

# Financial Markets Authority Establishment Board

*Simon Botherway (Chair)*

Financial Reporting and Auditing Conference – A New  
Landscape

**FMA**

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Establishment Board

# How Kiwis Save

We know we're wealthy when .....



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# Background

Financial markets depend on trust and confidence:

'87 stock market crash

Failures in managed property sector

Finance company failures

Governance Failures

Kiwisaver reporting issues

- Fragmentation of powers and responsibilities between regulators has also contributed to a loss of confidence in financial markets
- A substantial mis-match has emerged between the public's expectations of the regulators and the powers and capacity of the regulators.

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# Financial Markets Authority

- Cabinet made a decision to create the FMA as a new Independent Crown Entity.
- FMA will take over the existing roles of the Securities Commission and Government Actuary, and some of the functions of the Registrar of Companies. Additionally the NZX Disciplinary functions via the creation of the Rulings Panel.
- The FMA will not simply be an amalgamation of old functions and approaches, but signals a new strategic direction aimed at systematically building trust and confidence.
- NZ retains the 'Twin Peaks' regulatory structure with the RBNZ retaining responsibility for prudential supervision.

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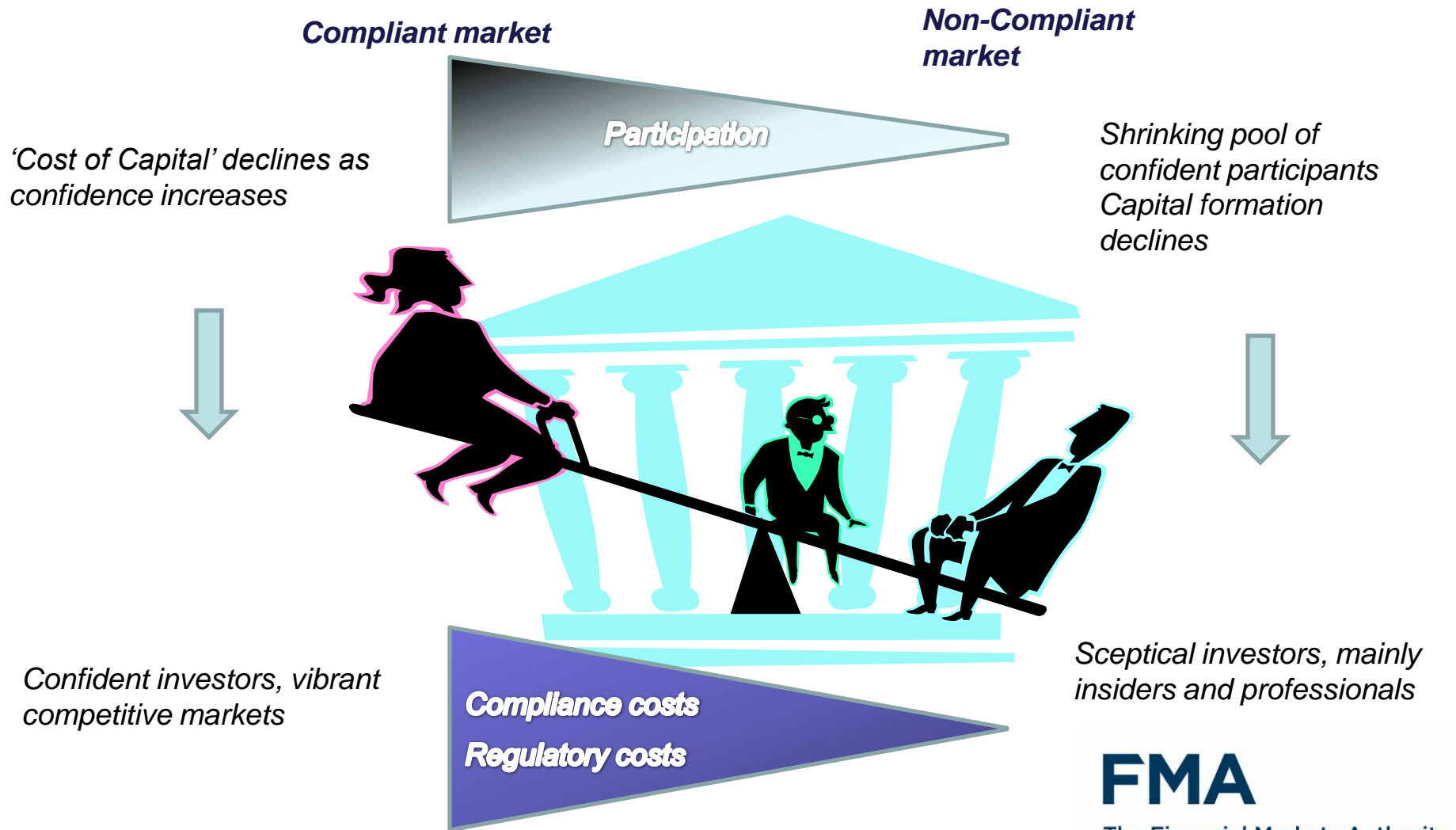
# Role of the Establishment Board

- Advise on:
  - Legislation (establishment, securities law review, licensing);
  - Mission;
  - Strategy including preparation of draft SOI
  - Organisational design and budget including personnel, functions, capabilities and supporting infrastructure including IT
- Appoint the Chief Executive – designate for FMA
- Ensure that everything is in place for effective operation on Day 1

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# The role of the regulator in restoring Investor Confidence



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# Jurisdiction of the FMA

- The financial market conduct of Issuers and intermediaries; (Secs Act, Sec Mkts Act, FAA etc) AND
- Compliance with the governance, reporting and supervision legislation relating to Financial Service Providers (eg Coys Act, FRA and includes AML/CFT responsibilities)
- FMA will have regulatory responsibility or oversight for the following:
  - Issuers (incl Superannuation and KiwiSaver schemes);
  - Financial Services Providers (FSP Act)
  - Registered exchanges;
  - Financial Advisers (AFA's and QFE's);
  - Trustees;
  - Auditors; and
  - Any other parties identified as a result of the review of the Securities Act.

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# Other changes incorporated in Bills

- Derivative Action powers
- Managers of retail Kiwisaver Schemes will become the issuer (rather than the Trustee)
- Some statutory exemptions to be limited by regulations – ‘call-in powers’ (eg property-based schemes)
- New registration process for securities offerings and a new securities register
- FMA will consider whether prospectuses contain requisite information or may be ‘false or misleading’ (risk-based assessment program to be implemented)
- Power to make regulations prescribing periodic disclosure requirements (eg Kiwisaver Schemes)
- NZX oversight
- Establishment of the statutory Rulings Panel

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# Objective of the FMA

Cabinet has agreed (subject to drafting) that the objective of the FMA is to:

*Promote the growth and development of fair, efficient and transparent financial markets*

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# Draft Mission Statement\*

To promote the interests of the public by fostering well-functioning financial markets that are:

- fair and transparent, operate with integrity and warrant confidence; and
- dynamic and competitive, providing both investment opportunities and access to capital.

\* subject to finalisation of Bill

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# Regulatory outcomes

**Market confidence** - “level playing field” for information. Provision of mechanisms for redress (in cases of wrongdoing). Minimisation of impact of failures on the market in aggregate.

**Reduction of financial wrongdoing** – communication of expectations  
prospects of detection  
consequences of offending

**Investor knowledge** – of the range, benefits, suitability and risks of investment. Provision of appropriate, unconflicted, competent advice. Regulator not underwriter.

**Vibrant, competitive, dynamic and innovative financial markets** – benefits of compliance accrue to investors, issuers and overall economic welfare

**Principles-based regulation** “it is neither possible nor desirable to write a rule to cover every specific situation or need for a decision that a regulated firm might encounter” (*source: FSA*)

*Eg A firm must conduct its business with due skill, care and diligence*

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# Key Areas of Focus Next Three Years

Over the next three years the FMA plans to:

## **Establishing Expectations For Market Participants**

- Work with market participants to help them understand the expectations of them (guidance, practice notes etc);
- Establish self-reporting and remediation policies
- Raise the profile of and participation in the capital markets via effective education, partnerships and public engagement initiatives;
- Engage with market participants and stakeholders to identify barriers to capital market growth and explore the role of the FMA in overcoming those obstacles;

## **Minimising Asymmetries of Information for Investors**

- Implement new prospectus (delayed allotment) regime; Proactively promote relevant disclosures; Guidance notes; Warnings; Education

## **Building Confidence in Intermediaries**

- Effectively implement and oversee new licensing and supervision functions (auditors, trustees, financial advisors, exchanges);

The logo for the Financial Markets Authority (FMA) consists of the letters 'FMA' in a bold, blue, sans-serif font.

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# Key Areas of Focus cont.

Over the next three years the FMA plans to:

## **Early detection and strong enforcement**

- Place a strong emphasis on surveillance, investigation and enforcement actions so as to have the greatest deterrent effect;
- Develop an intelligence gathering and analysis hub to disseminate information throughout the organisation;
- Develop a robust case selection policy consistent with the strategic plan which includes taking cases that test the boundaries of the law and develop new case law;
- Develop and implement a referral management system including whistle blowers;
- Develop and support a well-regarded judicial process via the Rulings Panel

## **Other**

- Collaborate and co-ordinate with other regulatory agencies locally and internationally (particularly Australia) to eliminate prospects of duplication, inefficiency and delay;
- Add specialist skills in new areas: (eg specialised analytical skills);
- Develop education and literacy programs

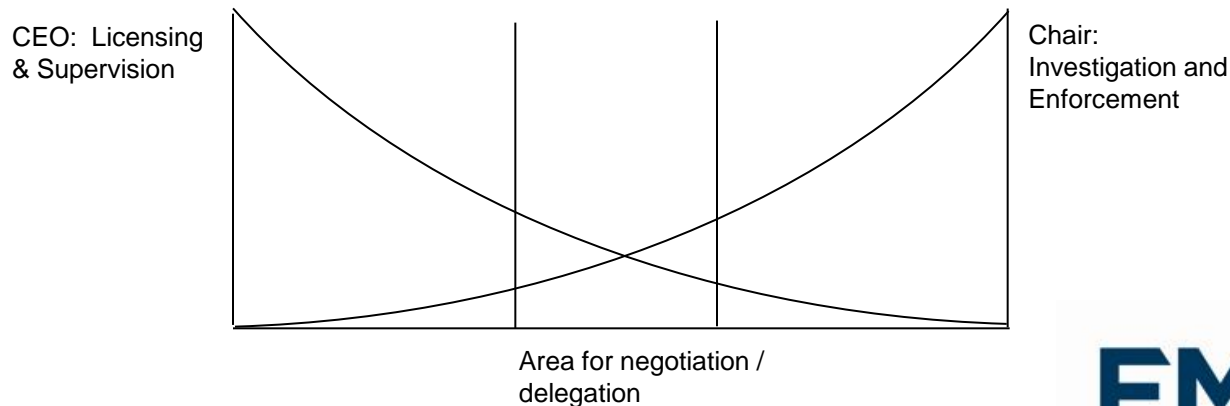
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# Proposed Governance Model

Non-executive Board of Directors (probably 9); Possibility of Associates  
Chair will at least initially be full-time (but non-exec)  
Broad capital markets skills matrix desired

- A strong board focused on setting direction, holding management to account, and making key decisions;
- Clearly delineated delegations to the Chief Executive; and
- Clarity as to what matters the chair and chief executive will be the 'public face' on.



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# Next Steps

- Select Committee Process
- Completion of work on the institutional design of the FMA including its overall governance framework, staffing, location(s) and resourcing.
- Appointment of CEO-designate.
- Ministerial consideration of draft SOI and budget
- Operational in Q2 2011.

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