

FMA's supervision of Anti-Money Laundering and Countering Financing of Terrorism



Financial Markets Authority

Website: www.fma.govt.nz

Auckland Office

Level 5, Ernst & Young Building
2 Takutai Square, Britomart
PO Box 106 672
AUCKLAND 1143

Wellington Office

Level 2
1 Grey Street
PO Box 1179
WELLINGTON 6140

June 2013



Contents

- Introduction4**

- FMA’s supervision priorities for 20135**
 - Ensuring compliance.....5
 - Focus areas5
 - Continuing education6

- Regulatory approach to AML/CFT supervision7**
 - FMA’s compliance strategy7
 - Intelligence and risk-based monitoring approach.....7
 - Audit report8
 - Monitoring outcomes.....8
 - Co-operation with other agencies.....9



Introduction

This document outlines the Financial Markets Authority's (FMA's) priorities for monitoring reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act).

FMA monitors reporting entities that are managers of collective investment schemes, trustee companies, brokers, futures dealers, financial advisers and issuers of securities.

FMA expects all reporting entities will be compliant from 30 June 2013, when the AML/CFT Act comes into force. This document provides the opportunity for reporting entities to gain a better understanding of our approach and encourages reporting entities to ensure they are compliant, particularly in our priority areas outlined below.

It is important that all reporting entities adapt to their new regulatory obligations in as timely a manner as possible, so the objectives of the AML/CFT Act can be achieved. These are:

- to detect and deter money laundering and financing of terrorism
- to maintain and enhance New Zealand's international reputation by adopting recommendations issued by the Financial Action Task Force ("FATF")
- to contribute to public confidence in the financial system.



FMA's supervision priorities for 2013

Ensuring compliance

From 30 June 2013, FMA's role as a supervisor will be to monitor compliance with the AML/CFT Act, including assessment of the adequacy and effectiveness of reporting entities' systems and controls, to detect and deter money laundering and terrorist financing, and to take action where these fall below the expected standard.

It is not FMA's role to prosecute acts of money laundering or terrorist financing. If we become aware of potential money laundering and terrorist financing, FMA will make referrals to the proper authority, such as the New Zealand Police Financial Intelligence Unit. However, it is our role to enforce compliance with the AML/CFT Act with respect to FMA's reporting entities.

We expect a reporting entity and its staff to be clear about their obligations to comply with the AML/CFT Act, and for senior management and directors to make sure that they know what the entity is doing to comply.

As part of a reporting entity's compliance programme, FMA expects senior management and directors to:

- put in place appropriate monitoring activities such as independent compliance checks or internal audits
- receive information tracking key compliance controls
- deal with any breaches and associated remedial actions
- challenge management on compliance results where necessary.

FMA's monitoring activities may start by asking senior management *"How do you know your organisation is compliant and adopting appropriate behaviours?"*


Focus areas

Risk assessments

Each reporting entity is required to assess the risk of money laundering and terrorist financing it can reasonably expect to face in the course of its business. FMA will review risk assessments to see how entities have identified the risks of money laundering and terrorist financing within their business, what policies and procedures have been implemented to keep the risk assessment up to date, and how the risk assessment has been used to develop the reporting entity's AML/CFT compliance programme.

AML/CFT compliance programme

Compliance programmes should set out the internal policies, procedures and controls necessary to detect



money laundering and terrorist financing, as well as manage and mitigate the risk of it occurring. FMA will review the board and senior management oversight of compliance and also focus on:

- **Customer due diligence** – policies and procedures including both ‘on boarding’ procedures and on-going customer due diligence. Our focus will include the identification of customers who are at the highest level of risk, taking into account investments, country of residence, and for non-individuals, the type and complexity of the customer. We will review a selection of customer files to ensure the procedures are being followed in practice
- **Customer transaction monitoring** – how the reporting entity has implemented appropriate levels of customer transactional monitoring to identify suspicious transactions
- **AML/CFT compliance officer** – skills and experience of the AML/CFT compliance officer and how this person administers and maintains the compliance programme
- **Management information** – the reporting entity’s management and use of relevant information by directors to manage and mitigate money laundering and terrorist financing risk and overseeing of compliance
- **Compliance monitoring** – the scope and results of the reporting entity’s own compliance monitoring, together with the results of any formal review by the entity to comply with section 59 of the AML/CFT Act.

The AML/CFT supervisors have issued guidelines and a Code of Practice on identity verification, to assist reporting entities in meeting the necessary requirements. FMA encourages entities to utilise these resources.

Continuing education

We are committed to an open educative approach to ensure all reporting entities have clear and well understood responsibilities. FMA will publish our findings from our monitoring and may also issue further guidance as a result of this monitoring.

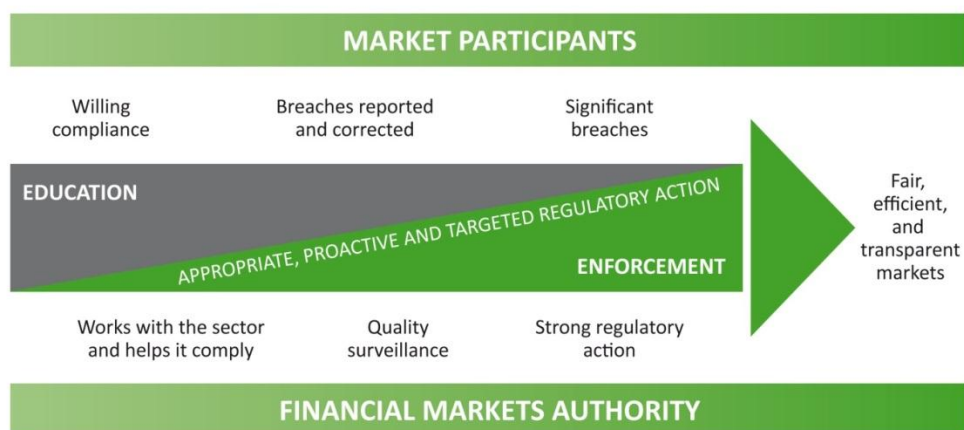
We encourage all reporting entities to use our findings to improve their reporting entity’s compliance as necessary.

Regulatory approach to AML/CFT supervision

FMA's compliance strategy

Our compliance strategy emphasises a 'top of the cliff' approach and focuses on ensuring reporting entities are aware of their obligations and have implemented systems and processes to ensure compliance with the AML/CFT Act. FMA is proactively fostering a culture in which reporting entities actively work to set appropriate standards and put in place a robust approach to managing and monitoring compliance, as well as willingly sharing information with us, and reporting breaches as necessary.

FMA's regulatory framework




Intelligence and risk-based monitoring approach

FMA's intelligence and risk-based approach to our monitoring and surveillance activities means that we prioritise resources to those areas with the greatest risks of money laundering and financing of terrorism and identify new and emerging risks.

In considering risk, we use market intelligence and research to identify potential problems, assess the likelihood that poor practice or non-compliance may be occurring, and consider the impact on New Zealand's reputation and the public's confidence in the domestic financial systems.

When selecting reporting entities for monitoring, FMA takes into consideration the economic environment, the industry sub-sector, the size and nature of the business, and the compliance history of a reporting entity. FMA published a risk assessment to help those it is responsible for supervising prepare to meet upcoming requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, in March 2011, this can be found at <https://www.fma.govt.nz/keep-updated/newsroom/releases-from-the-old-securities-commission/2011/commission-releases-risk-assessment-for-sector/>.



We will use information from the survey of reporting entities undertaken some time ago, and information received as part of our readiness assessment visit programme in 2012. FMA may also contact entities for further information prior to the filing of their first annual report.

As part of our risk-based approach, we will proactively monitor a range of reporting entities within our supervised sector. This allows us to identify any new risks and any compliance themes or areas of poor practice across the sector. It also helps FMA to identify a need for further guidance and ensure our expectations are practical.

FMA may undertake thematic reviews on particular areas of the compliance programme at any time.

We will continue to use a variety of monitoring approaches, from desk based reviews to full on-site inspections, involving both interviews with management, compliance and front-line staff, reviews of relevant documentation and testing controls. In most cases, FMA will contact an entity prior to conducting a monitoring visit so that the scope of the visit and appropriate dates can be agreed.

Audit report

All reporting entities are required to have their risk assessment and compliance programmes independently audited every two years, or when requested to do so by their supervisor. Reporting entities should consider the timing of their audit carefully. FMA expects that many entities, particularly those in sectors which we regard as higher or medium risk, will seek to obtain assurance about their compliance well in advance of the final date allowed by the AML/CFT Act.


Reporting entities should also take into account the availability of appropriately qualified independent auditors during this period. FMA will consider whether a firm has received an audit report, or will soon receive a report, when determining its priorities for monitoring. Those firms which have not undertaken an audit, or where the type of audit opinion provided less assurance, are likely to be a higher priority for FMA.

FMA will request copies of audit reports of entities in sectors which we regard as high or medium risk. We will set up a time for the first audit with entities in these sectors. FMA expects some audit reports to be available for the period 30 June 2013 to 31 December 2013, with subsequent audit reports to be prepared by the reporting entities two yearly or earlier, subject to FMA's request.

Monitoring outcomes

Responsibility for compliance with the AML/CFT Act rests with the reporting entity and its directors.

Where our monitoring or enquiries identify non-compliance, we will use a range of tools available to us, to deliver a timely, effective and proportionate response. We may undertake further inquiry or expect a reporting entity to adjust its compliance and will follow up to ensure that this is done. In some cases, notices, warnings or enforceable undertakings may be used. Further non-compliance could result in stronger action, such as civil or criminal prosecution.



Over the past three years, FMA has worked hard to raise awareness and provide guidance. However, even with our open and educative approach, there will always be some reporting entities that do not comply. We will work to identify this behaviour as early on as possible and take the appropriate action to address this.

Co-operation with other agencies

FMA will engage regularly with other AML/CFT supervisors (the Reserve Bank of New Zealand and Department of Internal Affairs) to discuss issues arising and ensure consistency across the supervisors. In addition, the supervisors will engage with the Police Financial Intelligence Unit and other government agencies through the National Co-ordination Committee. The committee includes the Ministry of Justice, Customs, Inland Revenue and Ministry of Foreign Affairs and Trade.

FMA may also receive information from the Police Financial Intelligence Unit on compliance issues revealed by suspicious transaction reporting, and may undertake follow-up action with those reporting entities.

The money laundering and terrorist financing environment is not static. Criminals adapt by adopting new methods of money laundering and terrorist financing, for example by utilising new technologies. To assist FMA in targeting our monitoring approach, we will take into account all relevant information provided by international counterparts, including typology reports issued by AUSTRAC and the Asia Pacific Group (APG) and statements from the Financial Action Task Force (FATF).

In future, New Zealand will also be subject to mutual evaluations undertaken by FATF and the APG. These evaluations will consider the legal framework in place to detect and deter money laundering and terrorist financing, and the effectiveness of these regimes, including how we monitor.

