Conduct Outcomes Report 2017

FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

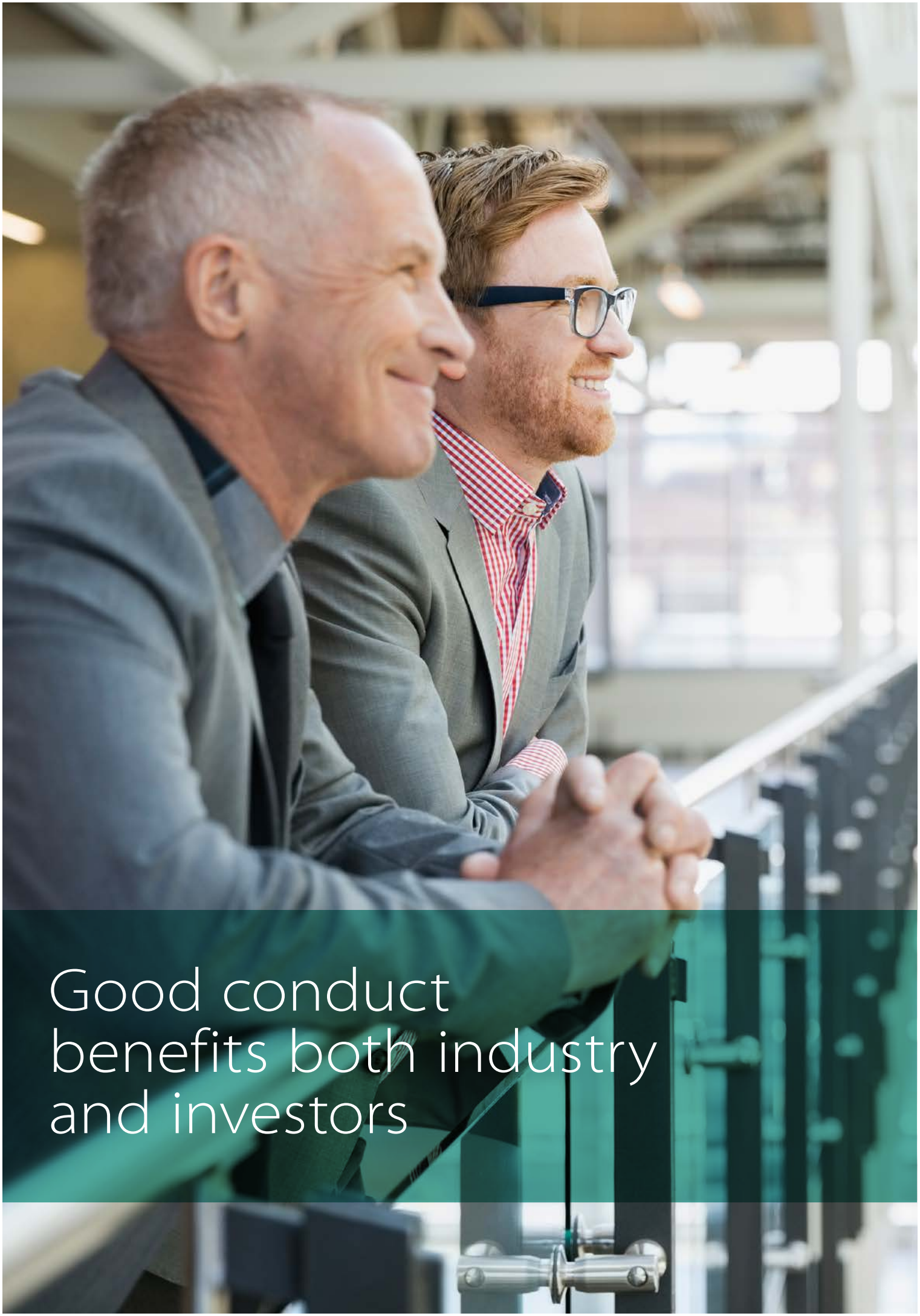
Auckland
Level 5, Ernst & Young Building, 2 Takutai Square, Britomart
PO Box 106 672, Auckland 1143
Phone: +64 9 300 0400 Fax: +64 9 300 0499

Wellington
Level 2, 1 Grey Street
PO Box 1179, Wellington 6140
Phone: +64 4 472 9830 Fax: +64 4 472 8076

fma.govt.nz

Please see page 30 for the summary of actions for 2017.

Contents



Good conduct benefits both industry and investors

Introduction

As a conduct regulator, a critical part of the FMA's work is to look for market conduct that poses a risk to investors or consumers, and change that conduct for the better.

We believe raising the standard of conduct in financial services will support our statutory mandate to increase investor confidence and participation in New Zealand's financial markets.

In our view, good conduct also makes good business sense. It promotes long-term, sustainable relationships with customers. It reduces financial risks for providers associated with compensating customers and other conduct-related issues.

The general intent behind conduct regulation is not only to respond to potential misconduct, but to guide licensed providers to improve their focus on delivering good outcomes for investors – preferably, before something goes wrong, rather than after.

Where we identify threats and risks to fair, efficient and transparent financial markets, we will take appropriate action to reduce the potential harm to investors and maintain market integrity. This could be 'classic' enforcement action such as court proceedings, or supervisory or administrative action such as imposing conditions on licences, as well as direction orders and warnings.

This report outlines how we responded to the areas of misconduct we saw during 2017. It also gives an overview of our supervision activity for the parts of the financial services industry we regulate. In some parts, such as managed funds, that supervision has only just begun. In other areas, the regulatory regime is more mature.

Scope of this report

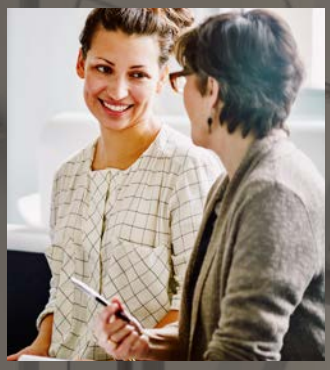
Previously, this report outlined and summarised the key actions from our enforcement and investigation activities during the relevant year.

Starting with the 2016 conduct outcomes report, we widened our focus to communicate our expectations for good market conduct. The scope of this year's report also now includes our monitoring and supervision work, and our activities to address risks and harms on our regulatory perimeter. It also includes good practice suggestions for licensed financial service providers, touches on investors' perception of provider conduct, and sets out where we will focus our energies in 2018.

This work is outlined under the key themes on pages 10 to 27. Each section explains why we acted in these particular cases, and how those decisions contribute to the FMA's statutory objectives and to maintaining market integrity.

What we saw in 2017

We saw different types of misconduct across a range of activities during 2017. This came to our attention through our monitoring activities, and investor complaints or queries.



There were some familiar types of misconduct, such as insider trading, market manipulation and scams. Other areas of concern emerged or developed further, such as scams associated with initial coin offerings, which were taking advantage of increased consumer interest in digital currencies.

The high number of investment scams remains worrying. Scams are a widespread concern for other countries and regulators; and there is no one simple solution to the issue. It requires vigilance from the public and firm action by relevant state agencies.

We will continue to encourage investors to be sceptical about 'get-rich-quick' offers, and to deal with a New Zealand-based licensed provider wherever possible. This message supports our investor capability work, where one of our key objectives is to help investors recognise the warning signs of scams and check our online warning lists.

As signalled in previous years, we continue to see potential harm caused by market participants not adhering to financial reporting or disclosure obligations.

On the fringes of our regulatory remit, we kept other areas on our radar, particularly conduct in the wholesale sector. We also continued to take action where we saw businesses and individuals inappropriately trading on New Zealand's good business reputation through misuse of the Ministry of Business, Innovation and Employment's (MBIE) Financial Service Providers Register.

Seeing positive change

During the year, we had positive engagement with market participants regarding the financial services sector's progress on customer-focused conduct. We were encouraged to see examples of businesses and individuals doing the right thing. Most wanted to ensure they understood our expectations, and were proactive in speaking to us about their issues or concerns. When mistakes did occur, market participants largely accepted them, and took steps to make sure they were not repeated.

For many of our newly licensed firms the explicit and organisation-wide focus on customer outcomes is not yet embedded, and we expect this will be apparent when we report on our supervisory work for the year. We will continue to acknowledge where firms show us they are serious about improving their customer outcomes.

We want market participants to understand our role as a conduct regulator and their obligations. Where participants are able to demonstrate their efforts to adjust how they serve their customers, we will take this into account when dealing with any issues that arise.

Sometimes providers can be less than cooperative or, in extreme instances, obstructive. This can cause mistrust and some scepticism about whether those providers are on board with the 'can we versus should we' approach we would like to see. In these cases, we may need to respond more firmly to any issues arising with such firms or individuals.

Why good conduct matters

At its most basic level, conduct is about how people and firms behave. Standards, systems, processes and controls are all necessary to provide the best outcomes for investors – but ultimately, it comes down to the conduct of individuals.

When financial service providers act in their customers' interests, it builds confidence in individual providers and the market as a whole.

Good conduct leads to healthier financial markets as well as increased investor participation in them.

Better conduct, better customer outcomes

To reduce the risks and harms outlined in our Strategic Risk Outlook 2017, we must work together with those we regulate, rather than in isolation, to raise the standards of financial market conduct. We will convey our overall expectations to those we regulate, however good conduct needs to be designed, built and maintained by each firm individually.

We acknowledge there is no one-size-fits-all approach. We do not intend to be prescriptive or rigid about how licensed businesses and individuals deliver good customer outcomes. What we do expect to see – and want to see more of – is providers operating in a way that puts customers first.

The FMA's guide to our view of conduct states that firms need to aim for good customer outcomes in every decision, disclosure and interaction they make. Where we see they haven't done that, we will take appropriate steps to address actionable misconduct.

Our focus on investor outcomes is reflected in our investor entitlements guide, which explains what consumers should expect from a financial service provider.

> "Customer knowledge of financial markets and products varies widely. Providers should be particularly sensitive to this and show how they have taken steps to minimise the risk of misunderstandings and poor customer outcomes."
>
> *- FMA's guide to our view of conduct*

Applying a conduct lens

When we interact with regulated firms and individuals, we apply what we call our 'conduct lens' to any issues we identify. This consists of five areas that convey how we expect financial service providers to treat their customers.

- Listen to customers
- Help customers understand products and services
- Ensure good communication across the whole organisation

- Have the skills and experience to provide the right products and services
- Meet professional standards of care
- Seek continuous improvements through training

- Serve business and customer interests
- Disclose and discuss conflicts
- Explain related party arrangements

- Maintain systems to support good conduct
- Seek continuous improvements
- Effectively manage complaints and disputes transparently

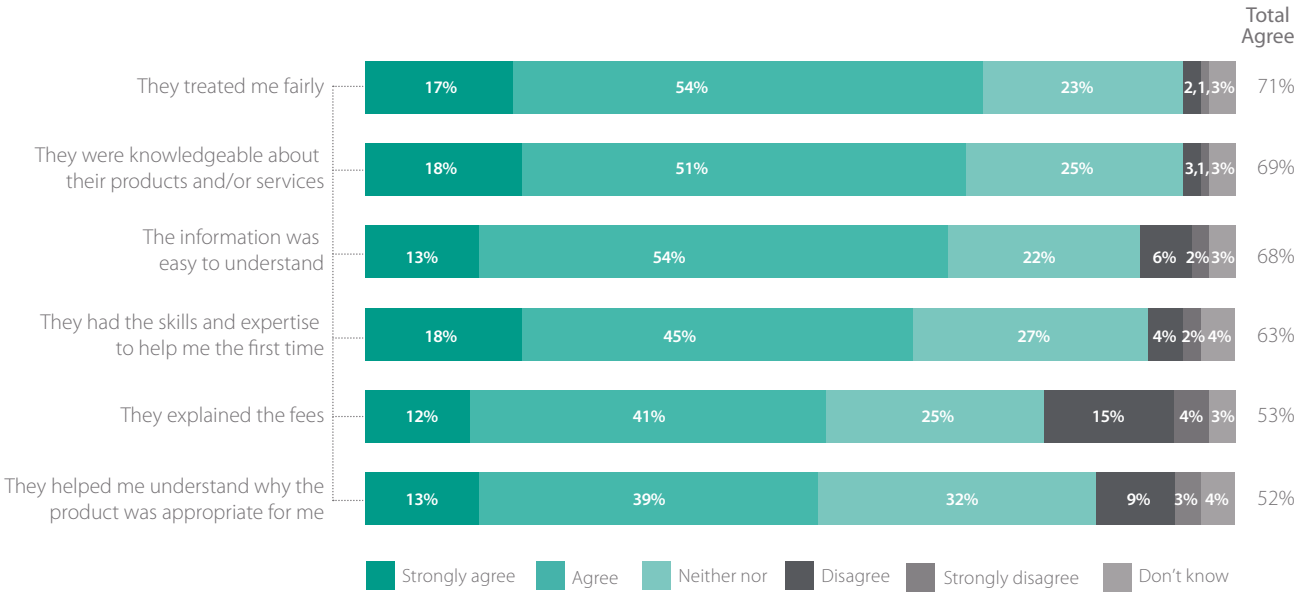
- Act in the interests of customers
- Treat customers honestly and fairly
- Conduct expectations communicated clearly by leaders and understood by staff
- Address poor conduct; recognise and reward good conduct

Investors' view of conduct

Understanding how investors view the providers we regulate helps us highlight areas for improvement in providers' practices and communication. In 2017, we surveyed investors for the first time about their experience of financial service providers' conduct.

This research aligns with a measure in our Statement of Intent 2017-2020 for licensed market participants showing how they achieve good customer outcomes. The results let us know how the financial service providers we regulate are tracking towards this.

Investors' perceptions of their financial provider



The results highlighted issues around disclosure of fees, with only 53% of the 899 investors surveyed agreeing the provider explained fees to them.

On a positive note, providers scored well on fairness and professionalism.

We shared these survey results with providers, and made it clear that we expect improvements where the survey results identified specific issues.

This research gives a key insight into providers' conduct and the perceptions of investors. We will run this survey every year to help us see which areas of investors' customer experience require improvement.

How we respond to misconduct

Our regulatory response guidelines help inform what course of action the FMA may want to take when we see misconduct in New Zealand's financial markets. We now have increased powers under the Financial Markets Conduct Act 2013 (FMC Act), which means there are various courses of action available to us, depending on the circumstances and scale of the misconduct we identify. Choosing the right course is not always clear-cut. In each instance we need to weigh up various factors, including the appropriate use of our resources. These guidelines help us by setting out the criteria and factors we think about before we decide on the best course of action.

In some cases, it could be that the matter is best handled by another agency. We refer some matters to the Serious Fraud Office, the Police, the Reserve Bank or the Commerce Commission.

For customer complaints, we connect complainants to the relevant dispute resolution scheme. This is an important resource for those who run into issues with their financial service provider. We liaise closely with the dispute resolution schemes and other consumer-focused organisations to better understand the frustrations between customers and their financial service providers.

Market conduct – market manipulation

Milford/Mark Warminger

This was the first case of its kind litigated in New Zealand. The action involved allegations of market manipulation by Mark Warminger when he was an employee of Milford Asset Management (Milford).

In 2015, Milford signed a settlement agreement. Milford accepted responsibility for having inadequate oversight and controls, and for not monitoring Mr Warminger's trading activity adequately.

Milford agreed to thoroughly review its systems and processes, and paid $1,100,000 to the FMA (in lieu of a pecuniary penalty), and $400,000 towards the cost of the investigation. The settlement with Milford did not address the culpability of Mr Warminger. The FMA considered civil proceedings against Mr Warminger to be the best option to achieve our regulatory objectives.

In March 2017, the High Court ruled that Mark Warminger's trading conduct amounted to market manipulation on two of the 10 occasions we put before the court. He was ordered to pay a $400,000 fine and received a five-year management ban.

Why we took action – Mark Warminger

Maintaining market integrity is at the core of our mandate. Our objectives for this case were to address the misconduct we perceived, send a clear message of deterrence to the trading sector, and illustrate the standard of conduct we expect.

If left unchecked, unethical conduct such as market manipulation, severely erodes investor confidence, and damages the reputation of New Zealand's financial markets.

Milford/Mark Warminger case – our key objectives

- To provide a deterrence message to Mr Warminger and the trading sector
- To set standards in the fund management industry
- To hold to account those who have not met the standards of market conduct we expect

Engaging and educating

Between September and December 2017, we met with brokers and managed investment funds that trade securities, to raise awareness of the lessons learnt from the Warminger judgment.

Our presentations encouraged firms to assess their governance structures, risk-management processes and controls, so they could identify opportunities for improvement and ensure they were managing the risk of any potential misconduct.

This year we will meet with brokers and fund managers to convey similar messages.

Why we took action – Milford

The settlement with Milford recognised the need for good governance. Firms have a responsibility to ensure they have robust systems and controls to monitor and identify inappropriate trading conduct. It is also important that firms take remedial steps when necessary.

Since December 2016, managed fund providers require a licence under the FMC Act. Post-licensing, we have communicated to these providers about the systems and controls we expect to see around trading by managed funds. The Milford settlement supports and strengthens our ongoing dialogue with the sector.

Where firms condone inappropriate conduct, or do not intervene to stop it, this affects overall market integrity.

We prefer firms to be proactive, and identify and address these matters within their organisations. However, when they do not, we may need to take enforcement action.

Expectations of good practice

- Ensure all trading is for a legitimate purpose
- Have appropriate monitoring for your business
- Ensure compliance and good internal culture in your organisation
- Ensure staff have regular training on acceptable conduct
- Effectively manage any conflicts of interest
- Ensure robust record-keeping to document internal processes.

Goldman Sachs

During our investigation into Mark Warminger, we saw trading activity by Goldman Sachs that gave cause for concern and warranted further investigation. This activity may have presented a false or misleading appearance of the price and supply of securities, which is why it came to our attention.

After assessing the trading activities and assessing our regulatory objectives and the options available to us, we decided not to pursue enforcement action. Instead, we released a report that highlighted our concerns and the action we want to take in the future.

Why we took action

Publishing our conclusions about the Goldman Sachs investigation enabled us to communicate to the sector the lessons from our findings. We were able to educate market participants about the behaviour and standards we expect. Providing clear messages about our expectations of conduct is an important part of our work.

"We'll continue to engage with industry to ensure they are clear about the standards of conduct, governance, systems and controls we expect. We will use this report to help our discussions when we meet with brokers."

– Rob Everett, FMA Chief Executive

Market conduct – insider trading

In 2017, we commenced two insider trading cases. Our action concerning trading in EROAD shares is the first time criminal charges have been brought for insider trading in New Zealand.

EROAD

In 2015, an EROAD employee sent confidential information to a former employee and suggested the former employee sell their EROAD shares. Following this, the former employee traded 15,000 EROAD shares. The individual who sent the confidential information pleaded guilty to insider trading charges.

The FMA filed criminal charges related to obstructing our investigation; these were not pursued following the guilty plea to insider trading. Failing to comply with statutory notices or attempting to mislead the FMA is a serious matter, which we take very seriously. When this happens, we will consider all options available to us.

The other individual was also charged with insider trading. That case is still in progress at the date of publication.

VMob Group

The FMA filed criminal charges against a former employee of VMob Group Limited (now Plexure Group Limited). The former employee was charged with insider trading and failing to disclose interests in VMob Group shares. The case is still in progress at the date of publication.

Why we took action

Insider trading laws are one of the key mechanisms for ensuring licensed markets remain fair and transparent. We will continue to take enforcement action where we find evidence of misconduct in this area. Both individual and institutional investors want to be confident that participants are all adhering to the same standards of market conduct.

Despite the considerable resource required, we have pursued several cases in this area and take a long time to reach court. We believe these actions help deter future misconduct and set clear expectations for those operating in our markets.

At the date of publication, we have a number of other matters in progress.

Supervision and monitoring

Financial Markets Conduct Act licensing

Under the FMC Act, we licence a number of sectors within financial services, such as managed funds, derivatives issuers, and crowdfunding and peer-to-peer platforms.

In 2017, we declined two other FMC licence applications.

In one application that was declined, the applicant was not able to demonstrate that its directors and senior managers had the appropriate skills and experience to manage a licensed business. We also considered there was a risk that the business would not have adequate financial resources to effectively perform the licensed service. This applicant can reapply once it has rectified these matters.

We designed our licensing process to be fully interactive – acknowledging this was the first time many businesses or individuals applied for a licence. We received applications that did not demonstrate the minimum standards, and showed a lack of understanding of one or more obligations. As a result of this, and because of the dialogue with us, a significant portion of licence applicants withdraw or significantly amend their applications. Most changed aspects of their internal processes, controls or governance to align with the minimum standards.

The licensing process is a good example of how we seek to influence future conduct and achieve better outcomes for customers. It is resource-intensive on both sides, but overall we have seen licence applicants show genuine willingness to understand the standards we require, and adapt their business models to achieve it.

We granted some licences with specific conditions attached to address issues we identified during the licensing process. Our monitoring work during 2017 has included following up with businesses to ensure they have met the obligations of these special conditions. In many cases, we wanted to see the processes and controls outlined in the licence application operating in practice. This work will continue in 2018.

Financial Markets Supervisors Act licensing

All licensed supervisors needed to apply for new licences in 2017 under the Financial Markets Supervisors Act 2011. Applicants received a new five-year licence. As part of the licensing process, we visited all supervisors onsite to better understand how they operate and meet their licensing obligations.

As supervisors play a critical role in our financial markets, in most cases we also met with senior management and boards of the supervisor entities, to understand how their businesses were operating and make sure they understood our expectations. We intend to continue our onsite monitoring with all supervisors during 2018.

Financial Markets Conduct Act licensed entities

In the first half of 2017 we focused on those with licence conditions and assessed how well participants were meeting the obligations of the new regime.

We took a more individual approach to follow-up monitoring. We wanted to establish good working relationships, and facilitate engagement with market participants, which is very important as the new licensing regime matures.

Conduct regulation and standards are still quite new in our financial services sector, which means we must constantly communicate our expectations. As a result, we were not surprised to see providers had work to do in a number of areas we review and monitor. However, we did expect providers to demonstrate how they had fulfilled the conditions of their licences.

Where we find non-compliance, we will work with licensees to achieve voluntary behavioural change that addresses the risk of misconduct and reduces any risks to investors.

We will take additional measures, if necessary, to improve conduct by licensed firms, including directions, action plans, and licences with conditions attached. We only pursue court action for the most serious misconduct, and where we believe litigation is required to protect or compensate consumers, and/or clarify an area of law.

When licence obligations are not met

Our monitoring found one firm in breach of several licensing obligations.

Our findings included:

- Several potential breaches of its internal company policies.
- Non-compliance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. These included poor staff knowledge or training, a lack of monitoring of suspicious transactions, and breaches of its own compliance programme.
- Not meeting standards for governance and culture. The managing director, at the time, could not show sufficient knowledge or understanding of the licensed business's requirements.
- No appropriate control environment to ensure staff training or to check staff were adequately qualified.
- Not filing financial statements with the Registrar within four months of their balance date and not meeting the standard licence conditions for financial reporting.
- Non-compliance with specific licensing conditions.

The extent of the issues meant we had very serious concerns about their ability to comply with regulatory obligations. We required the firm to stop trading immediately. They then submitted a remediation plan outlining the steps they would take to resolve the issues.

We encouraged them to update their clients about our monitoring visits, and the steps they were taking to ensure compliance with their regulatory obligations.

Authorised financial advisers

Last year, we conducted 72 authorised financial monitoring (AFAs) visits. They are the largest population that we supervise. Our monitoring seeks to understand how they provide advice and how they comply with legislation and the AFA Code of Conduct. We also review disclosure documents and professional development logs. The proposed changes to the financial advice regime will transform the size and scale of this work.

Areas of concern

We were most concerned about AFAs' disclosure statements that did not comply with the regulations, and an absence of signed client acknowledgements on client files. It is critical that AFAs can demonstrate they have disclosed all appropriate matters to their clients, and can show why they provided the advice they did. Without records of this information, we cannot properly assess their conduct when dealing with clients.

We also took the opportunity to understand from AFAs the pressures in their businesses, and their thoughts about the Financial Services Legislation Bill. This provided a great source of intelligence for future monitoring activities and valuable feedback for us about how we should interact with such a vital part of our financial services sector.

Thematic projects

One of the key changes in our approach to monitoring the increased population size we now regulate is our activity in thematic monitoring. Thematic projects are an assessment of an issue or risk across a sample of market participants in a sector or industry. The exploratory work enables us to come to a view on conduct or controls/processes in certain parts of the industry, rather than doing deep dives into individual firms in various sectors.

Thematic projects are common in other countries where conduct regulation is more established.

This year, we will communicate externally the insights learned from these important projects, to help educate and inform market participants.


Financial
advice

Communicating to customers

In June 2017, the Financial Advisers Disciplinary Committee (FADC) heard a case we brought against an AFA who we believed had breached code standards relating to pension transfer advice and insurance advice.

The FADC concluded the adviser failed to meet obligations in the AFA Code of Conduct to provide clients with written confirmation of his advice. When he gave insurance advice, he made recommendations without a reasonable basis for doing so.

However, on some points of the complaint, the committee ruled in the adviser's favour. We have incorporated this ruling into our review standards.

A penalty of formal censure and supervision was imposed, and permanent name suppression granted.

Why we took action

We wanted clarity on the standards required when giving financial advice to those who want to transfer from overseas pensions and insurance products.

The FADC's decision provides useful guidance on applying the AFA Code of Conduct. It also recognises that advisers need to give their clients a timely record of advice for administration purposes and to help them make sound investment decisions.

> "…The whole industry operates on a model of trust between brokers and insurers, and advisers and insured persons; the whole system relies on the integrity of its participants."
>
> *- Judge Black, FMA v Wilson*

Forging customer documents

Anthony Norman Wilson pleaded guilty to four charges under the Crimes Act 1961.

He was charged with forging clients' initials and amending insurance applications while working as a registered financial adviser.

In one case, he removed a page that disclosed pre-existing conditions, and replaced it with a blank page, which he initialled. When the client made a claim, the insurer declined it, based on non-disclosure of the pre-existing conditions.

Wilson received a sentence of 150 hours of community work and six months' community detention. He also had to pay reparations of $16,461.

Why we took action

The relationship between clients and advisers is based on trust. Any erosion of that trust has an impact on the overall integrity of the sector. This case is important as it highlights there are criminal consequences when financial advisers abuse the trust of their clients. It also highlights the high personal cost to individuals affected by this type of behaviour.

Investor protection

The role of the supervisor

Financial markets supervisors must now be licensed and are subject to specific statutory obligations, additional to the standards that applied in 2010. Monitoring and enforcing these obligations to ensure investors can have confidence in supervisors is one of the FMA's strategic priorities.

Prince and Partners

In August 2017, we settled a case against Prince and Partners Trustee Company for $4.5 million. The settlement and agreed compensation for investors meant litigation was not necessary.

Prince and Partners was trustee for finance company Viaduct Capital Limited, which went into receivership in 2010. We believed Prince and Partners failed to carry out its role as a supervisor with the care, diligence and skill expected. Prince and Partners admitted a series of failings in its role as trustee.

Why we took action

This is the first time we have used our powers under Section 34 of the Financial Markets Authority Act 2011. The section allows the FMA to exercise the rights of action of investors in certain circumstances. In this case we 'stepped into the shoes' of investors who suffered loss from the collapse of Viaduct Capital Limited. We will take action against supervisors who fail to discharge their responsibilities, to highlight examples of unacceptable conduct.

This case had regulatory objectives beyond achieving investor compensation. Our goal was to promote investor confidence in licensed supervisors and ensure supervisors understand their obligations.

We will continue to look at taking further enforcement actions, where we see supervisors failing to meet their obligations to promote investor confidence in licensed supervisors.

> "The trustee's role was to protect the interests of investors and act as an independent watchdog. It failed to do so, despite obvious concerns… Supervisors play an important role to protect investors and promote confidence in New Zealand's financial markets."
>
> *- Karen Chang, FMA, Head of Enforcement*

What's the purpose of Section 34?

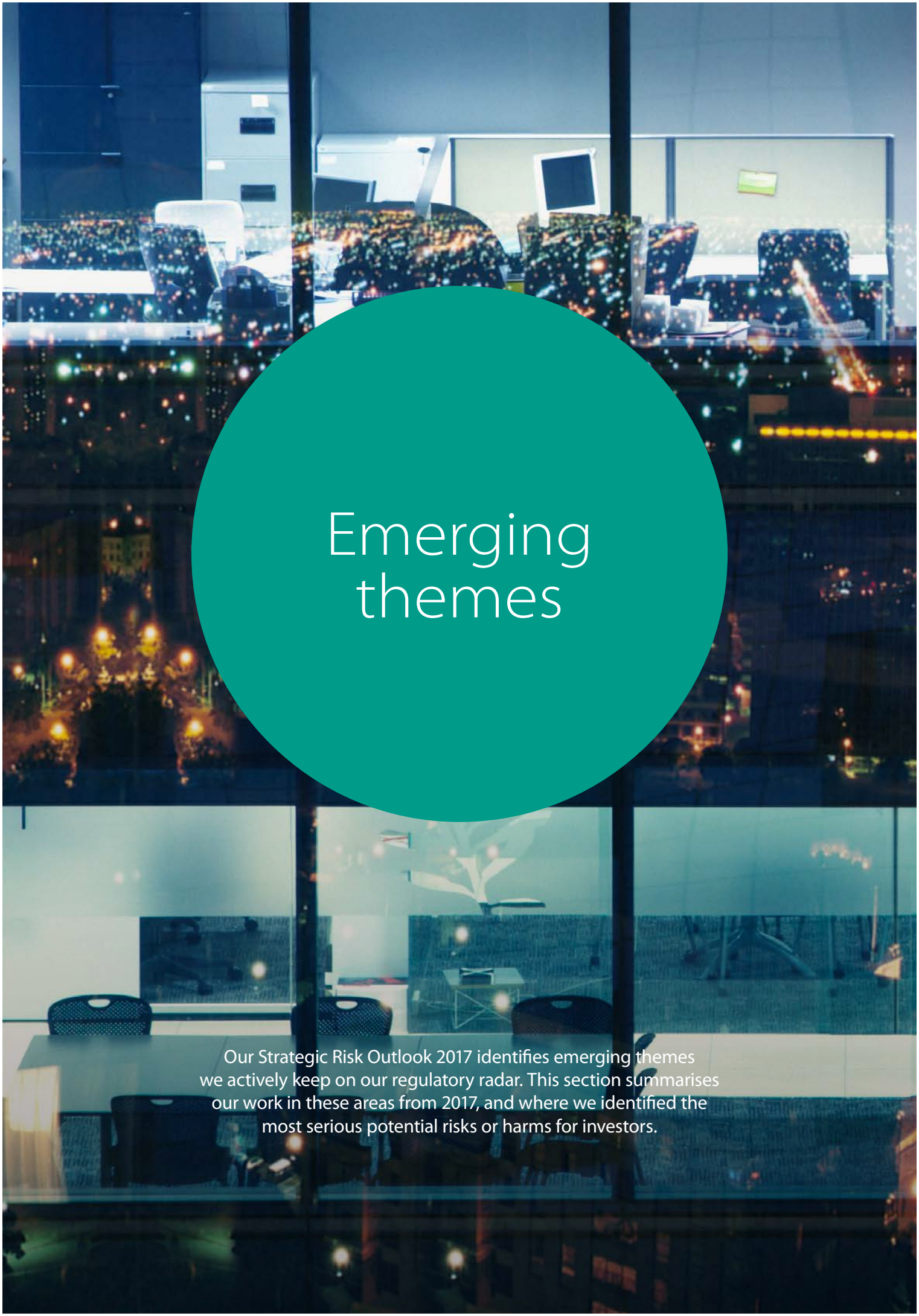
Section 34 of the Financial Markets Authority Act 2011 allows us to take action, on behalf of another, against a third party who is or has been in the financial markets industry.

It gives us the right to 'stand in another person's shoes' and take the action for them in certain circumstances.

There is a high threshold to meet for taking court proceedings under Section 34. We only use these powers where it aligns with our statutory objectives and there is a strong public interest to proceed.

Before we use Section 34, we are required to consider:

- what is our statutory objective
- what effect it may have on the future conduct of financial markets participants
- how commercially significant it is to the financial markets
- how likely it is the aggrieved parties will commence and continue proceedings
- any other relevant matters.



Emerging themes

Our Strategic Risk Outlook 2017 identifies emerging themes we actively keep on our regulatory radar. This section summarises our work in these areas from 2017, and where we identified the most serious potential risks or harms for investors.

Theme: Perimeter activities

We do not regulate the conduct of all financial services, providers and products. The activities we do not regulate, but that pose potential risks, we call 'perimeter' issues. Below we summarise our work dealing with perimeter issues in 2017.

Financial Service Providers Register (FSPR)

The FSPR is a public register of New Zealand businesses and individuals providing financial services, maintained by the Companies Office. Registration only means the provider meets certain basic requirements, including passing criminal history checks. It does not mean they are licensed or regulated by us. Only a small portion of those on the FSPR are licensed by us or by other agencies such as the Reserve Bank. Separate public lists of licensed firms are maintained by the FMA and the Reserve Bank.

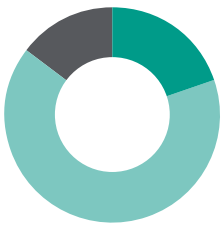
Consumers and some overseas regulators can misinterpret registration to mean that a provider is actively regulated in New Zealand for all the services it provides, either here or overseas. These businesses may disclose their registration in a way that gives this impression, particularly overseas, to leverage the good reputation of New Zealand's financial markets inappropriately. It is also misleading to consumers.

We have the power to direct the Registrar at the Companies Office to deregister a company from the Financial Service Providers Register if we believe registration would:

- Give a false or misleading impression that they are providing financial services and/or are regulated in New Zealand.
- Otherwise damage the reputation of New Zealand's financial markets in some way.

Our work on the FSPR

20 new applications reviewed in 2017



- Directed Registrar to prevent registration
- Application expired or withdrawn after FMA engagement
- Allowed to register

17 existing registrations reviewed

- Directed Registrar to deregister
- Deregistered by Registrar
- Voluntarily deregistered
- Not removed

Deregistration from the FSPR

Innovative Securities Limited

In June 2017, the High Court dismissed an appeal by Innovative Securities Limited against our decision to direct the Registrar to deregister Innovative Securities from the FSPR.

Not one of its three New Zealand-based staff provided financial advisory services, and its 21,000 clients were all based overseas. We directed deregistration based on these facts.

> "…the FMA was correct to determine that the registration of Innovative Securities is or is likely to create a false or misleading appearance that… its financial services are provided from New Zealand..."
>
> *- Moore J, Innovative Securities v FMA*

Why we took action

We want to send a clear message that we will go to significant lengths to protect the good reputation of New Zealand's financial markets. Creating 'sham' offices in New Zealand to enable registration on the FSPR will not be tolerated.

New Zealand-based directors

At the date of publication, we have two cases where proceedings are likely to be brought against New Zealand-based company directors for inappropriate use of the FSPR. We have this sector under scrutiny, and have several active investigations in progress concerning misuse of the FSPR.

Deceiving investors

Steven Robertson/PTT Limited

In October 2017, we filed 47 charges against Steven Robertson. These charges related to PTT Limited and associated entities, and included:

- theft by a person in a special relationship
- obtaining by deception
- dishonestly taking or using a document.

All charges carry a maximum penalty of seven years in prison per charge.

Evidence was gathered from individuals across New Zealand and Australia.

The total monies lost by investors was $NZ 1.86m and $AU 240,000. The case is before the courts at the date of publication.

In 2015, we requested asset preservation orders in connection with Mr Robertson and associated businesses, as we were concerned investors' funds were at risk. Mr Robertson was not an authorised financial adviser and therefore not licensed by us. However, he held himself out as investing funds deposited with him by clients. This may have given his clients reason to believe his activities were regulated.

Why we took action

We considered Mr Robertson posed a significant risk to the public, and the nature and scale of alleged offending warranted criminal prosecution. This case is before the courts at the date of publication.

Wholesale market conduct

BKBM guidance

Our guidance on the Bank Bill Benchmark Rate (BKBM) and closing rates published in 2017 conveyed our expectations around trading conduct and controls to firms that trade in wholesale markets.

We wanted to establish our conduct expectations in wholesale markets and reduce regulatory uncertainty, while also supporting capital market growth and integrity.

In recent years, many banks have stopped participating in the calculation of certain benchmarks. Where fewer banks participate in setting a benchmark, there are increased risks the benchmark will not be robust. We were very conscious of litigation and regulatory action for benchmarks such as LIBOR* and in relation to foreign exchange in other jurisdictions. This activity was also causing anxiety with New Zealand's markets as to what is acceptable in terms of trading activity that might impact benchmarks.

We stated that we are willing to engage with market participants to be clear about our role and expectations, and to encourage the return of market participants to trading. However, we also made clear that participants retained responsibility for ensuring the trading conduct of their staff is legal and appropriate.

* LIBOR stands for the London interbank offered rate. It is the basic rate of interest used in lending between banks on the London interbank market and also used as a reference for setting the interest rate on other loans.

Theme: Regulating for rapid technological change

We encourage an open-door policy around engaging with the market about new and innovative financial products and services. We balance embracing innovation with our goal to reduce any potential risks for investors.

Cryptocurrencies and ICOs

This year consumer interest in cryptocurrencies and initial coin offerings (ICOs) heightened. We responded with information on our website to help investors and consumers understand what cryptocurrencies are, and the risks associated with them. For market participants thinking of offering ICOs we also included information about different categories of these offerings, and how we would assess the appropriate regulatory treatment of them.

Sell My Good initial coin offering

Our web content on ICOs clearly sets out that anyone planning an ICO should engage with the FMA as early as possible in the process. Every ICO is different and has to be assessed individually. If the 'tokens' (currency) of an ICO are a financial product, they would be regulated. Offerors must ensure any statements in their proposal are accurate and can be substantiated.

Sell My Good contacted the FMA in the final planning stages of its ICO but did not provide us any details of their intended final offering. We were not able to assess their ICO prior to the tokens going on sale, but believed it should be classed as a financial product and therefore, fall within our regulatory remit.

After we engaged with the directors, they stopped the ICO voluntarily. They also agreed to refund all money to investors.

Why we took action

Investors should be able to receive accurate and understandable information to help them make good decisions about financial products, including ICOs. We also expect those offering tokens via an ICO to take formal advice to understand if their offering will be regulated; and discuss any issues with us before making an offer.

When we see this has not happened, we will take action to protect investors. We can issue stop orders against New Zealand companies advertising financial products in a misleading way, or that breach offer regulations.

Improving how we identify and respond to misconduct

The FMA has a range of significant regulatory powers we can use to address market misconduct. Before acting, we carefully consider the appropriate regulatory tool to use that will achieve our statutory objectives. Most issues we investigate are complex and there is a lot at stake for those we investigate. This means it takes time – sometimes longer than we would like – and resources to make well-informed decisions.

We also want to ensure we are as effective and efficient as we can be about identifying the risk of poor conduct and pursuing misconduct when we see it, and that we focus on those matters that help achieve our strategic objectives.

We are improving our knowledge management capability and reviewing mechanisms to improve early engagement with senior staff. This will further facilitate early direction on investigation matters.

This year, we will continue to use the full range of our enforcement tools - not only court proceedings - to provide faster and more cost-efficient ways of addressing some of the misconduct we see.

Focus for 2018

- Intelligence-led approach
- Continue to address issues on our regulatory perimeter
- Strengthen and build on our intelligence gathering
- Remain active where we see non-compliance with licence conditions
- Continuing to improve our knowledge about market conduct
- Continue to communicate and engage with those we regulate.

Acting in your customers' interests – good practice for financial service providers

What can you do to help?

- Educate your staff on good conduct
- Get familiar with our conduct guide and apply it across your business
- If things are going wrong, be proactive and speak to us early
- Show, rather than tell, your customers that you place their interests at the centre of what you do and how you do it
- Engage with us early if you have any issues
- Visit our website for helpful materials.

Calendar

February 2017

AML/CFT warning

Anti-Money Laundering/Counter-Financing of Terrorism warning (AML/CFT). This followed a review where requested information Act 2009 was not provided.

Wilson

Charges filed against registered financial adviser Anthony Norman Wilson for making a false document and dishonestly using a document.

May 2017

Viaduct Capital/ Mutual Finance

Trial aborted in the prosecution of former directors of finance companies, Viaduct Capital and Mutual Finance.

July 2017

Warminger

Mark Warminger withdrew his appeal against the High Court judgment. Civil proceedings ended. High Court judgment enforced.

Wilson

Former registered financial adviser Anthony Norman Wilson was sentenced to 150 hours of community work, six months' community detention and ordered to pay reparations of $16,461 for forging clients' initials and falsely amending insurance applications.

October 2017

VMob

Charges filed against an individual alleging insider trading in shares of VMob (now trading as Plexure Group).

Robertson

Charges filed against Stephen Robertson for theft by a person in a special relationship, dishonestly using a document and obtaining by deception.

March 2017

Patterson

Charges filed against Garry James Patterson alleging contravention of the Financial Service Providers (Registration and Dispute Resolution) Act relating to various insurance policies.

Warminger

The High Court declared that Mark Warminger's trading conduct on two occasions (during his employment at Milford Asset Management) amounted to market manipulation.

EROAD

Charges filed against Jeffrey Peter Honey and another individual relating to insider trading in shares of EROAD.

June 2017

FADC decision

Following our complaint, the Financial Advisers Disciplinary Committee found that an authorised financial adviser breached code standards relating to pension transfer advice and insurance advice.

Warminger

The High Court imposed a penalty of $400,000 on Mark Warminger. He also received a five-year management ban.

EROAD

Jeffrey Peter Honey sentenced to six months' home detention after pleading guilty to one charge of insider trading.

South and Provan

Charges of theft by a person in a special relationship filed against Robert Ian South. Charges of obtaining by deception filed against Murray Byron Provan.

Innovative Securities

Innovative Securities Limited appeal against our decision to direct Companies Office to deregister them from the FSPR was dismissed.

August 2017

Prince & Partners

Prince & Partners Trustee Company admitted failings as trustee of Viaduct Capital Limited which went into receivership in 2010. The FMA brought a claim against Prince & Partners pursuant to section 34 FMA Act. To settle the claim, Prince & Partners paid $4.5m, made admissions that we could publish and agreed not to act as a supervisor of any regulated offer of debt securities for five years.

September 2017

FSPR report

Financial Service Providers Register (FSPR) report released about our work in this area between 2014 and 2017.

November 2017

Goldman Sachs

The FMA published a report on the outcome of investigation into potential market manipulation by Goldman Sachs.

Fullerton Markets

Formal warning issued to Fullerton Markets for AML/CFT Act breaches related to inadequate risk assessment, compliance and due diligence.

ANZ

The High Court heard a judicial review application and breach of confidence claim by ANZ against the FMA, concerning the interpretation of our powers under s59 of the Financial Markets Act 2011.

FMA

FINANCIAL MARKETS AUTHORITY

TE MANA TATAI HOKOHOKO - NEW ZEALAND