



FINANCIAL SERVICES FEDERATION

6 October 2021

Financial Markets Authority
Wellington

By email to: consultation@fma.govt.nz

Dear Sir/Madam,

Consultation paper: Proposed financial reporting exemptions for FMC reporting entities in liquidation, receivership, or voluntary administration

The Financial Services Federation (“FSF”) is grateful to the Financial Markets Authority (“FMA”) for the opportunity to respond to the consultation on the Proposed financial reporting exemptions for FMC reporting entities in liquidation, receivership, or voluntary administration.

By way of background, the FSF is the industry body representing responsible non-bank lenders, fleet and asset leasing providers and credit-related insurance providers. We have over 80 members providing these products to more than 1.7 million New Zealand consumers and business. The FSF membership covers credit unions, building societies and listed issuers, therefore warranting our submission today. A list of our members is attached as Appendix A.

Before answering the questions posed in the consultation document, the FSF has some more general comments to make.

As outlined above, the FSF represents credit unions, building societies and listed issuers. These are regulated by the Reserve Bank of New Zealand and subject to six categories of prudential requirements, including capital, liquidity, credit ratings and risk management. In light of these prudential requirements, the likelihood of these entities becoming insolvent is very slim, and chances of our members having to rely on this exemption is therefore highly unlikely.

That being said, the FSF still appreciates and acknowledges the rationale behind this policy decision and the preferred option for a class exemption, based on the harm assessment carried out in the Consultation Paper and it’s furthering of the purposes of the Financial Markets Conduct Act 2013 (FMC Act).

Answers to the questions asked in the Consultation Paper are provided below.

Question 1: Do you agree that these are the FMC Act provisions which are relevant to this consultation? If not, please explain your reasons.

Yes, the FSF agrees.

Question 2: We are not proposing any relief from the requirement in section 455 of the FMC Act to keep proper accounting records, even if the reporting entity is insolvent. Do you agree with our approach? If not, please explain your reasons.

The FSF agrees with this approach. It is still important that proper accounting records are kept by insolvent FMC entities in receivership, liquidation, or voluntary admission.

Question 3: Do you have any comments on the basic problem caused by dual reporting requirements?

The FSF agrees with the summarised practical and legal issues associated with dual FMC Act and insolvency requirements.

Question 4: Do you think that the FMC Act financial reporting duties impose unnecessary compliance costs on an insolvent entity? Please give us an estimate or range for the average compliance costs (broken down into indirect costs) for you FMC reporting entity to comply annually with this FMC financial reporting duties.

The financial reporting regimes under the Companies Act and the Receiverships Act for the various forms of external administration provide sufficient transparency and information for existing investors and creditors. It is logical to remove this unnecessary depletion of an entity's resources, where the information about the company's financial and other affairs is available through other sources.

As an industry body with various sized entities, the FSF is unable to provide estimates and ranges as requested. However, the general understanding would be that these costs of complying with the FMC Act reporting requirements are not small, nor immaterial.

Question 5: Do you think that FMC Act financial reporting compliance costs materially reduce the returns available to investors and creditors without any significant benefit to them?

Yes, the FSF agrees with this statement. The amounts required for compliance with the reporting requirements are inappropriate and unnecessary given the state of the entity and the replicated insolvency requirements in place.

One can reasonably foresee that such costs take away from funds that otherwise would be available to creditors and investors.

Question 6: Do you think the financial reporting regimes under the Companies Act and the Receiverships Act for the various forms of external administration provide sufficient transparent information for existing investors and creditors?

As stated in the answer to Question 4 above, both of these Acts are sufficient.

The Companies Act liquidation process may not be as comparatively comprehensive as the financial statements that need to be prepared under the FMC Act, however, a comprehensive process is not always necessary. The liquidator's statement, as required under the Companies Act, does give readers all the key information they need regarding the present financial position of the insolvent entity. On this basis, the Companies Act liquidation process is sufficient on its own and removes the necessity for the FMC Act reporting requirements.

Once an entity is placed in receivership, the provisions of the Receivership Act are applicable also. An initial state of affairs in respect to the entity in receivership, including finances, and six-monthly statements of affairs after that, are sent to the Registrar. The FSF aligns with the view that, in combination with the Companies Act, there is sufficient transparent information available for existing investors and creditors. Therefore, financial reporting requirements under the FMC Act, are not necessary.

Question 7: Do you agree with our assessment of the four other significant problems? Please give your reasons for your answer.

Yes, the FSF agrees with this assessment of the four other significant problems.

Question 8: Please estimate or comment on the additional costs which may be incurred by the auditor where they are prepared to sign off on an audit of an involved entity, so they can get assurance that the financial statements provided a true and fair view, given the entity is insolvent.

As an industry body, representing various sized entities, the FSF is unable to give estimates of costs which may be incurred by the auditor where they are prepared to sign off on an audit of an involved entity.

Question 9: Do you agree with our assessment of these other problems? If you do not agree, please explain your reasons.

The FSF agrees with this assessment of these other problems.

Question 10: Do you think there are any other problems we need to consider? If so, please outline them.

The FSF is not aware of any other problems that need to be considered.

Question 11: Do you think there are any other current or emerging issues we should take into account as part of our process for considering the introduction of relief?

The FSF is not aware of any other current or emerging issues that should be taken into account.

Question 12: Do you agree that compliance with the financial reporting duties by an entity under external administration imposes unnecessary compliance costs? If not, why not? Are there any other factors that we should consider?

Yes, the FSF agrees that the financial reporting duties by an entity under external administration imposes unnecessary compliance costs.

The FSF is unaware of any other factors to consider.

Question 13: Do you have any comments on our harm assessment?

The FSF endorses the harm assessment made on page 10 of the Consultation Paper, particularly the comments surrounding the inability to produce quality audited financial information and legal uncertainty created for directors of insolvent FMC reporting entities.

Question 14: Do you have any comments on the rationale for our preferred option?

The FSF agrees with the rationale for the proposed preferred option. The preferred option takes a similar approach to that taken in Australia in 2018, with three types of relief being available to externally administered bodies.¹ The preferred option would further the purposes under the FMC Act of avoiding unnecessary compliance costs and promoting flexibility in financial markets.

Question 15: Are there large of complex insolvencies where this rationale should not apply? If so, please provide an explanation.

The FSF has no comment on this question.

Question 16: What do you think of these other options for relief?

The FSF agrees with the preferred option for relief, as mentioned above. Other options for relief and their efficacy have not been tested. As for the preferred option, the FSF is aware of its efficacy as a result of Australia's earlier adoption.

Although law reform is a method which is typically effective and well regarded, the FSF understands the process of law reform to be costly and elongated. Bearing in mind, the current magnitude of reform already taking place in the financial services sector, elongating this consultation into a process for law reform is likely to cause further unnecessary costs to affected entities. A class exemption is what the FSF presently sees as the best option for relief.

Question 17: Do you have any comments on the scope of our proposed relief for entities in liquidation?

The FSF agrees with the scope of the proposed relief.

¹ Table 2, *Regulatory Guide RG 174: Relief for externally administered companies and registered schemes being wound up*, ASIC, Australian Government.

Question 18: Do you agree that we should allow a deferral relief period for up to 12 months? If not, why not?

The FSF is in agreement with this proposal. However, the relief period would have to be further extended if the 12-months had expired and the insolvent entity continues to be in receivership or voluntary administration.

Question 19: In what circumstances do you consider it is not appropriate for us to extend the 12-month deferral period for an externally administered entity?

The FSF has no comment to make with respect to this question.

Question 20: What do you think of our proposals in respect of the situation where financial statements are overdue for filing at the time of appointment of an external administrator? Do you agree that we should deal with these situations on a case-by-case basis, and that directors should not be relieved of their obligations if they have not acted reasonably?

Yes, the FSF agrees with these proposals.

Question 21: Do you think the exemption and deferral relief should be confined to entities which are incorporated in New Zealand and subject to New Zealand insolvency laws? If not, why not? If you consider relief should be extended to entities which are incorporated in another overseas jurisdiction, please provide detailed information about the insolvency regime in that jurisdiction and its reporting requirements.

Yes, the FSF agrees that this should be confined to entities which are incorporated in New Zealand and subject to New Zealand insolvency laws. This will ensure that appropriate reporting is available to relevant investors, creditors and stakeholders, as overseas insolvency requirements may vary and may not be equivalent to what is required here.

Question 22: Do you agree that we should include provisions relating to the early end of an external administration, where the entity is returned to the control of the directors? Are there any other situations you consider should bring about an early end to the exemption relief or the deferral period?

The FSF agrees that the exemption should include a provision relating to the early end of an external administration, where the entity is returned to the control of the directors.

Question 23: Do you have any other comments on the proposed conditions?

The FSF has no further comment to make on the proposed conditions.

Question 24: Are there any other conditions you consider we should include?

The FSF is not aware of any such conditions.

Question 25: Do you have any other comments on the factors we have listed? Are there any other factors you consider we should include on the list?

When the FMA is taking on the assessment of whether to grant relief on a case-by-case basis, the FSF urges that there should not be any prescription in this assessment so that the FMA can be flexible and acknowledge that valid circumstances for relief may not be foreseeable.

The FSF does not suggest any further points or issues to consider as part of the process for considering the introduction of relief and is satisfied that the consultation paper is comprehensive enough in its analysis of the issues, harms, and its proposals.

Please do not hesitate to contact me for further information.

Yours sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a vertical line, likely representing the name Diana Yeritsyan.

Diana Yeritsyan
Legal and Policy Manager
FINANCIAL SERVICES FEDERATION

APPENDIX A



FINANCIAL SERVICES FEDERATION

FSF Membership List as of September 2021

Non-Bank Deposit Takers Leasing Providers	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Credit Reporting & Debt Coll Agencies	Affiliate Members
<u>Rated</u> Asset Finance (B) <u>Non-Rated</u> Mutual Credit Finance Gold Band Finance ➤ Loan Co <u>Credit Unions/Building Societies</u> First Credit Union Nelson Building Society Police and Families Credit Union <u>Westforce</u> Credit Union <u>Insurance Premium Funders</u> Hunter Premium Funding <u>IQumulate</u> Premium Funding Rothbury Instalment Services <u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd Lease Plan ORIX New Zealand SG Fleet	AA Finance Limited Auto Finance Direct Limited BMW Financial Services ➤ Mini ➤ <u>Alpha</u> Financial Services Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Kubota New Zealand Ltd Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance	Avanti Finance ➤ Branded Financial <u>Basecorp</u> Finance Ltd Caterpillar Financial Services NZ Ltd Centracorp Finance 2000 Finance Direct Limited Finance Now ➤ The Warehouse Financial Services ➤ Southsure Assurance Flexi Group (NZ) Limited Future Finance ➤ Lending Crowd Geneva Finance Harmony Home Direct Instant Finance ➤ Fair City ➤ My Finance John Deere Financial Latitude Financial Metro Finance NZ Finance Ltd	Pepper NZ Limited Personal Loan Corporation Pioneer Finance Propsa NZ Ltd Smith's City Finance Ltd South Pacific Loans Speirs Finance Group ➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ <u>Yoogo</u> Fleet Thorn Group Financial Services Ltd Turners Automotive Group ➤ Autosure ➤ East Coast Credit ➤ Oxford Finance UDC Finance Limited	Baycorp (NZ) ➤ Credit Corp Centrix Collection House Equifax (<u>prev</u> Veda) Illion (<u>prev</u> Dun & Bradstreet (NZ) Limited) Intercoll Quadrant Group (NZ) Limited <u>Credit-related Insurance Providers</u> Protecta Insurance Provident Insurance Corporation Ltd	255 Finance Limited Buddle Findlay Chapman Tripp <u>Credisense</u> Ltd Credit Sense Pty Ltd Experian EY FinTech NZ Finzsoft Green Mount Advisory Happy Prime Consultancy Limited HPD Software Ltd KPMG LexisNexis PWC Simpson Western Verifier Australia Total 81 members