

1 August 2019

[personal information]

By email: [personal information]

Dear [personal information]

YOUR REQUEST FOR INFORMATION UNDER THE OFFICIAL INFORMATION ACT 1982 (OIA)

1. We refer to your email to the Financial Markets Authority (**FMA**) dated 5 July 2018. You requested the following information under the OIA:
 - 1.1. Details of the investigation by the FMA in 2012-2013 into banks marketing, promoting and selling interest rate swaps to rural customers between 2005 and 2009.
 - 1.2. [request details]
 - 1.3. Could you please also send me the details of any complaints made to the FMA about interest rate swaps.
 - 1.4. As part of this I am interested in whether the FMA came up with an estimated value for the money lost by bank customers as a result of the interest rate swaps. I'm also interested in any documents about how the FMA came up with the final settlement number with the banks. For example, with ANZ the settlement was \$18.5 million.
2. Our response to your request is below.

Details of the investigation

3. We have decided to provide you with a summary of the FMA's investigation, pursuant to section 16(1)(e) of the OIA.
4. The Commerce Commission (**Commission**) carried out the substantive investigation into the marketing of interest rate swaps to rural customers. The Commission referred their findings to the FMA in December 2013, to consider any Securities Act offences, as the products were securities that were offered to the public.

5. The FMA (jointly with the Commission) made enquiries with a sample of complainants in 2014. In addition, the FMA reviewed marketing materials provided to the clients and sought independent legal advice on the matter. The FMA also joined the Commission in settlement discussions with the banks.
6. A settlement was reached in December 2014 with ANZ based on the conclusions from the commission's investigation and the FMA's enquiries and engagement with the banks. Further background information is publicly available in the settlements reached with [ANZ](#) and [ASB](#).

[correspondence details]

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Details of any complaints made to the FMA

10. We have decided to provide you with a summary of the complaint made, pursuant to section 16(1)(e) of the OIA.
11. The Securities Commission, the FMA's predecessor, received one complaint in May 2008 regarding advice given by the National Bank in relation to interest rate swaps. The complainant noted that the complaint was also lodged with the Banking Ombudsman. Given the Ombudsman involvement, and noting that the advice was given prior to Financial Advisers Act coming into force, no action was taken at that time. We did not receive any other complaints in relation to interest rate swaps.
12. As noted above, we relied on the extensive material collated by the Commission in response to its investigation, and made enquiries with a sample of complainants.

Details of the settlement amount

13. We refer to [reference] above (your request about settlement amounts). The settlement amounts were based on a number of factors in addition to an assessment of loss, including the potential for lengthy and uncertain court proceedings, the enforceable undertakings given by the banks, and privileged negotiations between the banks and the two agencies. The assessment of loss included an approximation of the amounts that eligible customers incurred by way of extra margins and additional early termination amounts (for those who broke their swaps), or extra costs (for those who did not).
14. The information above is a summary provided under section 16(1)(e) of the OIA. [decision details]

Concluding matters

16. We note that you have a right, by way of complaint under section 28 of the OIA to the Ombudsman, to seek an investigation and review of FMA's decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or phone 0800 802 602.
17. If you wish to discuss this letter with us, please feel free to contact [personal information] in the first instance.

Yours sincerely

[personal information]

Manager, Policy and Governance