Pūrongo mai i te Heamana me te Tumu Whakarae Matua

Message from the Chair and Chief Executive

May 2021 marked the FMA's 10th anniversary. Looking back to our first year, it is natural to draw parallels to today.

Then, like now, we were awaiting and preparing for new legislation that would expand our remit. We had an eye on KiwiSaver fees, and were monitoring compliance with new regulatory obligations for those providing financial advice.

At first glance it may seem like groundhog day. But the story of the FMA over the past decade is one of progress and growth, generated by the good work we have done, the trust we have built with industry, and the subsequent improvements we have seen in the conduct of much of our regulated population. Furthermore, investor confidence in New Zealand's financial markets has increased more or less steadily over the decade – to 72% in 2021, up from 58% in 2013 when we began tracking this in our annual Investor Confidence survey.

We are currently preparing for new responsibilities that will include licensing and supervising banks, insurers and non-bank deposit takers for conduct, reviewing the climate-related financial disclosures that will become mandatory for some entities, and monitoring compliance with new requirements for insurers regarding policies and protections for customers.

While previous regulatory reform has primarily been about filling gaps and replacing outdated legislation, the intention behind these changes reflects a deeper focus on serving the needs of customers, by ensuring they are treated fairly and have access to the information they need to make good decisions.

Our interest in KiwiSaver fees has matured into a more holistic focus on value for money, and our expectations have expanded to all managed funds. The guidance we produced this year sets out a framework for fund managers and supervisors to conduct a complete evaluation that takes into account not just fees, but also returns, advice and other services that provide value to investors.

And while the financial advice sector is currently getting up to speed with a refreshed set of obligations, we are confident that we have laid the groundwork, through engagement, consultation and collaboration with the adviser industry and Government over the past five years, for an enduring regulatory regime that delivers on its aim of increasing access to quality financial advice for New Zealanders.

COVID-19 has been an ever-present issue over the past year. The global pandemic had a weaker impact on the New Zealand economy than initially predicted, evidenced by a strong recovery in output and low unemployment in the first half of 2021, although we have since seen further disruption due to the Delta outbreak. New Zealand is among the first developed countries to begin raising interest rates in response to macroeconomic conditions, and future uncertainties remain around further COVID-19 disruptions, supply chain issues, asset prices, and rising labour costs.

Our strong response in the early stages of the pandemic gave us a clear direction for navigating subsequent lockdowns and managing further regulatory relief options where required. We published insights from our interactions with financial services firms in 2020, including examples we observed, to help firms strengthen their own response.

As always, a look back at our enforcement activity shows a busy and varied year.

We issued a warning to an individual for behaviour that likely amounted to market manipulation. We've been watching the significant growth of 'DIY' investing via online trading platforms, and used this warning as an

From the Chair

This annual report will be the last with Rob Everett as Chief Executive. On behalf of the Board, I want to acknowledge Rob's outstanding service over the past seven years, and recognise the great respect with which he is held both within the FMA and amongst our stakeholders generally.

As our second Chief Executive, overseeing a crucial period of development for the organisation, Rob has made an exceptional contribution to the success and standing of the FMA. We thank him for this and wish him all the best with his future endeavours.

We also look forward to welcoming Samantha Barrass as our new Chief Executive in the New Year.

opportunity to highlight, particularly to new investors, the obligations and responsibilities in regard to trading activity. We also published guidance for investors on the risks and obligations associated with online trading, and will be looking for further opportunities to reinforce this messaging, through education as well as enforcement.

We welcomed two court decisions that will see victims of convicted fraudsters Steven Robertson and Rodney McCall receive a portion of their money back. We sought asset preservation orders in relation to this case back in 2015, when we became concerned client funds were at risk, so it was pleasing to see this money will be returned to victims of the pair's fraudulent investment offers.

We spent a significant amount of time this year reviewing the cause and response for the various trading outages NZX experienced in 2020. We found NZX did not have adequate capability across its people, processes and platform to comply with its market operator obligations, and required it to submit an action plan for remedying these issues. Follow-up monitoring as part of our regular annual review has left us optimistic that NZX is on track to strengthen its technology capabilities.

Investment products that incorporate environmental, social and governance (ESG) outcomes have continued to grow in popularity. We have been thinking about them as 'integrated' financial products, that is, products that look beyond financial capital by integrating non-financial factors. We have seen it is often difficult to evidence and quantify non-financial outcomes, and our recent guidance sets out a framework for how providers can demonstrate to investors that these products are functioning as advertised and delivering the expected benefits.

For all the talk of change as we reflect on 10 years of the FMA, one thing that remains evergreen is our expectations for good conduct.

Firms are facing new obligations, new customers, new products, and new challenges such as cybersecurity threats and economic uncertainty. Good conduct, fuelled by sound governance and a focus on customers, is what will stand them in good stead as they navigate these changes, and is what we'll be looking for in our future licensing, monitoring and oversight.

Mark Todd

Chair

Rob Everett

Chief Executive

Ngā tekau tau ō te FMA

10 years of the FMA

The Financial Markets Authority was established 1 May 2011 in response to the need to address failures in New Zealand's financial markets, which were exacerbated by the global financial crisis. The 10 years since have seen us significantly widen our focus on conduct in financial services – here are some of the highlights from the past decade.

2011/12

Initiated and continued court action and investigations into failed finance companies, including reaching a settlement with Kiwi Finance Limited and full recovery for investors.

2012/13

Investigation into Ross Asset Management, following complaints received that customers were unable to withdraw funds. David Ross later pleaded guilty to criminal charges in relation to running a Ponzi scheme, and was sentenced to 10 years and 10 months in prison.

2013/14

- Implementation of the Financial Markets Conduct Act 2013 (FMC Act), which gave us regulatory powers relating to markets, conduct and fair dealing.
- Completed the remaining investigations into the collapsed finance companies, and initiated criminal proceedings with respect to three companies.

2014/15

- More than $51 million was recovered from failed finance companies Hanover, Dominion Finance, North South Finance and Strategic Finance to help repay investors.
- Milford Asset Management agreed to pay $1.5 million, and to improve its systems and controls, following our investigation into potential market manipulation.
- Launched our Investor Capability Strategy, which set a direction for working with other organisations and the financial sector to improve investor understanding and confidence.
- Issued the first licences for peer-to-peer lending platforms and crowdfunding providers.

2015/16

- Published our first report into sales practices within the life insurance industry, which identified 65,000 policies at risk of being 'churned' (shifted between providers to the benefit of the adviser), and 200 advisers using sales practices that required further monitoring.
- OPI Pacific Finance directors were sentenced to community work and ordered to pay reparations, after pleading guilty to charges of making untrue statements in a disclosure material.

2016/17

- Published a guide to FMA's view of conduct, describing for directors and senior managers the importance of good conduct, and the cultural and system issues that financial services entities must consider to ensure good outcomes for customers.
- The High Court found Mark Warminger, a senior trader at Milford Asset Management, committed market manipulation – a first-of-its-kind judgment that provided important clarification about the law. Warminger was ordered to pay a $400,000 penalty and received a five-year management ban.

2017/18

- As part of our ongoing focus on encouraging KiwiSaver members to take an active interest in their investment, we launched an online tool to guide people through checking they're on track to meet their goals. The associated media campaign reached more than 230,000 people from our target audience through Facebook and Instagram.
- Continued our work on insurance sales practices, publishing three reports looking at replacement business and conflicted conduct, the extent of soft commissions in the life and health insurance industries, and whether insurance providers' practices were designed to facilitate good outcomes for customers.
- Former registered financial adviser Anthony Norman Wilson was sentenced to 150 hours of community work, six months' community detention and ordered to pay reparations for forging clients' initials and falsely amending insurance applications.

2018/19

- With RBNZ, we carried out extensive reviews of the conduct and culture of New Zealand banks and life insurers. The reviews identified widespread poor practices and instances of potential misconduct. The response included changes at some entities (including the removal of sales incentives for bank frontline staff and managers) and ultimately a decision by the Government to introduce a regulatory regime for bank and insurer conduct.
- Mark Stephen Talbot admitted to insider trading conduct and entered a guilty plea on a representative charge for a breach of disclosure obligations. He was required to pay $150,000 in lieu of a penalty and barred from acting as a director or manager of a listed business for five years.
- Completed a thematic review of cyber resilience in financial services, based on providers' assessment of cyber risk and how prepared they are for a cyber attack.

2019/20

- Put parts of our planned work programme on hold to manage our part in the COVID-19 crisis. We increased engagement with firms and investors, collaborated with other agencies, and provided regulatory relief, guidance and leadership to support the financial sector.
- Steven Robertson was sentenced to six years and eight months in prison, after he was found to have misappropriated funds that clients believed were to be traded or invested on their behalf.
- In collaboration with the Institute of Directors, we released Ngā mea waiwai o te tūranga whakataka, a te reo Māori translation of our guide on the essentials of being a company director.

2020/21

- The new regime for regulating financial advice was introduced, following almost five years of planning, development, and engagement with the financial advice sector, industry bodies and Government agencies.
- Published expectations and a framework for how fund managers can demonstrate they are providing value for money to investors.
- ANZ New Zealand admitted to breaches of the Financial Markets Conduct Act for misleading representations it made in the supply of credit card repayment insurance, after we alleged ANZ charged certain customers for policies that offered no cover or benefit.
- In response to the rise in the use of online investment platforms, we carried out online engagement activity to raise awareness of the risks and responsibilities related to share trading.