

# FOUR FAST FACTS

## ON: FMA ENFORCEMENT

OCTOBER 2021

### Credible deterrence in action

1

Credible deterrence of misconduct has been a strategic priority for the Financial Markets Authority (FMA) since 2019. However, 2021 has seen a marked increase in enforcement activity with the FMA initiating pecuniary penalty proceedings for market manipulation, breaches of the fair dealing provisions of the Financial Markets Conduct Act and anti-money laundering failings.

### AML/CFT

2

The FMA has secured its first pecuniary penalty for breaches of the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act. The High Court imposed a fine of NZ\$770,000 on CLSAP NZ for breaches that included failures to:

- conduct customer due diligence,
- terminate an existing business relationship because of inability to conduct due diligence,
- report suspicious transactions and activities, and
- keep requisite records.

The FMA has also issued public formal warnings to other reporting entities for failures to comply with AML/CFT requirements, and recently reported that given the regime has been in place for eight years, it has less tolerance for failures to meet obligations.

### Market manipulation via social media

3

The FMA has filed civil High Court proceedings against an individual for alleged information-based market manipulation in contravention of the Financial Markets Conduct Act and the Securities Markets Act. The individual made anonymous posts on Sharetrader's online investor forum without disclosure of involvement in the company referenced. The FMA describes the case as an important reminder that information-based market manipulation can occur on social media and forums, where investors are increasingly gathering to discuss stocks.

### Customer protection trend

4

The Financial Markets (Conduct of Institutions) Amendment Bill will introduce mandatory obligations to put customers first, but this isn't likely to be passed until next year. In the meantime, the FMA expects financial service providers to prioritise customers in their conduct, culture and governance. In a recent report into credit card related insurance, the FMA has told product providers and distributors that they need to regularly check product suitability after the point of sale and clearly delineate their respective responsibilities for good customer outcomes. The FMA has also said that it will continue to take enforcement action where it believes there is a risk of harm to customers.