

29 July 2023

By email: [REDACTED]

### Official Information Act 1982 Request (OIA) – FAP report

Dear [REDACTED]

I refer to your email to the FMA on 21 June 2024, you made an OIA request, requesting for information related to the FMA's monitoring report of the new financial advice regime<sup>1</sup> (the Report) and the diagram on page 5 of the report. Specifically, you asked for:

- “1. Tell me the nature of each of the 56 notifications: what were the notifications concerning? Why was each of them made? Also tell me the name of each entity that made a notification.
2. Please break down the 1029 enquiries and information reports from market participants. What were the nature of these enquiries? Please break them down into the areas they concerned. Did any of them lead to formal actions, or investigations? Please provide details of the nature of any follow-up work done after the receipt of them.
3. Please break down the nature and substance of the 147 reports of misconduct: how many had substance? How many led to follow-up activity? What was the nature of that follow-up activity? Have any investigations or formal actions/sanctions followed? What is the nature of those? Please be as detailed as possible.”

### OIA response

We have considered your request pursuant to the OIA and based on a review of the records and information available in our system. We have included only those cases referenced in the above statistics and in the diagram in the Report as per your request. Due to the high volume of cases, we can only provide high-level data according to the records in our system. We are unable to provide specific details for all cases, as there are more than 1200 cases. We respond to your request respectively as per the request number above.

The Report states that the cases processed were from 15 March 2021 to 20 April 2024. However, after receiving your OIA request and reviewing the data, we have identified an error regarding the dates. The cases reviewed for the report are actually for the period 15 March 2021 to 20 April 2023. We intend to correct this information in the report and update it on our website.

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<sup>1</sup> <https://www.fma.govt.nz/assets/Reports/Financial-Advice-Provider-Monitoring-Insights.pdf>

## 1 – 56 notifications

Please note that ‘notifications’ in this context are often information that regulated firms are required to report to us, for us to conduct our monitoring role. These requirements are specified broadly under the Financial Markets Legislation we enforce. For FAPs, it is primarily Standard Condition 7 of their licenses, and r191 of the FMC Regulations. The nature and likely reasons of the 56 notifications is outlined in **Table A** below.

In relation to your request for the name of each entity that made a notification, we have decided to withhold this information pursuant to the following grounds under the OIA:

- **Section 9(2)(ba)(i):** Often it is appropriate to withhold correspondence with, or material provided by, regulated entities in relation to regulatory matters where it has been obtained from them on a confidential basis and release may prejudice the future supply of information from those entities, or other entities we regulate. It is important to the FMA’s regulatory effectiveness, and so in the public interest, that the FMA continue to be able to engage frankly with market participants.
- **Section 9(2)(b)(ii):** Some information may be appropriate to withhold to avoid unreasonable prejudice to the commercial position of the person who supplied or who is the subject of the information such as sensitive financial information about companies and entities.
- **Section 9(2)(a):** Personal information within the documents may be appropriate to withhold to protect the privacy of individuals.

## 2 – 1029 enquiries

The information requested is detailed in **Table B** below. Please note that this information is compiled from the standard categories in our system (similar for the follow-up actions). One case may have more than one category noted and as a result, the total number in the table does not conclusively add up to 1029.

Our system categorises cases according to enquiry category, issue category, market category and product category. Often enquiries matters are not related to misconduct issues and often can be resolved by FMA providing a response to the relevant parties or hold the information on file and noted for ‘intelligence’ purpose.

## 3- 147 reports of misconduct

It is important to note that the term “reports of misconduct” in this context is for categorisation/reporting purposes, but is not conclusive of ‘misconduct’ having occurred in relation to that area. The breakdown of the nature of the 147 reports of misconduct cases referred in our report is detailed in **Table C** below. As noted above that this information is compiled from the standard categories in our system (similar for the follow-up actions). One case may have more than one category noted and as a result, the total number in the table does not conclusively add up to 147.

In relation to the follow up activities, out of 147 cases, 7 cases were referred to our Perimeter and Response team (noted as “referred to another team” in the table). These are usually more serious misconduct cases. Out of those 7 cases:

- 2 matters: referred to or actions were taken by the Police;
- 3 matters: Informal regulatory actions taken such as monitoring visits or further enquiries made; and

- 2 matters: still ongoing.

Additionally, information received through several of the 69 misconduct cases “noted for intelligence” and 49 “response provided” helped determine which firms are selected by the FMA for monitoring visits. While there is not a direct relationship, information received by the FMA is used to drive our risk-based approach.

These are the instances where misconduct cases were noted for intelligence and indirectly led to regulatory or enforcement action:

- 3 monitoring engagements that were referred to our Perimeter and Response team and resulted in regulatory action.
- 3 investigations that were referred to our Perimeter and Response team and resulted in regulatory or enforcement action.

In relation to the information withheld, I am of the view that the reasons outlined above are not outweighed by other considerations that render it desirable, in the public interest, to make this information available.

If you have any questions, please contact me at [nath.lostitmonton@fma.govt.nz](mailto:nath.lostitmonton@fma.govt.nz)

We also note that you have the right to complain to the Ombudsman regarding our assessment of your OIA requests, in accordance with section 28 of the Official Information Act. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or phone 0800 802 602.

Your sincerely

A handwritten signature in black ink, appearing to read 'Nath', with a stylized flourish underneath.

Nath Lostitmonton  
**Senior Legal Counsel**

**Table A: Nature of 56 notifications**

Notification Type	Number
AML/CFT (Definitions) Regulations 2011 , Reg 6 – change of details	1
AML/CFT Act, S59 – audit reporting	1
AML/CFT Act, S56 – removal of reporting entity	1
FA Act, Section 77 – providing annual QFE report to FMA	2
Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014, Reg 10 – Annual assurance reporting	1
FMC Regulation 231 & 236 - DIMS limit break & related party certificate reporting	3
FAP licence Standard Condition 7 – notification of material change	3
FMCA, Section 412 – reporting of misconduct	6
FMC Regulations, Section 191 (1)(c) – appointment or removal of director/senior manager	8
FMC Regulations, Section 191 (1)(g) – change in shareholding/control	8
FMC Regulations, Section 191 – major transaction, material change	5
FMC Regulations, Section 191 (1)(b) entities required to inform the FMA if they initiated relevant proceeding or civil action has been commenced by/ against them	7
FMC Regulations, Section 191 (1)(d) – resignation/appointment of auditor	1
FMCA, Section 412 - Market Services Licensees reporting	6
FSP Act, Section 67 - Statutory Notification	3

**Table B: Nature of 1029 enquiries**

Enquiry Category	
AML/CFT	523
Credit/Mortgage Product	2
Financial Adviser Act	5
Financial Markets Conduct Act	53
Financial Service Providers Register	7
Financial Services Legislation Amendment Act	203
FMA	26
FMA Action	1
FMA Processes	141
General Insurance Product	2
Licensing requirements and obligations	13
Life Insurance Product	2
Other	16
Peer-to-peer	1

Issue Category	
Adviser Obligations	1
Continuous Disclosure	4
Fair dealing provisions	1
Licensed Market Operator obligations	1
Money Laundering	3
Other	2
Poor financial advice	3
Sales processes	1

Market Category	
AFA	1
Authorised Body	53
Broker	20
Consumer Finance Provider - Other	1
Credit Contract Provider	6
Custodian	8
Derivative Issuer	3
Digital Advice	1
DIMS Provider	1
FAP	372
Finance Company - non-deposit taker	1
Financial Adviser	311
Financial Advisers	2
FMA	25
Fund or Scheme Manager	18
Insurer	26

KiwiSaver provider	2
Manager of MIS	2
Money Transfer Service provider	2
Nominated Representative	2
Non-bank lenders	1
NZ Audit Firms	2
Online Trading Platform Provider	2
Other	140
Peer-to-peer lending platform provider	1
QFE Adviser	1
Registered Bank	8
Unregistered – NZ	20
Unregistered - Offshore	1

Product Category	
Archive DIMS	3
Credit/Mortgage Product	20
Debt	6
Digital Currencies	3
Direct Property Investments	1
Equity	4
Financial advice	11
Financial advice service	52
Financial Planning	4
Fire and General	31
Forex Derivative	1
Health	1
KiwiSaver	31
Life	10
Mortgage lending	1
Not a Financial Product	829
Other	8
Other Insurance	2
Superannuation	3
Unit Trust/Managed Fund	6

### Follow-up action

	Outcome/Action
Exercise of statutory delegation	1
Guidance provided	40
Noted for Intelligence	39
Referred to another FMA team	1
Response provided	919
Converting to Investigation	1
No action taken	25
Referred to outside FMA	2

**Table C: Nature of 147 Misconduct cases**

<b>Enquiry Category</b>	
Financial Markets Conduct Act	1
Financial Services Legislation Amendment Act	1
FMA Processes	1
<b>Issue Category</b>	
Acting outside registration / licence conditions	9
Advertising	15
Adviser incompetence	1
Breach of Terms of the Offer	1
Commissions, Fees, and Charges	11
Conflict of Interest	3
Continuous Disclosure	2
Fair conduct	1
Fair Contract Terms	1
Fair dealing	1
Fair dealing provisions	18
Fake Broker or Investment Manager	1
Falsifying Documents	1
FAP Obligations	1
Fraud / Scams	4
Licensed Market Operator obligations	1
Money Laundering	1
Offer document disclosure	7
Other	10
Poor financial advice	31
Providing Financial Services without Registration / Authorisation	6
Related Party Transaction	3
Sales processes	9
Statutory Ongoing Disclosure	1
Unethical behaviour	2
Unit Pricing	1
Unsolicited Offer	3
Withholding Client money	4
<b>Market Category</b>	
AFA	1
Authorised Body	5
Broker	3
Credit Contract Provider	1
DIMS Provider	3
FAP	52
Financial Adviser	51
Fund or Scheme Manager	1

Insurer	17
Issuer of Equity	2
Manager of MIS	1
Other	2
Registered Bank	3
Unregistered – NZ	6
<b>Product Category</b>	
Credit/Mortgage Product	3
Cyber/Crisis management	1
Debt	8
Direct Property Investments	1
Equity	8
Financial advice	1
Financial advice service	1
Fire and General	22
Forex Derivative	1
Forex Spot	1
KiwiSaver	11
Life	19
Mortgage lending	2
Not a Financial Product	57
Other	3
Superannuation	3
Unit Trust/Managed Fund	5

## Follow-up actions

Informal action taken	
Guidance provided	2
Misconduct remedied	2
Misconduct remedied, follow up recommended	3
Noted for Intelligence	69
Referred to another FMA team	8
Response provided	49
Referred outside FMA	3

Formal action taken	
Monitoring engagement leading to regulatory action	3
Investigation leading to regulatory or enforcement action	3