September 2014

FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

Investigations and Enforcement Report

Key issues and themes arising from investigations and enforcement activities

1 July 2013 – 30 June 2014

This report should be read by:

Auditors
Audit partners
Company directors
Compliance officers
Financial advisers
Investors
Legal counsel
Receivers and liquidators
Risk officers
Senior executives
Supervisors
Trustees

About the FMA

The FMA is an independent Crown entity with a mandate to promote and facilitate the development of fair, efficient, and transparent financial markets. We work with financial markets participants to raise standards of good conduct, ethics and integrity and to achieve best standards of practice and compliance. Through our activities we aim to strengthen investor confidence in New Zealand's capital markets.

WWW.FMA.GOVT.NZ

AUCKLAND OFFICE | Level 5, Ernst & Young Building | 2 Takutai Square, Britomart | PO Box 106 672 | Auckland 1143
WELLINGTON OFFICE | Level 2 | 1 Grey Street | PO Box 1179 | Wellington 6140

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Executive summary

Promoting high standards of behaviour and responding to harms that threaten the integrity of our financial markets is an important part of the Financial Market Authority's (FMA) mandate. Through our investigation and enforcement activities we aim to raise standards of behaviour, deter misconduct, and hold to account those whose conduct harms the fair, efficient and transparent operation of our financial markets. Our intention is to raise investor confidence by taking timely and proportionate enforcement action and by seeking compensation for investors where appropriate.

This report provides an overview of our investigation and enforcement activity in the year to 30 June 2014. It highlights key themes and issues that have emerged during this reporting period with the intention to provide guidance and key learnings to our financial markets participants to help them better understand the standards of behaviour we expect in our financial markets. This report also gives investors and members of the public insight into the work we do which we hope will increase their confidence in our markets and in the role of regulation.

We focus our enforcement activities on the most serious harms threatening New Zealand's financial markets and we measure our response to misconduct according to both severity and the impact our response can achieve. In this reporting period, our investigation and enforcement activity focused on:

- responding to serious financial crime
- probing alleged secondary markets violations
- addressing the persistent failure by some issuers to file important financial statements
- completing the legacy finance company cases
- cementing our focus on actual and potential harms facing the market today.

It is important to note that we do not have a 'litigation by default' approach, rather we use a range of tools to achieve appropriate, proactive and targeted enforcement action. In some cases we have issued warnings or settled proceedings, particularly where this has been in the best interest of the public and investors. In other cases we have engaged with market participants at the compliance end of the regulatory spectrum to assist them with their compliance. In those cases no harm to investors has occurred and the regulatory objectives have been achieved without the need for recourse to enforcement action. Our Enforcement Policy guides our decision making on the actions to be taken.

Financial Markets Conduct Act 2013

On 1 April 2014 the first phase of the *Financial Markets Conduct Act 2013* (FMC Act) was implemented. This new financial services regime simplifies what has traditionally been a complex liability regime in New Zealand's financial markets. The new FMC Act adopts a system of de-escalating levels of liability and introduces a new set of regulatory powers and infringement offences, increasing the emphasis on civil liability for contraventions.

Supporting references

A glossary and timeline of investigation and enforcement activity is included at the end of this report. These resources are quick reference points to support your reading and understanding of this document.

Summary of key themes and issues

In the year to 30 June 2014 a range of themes and issues emerged. These are summarised below and addressed in further detail throughout this report.

- **Assertive action against serious misconduct.** We will take court action against serious financial crime or misconduct where required.
- **Focus on secondary markets.** We have maintained a focus on secondary markets issues and have investigated reports of suspicious trading, as received from the frontline regulator, NZX, or from other sources. In the course of this work we have initiated the first market manipulation case.
- **Effective use of settlements.** We will enter into settlements when we consider it is in the best interest of the public to do so. In making these types of decisions we consider a number of factors including: the interest of investors; the prospects of recovery of any Court award; the appropriate use of FMA resources and public funds; and the total cost, time and certainty benefits that arise from an early resolution.
- **Use of management bans.** We recognise that management bans play an important role in responding to misconduct and in protecting the investing public.
- **Corporate governance.** Strong corporate governance is important in the prevention and detection of harm in our financial markets, and in encouraging investors to be confident participants.
- **Harms-based regulation.** We take a harms-based approach to regulation. We use a range of non-litigation regulatory tools to respond to misconduct in the market and to guide market participants and regulated firms or individuals as to the standards of conduct expected of them.
- **Requests for information.** We expect financial markets participants to comply promptly with requests for information in order to assist us in responding to market issues in a timely manner. At times our response may include reaching a decision to take no further action.

This report also addresses forward-looking issues, including our anticipated future priorities in enforcement activity. These are summarised below and addressed in further detail throughout the report.

- **Use of the full range of regulatory tools available to the FMA.** With an extended range of powers now available in addition to our existing powers, we have an increased variety of means to achieve our regulatory objectives. In the enforcement space, this includes using public warnings about products and conduct, cancelling prospectuses, and imposing bans on directors, where appropriate. These remedies are designed to sanction misconduct, reduce the chances of further misconduct and to raise public awareness.
- **Secondary markets.** We anticipate continued focus on a range of secondary market conduct issues, typically in conjunction with NZX. Identifying and reacting to possible instances of insider trading and market manipulation is central to our mandate.
- **Corporate disclosures.** The importance of corporate disclosures, whether in offer documents, annual reports, or exchange announcements, is critical to the effective operation of our markets and will continue to be a significant focus.
- **Role of 'frontline regulators' and gatekeepers.** The effectiveness of frontline regulators and gatekeepers such as NZX, trustees, auditors and chartered accountants is critical to our ability to regulate. We will continue to spend considerable time monitoring the operation of these sectors.
- **Inter-agency collaboration.** Co-operation with other government agencies is critical to delivering effective enforcement outcomes and to raising the standards and confidence in New Zealand's financial markets.

FMA enforcement activities

Referrals and complaints

Enforcement and investigation activities arise from information provided by a number of sources, including from:

- the public through our complaints process
- other government agencies
- frontline regulators
- the FMA compliance teams who monitor and supervise financial markets participants.

We will assess any information that indicates grounds to suspect serious harm to the operation of fair, efficient and transparent financial markets. That assessment may result in undertaking inquiries and working with the financial markets participant to reach a resolution, or, where potentially serious harm is identified, opening an investigation. Our compliance and enforcement teams work closely to determine the appropriate action to be taken.

In the year to 30 June 2014, we received a total of 2,701 enquiries and 839 complaints. The enquiries related primarily to:

- the FMA and the implementation of the FMC Act, including our engagement with the market in relation to the new Act
- legislation, policy and guidance regarding the Anti-Money Laundering (AML) regime.

Complaints primarily related to:

- alleged scams including through foreign exchange platforms
- people or entities providing financial services without registration or authorisation
- custody of client funds.

Of the 839 complaints, 68 were referred to the FMA Enforcement Team. The majority related to existing investigations and a small number resulted in new investigation action. The other 771 complaints were either resolved, closed with no further action taken, or were referred to the FMA compliance team and are subject to ongoing consideration.

Enforcement inquiries and investigations

In the year to 30 June 2014, the FMA's Enforcement Team was engaged in 76 inquiries and investigations and 29 litigation matters.

These matters covered a wide range of issues in the following categories:

- financial adviser regime, including referrals to the Financial Advisers Disciplinary Committee (FADC)
- primary markets, including offer disclosures and illegal offers
- secondary markets, including insider trading, market manipulation and disclosure obligations
- finance company investigations and litigation (civil and criminal)
- financial reporting by public issuers and contributory mortgage brokers
- financial crime, including Crimes Act 1961 (Crimes Act) and Companies Act 1993 (Companies Act) offences
- perimeter issues, including forex operators and offers outside New Zealand
- provision of assistance to overseas regulators pursuant to the International Organisation of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMOU).

During the year to 30 June 2014 we had a greater number of cases in court compared to the 2012–13 year which is primarily the result of:

- the completion of three large finance company investigations resulting in the initiation of criminal proceedings: OPI Finance Limited (In receivership); Viaduct Capital Limited (In receivership); and Mutual Finance Limited (In receivership)
- the increase in referrals to the FADC and the commencement of a number of category 1 criminal proceedings following the FMA's project for compliance with financial reporting requirements.

Forty-six of the 76 inquiries and investigations were closed during this reporting period as a result of one of the following outcomes:

- compliance was achieved following engagement with the FMA
- no harm to the market was identified or no breach was established
- the financial markets participant ceased operations in New Zealand
- a public or private warning was issued
- a compliance advice letter was issued (explaining what is required for compliance to be achieved)
- a civil or criminal proceeding was initiated
- the matter was referred to the FADC
- the inquiries were completed to the satisfaction of the overseas regulator.

As at 30 June 2014, we had 30 active inquiries and investigations underway and proceedings before the Courts continue in 13 cases. These matters continue to cover a broad range of regulatory issues and market harms in both primary and secondary markets.

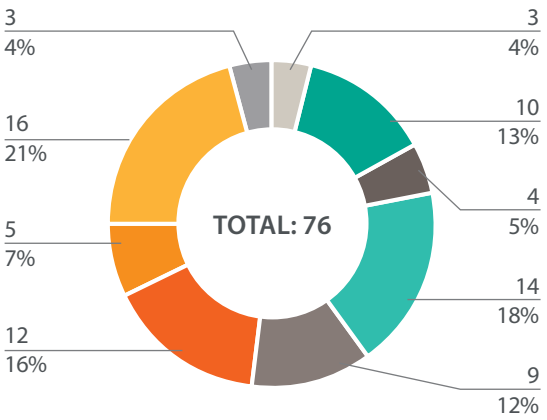
Summary of activity

- **Secondary markets.** Investigations into secondary markets issues were a significant area of focus, accounting for 21% of inquiries and investigations. These related to potential insider trading, market manipulation and disclosure breaches. By comparison, finance company investigations accounted for 13%.
- **Financial statements.** Investigations into public issuers and contributory mortgage brokers which had repeatedly failed to file financial statements or annual reports, accounted for 22% of the investigation cases.
- **Primary markets.** The FMA has continued to inquire into primary markets issues, mostly relating to potential illegal offers. These comprised 16% of all cases.
- **Authorised Financial Advisers.** Investigations into complaints regarding potential breach of the Code of Professional Conduct (the Code) for Authorised Financial Advisers (AFA), and harm arising from non-compliance with the financial advisers and Financial Service Providers Register (FSPR) regime, comprise the majority of the remainder of inquiries and investigations.

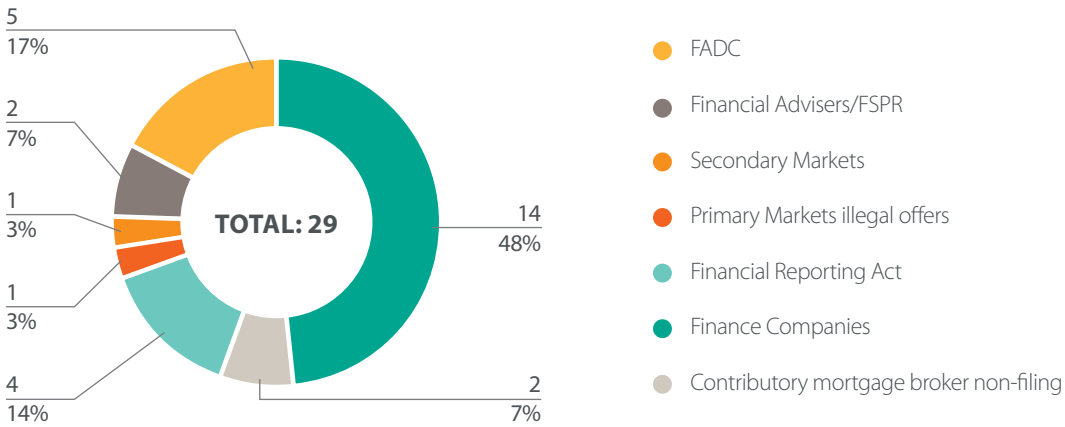
- **Outstanding finance company cases.** Completing the finance company investigations has been a priority. Nine finance company investigations were concluded this year, resulting in one settlement, the issuing of two warnings, and initiation of criminal proceedings against the directors of three companies. The remaining investigations were closed with no further action. In addition, 14 finance company cases have been before the courts either in criminal or civil proceedings, or on appeal. Most legacy matters are now resolved or in litigation.

- **Litigation.** Finance company litigation, either civil, criminal or on appeal, has accounted for 48% of the FMA cases before the Courts. We have also applied our in-house litigation resources to appearances before the FADC (17%), and in the District Courts in Auckland, Tauranga and Christchurch, to deal with *Financial Reporting Act 1993* (Financial Reporting Act) and contributory mortgage broker non-filling cases (21%).

INQUIRIES AND INVESTIGATIONS DURING 2013/2014



LITIGATION MATTERS 2013/2014



Action against serious misconduct

Where the FMA identifies serious misconduct, financial crime and fraud in the financial markets, we will take strong action either through criminal or civil proceedings.

Criminal proceedings

In the year to 30 June 2014 criminal proceedings have been commenced against the directors of three finance companies:

- Viaduct Capital Limited (In Receivership)
- Mutual Finance Limited (In Receivership)
- OPI Pacific Finance Limited (In Receivership and In Liquidation).

In the case of Viaduct Capital Limited and Mutual Finance Limited, charges have been filed under the Crimes Act and Companies Act. In the case of OPI Pacific Finance Limited, charges were filed under the Securities Act 1978 (Securities Act). Charges were also filed against contributory mortgage brokers and directors of issuers for failing to file annual reports and important financial statements. As at 30 June 2014, these cases remained before the Courts.

The FMA has also worked closely with the Serious Fraud Office (SFO) to investigate and bring criminal prosecutions against financial advisers whom the FMA and SFO allege have committed fraud through the theft of investor funds and against a professional legal adviser to finance company directors.

Belgrave Finance Limited (In receivership and liquidation)

In the case of Belgrave Finance Limited, the FMA and SFO brought charges against one of the professional legal advisers, Mr Hugh Hamilton, for his role in facilitating criminal conduct of the directors of that company.

On 16 May 2014, Justice Faire delivered his verdict in the prosecution against Mr Hamilton. He was found guilty of 14 charges under s220 Crimes Act relating to theft in a special relationship. The charges related to loans with a value of more than $12 million, made by Belgrave Finance Limited to various related entities between June 2005 and March 2008. These charges involved advances made to various entities related to Mr Raymond Schofield.

The Court found that Mr Hamilton had played an integral part in enabling and assisting the offending by the Belgrave Finance Limited directors. He did this by carrying out the instructions for the execution of loan advances to related parties in breach of the Debenture Trust Deed. Mr Hamilton had provided legal advice to Mr Schofield, Mr Smith and Mr Buckley, who were charged in relation to the making of substantive fraudulent representations and misuse of investors' funds.

In his reasoning, the Judge noted that the case would be of interest to legal practitioners acting in the area of securities law, having regard to the fact that Mr Hamilton's involvement commenced on the receipt of instructions from the principal parties involved.[1]

Professional advisers play a critical role in ensuring compliance when they provide advice to companies that raise money from the public, and they have a responsibility to ensure they do not enable wrongdoing. The FMA is focused on restoring confidence to the primary debt market and we believe this proceeding serves to deter others who might think to offend in a similar way.

Ross Asset Management Limited (In liquidation)

In June 2013, following a co-ordinated investigation, the SFO filed charges against Mr David Ross alleging that he conducted a Ponzi scheme which he disguised by falsely reporting clients' investments. Further charges were filed by the FMA against Mr Ross alleging breaches of:

- the *Financial Service Providers (Registration and Dispute Resolution) Act 2008* (FSP Act) by providing a financial service (broking) when he was not registered for that service

[1] *On 4 July 2014, Mr Hamilton was sentenced to four years and nine months' imprisonment. Mr Hamilton has filed a notice of appeal against sentence which is yet to be determined by the Courts.*

- the *Financial Advisers Act 2008* (FA Act) by knowingly making a false or misleading declaration or representation to the FMA for the purpose of obtaining authorisation to become an AFA
- the *Financial Markets Authority Act 2011* (FMA Act), by supplying information to the FMA which he knew to be false or misleading.

In August 2013 Mr Ross pleaded guilty to all of the FMA and SFO charges. In November 2013 he was sentenced in the Wellington District Court to 10 years and 10 months of imprisonment.

This case highlights how the financial adviser regime relies on advisers providing truthful information when they apply for any licence. The conduct of Mr Ross undermined the integrity of the regime.

The FMA's charges – and the subsequent guilty pleas by Mr Ross and his sentence – underline the serious consequences where false information is provided to the FMA and reinforce the need for integrity in the licensing and compliance system.

As part of the response to Mr Ross's offending there has been law reform in respect of financial advisers.

Under the FMC Act, financial advisers who manage a client's portfolio under an investment authority will no longer be able to hold that money or property themselves. This is intended to better protect the security of investors' money and the FMA's monitoring of AFAs will assist in ensuring they are meeting their obligations.

We have released a best-practice guidance for financial advisers providing Discretionary Investment Management Services (DIMS) to ensure our expectations are well understood. We have also provided guidance for investors considering using such services, and all guidance materials are available at www.fma.govt.nz

Strategic Planning Group Limited

The Strategic Planning Group Limited case is currently before the Courts. In this case, both the FMA and SFO have brought charges against the directors. The SFO alleges that one of the directors, who is also an AFA, engaged in serious criminal offending by the alleged theft of investor funds. Our charges allege that both directors made false statements in financial reporting and that the AFA has breached financial adviser legislation.

Together with the SFO we undertook a co-ordinated investigation resulting in charges laid by the SFO under the Crimes Act, and charges laid by the FMA under the Financial Reporting Act and financial adviser legislation.

Civil proceedings

In the year to 30 June 2014, the following civil proceedings against the directors of finance companies remained before the Courts:

- Dominion Finance Group Limited (In Receivership and In Liquidation)
- Capital + Merchant Finance Limited (In Receivership and In Liquidation)
- Hanover Finance Limited.

Brian Peter Henry

In July 2013, the FMA filed the first case alleging market manipulation in the trading of shares of a listed entity. In our claim we sought declarations of contravention and pecuniary penalties alleging that certain orders and trades made by an individual breached trading prohibition in the *Securities Markets Act 1998* (SMA).

The FMA alleged that trades were conducted and created a false or misleading appearance with respect to (a) the extent of active trading in the shares of the listed entity; and (b) the supply of, demand for, and price for trading in value of the listed shares. In this case, we considered that civil, rather than criminal, proceedings was the proportionate response. At 30 June 2014, the case remained before the Court. The case has since been completed with Mr Henry admitting all of the claims. The Court has imposed a pecuniary penalty of $130,000 and highlighted the seriousness and impact of market manipulation in interfering with the integrity of New Zealand's secondary markets.

Settlements

The FMA has the authority and mandate to settle a case we have commenced. This may occur where we consider the terms of settlement will satisfy our regulatory purpose and where it is in the interest of investors and the wider public to do so. We do not take a pro forma approach to settlement and a decision to settle is not taken lightly. Every case is considered on its own merits.

When considering whether it is appropriate to settle a case, we take in to account a number of factors including the:

- interests of investors
- overall regulatory objective
- probability of recovery through proceedings (where compensation is a driving feature of the case)
- cost to the taxpayer of proceedings relative to the likely benefits.

We also balance the need to ensure that misconduct is the subject of public sanctions and the importance of securing a certain outcome in a timely way.

In this reporting period we consented to, or participated in, settlements of civil claims brought against directors and third-parties involved in finance companies which had failed.

Examples of specific cases where the FMA entered into settlements

Bridgecorp Limited (In Receivership and In Liquidation)

In March 2014, the FMA consented to an $18.9 million settlement between the receivers of Bridgecorp Limited entities, the directors, and their liability insurers. As a term of the settlement we agreed to end the civil proceedings against the Bridgecorp Limited directors on payment of the receiver's settlement sum. In reaching the view that settlement was appropriate, we took several points in to account.

- The interest of investors was considered and we determined the settlement amount was more than we expected we could recover following a trial, having assessed the personal financial position of the directors.
- Settlement ensured that investors would receive funds in a timely way, rather than awaiting the outcome of further litigation.
- Our claim would have pursued the same funds which were being pursued by the receivers.
- Given the best outcome could be achieved through settlement, it was not a good use of public funds to continue with a lengthy litigation court process.
- The directors had been held to account through criminal proceedings, with convictions and sentences of home detention and imprisonment passed down by the Court. The criminal case had sent a strong deterrent message regarding consequences that result from criminal offending by the directors of public issuers.

Bridgecorp Limited and Bridgecorp Investments Limited were placed in receivership in July 2007 with approximately $459 million owing to 14,500 investors.

Strategic Finance Limited (In Receivership and In Liquidation)

In March 2013 the FMA announced we had concluded our investigation into Strategic Finance Limited. We reached the view that six of the directors of Strategic Finance Limited had likely breached the Securities Act with respect to statements made in offer documents between March and August 2008. Strategic Finance Limited went into receivership in March 2010 owing approximately $383 million to 11,000 investors.

The FMA and the receivers of Strategic Finance Limited finalised a $22 million settlement with the directors and auditors in June 2014. The settlement enables the receivers to make a further distribution to investors. Under the settlement, six directors provided the FMA with enforceable undertakings that they will not, without our prior written approval:

- act as a director or promoter of a public issuer of securities for five years
- accept appointment or employment or act as a chief executive officer or chief financial officer (or equivalent position) of a public issuer of securities for three years.

In reaching a settlement in this case, the FMA took into account a number of the factors considered in the Bridgecorp Limited case, as well as:

- the ability to give certainty to investors as to what compensation they would recover without a lengthy court process
- litigation risks arising from some of the complex legal issues connected to the recovery of compensation for investors
- delivery of a strong deterrence message and protection for investors through the undertakings provided by the directors.

Lombard Finance & Investments Limited (In Receivership and In Liquidation)

In February 2014 the receivers of Lombard Finance & Investments Limited reached a settlement with the directors, their insurers, and a third party for $10 million. We consented to that settlement and as a condition of settlement agreed to discontinue our own civil proceedings against the directors for pecuniary penalties.

In this case the FMA concluded there were limited prospects of achieving any better recovery through its own claim and therefore it was in the public interest and the interests of investors for the FMA to provide consent to enable the receiver's settlement to proceed.

Use of warnings and other regulatory tools

The FMA has at its disposal a range of powers and remedies that do not require litigation. These powers and remedies allow us to respond to misconduct or potential harm more immediately than litigation would allow, and to also respond to a wider range of misconduct or potential harm.

We do not take a 'litigation by default' approach and instead prefer to determine what the most effective and appropriate regulatory response might be, having considered the:

- attitude of the financial markets participant
- nature and severity of the conduct
- interests of investors and consumers
- best way to respond under our statutory mandate
- extent of potential detriment or actual harm to the market.

Through direct engagement, we can achieve corrective action and protect investors from potential harm. We work with participants to:

- achieve general compliance
- ensure specific products or offers made to the market are compliant
- remedy or respond to low level harms through the use of non-litigation regulatory tools.

Such actions can include giving directions, issuing warnings, or obtaining undertakings.

Examples of specific cases where the FMA issued warnings

During this reporting period we issued a number of warnings, some of which were published and others which were issued as private warnings, with an announcement made by us detailing that the warning had been issued.

Where we conclude there has likely been a breach of financial markets legislation, but for various reasons a civil or criminal proceeding is not justified, then a warning may be used. In those cases, the warning serves as a form of censure whilst acknowledging that a full independent judicial process has not been pursued. The warning also encourages deterrence and educates the market as to the standards of behaviour expected.

Allied Nationwide Finance Limited (Struck off)

In September 2013, the FMA issued a warning to certain directors of Allied Nationwide Finance Limited, advising that in our view the directors had likely breached the Securities Act and better disclosure ought to have been made in the prospectus distributed in October 2009. Better disclosure would have ensured investors were aware of the risks associated with their investments.

St Laurence Limited (Struck off)

In May 2014, the FMA closed its investigation into St Laurence Limited and issued a warning to eight directors in respect of potential breaches of the Securities Act. The warning was in relation to statements in the prospectus distributed in 2007 that were, or became, misleading in the period March–June 2008.

In both the Allied Nationwide Finance Limited and St Laurence Limited cases, we considered that minimal additional benefit in terms of punishment, deterrence, or redress for investors would have been achieved by taking proceedings in Court.

Phoenix Forex Limited (In Liquidation)

In the past year, the FMA has continued to receive complaints regarding the promotion and sale of margin for foreign exchange products. In the case of Phoenix Forex Limited, we issued a public warning which was posted on our website, and theirs, in order to ensure that investors were aware of the concerns we had regarding their product and sales approach. Phoenix Forex Limited provided access to a foreign exchange trading system, under which an investor opens an account with a third-party broker and an algorithmic trading software is used to carry out the investor's trades. Following inquiry, we considered that Phoenix Forex Limited had:

- claimed the level of returns made by its trading system were between 50% and 65% per annum, which it could not substantiate
- misrepresented the profitability of, and risks associated with, its trading system and did not disclose that investments of this nature carry a high risk of loss of some or all of an investor's capital, and that such losses can often exceed the amount of the original investment.

We further identified that Phoenix Forex Limited was in the business of dealing in futures contracts, including margin foreign exchange products and ought to have been registered in the Financial Service Providers Register (FSPR) and authorised by the FMA. Following the issue of the warning, Phoenix Forex Limited ceased offering its products in New Zealand.

The Phoenix Forex Limited case highlights the need for prospective investors to check the FSPR to confirm a person or company is registered. Investors should also undertake some due diligence about claims made in promotional material before engaging a financial service provider or paying any money in respect of a financial service or investment. The investing public should also be wary of advertisements promising financial returns that sound too good to be true or contain vague or overly technical explanations of how those returns will be achieved. It is important that investors seek out competent financial advice before making investment decisions, particularly investments in sectors unfamiliar to the investor.

Financial advisers and the Anti-Money Laundering/Countering the Financing of Terrorism Act

The FMA issued directions to a broker under s77V(3) of the FA Act in response to concerns of potential breaches of broker obligations identified during a monitoring visit. No client losses were identified; however there may have been a risk of future loss without action.

The directions required the broker to comply with relevant sections of Part 3A of the FA Act, and included specified steps to be carried out.

For five other reporting entities, we used our power under section 59(2) of the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* (AML/CFT Act) to bring forward (by between 6 and 9 months) the independent audit of those entities' risk assessments and AML/CFT programmes. This was in response to concerns about the entities' compliance with the AML/CFT Act. In each case we used our power under section 59(7) to require the entities to provide us with a copy of the audit.

Voluntary response

We have obtained voluntary agreement from market participants to take action to remedy breaches, or to comply with best practice, without the need to use our statutory powers.

We welcome voluntary engagement to remedy compliance issues and understand the importance of confidentiality where no immediate harm to the market has occurred and where disclosure of details will serve no practical public benefit. We do not generally disclose the names of the entities that have engaged with us on a voluntary basis.

Examples of voluntary engagement in the year to 30 June are listed below.

- Small businesses providing broking services, including DIMS, have agreed to outsource custody of client money and property to independent institutional custodians. These small businesses recognise that this approach strengthens protection of client money and property.

- At our request, an insurance intermediary engaged an accountancy firm to prepare compliant accounting records and financial statements and to review and report on improvements to systems and controls. This followed our identification of shortcomings in accounting records and financial statements prepared by the intermediary. The firm's recommendations were implemented.
- Parties making offers subject to the *Securities Markets (Unsolicited Offers) Regulations 2012* agreed to make changes to disclosure documents to ensure compliance with the Regulations.

Warnings for illegal offers

Several inquiries have related to capital-raising undertaken by private companies and individuals without a prospectus, in the belief that the persons to whom the offers were made were not members of the public.

We found that some issuers relied on tenuous social connections to argue that the exception of 'close business associate' applied or relied on a person's net worth as evidence that the person was a 'habitual investor'.

In certain cases, our inquiries found that those in receipt of the offer in fact fell within the definition of 'members of the public', rendering the offer unlawful for having been made without a prospectus.

Our response in one case was to issue a private warning to the affected investors, notifying them that a capital-raising offer had been made without a prospectus and was unlawful. The warning identified the concerns we had with aspects of the investment.

No funds had been raised and so we recommended that investors should seek independent legal and financial advice regarding their investment.

Cancellation of a prospectus

As part of our ongoing surveillance and monitoring activities, we reviewed high-risk disclosure documents and engaged with the issuers where we consider the disclosure documents did not meet legal requirements.

In the case of FMP Medical Securities Limited, we used our powers under section 43G(1)(c) and section 43F(1)(a) of the Securities Act to cancel a proposed offer of securities. We considered that the prospectus and investment statement were false, misleading, or omitted material particulars.

Management bans

As a consequence of the convictions resulting from action taken by the FMA (and formerly the Securities Commission), 32 directors and one lawyer are currently subject to automatic five-year management bans under the Securities Act and/or Companies Act.

In another case, directors have provided an undertaking not to act as a director or promoter of a public issuer for five years; or to accept appointment or employment, or act as a CEO or CFO or equivalent, for three years.

The management ban plays an important role in protecting the investing public and is one of the regulatory responses which enable us to restore confidence to the public and investors. Looking forward, we will continue to monitor compliance with bans and undertakings, and our efforts will be assisted where the market and the public report any concerns of potential breach.

Corporate governance

Weak corporate governance can result in harm to the market, as many of the cases discussed in this report have identified. Some companies could do more to improve culture and performance from the people in senior executive roles. Examples of weak corporate governance include: electing not to file accounts due to the costs; failing to apply internal trading policies in a robust way; or failing to ensure that strong processes are in place for keeping records of client instructions. We do not consider this to be an endemic issue for the wider director community, but we do continue to see cases where directors and their senior management have failed to exercise care and attention to their corporate governance responsibilities.

We want to see continuing improvement in performance and conduct at the Board and executive management level. Appropriate standards of governance for financial markets participants includes the Board having an interest in, and understanding of, the customer outcomes that the institution is striving to achieve. This includes considering the protection that compliance with regulation delivers to future and existing investors.

Testing whether these outcomes are positive for customers is important. Where institutions focus on avoiding potential harmful outcomes for customers and potential investors, such as mis-selling, poor advice, failure to properly follow good process or adopting bad process, then they are less likely to become the subject of our enforcement focus.

It is critical to the health of New Zealand's financial markets that directors and senior management understand their legal obligations, know what is going on within their businesses, and put high standards of behaviour and the best interests of their customers at the centre of their business strategy. They must lead by example and set the tone from the top.

The FMA expects executive managers and directors to know what is going on within their businesses and to put the best interests of their customers at the centre of their business strategy.

FMA enforcement activities

Regulating secondary markets

Monitoring and investigating issues arising in secondary markets, including New Zealand's registered securities exchange (NZX), continues to be a priority focus for the FMA. This year we have filed proceedings in the first market manipulation case[2]. Other cases regarding trading conduct remain under investigation as at 30 June 2014.

NZX operates as the frontline regulator of its registered markets. Under the *Securities Markets Act 1998* (SMA), NZX has an obligation to ensure its markets are fair, orderly and transparent. This includes having market rules in place which govern listed issuers and participant trading and advising firms.

Under the listing rules issuers must provide for continuous disclosure of material information. Any breach of the continuous disclosure provisions of the listing rules is also a breach of law and can be enforced.

Issuers and holders of public listed securities also have obligations under the SMA to provide particular disclosures to the market, such as Substantial Security Holder Notices (SSH) and Director and Officer Notices (D&O).

NZX undertakes real-time market surveillance of trading occurring on its markets. It is responsible for monitoring the compliance of listed issuers and persons trading on NZX's markets with:

- NZX's rules relating to its registered markets
- legislation, including continuous disclosure laws and market misconduct prohibitions.

NZX has a specific obligation to notify us when it identifies activity that may constitute a breach of the law. As a consequence, a large portion of the secondary market misconduct investigations that we carry out originates from referrals from NZX. We also investigate secondary market issues based on intelligence that we receive directly from the market, or from market surveillance activities. During this reporting period, we had extensive contact, and worked collaboratively with NZX.

[2] *See Civil proceedings, Brian Peter Henry, page 10 of this report.*

The following table summarises new secondary markets matters we dealt with in the year to 30 June 2014.[3]

Secondary markets	Number of referrals or complaints	Source of referrals or complaints	Results
Insider trading	12	NZX and members of the public	Preliminary inquiries undertaken in each case, five of which are ongoing at 30 June 2014. Two cases proceeded to the investigation stage, and one of these cases was closed with no evidence of insider trading identified. The other is ongoing.
Market manipulation	3	NZX and members of the public	Preliminary inquiries undertaken in each case. One case proceeded to the investigation stage and is ongoing.
Continuous disclosure: SSH and D&O notices	22	NZX and members of the public	NZX monitors SSH and D&O disclosures for timeliness and accuracy. Periodically NZX refers possible breaches to the FMA. The FMA considered no action was necessary in most of the referred cases. As at 30 June 2014, one investigation was ongoing.
Continuous disclosure: non-compliance with continuous disclosure provisions in the NZX Listing Rules	6	NZX, the FMA and members of the public	NZX usually carries out investigations into potential breaches of continuous disclosure requirements, under the NZX Listing Rules. NZX informs the FMA of progress and the FMA provides comment or feedback as appropriate. As at 30 June 2014, one continuous disclosure investigation was ongoing.

[3] *In the period, the FMA also considered existing secondary markets inquiries and investigations that had commenced before 1 July 2013.*

Insider trading cases

The underlying rationale for the insider trading prohibition under the SMA is based on market efficiency and market fairness. The provisions are designed to strengthen investor confidence in the market by ensuring there is no unfair disparity in information held by those who trade. The rationale is aimed at preventing an insider from having an information advantage when trading. For the market to operate efficiently, all trading participants need to be able to access the same information.

To establish a breach of the insider trading prohibitions, we must show that a person:

- possesses material information relating to a public issuer that is not generally available to the market
- knows, or ought reasonably to know, that information is not generally available
- knows, or ought reasonably to know, that the information is material, then buys or sells the shares or other listed securities of the public issuer; or advises or encourages another to trade or hold securities in the public issuer.

Material information is information that a reasonable person would expect to have a material effect on the price of listed securities, if it were generally available to the market.

Insider trading can be difficult to enforce because of the need to establish actual or constructive knowledge of these matters on the part of the alleged insider.

Nonetheless, protecting New Zealand's markets from insider trading is a priority for the FMA. NZX referred cases to us where NZX identified suspicious or unusual trading patterns, or trading proximate to a price sensitive event.

In some cases, we found that the person who undertook the trades in question had no relationship with the listed company or did not hold, and had no way of holding, the price sensitive information. In those cases the trading party was found not to be an information insider.

Trading patterns that raise questions often reflect activity in the relevant shares that can be readily explained on inquiry from NZX or the FMA, but that is not immediately visible or known to the wider market. NZX and the FMA routinely inquire of market participants as to the drivers for unusual trading patterns and their timing.

In other cases, we found that while the trading person did have access to price sensitive information, they did not receive that information at the time of the trade, but later on. In those cases the trading was found to be lawful.

A theme identified by our team in the course of these types of investigations, is the importance of listed entities maintaining and properly applying trading policies that apply to directors and employees.

Where senior management and directors intend to purchase shares in their listed company, they need to consider whether the information they hold is or might be perceived to be material. Also where an internal approval process is in place, we expect the approver to make a robust and independent assessment of materiality, and to keep a clear record of the inquiries undertaken and the assessment of materiality reached.

Market manipulation cases

The market manipulation provisions are designed to protect and preserve the integrity of the listed markets against conduct that results in artificial or managed manipulation. It is important that the market reflects the forces of genuine supply and demand. Conduct that interferes with what the market would perceive as the true value of the shares is not acceptable. Market manipulation undermines the confidence and trust that investors, institutions and financial markets participants place on the fair and orderly operation of the market.

Market manipulation can be hard to detect but the consequences on market integrity are great. Taking action that deters misconduct in secondary markets and provides clear guidance as to acceptable conduct is one of our compliance priorities.

In July 2013, we filed the first case alleging market manipulation in the trading of shares of a listed entity. Another investigation into market manipulation highlighted the importance of brokers keeping clear records of client instructions and giving careful consideration to the nature and impact of client trading.

In the case of small-cap illiquid stocks, even a relatively small trade may have a material impact on the market for, or the price of, a security. When executing a trade which may materially affect the market, or price, the broker must assess the purpose of the order to determine if it is genuine or manipulative.

We expect market participants to assess such trading by clients and to keep clear records of client instructions so that these may be referred to where the FMA or NZX identifies trading which gives rise to suspicions of market manipulation. Further guidance is available to participants in the NZX Guidance Note on Market Manipulation. This guidance can be found on the NZX website at www.nzx.com

Financial reporting obligations under the Financial Reporting Act

Under the *Financial Reporting Act 1993* (FRA), the directors of an issuer making offers of securities to the public must ensure that the issuer's financial statements and a copy of the auditor's report are filed with the Registrar of Companies within a specified time frame. Under the FRA, each director who fails to meet these obligations commits an offence and can be liable for a fine of up to $100,000.

The filing obligations under the FRA are intended to ensure that timely, accurate and public financial reporting is made available to the public and investors. Such disclosure is important for ensuring fairness and transparency in New Zealand's financial markets. When companies fail to file or delay filing their financial statements, it limits the ability of investors to make informed investment decisions. It also inhibits our ability to oversee compliance with financial markets legislation.

Ensuring accurate and timely disclosure to investors and promoting compliance with reporting obligations is a key priority for us. Non-filing has been a persistent problem for certain financial markets participants which prompted us to undertake a review of FRA compliance.

We seek to raise standards of conduct in the market by encouraging compliance with financial markets' legislation. However, in cases where there is persistent non-compliance, we will take enforcement action.

Accordingly, we initiated prosecutions against the directors of eight issuers in the year to 30 June 2014, having reached the view that their history of failing to file meant they presented the greatest potential harm. As at 30 June 2014, court proceedings were ongoing against the directors of five of these entities.

We also made recommendations to the Registrar of Companies to issue infringement notices to the directors of a further 13 entities.

In a recently concluded prosecution[4], the District Court shared our view that directors who fail to meet these fundamental requirements should face stern consequences. The director, who faced eight charges, was fined $30,000, following the application of a discount for an early guilty plea.

[4] *Ross Anthony Collins, sole director of Prosper Hills (2004) Limited; Prosper Hills (2006) Limited and NZFIL3, was fined $30,000 on 10 July 2014 for failing to file financial statements on time. The fine was imposed in the 2014-15 year.*

Contributory mortgage brokers and failure to file annual reports

The FMA brought successful proceedings against two contributory mortgage brokers[5] for failure to file annual reports with the Registrar of Companies. Under the *Securities Act (Contributory Mortgage) Regulations 1988* (Regulations), contributory mortgage brokers are required to file an annual report with the Registrar. Any entity that fails to comply commits an offence and is liable for a $5,000 fine.

As with issuers under the FRA, reporting and disclosure by contributory mortgage brokers gives investors and potential investors information that enables them to understand a broker's financial position and is relevant to investment decisions. Brokers who fail to comply undermine the transparency and efficiency of the market.

We reviewed 20 registered contributory mortgage brokers; 11 of them had not filed their annual reports by the due date. Prosecutions were initiated against two brokers who were considered to pose the greatest likelihood of harm to investors. In both cases convictions were entered and the court ordered fines against the companies.

Action against firms and people outside New Zealand

Where we identify conduct that we consider presents a serious harm to New Zealand's financial markets, we will take action, even if the perpetrators are based overseas. This theme has been evident in a number of our investigations this year, in particular the case of OPI Pacific Finance Limited (In Receivership).

In November 2013, we laid charges against four directors of OPI Pacific Finance Limited alleging breaches of the Securities Act arising from alleged untrue statements in OPI Pacific Finance Limited's 2007 offer documents.

All defendants are based in Australia and the case will be heard in New Zealand's courts.

Financial Advisers Disciplinary Committee

The FADC is responsible for conducting disciplinary proceedings arising from complaints about AFAs relating to alleged breaches of the Code of Professional Conduct (the Code). A key focus for the FADC is the fair and timely determination of any proceeding in a cost effective way.

The FADC is an independent industry body and its disciplinary powers include the imposition of fines, cancelling an AFA's authorisation, issuing supervision orders and censuring AFAs.

An important aspect of the FADC's role is the ability for it to give guidance, through its decisions, on the standards of behaviour which investors can expect from their AFAs.

[5] *On 5 March 2014 Prudential Mortgage Limited was fined $2,000 for failing to deliver its annual report to the Register of Companies by 30 June 2013. First Mortgage Investments Limited was fined $4,000 plus court costs for the same breach on 20 March 2014.*

The Code contains minimum standards of competence, knowledge, skills, ethical behaviour and client care for AFAs. The Code also specifies requirements that an AFA must meet for the purpose of continuing professional training. This has been the first year the FADC issued decisions on complaints against AFAs for breaches of the Code. Those decisions were as follows.

- In one case, the FADC found the four breaches of the Code (code standards 6, 8, 9 and 12) admitted by the AFA amounted to a significant professional failure. In particular, the FADC noted the AFA's failures meant clients were unable to make informed decisions. Clients were deprived of a meaningful assessment of suitability, and the expectation that information and advice would be available to clients, and the FMA, was undermined. The AFA surrendered his AFA status and was censured by FADC for the breaches and fined $4,000.
- In another case, the AFA admitted breaches of the Code (code standards 8, 9 and 12) which related to providing unsuitable advice to a client with no written explanations and poor record keeping. The AFA agreed to surrender his AFA status following the sale of his business. In light of this, the FADC censured the AFA for the breaches and ordered supervision until he surrendered his status.
- In the last case, the FADC considered a complaint against an AFA regarding breaches of the Code (standards 8, 9 and 12) where the focus was on a failure to meet some of the basic client care standards. The AFA admitted the breaches and agreed to 6 months' supervision. The FADC approved the supervision arrangements as the appropriate sanction in the given circumstances. In its decision the FADC[6] noted:

  The critical importance of proper record keeping cannot be minimised, particularly because of the influence it can have in an AFA determining whether he or she has an up-to-date understanding of a client's financial situation, needs, goals and tolerance for risk. These factors are vital to determining what steps an AFA has taken to ensure that financial services provided to a client are suitable for that client.

The FADC's decisions have provided AFAs with further guidance as to how to interpret and apply the Code and how disciplinary proceedings will be dealt with. The FADC has made it clear that it supports engagement between the FMA and the AFA, before the matter proceeds to a hearing. The aim of the engagement is to ensure that a fair and timely determination is reached.

[6] *FMA v X, 2014 FADC 005 at 11.*

Working with co-regulators and organisations with regulatory responsibilities

The FMA collaborates with organisations that are co-regulators or which have regulatory responsibilities. We also assist co-regulators from other countries, including the Australian Securities and Investments Commission.

Major New Zealand co-regulators include the Reserve Bank of New Zealand and the Commerce Commission.

Chartered Accountants Australia and New Zealand (formerly NZICA) and CPA Australia, have regulatory responsibilities with regard to auditors for issuer entities. NZX has regulatory responsibilities for the registered exchange.

We also work with the Companies Office with respect to enforcement. For example, we worked with the Companies Office when we responded to persistent non-filing of financial statements by some firms. The details of non-filing public issuers were provided to us by the Companies Office. The Companies Office then issued infringement notices following our recommendation.

Collaboration is a fundamental element of successful regulation.

We work closely with the SFO in responding to serious and complex fraud. The prosecutions undertaken in Ross Asset Management Limited and Strategic Planning Group Limited this year are instances of the FMA and SFO working together.

This year we worked with the SFO to update the 2012 Memorandum of Understanding (MOU). The updated MOU:

- renews the commitment to cooperation and coordination
- provides further clarity on the respective mandates of each agency
- states a firm commitment to avoiding duplication and places increased emphasis on sharing resources
- introduces a set of principles that will ensure decisions can be made quickly and efficiently when determining:
  - the role that each agency will play in response to alleged misconduct
  - which agency shall take primary responsibility.

Meeting obligations to provide documents, information or evidence

The FMA can compel market participants and third parties to produce documents and information through the issue of a notice under section 25 of the FMA Act.

We have an on-going focus on securing the cooperation and willing provision of information from participants and third parties. Many entities and individuals co-operate and assist us in our efforts to gather information which is relevant to our inquiries and investigations. Others resist and delay, which inhibits our ability to respond to misconduct and complete our investigations in a timely way.

Over the past year, in our engagement with recipients of section 25 notices, we have emphasised that in some cases the purpose, scope and timeframe can be discussed and agreed with us.

This approach has been effective and we see it as one of the keys to reducing delays in our investigations.

While we have the power to commence criminal proceedings for obstruction, we prefer to achieve compliance without needing to take such formal steps.

The introduction of the Financial Markets Conduct Act and changes to the liability regime

On 1 April 2014 the first phase of the FMC Act was implemented. This new financial services regime simplifies what has traditionally been a complex liability regime in New Zealand's financial markets. The new Act adopts a system of de-escalating levels of liability and introduces a new set of regulatory powers and infringement offences, increasing the emphasis on civil liability for contraventions. Serious criminal offences, which may result in imprisonment, are reserved for the most serious violations of the law. With its expanded regulatory toolbox, the new regime can ensure the regulatory response to actual or potential misconduct is proportionate to the contravention.

Financial Markets Conduct Act: Part 8

While the FMA's powers and the offence provisions are present throughout the FMC Act, Part 8 specifically deals with:

- the FMA's enforcement powers
- the High Court's enforcement powers
- civil liability including civil remedies and defences
- banning orders
- infringement offences
- asset preservation orders
- appeals.

Under Part 8 of the Act, the FMA has the power to make a range of orders. This includes Direction Orders, which may direct compliance with the Act and stipulate steps for compliance, and Stop Orders, which prohibit certain action. These orders are designed to enable the FMA to proactively respond to threats of harm to the market across a wide range of regulated activities.

Civil liability

While shifting away from an emphasis on criminal liability, the FMC Act provides a broader range of civil penalties and remedy provisions where issuers contravene the law, and where directors and others are involved in these contraventions. In pursuing a civil claim, the FMA may apply to the High Court for orders including declarations of contravention, civil pecuniary penalties, and compensation orders.

These civil liability provisions are strict liability. Persons involved in a contravention may be liable if they are an intentional participant in the primary contravention and if they have knowledge of all essential facts. The FMC Act provides robust defences for those who have good corporate governance structures and due diligence processes and procedures in place.

Criminal liability

Criminal liability is now reserved for misconduct involving knowledge or recklessness. For example, those offering products will be criminally liable for knowingly or recklessly making an offer where there is defective disclosure. Directors will only be criminally liable if the offer document was issued with their authority or consent, and they knew, or were reckless, about whether there was a defect.

What to expect under the new Act

The FMA's primary focus is to help market participants understand their obligations and to support honest and reasonable efforts to comply. The FMC Act equips the FMA with a wide range of powers enabling the FMA to act swiftly to minimise harms to the market and to protect investors. Raising investor confidence and promoting the integrity of the market is at the core of the new regime and will guide the FMA's use of its increased powers.

The FMA encourages the market to focus on high standards of corporate governance, where the interests of investors are promoted and protected. Financial markets participants who have high standards of conduct, ethics, and integrity at the core of their business activities, will be well placed to adapt to the requirements of the FMC Act.

Closing comments

Enforcement is one of a wide range of regulatory responses open to the FMA in achieving our objectives of fair, efficient and transparent markets. In cases of apparent and potential breaches of rules or other misconduct, we carefully consider what is the appropriate regulatory response. This response can range from a simple phone call to the instigation of civil or criminal proceedings.

The facts involved in any situation are always unique and the balance of the various factors we consider will, by necessity, require judgement. However, we strive to be as consistent and transparent as possible in our decision-making. Our governance procedures are designed to achieve these objectives.

We strive to make clear and consistent decisions, taking appropriate enforcement action in response to each unique case.

Glossary

AFA	Authorised Financial Adviser – A financial adviser who is authorised in accordance with the Financial Advisers Act 2008.
AML/CFT Act	Anti-Money Laundering and Countering Financing of Terrorism Act 2009
CEO	Chief Executive Officer
CFO	Chief Financial Officer
Companies Act	Companies Act 1993
Crimes Act	Crimes Act 1961
D&O	Director and Officer Notices
DIMS	Discretionary Investment Management Service
FA Act	Financial Advisers Act 2008
FADC	Financial Advisers Disciplinary Committee
Financial Reporting Act	Financial Reporting Act 1993
FMA	Financial Markets Authority
FMA Act	Financial Markets Authority Act 2011
FMC Act	Financial Markets Conduct Act 2013
FRA	Financial Reporting Act 1993
FSP Act	Financial Service Providers (Registration and Dispute Resolution) Act 2008
FSPR	Financial Service Providers Register
IOSCO	International Organisation of Securities Commissions
MMOUC	Multilateral Memorandum of Understanding
MOU	Memorandum of Understanding
NZX	New Zealand Exchange Limited
Regulations	Securities Act (Contributory Mortgage) Regulations 1988
Securities Act	Securities Act 1978
SFO	Serious Fraud Office
SMA	Securities Markets Act 1998
SSH	Substantial Shareholder Notices
The Code	Code of Professional Conduct for Authorised Financial Advisers

Appendix 1

Timeline of key investigation and enforcement events

The following table provides a timeline of activity for key investigation and enforcement events.

Date	Case	Details
July 2013	Mr Brian Peter Henry – Pecuniary Penalty	The first civil pecuniary penalty proceedings for market manipulation commenced.
	FX Promax Limited	Warning issued to the public against conducting business with entity called FX Promax, which the FMA believes is fictitious and not currently operating from the stated address in Auckland.
August 2013	Dominion Finance Group Limited (In Receivership and In Liquidation) – Criminal	Three directors sentenced to home detention and community work following conviction for Securities Act offences. Two directors pay reparation.
	Mr David Ross – Criminal	Mr Ross pleaded guilty to all charges laid by the FMA and the SFO under the Crimes Act, Financial Service Providers Act, Financial Advisers Act and Financial Markets Authority Act.
	AFA – FADC	FADC decision issued following admission of breaches of the Code of Professional Conduct for AFAs by an AFA. AFA censured and subject to six months supervision.
	Phoenix Forex Limited	Warning issued to the public about Phoenix Forex and Oak FX foreign exchange trading system and claims made regarding level of returns made by trading system and profitability and failure to be registered on the Financial Service Providers Register for dealing in futures contracts.
September 2013	AFA – FADC	FADC issued its decision imposing a fine of $4,000 and public censure.
	Finance company investigations	Investigations into Equitable Mortgages Limited, Irongate Properties Limited and LDC Finance Limited completed and closure announced.
		A warning was issued to certain directors of Allied Nationwide Finance Limited for alleged breaches of the Securities Act.

Date	Case	Details
September 2013 (continued)	Strategic Planning Group Limited – Criminal	Charges were laid against the directors of Strategic Planning Group Limited, Mr Andrew Robinson and Mr Mark Turnock. The FMA laid charges against both directors for breaches of the Financial Service Providers Act, Financial Advisers Act and the Financial Reporting Act. Following a joint investigation, the SFO laid charges against Mr Robinson under the Crimes Act on the same day.
October 2013	Lombard Finance & Investments Limited (In Receivership and In Liquidation) – Criminal	The Supreme Court declined the application by the Lombard directors for leave to appeal the Court of Appeal's decision upholding their convictions and granted leave to appeal the Court of Appeal's decision on the uplift in sentence.
	National Finance Limited (Struck off) – Criminal	The Court of Appeal dismissed the appeal by former National Finance director, Mr Banbrook, against conviction and sentence.
	FMP Medical Services Limited	The FMA cancels prospectus because it believes that it contains false and misleading statements and is likely to deceive, mislead or confuse.
November 2013	OPI Pacific Finance Limited (In Receivership and In Liquidation) – Criminal	Criminal prosecution commenced against four directors of OPI alleging breaches of s58 of the Securities Act.
	Mr David Ross – Criminal	Mr Ross sentenced to 10 years and 10 months imprisonment for offences under the Crimes Act, Financial Advisers Act, Financial Markets Authority Act and the Financial Service Providers (Dispute Resolution and Registration) Act. This followed a joint investigation by the FMA and the SFO.
December 2013	First Mortgage Investments Limited/Prudential Mortgage Limited – Criminal	Charges filed against contributory mortgage brokers for failing to deliver financial reports to the Registrar of Companies in breach of Securities Act (Contributory Mortgage) Regulations.

Date	Case	Details
February 2014	Lombard Finance & Investments Limited (In Receivership and In Liquidation) – Criminal	Supreme Court granted defendants appeal against sentence and reinstated sentences passed by the High Court in May. Steps taken to distribute to investors reparation payments made by two defendants.
	Lombard Finance & Investments Limited (In Receivership and In Liquidation) – Civil	The FMA consented to the $10 million settlement reached between receivers and Lombard directors and auditor and as a term of settlement discontinued its civil proceeding.
	Mr David Ross – Civil	The FMA consented to variation of asset preservation orders held over Mr Ross and related entities to enable sale of trust and personal assets owned by Mr and Mrs Ross and related entities to proceed pursuant to settlement reached with Receivers.
	Mr David Ross – FADC	The FMA's complaint to the FADC regarding the conduct of Mr Ross as an authorised financial adviser dismissed in light of the outcome in the criminal prosecution.
March 2014	Viaduct Capital Limited (In Receivership)/ Mutual Finance Limited (In Receivership) – Criminal	Charges filed in the Auckland District Court against directors and an officer of finance companies VCL and MFL for breaches of the Crimes Act and Companies Act.
	Contributory Mortgage Broker Non-filing – Criminal	Prudential Mortgage Limited convicted and fined $2,000 for failing to deliver annual report to the Registrar of Companies.
	Bridgecorp Limited (In Receivership) – Civil	The FMA consents to $18.9m settlement between Bridgecorp receivers, directors and insurers and agrees to discontinue its civil claim as a term of the settlement.
	Contributory Mortgage Broker non-filing – Criminal	First Mortgage Investments Limited convicted and fined $4,000 for failing to deliver its annual report to the Registrar of Companies.

Date	Case	Details
May 2014	Belgrave Finance Limited (In Receivership and In Liquidation) – Criminal	Lawyer, Hugh Hamilton found guilty of 14 charges under the Crimes Act for theft in a special relationship arising from related party loans made by Belgrave Finance between 2005 and 2008.
	St Laurence Limited (Struck off)	The FMA closes its investigation into St Laurence Limited and issues warning to eight directors in respect of potential breaches of the Securities Act arising from St Laurence's September 2007 prospectus.
	Adviser X – FADC	FADC releases decision regarding breaches of the Code of Professional Conduct for Authorised Financial Advisers, code standards 8, 9 and 12.
	National Finance – Criminal	Banbrook application to vary reparation order dismissed.
June 2014	Strategic Finance Limited (In Receivership and In Liquidation) – Civil	The FMA and receivers of SFL announce $22 million settlement with directors and auditors of SFL regarding alleged breaches of the Securities Act and Companies Act. As a term of settlement SFL directors provided the FMA with an enforceable undertaking that they will not, without prior written approval of the FMA, act as a director or promoter of a public issuer of securities for five years or accept an appointment or employment or act as a CEO or CFO or equivalent of a public issuer of securities for three years.
	Financial Reporting Act – Criminal	The FMA files charges against the directors of eight public issuers alleging breaches of the Financial Reporting Act for failing to file audited financial statements with the Companies Registrar.
	Mr David Ross – Criminal	Mr Ross' appeal against the minimum parole period dismissed by Court of Appeal. Sentence of 10 years and 10 months with minimum parole period of five years and five months confirmed.

AUCKLAND OFFICE
Level 5, Ernst & Young Building
2 Takutai Square, Britomart
PO Box 106 672
Auckland 1143

WELLINGTON OFFICE
Level 2
1 Grey Street
PO Box 1179
Wellington 6140

www.fma.govt.nz
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FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND