

16 May 2018

Financial Markets Authority
New Zealand
consultation@fma.govt.nz

Submission: Consultation on including an annual declaration of compliance in regulatory returns and updating the standard regulatory returns condition

This submission is from the Financial Services Council of New Zealand Incorporated (**FSC**).

The FSC represents New Zealand's financial services industry having 33 members at 30 April 2018. Companies represented in the FSC include the major insurers in life, disability, income, and trauma insurance, and some fund managers and KiwiSaver providers plus law firms, audit firms, and other providers to the financial services sector.

Our submission has been developed through consultation, and represents the views of our members and our industry. We acknowledge the time and input of all our members in contributing to this submission.

The FSC's guiding vision is to be the voice of New Zealand's financial services industry and we strongly support initiatives that are designed to deliver:

1. Strong and sustainable consumer outcomes;
2. Sustainability of the financial services sector; and
3. Increasing professionalism and trust of the industry.

Given the different business models, diversity and expertise of our members, there are times when there are a range of insights and views. This consultation shows such a range of views in the specific responses to the questions.

I can be contacted on 021 0233 5414 or richard.klipin@fsc.org.nz to discuss any element of our submission.

Yours sincerely

Richard Klipin
Chief Executive Officer, Financial Services Council

Specific Responses

- 1. Do you agree with the proposal that the annual declaration of compliance will be confirmed by resolution instead of by signed declaration (online or otherwise)? Please set out your reasons.**

Our members have a range of views:

- In its revised form this is a sensible level of assurance to request. Assuming licensees have in place assurance processes and regular Board reporting, such declaration should be simple to obtain and validate in most cases.
- Although pleased to see the ability for an oversight committee to provide confirmation and the introduction of a simple online process, confirmation should be possible in multiple ways, for example by 'approval' of an oversight committee or by 'resolution' of a board.
- Where licensees have multiple oversight bodies they should be able to decide which one is the most appropriate to provide the confirmation.

- 2. Do you agree with the proposal to make the annual declaration part of the regulatory return? Please set out your reasons.**

Our members have a range of views:

- Provided that the declaration is required along with the regulatory return and that return is not required until at least 4 months after the year end, our members confirm they will be able to comply. Shorter timeframes will make it difficult for licensees to provide the declaration.
- Licensees should be able to have flexibility in whether the annual declaration is included as part of the regulatory return, for example alignment with other compliance and reporting processes.

- 3. Do you agree with the proposed wording of the annual declaration? Please set out your reasons.**

Our members have individually provided suggested amendments to the FMA in response to this consultation. Common themes are:

- A materiality threshold should apply for board/committees not able to answer affirmatively.
- Confirmation should be on the basis that boards/committees have made 'all reasonable enquiries'.
- Guidance is needed about what happens if a board determines the confirmation cannot be provided? For example, a major issue may have arisen in the prior month, the FMA and supervisor are aware, but there has been no conclusion before the declaration is due.
- A licensee should be able to attest to partial compliance, for example in those circumstances where improvements are currently underway to ensure full compliance.

- 4. Please describe any adverse implications for your business associated with providing the declaration in the manner proposed.**

Our members have answered this question in their individual submissions.

5. Do you agree with the proposed changes to the standard regulatory returns condition? Please set out your reasons.

Our members have a range of views:

- We do not support an annual declaration of compliance. The Financial Markets Conduct Act (FMCA) provides continuous compliance and monitoring obligations, such as those under section 412. Therefore, licensees should be able to focus compliance resource on those continuous obligations rather than on the provision of an annual declaration as proposed.
 - We support the intention of the proposed standard condition as it relates to requiring licensees to provide an annual regulatory return. However, as drafted, the condition is too broad and could potentially go beyond the information required as part of the annual regulatory return. We recommend the condition is reworded as a requirement to provide the regulatory return, including the declaration of compliance.
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