

1 November 2022

Financial Markets Authority  
Level 2, 1 Grey Street,  
Wellington, New Zealand  
By email only: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

## **NZX Wealth Technologies submission on proposed guidance for client money or property service providers**

### **Background**

1. NZX Wealth Technologies submits this response to the Financial Markets Authority (**FMA**) consultation paper 'proposed guidance for client money or property service providers' (**Consultation Paper**). We thank the FMA for the opportunity to make this submission and to contribute towards providing guidance on the standards expected of client money or property service providers.
2. NZX Wealth Technologies, a subsidiary of NZX Limited, operates a wealth management platform which currently manages over \$10 billion in client funds (\$2.5 billion within the custodial service). As the guidance proposed within this Consultation Paper will apply to NZX Wealth Technologies, we have directed our responses within our submission specifically towards the proposed guidance relating to the management of client money.
3. Nothing in this submission is confidential.

### **Response to consultation**

- 3) Do you agree with our expectations in regards to identifying who the provider is and documenting the nature of the arrangement? Are there any other aspects you consider it would be beneficial to include to assist with clarifying provider arrangements?
4. NZX Wealth Technologies believes that the FMA's expectations towards identifying who the client money provider is and documenting the nature of the arrangement extends beyond legal requirements. The proposed guidance suggests that a custodian is responsible for the provider's obligations where the provider's contract does not identify itself as being the responsible entity. Given the difficulty for a custodian to control the content of a provider's client contract, this disproportionately increases custodian liability in such arrangements.
- 4) Do you agree with our interpretation of what meets the threshold for a 'client address', and the limited circumstances in which this definition may be broadened? If no, please explain why.
5. NZX Wealth Technologies supports the FMA's proposed guidance on acceptable methods for communicating investor reports, with the inclusion of guidance on standards

for sending reports across email and online portals. We share the FMA's concern that reports should be sent directly to a specified address belonging to a client as an additional security measure.

6. We encourage the FMA to include additional clarity within its proposed guidance on which individual should be the intended receiver for reports in instances where complex legal structures exist, such as instances when there are multiple directors or trustees involved in the management of a client's funds.
- 5) Does your assurance testing include reviewing client addresses to ensure the independence of recipients? If not, please explain why, including whether extending the scope of your assurance testing to include this review is likely to incur any significant additional costs or time requirements.
7. NZX Wealth Technologies currently employs a procedure which requires reports sent to undergo spot check reviews when the reports are being produced to ensure that they are not being addressed to the client's adviser. Clients who have opted in to receive custodian reports through the online portal are notified of the release of reports through an email sent to the email address provided by the client. Once reports have been sent, the number of printed reports and number generated reports are reconciled.
8. In terms of ensuring that client addresses belong to independent recipients, NZX Wealth Technologies relies on the investor's licensed financial providers to correctly key in client addresses into our system as part of the 'know your client' element of AML/CFT. As NZX Wealth Technologies does not have a direct relationship with the client, we are unable to ensure the independence of recipients through the addresses provided. We believe that the complexities of implementing such a process would be disproportionate to the risk it addresses.
- 6) Do you agree with our interpretation that a client's 'electronic address' may include access to an online portal through which reporting is provided? Please state the reasons for your view.
9. NZX Wealth Technologies supports the integration of online portals within the definition of a client's electronic address. We share the FMA's view that it is important for clients to have easy access to their custody reports, and currently utilise a password-protected online portal to deliver information to clients who have opted to receive reports through the online portal. Investors are increasingly opting for more information to be made accessible to them online and the use of online portals provides a solution as an instant and secure method of delivery to investors, while also mitigating the risk that reports are received by unknown individuals.
- 8) Are there any aspects of the guidance you think need to be improved or clarified? If so, please state what these are and explain what changes you would like to see.
10. NZX Wealth Technologies is generally pleased with the proposed guidance within the Consultation Paper, however we do note two areas that could do with additional clarity, these are:
  - a. Reporting to clients, as outlined on page 6 of the Consultation Paper, states that "For most portfolios, providers should be reporting trading activity to clients at

least quarterly.”. We would like to highlight to the FMA that this requirement extends beyond regulation 229Q(3)(a) of the Financial Markets Conduct Regulations 2014 which outlines the custodial reporting period to as a period of 6 months.

- b. Custodial Assurance Engagements, as outlined on page 12 of the Consultation Paper, states that “custodians must, within four months of the *close of their accounting period*, obtain an assurance engagement and report from a qualified auditor”. We wish to highlight that the proposed guidance does not reflect regulation 229U of the Financial Markets Conduct Regulations 2014. The regulations state that a custodian must obtain an assurance engagement “within 4 months after the relevant date”, where “relevant date” is defined in regulation 229U(5) as being either the custodian’s balance date *or a date notified to the FMA prior as the relevant date*. We suggest that the proposed guidance conform with the regulations and provide wording for the deadline to be within 4 months after the relevant date; and
- c. Sub-custodians, as outlined on page 11 of the Consultation Paper, which does not account for instances where some custodians appoint international custodians to hold assets to ensure effective trading processes. We therefore suggest that the guidance clearly state that a sub-custodian is not required to report to the custodian on a six-monthly basis, but may instead report within a specified time frame that has been agreed by the parties.

## Closing comments

- 11. NZX Wealth Technologies generally supports the proposed guidance as outlined in the Consultation Paper and wishes to acknowledge the efforts of the FMA in the preparation of this guidance. We generally encourage the FMA to further clarify areas where the proposed guidance may be prescribing additional requirements for regulated entities, which may in some instances go beyond their current legal obligations. We are pleased to see the proposed guidance adopt definitions and provisions from within our existing rule set as this improves regulatory conformance and certainty for regulated entities.
- 12. NZX Wealth Technologies thanks the FMA for this opportunity to submit on this consultation and looks forward to the further development of the proposed guidance.

Yours faithfully,



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