CONDUCT OUTCOMES REPORT 2016

FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO ~ NEW ZEALAND

Purpose of this report

As a conduct regulator we have a broad mandate to oversee New Zealand's financial markets. The Financial Markets Conduct Act 2013 (FMC Act) gives us a wide range of regulatory tools to carry out this mandate. Our aim across all of our activities is to raise the standard of conduct, and increase investor and market confidence to support economic growth in New Zealand.

This report highlights the key issues and actions from our enforcement, supervision and preventative activities in the period 1 July 2015 to 30 June 2016.

It provides insight into the work we do and the approach we take, and helps businesses and professionals better understand our expectations of market conduct.

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TE MANA TATAI HOKOHOKO - NEW ZEALAND

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ISSN: 2324-5689

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Key outcomes

Key outcomes from 1 July 2015 to 30 June 2016

70%
of our completed investigations resulted in sanctions other than court action.

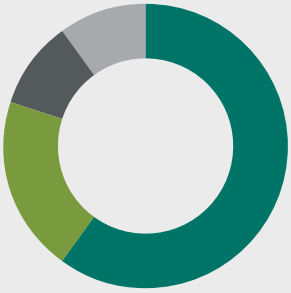
4
directors will not be involved in aspects of the financial markets for agreed periods of time.

28
firms were removed from the Financial Services Providers Register.

Investigation outcomes

- FMA-imposed sanctions **70%**
- Court proceedings **30%**

Litigation outcomes



- Still active **60%**
- Court judgement **20%**
- Settled **10%**
- Discontinued **10%**

Litigation matters in 2016

The FMA took 10 cases in the period July 2015 – June 2016

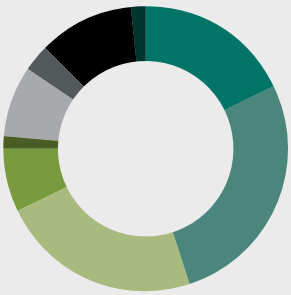
- Finance companies **20%**
- Financial advisers **10%**
- Primary markets* **20%**
- Secondary markets** **20%**
- Section 34 proceedings **10%**
- Other **20%**

*includes disclosure, unlawful offers, and compliance with management bans.

**including market manipulation and disclosure obligations.

Inquiries and investigations in 2016

71 cases were investigated in the period July 2015 – June 2016



- IOSCO **18%**
- Primary markets **27%**
- Secondary markets **23%**
- FA Act & FSPR **7%**
- AML/CFT **1.5%**
- Finance companies **8%**
- Potential s34 actions **3%**
- Financial Reporting Act **11%**
- Other **1.5%**

Our approach to conduct and enforcement

The conduct of financial services providers directly affects all New Zealanders. High standards of conduct support fair, efficient and transparent markets, and confident participation by businesses and investors in those markets. This benefits our economy and everyone in it.

Poor conduct, on the other hand, can destroy confidence and discourage participation in our financial markets. For this reason, conduct is at the core of the FMC Act, which sets new standards and adds weight to our existing statutory mandate to monitor conduct and compliance with financial markets legislation.

Enforcing the law

Part of our role is to be a law enforcement agency as well as a conduct regulator. We respond to market misconduct, and the risk of harm to investors from poor systems and governance; we also license, monitor, supervise, provide guidance and contribute to policy and law reform. The FMC Act provides us with a wide range of regulatory tools to carry out our work.

We do not commence enforcement actions in isolation. Increasingly, our enforcement work flows from a supervisory or monitoring action; it can also be generated by complaints or queries from the general public or market participants. Our enforcement work complements our key areas of supervisory focus and is underpinned by the strategic priorities detailed on page 8.

Risk-based approach

We take a risk-based approach to our regulatory activities. We assess the financial services providers and types of conduct that are most likely to pose the most serious risks to fair, efficient and transparent markets – and resulting harm to consumers – then direct our attention and efforts accordingly.

Range of responses

If we become aware of potential wrongdoing, we can respond in a range of ways. Court action is not always the most effective response, as it involves delay, expense and sometimes uncertain results. A different response will often be more effective and proportionate. Where we do take court action it's because we believe, in a particular case, it serves as the best deterrent and most appropriate type of sanction for wrong-doing, getting compensation for victims, or clarifying the law.

Before acting, we consider all of the options, the views of our senior management and external advisers - an approach rigorously tested by our board.

This helps ensure we are objective, fair and consistent in our decision-making in the regulatory space where many of the legislative requirements are still new or have changed substantially.

Working with others

We acknowledge our work often involves other frontline regulators, such as the supervisors of managed investment schemes, auditors and the NZX. Some of our actions are a joint effort with other regulators, but we also have a statutory responsibility to oversee their supervisory work and an obligation to report on that annually.

Our decision-making about a particular issue or action cannot always be completely transparent. We may decide that we cannot comment on a particular investigation in progress, as it is not fair to those we are investigating, or it may hinder the effectiveness of the overall investigation.

This report aims to provide some insight into the rationale behind why we decided to take one course of action over another.

Other FMA publications relevant to this report

We recommend reading this report with the following documents. Each of them provides context to our expectations of conduct, and how we respond when it does not meet our expectations:

- Guide to the FMA's View of Conduct
- Regulatory Response Guidelines
- Enforcement Policy
- Co-operation Policy.

Key themes

Throughout 2016 the key theme for us was a shift in focus away from dealing with the finance company collapses. At date of publication, the final criminal prosecution of Viaduct Capital Limited and the directors of Mutual Finance Limited is still before the courts, and a civil claim against an independent trustee is scheduled for August 2017. These actions bring closure to the finance company cases on our books.

Moving on from these cases brings with it some challenges. One of these is getting the balance right in some important areas:

- speed versus thoroughness
- transparency versus confidentiality
- developing – and sharing – a common understanding of the broader range of powers and tools at our disposal, other than court action.

In our view, this shift in approach was evident in much of the work completed during this reporting period.

Here we summarise those key actions:

Using court action to clarify our expectations of market participants

We commenced civil proceedings for market manipulation, involving trading activities by Mark Warminger of Milford Asset Management. This went to trial in September 2016. The matter is still before the courts at the date of publication. Clarifying our expectations of market participants through this action is an important part of our remit. See page 14 for details.

Preventing harm, rather than taking court action to respond to harm

We issued administrative orders to direct Cambrian Corporation Limited to change its marketing materials, as we felt they contained misleading and unsubstantiated statements about Cambrian's services. See page 20 for details.

Shining a warning light on our perimeter

We issued a larger number of public warnings, assisted by consumer marketing and communications campaigns, about businesses operating outside the perimeter of financial regulation.

Where we were concerned about businesses or individuals offering financial products and services, but who were not required by law to be authorised or licensed by us, we used our powers to preserve assets for investors (in extreme cases) and issued public warnings about our concerns.

We also co-operated and worked collaboratively with the Serious Fraud Office and the New Zealand Police on relevant cases.

Addressing deficiencies in financial reporting

We took action where we saw non-compliance with financial reporting obligations. Accurate financial reporting is critical to the promotion of confident and informed participation in fair, efficient and transparent financial markets. Our focus on encouraging investor due diligence and informed decision-making relies on prompt and accurate financial reporting for securities issued to the public.

We initiated civil proceedings about alleged breaches of substantial shareholder disclosure obligations. See page 21 for details.

Addressing deficiencies in process before it leads to poor outcomes

We issued a formal warning, under the AML/CFT Act, to Craigs Investment Partners Limited, for failing to carry out or follow up on, adequate customer due diligence. See page 10 for details.

Our current monitoring and supervision of AML, as well as the experience of RBNZ and the Department of Internal Affairs, indicate that more of these warnings will be issued in the future.

Confirming our reach extends offshore

We obtained guilty pleas for criminal proceedings under the Securities Act against four Australian-based finance company directors. This was our first action against misconduct by market participants based overseas. See page 12 for details.

Future focus

During 2017 and beyond, we continue to focus on preventing misconduct and correcting poor governance, systems and controls that we think pose the greatest potential harm to our markets and investors.

This will involve greater use of our wide range of regulatory tools. These tools range from informing consumers to help them assess the conduct of their provider right up to pursuing court action.

We are aware that conduct-focused regulation requires a shift in the culture and behaviour of many market participants. We want to clarify our expectations of providers to show them where we will act, what that action looks like, and how those actions benefit New Zealand's financial markets.

Specific areas of focus for 2017 and beyond

We want to focus our efforts on the following areas:

- Conduct in wholesale markets
- Monitoring our regulatory perimeter
- Improving investor capability and education
- Following up on conditions imposed during licensing
- Sales practices and conflicted conduct

Please refer to our Strategic Risk Outlook 2017 for our view on the key risks to the stability of New Zealand's financial markets.

Our strategic priorities and approach

The regulatory actions we take are guided by the main drivers of the risks to our goal of fair, efficient and transparent financial markets. These drivers or root causes of risk are set out in more detail in our *Strategic Risk Outlook*. These risks help define our strategic priorities.

Our strategic priorities

Strategic priority	We want to see
 Governance and culture	Boards and senior management leading organisational culture and placing customer interests at the centre of their business strategies.
 Conflicted conduct	Conflict management procedures designed to put customer interests first.
 Capital market growth and integrity	Resilient and dynamic capital markets with broad investor participation and sound infrastructure.
 Investor decision-making	Capable, confident and well-informed investors.
 Sales and advice	Sales and advice practices designed to meet the needs of customers.
 Frontline regulators	Frontline regulators who contribute to well-regulated financial markets.
 FMA effectiveness and efficiency	The FMA as an efficient and effective intelligence-led regulator.

Our approach

While the strategic priorities influence what we respond to, we must also determine how we respond. Broadly, we can respond in the ways described in the table below. This does not mean that we have to choose one of four possible regulatory responses to misconduct. Instead, it gives us a spectrum of responses to choose from. Our approach includes aspects of, for example, both preventative and enforcement action.

Approach	Action taken
 Supervisory	We identify and address necessary improvements with a participant directly, as part of our normal work.
 Preventative action	We take action to prevent what we believe is causing – or will cause – harm to investors.
 Enforcement	We respond to misconduct with court action, or other powers, to help us enforce or clarify the law.
 Information	We produce guidance or run consumer awareness campaigns to inform consumers about potential risks or sources of harm.

In the following section, we use the above icons to show which regulatory response we used for each action during the period, together with the icons on page 8 to signpost which of our strategic priorities relates to the action.

Regulatory actions taken

Warning to Craigs Investment Partners Limited (Craigs)

Action

In May 2016, we issued a formal warning to Craigs under the AML/CFT Act following, a failure by Craigs' to conduct adequate enhanced due diligence. Craigs had not completed enquiries or actively pursued areas of information that it had determined should be obtained. It then failed to terminate its business relationship with a 'higher risk' client when it had not been able to complete the required customer due diligence on that client.

Enhanced due diligence

Customers who could pose a higher level of risk need to undergo a higher level of due diligence – known as enhanced due diligence – under the Act. Craigs admitted it had not carried out enhanced due diligence with this particular client. Deficiencies were found in Craigs' compliance programme dating back to 2013, when the AML/CLT Act came into force.

Our monitoring of Craigs AML processes and controls revealed that Craigs did not have a cohesive monitoring plan to manage AML/CFT issues, or keep sufficient written records about its due diligence process.

Improvements made

Since 2014, Craigs has taken steps to significantly improve its AML/CFT compliance programme. This included introducing a range of initiatives to reduce the chances of similar future breaches, such as appointing an independent party to help them improve AML/CFT processes.

Outcome

Taking account of Craigs' admissions, and the steps it took to remedy the deficiencies, we issued Craigs with a formal warning.

Our view

This case highlights the importance of robust procedures and controls which comply with regulatory requirements – in this case the AML/CFT Act.

It reinforces a need for companies to show clear and complete records that detail their processes, decisions and actions taken to tackle any issues.

It also highlights the benefits of co-operating with a regulatory inquiry, acknowledging where standards are not up to scratch, then taking remedial action to address the issues uncovered.

Insurance business replacement review

Action

In May 2015, we requested data[1] from New Zealand's twelve main insurance providers. We published the resulting report, *Replacing Life Insurance: who benefits?,* in June 2016.

Our analysis showed around 1100 advisers with more than 100 active policies, which we called 'high-volume advisers'. Around 200 of the high-volume advisers we discovered had a high estimated rate of replacement business.

We monitored these high-volume advisers and followed up where we have identified particular issues.

We continue to look into the conduct of financial advisers where they recommend clients replace their existing insurance policies. We want to assess adviser conduct, client outcomes and the quality of advice provided.

To help us do this, we contacted a selection of advisers identified as having unusually high levels of replacement business. We are in the process of obtaining further information about these advisers and their clients to better understand why those clients changed insurance providers.

1 The data covered a four year period from April 2011–March 2015. It included four types of cover: Life, trauma, income protection and total, and total and permanent disability.

Court action against directors of finance companies

Action

In our first action against market participants based overseas, we charged four Australian-based directors of OPI Pacific Finance Limited (in receivership and in liquidation) (OPI) for suspected misconduct in relation to its collapse.

OPI, which provided finance to businesses that developed and invested in commercial property, owed approximately $247 million to more than 100,000 investors.

Outcome

We charged the directors with criminal offences, under the Securities Act 1978 with making untrue statements in their 2007 offer documents. These events took place before the FMA Act came into force.

We were concerned that OPI's Australian interests received preference over its New Zealand operation, where New Zealand investors had placed their money.

The directors each pleaded guilty before trial in October 2015. They were sentenced to community-based sanctions and requested to pay reparations.

Our view

OPI's directors had a duty to ensure their offer documents were true and that decisions were being made in the interests of the New Zealand business.

The directors had a responsibility to check the company's financial statements and examine the strength of its financial position to ensure robust governance.

Action for false statements in financial documents

Action

In 2014, we brought criminal charges against company directors Andrew Robinson and Mark Turnock for making false statements in the financial statements of SPG Investment Company No.1 Limited (SPGI).

Outcome

SPGI's directors were convicted and sentenced in the second half of 2015. Mr Robinson pleaded guilty to charges brought under the Financial Reporting Act, Financial Advisers Act, and the Financial Service Providers (Registration and Dispute Resolution) Act. Mr Turnock also pleaded guilty to a charge under the Financial Reporting Act.

The directors had signed off on financial statements stating the company had not been engaged in any related-party lending. In fact, SPI had directed the majority of investors' money towards a company – wholly owned and controlled by Turnock – which then went into liquidation.

This lack of disclosure meant that investors could not fully assess the investment risks; and the conflicts of interest were not managed adequately.

Our view

Directors are required to give full and transparent disclosure so investors can make well-informed decisions. They must appropriately manage or avoid situations where conflicts of interest arise. We pursued court action to hold the directors to account for failing to fulfil their disclosure duties to investors.

This case also clarified that a director is responsible for financial statements that he or she has signed. A director can not rely on the defence of saying that he or she has not read the financial statements, when they have, effectively, put their name to the statements by signing them.

Partnership approach to trading conduct

Action

We work collaboratively with industry participants to provide guidance and engagement on the key issues that affect our capital markets.

An example of this partnership approach is our work with the Trading Conduct Working Group.

Established in 2015 by ourselves, the NZX and the Securities Industries Association (SIA), the working group aims to offer guidance to the industry on trading practices and conduct. This is an area of interest for us, as demonstrated by our market manipulation case outlined below, and echoed by the actions of our Australian counterpart (ASIC) and other international regulators.

Outcome

We developed, with the NZX, a range of trading scenarios and asked for SIA feedback about whether the conduct was acceptable. This work informed a guidance note being developed by the NZX.

Market manipulation

Action

Warminger

In July 2015, we issued civil proceedings in the High Court against Mark Warminger for alleged market manipulation during his employment at Milford Asset Management Limited.

The allegations against Warminger included that he:

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

Outcome

Warminger denies our allegations. The matter is still before court at the date of publication.

Our view

To protect the integrity of New Zealand's markets it is essential that all trades are legitimate and reflect genuine supply and demand.

Traders on our retail and wholesale markets need to understand and abide by the legal rules for trading. Traders also need to be confident that others are working within the same set of legal rules and obligations.

Addressing risk to investors' funds

Action

In June 2015 we received complaints about PTT, alleging it was operating a potentially fraudulent Ponzi-type scheme, through a number of businesses, under the guise of a legitimate business.

Outcome

We obtained interim asset preservation orders (APOs) which immediately froze all cash and assets held by PTT and certain associated individuals and businesses.

We obtained these orders because we were concerned that financial markets legislation had been contravened.[2] Our investigation into PTT and various associated businesses and individuals is ongoing.

Action

Blackfort/Arena

We continue to work with the receivers and liquidators of Blackfort/Arena[3] Capital to realise assets frozen pursuant to our APOs for the benefit of investors.

Outcome

Individuals associated with Blackfort/Arena have now been charged by the Serious Fraud Office.

Our view

By using APOs we prevented further funds leaving the relevant bank accounts. We collaborated with the Serious Fraud Office to bring the parties to court.

We used our powers under the FMC Act to preserve investor funds during an investigation where those funds may be at risk. Where appropriate, we will work with receivers and managers to preserve assets.

2 Including: the Crimes Act 1961, the Financial Markets Conduct Act 2013, the Financial Advisers Act 2008, and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

3 See our Enforcement and Investigations Report 2015 for more detail.

Addressing harm from our regulatory perimeter

Action

Vivier

In February 2015, we became concerned that Vivier and Company Limited (Vivier)[4] was not providing any financial services in or from New Zealand.

As its registration may have misled overseas consumers or caused damage to the reputation of our financial markets, we directed Vivier to deregister from the FSPR. Vivier successfully appealed the decision in the High Court.

A subsequent High Court decision, relating to another FSPR-registered company reached a different conclusion and we successfully deregistered a company from the FSPR. However, these two conflicting High Court decisions created uncertainty as to the legal position.

Vivier appeal

To resolve the legal uncertainty, we appealed to the Court of Appeal (COA) and were successful.

The COA found that we did not need to have evidence specific to Vivier that its registration was misleading consumers or damaging the reputation of New Zealand's financial markets.

The fact that all or most of the financial services are provided or supplied overseas may be enough to deny registration or de-register a financial services provider.

The COA also said that we could rely on our expert knowledge of financial markets here and overseas to assess if the registration was misleading or damaging. We believed it was misleading because Vivier was not providing any material financial services in or from New Zealand. It also had little reason to be registered on the FSPR other than to persuade offshore customers that it had substantial presence in New Zealand.

Outcome

The direction to deregister Vivier was restored and we were awarded costs.

Our view

A business or person not offering financial services either from New Zealand or to New Zealanders has no place on the FSPR. Their presence on the register confuses the FSPR's role. There is the potential to mislead consumers about that provider's connection to New Zealand. It may give the appearance that the business or individual is regulated in New Zealand.

We will take action to deregister FSPs to ensure they are not using the FSPR to trade off New Zealand's reputation for commercial benefit.

4 A New Zealand company registered as a financial services provider under the Financial Services Providers (Registration and Dispute Resolution) Act 2008.

Financial Service Providers Register (FSPR)

A large number of off-shore financial service providers (FSP) are registered on our FSPR, potentially misleading consumers that they are regulated and/or operating in New Zealand.

We monitor the requirements for registration under the FSP Act, but we do not regulate all financial service providers as some are not offering products or services that require us to license them.

These activities often have little direct impact on New Zealand businesses or consumers because these providers typically do not offer financial services to New Zealanders. However if these offshore businesses do not conduct their business legitimately, there is possible harm to New Zealand's reputation as a well-regulated jurisdiction and to the reputation of legitimate FSPs. We have also seen other regulators or law enforcement agencies take issue with the conduct of businesses or individuals which were at some point registered on the FSPR.

Consumer confusion

Where no financial services are offered in or from New Zealand, and a business or individual has no legitimate reason to be on the FSPR, other than for marketing or appearances sake, we believe it can cause confusion for consumers.

It may also lead to conduct which undermines our goal of capital markets integrity, which is why we took action in the cases outlined in this section.

Amendments to the FSP Act now give us the ability to direct the registrar of the FSPR to deregister market participants in these situations.

Our view

Even NZ-based businesses, who register on the FSPR, need to identify the services they will provide to ensure that they are not conducting activities that require them to be licensed by us or other New Zealand regulators.

Sales and advice

Insurance sales and advice

Under the AFA Code of Conduct, an authorised financial adviser must place their clients' interests first and act with integrity. In the life insurance space, this can become complicated when some advice is requested by registered financial advisers (RFAs) who are not subject to the AFA Code of Conduct.

Our guidance for all advisers, when giving personalised replacement advice to a retail client, is to make an appropriate comparison of the client's existing arrangements with the new recommended product. This comparison should include the key differences between the policies, including loss of benefits, and outline for the client any consequences of changing policy or provider.

If no comparison is made, the adviser must inform the client of the limited scope of the service. These actions also need to be thoroughly documented by the insurance provider.

Advising without authorisation

Action

Financial advisers must comply with the regulatory requirements related to the services they offer. Where we see non-compliance by advisers, we will take appropriate action.

Stephen Duff[5] was registered on the FSPR to provide wholesale and generic financial adviser services. Duff was a registered financial adviser (RFA) but not an authorised financial adviser (AFA).

We were concerned that Duff was operating as an AFA without authorisation, and that his conduct breached the relevant legislation.

Duff accepted he was not authorised to provide financial advice to retail customers.

Outcome

Working with us, Duff agreed to:

- deregister as a financial adviser
- transfer his client list to an AFA and discretionary investment management service provider
- restrict his participation in the financial markets.

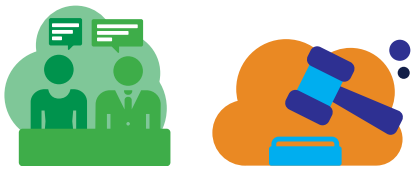
Our view

Wherever possible, we will work with businesses and individuals to achieve voluntary behavioural change that addresses misconduct and reduces the risk to investors.

We reserve formal court proceedings for the most serious misconduct, and where a court outcome is required to protect consumers.

5 Trading as Financial Vision Limited (FVL).

Acting on misleading or deceptive conduct



Action

In August 2016, we issued a warning to an RFA suspected of misleading or deceptive conduct. After investigation, we believed his conduct was misleading or deceptive. The RFA completed and submitted a direct debit form, purportedly signed by his client, declaring that he was in good health, without the client's authority.

Outcome

We assessed the level of misconduct and felt it was appropriate to issue a warning. Our decision-making is always guided by public interest factors.

In this case, we considered the following:

- The RFA deregistered from the FSPR voluntarily
- His employment was terminated and he does not work in financial services any longer
- We felt assured this was a one-off incident
- His employer's file review showed no other misconduct
- He made no financial gain and there was no monetary loss to clients
- When he recommended his client change insurance policy, he believed the product was appropriate.

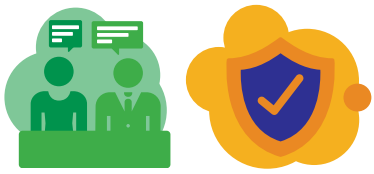
Our view

Even though the RFA believed the insurance policy was a suitable product for his client, his conduct was unacceptable when he submitted documentation without their prior authority.

We will take action against financial advisers when we see misconduct. In the Duff case, our approach considered the RFA's willing co-operation with us, and the fact that he stopped working in the financial services industry.

We were satisfied that it was in the public interest to issue a warning, rather than pursue prosecution.

Addressing misleading marketing materials



Action

Cambrian

In May 2016, we issued administrative orders to direct Cambrian Corporation Limited (Cambrian) to change its marketing materials, as we felt they contained misleading and unsubstantiated statements about Cambrian's services.

The order required Cambrian to, among other things, change its printed marketing materials and website to make them comply with the FMC Act; and to then certify they had complied with our requirements.

Outcome

Cambrian was also required to provide a copy of the administrative order to all of its past and present clients.

Our view

Direction orders are a regulatory tool we use when we are satisfied that conduct has breached, or is likely to breach, certain FMC Act provisions, including the fair dealing provisions.

We believe that Cambrian's clients should have been given the opportunity to consider whether they had chosen Cambrian's services based on misleading information and whether any losses could be recovered on that basis.

We felt issuing a direction order was a proportionate response that would ensure that existing and potential users of Cambrian's products and services had access to clear and accurate information.

Working with issuers to improve disclosure to investors

Action

We have been working closely with issuers to ensure that only the most significant risks are included, and that disclosure documents are drafted with customers' needs front of mind.

This has involved significant interaction with issuers and their advisers about their proposed offer materials. To date we have extended the 'waiting period' for one FMC offer to allow time for improvements in the disclosures. We have also taken enforceable undertakings in relation to offers to ensure disclosure is appropriate.

Addressing failures in substantial shareholder disclosure obligations

Action

We initiated civil proceedings against Archer Capital (Pty) Limited and Healthcare Industry Limited (HIL) for alleged breaches of substantial shareholder disclosure obligations related to shares in Abano Healthcare Group Limited.

This action reflects our view that timely and accurate disclosure is central to the promotion of well–informed and transparent financial markets.

Outcome

In July 2016, we discontinued this case. After discussions with the defendants and their lawyers, it was decided that the law was not under dispute.

We issued a statement confirming our view of the legal position and our expectations of participants in this area, but considered there was no longer a public interest to take the case to trial.

Our view

Both investors and their advisers must recognise that disclosure is required by law when arrangements and understandings are reached. These can arise in circumstances where there is no legally enforceable agreement. Businesses need to remember that an agreement can exist even if not covered by formal, written agreements which trigger their disclosure obligations.

Financial reporting obligations

Action

We brought charges against directors of Apple Fields Limited (Apple Fields) for breaches of the Financial Reporting Act 1993, by not filing financial statements for three years (2011, 2012 and 2013).

Outcome

The two directors defended the charges. However the District Court ruled in our favour, saying that reporting provisions exist to ensure that non-compliant issuers, who do not meet the statutory criteria, will not be allowed to continue to be issuers.

The court also said that audited accounts should clearly show investors and shareholders the exact financial position, circumstances, and nature of the company they have invested in.

Apple Fields appeal

The directors appealed to the High Court unsuccessfully. The court, in agreement with us, ruled that the directors did not take all reasonable and practical steps to comply with the Financial Reporting Act.

However, in a further COA appeal the court ruled in the directors' favour.

The decision was confined to the specific facts of the case and the court's view was that it was reasonable, in these specific circumstances, for the directors to rely on their accountant's advice.

Our view

Well-informed investor decision-making relies on accurate and timely filing of financial statements. Investors have the right to make decisions based on full and accurate company information.

We will continue to take appropriate action against market participants who we believe are not meeting their financial reporting obligations.

Glossary

AML/CFT	Anti-money laundering and countering financing of terrorism
Companies Registrar	The official responsible for the Companies Office, the government agency responsible for corporate body registers, occupational registers, and the register of personal property securities
FADC	Financial Advisers Disciplinary Committee
FMA	Financial Markets Authority
FMC Act	Financial Markets Conduct Act 2013
FSP Act	Financial Service Providers (Registration and Disputes Resolution) Act 2005
FSPR	Financial Service Providers Register
IOSCO	International Organization of Securities Commissions
NZICA	New Zealand Institute of Chartered Accountants
NZX	New Zealand Exchange, the company that operates New Zealand's main stock exchange
SFO	Serious Fraud Office
S34	Section 34 of the Financial Markets Authority Act 2011

Appendix: Timeline

This calendar sets out a timeline of events related to the cases we detailed in this report. It includes some key milestones that occurred outside of the reporting period.

July 2015

We agreed to accept enforceable undertakings from David John Hobbs and Jacqueline Hobbs, limiting their activities in New Zealand's financial markets.

We issued a Stop Order against Green Gardens Finance Trust Limited and warned the public to be wary of doing business or depositing money with this company.

We issued civil proceedings in the High Court seeking pecuniary penalties against Mark Warminger for trading carried out while employed by Milford Asset Management Limited.

August 2015

OPI directors pleaded guilty to Securities Act charges.

We secured interim asset preservation orders over PTT Limited, Steven Robertson and associated entities.

September 2015

OPI directors sentenced to community service and ordered to pay reparations.

SPGI and SPG director, Andrew Robinson, pleaded guilty to charges under the Financial Reporting Act (FRA), the Financial Advisers Act (FAA), and the Financial Service Providers (Registration and Dispute Resolution) Act (FSPRA).

The High Court allowed the appeal of Vivier and also held that our direction to deregister Excelsior from the FSPR was invalid.

October 2015

SPGI director, Mark Turnock pleaded guilty to FRA charges.

Andrew Robinson was sentenced to 12 months imprisonment for charges under the FRA, FSPRA and FAA.

December 2015

The High Court confirmed that our direction to deregister Excelsior form the FSPR was valid.

February 2016

The Court of Appeal overturned the High Court decision in the Vivier matter and ordered that our direction to deregister Vivier from the FSPR be restored.

April 2016

We accepted an enforceable undertaking from RFA Stephen Duff related to apparent breaches of financial advice obligations.

May 2016

We issued a direction order requiring Cambrian to remove and/or correct misleading information from their website and other marketing materials.

We issued a formal warning to Craigs for breaches of the AML/CFT Act.

June 2016

Mark Turnock sentenced to four months home detention and 200 hours of community service under the Financial Reporting Act, Financial Advisers Act and the FSP Act charges.

July 2016

We discontinued proceedings against Archer Capital (Pty) Limited and Healthcare Industry Limited for alleged breaches of the substantial shareholder disclosure obligations contained in the Securities Markets Act 1988.

August 2016

Beginning of High Court proceedings against the directors and persons associated with Viaduct Capital Limited and Mutual Finance Limited.

We issued a warning to a registered financial adviser suspected of misleading or deceptive conduct.

September 2016

Civil case against Mark Warminger commences in the High Court.

FMA

FINANCIAL MARKETS AUTHORITY

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