



FMA's approach to compliance and enforcement

Sue Brown

Head of Primary Regulatory Operations

Banking and Financial Services Law Conference | 5 August 2012 | Queenstown

FMA's busy first year keeping industry clean



THE NATIONAL BUSINESS REVIEW
11:56AM Friday 29 June 2012

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FMA warns of unsolicited offers from Share Buyers and Stock & Share

NBR staff | Monday July 11, 2011 | 1 comment

The Financial Markets Authority has issued warnings about unsolicited offers from Share Buyers or Australian-based Stock & Share.

Share Buyers and people associated with it have requested the share registers for 23 companies saying they plan to use the information to make offers to purchase shares from shareholders.

According to the Companies Office, Share Buyers was incorporated on May 31. Its director and sole shareholder is Ting Wei, who is listed as living in Western Australia.

Stock & Share has already made a number of unsolicited offers, including a recent offer to purchase debentures in St Laurence Limited for 3 cents for every dollar of debentures held. St Laurence Limited was placed in receivership in April 2010. Based on indications from the receivers, investors are forecast to receive a further payment of around 6 cents in the dollar, in addition to the 3 cents in the dollar already paid to investors.

The FMA is warning investors to treat any offers from Share Buyers or Stock & Share with caution and to seek advice from an authorised financial adviser, Community Law Centre, or Citizens Advice Bureau.

FMA has given notice to both Share Buyers and Stock & Share that it will consider

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Business

FMA appeals Lombard directors' sentences

NBR staff | Monday April 30, 2012

The Financial Markets Authority is appealing sentences handed out to the director and investments directors, from left, Lawrence Brink and Sir Douglas Graham standing in the stock exchange.

A spokesman for the market appealed, but wouldn't provide details.

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Business

Finance boss Ludlow gets nine months extra jail time

By Hamish Fletcher
12:15 PM Thursday Jan 26, 2012

Trevor Ludlow, Photo: / Dean Purcell

Former National Finance boss Trevor Allan Ludlow has had nine months added to his prison sentence for misleading investors and making false financial statements.

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Business

Hanover civil proceedings just the beginning - Hughes

Duncan Bridgman | Thursday December 15, 2011

Intended civil proceedings against the Hanover group of finance companies could be a test case for further compensation action, the Financial Markets Authority says.

The FMA announced today it will file civil proceedings against directors and promoters of Hanover Finance, Hanover Capital, and United Finance next year and subsequent advertisements, totalling approximately \$30 million.

Those targeted could include Hanover co-founders Mark Holchen and Eric Watson and former directors Greg Muir, Sir Traine O'Keefe and Bruce Gordon.

These targeted could include Hanover co-founders Mark Holchen and Eric Watson and former directors Greg Muir, Sir Traine O'Keefe and Bruce Gordon.

Mr Watson, who lives overseas, was a director of Hanover Group, and thereby established liability of a branch of the firm in the prospectus and advertisements.

FMA chief executive Sean Hughes said it successful the civil proceedings would establish liability of a branch of the firm in the prospectus and advertisements under the Securities Act.

Against that the FMA and/or any other party could subsequently rely on its present compensation jurisdiction through the FMA's new Section 142 lawsuit, he said.

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Business

Bridgecorp: Roest gets six years jail

By Edward Gray
12:33 PM Friday May 18, 2012

Robert Roest (L) and Peter Steigard (R)

Bridgecorp's former financial controller Rob Roest will join the failed finance company's boss Rod Petricovich behind bars - but another former director escaped prison when the men were sentenced at the High Court in Auckland this morning.

Roest was jailed for six years and six months and Peter Steigard was ordered to complete nine months of home detention, 200 hours of community work and ordered to pay \$350,000 in reparations.

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More headlines on 'bridgecorp'

- Treasury set for Bridgecorp case to top \$1.5m
- Receivers of failed firms get fat out
- Search of ex-SFO lawyer's computers fails to find file email
- Doubt over whether SFO's Bridgecorp trial will go ahead
- Unives decides against jail term appeal
- Fine goals for the FMA
- From O'Sullivan: Public still needs protection from Petricovich
- FMA appeals Lombard directors' sentences
- Petricovich's fat not hand enough for victims of

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Business

THERE ARE HUNDREDS OF REASONS TO CHOOSE YOUR LETTERBOX.

Business headlines continue

Related Tags: Finance Company Collapses, Fraud

FMA: What we do



Purpose: To promote and facilitate the development of fair, efficient and transparent financial markets.

- Enforce 20 pieces of legislation, many new.
- Regulate entities
 - 2,200 organisations
 - 32,000 individuals
- Monitor Anti Money Laundering/Counter Terrorism Financing.
- Investor education and information.
- New enforcement powers.
- Civil and criminal proceedings.

FMA and RBNZ share 'twin peaks' approach to regulation

FMA structure supports what we do

FMA Board

Chief Executive

Primary Regulatory Operations

Licensing, Retail Surveillance, Prospectus Review, Novel Applications, New Product And Services, Regulatory Policy

Compliance Monitoring

(Commercial and Infrastructure)
Compliance Policy, Issuer and Commercial Surveillance, Infrastructure Oversight

Enforcement

Civil and Criminal Investigations, Evidence and Enforcement

Strategic Intelligence

Information Research, Analysis, Issue Identification and Strategy and Solutions

Stakeholder Management

Stakeholder (Government Sector, Public, Media and Co-regulator) Relationships, Communications

Business Performance and Strategy

Operations, Technical & Shared Services
(IT / Finance / HR / Admin services)

Legal

Internal, Legal Expertise, Risk Management and Corporate Governance

FMA impacts 2012-2015

GOVERNMENT PRIORITY

TO BUILD A MORE COMPETITIVE AND PRODUCTIVE ECONOMY

FMA'S PURPOSE

TO PROMOTE AND FACILITATE THE DEVELOPMENT OF FAIR,
EFFICIENT, AND TRANSPARENT FINANCIAL MARKETS

OUTCOMES

Increased confidence and participation in New Zealand's financial markets

Competent and compliant financial
markets participants

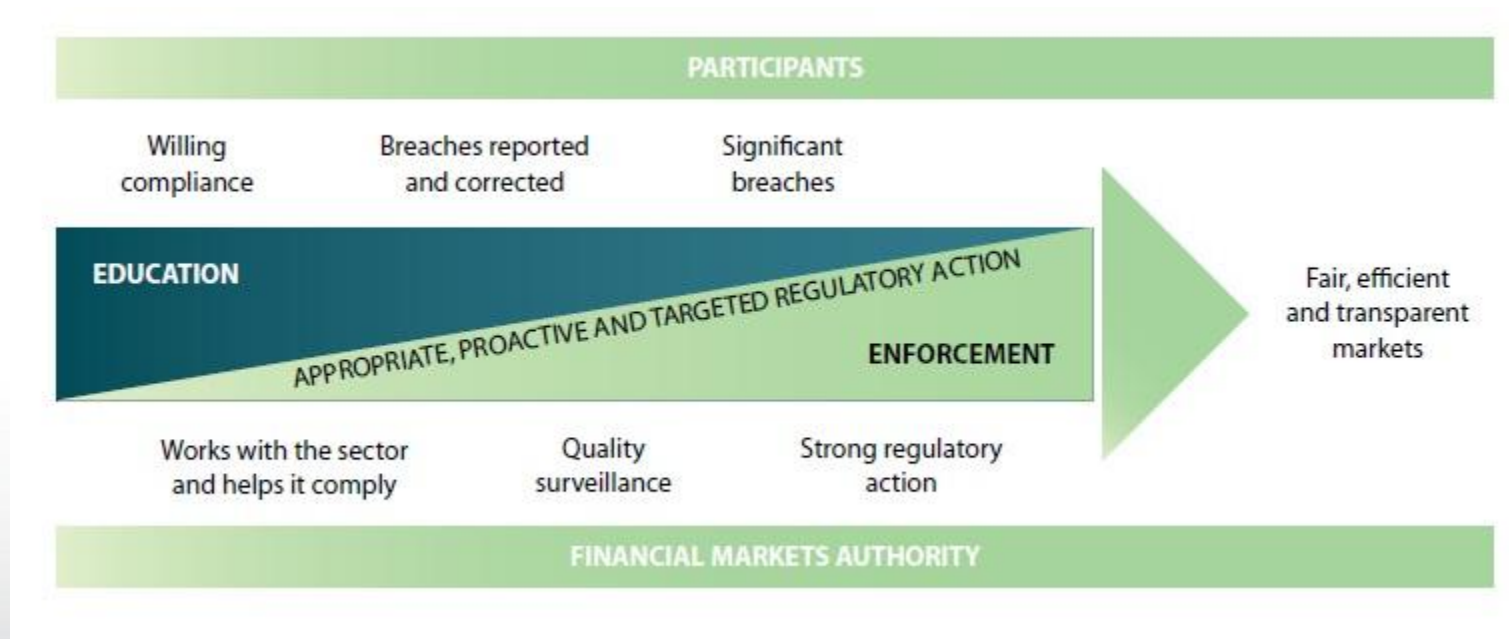
Well informed investors who
understand financial risk and return

Market integrity

DESIRED IMPACTS

1. Financial markets participants have clear responsibilities
2. Increased levels of compliance of market participants with financial markets regulations
3. Investors have access to resources to increase understanding of financial risk and investment choices
4. Front line regulators and gatekeepers effectively discharge their statutory functions
5. FMA's regulatory and enforcement actions support market activity

Increased levels of compliance of market participants with financial markets regulations



Financial markets participants have clear responsibilities



Guidance Note: Effective Disclosure

June 2012

About this guidance note

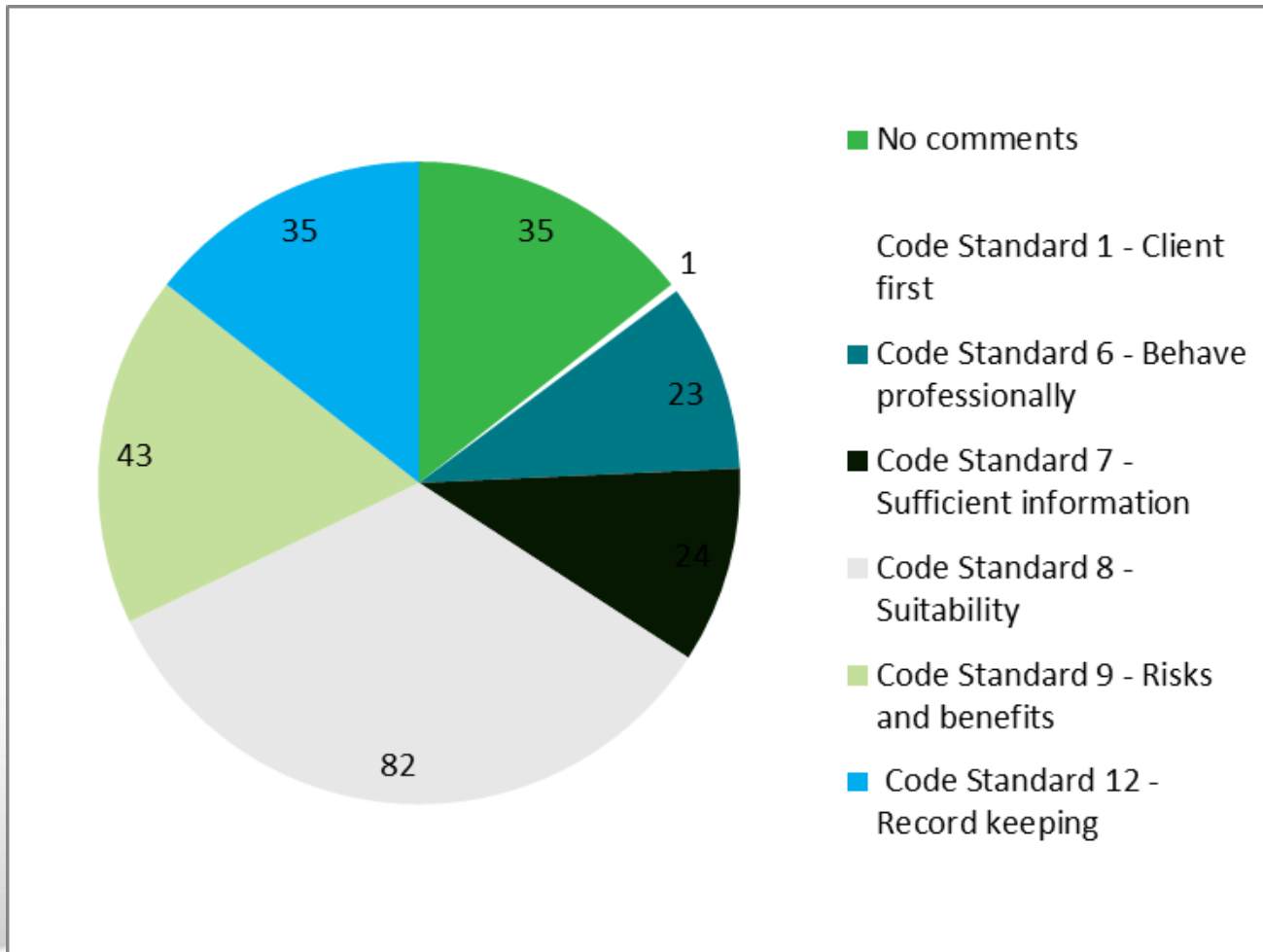
This guidance note is for issuers of securities, their directors and advisers. It explains the approach the Financial Markets Authority intends to take in reviewing prospectuses and investment statements for compliance with the law. It also provides our views on good practice for preparing these disclosure documents.

Significant changes will come into force when the Financial Markets Conduct Bill is enacted and comes into effect. It is not possible to future proof this guidance note because there can be no certainty about the final legislation until the Parliamentary process is complete. This guidance note therefore refers to current requirements and will be updated when we know the new disclosure requirements.

Issuing guidance is just one of the ways we can be transparent and share our intended approach with the market. Guidance helps market participants be confident they understand our approach and how we interpret, and intend to apply, the law relating to their responsibilities. We will continue to engage with the market as issuers align with the guidance.

Feeding back on results of monitoring

Interim findings in relation to AFA Code Compliance as at July 2012



Investors have access to resources to increase understanding of financial risk and investment choices

FMA wants feedback on non-standard earnings measures

Paul McBeth | Tuesday May 22, 2012

BUSINESSDESK: The Financial Markets Authority is seeking submissions on the growing use of irregular earnings measures in preference to statutory profit.

The market watchdog has published a draft guidance note on the disclosure of non-Generally Accepted Accounting Principles (GAAP) financial information.

The move is in response to the growing number of companies using underlying earnings measures to strip out the "noise" of unrealised movements in fair value that have to be recognised under International Financial Reporting Standards.

"These measures can provide useful information to investors, but they also have the potential to be misleading if used to mask bad news," FMA head of compliance Elaine Campbell said.

"It is important for both issuers and investors to have greater clarity on the use of non-GAAP financial information, which will contribute to increasing confidence in our markets."

The IFRS accounting standards became mandatory in 2007, requiring companies to recognise the market value of assets such as property and financial instruments in their financial statements, sparking disquiet among corporates who claimed they exaggerated the global downturn in 2008.



COMPANIES WITH
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PEOPLE SCENE



Front line regulators and gatekeepers effectively discharge their statutory functions



- NZICA – responsible for 32,000 accounting and business professionals
- NZX – FMA’s job to ensure that its Registered Markets operate in a fair, orderly and transparent way
- QFEs – oversee 25,000 QFE advisers providing Category 1 products (KiwiSaver, shares, managed funds)

FMA's regulatory and enforcement actions support market activity

FMA provides update on exemption review and requests further feedback on specific notices

3 July 2012

The Financial Markets Authority (FMA) is undertaking a review of 44 class exemption notices due to expire later this year. We have completed an initial round of public consultation on the expiring class exemption notices.

We would like to update interested parties on decisions made, the continuing work on notices, and the further feedback we are seeking.

A copy of our Project Update paper can be found [here](#).

As part of the review process, FMA is also undertaking further consultation on the following 5 exemption notices and requests further feedback from interested parties:

- [Securities Act \(Amalgamations\) Exemption Notice 2002](#)
- [Securities Act \(Co-operative Companies\) Exemption Notice 2011](#)
- [Securities Act \(Renewals and Variations\) Exemption Notice 2002](#)
- [Securities Act \(Rights, Options and Convertible Securities\) Exemption Notice 2002](#)
- [Securities Act \(Takeovers\) Exemption Notice 2011](#)

The final date for submissions is 27 July 2012. The consultation paper and request for feedback can be found [here](#).

Statutory enforcement mandate

“A gun-shy dog is useless for duck hunting”

Section 9:

- to monitor compliance with, investigate conduct that constitutes or may constitute a contravention of, and enforce certain pieces of legislation (s9(1)(c)); and
- to monitor, and conduct inquiries and investigations into any matter relating to, financial markets or the activities of financial markets participants or of other persons engaged in conduct relating to those markets (s9(1)(d)).

New powers

- Sections 25 and 29:
 - General search and information-gathering and enforcement powers
- Section 34:
 - FMA may exercise person’s right of action “stand in the shoes”

FMA's enforcement policy



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Our enforcement priorities

FMA will use the full range of its enforcement powers, targeting conduct that presents the greatest likelihood of harm to the function of open, transparent and efficient capital markets.

[More](#)



Warning: Be wary of unsolicited offers

FMA advises investors to be wary of unsolicited offers from Ross Investments (Aust) Pty Limited

FMA action to recover \$25 million in related party loans

FMA confirms continued engagement with Perpetual Trust Limited (Perpetual) to recover \$25 million in related party loans.

Trans-Tasman mutual recognition of financial advisers announced

Joint announcement of mutual recognition arrangements for Australian and New Zealand financial advisers.

Financial Markets Conduct Bill

Financial Markets Conduct Bill

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to provide an enduring financial market conduct regulatory regime that promotes confident and informed participation in New Zealand's financial markets. The regime provided by the Bill does this by—

- ensuring that investors are provided with understandable and accurate information to guide their decision making;
 - ensuring that governance arrangements in respect of financial products available to the public are robust;
 - minimising unnecessary compliance costs for those organisations and effective competition.
- market conduct regulation
for a more coherent

Looking forward

“Timely and effective enforcement action remains fundamental, but we are also seeking a new market maturity and behaviour change. As the market grows and we develop as an organisation, we want to see the impact of our education programmes, our market consultation, and guidance and policy notes bring about new levels of professionalism, good governance and increased confidence. Enforcement takes a lesser role as the market proactively and willingly complies.”

Fast deals reflect poor judgment

Tim Hunter

Incredibly, after all the damage done by finance companies with related-party loans, a major institution has been at it again.

With the release of court judgments involving Pyne Gould Corporation subsidiary Perpetual Trust, this time we know regulators have acted promptly.

The email requested a loan facility of \$7.5m, but preferably \$15m, and asked for arrangements to be made that night so A\$5.5m (NZ\$7) could be sent to Sydney the following day.

An \$18m loan was approved by PGC's board, without Kerr who declared himself conflicted, the following afternoon.

\$28.2m, apparently without further formal approval.

The whistle was eventually blown by Trustees Executors, the cash fund's statutory supervisor, and the FMA came down on Perpetual like a ton of bricks.

No doubt Perpetual and Torchlight would argue the loans were a great deal for investors in the cash fund.