

From: Governance.Team <Governance.Team@fma.govt.nz>
Sent: Wednesday, 7 July 2022 11.14am
From: [REDACTED]
Subject: Re: Your Official Information request - Kiwisaver funds that move the market

Kia ora [REDACTED]

OIA - Large funds moving the market

We respond below to your OIA request, namely - *Has the FMA received any referrals from NZ RegCo regarding large funds moving the market and if so how many each year over the last ten years?*

We understand you seek information about numbers of referrals, each year for the last 10 years, from NZ RegCo (and prior to the commencement of NZ RegCo, NZX itself pursuant to its regulatory function), where a concern has been raised that trading by a manager of a large managed fund has moved the market, *and that conduct has been considered potentially manipulative*. You will appreciate that there are legitimate market reasons why trading by a fund manager (or any investor) may move the market price – for example typically if the purchase demand is higher than sale demand for a particular share, the share price will rise, and if sale demand is higher than purchase demand for a particular share, the share price will move downwards. We would not expect, and are not aware of, receipt of any referrals from NZ RegCo about trading by large funds simply moving the market, unless NZ RegCo had concerns about potential misconduct associated with the trading, such that investigation may be warranted.

Relating to this 10 year period, we are aware of one relevant referral. It related to Mark Warminger, a fund manager at Milford Asset Management, which also resulted in the FMA more generally considering the conduct of Milford Asset Management. It was investigated by the FMA and action pursued. You can read more about this matter, and access the judgment relating to Mark Warminger on the FMA's website here: [News and Resources > Cases > Mark Warminger](#), and information in relation to Milford Asset Management Limited here: [News and Resources > Cases > Milford Asset Management Limited](#).

We are not aware of any other referrals from NZ RegCo of this nature.

To reach this view we have engaged with senior colleagues (who have between them worked in relevant roles at the FMA for more than the preceding 10 years) from the FMA's Disclosure and Market Conduct Team. This Team takes the lead on matters relating to conduct of, or pertaining to, New Zealand markets including the NZX's markets. One of these colleagues I consulted is the current Head of Disclosure and Market Conduct – who now leads the team, and has previously held a senior position in the team for the last 8 years. The nature of the roles held by the staff consulted gives me good confidence they would have been aware of any referrals that led to an investigation by the FMA.

It is possible that a referral has been made at some time in the last 10 years, that following review by FMA staff at the time of receipt of the referral, did not raise significant concerns and accordingly did not result in an investigation or other significant enquiry by the FMA. If there was a referral such as this, my colleagues acknowledge that it is possible that despite their careful consideration of your question they may have omitted to remember such a referral. We note, consistently with section 18(f) of the OIA, that although we are not aware of any such referrals, it is possible one or more of these kinds of less significant referrals may have been made, and if this is the case we cannot definitely provide information on numbers, because the information cannot be made available without substantial collation or research. The reason is that over the preceding 10 year period, a substantial number of emails have been received from NZ RegCo/NZX. Some will have been referrals relating to the wide range of issues in respect of which NZ RegCo acts as frontline regulator including market manipulation, insider trading, and continuous disclosure. To double check that no less significant matter referred by NZ RegCo, in respect of which an investigation and enforcement action by FMA did not result, has not been overlooked all the emails for this 10 year period would need to be located then reviewed. For this reason, we consider section 18(f) applies to the extent it is possible we have unintentionally overlooked information received on any of these possible less significant referrals.

Please let me know if you have any questions about our decision under the OIA. I also note that you have the right to complain to the Ombudsman regarding our assessment of your OIA request in accordance with section 28 of the Official Information Act. Information about how to make a complaint is available at www.ombudsman.parliament.nz or phone 0800 802 602.

Ngā mihi

Natalie Muir

Principal Adviser, Governance

-----Original Message-----

From: [REDACTED]

Sent: Thursday, 9 June 2022 6:30 pm

To: Governance.Team <Governance.Team@fma.govt.nz>

Subject: Re: Your Official Information request - Kiwisaver funds that move the market

Dear Governance.Team,

Has the FMA received any such referrals from NZRegCo regarding large funds moving the market and if so how many each year over the last ten years. I made this request under the Official Information Act.

Yours sincerely,

[REDACTED]