Investigations and Enforcement Report 2013

Key issues and themes arising from investigations and enforcement activities

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30 June 2013

Contents

About FMA

Our purpose is to promote and facilitate the development of fair, efficient, and transparent financial markets. Our mandate is to strengthen the public's confidence in New Zealand financial markets, promote innovation and grow New Zealand's capital base.

FMA's functions include:

- to monitor compliance with, investigate contraventions of, and enforce securities and investment law, financial reporting law and companies law, in respect of financial markets participants
- to promote confident and informed participation in New Zealand's financial markets
- to license and supervise particular financial markets participants, including financial advisers, trustees and statutory supervisors, auditors and securities markets
- to monitor and conduct inquiries and investigations into financial markets and financial markets participants
- to keep the law under review.

We are committed to taking timely and proportionate enforcement action against those whose behaviour threatens market integrity and investors' confidence in New Zealand's financial markets. We recognise that part of our role, as a financial markets conduct regulator, is to investigate financial markets misconduct and hold to account those who fall below the standards required by law.

Introduction

FMA's role as a financial markets conduct regulator is to promote, assist and monitor compliance, enforce the law, and help set stakeholder and market expectations. Our investigation and enforcement objective is to take risk-based, timely and proportionate action against misconduct and in taking this action to support market activity. These principles continue to be a critical part of our outcome framework (see Figure One).

This report highlights the key issues and themes that have emerged through FMA's investigations and enforcement activities from July 2012 to June 2013.

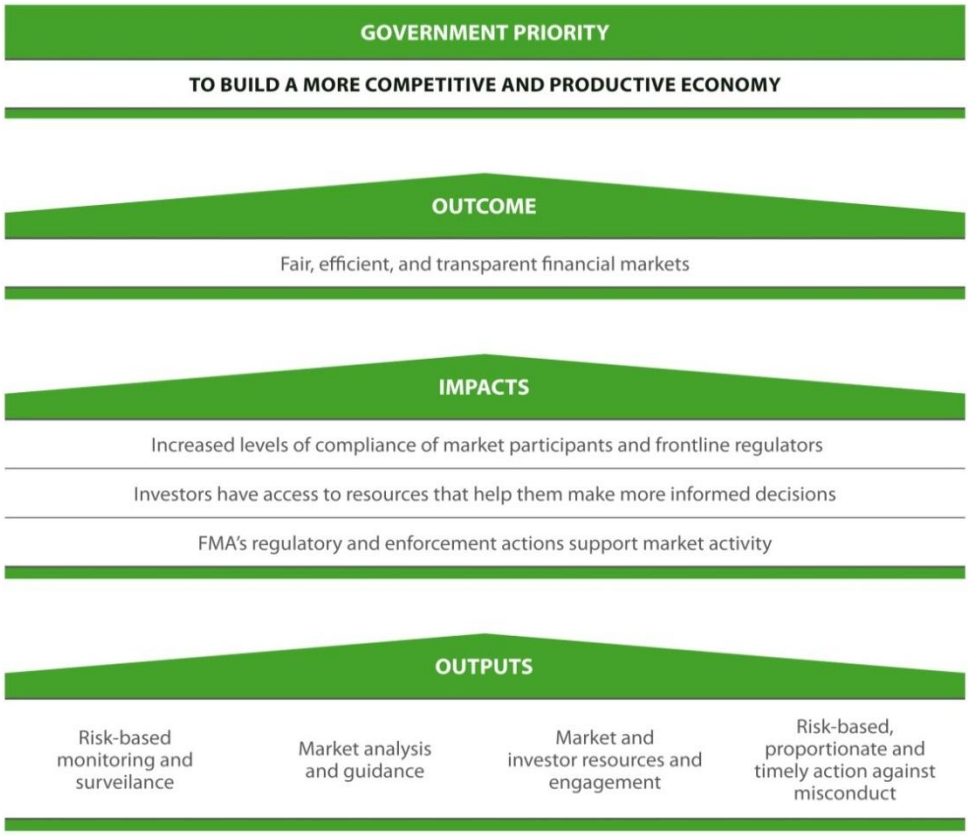
The Government is committed to New Zealanders enjoying greater prosperity and security through an increasingly competitive and productive economy. This requires well-functioning financial markets that support sustainable business growth and job creation - where risk is understood, innovation flourishes, integrity prevails and investors are confident enough to participate actively.

We are committed to supporting the financial markets sector to help it understand and willingly comply with our expectations, as well as encouraging participants to promptly report and correct any errors or regulatory breaches. FMA has continued to promote compliance and raising standards in financial markets, using the full range of our enforcement tools. We are working to ensure that our education, surveillance and enforcement functions work cohesively to produce a strong deterrent effect.

Critical to FMA's investigation and enforcement activities over the last 12 months has been the importance of sending a strong and clear deterrence message to financial markets participants that we will hold to account those who fail to meet the standards we expect in New Zealand's financial markets. Just as important, has been the action we have taken in response to new market threats, to restore and strengthen investor confidence in New Zealand's financial markets. Alongside our prosecution and investigation work, we have used other non-litigation enforcement tools, working with participants to assist them to willingly comply with the standards required in financial markets.

Over this period, we have been committed to completing our investigations into failed finance companies and resolving legacy inquiries. Our attention has been on serious misconduct occurring in priority areas outlined in FMA's Compliance Focus 2013, published February 2013.

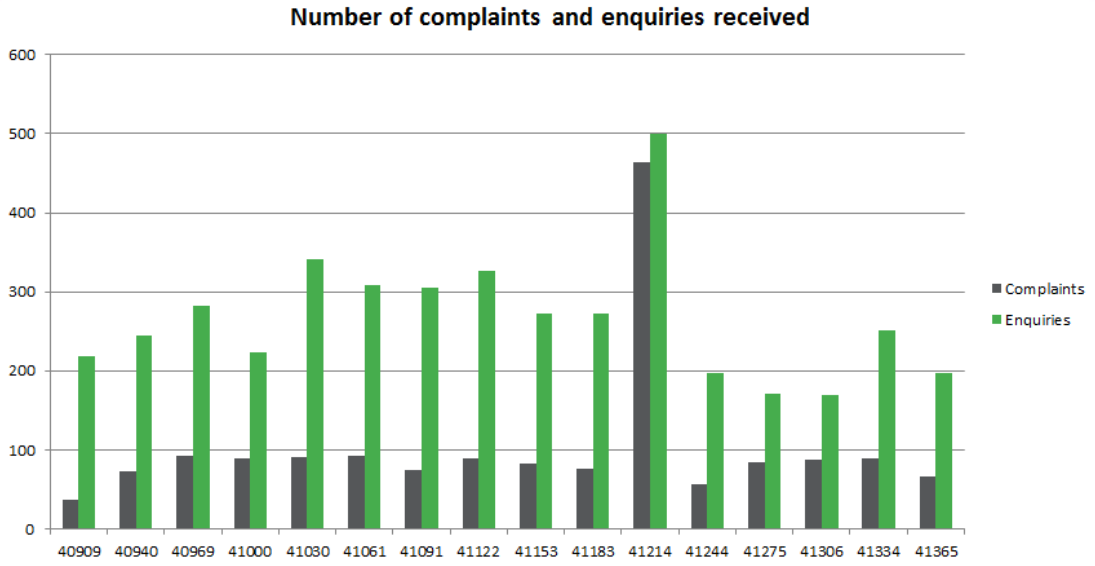
FIGURE ONE: FMA'S OUTCOME FRAMEWORK 2013-2016



Complaints and enquiries

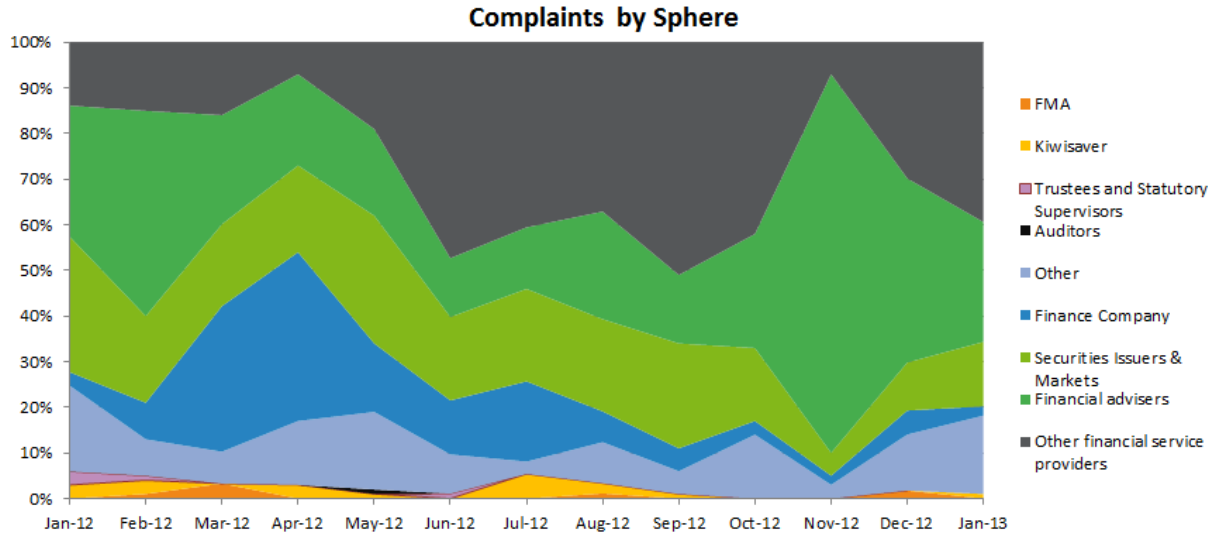
During the 1 July 2012 – 31 May 2013 period, FMA received 1273 complaints and 2923 enquiries.

The majority of these contacts related to people or entities providing financial advice, securities issuers, and foreign exchange dealers.

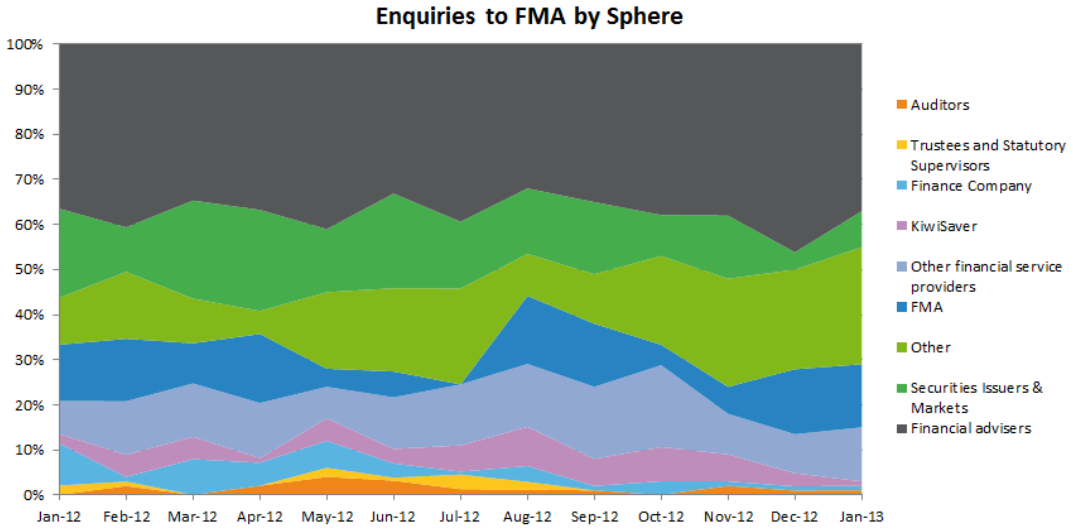


The largest areas of concern raised through complaints received by FMA, related to three key issues: holding of client money by financial advisers; people or entities operating without the necessary authorisation or registration; and alleged fraud by foreign currency changers. Some of the enquiries received by FMA related to matters we were already dealing with, such as finance companies and FMA policy and legislation. Others were outside our jurisdiction and subsequently referred to other agencies.

Close to 500 complaints were passed on to our enforcement team. The vast majority of these became part of an existing investigation reinforcing the fact that we were already actively engaged in issues of concern raised by our contacts. However, two percent of these complaints resulted in new investigative action. The remainder were resolved or no action was required.



Complaints and enquiries are an important indicator of trends in the market. By themselves however, they do not provide significant insight into emerging market issues, as the subject of the contact is often influenced by what is 'front of mind' on any given day, as well as seasonal factors such as media. For example, in November we saw a large spike in complaints due to the Ross Asset Management issue being widely reported in the media. The illustration of Complaints by Sphere shows the impact that this had on complaint volumes. Many of these contacts sought reassurance, which is an important part of our role.



In our view there is no 'right' amount of public contact, it is critical that we remain accessible and responsive to all contacts.

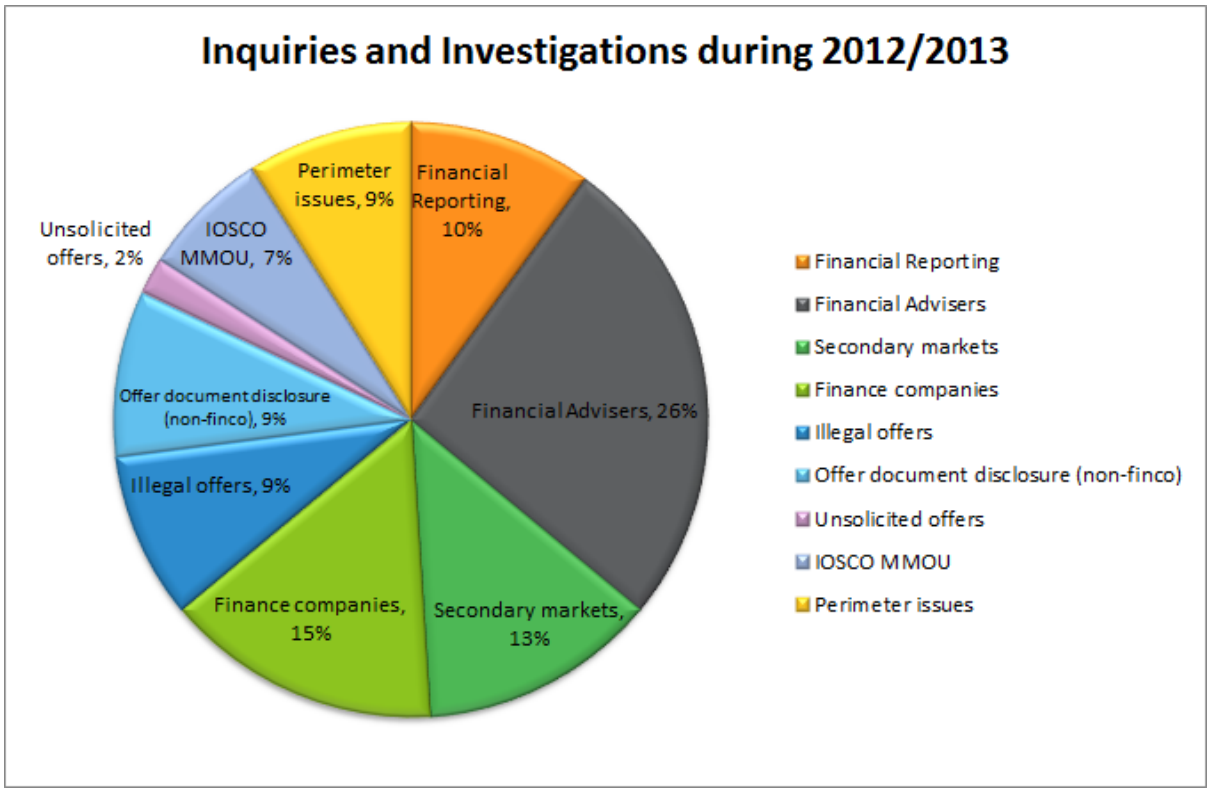
Investigations and enforcement activity

Over the last 12 months FMA's enforcement team has been actively engaged in 97 inquiries and investigations and 18 litigation matters. These enforcement activities have involved a wide range of issues, falling within the following categories:

- financial adviser regime
- primary markets: offer document disclosure obligations, illegal offers
- secondary markets: insider trading, market manipulation, continuous disclosure obligations
- failed finance company litigation and investigations
- financial reporting
- fraud and other Crimes Act offences
- perimeter issues
- provision of assistance to overseas regulators pursuant to the International Organisation of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMOU).

A number of our existing inquiries were legacy matters which were referred to us following the disestablishment of the Securities Commission. Completing these cases has been a key priority. Over the last 12 months, 48 matters have been concluded as a result of compliance being achieved, the matter being closed for no breach, the participant ceasing operations or following the use of a non-litigation enforcement tool, such as the issue of a compliance advice letter (explaining what is required for compliance to be achieved) or by issuing a warning.

As discussed in our 2012 Inquiries, Investigations and Enforcement Report, a priority for FMA has been completing the finance company investigations which we inherited from the Securities Commission and certain parts of the former Ministry of Economic Development. Over this period, three investigations have been closed with no further action taken, and of the nine investigations remaining, seven have been completed with announcements on the resulting action to be made shortly. In addition, ten failed finance company cases underway have continued in the Courts either in criminal or civil proceedings or on appeal.



*Measured by number of inquiries and investigations

During the period, failed finance company matters only accounted for 15 percent of FMA's investigations. This reflects FMA's move away from legacy issues and focus on current issues impacting the market. The remaining matters related to financial advisers, primary and secondary markets, financial reporting, issues arising on the perimeter of regulation, and providing assistance to overseas regulators.

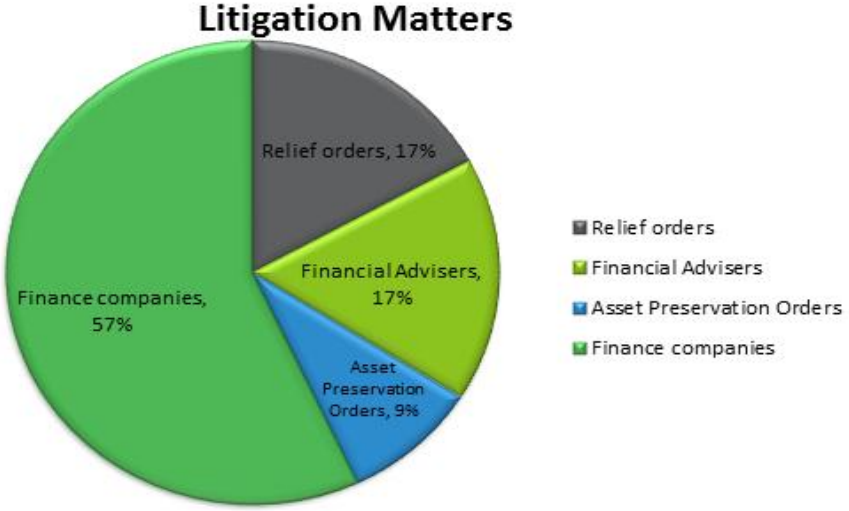
Failed finance company proceedings accounted for just over half of the number of our litigation activities over the last 12 months. FMA's focus was also applied more broadly to non-finance company proceedings before the Courts and the Financial Adviser Disciplinary Committee. Failed finance company cases before the Courts are discussed in more detail later in this report.

We have almost 50 active enforcement inquiries and investigations currently underway, and proceedings before the Courts continue. The remaining matters comprise:

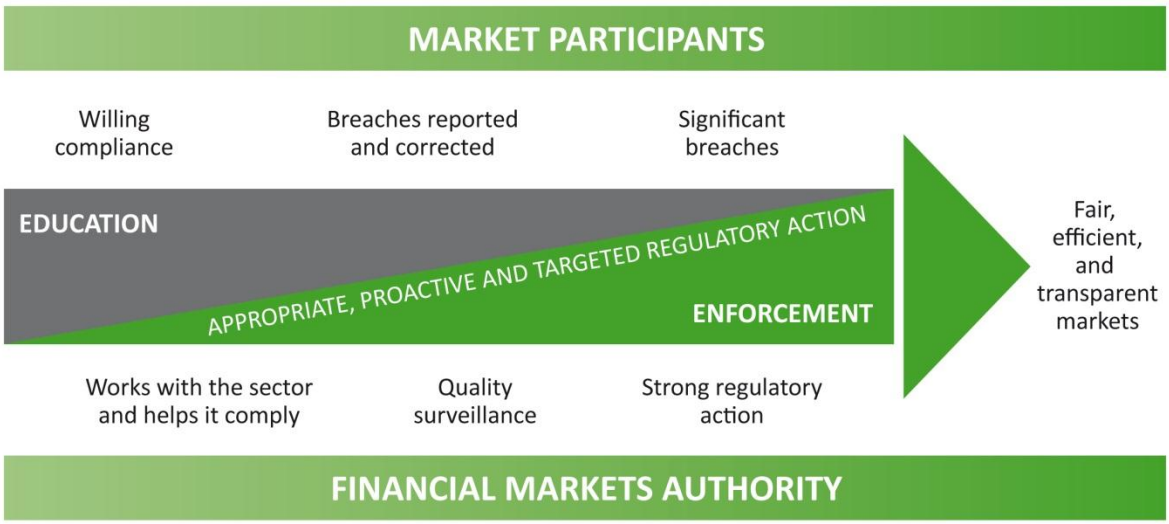
- Investigations into suspected contraventions of the financial advisers' regime and constitute 27 percent of our open matters. These relate to either suspected breaches of the Code of Professional Conduct for Authorised Financial Advisers (AFAs), non-registration or non-authorisation and non-compliance with the Financial Advisers Act (FA Act), as well as potential Crimes Act offences.
- Investigations into primary markets offences, particularly illegal offers (public security offerings without a registered prospectus) or potential breaches of the disclosure obligations under the Securities Act, representing 29 percent.
- Secondary markets investigations relating to insider trading, market manipulation, and disclosure obligations, representing 18 percent.
- Investigations to assist overseas regulators, representing six percent.
- Suspected financial reporting breaches, representing 12 percent.
- Issues relating to matters that are on the perimeter of regulation, representing eight percent.

The increase in the range of issues under investigation is the direct result of FMA's retail surveillance and compliance monitoring activity, coupled with increased public awareness and willingness of participants to refer relevant information to FMA.

The activities described above relate primarily to the enforcement work undertaken by our enforcement team. In addition, our surveillance and monitoring teams have used other enforcement tools to achieve compliance in the market, including issuing warnings and working with participants to achieve compliance or to cease the provision of a product or service. Through direct engagement with participants we have achieved corrective action. This has included requiring a participant to have their financial statements audited and ensuring that an issuer withdraws and then reissues its offer documents after addressing our concerns.



FMA's investigation, regulatory and enforcement framework



FMA's enforcement policy

FMA's enforcement policy states our commitment to take action that targets conduct which harms or presents the greatest likelihood of harm to the functioning of open, transparent and efficient capital markets.

Given the volume of potential enforcement work, it is important that we focus our enforcement resources in a way that allows us to be flexible and to respond quickly to changing or emerging market conditions and shifting priorities. The policy considerations we apply when deciding whether or not to progress a case include assessing the evidence for:

- intentional, reckless or other serious unlawful conduct
- predatory, prevalent or increasing patterns of misconduct
- severity of market impact or detriment considering loss or risk of loss, number of investors affected, product risk and investor vulnerability
- deterrent effect and/or precedent value
- likelihood of recovery
- prospect of successful litigation (unless seeking precedent and clarity in an area of uncertainty).

We recognise the importance of making robust principled decisions in prioritising cases, which provide the best means of ensuring consistency of messages to market participants, as well as clarity around our interpretation of legislation. However, we are also mindful of changes in market

conditions and events which may elevate or reduce the importance of particular issues. FMA is not able to investigate all breaches referred to us, but we will prioritise any cases which fall within the enforcement criteria discussed above.

FMA's regulatory toolbox

The financial markets legislation provides us with a wide variety of enforcement tools that will be applied by us proportionately, according to the likelihood of harm that particular conduct presents to capital markets.

Where matters involve serious misconduct, FMA will consider criminal prosecution of the offenders. In other cases we will seek monetary compensation for losses that follow unlawful conduct and, when it is in the public interest to do so, we will consider whether to exercise another person's right of action against market participants.

However, where matters represent less serious consequences to investors and markets, or involve conduct that is not deliberate or reckless, we will consider less punitive action or remedies. In these cases the desired outcome is to inform the contravener, stop the illegal behaviour and deter similar behaviour by that person and others, and where possible restore investors' financial position. This may involve:

- issuing a compliance advice letter, which sets out the conduct expected from a participant and continuing to monitor their conduct
- issuing a public warning
- issuing market guidance
- giving directions
- varying, suspending or cancelling a license
- seeking enforceable undertakings
- taking other administrative action such as prohibition or corrective orders.

We will consider stronger enforcement action should non-compliance continue. Where possible, we will report the use of these tools on our website. By doing this, FMA hopes to reassure investors that we will take action and hold to account those who operate outside the law.

Where investments are exposed by likely offending to a risk of dissipation or loss, we may seek asset preservation orders to protect investor interests. FMA continues to maintain asset preservation actions in respect of Mark Hotchin (a director of the Hanover group of companies), David Ross and related trusts and entities.

Themes from investigation and enforcement activities

Many themes and issues have emerged from the investigation and enforcement activities undertaken by FMA over the last 12 months. These are discussed in further detail below. However, a theme that runs through all of the matters discussed in this report is the failure of certain market participants to meet the standards of behaviour which we consider New Zealanders ought to be able to expect from financial markets participants.

Our enforcement activities have identified that not only have certain participants failed to meet technical legal requirements, but in doing so they have not acted professionally and diligently, failing to be accountable for their actions and failing to put investors interests first. FMA believes that enforcement activity is necessary not only to deter unlawful conduct, but to also lift standards of integrity, responsibility and ethics in the market.

Appendix 1 contains a table setting our key investigation and enforcement outcomes in the period July 2012 to June 2013.

Perimeter Surveillance

The Financial Markets Authority Act 2011 (FMA Act) gives FMA the power to monitor compliance and investigate conduct that constitutes, or may constitute, a contravention of the FA Act and Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPA), and to enforce this legislation.

The FSPA requires financial service providers to be registered. FMA's initial perimeter focus included making enquiries into individuals who appeared to be non-compliant with the FSPA by, for example, providing advice as a financial adviser without being registered.

We also had concerns about some of the offshore entities that do not have a place of business in New Zealand, offering financial services. While FMA currently has no direct jurisdiction over this conduct, we examine the structures and circumstances in each case to determine whether the particular matter involves products that may be brought within the regulatory scheme. In certain cases we have issued warnings to ensure that investors understand that these products are not regulated.

We will continue to undertake proactive surveillance projects to ensure market participants are not providing financial services, such as property investment seminars and services or money management services, without being qualified to do so.

As a result of FMA's perimeter activities, we have identified and published on our website a list of companies and individuals that we are aware of, who may be providing financial services that are not in compliance with New Zealand's financial services laws or who are not registered as financial service providers in New Zealand.

Our work in monitoring the perimeter of regulation and issuing warnings where appropriate continues to be important to ensure that investors are aware that there are some entities endeavouring to operate in New Zealand outside the reach of regulation.

Financial advisers

We expect that all market participants should have a heightened sensitivity toward non-compliant or unethical behaviour by other participants, where that behaviour is used to gain an unfair competitive advantage. An emerging theme is unlawful and unethical behaviour going unnoticed.

FMA has reminded investors to be more aware of their own potential blind spots when making important decisions concerning their investments. Investigations and inquiries in relation to financial advisers have highlighted the need for investors to ask their financial adviser the following key questions:

- how do I know what you are recommending is the best option for me
- what are the risks
- what will I need to pay
- what information will I receive about my investments
- how can I get my money back.

Our inquiries have also identified the importance of investors making sure they question any unrealistic portfolio returns and raise concerns with FMA in the event of any delayed repayments.

FMA's primary focus in 2011-12 was on education and engagement with AFAs, and this has continued into 2013. We are however, increasing the tempo in testing compliance and enforcing the law. This has been evident in the referrals to the FADC, and in the instances where following engagement with FMA, AFAs have stopped providing financial adviser services and voluntarily relinquished their AFA status.

Referrals to the FADC have resulted from both FMA's monitoring activity and referrals from investors. The primary code standards which are alleged to have been breached in cases investigated to date are:

- **Code Standard 1**: An AFA must place the interests of the client first and must act with integrity.
- **Code Standard 6**: An AFA must behave professionally in all dealings with a client and communicate clearly, concisely and effectively.
- **Code Standard 8:** When providing a personalised service to a retail client an AFA must take reasonable steps to ensure that the personalised service is suitable for the client.
- **Code Standard 9**: When an AFA provides a personalised service to a retail client that is an investment planning service or that relates to a Category 1 product, the AFA must provide a written explanation to the client of the basis on which those services are provided. The AFA must also take reasonable steps to ensure the client is aware of the principal benefits and

risks involved in following any financial advice provided as part of that service, having regard to the characteristics of the personalised service.

- **Code Standard 12**: An AFA must record in writing adequate information about any personalised services provided to a retail client.

Failure to maintain proper client records and to record discussions with clients is a common weakness in the types of cases that we have considered so far, even though these are simply basic requirements for good client services. The FADC has not yet issued decisions on the referrals made, but we expect these to be available in 2013-2014. We look forward to seeing the constant raising of standards by AFAs as these cases progress and decisions from the FADC are communicated.

Financial adviser misconduct

The FA Act sets out financial adviser conduct obligations and examples of when these apply. These obligations apply to all financial advisers.

Over the last 12 months, FMA has investigated allegations of misconduct by financial advisers who we suspected had acted in breach of the FA Act, as well as investigating suspected breaches of the Code of Professional Conduct.

During the January to March 2013 period, FMA carried out a thematic monitoring project focused on AFAs licensed to provide Discretionary Investment Management Services (DIMS). There are currently around 1,300 AFAs licensed to provide this type of service. A report was completed on the key findings and observations from our monitoring activities. Where we identified short comings we engaged with the AFA to take appropriate steps to ensure these were addressed. The report can be reviewed under 'Keep Updated', Reports and Papers, on FMA's website.

All financial advisers are required, when providing a financial adviser service, to exercise due care, diligence and skill. In addition, a financial adviser must not engage in conduct that is misleading or deceptive, or likely to mislead or deceive, when providing financial adviser services. FMA provides due care, diligence and skill examples on our website to show how we consider these general principles apply in insurance and product replacement advice (https://www.fma.govt.nz/help-me-comply/financial-advisers/your-obligations/care,-diligence-and-skill-examples/). We expect all financial advisers to comply with their obligations. Our investigations this year have revealed that the standard of conduct expected from financial advisers is not properly understood by all.

When FMA has investigated a complaint about an AFA, we must refer that complaint to the FADC if in our opinion, the conduct amounts to a breach of the Code. If the AFA has breached the FA Act or their terms and conditions of authorisation, we may give the financial adviser direction in respect to their breach of disclosure or conduct obligation, or take action to cancel or suspend their authorisation.

At the time of this report, we have made four referrals to the FADC and so far the Committee has determined that a hearing is necessary in three of those cases.

Financial Advisers Disciplinary Committee

The FADC is responsible for conducting disciplinary proceedings arising from complaints about AFAs, relating to alleged breaches of the Code that have been referred to it by FMA.

The Committee is an independent body established in December 2010, by the Minister of Commerce.

The FA Act sets out the functions of the Committee and allows the Committee to determine its own practices and procedures for performing its functions under the Act.

The Committee's functions are:

- To conduct disciplinary proceedings arising out of complaints regarding AFAs
- To impose, if appropriate, a range of penalties ranging from recommending to FMA that it cancel an AFA's authorisation, to imposing a fine of up to $10,000 as a result of the disciplinary proceeding.

Making a complaint

A complaint about an AFA should be made directly to FMA. Anyone wishing to complain about an AFA can submit their complaint either through our website – see Complaints at www.fma.govt.nz by telephone, or in writing via facsimile or post.

Contact details for submitting a complaint are:

Financial Markets Authority
PO Box 106 672
Auckland 1143
Phone: (09) 300 0400
Facsimile: (09) 300 0499
Email: questions@fma.govt.nz
Website: www.fadc.govt.nz

More information about FADC, the hearing process and the procedural rules, can be found at www.fadc.govt.nz

Primary markets

Over the last 12 months, we have engaged with participants on primary market issues to resolve disclosure and related party issues. In one particular case, following engagement with FMA, a substantial loan was repaid to a retail group investment fund.

A key focus this year has been on completing the failed finance company matters. Key issues and themes emerging from those cases are addressed below.

Secondary markets

NZX operates as the frontline regulator of its registered markets. Under the Securities Markets Act 1988 (SMA), NZX has an obligation to do everything reasonable to ensure markets are fair, orderly and transparent. NZX is also required to have in place listing rules that provide for continuous disclosure of material information, and issuers are required to comply with the listing rules. A breach of the continuous disclosure listing rules is a breach of law which we can enforce.

Similarly, issuers have certain obligations under the SMA to provide certain disclosures to NZX, such as substantial shareholder (SSH) notices and Director and Officer (D&O) notices.

To fulfil its obligation to ensure its markets are fair, orderly and transparent, NZX undertakes real time market surveillance of trading occurring on its markets. It is responsible for monitoring compliance with its:

- continuous disclosure rules and other disclosure rules and laws imposed on issuers
- participant rules and statutory obligations imposed on those persons accessing NZX's trading platform.

NZX has obligations to notify FMA where it suspects there are breaches of the laws we enforce. As a consequence, the majority of the secondary market conduct that we investigate is the result of a referral from NZX.

It is important that FMA and NZX work closely together to ensure that appropriate action is taken in regard to potential secondary market misconduct such as insider trading, market manipulation, delayed or incorrect filing of SSH and D&O notices, and breaches of continuous disclosure obligations. Given that in many instances a breach of NZX's rules will also be a breach of the law, FMA and NZX co-ordinate activities to minimise the possibility of duplication in the activities they undertake. Depending on the circumstances, NZX may investigate a matter, or we may lead the inquiry. FMA may also investigate secondary market issues based on intelligence we receive directly from the market or from our own market surveillance activities.

Over this period FMA undertook a monitoring project to assess the compliance with the SSH and D&O obligations, due to concerns we had about the quality of compliance. Our report on the monitoring of these notices can be found at https://www.fma.govt.nz/keep-updated/reports-and-papers/auditor-regulation-and-oversight-plan-for-the-three-years-ending-30-june-2016/

To summarise our findings:

- The majority of D&O disclosures were made within the required timeframe, however there were issues with their accuracy, including that the relevant interest was incorrectly classified or the date of the last disclosure was incorrect.
- SSH notices were in general filled out accurately, but were filed later than they should have been, with 12 percent filed more than one week after the relevant event. In our view the investing public is entitled to access relevant information regarding the trading activities of certain classes of individuals who have a particular relationship with a listed company. Therefore, accurate and timely filing of disclosures is critical to maintaining integrity in the market.

Secondary markets matters

The following table summarises secondary markets matters dealt with by FMA for the 1 July 2012 to 22 April 2013 period:

Secondary Markets Matters	Number of referrals/complaints	From	Result
Continuous disclosure: SSH and D&O notices	48	NZX	Compliance advice letters have been sent to persons holding substantial security interests in issuers and directors and officers of various issuers to remind them of their obligations. FMA is currently investigating the compliance of the directors and officers of an issuer with a view to assessing whether enforcement action should be taken. One issuer self-reported breaches of these, amongst other, legislative provisions. It remedied its non-compliance and is under an agreed compliance plan with FMA.
Insider Conduct	6	NZX and Member of the public	Preliminary inquiries undertaken in each case, with 2 cases proceeding to the investigation stage, with investigations continuing. In relation to the other 4 feedback was provided to NZX or the member of the public as to why FMA did not consider the case to be a breach of law or why FMA determined that no further action should be taken.
Market Manipulation	1	Member of the public	Preliminary inquiries undertaken for a potential misleading statement. No breach identified.
Continuous disclosure: non-compliance with continuous disclosure provisions in the Listing Rules	7	Generally from NZX	Over this period, NZX generally led these investigations, some of which are continuing. FMA provides feedback to NZX as appropriate. One continuous disclosure case is currently being investigated by FMA.

FMA is acutely aware of the concerns held by market participants about the damage insider trading and market manipulation can cause to the integrity of the market. We consider that artificial or managed manipulation of the market attacks the integrity of the market by masking the proper forces of genuine supply and demand. Conduct which has the sole or primary purpose of setting or maintaining the market price impacts on and interferes with the integrity of the market.

Where an attack on the integrity of New Zealand's traded markets has occurred, the conduct will be treated seriously. In light of the investigations conducted into issues arising in the secondary markets, FMA considers that strong action is a necessity, in order to deter misconduct which will not be tolerated in New Zealand's financial markets.

Investors

Investors are an important part of FMA's enforcement work. As noted in our Compliance Focus for 2013, investors rely on market participants to act with integrity in their dealings with them. This integrity is crucial to building customer trust and confidence, promoting the long term success of participants and growing New Zealand's capital base. We expect participants to make customers' interests central to their activities. At the same time, we expect investors to take responsibility for their own financial decisions.

Through the enforcement activities undertaken this year we have demonstrated that where investors' money is put at risk or lost because of poor practice, non-compliance, or misconduct by market participants, we will act to deliver a timely, effective and proportionate response. Where the conduct is serious, extensive inquiry may be required to determine the nature and extent of the misconduct. We understand that lengthy investigations are frustrating for investors and we are committed to engaging with investors and doing what we can to keep them informed during the course of our investigation. This may be done by:

- responding individually to investors' queries
- updates provided through the FMA website
- client questionnaires and surveys.

Nevertheless, in many cases the information that FMA is able to provide to investors concerning the status of an investigation, or details of our findings at any particular point, may be limited. We are constrained by the Solicitor General's Prosecution Guidelines and the concept of natural justice. We must also be cautious about disclosing information that might be harmful to the investigation and other parties, or where disclosure would be detrimental to the maintenance of the law.

Failed finance company investigations and litigation

The recurring theme from the failed finance company cases can be broadly summarised as the failure of corporate governance, particularly with respect to the accuracy and completeness of disclosure. In these cases, over the last 12 months, the Courts' focus in these cases has been on sentencing principles, as an increasing number of defendants have pleaded guilty.

During May 2013 the Court of Appeal released its decision in respect of the *Lombard* directors'[1] appeal against their convictions and Crown's appeal against sentence. The Court reaffirmed the message that the purpose of the Securities Act is to protect the investing public through timely disclosure of material information. The Court further reaffirmed the principle that the duty in s58 of the Securities Act is non-delegable, and in this case the directors could not reasonably have relied on the advice of management or their professional advisers. Ultimately, the responsibility to govern and manage the company lies with the directors.

The decision also contains useful guidance on the defences to be applied and the interaction of directors' duties under the Securities Act and under the Companies Act. On this point, the Court of Appeal specifically noted that when a public offer is made, the statutory obligation is to ensure that offer documents are true, and that obligation overrides the duty that directors owe to the company to act in its best interests, (where those duties may conflict). If Directors cannot be satisfied that the statements in offer documents are true and not misleading by omission, then the offer should not be made, irrespective of the consequences that might then flow.

In granting the Crown's application for leave to appeal against sentence, the Court held that the trial Judge did not give enough weight to the sentencing purposes of denunciation and general deterrence, and of holding offenders accountable. The Court also held that the trial judge failed to give sufficient weight to the purpose of the Securities Act, being to protect the investing public through timely disclosure of material information. The Court observed:

> *"The investing public is highly dependent upon the truthful disclosure of relevant information in offer documents. This is required to facilitate the raising of capital and to promote confidence by the investing public in financial markets. Failure to meet the required standards has a number of potential consequences: loss of investor confidence, lack of trust in this country's financial institutions, damage to capital markets and the wider economy; and loss of funds invested by the public."*

The principles enunciated by the Court of Appeal reinforces the importance of FMA pursuing the finance company prosecutions and reflects the themes that have flowed throughout the decisions, which have been delivered by the Courts in these cases over recent months.

[1] *Jeffries et al* v *R* CA [2013] NZCA 188. The defendants have notified their intention to seek leave to appeal to the Supreme Court.

Over the last 12 months we have considered whether it is appropriate to bring an action under s34[2] of the FMA Act, in respect to a number of the finance company cases. To date, none have reached the public interest threshold as set out in the Act, although FMA continues to give consideration to opportunities for the appropriate use of this power.

Directors

The specific messages from the decisions of the Courts provide further guidance for directors concerning their responsibilities under securities legislation, to ensure the ongoing relevance, accuracy and adequacy of offer documents for the benefit of investors.

Being a director is more than just a title. Regardless of the exact role or title, as a director of a public issuer, executive or non-executive, de facto director, the Courts have continued to hold that directors have a responsibility to investors to make full and accurate disclosures, and to ask questions and make enquiries if they don't understand clearly the business of the company. The message is clear; all directors will be held accountable if they do not.

So far, 32 directors of failed finance companies have been convicted as a result of prosecutions pursued by FMA. Court decisions over the last 12 months have focused on sentencing principles. Factors that have contributed to the sentences passed in finance company cases brought by FMA over the past year have included:

- the individual level of culpability: from errors of judgment and abdication of responsibility at one end, to negligence, gross negligence, and dishonesty and concealment at the other
- the nature of the director's role: those more closely involved are more responsible
- guilty pleas and co-operation have led to marginally discounted sentences
- remorse and reparation have led to marginally discounted sentences
- previous good character and family circumstance have also led to marginally reduced sentences.

A summary of key factors taken into account by the Courts in reaching decisions on sentences is summarised in Appendix 1 of this report.

This year FMA, in conjunction with the Institute of Directors, released 'A Director's Guide' on the essentials of being an effective director. The guide outlines some of the essential behaviours directors must demonstrate to meet legal, regulatory and ethical standards, and tells directors where they can find more help. A copy can be found at www.fma.govt.nz

[2] Section 34 provides that FMA may exercise a person's right of action against a market participant if it is in the public interest to do so.

Enforcement matters

Working with co-regulators

The Council of Financial Regulators facilitates the sharing of information and identification of significant issues, trends and risks, as well as enabling a co-ordinated response across agencies when required. The Council comprises FMA as the financial markets conduct regulator, the Reserve Bank as the prudential regulator, and the Ministry of Business, Innovation and Employment (MBIE) and Treasury as policy advisers. FMA works closely with the Minister of Commerce and MBIE to ensure our strategic priorities align and any risks are discussed and addressed in a timely manner.

Working alongside our co-regulators, FMA aims to increase confidence and participation in New Zealand's financial markets and consolidate our role in being an effective regulator, providing advice and guidance to participants; regulatory oversight of frontline regulators; and timely, proportionate and targeted enforcement action.

We operate under Memoranda of Understanding (MOU) with the Reserve Bank, Serious Fraud Office (SFO), Australian Securities and Investment Commission (ASIC), and the New Zealand Institute of Chartered Accountants (NZICA). These formal relationships help facilitate effective collaboration and sharing of information and resources, as we work together to respond to financial crime.

In particular, the MOU with SFO has provided a framework for conducting investigations with respect to RAM and the Strategic Planning Group, enabling the sharing of specialist resources and allowing each agency to advance matters of joint interest in an efficient and effective way.

As previously discussed, in fulfilling our market oversight role, we also work closely with NZX to ensure that appropriate action is taken regarding potential secondary market misconduct. The recently released General Obligations Review of NZX notes that NZX has committed to a programme of continuous improvement in all aspects of its operations that contribute to its delivery of fair, orderly and transparent markets, including its frontline regulatory role. As part of this programme, FMA and NZX are currently engaged in developing better processes and interaction for the investigation of matters that pose a threat to the integrity of the securities markets, particularly those involving possible market manipulation or insider trading.

FMA participates in both strategic and operational meetings of the Combined Law Agency Group (CLAG).

These cross agency relationships are important and enable FMA to deliver our services to the New Zealand public and in particular to the investing public with an all-of-government approach.

Protected disclosure

Increasingly, FMA is approached on a confidential basis by informers and whistleblowers, with information about possible breaches of the legislation that we enforce. This channel is an important source of information for any regulator and FMA takes all possible steps to protect the identity of anyone who provides information to us in good faith. We rely on people in the market to help us maintain market integrity. Assistance and information from market participants and the public helps FMA to identify any potential breaches of the law and minimise harm to investors.

Information provided to us in confidence is protected by the FMA Act and remains confidential, except where the Act permits its disclosure. If disclosure of identity is necessary, for example, where FMA is required to do so by law or it would impede an investigation not to disclose the informant's identity, FMA will not release identifying information without first advising the informant of our intention.

In certain cases, if someone makes a disclosure to FMA, the law will protect their identity and may also protect that person from any related legal action. These protections are contained in the following Acts:

- Protected Disclosures Act 2000 (voluntary disclosures by employees)
- Financial Advisers Act 2008 (voluntary disclosures by AFAs)
- Securities Trustees and Statutory Supervisors Act 2011
- Securities Act 1978 (voluntary disclosures by directors of Issuers, Promoters and Experts)
- Evidence Act 2006 also provides some protection for informers.

The Protected Disclosures Act applies to employees providing information about their employer and includes current and past employees, contractors, secondees and volunteers. It protects an employee from liability for the act of disclosing, but does not prevent the employee from prosecution by FMA if the information incriminates them.

An informer has a privilege in respect of information that would disclose, or is likely to disclose, the informer’s identity. It applies to a person who has supplied (gratuitously or for reward) information to an enforcement agency concerning the possible, or actual, committing of an offence in circumstances in which the person has a reasonable expectation that his or her identity will not be disclosed. This is not limited to employees and provides greater protection from general disclosure, but does not provide the employment protections in the Protected Disclosures Act.

Generally, an employee must disclose information in the way mandated by internal procedures in their organisation, for receiving and dealing with information about serious wrongdoing before approaching FMA. In some situations however, they can make a disclosure to FMA first, if they believe they have reasonable grounds, for example, the urgency of the matter demands it, the head of the organisation is involved in the wrongdoing, or there has been no action on the matter for a period of time after disclosure.

FMA works with informants to identify the protections which may be available and we strive to keep the person's identity confidential.

Where the law does not provide specific whistleblower protection, FMA cannot guarantee immunity in return for information. However, we will always take into account voluntary disclosures and other forms of co-operation when considering what action is appropriate.

Over the last 12 months, FMA has received information on the following subjects on a confidential basis:

- evidence of alleged misleading information in a prospectus or investment statement
- incidents of non-payment of money to investors when due
- provision of financial advice by people who are not AFAs
- misleading reporting and non-reporting of relevant information to NZX and failure to update a prospectus or investment statement
- low-ball share offers
- information relating to current investigations FMA is conducting.

We understand that a decision to come forward is not taken lightly and we will take all possible steps to protect the identity of anyone who gives us information in good faith. In 2012 FMA took steps to argue for the protection of an informant's identity in the face of legal challenge and succeeded.

Public comment

Informing the public of FMA's enforcement activities is important as it increases awareness of what we are doing about people who break the law, and also sends a message to market participants about what is expected of them.

FMA is however, constrained by the law and the Solicitor General's Prosecution Guidelines and Media Protocol as to what we can disclose about matters under investigation or before the Courts. We are always mindful to avoid comment that might jeopardise a fair trial. FMA is committed to conducting itself as a model litigant and to behave fairly toward those who are the subject of an investigation. The need for confidentiality and the restrictions on us making any public comment becomes stronger the closer a matter gets to prosecution.

Key considerations for us are whether a comment might:

- prejudice the right to a fair and public hearing by an independent and impartial Court (the New Zealand Bill of Rights Act 1990, s25(a))
- create a real risk of interference with the administration of justice.

Summary

Over the last 12 months, the scope of FMA's enforcement activity has broadened and new powers have been used in our investigation work. The key theme emerging from our work is the need for participants to continue to strive to meet the technical legal requirements, but also act in a way which will raise professional standards, maintain market integrity and restore investor confidence. It is important to note that in the majority of cases market participants do willingly comply with their obligations.

Investors rely on market participants to act with integrity in their dealings with them. This integrity is crucial to building customer trust and confidence, promoting the long term success of participants and growing New Zealand's capital base. We expect participants to make customers' interests central to their activities.

At the same time, investigation activities have identified the need for investors to take responsibility for their financial decisions. We will work with other agencies to make information available to help investors better understand risk and make informed decisions.

As New Zealand's regulatory relationships continue to mature, FMA looks forward to working with participants to bring about higher standards of conduct and willing compliance, while ensuring a timely and proportionate regulatory enforcement approach.

Appendix 1

Key investigation and enforcement outcomes

Over the last 12 months, we have continued to deploy a range of regulatory tools as illustrated by the following events:

July 2012	**Perpetual Trust Limited:** Court of Appeal dismissed Perpetual Trust Ltd.'s (Perpetual) appeal against the High Court's decision to discharge confidentiality orders originally made in proceedings taken by Perpetual against FMA's actions, in relation to loans made by the Perpetual Cash Management Fund (Fund) to Torchlight Fund No. 1 LP (Torchlight).
	National Finance: Carol Braithwaite, a director of failed finance company National Finance 2000 Ltd, was found guilty by jury of making untrue statements in a prospectus.
	Ross Investments (Aust) Pty Ltd: FMA issued a warning about unsolicited offers from Ross Investments (Aust) Pty Ltd, following notification that they were requesting copies of the debenture holder register of failed finance company Dominion Finance Group Limited and possibly of other issuers. Enforceable undertakings were obtained by FMA from this company and its principal Robert Campbell, to include a warning at the beginning of all unsolicited offer documents that they, or any associated persons, issue in NZ.
	Secondary Markets: Following referrals from NZX, FMA opened 2 secondary markets inquiries. One matter involves allegations of market manipulation and the other, insider trading.
August 2012	**Hotchin Asset Preservation Orders:** The Court of Appeal dismissed an appeal by the trustees of the KA3 and KA4 trusts (associated with Mark Hotchin, director of the failed Hanover finance companies) concerning interim asset preservation orders obtained by FMA.
	FMA provided assistance to the High Court with respect to an application for relief orders under the Securities Act.
	Belgrave Finance Limited (Belgrave)**:** Former Belgrave director Shane Buckley pleads guilty and is sentenced to 3 years imprisonment for making untrue statements in offer documents and a false or misleading statement to the trustee appointed to safeguard the interests of investors in the failed finance company's secured debenture stock.
	Protected Disclosure: FMA successfully defended the identity of an informant in an application by a participant to access protected disclosure documents.

September 2012	**National Finance:** Carol Braithwaite was sentenced to 10 months home detention and 300 hours community work following her conviction in July on Securities Act charges.
	Warning, Stock and Share Training Company Pty Ltd: FMA warned of unsolicited offers being made by Stock & Share Trading Company Pty Ltd for shares and other securities at significantly less than the market value of the securities.
October 2012	**Ross Asset Management Limited (RAM):** FMA received complaints that customers were unable to withdraw funds from RAM. Following immediate initial inquiries FMA obtained and executed search warrant powers under s29 of the FMA Act.
	Finance Company Investigations Closed: Three of FMA's inquiries into failed finance companies were closed. Compliance advice letters were issued to all relevant directors.
November 2012	**RAM:** The High Court granted FMA's application for Asset Preservation Orders under the FA Act and for the appointment of receivers and managers to manage the business of David Ross, RAM and related entities.
	Belgrave: Jointly with SFO, FMA laid charges under the Crimes Act and Companies Act against Hugh Hamilton, a former barrister and solicitor and legal adviser to the directors of Belgrave.
December 2012	**Strategic Planning Group:** FMA commenced investigation into Andrew Robinson and his company Strategic Planning Group (SPG) for breaches of financial markets legislation including the FA Act and Crimes Act. Accounts were frozen and all affected investors have been referred to a new adviser. Allegations of theft were referred to the SFO and FMA continues to investigate suspected breaches of financial markets legislation. Mr Robinson's AFA status was cancelled in December.
	Strategic Finance Limited (Strategic): FMA completed the investigation into Strategic Finance and advised directors of the decision to commence civil proceedings under the Securities Act.
February 2013	**Capital + Merchant:** All defendants pleaded guilty to criminal charges under the Securities Act for untrue statements in documents offering securities to the public.
March 2013	**Capital + Merchant:** 3 of 5 defendants sentenced following conviction for offences under the Securities Act.
	Financial Adviser Disciplinary Committee (FADC): FMA made our first referral to FADC alleging breaches of the Code of Professional Conduct for AFAs.
	National Finance: Mr Banbrook was sentenced to home detention and ordered to pay $75,000 reparation following a conviction for Securities Act offences.
April 2013	**Five Star:** Mr Neill Williams was sentenced to 3 years and 7 months imprisonment for breaches of ss58 and 59 of the Securities Act.
	Secondary Markets: FMA completed an investigation into market manipulation and notified the defendant of intention to issue civil pecuniary penalty proceedings for alleged breaches of the Securities Markets Act.

	Hotchin and Trusts: FMA intervened and was heard in declaratory judgment proceedings brought by Mr Hotchin against his trust KA4 Trust Limited to determine the extent of his interest in a property on Paritai Drive which is subject to Asset Preservation Orders obtained by FMA.
	Belgrave: Defendant Smith pleaded guilty to criminal charges under the Securities Act, Companies Act and Crimes Act for making untrue statements in offer documents and making a false and misleading statement to the trustee in a joint prosecution brought by FMA and SFO.
	FADC: FMA refers second complaint to the FADC for alleged breaches of Code of Professional Conduct for AFAs.
May 2013	**Lombard**: Court of Appeal dismissed defendants appeal against conviction and granted the Crown leave to appeal against sentence. Defendants have advised their intention to appeal to the Supreme Court.
	National Finance: Court of Appeal heard appeal against conviction filed by Mr Ludlow.
	Dominion Finance Group Ltd (Dominion): Former directors, Mrs Butler and Mr Whale pleaded guilty to criminal charges under the Securities Act.
	FADC: FMA referred a third matter to the FADC for alleged breaches of Code of Professional Conduct for AFAs.
June 2013	**Belgrave:** Mr Smith was sentenced to 4 years imprisonment.
	FADC: FMA referred a fourth matter to the FADC for alleged breaches of the Code of Professional Conduct for AFAs.
	Ross: Following a co-ordinated investigation with SFO, charges laid against Mr Ross alleging breaches of the Crimes Act.
	Dominion: Mrs Butler and Mr Whale sentenced to home detention and community work and ordered to pay reparation.
	Dominion: Messrs Arkinstall, Bettle and Forsyth pleaded guilty to criminal charges under the Securities Act.
	Capital + Merchant: Mr Nicholls and Mr Douglas were sentenced to further periods of imprisonment for Securities Act convictions. Sentences to be served in addition to sentences passed in SFO proceedings.
	David Ross / RAM: FMA laid summary criminal charges laid against Mr Ross for breaches of FSPA, FA Act and FMA Act.

Appendix 2

Sentencing in Finance Company Cases

Defendant	Charges	Starting point	Relevant factors	End sentence
1. Nicholas Kirk (*Five Star Finance*)	S58 and 59 Sec Act FRA S220 Crimes Act (SFO)	4 years imprisonment for FMA charges (6 years overall)	• Key role in company • Denunciation and deterrence • Previous good character • Assistance to prosecution (offering to give evidence) • Guilty plea (50% discount)	1 year, 9 months imprisonment for FMA charges (2 years, 8 months total) Dec 2010
2. Marcus MacDonald (*Five Star Finance*)	S58 and 59 Sec Act FRA S220 Crimes Act (SFO)	3 years, 4 months for FMA charges (5 years overall)	• Key role in company • Denunciation and deterrence • Previous good character • Assistance to prosecution (offering to give evidence) • Guilty plea (50% discount)	1 year, 6 months imprisonment for FMA charges (2 years, 3 months total) Dec 2010
3. Anthony Bowden (*Five Star Finance*)	S58 and 59 Sec Act FRA S220 Crimes Act (SFO)	3 years, 6 months imprisonment	• Previous good character • Age (70 years old) • Limited financial means • Assistance to prosecution • Late Guilty plea (10%)	9 months home detention, 300 hours community work for FMA charges (18 months home detention, 400 hours community work total) Dec 2010

Defendant	Charges	Starting point	Relevant factors	End sentence
4. John Hotchin (*Nathans*)	S58 Sec Act	3 years imprisonment	• Guilty plea • Most culpable of directors • Involved with VTL (related party lending) • Serious offending • Harm to investors and the 'nation' • Good character • Reparation • Co-operation and remorse	11 months home detention, 200 hours community service and $200K reparation 4 March 2011
5. Kenneth Roger Moses (*Nathans*)	S58 Sec Act	3 years, 3 months	• Gross negligence • Chairman and intimate knowledge • Offending over longer period than others • Reparation • Good character • Remorse	2 years, 2 months imprisonment and $425,000 reparation 2 September 2011
6. Mervyn Doolan (*Nathans*)	S58 Sec Act	3 years, 4 months	• Gross negligence • Executive director • Marginally greater culpability than Moses • Law change irrelevant • Good character • Reparation	2 years, 4 months imprisonment and $150,000 reparation 2 September 2011
7. Donald Young (*Nathans*)	S58 Sec Act	2 years, 9 months imprisonment	• Independent director, more limited role • Least culpable • Genuine remorse • Reparation $310k • Previous good character	9 months home detention, 300 hours community service and $310,000 reparation 2 September 2011

Defendant	Charges	Starting point	Relevant factors	End sentence
8. Bruce Davidson (*Bridgecorp*)	S58 Securities Act	3 years, 3 months imprisonment	• Chairman in leadership role • Early guilty plea (20%) • Remorse • Previous good character • No dishonesty	9 months home detention, 200 hours community work and $500,000 reparation 7 October 2011
9. Alan Ludlow (*National*)	S58 Sec Act S51 FRA Ss220 and 260 Crimes Act (SFO)	4 years imprisonment on FMA charges (8 years in total: SFO +FMA)	• Totality principle • Victim impact • Deterrence • Premeditation • Previous good character • Remorse • Co-operation with receivers (5–10%) • Guilty plea (10–15%)	9 months imprisonment for FMA charges (6 years, 4 months total) Jan 2012
10. Gary Urwin (*Bridgecorp*)	S58 Securities Act	3 years, 3 months imprisonment	• Guilty plea • Chair of credit and audit committee but non-exec • Gross negligence or knowledge • Offending caused significant loss • Denunciation and deterrence	2 years imprisonment 17 April 2012
11. Rodney Petricevic (*Bridgecorp*)	S242 Crimes Act S377 Companies Act S58 Securities Act	4 years, 6 months imprisonment for Securities Act charges (7 years, 6 months overall)	• Victim impact • Managing Director • Misconduct undermines investor confidence • Previous good character (10%) • No genuine remorse • Assaults/threats towards Petricevic and family	6 years, 6 months imprisonment overall 26 April 2012

Defendant	Charges	Starting point	Relevant factors	End sentence
12. Cornelis Roest (*Bridgecorp*)	S242 Crimes Act S377 Companies Act S58 Securities Act	4 years, 6 months imprisonment for Securities Act charges (7 years, 6 months total)	• Heavily involved (exec finance director) • Dishonesty • No remorse • Previous good character (10%) • Parity with Petricevic	6 years, 6 months imprisonment overall May 2012
13. Peter Steigrad (*Bridgecorp*)	S58 Securities Act	3 years, 3 months	• No dishonesty • Negligence/gross negligence • Previous good character (15%) • Remorse • Reparation • Personal circumstances • Least culpable of directors	9 months home detention and 200 hours community service May 2012
14. Shane Buckley (*Belgrave*)	S58 Securities Act S377 Companies Act S242 and 220 Crimes Act (SFO)	6 years imprisonment for SFO charges (4 years, 6 months imprisonment (s242), uplift of 18 months imprisonment (s220))	• Remorse • Co-operation with authorities (offer to give evidence) • Rehabilitation • Lapse of time • Guilty plea (25%)	3 years imprisonment (s242) (Concurrent: 12 months (s220) 18 months (s58) 18 months (s377)) 30 August 2012
15. Carol Braithwaite (*National*)	S58 Securities Act	2 years, 8 months imprisonment	• Jury trial found guilty • Net loss $15m • Abdicated responsibilities as director • Good character • Expressly does not take account of vulnerable investors nor breach of trust • Family circumstances (care of autistic child)	10 months home detention and 300 hours of community work 18 September 2012

Defendant	Charges	Starting point	Relevant factors	End sentence
16. Sir Douglas Graham (*Lombard*)	S58 Securities Act	Community detention and community work	• Good character and public service • Non exec director • Lower end culpability, no dishonesty • No deficiencies as chairman • Reparation • Remorse	300 hours community service and $100,000 reparation (under appeal) 29 March 2012
17. Michael Reeves (*Lombard*)	S58 Securities Act	Short prison term or home detention	• Lower end culpability • CEO • Previous Securities Act conviction • Remorse • Bad health and family situation	400 hours community service (under appeal) 29 March 2012
18. Lawrence Bryant (*Lombard*)	S58 Securities Act	Community detention and community work	• Lower end culpability, no dishonesty • Non exec director • Reparation • Remorse	300 hours community service and $100,000 reparation (under appeal) 29 March 2012
19. William Jeffries (*Lombard*)	S58 Securities Act	Community detention and community work	• Good character and public service • Non exec director • Remorse in doubt • Lower end culpability, no dishonesty	400 hours community service (under appeal) 29 March 2012
20. Anthony Banbrook (*National*)	S58 Securities Act	2 years, 6 months imprisonment	• Late guilty plea • No dishonesty • Gross negligence • Loss in key period relatively low $2.35m • Reparation & remorse	8 and a half months home detention and $75,000 reparation 12 March 2013

Defendant	Charges	Starting point	Relevant factors	End sentence
21. Owen Tallentire (*Capital + Merchant*)	S58 Securities Act S220 Crimes Act (SFO)	3 years, 6 months imprisonment on FMA charges (7 years, 3 months overall)	• Director • Dishonest belief • Victim impact • Previous good character • Remorse (12 months) • Guilty plea (10–15%)	12 months imprisonment on FMA charges (cumulative on 5 years imprisonment) 15 March 2013
22. Colin Ryan (*Capital + Merchant*)	S58 Securities Act	3 years imprisonment	• Honest belief but gross negligence • Non-exec • Victim impact • Guilty plea (10-15%) • Previous good character • Health issues • Co-operation with Crown	7 months home detention, 300 hours community work $100,000 reparation 15 March 2013
23. Robert Sutherland (*Capital + Merchant*)	S58 Securities Act	3 years imprisonment	• Honest belief but gross negligence • Non-exec • Guilty plea (10-15%) • Victim impact • Previous good character • Remorse	6 months home detention, 300 hours community work $60,000 reparation 15 March 2013
24. Neill Williams (*Five Star Finance*)	S58 and 59 Sec Act FRA	4 years, 6 months imprisonment	• Guilty plea but subsequent delays • Not named director but key player • Concealed true role • Acted dishonestly • Old age and caregiver of ill wife	3 years, 7 months imprisonment for FMA charges 19 April 2013

Defendant	Charges	Starting point	Relevant factors	End sentence
25. Stephen Smith (*Belgrave Finance*)	s220 & 242 Crimes Act, s58 Securities Act, s377 Companies Act (SFO & FMA)	6 years imprisonment	• Victim impact • Offending involved gross abuses of position and trust • Deceitful actions (seeking and misusing funds) • Covering up trust deed breaches • Continued premeditated offending • Remorse • Small allowance for good character Small allowance for late guilty pleas	4 years imprisonment
26. Ann Butler (*Dominion Finance*)	s58 Securities Act	2 years, 9 months imprisonment	• Gross negligence • Acted honestly • Non-exec • Previous good character • Husband's death, care of ill family member • Remorse • Reparation • Guilty plea	9 months home detention, 80 hours community work, $300,000 reparation
27. Robert Whale (*Dominion Finance*)	s58 Securities Act	3 years, 2 months imprisonment	• Expertise as lawyer, education in commerce and tax and a notary public • Gross negligence • Documented and had intimate knowledge of related party transactions • Reparation offer underwhelming • Good character • Remorse • Guilty plea	12 months home detention, 250 hours community work, $75,000 reparation

Defendant	Charges	Starting point	Relevant factors	End sentence
28. Neal Medhurst Nicholls (*Capital + Merchant Finance*)	s58 Securities Act	3 years, 6 months imprisonment	• Victim impact • Non-executive director however pre-existing knowledge of company and its finances as founding director • Personal benefit from related party transactions • Put own personal financial position ahead of obligations as a director • Totality sentencing principle • Remorse • Guilty plea • No offer of reparation	12 months imprisonment on FMA charges (8 years, 6 months total)
29. Wayne Leslie Douglas (*Capital + Merchant Finance*)	s58 Securities Act	2 years, 9 months imprisonment	• Victim impact • Non-executive director however pre-existing knowledge of company and its finances as founding director • Personal benefit from related party transactions • Put own personal financial position ahead of obligations as a director • Slightly shorter sentence than co-offender Nicholls because offending relates to shorter time period • Totality sentencing principle • Remorse • Guilty plea • No offer of reparation	8 months imprisonment on FMA charges (8 years, 2 months total)

FMA

FINANCIAL MARKETS AUTHORITY

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