

APPENDIX A

TERMS OF REFERENCE FOR INDEPENDENT REVIEW OF FINANCIAL SERVICES COMPLAINTS LIMITED

1. Background

1.1 Financial Services Complaints Limited (“FSCL”) is an independent external dispute resolution scheme approved by the Minister of Consumer Affairs under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the “Act”). FSCL is a not for profit operation and is funded by a combination of membership and complaint fees levied on its participants. FSCL’s services are free to consumers.

1.2 FSCL has over 5,500 scheme participants drawn from all sectors of the financial services industry, excluding retail banking.

1.3 FSCL has been receiving and investigating complaints since January 2011. FSCL investigates complaints in accordance with its terms of reference.

1.4 FSCL is governed by a Board consisting of two consumer representatives, two industry representatives and an independent chairperson. FSCL currently has a staff of nine, including its Chief Executive Officer, Susan Taylor and its General Manager, Trevor Slater.

1.5 FSCL is required to have an independent review of its operations at least once every five years (see s 63(q) of the Act) and under its constitution FSCL is required to have its first independent review completed by 31 March 2015.

1.6 This is FSCL’s first independent review.

2. Review Scope

2.1 As an approved scheme, FSCL is required to meet and comply with 6 benchmark principles set out in the Act, namely:

accessibility

accountability

effectiveness

efficiency

fairness

independence.

The reviewer is asked to consider and report on whether or not FSCL is meeting these principles.

2.2 A more detailed explanation of factors to be considered under these headings is set out in Appendix 1 to these terms of reference.

2.3 The reviewer is asked to assess FSCL's performance against the scheme's terms of reference, in particular:

the requirement to resolve complaints in a cooperative, efficient, timely and fair manner, whilst proceeding with minimum formality and technicality, and

FSCL's processes to ensure consistency and high quality decision making in accordance with its obligations under the TOR to resolve a complaint on its merits, to do what in its opinion is fair in all the circumstances, having regard to:

- (i) The law;
- (ii) Any applicable legal rule or judicial authority;
- (iii) General principles of good industry practice and any applicable code of practice.

2.4 The reviewer is asked to consider whether there is any disadvantage to FSCL in not using the name "Ombudsman", particularly when considering consumers' accessibility to the scheme.

2.5 The reviewer is asked to consider whether:

the current financial limits of \$200,000 for direct financial loss and \$500 for inconvenience are appropriate

a complainant should be permitted to access FSCL if prepared to waive any claim amount that is in excess of the \$200,000 financial limit.

3. Methodology

3.1 It is expected the review process will include the following:

- (i) Interviews of FSCL management and some staff;
- (ii) Review of FSCL's terms of reference, written procedures, systems, statistics, website and other material;

- (iii) Review of about 25 complaints files;
- (iv) Stakeholder interviews, including FSCL Board members, Ministry of Business Innovation and Employment representatives, FMA representatives, participants and consumer representatives;
- (v) Telephone interviews of 5 previous complainants; and
- (vi) Telephone interviews of 10 people who in the last few months have contacted FSCL with an inquiry but who have not lodged a formal complaint with FSCL.

APPENDIX 1 - REVIEW OF BENCHMARK PRINCIPLES

Benchmark 1 - Accessibility

1. Principle – The Scheme makes itself readily available to consumers by promoting knowledge of its existence, being easy to use and having no cost barriers.

Key Practices

1.1 The Scheme seeks to ensure that all financial services consumers are aware of its existence;

1.2 The Scheme produces readily available material in plain English to explain:

- how to access the Scheme

- how the Scheme works

- the major areas with which the Scheme deals, and

- any restrictions on the Scheme's powers.

1.3 The Scheme requires Scheme participants to inform their customers about the Scheme.

1.4 Complainants can make initial contact with the Scheme orally or in writing but the complaint must ultimately be put in writing.

1.5 The Scheme's Terms of Reference are expressed clearly.

1.6 Complainants do not pay any application or other fee or charge before a complaint is dealt with by the Scheme, or at any stage in the process.

1.7 The Scheme's staff have the ability to handle customer complaints and are provided with adequate training in complaints handling.

1.8 The Scheme's staff explain to complainants in simple terms:

how the Scheme works

the major areas it deals with

any restrictions on its powers, and

timelines applicable to each of the Scheme's processes.

1.9 The Scheme's staff assist complainants to put a complaint in writing, where complainants need assistance to do so.

1.10 The Scheme's processes are simple for complainants to understand and easy to use.

1.11 The Scheme uses appropriate techniques, including conciliation, mediation and negotiation in attempting to settle complaints.

1.12 The Scheme provides for informal proceedings which discourage a legalistic, adversarial approach at all stages in the Scheme's processes.

Benchmark 2 - Accountability

2. Principle - The Scheme publicly accounts for its operations by producing written determinations, published in case notes and information about complaints and highlighting any systemic industry problems.

Key Practices

2.1 The Scheme regularly provides written reports of determinations to Scheme participants and complaints.

2.2 The Scheme regularly publishes case notes on its website for the purposes of:

educating Scheme participants and consumers, and

demonstrating consistency and fairness in decision making.

Case notes do not name the parties involved.

2.3 The Scheme publishes a detailed and informative Annual Report containing specific statistical and other data about the Scheme's performance including:

information about how the Scheme works

the numbers and types of complaints it receives and their outcome

the time taken to resolve complaints

any systemic problems arising from complaints

examples of representative case studies

information about how the Scheme ensures equitable access

information about new developments or key areas in which policy or education initiatives are desirable.

2.4 The Annual Report is distributed to relevant stakeholders and otherwise made available upon request.

Benchmark 3 - Effectiveness

3. Principle - The Scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

Key Practices

3.1 The Scheme's scope and decision-maker's powers are clear.

3.2 The Scheme's scope (including the decision-maker's powers) is sufficient to deal with:

the vast majority of customer complaints in the relevant industry, and

customer complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in the relevant industry.

3.3 The decision-maker has the power to make monetary awards of sufficient size and other awards (but not punitive damages) as appropriate.

3.4 The Scheme has mechanisms for referring systemic industry problems to the overseeing entity (where referral to the Scheme participant does not result in the systemic problem being adequately addressed) for appropriate action.

3.5 The Scheme has procedures in place for receiving complaints about the Scheme including responding to any such complaints in a timely and appropriate manner.

3.6 The Scheme requires participants to set up internal complaints processes.

3.7 The Scheme has the capacity to advise Scheme participants about their internal complaints processes.

3.8 The Scheme has mechanisms to encourage Scheme participants to abide by the Scheme's rules.

3.9 The decision-maker's determinations are binding on the Scheme participant if complainants accept the determination.

Benchmark 4 - Efficiency

4. Principle - The Scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

Key Practices

4.1 The Scheme deals only with complaints that are within its Terms of Reference and have not been dealt with, or are not being dealt with, by another dispute resolution forum; and

which have been considered, and not resolved to the complainant's satisfaction, by a scheme participants internal complaints resolution process, or

Where a scheme participant has refused, or failed within a reasonable time, to deal with the complaint under its internal complaints process.

4.2 The Scheme has mechanisms and procedures for referring relevant complaints to other, more appropriate, dispute resolution bodies and/or regulatory authorities.

4.3 The Scheme has mechanisms and procedures for referring systemic industry problems that become apparent from complaints to relevant scheme participants.

4.4 The Scheme excludes vexatious and frivolous complaints at the decision-maker's discretion.

4.5 The Scheme has reasonable time limits set for each of its processes which facilitate speedy resolution of complaints without compromising quality decision making.

4.6 The Scheme has mechanisms to ensure that the time limits are complied with as far as possible.

4.7 The Scheme has a system for tracing the progress of complaints.

4.8 The Scheme's staff keep the parties informed about the progress of their complaint.

4.9 The Scheme sets projective targets against which it can assess its performance.

4.10 The Scheme keeps records of all complaints and inquiries, their progress and their

outcome.

4.11 The Scheme conducts regular performance reviews.

4.12 The Scheme's staff seek periodic feedback from the parties about the parties' perceptions of the Scheme's performance.

4.13 The Scheme reports regularly to the overseeing entity on the results of its monitoring and review.

Benchmark 5 - Fairness

5. Principle - The Scheme produces decisions which are fair and are seen to be fair by observing the principles of procedural fairness and natural justice, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

Key Practices

5.1 The decision maker bases determinations on what is fair and reasonable, having regard to the law, good industry practice and relevant industry codes of practice.

5.2 The Scheme's staff advise complainants of their right to access the legal system or other redress mechanisms at any stage if the complainant is dissatisfied with any of the Scheme's decisions or with the decision-maker's determination.

5.3 Both parties can put their case to the decision-maker.

5.4 Both parties are told the arguments, and sufficient information, to know the other party's case.

5.5 Both parties have the opportunity to rebut the arguments of and information provided by the other party.

5.6 Both parties are told of the reasons for any determination.

5.7 Complainants are advised of the reasons why a complaint is outside jurisdiction or is otherwise excluded.

5.8 The decision-maker encourages but cannot compel complainants to provide information relevant to a complaint.

5.9 The decision-maker can require that Scheme participants provide all information which, in the decision-maker's view, is relevant to a complaint, unless that information identifies a third party to whom a duty of confidentiality or privacy is owed, or unless it contains information which the Scheme participant is prohibited by law from disclosing.

Benchmark 6 - Independence

6. Principle - The decision making process and Scheme administration are independent from scheme participants.

Key Practices

6.1 The Scheme has a decision-maker who is responsible for the determination of complaints.

6.2 The decision-maker is not selected directly by Scheme participants, and is not answerable to Scheme participants for determinations.

6.3 The decision-maker has no relationship with the Scheme participants that fund or administer the Scheme which would give rise to a perceived or actual conflict of interest.

6.4 The Scheme's staff are not selected directly by Scheme participants, and are not answerable to Scheme participants for the Scheme's operation.

6.5 There is a separate entity set up formally to oversee the independence of the Scheme's operation. The entity has a balance of consumer and industry interests.

6.6 Representatives of consumer interests on the overseeing entity are:
capable of reflecting consumer's viewpoints and concerns, and
persons in whom consumers and consumer organisations have confidence.

6.7 As a minimum the overseeing entity's functions should include:

appointing or dismissing the decision-maker

recommending or approving the Scheme's budget

recommending and being consulted about any changes to the Scheme's Terms of Reference

receiving regular reports about the Scheme's operation, and

receiving information about, and taking appropriate action in relation to, systemic industry problems referred to it by the Scheme.

6.8 The Scheme has sufficient funding to enable its case load and other relevant functions necessary to fulfil its Terms of Reference to be handled in accordance with these benchmarks;

6.9 Changes to the Terms of Reference are made in consultation with relevant stakeholders, including Scheme participants, industry and consumer organisations and Government.

APPENDIX B

FSCL CONSTITUTION AND TERMS OF REFERENCE

The Constitution of

FINANCIAL SERVICES COMPLAINTS LIMITED

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PART A

The clauses in this Part A specify details required for the purposes of Part B of this Constitution

I. The Company (clause 1.1 of Part B)

The Company is *Financial Services Complaints Limited*.

II. Number of Directors (clause 9.1 of Part B)

The number of directors of the Company will be a minimum of 5.

III. Names of Directors (clause 9.2 of Part B)

The directors of the Company at the date of adoption of this Constitution are:

Kenneth Barry Johnston, Chairperson, deemed to be appointed pursuant to clause 9.4(a) for a term expiring on 30 September 2012;

Lynette Anne McMorran, deemed to be appointed pursuant to clause 9.4(b) for a term expiring on 30 September 2011;

Leonie Joan Wallwork, deemed to be appointed pursuant to clause 9.4(b) for a term expiring on 30 September 2012;

Bruce William Cronin, deemed to be appointed pursuant to clause 9.4(c) for a term expiring on 30 September 2011.

Raewyn Christine Fox, deemed to be appointed pursuant to clause 9.4(c) for a term expiring on 30 September 2012; and

IV. Quorum for Directors' Meetings (clause 10.8 of Part B)

The quorum for a meeting of directors will be 5 directors.

PART B

1. INTERPRETATION

1.1 *In this Constitution, unless the context otherwise requires, the following terms will have the following meanings:*

<i>Act</i>	The Companies Act 1993 as amended from time to time.
<i>Alternate director</i>	The meaning given to that term in clause 9.12.
<i>Annual Meeting</i>	The meeting of the Shareholder held pursuant to clause 6.1.
<i>Board and Board of Directors</i>	In relation to the Company means those directors appointed pursuant to clause 9 who number not less than the quorum specified in clause IV of Part A of this Constitution acting together as a board of directors, or, if the Company has only one director, that director.
<i>Chairperson</i>	The chairperson of the Company.
<i>Company</i>	The company specified in clause I of Part A of this Constitution.
<i>FSP</i>	A Financial Service Provider as defined under the FSP(RDR) Act
<i>FSP(RDR) Act</i>	The Financial Service Providers (Registration and Disputes Resolution) Act 2008 as amended from time to time
<i>Participant</i>	Those persons entered on a register to be held by the Company who are for the time being approved by the Directors as a Participant.
<i>Participation Agreement</i>	The Participation Agreement entered into between the Company and participants in the scheme relating to the operation and functions of the Company and the scheme.
<i>Reserve Scheme</i>	The financial service providers reserve dispute resolution scheme as provided for in Section 71 of the FSP(RDR) Act
<i>Scheme</i>	The dispute resolution scheme run by the Company
<i>Secretary</i>	The secretary of the Company appointed pursuant to

clause 22.1.

<i>Shares</i>	The meaning given to that term in clause 3.1.
<i>Shareholder</i>	The meaning given to that term in clause 3.1.
<i>Terms of Reference</i>	The rules established from time to time by the Company which constitute and govern the powers and obligations of the Scheme and its Chief Executive Officer.

1.2 *Except as specified in clause 1.1, words or expressions used in this Constitution which are defined in the Act will have the meaning given by the Act unless the context otherwise requires.*

1.3 *Expressions referring to writing will be construed as including references to printed, typewritten, painted, engraved, lithographed, communicated in any electronic form, or otherwise traced or copied.*

1.4 *This Constitution has no effect to the extent that it contravenes the Act.*

2. OBJECTS AND MANAGEMENT OF THE COMPANY

Objects and Powers

2.1 The objects of the Company are:

- (a) To establish, maintain and promote a dispute resolution scheme for the financial services industry to be known as the “Financial Services Complaints Scheme” or “FSCL”;
- (b) To have the Scheme approved under Part 3 of the FSP(RDR) Act;
- (c) To appoint and support a Chief Executive Officer, a General Manager and, where necessary Panel members, for such periods and on such terms and conditions of engagement as the Directors think fit, with powers:
 - (i) *to consider, subject to the Terms of Reference, complaints in connection with the provision of financial services by any Participant;*
 - (ii) *to facilitate the satisfaction, settlement or withdrawal of such complaints whether by conciliation, the making of recommendations or determinations or by such other means as shall seem expedient;*
 - (iii) *to promote and publicise the Financial Services Complaints Scheme and to encourage and provide advice to Participants on the development and*

maintenance of good complaint-handling practices;

(iv) *to consult and maintain relationships with stakeholders and other approved dispute resolution schemes;*

(d) The Board will not appoint persons to the positions of Chief Executive and General Manager unless those persons hold a legal qualification and/or have proven expertise and experience in alternative dispute resolution;

(e) To consult and maintain relationships with government or other authorities (whether national, local or otherwise) or any corporations, companies or persons on all matters relating to and affecting the business of those referred to in clause 2.1(a) and the resolution of complaints in relation thereto.

2.2 *The Company and the Board have full powers, rights and privileges (to the maximum extent permitted by law) to carry on or undertake any business or activity, do any act, or enter into any transaction, to further the objects set out in clause 2.1, including without limitation the right to levy, charge, collect and receive subscriptions, levies, fees and other payments from Participants and expend the same in furthering all or any of the objects or providing for the expenses of the Company.*

2.3 *The income and property of the Company, from wherever derived, shall, subject to the Terms of Reference and the Participation Agreement, be applied solely towards the promotion of the objects of the Company as set out in clause 2.1. No portion of the income or property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the Shareholder or the Participants.*

Management

2.4 *The business and affairs of the Company must be managed by, or under the direction or supervision of, the Directors. The Directors will approve the budget of the Company from time to time. The Directors may at any time and from time to time obtain money for the purposes of the Company by charging fees to the Participants. The form, amount and terms of any fees may be determined by the Directors at their discretion and, without limitation, may include any or all of:*

(a) An annual participation fee;

(b) A joining fee; and

(c) A dispute fee.

2.5 *Each fee will be due and payable by each Participant as at the date specified by the Directors.*

2.6 *The Board is to ensure that the Company has processes in place to:*

- (a) Monitor Participants' compliance with the Scheme, and
- (b) Accept and respond to complaints about the operation of the Scheme.

2.7 *The Board may delegate to a committee of directors, a director or employee of the Company, or any other person, any one or more of its powers, other than those specified in the Second Schedule to the Act.*

2.8 *The Board is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board:*

- (a) Believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on directors of the Company by the Act and this Constitution; and
- (b) Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

Participation

2.9 *A person is eligible to be a Participant if, and only if, it is a FSP .*

2.10 *To become a Participant a person must have been approved by the Directors as a Participant.*

2.11 *To apply for approval as a Participant, a FSP must deliver to the Company a completed and signed application in the form approved by the Directors from time to time together with such particulars as the Directors may require.*

2.12 *There is no limit on the number of Participants. Participation is not transferable.*

2.13 *Participants who are members of a Group may, at the request of the Chief Executive Officer, nominate a Head Member for that Group for the purposes of:*

- (a) Receiving communications for the Company, including notices and invoices on behalf of each member of the Group;
- (b) Dealing with disputes and customer enquiries on behalf of the Participant;
- (c) Exercising a vote of a Participant of a Group;
- (d) Such other matters as may be included in the nomination form of a head Participant.

2.14 *The Directors may not approve as a Participant a FSP who has not complied with remedial action imposed on it by another approved dispute resolution scheme or the Reserve scheme.*

2.15 The Directors may:

- (a) Approve a FSP as a Participant subject to such terms and conditions as the Directors may in their discretion determine and may reject any application for Participation without being required to provide a reason for that rejection. Without limiting the generality of this clause 2.15 the Directors may impose different terms and conditions on admission to participation and on different persons admitted to participate; and
- (b) Delegate any of the powers and functions under clauses 2.11 to 2.15(a) (both inclusive) to the Chief Executive Officer.

2.16 *At any time after 31 March 2011 a Participant may withdraw as a Participant in the Scheme by giving to the Secretary not less than twelve months' notice to that effect and participation ceases upon expiry of that notice. The Directors may, in their absolute discretion, resolve to accept a Participant's withdrawal from participation at any time even if notice has not been given in accordance with this clause and may waive any portion of the notice period.*

2.17 If a Participant:

- (a) Ceases to be a FSP or carry on business in the Industry;
- (b) Is required to be licensed or authorised under any Act to be a FSP and the Participant ceases to be so licensed or authorised; or
- (c) Becomes insolvent;

the Participant shall immediately cease to be a Participant of the Scheme.

Independent review

2.18 *The Board will ensure that an independent process review of the Scheme is undertaken not less than every five years, with the first such review to be completed by 31 March 2015.*

2.19 *The independent reviewer's report on the Scheme will be provided to the Minister of Consumer Affairs within three months of completion of the report.*

3. SHARES

Rights and Powers Attaching to Shares

3.1 *The capital of the Company consists of one hundred fully paid ordinary shares (Shares) which are to be held by the person who for the time being occupies the position of Chairperson (Shareholder).*

Board to Issue Shares

3.2 ***The Board does not have the power to issue further shares.***

4 TRANSFER AND TRANSMISSION OF SHARES

4.1 ***Subject to the terms of this Constitution:***

- (a) The Shares are transferable only to the person who for the time being occupies the position of Chairperson; and
 - (b) Upon change of person holding the office of Chairperson (other than pursuant to clause 10.3), the Shares must be transferred from the exiting Chairperson to the new Chairperson. The Company may act as agent of the Shareholder for the purpose of signing the necessary share transfer form, and doing all things or signing all other documents necessary or expedient, to give effect to this clause 4.1.
- 4.2** Upon the death or incapacity of the shareholder, the shares shall be transferred by transmission to the person holding the office of Chairperson.

5 DISTRIBUTIONS

Distributions

- 5.1** ***The Board will not authorise any distribution or dividend except upon winding up or liquidation of the Company.***
- 5.2** If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed to the Shareholder or among the Participants of the Company. Instead the property shall be given or transferred to some other organisation or body having objects similar to the objects of the Company, or to a charitable organisation or purpose, within New Zealand.

6 MEETINGS OF THE SHAREHOLDER

Annual Meeting

- 6.1** ***An annual meeting of the Shareholder will be held once in each calendar year; and***
- (a) Not later than 5 months after the balance date of the Company; and
 - (b) Not later than 15 months after the previous annual meeting.
- 6.2** ***Representatives of each Participant, together with those other persons entitled to receive notice of Annual Meetings (set out in clause 6.4), are entitled to attend and speak at all Annual Meetings.***

6.3 *The Shareholder and Participants shall, at the Annual Meeting, receive the annual report.*

Notice of Meetings

6.4 *Written notice of the time and place of a meeting of the Shareholder must be given to the Shareholder and to:*

- (a) Every Participant;
- (b) The Chief Executive Officer;
- (c) The Secretary; and
- (d) Every director and an auditor of the Company,

not less than 10 working days before the meeting.

Quorum

6.5 *A quorum for a meeting of shareholders is present if the Shareholder is present.*

7 *DIRECTORS' DUTIES*

7.1 *A director of the Company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the Company.*

7.2 *A director must exercise a power for a proper purpose.*

7.3 *A director of the Company must not act, or agree to the Company acting, in a manner that contravenes the Act or this Constitution.*

7.4 *A director of the Company must not:*

- (a) Agree to the business of the Company being carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors; or
- (b) Cause or allow the business of the Company to be carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors.

7.5 *A director of the Company must not agree to the Company incurring an obligation unless the director believes at that time on reasonable grounds that the Company will be able to perform the obligation when it is required to do so.*

7.6 *A director of the Company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation:*

- (a) The nature of the Company; and
- (b) The nature of the decision; and
- (c) The position of the director and the nature of the responsibilities undertaken by him or her.

Reliance on Information and Advice

7.7 Subject to clause 7.8, a director of the Company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (b) An employee of the Company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
- (c) A professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; or
- (d) Any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.

7.8 Clause 7.7 applies to a director only if the director:

- (a) Acts in good faith; and
- (b) Makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) Has no knowledge that such reliance is unwarranted.

8 SELF INTEREST TRANSACTIONS

8.1 A director of the Company must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register, and, if the Company has more than one director, disclose to the Board:

- (a) If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
- (b) If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.

8.2 A general notice entered in the interests register or disclosed to the Board to effect that a director is a shareholder, director, officer or trustee of another named company or other

person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

8.3 *A transaction entered into by the Company in which a director of the Company is interested may be avoided by the Company at any time before the expiration of three months after the transaction is disclosed to the Shareholder (whether by means of the Company's annual report or otherwise).*

8.4 *A transaction cannot be avoided if the Company receives fair value under it.*

8.5 *Nothing in clauses 8.1 to 8.4 applies in relation to:*

- (a) Remuneration or any other benefit given to a director in accordance with clauses 11.1 and 11.2; or
- (b) An indemnity or any other benefit given to a director in accordance with clauses 12.1 to 12.6.

8.6 *If all entitled persons have agreed to or concur in the Company entering into a transaction in which a director is interested, nothing in clauses 8.1 to 8.4 will apply in relation to that transaction.*

8.7 *Subject to the Act, the Shareholder may, by ordinary resolution, ratify or approve any act or omission of a director or the Board.*

Actions by Interested Directors

8.8 *A director of the Company who is interested in a transaction entered into, or to be entered into, by the Company, may:*

- (a) Vote on a matter relating to the transaction; and
- (b) Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
- (c) Sign a document relating to the transaction on behalf of the Company; and
- (d) Do any other thing in his or her capacity as a director in relation to the transaction,

as if the director were not interested in the transaction.

Use of Company Information

8.9 *A director of the Company who has information in his or her capacity as a director or employee of the Company, being information that would not otherwise be available to him or her, must*

not disclose that information to any person, or make use of or act on the information, except:

- (a) For the purposes of the Company; or
- (b) As required by law; or
- (c) In accordance with clauses 8.10 or 8.11 of this Constitution; or
- (d) In complying with clause 8.1 of this Constitution.

Disclosure

8.10 A director of the Company may, unless prohibited by the Board, disclose information to a person whose interests the director represents or in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register.

Disclosure & Use of Information Generally

8.11 A director of the Company may disclose, make use of, or act on the information if:

- (a) Particulars of the disclosure, use, or the act in question are entered in the interests register; and
- (b) The director is first authorised to do so by the Board; and
- (c) The disclosure, use, or act in question will not, or will not be likely to, prejudice the Company.

9 APPOINTMENT AND REMOVAL OF DIRECTORS

Minimum Number

9.1 The number of directors will be not less than the minimum number specified in clause II of Part A of this Constitution.

Appointment

9.2 A person named as a director in clause III of Part A of this Constitution holds office as a director from the date of adoption of this Constitution until that person ceases to hold office as a director in accordance with the Act or this Constitution.

9.3 A person must not be appointed a director of the Company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or

holding office as a director of the Company.

9.4 The Board shall comprise:

- (a) A Chairperson, appointed in accordance with clause 10.1;
- (b) Two representatives of Participants appointed to be industry Directors in accordance with clauses 9.5 and 9.6;
- (c) Two persons appointed to be consumer Directors in accordance with clauses 9.7 and 9.8.

9.5 *An industry director must be a person with experience in and knowledge of one or more sectors of the financial services industry.*

9.6 *Prior to appointing an industry Director, the Directors must consult with, and have regard to the views of, such individuals and organisations as the Directors consider appropriate in order to give proper consideration to the person's expertise in and knowledge of one or more sectors of the industry, independence, capacity and willingness to consult with the industry.*

9.7 *A consumers' Director must be a person who has an interest in, and is knowledgeable about, consumers' interests relevant to the Scheme.*

9.8 *Prior to appointing a consumers' Director, the Directors must consult with, and have due regard to the views of, such individuals and organisations (including key consumer and community organisations) as the Directors think appropriate in order to give proper consideration to the person's expertise in consumer affairs, independence, capacity, and willingness to consult with consumer organisation, and knowledge of issues pertaining to the financial services industry.*

9.9 *A Director holds office for a maximum period of three years from the date of their appointment, and is eligible for re-appointment.*

Vacation of Office

9.10 *The office of director of the Company is vacated if:*

- (a) The term of a director's appointment expires; or
- (b) The person holding that office:
- (c) *Resigns by signing a written notice of resignation and delivering it to the address for service of the Company, such notice to be effective when it is received at that address or at a later time specified in the notice; or*
- (d) *Is removed from office in accordance with clause 9.12; or*

- (e) *Becomes disqualified from being a director pursuant to section 151 of the Act; or*
- (f) *Dies.*

Appointment and Removal of Directors by Board

9.11 *Where a director ceases to hold office by virtue of the vacation of office pursuant to clause 9.10 the continuing directors will, failing appointment of a new director to that director's position by the party entitled to appoint that director within a period of one month following such vacation, have power at any time thereafter to appoint any other qualified person to hold office as a director in such director's place until such time as the party entitled to appoint that director appoints a director, at which time the director appointed by the Board shall immediately cease to be a director.*

9.12 *The Board may remove a director if a director:*

- (a) *Becomes disqualified from being a director under the provisions of the Companies Act 1993;*
- (b) *Becomes of unsound mind or whose estate becomes liable to be dealt with under the law relating to protected persons or mental health;*
- (c) *Does any act which, in the opinion of the Directors, is likely to lead that Director or the Company into disrepute.*

Alternate Directors

9.13 *One alternate director shall be appointed for each director (other than the Chairperson) (alternate director) at the same time and in the same manner as each director is appointed.*

9.14 *An alternate director is entitled to notice of all meetings of the Board and, if the director is not present at such a meeting, is entitled to attend and vote in his or her stead.*

9.15 *An alternate director may exercise any powers that the director may exercise and in the exercise of any such power by the alternate director he or she is an officer of the Company and not deemed to be an agent of the director.*

9.16 *An alternate director is subject in all respects to the conditions attaching to the director of the Company generally except that he or she is not entitled to any remuneration otherwise than from the director for whom he or she has been appointed an alternate director.*

9.17 *The appointment of an alternate director may be terminated at any time by the appointer notwithstanding that the period of the appointment of the alternate director has not expired, and terminates in any event if the director for whom he or she has been appointed an alternate director vacates office as a director of the Company.*

- 9.18** *The termination of an appointment of an alternate director must be effected by a notice in writing signed by the appointer and served on the Company.*

10 DIRECTORS' MEETINGS

Chairperson

- 10.1** *The first Chairperson of the Company will be as named in clause III of Part A of this Constitution and thereafter the Board (including the current Chairperson) shall be entitled to appoint one person as Chairperson and as a director in place of the first or other subsequent Chairperson.*
- 10.2** *The Company shall use its best endeavours to ensure that no person is appointed as the Chairperson who has a material interest which may conflict with his or her duties as Chairperson.*
- 10.3** *When a Board meeting is held and the Chairperson is not present within ten minutes from the time appointed for the meeting, the directors present must elect one of their number to be chairperson of the meeting.*

Notice of Meeting

- 10.4** *A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the Board by giving notice in accordance with this clause 10.4 and clauses 10.5 and 10.6.*
- 10.5** *Not less than 2 working days' written notice of a meeting of the Board must be given either by hand, pre-paid post, telegram cable, telex, fax, or email to every director, every alternate director and to the Secretary. The notice must include the date, time and place of the meeting and the matters to be discussed.*
- 10.6** *An irregularity in the notice of a meeting or a failure to give notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors agree to the waiver.*

Methods of Holding Meetings

10.7A meeting of the Board may be held either:

- (a) By a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) By the contemporaneous linking together by telephone or other means of communication of the directors constituting a quorum, whether or not any one or more of the directors are absent from New Zealand and such meeting will be deemed to be properly held provided the following conditions are met:

- (i) *all the directors including alternate directors entitled to receive notice of a meeting of the directors will have received notice of the meeting and be entitled to be linked by telephone or such other means of communication for the purposes of such meeting;*
- (ii) *each of the directors taking part in the meeting by telephone or other means of communication must throughout the meeting be able to hear each of the other directors taking part;*
- (iii) *at the commencement of the meeting each director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other directors taking part;*
- (iv) *a director may not leave the meeting by disconnecting the telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting, and a director will be presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting to leave the meeting.*

Quorum

10.8 *A quorum for a meeting of the Board will be that number of directors specified in clause IV of Part A of this Constitution, provided there is present at any such meeting a person appointed pursuant to clause 9.4.2 and a person appointed pursuant to either clause 9.4.3 or clause 9.4.4.*

10.9 *No business may be transacted at a meeting of the Board if a quorum is not present.*

10.10 *If a quorum is not present within 15 minutes of the time appointed for the commencement of the meeting, the meeting will then stand adjourned for five working days. The quorum for an adjourned meeting of the Board will then be those present.*

Voting

10.11 *Every director has one vote. An alternate director will not vote at a meeting at which the person for whom he or she is an alternate director attends.*

10.12 *The Chairperson will have a casting vote.*

10.13 *Subject to clause 10.15, a resolution of the Board is passed if a majority of the votes cast on it are in favour of it.*

10.14 *A director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly abstains from voting or*

dissents from or votes against the resolution at the meeting.

10.15 *The Company must not engage in any of the following activities or determine any of the following matters without the passing of a unanimous resolution of the full Board:*

- (a) *Alteration, addition to, rescission or replacement of the Participation Agreement and/or the Terms of Reference (pursuant to the terms of the Participation Agreement);*
- (b) *Recommendation to the Shareholder to amend or replace this Constitution.*

Minutes

10.16 *The Board must ensure that minutes are kept of all proceedings at meetings of the Board, including names of directors in attendance.*

10.17 *The minutes must be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.*

Unanimous Resolution

10.18 *A resolution in writing, signed or assented to by letter, telegram, cable, telex, email, facsimile or other written form by all directors including alternate directors (when the person for whom he or she is appointed is unable to act), then entitled to receive notice of a Board Meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.*

10.19 *A resolution pursuant to clause 10.18 may consist of several documents (including facsimile, email or other similar means of communication) in like form each signed or assented to by one or more directors (or alternate directors, as the case may be).*

10.20 *A copy of any such resolution must be entered in the minute book of Board proceedings.*

Acts of Directors

10.21 *All acts done at a Board meeting or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director, or to act as a director, or that a person so appointed was not qualified, is valid as if a person had been duly appointed and was qualified to be a director.*

10.22 *A director may not hold any other office of profit under the Company nor, either personally or by his or her firm, act in a professional capacity for the Company.*

Other Proceedings

10.23 *Except as provided in this Constitution, the Board may regulate its own procedure.*

11 REMUNERATION AND OTHER BENEFITS

11.1 *The Board may authorise the payment of remuneration or the provision of other benefits by the Company to a director for services as a director or in any other capacity, or the entering into of a contract to such effect, if the Board is satisfied that to do so is fair to the Company.*

11.2 *If a payment or benefit is authorised under clause 11.1:*

- (a) The Board must ensure that particulars of that action are forthwith entered in the interests register; and
- (b) Directors who vote in favour of that action must sign a certificate stating that, in their opinion, it is fair to the Company, and the grounds for that opinion.

11.3 *The directors (without the prior consent of the Shareholder) will be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendances at Board meetings and when in any other manner whatsoever and wheresoever engaged on the business or affairs of the Company.*

12 INDEMNITY AND INSURANCE

12.1 *Except as provided in clauses 12.2 to 12.6, the Company must not indemnify, or directly or indirectly effect insurance for, a director or employee of the Company or a related company in respect of:*

- (a) Liability for any act or omission in his or her capacity as a director or employee; or
- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.

12.2 *The Company will indemnify a director or employee of the Company or a related company for any costs incurred by him or her in any proceeding:*

- (a) That relates to liability for any act or omission in his or her capacity as a director or employee; and
- (b) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

12.3 *The Company will indemnify a director or employee of the Company or a related company in respect of:*

- (a) Liability to any person other than the Company or a related company for any act or omission in his or her capacity as a director or employee; or

- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability;

not being criminal liability, or liability in respect of a breach, in the case of a director, of the duty specified in clause 7.1 of this Constitution or, in the case of an employee, of any fiduciary duty owed to the Company or related company.

12.4 *The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company in respect of:*

- (a) Liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or
- (c) Costs incurred by that director or employee in defending any criminal proceedings that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee and in which he or she is acquitted.

12.5 *The directors who vote in favour of authorising the effecting of insurance under clause 12.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.*

12.6 *The Board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the Company or a related company are forthwith entered in the interests register.*

12.7 *For the purposes of this clause 12, the definitions in section 162(9) of the Act apply.*

13 METHOD OF CONTRACTING

13.1 *A contract or other enforceable obligation may be entered into by the Company as follows:*

- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
 - (i) *two or more directors of the Company; or*
 - (ii) *if there is only one director, by that director whose signature must be witnessed; or*
 - (iii) *a director, or other person or persons authorised to do so by the Board whose signature or signatures must be witnessed; or*
 - (iv) *one or more attorneys appointed by the Company in accordance with section 181 of the Act;*
- (b) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority;
- (c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

14 AUDITOR

14.1 *The Company must, at each Annual Meeting, appoint an auditor to:*

- (a) Hold office from the conclusion of the meeting until the conclusion of the next Annual Meeting; and
- (b) Audit the financial statements of the Company for the accounting period next after the meeting.

14.2 *Notwithstanding clause 14.1, the Company need not appoint an auditor if, at or before the meeting, the Shareholder unanimously resolves that no auditor be appointed. Such a resolution will cease to have effect at the commencement of the next Annual Meeting.*

14.3 *The Board may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.*

15 ALTERATION OF CONSTITUTION

15.1 *Subject to the Act, and the FSP(RDR) Act, this Constitution may be altered or replaced at any time by Special Resolution. A Special Resolution to alter or replace the Constitution shall only be passed following a recommendation by the Board to the Shareholder to pass such Special Resolution, pursuant to clause 10.15 (b).*

15.2 An application to change the name of the Company specified in clause I of Part A of this

Constitution is not an amendment of this Constitution for the purposes of this

16 ACCOUNTS

16.1 *The Board must subject to section 10 of the Financial Reporting Act 1993, ensure that, within five months after the balance date of the Company, financial statements that comply with the Financial Reporting Act 1993 are:*

- (a) Completed in relation to the Company and that balance date; and
- (b) Dated and signed on behalf of the directors by two directors of the Company, or, if the Company has only one director, by that director.

17 ANNUAL REPORT

17.1 *The Board must, within three months after the balance date of the Company, prepare an annual report on the affairs of the Company during the accounting period ending on that date. A copy of that report must be sent to the Minister of Consumer Affairs.*

17.2 *The Board must cause a copy of the annual report to be sent to the Shareholder (unless the Shareholder has elected not to receive the annual report under section 212 of the Act) and to each Participant, not less than ten working days before the date fixed for holding the Annual Meeting.*

17.3 *Every annual report for the Company must be in writing and be dated and, subject to section 211(2) of the Act, must contain the reports, financial statements and information required by section 211(1) of the Act.*

18 MANNER OF SERVICE ON SHAREHOLDER AND CREDITORS

18.1 *A notice, statement, report, accounts, or other document to be sent to the Shareholder or a creditor who is a natural person may be:*

- (a) Delivered to that person; or
- (b) Posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or
- (c) Sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.

18.2 *A notice, statement, report, accounts, or other document to be sent to a creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 388 or section 390, as the case may be, of the Act.*

18.3 *A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or an overseas company, may be:*

- (a) Delivered to a person who is a principal officer of the body corporate; or
- (b) Delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
- (c) Delivered in such manner as the Court directs; or
- (d) Delivered in accordance with an agreement made with the body corporate; or
- (e) Posted to the address of the principal office of the body corporate or delivered to a box at a document exchange which the body corporate is using at the time; or
- (f) Sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate.

19 REMOVAL FROM THE REGISTER

19.1 *The Shareholder, or the Board, or any person or persons authorised by the Board, may, subject to section 318 of the Act, request the removal of the Company from the Register on the ground that:*

- (a) The Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
- (b) The Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the company into liquidation

20 REGISTERED OFFICE AND ADDRESS FOR SERVICE

20.1 *Subject to the Act, the Board may change the registered office of the Company at any time.*

20.2 Subject to the Act, the Board may change the address for service of the Company at any time

21 SHARE REGISTER

21.1 *The Board may divide the share register into two or more registers, which may be kept in different places.*

22 SECRETARY

Appointment of Secretary

- 22.1** *The Company shall appoint an employee of the Company or other person to act as Secretary to the Company on such terms, at such remuneration and upon such conditions as it thinks fit.*

Suspension and Removal of Secretary

- 22.2** *The Company shall have the power to suspend or remove the Secretary.*

Powers and Duties of Secretary

- 22.3** *The Company may vest in the Secretary such powers, duties and authorities as it may from time to time determine and the Secretary must accept all such powers and authorities subject at all time to the control of the Company.*

Secretary to Attend Meetings

- 22.4** *The Secretary is entitled to attend all annual and other meetings of the Board and the Shareholder and may be heard on any matter.*

23 PAYMENTS TO PARTICIPANTS

- 23.1** No Participant of the Company or any person associated with a Participant shall participate in or materially influence any decision made by the Company in respect of the payment to or on behalf of that Participant or associated person of any income, benefit or advantage whatsoever. Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value). The provisions and effect of this clause shall not be removed from this document, and shall be included and implied into any document replacing this document.

24 INLAND REVENUE APPROVAL

- 24.1** No addition or alteration of the aims/objects, payments to Participants clause or the winding-up clause shall be approved without the approval of the Inland Revenue. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

Certified as the Constitution of **FINANCIAL SERVICES COMPLAINTS LIMITED**

Susan Jane Taylor, Company Secretary

For and on behalf of the Company

Date: 26 September 2011

TERMS OF REFERENCE
OF
THE FINANCIAL SERVICES COMPLAINTS LIMITED SCHEME
OPERATED BY
FINANCIAL SERVICES COMPLAINTS LIMITED (FSCL)

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PRELIMINARY MATTERS

1. Introduction

1.1 Purpose of the Scheme

The FSCL Scheme is an independent external dispute resolution scheme to resolve complaints between Complainants and Participants. The Scheme is free of charge for Complainants. The Scheme's costs are met by the Participants.

1.2 FSCL's main objectives are to:

- provide Complainants free of charge with an accessible alternative to legal proceedings for the resolution of their complaints against FSCL's Participants
- act as an approved external financial dispute resolution scheme for the financial services industry, and
- actively facilitate the resolution of complaints about financial services.

1.3 In dealing with complaints, FSCL:

- must do what in its opinion is appropriate with a view to resolving complaints in a

cooperative, efficient, timely and fair manner

- shall proceed with minimum formality and technicality
- shall be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations, and
- must comply with the principles of accessibility, independence, fairness, accountability, effectiveness and efficiency.

1.4 Scope of the Terms of Reference

These Terms of Reference set out:

- who is eligible to lodge a complaint
- the types of complaints that FSCL can consider
- how FSCL resolves complaints
- the types of remedies that FSCL can provide, and
- other related matters.

These Terms of Reference are binding upon Participants.

1.5 Amendments to the Terms of Reference

The Board may amend these terms of reference:

- in accordance with the Constitution
- following consultation with the Participants and key consumer organisations, and

- with the approval of the Minister under Section 66 of the Act.

2. FSCL structure

2.1 Appointment of Chief Executive Officer

The Board appoints the Chief Executive Officer. In making appointments, the Board will consider candidates' objectivity, qualifications, experience and personal qualities.

2.2 Chief Executive Officer's powers and duties

The Chief Executive Officer has the power to exercise all powers and discretions conferred on FSCL by these Terms of Reference and to carry out all responsibilities attributed to FSCL by these Terms of Reference. The Chief Executive Officer's powers and duties include:

- making jurisdictional decisions
- resolving complaints by making recommendations and determinations
- chairing and participating in FSCL Panel processes
- delegating any of those powers and discretions (other than the power to make final decisions on jurisdiction, recommendations and determinations) to any employee or contractor engaged by FSCL.

2.3 Appointment of Panel Members

FSCL's Board of Directors appoints the Panel Members. In making appointments, the Board will:

- consider candidates' qualifications, experience and personal qualities

- where appointing consumer representatives as Panel Members, follow a merit selection process that includes input by relevant consumer groups. The consumer representative must be well-informed, impartial and objective, and
- where appointing industry representatives as Panel Members, follow a merit selection process that includes input by relevant industry groups. The industry representative must be well-informed, impartial and objective.

2.4 FSCL Panels

- (a) A FSCL Panel will be comprised of the Chief Executive Officer and two Panel Members, one of whom is a consumer representative and one of whom is a financial services industry representative.
- (b) A FSCL Panel has the power to resolve complaints by making determinations.
- (c) A Panel Member's duties are to participate from time to time, where requested by FSCL, in a FSCL Panel responsible for resolving a complaint by making a determination.

ROLE OF FSCL UNDER THESE TERMS OF REFERENCE

3. Principles FSCL must have regard to

3.1 In dealing with a complaint under these Terms of Reference, FSCL must deal with the complaint on its merits and do what, in its opinion, is fair in all the circumstances, having regard to each of the following:

- any applicable legal rule or judicial authority
- general principles of good industry practice and any applicable code of practice
- resolving complaints in a cooperative, efficient and timely way
- keeping Complainants and Participants informed of progress, and

- assisting Complainants and Participants to reach informed and voluntary agreements to resolve complaints.

4. Procedures offered by FSCL

4.1 A complaint may be lodged with FSCL by:

- delivery to the postal address
- facsimile
- email to info@fscl.org.nz
- completing the website's on-line complaint form
- telephone (0800 347 257).

4.2 FSCL offers two main types of procedure:

- a conciliation process in which a FSCL case manager uses his or her reasonable endeavours to resolve the complaint by communicating with the Complainant and the Participant involved, or by referring the complaint for a conciliation conference, and
- if conciliation fails, or is unlikely in the opinion of the Chief Executive Officer to resolve the complaint, a recommendation by the Chief Executive Officer or a determination by the Panel on the complaint.

4.3 These procedures are free of charge to the Complainant.

5. What conditions have to be met before using these procedures?

5.1 Before FSCL can consider (or continue to consider) a complaint made, it must be satisfied that:

(a) the complaint is made by or on behalf of:

- a person or group of persons to whom or for whom or for whose benefit the

financial service was provided; or a partnership comprising of persons – if the partnership carries on a business, the business must be a Small Business

- a person who has provided a guarantee or security for the financial service
 - a Small Business (whether a sole trader or constituted as a company, partnership, trust or otherwise)
 - a club or incorporated association – if the club or association carries on as a business, the business must be a Small Business, or
 - a body corporate of a strata title or company title building which is wholly occupied for residential or Small Business purposes, and
- (b) either, the complaint has been referred to the Participant's internal complaints handling service and has reached "deadlock", that is one of the following:
- the complaint was made to the Participant more than 20 working days previously and the Participant has not notified the Complainant in writing that it has good reason to extend the time for resolving the complaint and what that good reason is, and
 - in any case, the complaint has taken longer to resolve than 40 working days, or
 - if the Complainant does not accept a final proposal for resolution of the complaint made by a Participant at any time, or
- (c) the Participant concerned has informed the Complainant that deadlock has been reached and the Complainant makes the complaint to FSCL within two months of being informed:
- that deadlock has been reached
 - of the right to refer the complaint to FSCL (with the full contact details for

FSCL)

- that if the complaint is not referred to FSCL within two months, FSCL will not be able to consider the complaint, and
- (d) the act or omission giving rise to the complaint first occurred on or after 1 April 2010.

5.2 Participants must:

- have a robust internal complaint handling system that has been approved by the Board
- if required by their insurer, notify their insurer of complaints they receive within the time limit prescribed by their policy
- when advising Complainants of the outcome of complaints dealt with by the Participant's internal complaints handling system, also advise Complainants that they may complain to FSCL, if they are not satisfied with that outcome, and
- provide FSCL's contact details to Complainants both at the time that the Complainant first makes a complaint to the Participant, and when advising the Complainant of the outcome of the complaint dealt with by the Participant's internal complaints handling system.

Participants must not in any circumstances charge the Complainant any fee, or seek to be reimbursed for any fee payable by the Participant to FSCL, in connection with a complaint made to FSCL.

6. Assistance in making a complaint to FSCL

6.1 To provide fair and effective resolution of complaints, and to facilitate the clear identification of the matters in dispute, FSCL may assist Complainants to draft and lodge complaints. This includes assistance:

- to clarify the nature of the complaint including the issues raised and the matters

which might be relevant to those issues, and

- to reduce the complaint to writing,

but does not extend to advocating for the Complainant. A person wishing to make a complaint can contact FSCL for assistance in making a complaint in writing.

JURISDICTION OF FSCL

7. Types of complaints that can be considered by FSCL

7.1 Subject to these Terms of Reference, FSCL has the power to conciliate and determine complaints about any act or omission by a Participant, in relation to a financial service including:

- breaches of contract by the Participant
- breaches of statutory obligations
- breaches of industry codes and/or non-compliance with relevant industry practice by the Participant
- complaints relating to repossessions of motor vehicles or other goods
- any other matters provided for by FSCL.

7.2 Notwithstanding any other paragraph of these Terms of Reference, FSCL may consider a complaint where all parties to the complaint and FSCL agree. If so, the procedures set out in Section D will apply to the resolution of that complaint.

7.3 FSCL may determine a complaint where:

- the act or omission giving rise to the complaint first occurred on or after 1 April 2010, and

- the amount which the Complainant has claimed or could claim in respect of the subject matter of the complaint does not exceed the Financial Limit.

7.4 The Financial Limit does not apply to any amounts in relation to:

- interest that may be claimed or awarded, and
- compensation for inconvenience that may be claimed or awarded under paragraph 18.2.

8. Exclusions from FSCL's jurisdiction

8.1 FSCL cannot consider a complaint:

- (a) against an entity which is not a FSCL Participant at the time the complaint is made;
- (b) about the level of a standard industry fee, premium or charge, or interest rate, except a complaint concerning non-disclosure or misrepresentation or incorrect application of the standard industry fee, premium or charge, or interest rate;
- (c) about the investment performance of a product, except a complaint concerning non-disclosure or misrepresentation, or misleading conduct;
- (d) relating to the management of a fund or scheme as a whole;
- (e) relating to a Participant's commercial judgment in decisions about lending or security or insurance, but this does not prevent FSCL from considering complaints about administration in lending or security or insurance matters;
- (f) about underwriting or actuarial factors leading to an offer of a life insurance contract on non-standard terms;

- (g) the subject matter of which has already been dealt with in a previous complaint to FSCL by the same Complainant against the same Participant, and there are insufficient additional events and facts raised in the new complaint to warrant FSCL's consideration of the new complaint;
- (h) the subject matter of which has already been dealt with by a court, tribunal or arbitrator, or any other independent or statutory complaints or conciliation body, or any investigation by a statutory Ombudsman;
- (i) where more than six years have passed from the date the Complainant first became aware or should reasonably have become aware of the act or omission giving rise to the complaint;
- (j) where the Complainant, and any other person to whom the Participant owes a duty of confidence, has not waived the duty of confidence owed to the Complainant and any other person in respect of any information which FSCL may request a Participant to produce for the purpose of its consideration of a complaint;
- (k) where the value of the Complainant's claim exceeds \$200,000.

8.2 Discretion to exclude complaints

FSCL may refuse to consider, or continue to consider, a complaint, if FSCL considers this course of action appropriate, for example, because:

- (a) there is a more appropriate place to deal with the complaint, such as a court, tribunal, or another dispute resolution scheme or the Privacy Commissioner;
- (b) the complaint relates to a Participant's practice or policy and does not involve any allegation of:
 - maladministration
 - inappropriate application of the practice or policy, or

- breach of the law or any relevant code of practice;
- (c) where it appears to the Chief Executive Officer, on the basis of the facts presented by the Complainant, the relevant Participant has made a reasonable settlement offer in settlement of the complaint;
- (d) the complaint being made is frivolous or vexatious or not being pursued in a reasonable manner;
- (e) after lodging the complaint with FSCL, the Complainant commences legal proceedings against the Participant in respect of the subject matter of the complaint;
- (f) the Complainant is not a retail client as defined by the Act.

9 Decisions on jurisdiction

- 9.1 The Chief Executive Officer shall decide whether a complaint falls within the Terms of Reference. In reaching this decision he or she shall request and consider representations from both the Complainant and the Participant concerned.
- 9.2 The Chief Executive Officer will advise the Complainant in writing if a complaint is excluded, and give his or her reasons for excluding the complaint.
- 9.3 If, within 10 days of receipt of this advice, the Complainant objects to a decision made by the Chief Executive Officer in accordance with paragraph 9.1, the Chief Executive Officer will review the matter if the Chief Executive Officer is satisfied that the Complainant's objection may have substance. If so:
- the Chief Executive Officer will inform the other parties involved in the complaint

- all parties will be given an opportunity to provide submissions, if appropriate
- all parties will be provided with copies of each other's submissions, and
- the Chief Executive Officer will review the matter and provide the parties with the Chief Executive Officer's final decision referred to as a jurisdictional decision that will set out the reasons for the decision.

INFORMATION RELATING TO COMPLAINTS

10. Provision of information by Participants

10.1 The Chief Executive Officer may require any Participant named in a complaint to provide any information that, in the view of the Chief Executive Officer, relates to that complaint.

10.2 Participants must, as soon as is reasonably required, disclose the information requested by the Chief Executive Officer. However, a Participant is exempt from disclosing such information if the Participant certifies to the Chief Executive Officer:

- that the disclosure of the information would place the Participant in breach of its duty of confidentiality to a third party who has not consented to disclosure, despite the Participant using its best endeavours to obtain such consent, or
- the Participant does not have the information requested, or
- to provide the information would breach a Court order or prejudice a current investigation by the police or another law enforcement agency.

11. Disclosure of information to parties

11.1 If any party to a complaint:

- (a) supplies information to the Chief Executive Officer and requests that he or she treat it as confidential, the Chief Executive Officer must not disclose that information to

any other person, except with the consent of the party supplying the information. However, before supplying such information to the Chief Executive Officer, the Participant shall first notify the Chief Executive Officer of the request for confidentiality and the reasons for such confidentiality;

- (b) requests access to any information on the Chief Executive Officer's file, the Chief Executive Officer must, subject to these terms of reference, legal requirements and any procedural standard developed by the Chief Executive Officer, make the information available.

12. Responding to general enquiries

- 12.1 FSCL may respond to general enquiries, provide general information and give advice on the procedure for referring a complaint to FSCL. It is not FSCL's function to provide information about individual Participants or their financial services or products.

COMPLAINT RESOLUTION PROCESS

13. When a complaint is received

- 13.1 FSCL is not bound by any legal rule of evidence. FSCL's decisions do not create precedents.

- 13.2 After receiving a complaint, FSCL must:

- use its reasonable endeavours to resolve the complaint in a timely manner
- comply with the requirements of natural justice and procedural fairness, and
- regularly inform the parties of progress towards resolving the complaint.

- 13.3 In resolving the complaint, FSCL may:

- assist the Complainant with drafting and lodging a complaint, and

- investigate the complaint in the manner set out in these Terms of Reference and consistent with the rules of natural justice.

13.4 At any time that FSCL is considering a complaint it may seek to promote a settlement or withdrawal of the complaint by one or more of the following methods:

- negotiation
- conciliation
- deciding the complaint in accordance with the process set out in paragraph 14.

13.5 When deciding a complaint, FSCL may consult with industry and consumer advisers as FSCL thinks appropriate.

14. Recommendations and Panel Referrals

14.1 If the Complaint is not resolved by agreement and/or conciliation, the Chief Executive Officer, at the request of the Complainant or the Participant concerned, may make a recommendation for settlement or withdrawal of the complaint. Before doing so, he or she must:

- (a) ensure that the parties to the complaint are provided with access to the documentation, information and material upon which FSCL proposes to rely in its recommendation or determination;
- (b) first give the Complainant and the Participant 20 working days notice of his or her intention to make such recommendation;
- (c) during the period of notice (or such longer period as the Chief Executive Officer may agree) allow the Complainant or the Participant to make further representations to the Chief Executive Officer in respect of the complaint; and
- (d) if no agreement has been reached at the end of the period of notice make a

recommendation.

14.2 A recommendation must:

- state the name of the Participant concerned in relation to the complaint
- be in writing, and
- include a summary of the reasons for making the recommendation.

14.3 If, in making a recommendation:

(a) The Chief Executive Officer is minded to :

- propose that a complaint be settled or withdrawn on terms which appear to him or her to be acceptable to both the Complainant and the Participant concerned, or
- make a recommendation for the settlement or withdrawal of the complaint, and

(b) that settlement or withdrawal would involve the provision by the Participant of any service or require an action to be taken by the provision of valuable consideration (whether in the form of a money payment or otherwise),

the recommendation must, unless the Participant has agreed otherwise, state that it is open for acceptance by the Complainant only if he or she accepts it in full and final settlement of the subject matter of the complaint.

15. Panel Referrals and Procedures

15.1 With the Chief Executive Officer's agreement, a Panel may determine complaints involving a claim of greater than \$50,000 or such other amount as nominated by the Board from time to time, and any complaint referred by the Chief Executive Officer to the Panel.

15.2 The Chief Executive Officer, when dealing with a complaint, decides what procedure to follow, subject to the following:

- the proceedings are to be as informal as possible, with a minimum of legal formality and technicality
- the Panel is not bound by the rules or practice as to evidence, but may inform itself in any manner it thinks fits, and
- the Panel must apply the rules of procedural fairness.

16. Hearings

16.1 A Panel may hold a hearing for the purposes of taking oral evidence or receiving oral submissions if the Chief Executive Officer is satisfied it is appropriate and necessary to do so. The conduct of any such hearing will be at the discretion of the Chief Executive Officer having regard to the provisions of paragraph 3.1.

16.2 In the event of such a hearing all parties are expected to attend. The Complainant may appoint a person to assist him or her. Neither party shall be allowed legal representation except at the discretion of the Chief Executive Officer.

16.3 If external legal representation for a Panel hearing is first requested by a Participant and allowed by the Chief Executive Officer, the Participant must pay the reasonable costs of legal representation for the Complainant. In the event of any dispute as to payment of costs, the amount of those costs will be determined by the Chief Executive Officer.

17. Decisions

17.1 A Panel will try to reach a decision as soon as practicable after the complaint is referred to the Panel for determination.

17.2 Each person on a Panel has one vote. A decision is made by a simple majority.

17.3 A Panel must issue reasons for its decisions in writing.

17.4 Panel decisions do not create binding precedents.

18. Powers of the Chief Executive Officer and Panels to order compensation or other forms of redress

18.1 The Chief Executive Officer and Panel may award compensation for any financial or economic loss which is a direct result of any act or omission in respect of which a complaint is upheld, and direct a refund of fees or commission, up to the amount of \$200,000. However, where the parties have agreed under paragraph 7.2 that FSCL can deal with a complaint, there shall be no maximum limit on the compensation the Chief Executive Officer and Panel can award under this provision.

18.2 The Chief Executive Officer and Panel may also award compensation not exceeding \$500 to compensate the Complainant for inconvenience suffered by him or her as a result of the acts or omissions of the Participant concerned.

18.3 The Chief Executive Officer and Panel may direct the Participant to carry out or refrain from specific actions to the extent that this is necessary to provide redress for any matter in respect of which a complaint has been upheld, including

- the forgiveness or variation of a debt
- the release of security for a debt
- the repayment, waiver or variation of a fee or other amount owing to the Participant or its representative or agent including the variation in the applicable interest rate on a loan
- the reinstatement or rectification of a the contract
- variation of the terms of the credit contract in cases of financial hardship, and

- the meeting of a claim under an insurance policy by, for example repairing, reinstating or replacing items of property.

18.4 The Chief Executive Officer and Panel cannot award:

- monetary compensation in the nature of punitive damages, or
- compensation for financial or economic loss or damage that is not a direct result of any act or omission in respect of which a complaint is upheld.

18.5 The Chief Executive Officer and Panel may decide that the Participant pay interest on a payment to be made by the Participant to the Complainant. The Chief Executive Officer and Panel will calculate interest from the date of the cause of action or matter giving rise to the claim. The Chief Executive Officer and Panel may have regard to any factors it considers relevant, including the extent to which either party's conduct contributed to delay in the resolution of the matter.

18.6 If the Panel holds a hearing at the request of the Participant, the Participant must meet the Complainant's reasonable costs of attendance, including reasonable costs for travel and accommodation.

19. Complainant's acceptance of recommendations or determinations

19.1 A Complainant must elect whether or not to accept a recommendation of the Chief Executive Officer or determination of the Panel by informing FSCL in writing within one calendar month of the date the decision is sent to the Complainant.

19.2 Where a Complainant elects to accept the recommendation of the Chief Executive Officer or determination of the Panel, the Complainant is bound by all aspects of that decision.

19.3 If a Complainant does not inform FSCL within the specified time, the Complainant shall be taken to have elected not to accept the decision.

20. Participant bound to abide by recommendations and determinations

20.1 Where the Complainant accepts the Chief Executive Officer's recommendation or Panel's determination, the Participant must implement the decision as soon as practicable after being informed the Complainant has accepted it.

21. Termination

21.1 Where a Participant or former Participant fails to meet its obligations under these Terms of Reference and/or fails to comply with the Chief Executive Officer's recommendation or Panel's determination, FSCL may take any action it considers appropriate including:

- terminating the Participant's membership; and/or
- referring the matter to the Financial Markets Authority.

22. No liability

22.1 FSCL, the Chief Executive Officer, Panel members, Board members and/or FSCL employees are not liable for any loss, damage or liability that arises from anything done or omitted to be done in the course of his or her duties, unless the person has acted in bad faith.

22.2 No FSCL decision is able to be reviewed or appealed in any form, to any other person, court, tribunal, statutory complaints authority, or other approved dispute resolution scheme or body, except as contemplated by the Act.

F. INDUSTRY PROBLEMS

23. Reporting systemic issues

23.1 The Board must ensure that FSCL has procedures in place for dealing with systemic issues.

23.2 A systemic issue is an issue that will have an effect on other persons beyond the parties to the complaint. FSCL must identify systemic issues and refer these to the relevant Participant for remedial action. In each case, FSCL must obtain a report from the Participant as to the remedial action undertaken and continue to monitor the matter until a resolution has been achieved that is acceptable to FSCL.

23.3 FSCL must report systemic issues to the relevant licensing authority.

G. COLLECTION AND SHARING OF INFORMATION BY FSCL

24. Data collection

24.1 FSCL must collect and record comprehensive information relating to its complaints resolution, for example:

- the number of complaints and enquiries
- demographics of the Complainants (where practicable)
- details of complaints which were not considered by FSCL and why
- the outcome of complaints that were resolved by FSCL
- the current caseload including the age and status of open cases
- the time taken to resolve complaints
- a profile of complaints that identifies:
 - the cause of the complaint
 - any systemic issues or trends.

25. Referrals by FSCL to other dispute resolution schemes

25.1 FSCL will ensure that FSCL staff has information, mechanisms and procedures in place:

- for referring relevant complaints to other more appropriate forums, including other approved external dispute resolution schemes, and
- to share prescribed information with other approved schemes, the Reserve Scheme and the Registrar of Financial Service Providers.

H. LEGAL PROCEEDINGS

26 Debt recovery or other proceedings

26.1 Subject to paragraph 26.2, where a Complainant lodges a complaint with FSCL, the Participant must not:

- instigate legal proceedings against the Complainant relating to any aspect of the subject matter of the complaint
- pursue legal proceedings instituted prior to the lodging of the complaint with FSCL, save to the minimum extent necessary to preserve the Participant's legal rights and, in particular, must not seek judgment in the proceedings, and
- without the Chief Executive Officer's consent, take any action to recover a debt the subject of the complaint, to protect any assets securing that debt, or to assign any right to recover that debt while FSCL is dealing with the complaint.

26.2 Notwithstanding subparagraph 26.1, with FSCL's agreement and on such terms as FSCL may require, the Participant may:

- issue proceedings where the relevant limitation period for such proceedings will

shortly expire – but those proceedings may not be pursued beyond the minimum necessary to preserve the Participant’s legal rights, or

- exercise any powers it might have to freeze or otherwise preserve assets the subject of the complaint.

26.3 If the complaint is subsequently decided by FSCL and becomes binding upon the Participant, the Participant will abandon any aspect of proceedings against the Complainant that are inconsistent with that decision.

26.4 Settled proceedings

Where a complaint had been lodged with FSCL and is subsequently resolved by agreement between the parties, the Participant will not instigate or continue legal proceedings to the extent that those proceedings are inconsistent with that agreement.

I. ADMINISTRATIVE RESPONSIBILITIES

27. Responsibilities and requirements

27.1 The Chief Executive Officer is responsible for:

- (a) FSCL’s and the Scheme’s day to day management, administration and conduct. He or she shall have power to incur expenditure on behalf of the Board in accordance with the current financial budget approved by the Board;
- (b) appointing and dismissing employees, consultants, independent contractors and agents (other than Panel members), and determining their terms of employment or engagements;
- (c) attending, in a non-voting capacity, Board meetings;
- (d) promoting FSCL and its complaints handling procedures;

- (e) reviewing these Terms of Reference and making recommendations to the Board on any amendments he or she considers are required;
- (f) preparing an annual report containing, in relation to the preceding FSCL financial year, a general review of his or her activities and FSCL's finances during that year and, at least 21 days before FSCL's annual general meeting, sending that report to each Board member;
- (g) at his or her discretion, making:
 - ad hoc confidential reports to the Board on matters coming to his or her attention concerning Participants' general compliance with FSCL, and
 - general observations about the purpose and operation of FSCL in any general forum.

27.2 The Chief Executive Officer must not exercise any power which the Constitution of FSCL expressly gives to the Chairperson, the Board or any other person.

28. Definitions

In these Terms of Reference, the following expressions have the following meanings:

<u>Act</u>	the Financial Service Providers (Registration and Disputes Resolution) Act 2008
<u>Board</u>	is the FSCL Board of Directors as defined in the <u>Constitution</u>
<u>Chief Executive Officer</u>	means a person appointed to that position by the Board under the Constitution
<u>Complainant</u>	means a person who has a Complaint that has been lodged with FSCL and who, under paragraph 4 is eligible to use the Scheme.

<u><i>Complaint</i></u>	means an expression of dissatisfaction made to a Participant related to its products or services where a response or a resolution is explicitly or implicitly expected
<u><i>Constitution</i></u>	means the Constitution of Financial Services Complaints Ltd
<u><i>Consumer representative</i></u>	means a person appointed to that position by the Board under paragraph 2.3
<u><i>Determination</i></u>	means an assessment by a Panel about a complaint in accordance with paragraph 15 of these Terms of Reference
<u><i>Financial limit</i></u>	means \$200,000 as at 1 April 2010
<u><i>Financial Service</i></u>	means any financial service provided by a financial services provider registered under the Act
<u><i>Financial Services Industry</i></u>	means the provision of all forms of services, advice or products in connection with insurances, superannuation, retirement savings accounts, funds management, financial advice, investment advice and sales of financial or investment products, investment, securities and derivatives, the provision of loans and mortgages and any other areas that the Board determines should fall within these Terms of Reference.
<u><i>Financial services provider</i></u>	means a provider of a Financial Service that is a Participant. A reference to a Financial Services Provider includes any employee, agent or contractor of the Financial Services Provider including any person who has actual, ostensible, apparent or usual authority to act on behalf of the Financial Services Provider or authority and to act by necessity in relation to a financial service.
<u><i>FSCL</i></u>	Financial Services Complaints Limited

<u>Industry problem</u>	means a systemic fault including a consistently recurring problem, fault or defect that may be confined to a particular product, a particular company or that may be relevant to the whole or part of the <u>Financial Services Industry</u> , which related to a <u>Participant's</u> <hr/> dealings with its clients.
<u>Industry representative</u>	means a person appointed to that position by the Board under paragraph 2.3
<u>Jurisdictional Decision</u>	means a decision under paragraph as to whether, under these terms of Reference, FSCL is able to consider a complaint or whether FSCL should exercise its discretion to exclude a complaint
<u>Minister</u>	means the Minister of Consumer Affairs
<u>Panel</u>	means a body whose composition is determined under paragraph 2.4
<u>Participant</u>	means any FSCL member in respect of which these Terms of Reference are applicable
<u>Recommendation</u>	means an assessment by the Chief Executive Officer about a complaint in accordance with paragraph of the Terms of Reference
<u>Scheme</u>	means the dispute resolution scheme operated by FSCL
<u>Service</u>	means the complaint resolution scheme described in these Terms of Reference
<u>Small Business</u>	means a business that, at the time of the act or omission by the

Participant that gave rise to the Complaint is a business with less than 19 employees

Terms of Reference

means these Terms of Reference as amended from time to time in accordance with the Constitution

APPENDIX C

FSCL Survey for consumers

Thinking about ***your complaint*** please answer the following questions.

1. How did you find out about FSCL?

- ☐ The financial service provider I made the complaint about told me
- ☐ It was in the documents the financial service provider gave me
- ☐ I looked FSCL up via an internet search such as Google
- ☐ A community organisation / law centre / family budget service told me
- ☐ I was referred to FSCL from:
 - ☐ Ministry of Consumer Affairs / Commerce Commission /Financial Markets Authority
 - ☐ Banking Ombudsman
 - ☐ Insurance Ombudsman
 - ☐ Financial Dispute Resolution Limited
- ☐ Other – please specify

2. What outcome did you want when you approached FSCL?

- ☐ Compensation (monetary)
- ☐ An apology (from the financial service provider)
- ☐ An explanation (of why the product/service did not meet your expectations)
- ☐ The financial service provider punished or disciplined
- ☐ Other – please specify

3. What was the outcome of your complaint?

- ☐ I received monetary compensation
- ☐ I received an apology
- ☐ I received an explanation
- ☐ I received a non-monetary benefit
- ☐ I did not receive any payment or other benefit
- ☐ Other – please specify

4. How was your complaint finalised?

- ☐ It was settled by mutual agreement
- ☐ I withdrew my complaint
- ☐ FSCL upheld my complaint
- ☐ FSCL did not uphold my complaint

5. How satisfied were you with the outcome of your complaint? Please use the comment box below if you would like to comment why.

- ☐ Very satisfied
- ☐ Satisfied
- ☐ I can live with the outcome
- ☐ Dissatisfied
- ☐ Very dissatisfied

Thinking about the **FSCL process and staff** please answer the following questions.

6. The FSCL complaint process was easy to use and understand.

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

7. The FSCL process is independent from the financial industry.

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

8. The FSCL process is fair and took account of both parties' position.

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

9. Once my complaint was formally lodged with FSCL (after I received the final response to my complaint from my financial service provider) the FSCL process provided an outcome in a timely manner.

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

10. The FSCL staff listened to my complaint and showed me courtesy and respect.

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

11. The FSCL staff described the FSCL process and helped me understand what to expect and how long the process would take

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

12. The FSCL staff kept me informed of the progress of my complaint and responded promptly to my questions

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

13. The FSCL staff discussed and explained the merits of my complaint

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

14. The FSCL staff *did not* put pressure on me to accept a particular settlement of resolution

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

15. Overall, how did you find the FSCL process and staff?

1	2	3	4	5	6
Very poor			Excellent		

16. Do you wish to add any comments?

Thank you for completing our survey.

FSCL Survey for Participants

Thinking about **the complaint** please answer the following questions.

1. What was the outcome of the complaint?

- ☐ I/we provided monetary compensation to the consumer
- ☐ I/we apologised to the consumer
- ☐ I/we provided an explanation to the consumer / FSCL
- ☐ I/we did not provide any payment or other benefit to the consumer
- ☐ Other – please specify

2. How was the complaint finalised?

- ☐ It was settled by mutual agreement
- ☐ The consumer withdrew their complaint
- ☐ FSCL upheld the complaint
- ☐ FSCL did not uphold the complaint

3. How satisfied were you with the outcome of the complaint investigation? Please use the comment box below if you would like to comment why.

- ☐ Very satisfied
- ☐ Satisfied
- ☐ I can live with the outcome
- ☐ Dissatisfied
- ☐ Very dissatisfied

Thinking about the **FSCL process and the FSCL staff** please answer the following questions.

4. The FSCL complaint process was easy to use and understand.

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

5. The FSCL process is independent from consumer or Governmental influence.

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

6. The FSCL process is fair and took into consideration both parties' position

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

7. The FSCL process provided an outcome in a timely manner

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

8. The FSCL staff listened to me/us and showed me/us courtesy and respect

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

9. The FSCL staff described the FSCL process and helped me/us understand what to expect and how long the process would take

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ Not applicable as I know the FSCL process

10. The FSCL staff kept me informed of the progress of the complaint and responded promptly to mine/our questions

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

11. The FSCL staff discussed and explained the merits of my position in relation to the complaint

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

12. The FSCL staff *did not* put pressure on me/us to accept a particular settlement or resolution

- ☐ Strongly agree
- ☐ Agree
- ☐ Disagree
- ☐ Strongly disagree

13. Overall, how did you find the FSCL process and staff?

1	2	3	4	5	6
Very poor				Excellent	

14. Do you wish to add any comments?

Thank you for completing our survey.