

15 April 2024

[REDACTED]
[REDACTED]
[REDACTED]

By email to: [REDACTED]

Dear [REDACTED]

Request for information – [REDACTED]

Thank you for your email dated 22 March 2024 containing three requests for information. We have considered your requests under the Official Information Act and respond to each below.

Question 1: *Is the FMA monitoring non-GAAP disclosures of FMC reporting entities? If yes, please explain:*

- (i) when monitoring occurs,*
- (ii) what documents are monitored (e.g. annual reports, financial statements and/or NZX public announcements),*
- (iii) who undertakes this task, and*
- (iv) how the monitoring is undertaken and to what extent? We are particularly interested in NZSX-listed companies, so if this group is different from other FMC reporting entities, please explain. We would like to know if all companies annual reports, financial statements and/or NZX public announcements are reviewed, or if not, what portion?*

We currently undertake mainly reactive reviews of financial information, following a complaint, enquiry or other intelligence obtained by the FMA. In certain circumstances we do review consistency between the financial statements, annual reports, market announcements and investor documents, like presentations or Product Disclosure statements.

These reviews are performed by our Financial Reporting team that sit in our Regulatory Delivery function. As part of our monitoring of registered audit firms we also select a sample of FMC reporting entities for which we review the financial statements and audit file concurrently. An overview of our activities from these audit reviews can be found in our annual [audit quality monitoring report](#).

Our reviews are risk-based and therefore not all listed companies are reviewed on a regular cycle. There is no significant difference between our reviews of listed companies or other FMC reporting entities. The only difference is that for listed entities more information is available that forms part of the review.

Question 2: *If yes to Q1, has the FMA directly engaged (e.g. including discussed or penalised) with any NZSX-listed company since 1 January 2020? If yes, please explain:*

- (i) *how many companies each year, from 2020, 2021, 2022, 2023 calendar years (or similar; if this information is only in financial years, that would also be fine),*
- (ii) *over what types of issues and*
- (iii) *what penalties resulted (please specify financial or other), with numbers for each year?*

The information requested under (i) and (ii) is not something that we record in our systems and therefore not information we have available. In order to extract this information, we would need to manually review all cases assigned to the Financial Advice team for the date range specified.

Factoring the amount of work required to extract this information against staff constraints, we are refusing these requests under section 18(f) on the basis that the information requested cannot be made available without substantial collation and research. We consider doing either or both steps under section 18A would still not enable us to grant this request.

Regarding the information requested under (iii), following enquiries and investigations the FMA can take various regulatory action, including private and public warnings or referring matters to court. While we cannot provide numbers for each year for the reasons above, we note all our public statements are published on the FMA's [website](#). This part of the website is searchable for relevant financial reporting cases.

Question 3: *If yes to Q2, does the FMA regularly release information to the public about recent engagements that they have had with NZSX-listed companies about an entity's poor or questionable reporting of non-GAAP information or measures? For example, see ASIC's media release regarding an entity's removal of non-IFRS profit measure following a review conducted by ASIC – [see here](#).*

As to our knowledge we have not made any recent public announcements on non- GAAP measures. In instances we have identified issues and trends on financial reporting matters, we have various tools available to achieve our outcomes to provide accurate, complete and timely financial information. The tools most used include:

- Providing market guidance, the last one in relation to Non-GAAP is from July 2017 and can be found here: <https://www.fma.govt.nz/assets/Guidance/120901-guidance-Disclosing-non-gaap-financial-information.pdf>
- Updates on our financial reporting monitoring
 - <https://www.fma.govt.nz/assets/Guidance/2020-Financial-reporting-reviews.pdf>
 - <https://www.fma.govt.nz/assets/Reports/Filing-of-financial-statements-review-findings-and-guidance.pdf>
- Disclosing individual outcomes as mentioned under question 2.

Please let us know if you have any questions about this response. You also have the right to make a complaint to the Ombudsman in respect of this decision on your request. You can find more information on how to make a complaint on the Ombudsman's website at

<https://www.ombudsman.parliament.nz/>

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark'.

Mark McIlvride
Senior Legal Counsel