

**Subject:** OIA 2024/06: Monitoring Non-GAAP compliance in annual reports, financial statements and public announcements  
**Date:** Friday, 22 March 2024 at 6:48:20 PM New Zealand Daylight Time  
**From:** Wendy McGuinness <wmcg@mcguinnessinstitute.org>  
**To:** [REDACTED]  
**CC:** Patrick Shonakan <ps@mcguinnessinstitute.org>  
**Attachments:** image001.jpg

Kia ora,

### **Our OIA 2024/06: Monitoring Non-GAAP compliance in annual reports, financial statements and public announcements**

The Institute is currently in the process of publishing *Working Paper 2024/06 – Reviewing non-GAAP financial information in 2018, 2022 and 2023 annual reports and 2023 market announcements of NZSX-listed companies* (working title). This paper aims to analyse how NZSX-listed companies are presenting non-GAAP information in their annual reports and NZX market announcements.

Based on our research to date, we have found that both the US Securities Exchange Commission (SEC) and the Australian Securities and Investments Commission (ASIC) are actively engaging with companies if they are concerned about the presentation or nature of non-GAAP measures. From our research it appears the US and Australian financial market authorities monitor their non-GAAP regulations more closely than the FMA.

We note that ss 9(1)(c)–(d) of the Financial Markets Authority Act 2011 (see Figure 1 below), suggests that it is within the FMA’s remit to monitor companies’ use of non-GAAP information and engage if concerns exist over their use. This is further reinforced with the FMA’s report *Monitoring of non-GAAP disclosures* published in 2013 ([see here](#)). This 2013 report measured the presentation of non-GAAP information against the FMA’s 2012 non-GAAP guidance note *Guidance note: Disclosing non-GAAP financial measures* (since updated in 2017 – [see here](#)).

Given the above, we are hoping you can answer the following three questions:

**Question 1:** Is the FMA monitoring non-GAAP disclosures of FMC reporting entities? If yes, please explain:

- (i) when monitoring occurs,
- (ii) what documents are monitored (e.g. annual reports, financial statements and/or NZX public announcements),
- (iii) who undertakes this task, and
- (iv) how the monitoring is undertaken and to what extent? We are particularly interested in NZSX-listed companies, so if this group is different from other FMC reporting entities, please explain. We would like to know if all companies annual reports, financial statements and/or NZX public announcements are reviewed, or if not, what portion?

**Question 2:** If yes to Q1, has the FMA directly engaged (e.g. including discussed or penalised) with any NZSX-listed company since 1 January 2020? If yes, please explain:

- (i) how many companies each year, from 2020, 2021, 2022, 2023 calendar years (or similar; if this information is only in financial years, that would also be fine),
- (ii) over what types of issues and
- (iii) what penalties resulted (please specify financial or other), with numbers for each year?

**Question 3:** If yes to Q2, does the FMA regularly release information to the public about recent engagements that they have had with NZSX-listed companies about an entity’s poor or questionable

reporting of non-GAAP information or measures? For example, see ASIC's media release regarding an entity's removal of non-IFRS profit measure following a review conducted by ASIC – [see here](#).

The above information may already be in a report, in which case please direct us to this report. Alternatively, we can prepare an excel table for you to complete.

If you have any questions or points of clarification, please do not hesitate to contact me.

Ngā mihi,

Wendy

PS: See ss 9(1)(c)–(d) of the Financial Markets Authority Act 2011.

## **9 FMA's functions**

(1) The FMA's functions are as follows:

- (a) to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, including (without limitation) by—
  - (i) collecting and disseminating information or research about any matter relating to those markets:
  - (ii) issuing warnings, reports, or guidelines, or making comments, about any matter relating to those markets, financial markets participants, or other persons engaged in conduct relating to those markets (including in relation to 1 or more particular persons):
  - (iii) providing information about its functions, powers, and duties under this Act and other enactments (including promoting awareness by investors that all investments involve risks and that it is not the role of the FMA to remove those risks):
  - (iv) providing, or facilitating the provision of, public information and education about any matter relating to those markets:
  - (v) stating whether or not, or in what circumstances, the FMA intends to take or not take action over a particular state of affairs or particular conduct (for example, to give a person some level of certainty that the FMA will take no further action in relation to a matter):
- (b) to perform and exercise the functions, powers, and duties conferred or imposed on it by or under the financial markets legislation and any other enactments:
- (c) to monitor compliance with, investigate conduct that constitutes or may constitute a contravention or an involvement in a contravention of, and enforce—
  - (i) the Acts referred to in Part 1 of Schedule 1 (and the enactments made under those Acts); and
  - (ii) the Acts referred to in Part 2 of Schedule 1 (and the enactments made under those Acts) to the extent that those Acts or other enactments apply, or otherwise relate, to financial markets participants:
- (d) 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:

**Wendy McGuinness**

Chief Executive

**McGuinness Institute Te Hononga Waka**

Level 1A, 15 Allen Street, Wellington 6011 | PO Box 24-222 Wellington 6142

+64 4 499 8888 | [www.mcguinnessinstitute.org](http://www.mcguinnessinstitute.org)

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