

23 July 2019

[personal information]

By email: [personal information]

Dear [personal information]

### REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

1. We refer to:

- 1.1. the [personal information] official information request dated 16 May 2019 for *the FMA's five most expensive cases, what they involved and a summary of the costs (your Request)*; and
- 1.2. our letter dated 12 June 2019, extending the time to respond to your Request to 24 July 2019.

2. Our response to your Request is set out below.

#### COSTS

3. The five cases for which the FMA has incurred the greatest costs (the **Five Cases**) are:

| Case                                     | External costs | Costs recovered or awarded against the FMA   | FMA staff hours |
|--|----------------|--|-----------------|
| The Hanover case <sup>1</sup>            | \$3,776,732    | None   | 7,286           |
| The Viaduct and Mutual case <sup>2</sup> | \$2,351,847    | Additionally FMA had to pay costs awarded against the FMA of \$50K.  | 16,097          |
| The Warmingier case                      | \$1,676,197    | \$400K penalty was paid to FMA, of which: \$163K was retained by the FMA to cover costs incurred, the remaining was paid to the Crown.   | 6,804           |
| The Prince & Partners case               | \$820,327      | This case was settled for \$4.5m. Approx \$3.6m was distributed to investors and the Treasury. The remaining \$0.9m was split: \$88K retained by the FMA to cover costs incurred, the remaining was paid to the Crown. | 1,346           |
| The PTT Limited case <sup>3</sup>        | \$680,166      | None   | 14,681          |

<sup>1</sup> This case was commenced by the Securities Commission and continued by the FMA. These figures include costs and staff time incurred by both organisations. Further we note that it includes the cost and time involved in investigating and taking court action in relation to both the Hanover case and related asset preservation orders. It also includes time spent determining the distribution of settlement funds.

<sup>2</sup> This investigation is complete but the case is ongoing – the costs and time provided is based on information available as at 22 July 2019.

4. Please note:

4.1. We have determined these “cases” by considering all investigations or inquiries undertaken by the FMA that resulted in an enforcement outcome. We only considered cases where the investigation is complete - thus we have not included any matters where the investigation is ongoing. In two instances (the Viaduct and Mutual case, and the PTT Limited case), although the investigation is complete, we are awaiting court decisions thus some further work is envisaged by FMA staff. In these cases, the costs and staff hours noted are based on information available as at 22 July 2019. The external costs for the Five Cases exclude GST.

4.2. Further in some of these cases the FMA recovered some costs, or had costs awarded against it. We have separately noted these amounts in the table above to give a fuller picture of the cost to the FMA.

4.3. Two of the Five cases, Viaduct and Mutual, and PTT Limited are now “Crown Prosecutions”:

4.3.1. *Viaduct and Mutual* became a Crown Prosecution from 29 September 2014, when not guilty pleas were entered; and

4.3.2. *PTT Limited* became a Crown Prosecution from 24 May 2018 when the case was transferred from the District Court to the High Court.

Criminal cases involving a certain level of complexity and cases where a defendant has elected a jury trial become Crown Prosecutions. Once a case becomes a Crown Prosecution, some of the costs of the prosecution (including legal fees), fall under the Governments’ bulk funding arrangements with the network of Crown Solicitors (administered by Crown Law) (the **Crown Funding arrangement**). The FMA does not have visibility over costs incurred under the Crown Funding arrangement and these costs are not costs that the FMA pays. Accordingly, we note that additional costs may have been incurred for these cases. Given they are not costs borne by the FMA, in determining the Five Cases in relation to which FMA incurred the greatest external costs, and in calculating those costs, we did not take into account those amounts.

4.4. As previously advised to the [REDACTED], the FMA no longer provides a calculation of the cost of internal staff time spent on a case. This being the case we have provided you the information we hold on staff time in terms of hours spent.

#### SUMMARY OF THE FIVE CASES

5. The Hanover case (including the asset preservation orders pursued in *Mark Stephen Hotchin v Financial Markets Authority* [2012] NZCA 155)

5.1. Hanover Finance Limited was a finance company, which entered a moratorium in July 2010, owing \$554 million to investors.

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<sup>3</sup> This includes the cost and time involved in investigating and taking court action in relation to both the PTT Limited case and related asset preservation orders. This investigation is complete but the case is ongoing – the costs and time provided is based on information available as at 22 July 2019.

<sup>4</sup> Our letter dated 10 August 2017 (which attached the FMA’s redacted letter dated 22 June 2017) and 14 March 2019.

- 5.2. In December 2010 the Securities Commission applied to the High Court for asset preservation orders which sought to prevent the assets believed to be associated with former director Mark Hotchin from being transferred, charged or otherwise dealt with (**APOs**). These assets were held by Mr Hotchin and the trustees of the KA3 and KA4 trusts (the **Trusts**). The APOs were granted in December 2010.
  - 5.3. Mr Hotchin and the Trusts each filed appeals against the upholding of the APOs.
  - 5.4. In March 2012, the FMA filed civil proceedings against 5 directors and promoters of Hanover Finance, Hanover Capital & United Finance, alleging that the directors and promoters made untrue statements in the registered prospectuses, investment statements and in certain advertisements.
  - 5.5. In April 2012 and August 2012 the Court of Appeal dismissed the APO appeals.
  - 5.6. In July 2015, the FMA reached a settlement with the former directors of the Hanover finance companies, and the directors of the parent company, Hanover Group Limited in respect of the civil proceedings. As part of the settlement, \$18 million was distributed to eligible investors.
6. *R v Paul Bublitz, Bruce McKay and Richard Blackwood* [2019] NZHC 222 (the ‘Viaduct and Mutual case’)
    - 6.1. Viaduct Capital Limited (**Viaduct**) and Mutual Finance Limited (**Mutual**) were finance companies that went into receivership in 2010. At the time of receivership, Viaduct owed \$7.8 million to investors and Mutual owed \$9.3 million to investors.
    - 6.2. The FMA filed Crimes Act charges against Paul Bublitz, Bruce McKay, Richard Blackwood, Lance Morrison and one other in March 2014. The charges were theft by a person in a special relationship, making false statements in a prospectus and making false statements to a trustee.
    - 6.3. A High Court trial commenced in August 2016. On 10 May 2017, Justice Woolford declared a mistrial. A cost application was brought against the Solicitor-General and the FMA in February 2018 as a result of the mistrial. The High Court awarded compensation to be paid by the FMA totalling \$50,000.
    - 6.4. A re-trial was heard in August and September 2018. Verdicts and reasons were delivered in February 2019.
    - 6.5. Justice Toogood found Mr Bublitz, Mr McKay and Mr Blackwood guilty of the charges relating to Mutual and not guilty in relation to the charges brought in respect of Viaduct. The defendants were sentenced in March 2019.
    - 6.6. Mr Bublitz has filed an appeal against his convictions and sentence. Mr Blackwood and Mr McKay have each filed an appeal against their convictions. The appeals were heard on 4 July 2019, and the Court’s decision was reserved. As at the date of this response, no decision has been received.

7. *Financial Markets Authority v Mark Warminger* [2017] NZHC 1471 and *Financial Markets Authority v Mark Warminger* [2017] NZHC 327 (the 'Warminger case')

7.1. The FMA issued civil proceedings against Mr Warminger in June 2015, alleging market manipulation during his employment at Milford Asset Management Limited. The allegations against Mr Warminger included that he:

- (a) placed small trades directly on the market in one direction, followed by large off-market trades in the opposite direction;
- (b) manipulated the closing price; and
- (c) used his trading orders to move the price, rather than for a genuine commercial purpose.

7.2. The case was heard in the High Court in September 2016. The High Court's decision was released in March 2017, finding that Mr Warminger had manipulated the market on two occasions.

7.3. Mr Warminger appealed the decision in March 2017, and the FMA filed a cross-appeal in April 2017.

7.4. The High Court's penalty decision was released in June 2017, ordering that Mr Warminger pay a pecuniary penalty of \$400,000 in respect of the two contraventions. As a result of the pecuniary penalty order, Mr Warminger also received an automatic 5-year management ban.

7.5. In July 2017, Mr Warminger and the FMA each withdrew their appeals.

8. *Financial Markets Authority v Prince & Partners Trustee Company Limited* [2017] NZHC 2059 (the 'Prince & Partners case')

8.1. In August 2014, the FMA filed civil proceedings against Prince and Partners Trustee Company Limited (**Prince**), using powers under section 34 of the Financial Markets Authority Act (**FMA Act**). Prince was the trustee for a finance company, namely Viaduct Capital Limited (**Viaduct**).

8.2. Viaduct entered a moratorium in 2009 and was placed in receivership in May 2010. At the time of its collapse, Viaduct owed investors \$7.8 million, \$7.3 million of which was covered under the Retail Deposit Crown Guarantee (**Crown Guarantee**). The FMA's civil proceedings alleged that Prince breached the obligations it owed to Viaduct investors and to the Treasury (who holds the rights of investors paid out under the Crown Guarantee).

8.3. In August 2017, the parties reached a settlement, which was approved by the High Court on 25 August, following a hearing on 21 August. Under the settlement, Prince agreed to pay \$4.5 million.

9. *Financial Markets Authority v PTT Limited (In Receivership) and Ors* [2016] NZHC 692; *R v Robertson* CRI 2017-004-010580 (the 'PTT Limited case')

9.1. In August 2015 the FMA applied to the High Court for APOs in relation to assets held by Steven Robertson, PTT Limited and other entities associated with Mr Robertson. The application also sought to have receivers appointed to Mr Robertson and the various entities associated with him. A hearing was held in September 2015 to determine whether certain of the APOs granted should be varied, modified or removed.

9.2. In December 2015, the entities associated with Mr Robertson were placed into liquidation.

9.3. In October 2017, the FMA filed Crimes Act charges against Mr Robertson alleging theft by a person in a special relationship, obtaining by deception and using a document for a pecuniary advantage.

9.4. The FMA alleged that Mr Robertson misappropriated funds deposited by clients who believed those funds were to be traded on their behalf or were paid as consideration for the purported purchase of shares in PTT Limited or an associated entity. The FMA also alleged that some clients had funds withdrawn from their credit card accounts without their authority and knowledge.

9.5. The case was heard in the Auckland High Court from 20 May 2019 to 18 July 2019. Verdicts are due to be delivered on 19 August 2019.

10. You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or phone 0800 802 602.

11. If you wish to discuss any aspect of your Request with us, please feel free to contact us.

Yours sincerely

[personal information]

Manager, Policy and Governance