

5 February 2019

Sent by email to: [REDACTED]

Dear [REDACTED]

## FMA'S RESPONSE TO YOUR OFFICIAL INFORMATION ACT (OIA) REQUEST

Thank you for contacting us on 3 December 2019. You requested:

- the number of times in 2019 that the FMA requested a reporting entity (RE) seek an audit of its risk assessment and anti-money laundering and countering financing of terrorism (AML/CFT) programme at an 'other time' under section 59(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
- the documents which identify the general business nature of those REs, eg institution, managed investment scheme (MIS), custodian, financial adviser;
- the documents which contain the specific deadlines given for the REs to meet these requests; and
- the documents, including any that contain the agency's policies, principles, rules or guidelines, used to determine those deadlines.

On 16 January 2020 we wrote to you, notifying you that we have extended the date within which we would respond to your request to 5 February 2020.

### Number of times FMA has requested a section 59(2) audit

*In total during 2019 we made two requests to REs asking they seek an audit of their risk assessment and AML/CFT programme at an 'other time' pursuant to section 59(2).*

### Nature of REs

*The business nature of those two REs are one MIS manager, and one company registered on the Financial Service Providers Register to provide financial services.*

We noted you asked for the 'documents' which identify the business nature of the REs. We have summarised the 'business nature' from records in the FMA's records management system which records the status of these entities. This is consistent with section 16(1)(e) of the OIA which enables us to make information available by giving a summary. We have summarised this information, rather than providing documents, because we consider it most efficiently and effectively answers your question, and also protects the identity of the REs.

### Deadlines given to REs to meet requests

*One requested additional audit period was a period of approximately 11.5 months from the end date of the last audit period in which the deficiencies were identified. The other requested additional audit period was a period of approximately 14 months from the end date of the last audit period in which the deficiencies were identified. In both cases 1.5 months were given from the end date of the additional audit period to then provide the audit report to the FMA. Similarly in both cases the additional audit request was sent mid-*

April requiring the audit to be completed and the report provided to the FMA by mid-December, being a period of 8 months. We explain this further below.

- *The FMA had requested and reviewed these REs independent risk assessment and AML/CFT programme audit reports. The most recent audit report for each entity reported significant material adverse findings.*
- *FMA staff considered the appropriate regulatory response to ensure the deficiencies identified by these audit reports were addressed. Requesting additional section 59(2) audits was decided appropriate. The REs had already agreed 'action plans' to address the concerns identified by the audits. FMA staff were comfortable that the actions required by these plans should rectify the deficiencies raised by the audits and bring the REs' risk assessment and AML/CFT programme up to the relevant standard. Notably, it also appeared from reviewing previous audits, that both entities had previously received audits that did not identify significant concerns, so had reason to previously consider they were broadly compliant. In determining the regulatory response and timeline for it, there was therefore no reason to believe the entities were not willing to comply with the legislative requirements. (If we believed the entities were not willing to comply, a more serious regulatory response may have been appropriate.)*
- *In these circumstances the FMA decided the most appropriate regulatory response would be to use our ability under section 59(2) to ask each of the REs to get an additional independent audit with the additional audit period spanning the period from the end of the last audit (that had identified the deficiencies) to a date beyond the timeframe by which it was envisaged under the action plans that steps would have been taken to address the deficiencies identified. This would allow consideration of whether those action plans had been effective in rectifying the deficiencies. The requested additional audits were therefore to cover a period of approximately 11.5 months in the case of one entity and 14 months in the case of the other entity. FMA staff asked the audits then be provided to the FMA within 1.5 months after the end of the audit period. In total, in each case from the date of the request, there was an 8 month notice period for the additional audit to be completed, and the audit report provided to the FMA. FMA staff considered, in the circumstances, this was sufficient time for the REs to engage an auditor and acquire a completed audit report to provide to the FMA.*

Again, we noted you asked for 'documents' containing the deadlines given to the REs. The deadlines are referred to in documents being the letters to the REs and internal FMA memoranda. These documents contain information derived from information disclosed to the FMA under financial markets legislation. Section 59 of the Financial Markets Authority Act 2011 therefore provides this information is confidential and the FMA is not able to disclose it unless an exception applies. Relevant exceptions can include our ability to provide the information pursuant to the requirements of the OIA, and/or in summary form. Section 16(1)(e) of the OIA also envisages we can provide a summary. We have thus summarised the deadline information for you above. We consider this most efficiently and effectively answers your question (and explains the FMA's approach to these deadlines), but also protects the identity of the REs and information subject to obligations of confidence which if made available would be likely to prejudice the supply of similar information from these, or other market participants, that the FMA regulates.

#### **Policies, principles, rules, or guidelines determining deadlines**

*Documents setting out general policies, principles, rules or guidelines used to determine the deadlines do not exist. We therefore refuse this part of your request under section 18(e) of the OIA.*

To explain, to date these section 59(2) audit requests have not been a frequently used regulatory tool by the FMA and so there has not been a need to record guidelines on approach to deadlines for staff in a document. Secondly, FMA staff consider the appropriate deadline on a case-by-case basis. Staff consider

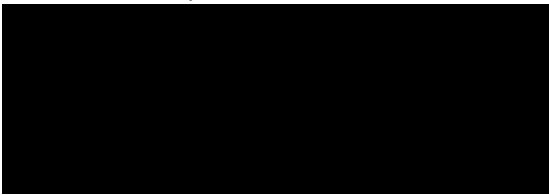
all relevant facts and circumstances in determining whether, and in what timeframe, to use this regulatory tool, including the nature and seriousness of any apparent or potential deficiencies in the risk assessment and AML/CFT programme, the responsiveness of the RE to previous section 59 audits, and the cost and other practical issues impacting the RE that may arise.

**Questions about this response**

We hope this provides the information you seek to understand. If you have any questions about this response please contact me at [REDACTED].

We also however note you have the right to seek an investigation and review by the Ombudsman regarding this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Yours sincerely

A large black rectangular redaction box covering the signature of the sender.

Manager, Policy & Governance

