Submission on discussion document: *Fit for purpose financial services conduct regulation*

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	Mosaic Business Solutions Limited (**Mosaic**)
Contact details	Privacy of natural persons

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Responses to discussion document questions

	Introduction
1	*Do you agree the proposed criteria are appropriate, given the objectives? Are there other criteria which should be considered?*
	We consider the criteria appropriate based on the stated objectives. However, we note that the CoFI Act is largely a principles-based legislative regime. Therefore, success or otherwise in meeting the objectives will be significantly influenced by the regulators' approach to interpreting the legislation, its requirements and how the regulator communicates and ultimately enforces those requirements.
	1: Options for CoFI Act reform
	A. Options for amending minimum requirements for fair conduct programmes
	Option A1: Remove/amend some minimum requirements for fair conduct programmes
2	*Do you support removing or amending some of the minimum requirements for fair conduct programmes? What are the advantages and disadvantages of this option?*
	We support option A1, given that the government has now instigated this review. *However, we believe amendments should be kept to a minimum.* *We agree with the consultation paper's observation that removing certain requirements/prescriptions can increase the uncertainty of what is required under the Fair Conduct Programme (FCP) for regulated entities, particularly regarding current and future regulator interpretation.*
3	*Which requirements should be removed or amended, if any? Please explain what changes you would like to be made.*
	In respect of the suggested requirements to be removed or amended as outlined in the consultation paper, we comment as follows: • *<u>Removing paragraph (a) (enabling the institution to meet its legal obligations to consumers).</u> – We believe removing paragraph (a) would reduce confusion and reduce duplication/overlap in the FCP. Removing paragraph (a) limits the scope of the FCP (and potentially reduces the specific risk/liability of not having an effective FCP). Noting financial institutions will still need to comply with all their legal obligations to consumers in any event (and if they already have effective policies, processes, systems and controls to comply with those laws to the extent applicable, these can be leveraged as part of the FCP to the extent they are relevant to the fair treatment of consumers.* • *<u>Removing subparagraphs (i) to (iii) in paragraph (c) (identifying, monitoring and managing conduct risks</u> – We believe this paragraph should remain. We agree that conduct risk or risk of the failure to treat customers fairly (i.e. the fair conduct principle), including monitoring and management of that risk, would likely form part of an effective risk management programme. However, given that the CoFI Act has presumably been passed to benefit the financial institution's customers, including the specificity in subparagraphs (i) to (iii) is appropriate. Not all financial institutions will necessarily have a risk management programme specifically covering CoFI*

	obligations and requirements; however, if they do and they consider them appropriate, a financial institution's risk management programme can be leveraged as part of the FCP. • *Adjusting or consolidating paragraphs (e) to (h) (setting requirements relating to employees and agents): We suggest (e) be limited to agents only (i.e., remove employees) and that (f) to (h) be streamlined for employees. We suggest that paragraph (h) would largely be sufficient on its own in that regard.* • *Removing paragraph (k) (reviewing the effectiveness of the programme) We agree that it would be helpful to remove paragraph (k). We consider it duplicative.*
4	*What would be the impact of removing or amending particular requirements (for example, on compliance costs for businesses)?*
	Many financial institutions are significantly advanced in preparing their FCP and applying for their CoFI licence, and any changes to the CoFI legislation because of this consultation will not occur until after financial institutions have received (or otherwise) their CoFI licence; therefore, we expect initial impacts and reduction in compliance costs will be limited. For most financial institutions, given the changes to the requirement are clarificatory in nature or remove duplication, which is helpful, the actual reduction in ongoing compliance costs will be limited.
5	*Do you have any other comments on the minimum requirements for fair conduct programmes?*
	No.
Option A2: Potential additions to minimum requirements for fair conduct programmes	
6	*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to fees and charges?*
	We do not think an express minimum requirement for FCPs regarding fees and charges is necessary. Such a requirement would be duplicative or already captured by section 446 J. We agree with the arguments outlined in paragraph 39 of the consultation paper. *Fees and charges are core components of any consumer contract for products and services and the overall assessment of the benefits (or potential benefits) the consumer receives. Therefore, they are a core component in complying with the requirement to treat consumers fairly and to ensure compliance with the fair conduct principle; we expect financial institutions will include fees and charges as core considerations when implementing policies, processes, systems and controls to meet the fair conduct principle and the minimum requirements for a fair conduct programme (see 446(J)(1) (b) and 446(J)(1)(i) &(j) for example).* *Specifically, including a reference to fees and charges could (unintentionally) de-emphasise their importance in ensuring the overall fair treatment of consumers.*
7	*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to complaints processes?*

	We do not think express minimum requirements for FCPs regarding complaint processes are necessary. They would be duplicative or already captured by section 446 J. We agree with the arguments outlined in paragraph 39 of the consultation paper.
8	*Do you consider that financial institutions already need to cover fees and charging arrangements and/or complaints processes in their fair conduct programmes under the current requirements?*
	Yes, see the responses above.
Option A3: Remove all minimum requirements for fair conduct programmes	
9	*Do you support removing all of the minimum requirements for fair conduct programmes from the legislation? What are the advantages and disadvantages of this option?*
	No. We consider the balance between prescription and providing financial institutions with flexibility to tailor their FCP (noting CoFI is largely principles-based) for their business and consumer (including changing expectations over time) is largely achieved under the CoFI Act as currently drafted.
Option A4: Retain minimum requirements for fair conduct programmes without change	
10	*Do you support retaining the existing list of minimum requirements for fair conduct programmes without any changes? What are the advantages and disadvantages of this option?*
	We support the relatively minor changes to remove duplication and improve clarity outlined in our responses to Option A1 above.
Proposal: proceed with Option A1 (remove/amend some minimum requirements)	
11	*Do you support the proposal to remove and amend some of the minimum requirements for fair conduct programmes and not proceed with the other options? Why/why not?*
	We support Option A1, per our comments in the above section.
B. Options for amending fair conduct principle	
Option B1: Keep the fair conduct principle open-ended	
Option B2: Make the fair conduct principle definition exhaustive	
Proposal: retain status quo (Option B1)	
12	*Do you support the proposal to maintain the status quo in the definition of the fair conduct principle? What are the advantages and disadvantages of this option?*
	Yes. We support maintaining the status quo and agree with the arguments for retention in paragraph 56 of the consultation paper. We also agree with the potential disadvantages set out in the consultation paper; we consider that MBIE will need to understand how the regulator (FMA) is interpreting the fair conduct principle (including FCP content) and whether their actions (e.g., market guidance and expectation setting under CoFI) are potentially stifling innovation and competition or excessively increasing compliance costs.

13	*Are there any additional clarifications that could be made to the definition of the fair conduct principle, or matters that you consider should be included or removed? Why or why not?*
	No
14	*Do you have any other suggestions or comments in relation to the fair conduct principle?*
	No
15	*Do you have any comments in relation to other areas of the CoFI Act that have not been covered in this section?*
	No
	2. Options for regulatory framework and powers
	C. Consolidating financial market conduct licences
	Option C1: Amend the FMC Act to require the FMA to issue a single licence covering different classes of market service
16	*Do you support the FMA being required by legislation to issue a single conduct licence covering one or more market services? What are the advantages and disadvantages of this approach?*
	We support this option. However, to realise the benefits outlined in the consultation paper, we consider that the licensing conditions must be aligned unless there is a compelling reason for them to differ between different market service providers. Without changes and alignment of standard conditions across market services, the benefits will be limited for existing licenced entities.
17	*Could consolidating existing licences into a single conduct licence give rise to any unintended consequences or costs for existing licensed firms? If so, please explain with examples where relevant.*
	Costs will likely be required to align internal compliance and reporting systems to accommodate a single conduct licence. We have assumed that existing entities will not need to reapply for a single conduct licence (as that would increase cost and uncertainty). There will likely need to be consequential changes to FMCA definitions etc. to accommodate.
18	*Are there any other matters that should be considered around market services conduct licensing?*
	We note the comments in paragraph 74 of the consultation document. We think streamlining standard conditions and harmonising how the FMA collects data across licenced entities should be progressed as a priority, as they will likely reduce compliance costs and unnecessary inconsistency more than moving to a single licence.
	D. Enabling reliance on another regulator's assessment
	Option D1: Amend legislation to enable the FMA and RBNZ to rely on an assessment by the other regulator where appropriate

19	*Should the FMC Act be amended to enable the FMA to rely on the RBNZ's assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.*
	No comment. Dual-licenced market participants are better placed to comment on the practical examples and associated benefits.
20	*Should there be equivalent provisions enabling the RBNZ to rely on the FMA's assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.*
	No comment. Dual-licenced market participants are better placed to comment on the practical examples and associated benefits.
21	*Are there any other improvements that could be made to how the FMA and the RBNZ work together to reduce compliance costs and regulatory burden?*
	No comment. Dual-licenced market participants are better placed to comment on the practical examples and associated benefits.
	E. Ensuring the FMA has effective tools
	Option E1. Introduce change in control approval requirements
22	*Should change in control approval requirements be introduced into the FMC Act? Please explain your answer, including why the current approach does or does not work.*
	No. We agree that prudential regulators (e.g., RBNZ) should approve systemically important financial institutions. However, we do not believe that a conduct regulator (e.g., FMA) explicitly approving a change of control regarding a licenced entity is necessary. *Licencing conditions and standards (e.g., fit and proper) must always be met, along with compliance with consumer protection laws. Potentially, a requirement to notify the FMA (say 60 days) before a change of control becomes effective could be introduced.* *This would enable the FMA to consider any potential impacts of the change of control and whether increased monitoring or additional licence conditions are required for that entity (we expect that, in most cases, any concerns in terms of potential future non-compliance with the FMC Act would be addressed through additional licencing conditions or increase monitoring rather than simply not approving the change of control as they likely are if concerns arose with any entity absent a change of control.*
23	*Should change in control approval requirements apply only to firms licensed to act as financial institutions or to all firms licensed under Part 6 of the FMC Act? Why?*
	As it already applies to financial institutions under prudential regulation, we think this is appropriate and sufficient. There is likely to be limited additional consumer benefit when weighed against the commercial costs and uncertainty it would place on the other entities licenced under Part 6 of the FMC Act. We consider the existing powers of the FMA to be sufficient to mitigate potential consumer harm from a conduct perspective due to a change of control.
24	*Do you have any other feedback on the change in control requirements option?*

	No.
Option E2: Introduce on-site inspection powers for the FMA	
25	*Should the FMA have the ability to conduct on-site inspections without notice? Please explain your answer, including why the current approach does or does not work.*
	Noting the short consultation period. Option E2 & E3 should be subject to a longer consultation period. The consultation paper has not sufficiently made a case that on-site inspection powers are necessary or that, in the New Zealand context, current FMA tools are insufficient.
26	*Should an on-site inspection power apply only to certain firms or in certain circumstances, e.g. to firms licensed under Part 6 of the FMC Act or to all firms regulated as financial markets participants? Why?*
	At this stage, without further consultation, we do not believe it necessary for FMA to be provided with on-site inspection powers for any market participant at this stage.
27	*What safeguards should be in place for on-site inspections without notice?*
	We expect extensive safeguards would need to be in place (particularly as the FMA is not a prudential regulator). However, given the potential for misuse over time of such powers, these powers and associated safeguards should be subject to further consultation. We consider that a court-ordered warrant is currently a sufficient safeguard.
28	*Do you have any other feedback on the on-site inspection option?*
	No,
Option E3: Introduce an expert report power for the FMA	
29	*Should the FMA have the ability to commission expert reports? Please explain your answer, including why the current approach does or does not work.*
	As per E2 above.
30	*Should an expert report power apply only to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?*
	As per E2 above.
31	*What safeguards should there be for an expert report power?*
	As per E2 above.
32	*Is it appropriate that the firm concerned bear the cost of the expert report? Why / why not?*
	This would depend on the safeguards that are applied. For example, if the report is based on significant specific (consumer harm) concerns with respect to a particular entity, then it may be appropriate that the FMA has the power to seek recovery of costs (after the outcome of the expert report is known.
33	*Do you have any other comments on the expert report power option?*

	No
	3*:* Limitations and constraints on analysis
34	*Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?*
	4*:* Implementation
35	*Do you have any comments on implementation of these reforms?*
	As mentioned above, we think option E2 and E3 should be subject to further analysis and consultation.

Other comments