



REGULATORY ACTIONS REPORT

1 APRIL 2023 – 31 MARCH 2023





PURPOSE OF REPORT

- Misconduct in the financial sector has far reaching consequences for consumers and negatively impacts their confidence in the financial sector. The FSCA, therefore, as one of its strategic objectives aims to maintain and support confidence and integrity in the financial sector by acting decisively and visibly against misconduct.
- Timeous and visible enforcement provide a credible deterrence to poor customer and market outcomes and drives positive behavioural changes in the financial sector.
- To support regulatory transparency, the FSCA publishes all enforcement sanctions and interventions on its website and through media releases. **The report enhances the FSCA's commitment to transparency by communicating all the regulatory actions it has taken over the period 2022-23 financial year in aggregated and summary format.**
- The report assists in identifying emerging trends and risks, changes in industry behaviour and consumer education needs. Case studies are used to illustrate principles and provide practical application.



INTERNATIONAL COOPERATION

- The globalised nature of economies, financial markets and financial services create a **highly interconnected financial ecosystem**. As a result, the provision of cross-border financial services and the uptake of such services by retail customers has grown over the years due to the ease of use, and the widespread availability of such technologies. This gives rise to several regulatory challenges, e.g. fraud through the internet and other electronic communications, and jurisdictional issues that **the FSCA endeavours to overcome through close co-operation and collaboration with international counterparts and enforcement agencies**.

Requests for Assistance

Requests for assistance made by the FSCA to Foreign Regulators	16
Requests for assistance made by Foreign Regulators to the FSCA	7

Unsolicited Information

Unsolicited information provided by FSCA to Foreign Regulators	15
Unsolicited information received by FSCA from Foreign Regulators	7

- International co-operation and collaboration are enabled through **92 bi-lateral and multi-lateral MoUs** with regulatory counterparts.

DOMESTIC COOPERATION

- The FSCA's enforcement function is further supported by the collaboration and cooperation with domestic counterparts (e.g., Prudential Authority, FIC, National Consumer Commissioner and the NCR).
- It is important to note that **the FSCA is not responsible or mandated to conduct criminal investigations and prosecutions**. The FSCA has no control over either of these functions that is the exclusive domain of the SAPS and the NPA. However, the FSCA has referred **70 cases** during the reporting period to the Specialised Commercial Crime Units and Commercial Crime Courts.
- The FSCA is currently providing active assistance to the SAPS and the NPA in **seven** complex commercial crime cases. This includes assistance to the NPA in their efforts to extradite Mr Steynberg, the kingpin in the **Mirror Trading International** case.
- The FSCA further collaborates with the FIC and AFU in **preserving assets under threat**. A recent example is the case of Classic Financial Services One (Pty) Ltd and its director, Mr JS Geldenhuis - R19 million preserved.

SUMMARY OF ENFORCEMENT INTERVENTIONS

- The FSCA takes enforcement action or measures, *inter alia*, **to change the behaviour of the person who is the subject of the intervention(s)**, to deter future non-compliance by others, to eliminate any benefit from non-compliance, and where practical, to remedy the harm caused by the non-compliance. This is all done for the ultimate purpose of **protecting financial customers**.
- The FSCA has actively utilised nearly the entire range of sanctions or interventions available to it to respond to misconduct.



INVESTIGATIONS

- The **FSCA** has a wide range of investigative powers to conduct in-depth investigations. These include conducting interviews under oath, the power to subpoena documents and, in appropriate instances, executing search and seizure warrants.
- Most of the investigations are conducted in respect of alleged contraventions of the **FAIS and Insurance Acts**. Most of the FAIS matters relate to unauthorised business. The insurance investigations relate mostly to **unregistered insurance business**, the majority of which was conducted by funeral parlours.
- FSCA established a **dedicated team** responsible for the investigation of funeral parlours.

Type, no. and status of Investigation cases

TYPE OF INVESTIGATION	NEW	ONGOING	FINALISED
FMA (Market Abuse)	38	63	29
FMA (Over-the-Counter Derivative Providers)	23	7	25
FAIS Act	245	182	178
Insurance Act*	91	58	65
PFA	-	2	1
CISCA	-	1	2
Friendly Societies Act	1	-	1
Other	3	1	4
No jurisdiction**	76	11	101
FSR Act	4	4	-
Totals	481	329	406

Breakdown of Financial Markets Investigation cases

Type of contraventions investigated	Total*
Prohibited Trading Practices	34
Insider Trading	43
False and Misleading Statements	14
Foreign Request: Market Abuse	1

ADMINISTRATIVE PENALTIES

Financial Sector Law	No. of Cases	No. of persons	Penalties Imposed	Penalties suspended for specific period	Penalties set aside on reconsideration	Total Penalties payable
FMA – Market Abuse	3	6*	R70 020 000	-	R50 000 000	R20 020 000
FMA - ODPs	3	3	R130 000	-	-	R130 000
PFA	1	6	R622 300	-	-	R622 300
FICA	3	3	R940 000	R520 000	-	R420 000
CISCA	5	1	R10 639 000	-	-	R10 639 000
Insurance Act	2	2	R75 000	-	-	R75 000
FAIS Act	10	19	R71 440 000	-	2 700 000	R68 740 000
TOTALS	27	44	R153 866 300	R520 000	R52 700 000	R100 646 300

- The FSCA process for imposing penalties is designed to fully comply with administrative law principles, and respondents are afforded reasonable opportunity to reply.
- 68%** of administrative penalties imposed and payable, was in respect of contraventions of the **FAIS Act** and **20%** in respect of contraventions of the **FMA**.

WITHDRAWALS AND SUSPENSIONS

- The FSCA may withdraw authorisations, *inter alia*, if a licence condition has been contravened, the licensee has materially contravened a financial sector law or failed to comply with a directive. **The primary consideration is to protect consumers against risk and financial harm.**

No. of FAIS suspensions, withdrawals and reinstatements of licences

Suspensions	Withdrawals*
984	420
Reinstatements**	
522	

- The FSCA suspended the licences of **984 FSPs** (approximately **8%** of the total number of FSP licenses). **938 (95%)** suspensions related to the non-submission of statutory returns and/or non-payment of levies. In **522 (53%)** matters the suspension of the licence was lifted.
- The FSCA further withdrew the licences of **420 FSPs** of which approximately **380 (90%)** related to the non-submission of statutory returns and/or non-payment of levies (approximately **4%** of the total number of FSP licences).
- The FSCA, with the concurrence of the Prudential Authority and the South African Reserve Bank, also withdrew the licence of a **market infrastructure** in terms of the FMA for prolonged non-compliance with the liquidity and capital adequacy requirements of an exchange.

DEBARMENTS

- The FSCA may debar a natural person for contravening a financial sector law, an enforceable undertaking, or attempted, conspired with, aided, abetted, induced, incited or procured another person to contravene a financial sector law, in a material manner.
- The FSCA debarred **210** persons. In most cases, the reasons for debarment involved **dishonest conduct, including fabricated policies**. Other common causes include **misappropriating clients' funds, acting *contra* mandate, trading and investing clients' funds in their own names, misrepresenting investment results and lack of oversight**.
- FSPs must in terms of section 14(1) of the FAIS Act debar a representative if that representative is no longer fit and proper or have contravened a provision of that Act in a material manner.

Debarments by FSPs

Debarment reasons	Total
Non-compliance with competency requirements	37
Dishonesty	1100
TOTAL	1 137



PUBLIC WARNINGS

- The FSCA endeavours to warn the public of harmful or suspicious investment offers and circumstances that may create risk for the public. Such warnings are published in media releases and placed on the FSCA website. It may relate to regulated or unregistered entities and may be as a result of a desktop or full investigation.
- During the reporting period the FSCA published **47 public warnings**. The warnings mainly related to the rendering of unauthorised financial services in respect of **online forex and derivative platforms, funeral policies and persons impersonating or using the name of an authorised FSP** and **Ponzi schemes**.
- The FSCA also conducts various consumer education activities on digital and traditional media platforms. The FSCA's messaging focuses on warning the public to only deal with authorised FSPs and to ensure that FSPs are licenced to sell the particular product or service they require. Consumer education campaigns have reached approximately **27,527, 852 consumers** during this period.

STATUTORY MANAGERS & CURATORSHIPS

- The FSCA may apply to the High Court, on an *ex parte* basis, for the appointment of a curator to take control of, and to manage the business of an institution, or it can appoint a curator by agreement with the institution concerned and without the intervention of the court.
- The FSCA may also appoint a statutory manager, by agreement with a financial institution and without the intervention of a court, if it appears that the financial institution has in a material respect failed to comply with a law, is likely to be in an unsound financial position or is maladministered.

No. and status of Curatorships per sector

FINANCIAL SECTOR	NEW	ONGOING	FINALISED
FSPs	-	3	-
Retirement Funds	-	6	1
Collective Investment Schemes	-	1	
TOTAL	-	10	1

No. and status of Statutory Managements per sector

FINANCIAL SECTOR	NEW	ONGOING	FINALISED
Retirement Funds	1	3	1

ENFORCEABLE UNDERTAKINGS

- The FSCA may enter into an enforceable undertaking with any person. The investigated person undertakes to implement specific remedial action – which may include customer redress. Enforceable undertakings improve enforcement efficiency, especially where the outcome of a matter is predictable or a high level of cooperation is present, by obviating the need to impose formal regulatory or enforcement actions.
- During the reporting period, the FSCA entered into **2 Enforceable Undertakings** relating to the retirement funds sector.

REMOVAL OF PERSONS FROM POSITIONS

- The FSCA may remove a person from a specified position or function in or in relation to a financial institution who has contravened a financial sector law or has been involved in a financial crime.
- A person may also be removed if it is responsible for, or in any way participated in, or failed to take steps open to him or her aimed at preventing a contravention of a financial sector law by the financial institution; or the financial institution being involved in financial crime, or no longer complies with applicable fit and proper person requirements.
- During the reporting period, the FSCA removed **5** board members of a retirement fund and **1** principal officer.

RECONSIDERATIONS

Status of applications lodged with Financial Services Tribunal

Reconsiderations logged during the Reporting Period	Finalised	Ongoing
59	41	18

Outcome of finalised cases

Applications withdrawn	Dismissed	Consent Order	Decision set aside
4	12	22	3

During the reporting period the FSCA took **1 688 administrative action decisions**. Of that number, **59 applications for reconsiderations** were logged with the Financial Services Tribunal of which **25 decisions were set aside**.

The number of decisions that were set aside during the reporting period constitute approximately **1,4%** of all administrative action decisions taken by the FSCA.



FOCUS AREAS AND TRENDS

The balance of the report contains some aspects of enforcement that we believe is important to emphasize. This is either because of a trend that is of concern or a lack of understanding in the market of the legislation.

1. Unlicensed over-the-counter derivative provider activities
2. Duties of Key Individuals
3. Unauthorised crypto asset financial services
4. Copy Trading
5. Circumvention of maximum commission Regulations
6. Fictitious Policies
7. Guarantee Policies
8. Regulatory Examinations
9. Failure to implement a programme for anti-money laundering and counter terrorist financing risk management and compliance.