 2025/26. This increase is being phased in over four years and the figures are not adjusted for inflation.

Crown/levy split

When the FMA was established in 2011, the split of its operational funding was approximately 30% Crown and 70% industry levies. As the FMA has grown, the percentage of Crown funding has fallen. The Crown contribution is due to fall to 16% of the FMA's funding in 2025/26.

Litigation fund

The FMA has a \$5 million per annum appropriation for its external litigation expenses, with any unspent funds remaining in a central litigation fund retained by MBIE, up to a maximum of \$10 million. This facility was approved by Cabinet and introduced in 2020.

The litigation fund acts as a credible deterrent of misconduct by clearly demonstrating the FMA's capacity to pursue litigation against all firms, no matter how large.

The FMA needs to ensure it has sufficient resources as and when required to take litigation and respond to challenges against its use of regulatory tools.

In January 2023, the total held by MBIE in the litigation fund reserve was \$8 million. The fund reserve built more quickly than anticipated, largely because of the impact of COVID-19 which has:

- delayed significant litigation cases
- disrupted the FMA's business as usual work including preliminary investigations and monitoring, which are the 'upstream' source of litigation action.

Following a request by Treasury in January 2023, MBIE and the FMA judged that the impact from COVID-19 meant that a one-off return to the Crown of \$3 million from the current litigation fund reserves held by MBIE could be made without unduly jeopardising ability to fund existing cases or the credible deterrent value of the litigation fund.

Prior to 2020, the litigation fund was previously \$2 million per annum, with any unspent funds being returned to the Crown. The size of the annual appropriation was increased to \$5 million because FMA litigation costs were regularly exceeding \$2 million a year and the FMA remit was expanding significantly.

Section 6: Research and insights

The FMA's first Chief Economist, Stuart Johnson, joined the FMA in January 2023.

Stuart will lead the research and insights team, who undertake work to enhance the FMA's understanding of consumers, firms and markets. This will help the FMA deliver both its current remit and prepare for the new legislative regimes, especially for banks and insurance firms.

The FMA will build a clearer picture of customer-level behavioural traits, decision making and preferences for different banking and investment products. This will include savings and investment products including KiwiSaver, and insurance.

From an economic perspective, the outlook for consumers is challenging following interest rate rises and wider macro-economic factors. The recent North Island flooding, and the associated clean up, will have an acute impact on those affected and is expected to have a significant effect on the wider economy. We expect consumers will be tightening their belts in the coming months, especially those who recently purchased new homes.

The FMA is increasing our focus on financial vulnerability. In April 2021, as a member of CoFR, the FMA adopted the Consumer Vulnerability Framework. The framework is designed to assist the financial services industry in developing their own approaches to assisting consumers in vulnerable circumstances.

The FMA expects firms to support their customers with clear communications as well as plans and processes for navigating, and ultimately successfully managing, their problems and stress points during difficult periods.

Section 7: Upcoming and ongoing enforcement matters

The FMA has a range of powers and remedies to respond to misconduct or potential harm with more flexibility than litigation. Civil or criminal proceedings remain an option under our legislation. We currently have a substantial pipeline of enforcement work.

Likely areas of focus in coming years

- Trading misconduct (e.g. insider trading and market manipulation, particularly where board members or senior executives are involved)
- Misconduct on our perimeter (e.g. unlicensed entities undertaking regulated activity; entities registering on the Financial Service Providers Register without intending to offer services here; entities offering services into foreign jurisdictions illegally)
- Failure to meet AML/CFT requirements
- Misleading and deceptive conduct (enforcing fair dealing provisions of the Financial Markets Conduct Act 2013), including greenwashing (i.e. ascribing environmental or ethical benefits to financial products in a misleading manner)

Key enforcement cases in the immediate future

CBL Corporation (in liquidation)

Two separate proceedings are underway against CBL (CBLC), its six directors and its CFO alleging multiple breaches of the FMC Act. The FMA is seeking declarations of contravention and civil pecuniary penalty.

- The IPO proceeding concerns alleged breaches of the FMC Act in relation to disclosures by CBLC as part of its IPO in September 2015, and the continuous disclosure proceeding arises from conduct after CBLC was listed.
- In addition, two sets of shareholder proceedings, and proceedings taken by the liquidators of CBL Insurance, are before the Court. The SFO has also laid charges against two of the CBL directors; that trial will go ahead in advance of the FMA's proceeding being heard.
- The High Court recently ruled that the FMA's two proceedings and the shareholder proceedings should be heard together as the claims are sufficiently similar in nature.
- The FMA's proceeding is set down for a hearing in April 2024, for an 8-month consolidated trial.

Insider trading case involving the trading of Pushpay shares

The FMA filed proceedings against two individuals for alleged insider trading in relation to the sale of shares in Pushpay Holdings Limited. The individuals have interim name suppression.

One defendant faces a criminal charge for which a trial has been set down in July 2023.

Both defendants face civil proceedings filed in the High Court which have been stayed until the outcome of the criminal trial.

Market manipulation cases

The FMA has two market manipulation cases before the Court against individuals, one involving close price manipulation and one involving information-based market manipulation.

Morrison and Blackwood v FMA and Attorney-General

Mr Morrison and Mr Blackwood were prosecuted following the failure of two finance companies, Viaduct Capital and Mutual Finance Limited. The first trial was aborted because of errors by the prosecution, and both were awarded some costs after the aborted trial.

Mr Morrison was not included in the second trial and Mr Blackwood was convicted on some charges.

The current proceedings are against the FMA and the Attorney-General and seek to recover damages of \$1,485,000 for legal costs incurred in the FMA's prosecutions against Mr Morrison and Mr Blackwood.

Legal profession privilege . The matter was heard in the Wellington High Court in October 2022. We are awaiting the judgment.

Fair dealing and AML matters

- Following the 2018 and 2019 Conduct and Culture reviews, the FMA has taken action in respect of a number of self-reported remediations where breaches of the FMC Act's fair dealing provisions arose from system and process issues at banks and insurers. The FMA has now received judgment in respect of three of these cases. There are two matters currently before the Court and two further matters that are close to being filed in Court.
- The FMA has one AML proceeding concerning customer due diligence, enhanced customer due diligence and record keeping proceedings before the Court awaiting a penalty hearing.

Other cases recently in the news

- February 2023 – The FMA issued an Interim Stop Order to Validus International LLC. The FMA made the order because the FMA considers it is in the public interest due to a real risk of investor harm. Offering financial trading courses, the company only accepts cryptocurrency payments, encourages investors to recruit others, and offers incentives for doing so. Maintenance of the law
- January 2023 – In August 2022, following proceedings brought by the FMA, Cigna Life Insurance admitted to breaching the fair dealing provisions of the FMC Act. The case proceeded to a penalty hearing and in January 2023, Cigna was ordered to pay a final pecuniary penalty of \$3,575,000. The case related to Cigna making false and/or misleading representations relating to inflation benefits in certain life insurance policies provided by the company between early 2013 and early 2019.

- October 2022 – The FMA filed High Court proceedings against Vero Insurance New Zealand for failing to apply multi-policy discounts, which led to affected customers being overcharged approximately \$8.7 million in premiums. The FMA claims that Vero contravened the fair dealing provisions of the FMC Act by incorrectly stating premiums owed by customers who were entitled to discounts.
- October 2022 – Following the Conduct and Culture reviews jointly conducted by RBNZ and the FMA in 2018 and 2019, customer remediation by banks and life insurers has reached a total dollar value of \$150 million being returned to customers.

Section 8: Calendar

Below are some of the main areas of engagement and activity for the FMA in the 2023 calendar year:

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| Quarter 1 | <ul style="list-style-type: none">• January: First annual reporting period for Climate Related Disclosures begins• January: FMA Annual Report published• February: FMA new structure 'go live'• February: Letter of Expectations presented to FMA• February: FMA consultation on guidance for CoFI intermediated distribution opens• March: New financial advice regime completes implementation• March: FMA half-year report presented to MBIE and Minister's office |
| Quarter 2 | <ul style="list-style-type: none">• April: FMA response to Letter of Expectations due• April: CoFI intermediated distribution consultation closes• April: Consultation on variation of Standard Conditions to include new Cyber and Operational Systems Resilience condition on FMC Act licences (to include new standard condition on licences for Cyber and BCP obligations)• June: NZX Market Operator Obligations Review published |
| Quarter 3 | <ul style="list-style-type: none">• 25 July: CoFI licensing opens• July: Governance thematic review published (joint with RBNZ) |
| Quarter 4 | <ul style="list-style-type: none">• September/October: Financial services industry conference season including Financial Advice New Zealand, Financial Services Council, INFINZ• October: Annual KiwiSaver report published |
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Section 9: Governance and leadership

The Minister for Commerce and Consumer Affairs has a quarterly meeting with the FMA Chair, Chief Executive and Manager of External Relations. The FMA's preference is for meetings to take place in person, but virtual meetings have been held when necessary.

Agendas are set approximately two weeks in advance and are agreed between the FMA, MBIE and the Minister's office.

FMA Board

Mark Todd, Chair

Mark has over 25 years' experience in financial markets regulation, including as a partner at a major law firm and through holding governance roles with both listed and unlisted companies. He co-founded Anti-Money Laundering Solutions and chaired Mint Asset Management. He was also the Customer Advocate at Westpac New Zealand.

Current term expires May 2024

Sue Chetwin

Sue has more than 12 years' experience working for and on behalf of consumers and is the former CEO of Consumer New Zealand. She is a strong supporter of financial regulations that encourage innovation while protecting consumer interests. She chairs the Government's review of drug buying agency PHARMAC and is a member of the Law Society Independent Steering Group Committee considering the terms of reference for the statutory framework for legal services. She is also a director of Food Standards Australia NZ. Her experience includes 25 years in journalism including editing the Sunday News, Sunday Star Times and Herald on Sunday.

Current term expires November 2025

Prasanna Gai

Prasanna is Professor of Macroeconomics and Head of the Departments of Economics and Accounting & Finance at the University of Auckland. He brings over 25 years of experience in financial market issues from academic and high-level policy roles. Prasanna is a Senior Research Fellow at the Deutsche Bundesbank and an Academic Adviser to the Bank of Canada. He has previously served as Special Adviser to the Governor of the Bank of Canada, Senior Adviser at the Bank of England, and Member of the Advisory Scientific Committee of the European Systemic Risk Board. He was also Professor of Economics at the Australian National University and a Visiting Fellow of All Souls College, Oxford.

Current term ends April 2023.

Elizabeth Longworth

Elizabeth has over 20 years' legal experience, predominantly in commercial, banking and technology law, as well as international governance and development expertise. She has specialties in information policies and disclosure, risk management, ESG, ethics and ADR. As the Executive Director of UNESCO, Paris, Elizabeth had strategic and oversight responsibilities across the organisation. She was the Director of the UN office for disaster risk reduction, Geneva. Previous NZ roles include Sector Director at Industry New Zealand and In-house Counsel at the Reserve Bank.

Current term expires July 2023.

Vanessa Stoddart

Vanessa is a Director of Channel Infrastructure, OneFortyOne Plantations Pty Ltd and a member of the board of Te Whatu Ora. She also holds other charitable and advisory governance roles. She was previously a senior executive at Air New Zealand and CEO of Carter Holt Harvey Packaging Australia.

Current term expires February 2024

Christopher Swasbrook

Christopher has more than 25 years' experience in stockbroking and funds management. He is currently the Managing Director of Elevation Capital Management Limited, Director of NZX-listed New Zealand Rural Land Company, NZX-listed Allied Farmers Limited, Bethunes Investments Limited and SwimTastic Limited. He is also a Member of NZ Markets Disciplinary Tribunal (since 2013) and a Member of the NZX Listing Sub-Committee (since 2008). He was previously a Partner at Goldman Sachs JBWere.

Current term expires June 2024

Kendall Flutey

Kendall is the co-Founder and co-CEO of Banqer, a financial education company that delivers experiential software to develop financial literacy and capability in their learners. She is also a Commissioner to the Insurance & Financial Services Ombudsman Scheme, and a member of the Digital Council for Aotearoa.

Current term expires February 2027

Mark Weenink

Mark is an experienced corporate lawyer and is currently Group General Counsel, Todd Corporation. Prior to the Todd Corporation, Mr Weenink was General Counsel at Westpac New Zealand. He has also held various other positions including Managing Partner at Minter Ellison Rudd Watts, and Head of Legal at Challenger Asset Management in Sydney.

Current term expires February 2027

Steven Bardy

Steven is a senior executive with extensive experience as a regulator and advisor in financial services and financial services regulation. He consults on financial services regulation to the World Bank and is a senior advisor to Principia Advisory, a European based global leader in ethics consulting. He was previously Managing Director of Promontory Australia, an IBM company, and a senior executive leader at the Australian Securities and Investments Commission. He was also the inaugural chair of the Assessment

Committee of the International Organization of Securities Commissions (IOSCO) and an ASIC representative on the IOSCO Board. His earlier career included working in the finance and tax practices of the Australia and US offices of an international law firm, holding ministerial advisor positions across a number of portfolios in the Victorian Government, holding senior risk and compliance positions in an Australasian Bank, and strategy consulting in both Australia and Europe.

Current term expires February 2027

Executive Leadership Team

Samantha Barrass: Chief Executive

Samantha has extensive international regulatory experience, including the Chief Executive role at UK's Business Banking Resolution Service, a dispute resolution scheme for banks and business customers. Previously she was Chief Executive of the Gibraltar Financial Services Commission, which oversees the prudential and conduct regulation of Gibraltar's financial services sector. She has held a number of other senior roles at finance regulators, and industry associations, including the UK's Financial Conduct Authority, Solicitors Regulation Authority and the London Investment Banking Association.

Clare Bolingford: Executive Director, Regulatory Delivery

Clare is responsible for directing, planning and delivery of the FMA's core regulatory functions across licensing, engagement and supervision of regulated individuals and firms. Previously Clare has led our Banking & Insurance Conduct function and served as Acting Director External Communications & Investor Capability. Clare is leading the FMA's implementation of the new conduct regime for banks, insurers and non-bank deposit takers, the new financial advice regime, and the Climate Related Disclosures regime.

Clare's experience includes almost 20 years with the Financial Conduct Authority in the UK, in a variety of policy, change implementation and supervision roles, including oversight of large banking groups and financial advisers. She also spent two years at the UK Treasury, leading capital markets and prudential policy.

Paul Gregory: Executive Director, Response & Enforcement

Paul is responsible for overseeing the strategic approach and appropriate response to the actions and behaviour of market participants that pose risk or harm, including the investigation and enforcement of misconduct cases. Previously, Paul has held leadership roles with the FMA as Director for Investment Management, Acting Director, Capital Markets, and Director for External Communications and Investor Capability.

His experience includes Chief Operations Officer at PIE Funds, positions in the investment and communications teams at the New Zealand Superannuation Fund, and communications management roles at Macquarie Group, SKYCITY and Westpac.

Liam Mason: Executive Director, Evaluation & Oversight and General Counsel, and Acting Executive Director, Strategy & Design

Liam is responsible for a broad range of audit, risk, legal and governance matters along with evaluating the effectiveness of regulatory interventions and activity. He remains the FMA General Counsel. Previously Liam has led frontline teams overseeing the FMA's compliance frameworks, licensing, knowledge management and intelligence, and fintech functions.

Liam has been with the FMA since its inception. He has extensive experience in securities law and corporate governance matters, advising on securities and financial services law and policy, Crown entity governance and legal compliance.

Liam is also Acting Executive Director, Strategy & Design and has interim responsibility for leading the strategy and direction setting for the FMA, ensuring a clear view of the systems, priorities and regulatory design is developed and communicated across a broad range of external stakeholders.

Sharon Thompson: Executive Director, Transformation & Operational Delivery

Sharon is responsible for the strategic direction of the FMA's operations and capability functions, including technical operations, project management, data engineering, IT security and architecture, customer relationship management, knowledge management, business improvement, people and capability, finance, business support and transformation. This group provides internal support to enable the whole of the FMA.

Sharon has extensive senior leadership experience in both the New Zealand public sector and financial services industry. Previously she was Deputy Commissioner for the Customer and Compliance Services (Individuals) group at the Inland Revenue - Te Tari Taake. Prior to Inland Revenue, Sharon held senior roles at ASB Bank and Westpac, and holds a Masters in Management from Massey University

The FMA anticipates making an announcement on a permanent Executive Director, Strategy & Design shortly.

