



21 September 2021

Financial Markets Authority

Email: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

## **Proposed financial reporting exemptions for FMC reporting entities in liquidation, receivership or voluntary administration**

The Institute of Directors (IoD) appreciates the opportunity to comment on the Financial Market Authority's consultation paper [Proposed financial reporting exemptions for FMC reporting entities in liquidation, receivership or voluntary administration](#).

### **About the Institute of Directors**

The IoD is New Zealand's pre-eminent organisation for directors and is at the heart of the governance community. We believe in the power of governance to create a strong, fair and sustainable future for New Zealand.

Our role is to drive excellence and high standards in governance. We support and equip our members who lead a range of organisations from listed companies, large private organisations, state and public sector entities, small and medium enterprises, not-for-profit organisations and charities.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good governance.

### **Background and overview of proposed exemptions**

Under the Financial Markets Conduct Act 2013 (the Act), Financial Market Conduct (FMC) reporting entities must prepare financial statements, have them audited and lodge them annually with the Companies Office. The financial statements must be signed by two company directors (or one if there is only a sole director).

When an entity becomes insolvent, an external administrator (liquidator, voluntary administrator or receiver) is normally appointed. External administrators have reporting obligations under New Zealand's insolvency laws (with information available to creditors and investors).

The Act requires insolvent FMC reporting entities to continue producing audited financial statements, alongside the external administrators' reports.

The consultation paper notes that "We have been told this provides limited benefit, and the additional costs may greatly outweigh the benefit. Investors and creditors can get the key financial information they need from the more regular external administrators' reports."

The consultation paper notes that “once an FMC reporting entity becomes insolvent the information needs of investors, lenders and other creditors change. They generally have two main concerns – how much am going to receive, and how long will it take?”

The FMA highlights a number of potential problems with the status quo including:

- the financial reporting duties may impose unnecessary compliance costs on the entity (reducing the returns available to investors and creditors without significant benefit to them)
- directors of a company in some form of external administration largely cease to have their normal powers and duties and no longer control the records of the company. They are not in a position to oversee the preparation of and sign the financial statements. External administrators are also unwilling or unable to sign the financial statements
- it is practically unlikely that an entity can submit financial statements which have been audited, given it is unlikely that an auditor would accept the appointment or sign off on an audit if the entity is insolvent. There can also be significant audit costs
- there can be time constraints for external administrators in fulfilling their obligations in relation to the administration and they may have limited human resources.

The FMA is considering introducing the following relief for insolvent FMC reporting entities from certain financial reporting obligations under the Act.

### **1. Exemption relief (where a liquidator is appointed)**

There would be relief from certain financial reporting duties by way of a class exemption for all insolvent FMC reporting entities (except managed investment schemes) to which a liquidator is appointed, subject to certain conditions.

### **2. Deferral relief (where a voluntary administrator or receiver is appointed)**

There would be relief from certain financial reporting duties for all FMC reporting entities (except managed investment schemes) to which a voluntary administrator or receiver is appointed for a period of 12 months from the appointment of the external administrator, subject to certain conditions.

### **3. Case-by-case relief**

Relief could be provided on a case-by-case basis from financial reporting duties in situations not covered by 1 and 2 above where similar policy considerations apply and the exemption criteria under the Act are met. The FMA would have discretion and could impose conditions.

The proposed relief is similar to the relief available in Australia.

### **IoD comments**

Financial reporting is a critical element of the disclosure of business and financial information for stakeholders. The information needs of investors, lenders and other creditors change when an entity becomes insolvent. These may be met by external administrators' reports.

We generally agree with the problems identified in the consultation paper and we support the proposed relief including appropriate safeguards. In relation to the proposed deferral relief, we consider that

12 months is a reasonable time period.

We also encourage the FMA to engage with other government bodies to consider related matters such as annual meeting requirements and disclosure under the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill.

We appreciate the opportunity to provide feedback on behalf of our members and we would be happy to discuss this with you.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'SE', written in a cursive style.

**Selwyn Eathorne**

Manager, Governance Leadership Centre