

FSCA REGULATORY ACTIONS REPORT

1 APRIL 2023 -
31 MARCH 2024



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ABBREVIATIONS

AFU	Asset Forfeiture Unit
AML/CFT	Anti-Money Laundering and Counter Financing Terrorist
Banks Act	Banks Act, No. 94 of 1990
CISCA	Collective Investment Schemes Act, No. 45 of 2002
CRS Act	Credit Rating Services Act, No 24 of 2012
FAIS	Financial Advisory and Intermediary Services
FAIS Act	Financial Advisory and Intermediary Services Act, No. 37 of 2002
FAIS General Code	General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003
FIC	Financial Intelligence Centre
FIC Act	Financial Intelligence Centre Act, No. 38 of 2001
FMA	Financial Markets Act, No. 19 of 2012
Friendly Societies Act	Friendly Societies Act, No. 25 of 1956
FSCA	Financial Sector Conduct Authority
FSP	Financial Services Provider
FSR Act	Financial Sector Regulation Act, No. 9 of 2017
Insurance Act	Insurance Act, No. 18 of 2017
LTIA	Long-term Insurance Act, No. 52 of 1998
MOU	Memoranda of Understanding
NCR	National Credit Regulator
NPA	National Prosecuting Authority
ODPs	Over-the-counter-derivative providers
Pension Funds Act	Pension Funds Act, No. 24 of 1956
SAPS	South African Police Services
STIA	Short-term Insurance Act, No. 53 of 1998

EXECUTIVE SUMMARY

- 1.1 **The FSCA reaffirms its commitment to enhancing market integrity and consumer protection within the financial sector.** This report highlights our enforcement efforts during 1 April 2023 to 31 March 2024 and sets the stage for future focus areas based on identified trends and risks.
 - 1.2 **The report aims to increase the visibility of the FSCA's enforcement activities, deterring misconduct and raising awareness of regulatory requirements.** By highlighting our actions, we communicate clear expectations for good conduct within the financial sector and identify changes in industry behaviour, emerging trends, and risks. The case studies illustrate principles and practical applications and guide stakeholders in embedding good conduct.
 - 1.3 Misconduct in the financial sector undermines consumer confidence. **To maintain and support confidence and integrity in the sector, one of the FSCA's strategic objectives is to act decisively and visibly against misconduct. The FSCA's enforcement function is critical to this objective, focusing on impactful and visible enforcement.** While all cases are approached with equal dedication, the resource-intensive nature of investigations necessitates balancing our efforts with the limited resources available. Our Case Selection Guideline ensures resources are allocated to cases with the most significant impact.
 - 1.4 **The FSCA's enforcement function is supported by the collaboration and cooperation with international counterparts and other regulatory authorities through multiple bi-lateral and multi-lateral MoUs.** During the reporting period the FSCA collaborated on 45 matters with international counterparts. The FSCA also became a signatory to IOSCO's Enhanced Multilateral Memorandum of Understanding that aims to enhance the effectiveness of cross-border investigations and enforcement.
 - 1.5 Domestically, the FSCA collaborates with domestic counterparts such as the Prudential Authority, FIC, National Consumer Commission, the NCR and Law Enforcement. These relationships are continually strengthened through initiatives like the **third annual Financial Crime Symposium, co-hosted with NWU Business School, which resulted in commitments to eight practical initiatives to combat financial crime.**
 - 1.6 The FSCA handed over 12 fully investigated cases to Law Enforcement and is actively assisting with these cases. **This included the prosecution of Mr Craig Warriner, who received a 25-year effective sentence for fraud and unregistered financial services business, following successful collaboration with the prosecution.**
 - 1.7 **The FSCA imposed approximately R943 million in administrative penalties on 31 persons, a significant increase** from the previous period's R100 million imposed on 44 persons. The increase in the value of administrative penalties is primarily due to the FSCA's approach to enhance deterrence.
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- 1.8 **The FSCA further suspended the licences of 1 061 FSPs, withdrew 75 licences and debarred 156 individuals.** Notably, 97% of the suspensions were due to the non-submission of statutory returns and/or non-payment of levies. In 58% of the suspended cases, the suspensions were lifted after the financial institutions rectified their non-compliance during the suspension period.
- 1.9 **During the reporting period, the FSCA registered 483 new investigation cases, finalised 418, and saw a 20% increase in ongoing cases to 375.** The majority of new cases related to potential misconduct in the FAIS and Insurance sectors. Notably, unauthorised FAIS business and fraud involving the FAIS regulatory examinations accounted for 61% and 8% respectively of the FAIS investigations. Additionally, most of the Insurance investigations involved unregistered funeral policy insurance businesses.
- 1.10 **Case load management is a priority of the FSCA, and various measures have been implemented to ensure timely handling of investigations, especially those posing significant harm to the public.** As such, we augmented the capacity of the FSCA's Enforcement Division and implemented the Case Selection Guideline.
- 1.11 **The FSCA endeavours to warn the public about potential harm from unauthorised or unlawful activities that comes to its attention.** To ensure maximum reach of the warnings, a general media release is issued, and the warnings are placed on the FSCA's website and relevant social media platforms. The FSCA has also launched a weekly campaign called "Warning Wednesdays" during which the FSCA shares warnings on the latest scams and enforcement-related matters. During the reporting period, 104 public warnings were published, a significant increase from the previous year.
- 1.12 **There has been a substantial increase in the use of enforceable undertakings by the FSCA, compared to the previous year.** The main reason for this is that it has proven to be an appropriate remedy in the funeral parlour investigations to encourage regularisation.
- 1.13 **During the reporting period, the FSCA took 1 323 administrative actions, a small fraction of which were challenged through reconsideration applications.** Most of these reconsiderations were finalised, with only a few resulting in the original decisions being overturned.
- 1.14 **The FSCA continues to address areas of heightened risk,** such as the duties of board members of retirement funds, non-compliance with anti-money laundering regulations, un-licensed over-the-counter derivative provider activities, submission of fictitious polices, regulatory examination fraud, copy trading, signal providers, introducing brokers, investments in livestock, unregistered insurance business in the funeral parlour industry, unauthorised crypto related financial services and key individual duties.

PART I: INTRODUCTION AND SUMMARY OF ENFORCEMENT INTERVENTIONS

2. INTRODUCTION

- 2.1 Reflecting on the previous reporting period, which detailed the FSCA's enforcement efforts from 1 April 2022 to 31 March 2023, we reaffirm our commitment to enhance market integrity and consumer protection within the financial sector. We further remain dedicated to combating misconduct decisively and visibly. The need for timely, meaningful, and transparent enforcement continues to be crucial, serving as a credible deterrence to poor customer and market outcomes, and driving positive behavioural changes in the financial sector.
- 2.2 Transparency remains a guiding principle for the FSCA. In creating awareness of enforcement actions, we endeavour to enhance awareness of regulatory expectations and requirements within the financial sector, as well as a deeper understanding of the importance of good conduct and regulatory compliance.
- 2.3 While this report serves as a reflection of our efforts during the 2023/2024 financial year, it also lays the groundwork for future focus areas. By analysing the enforcement data, we are able to identify trends and risks. The insights gained from this analysis informs supervisory and enforcement activities, enabling targeted interventions to address identified issues effectively.
- 2.4 In recognition of the dynamic nature of the financial landscape, our enforcement processes continue to evolve although efficiency, fairness, and consistency remain paramount.

3. PURPOSE OF REPORT

- 3.1 The FSCA takes enforcement action to achieve several key objectives: changing the behaviour of the individuals subject to intervention, deterring future non-compliance by others, eliminating any financial gain or benefit from non-compliance, and, where practical, remedying the harm caused by non-compliance. These efforts collectively aim to protect financial customers and enhance market integrity.
 - 3.2 This report supports our objectives by making the FSCA's enforcement efforts more visible, thereby deterring misconduct and enhancing awareness of regulatory requirements. By highlighting our actions, we clearly communicate our expectations for good conduct within the financial sector and promote compliance.
 - 3.3 Furthermore, the report assists in identifying changes in industry behaviour and consumer education needs. Emerging trends and risks are highlighted, and case studies are included to illustrate principles and provide practical applications, further guiding stakeholders in embedding good conduct.
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4. ENFORCEMENT STRATEGY AND CASE SELECTION

- 4.1 Misconduct in the financial sector has far-reaching consequences for consumers and undermines confidence in the sector. To maintain and support confidence and integrity in the sector, one of the FSCA's five strategic objectives is to act decisively and visibly against misconduct. The FSCA's enforcement function is critical to this objective, focusing on impactful and visible enforcement. While we approach all cases with equal dedication, investigations are expensive and time-consuming. We therefore strive to balance our objectives with the available resources.
- 4.2 To ensure our enforcement activities are risk-based, outcomes focussed and impactful (addressing drivers of misconduct), we have adopted a Case Selection Guideline. The guideline assists the FSCA with allocating resources to cases likely to have a significant impact on misconduct.
- 4.3 Some of the factors that the FSCA takes into account during case selection are:
- Strategic significance of addressing the alleged conduct.
 - Potential to send an important enforcement message.
 - Impact on financial customers, particularly poor outcomes.
 - Egregious or extensive misconduct.
 - Likelihood of availability of evidence.
 - Potential for recovery of clients' funds.
 - Likelihood of successful enforcement action.
 - Wider impact of the investigation.
 - Reputational damage to the FSCA's Licensing Framework.
 - Public and media interest.
 - Involvement of persons in positions of trust.
 - Harm to vulnerable financial customers.
 - Coordinated investigation on priority cases.



5. SUMMARY OF ENFORCEMENT INTERVENTIONS

5.1 The enforcement interventions taken by the FSCA from 1 April 2023 to 31 March 2024 are summarised in Figure 1 below. The statistics are further detailed in Part II of this report, with comparative figures for the previous year provided where possible.

Figure 1: Summary of FSCA Enforcement Interventions



*This number exclude debarments by FSPs

PART II: COOPERATION AND COLLABORATION WITH INTERNATIONAL AND DOMESTIC REGULATORY BODIES

6. INTERNATIONAL COOPERATION

- 6.1 As highlighted in our previous report, the globalisation of economies, financial markets and financial services has created a highly interconnected financial ecosystem, further amplified by advancements in digital technologies. Consequently, the provision and uptake of cross-border financial services by retail customers have increased due to their ease of use and widespread availability. This interconnectedness exposes consumers to higher risks of fraud and financial crime, and regulatory authorities face challenges in enforcing intervention measures across different jurisdictions. To address these challenges and safeguard consumers, the FSCA collaborates with international counterparts and enforcement agencies.¹ This collaboration is enabled through 92 bi-lateral and multi-lateral MoUs with international regulatory counterparts.²
- 6.2 To strengthen our collaboration with international counterparts, the FSCA has become a signatory to IOSCO's Enhanced Multilateral Memorandum of Understanding (EMMoU). The EMMoU complements and co-exists with the IOSCO MMoU, which the FSCA has already signed. The EMMoU aims to enhance the effectiveness of cross-border investigations and enforcement by broadening the scope of information that can be shared and assistance that can be provided.
- 6.3 During the reporting period, the FSCA made several requests to foreign regulators to assist with ongoing FSCA investigations and provided investigation assistance to its foreign counterparts.³ Additionally, the FSCA proactively and on an unsolicited basis, provided foreign regulators with information on suspected misconduct or other relevant information to help secure compliance with laws in their jurisdictions.
- 6.4 Tables 1 and 2 below outline the number of requests received and made during the reporting period, along with unsolicited information provided and received by the FSCA, excluding requests for verification of good standing.
- 6.5 Overall, while there are slight differences in the number of requests from the previous reporting period, they are not indicative of a clear trend and may simply be due to annual fluctuations. Several of the requests resulted from suspicious transactions on the stock exchange (suspected market abuse) placed by persons in foreign jurisdictions, and FSCA investigations into online trading platforms. Monitoring over a longer period will be necessary to identify any consistent trends.

¹ In terms of section 58(4) of the FSR Act, the FSCA is empowered to do anything reasonably necessary to achieve its objectives, including co-operating with its counterparts in other jurisdictions. Section 251 of the FSR Act further empowers the FSCA to share information with such counterparts.

² The FSCA is empowered under section 135(1)(b) of the FSR Act to exercise its investigation powers where it reasonably believes that an investigation is necessary to achieve a request by a foreign authority in terms of a bilateral or multilateral MoU.

³ Investigation assistance that are provided to foreign counterparts ranges from obtaining information (a request for the production of information or documents or questioning a person under oath) to search and seizures.

Table 1: Requests for Assistance

Requests for Assistance	2022/2023	2023/2024
Requests for assistance made by the FSCA to Foreign Regulators	16	23
Requests for assistance made by Foreign Regulators to the FSCA	7	11

Table 2: Sharing of Unsolicited Information

Unsolicited Information	2022/2023	2023/2024
Unsolicited information provided by FSCA to Foreign Regulators	15	3
Unsolicited information received by FSCA from Foreign Regulators	7	8

7. DOMESTIC COOPERATION

- 7.1 The FSCA recognises the importance of collaborating with domestic counterparts such as the Prudential Authority, FIC, National Consumer Commissioner, and the NCR in its enforcement efforts. During the reporting period, the FSCA continued to exchange information and facilitate mutual assistance, where required, through 14 bilateral and multilateral MoUs.
- 7.2 The FSCA also strengthened its relationship with the criminal investigation and prosecuting authorities, a development highlighted during the third annual Financial Crime Symposium held in March 2024. This event was co-hosted by the FSCA and the Unit for Corruption and Integrity Studies of the NWU Business School.
- 7.3 The Symposium is an event that provides a unique, private platform for key public and private sector players to collaborate in combating financial crime. Public sector participants included law enforcement, regulatory bodies, and other government entities. The private sector was represented by industry associations and professional bodies, with academia also present. Topics covered included trends in financial and organised crime, South Africa's FATF grey-listed status, combating ponzi and pyramid schemes digitally, and enhancing cyber and crypto crime-fighting capabilities.
- 7.4 The Symposium concluded with a plenary session where participants committed to eight practical initiatives for the coming year. These include specialised training on cybercrime investigations, public awareness campaigns, coordinated communication, a central information repository, improved private-to-private information sharing, enhanced feedback on shared information, and a best practice framework for collaboration.
- 7.5 The FSCA referred 21 cases to the SAPS and handed over 12 fully investigated cases to Law Enforcement and is actively assisting with these cases. In these matters, the FSCA believes the allegations are of such a nature that the cases warrant criminal proceedings. However, the FSCA has taken or will take its own enforcement actions as well. Additionally, the FSCA supported the AFU in obtaining preservation orders in three cases.
- 7.6 One example of active cooperation with the prosecuting authorities is the matter of BHI Trust and/or Mr. Craig Roy Warriner. In this matter the FSCA conducted a full investigation and handed over its evidence to the prosecution. This collaborative effort resulted in a conviction for fraud and conducting unregistered financial services business, leading to a total imprisonment term of 25 years, of which 10 years was imposed for conducting unregistered financial services businesses in contravention of section 7(1) of the FAIS Act. Below is a case study to provide context to the judgment.

Box 1: BHI Trust and Mr Craig Roy Warriner**CASE STUDY****BHI TRUST AND CRAIG ROY WARRINER****Imprisoned for 25 Years: 15 Years for Fraud And 10 Years for Unregistered Financial Services Business****Background**

In September 2020, the FSCA initiated an investigation into BHI Trust and/or Mr. Craig Roy Warriner (Mr Warriner) to determine potential contraventions of financial sector laws. Amidst the ongoing investigation, Mr. Warriner handed himself over to the SAPS on allegations of operating a fraudulent investment scheme.

Cooperation and Collaboration with Criminal Enforcement Agencies

The FSCA provided active assistance to the SAPS and the NPA to bring the case to a close. This involved sharing findings and evidence gathered by the FSCA during its investigation as well as engaging regularly to facilitate a successful prosecution.

The FSCA's investigation showed that Mr. Warriner, through the BHI trust, offered three fictitious "investment strategies" to his clients, namely; the BHI Strategy, BHI Plus and the BHI International Strategy. While these strategies purported to invest clients' funds in various financial products and assets, the financial analysis conducted by the FSCA for the period September 2020 to November 2023, revealed a different reality. Of the approximately R2.9 billion received from clients, only about 20% (approximately R584 million) was invested in a legitimate investment vehicle through a securities trading account held at a brokerage of a JSE authorised user. The remaining 80% of the funds were held in a money market account, used to pay returns to other investors in a ponzi scheme fashion, and to fund Mr. Warriner's lifestyle.

The FSCA's investigation further established that Mr. Warriner's investment management activities required a Category II financial services licence (discretionary investments services), which he had not obtained. His conduct, therefore, constituted a contravention of section 7(1) of the FAIS Act. It is worth noting that he did not meet the requirements to be licensed as a Category II FSP.

Outcome of FSCA Investigation

The FSCA's investigation further established that Mr. Warriner's investment management activities required a Category II financial services licence (discretionary investments services), which he had not obtained. His conduct, therefore, constituted a contravention of section 7(1) of the FAIS Act. It is worth noting that he did not meet the requirements to be licensed as a Category II FSP.

Outcome of the Criminal Case

As a result of the cooperation and collaboration between the NPA, FSCA and SAPS, Mr. Warriner was found guilty of 207 counts of fraud and sentenced to 537 years of imprisonment. The Court ordered that these sentences run concurrently, resulting in an effective 15-year imprisonment.

Additionally, Mr. Warriner received a 10-year direct imprisonment for conducting unregistered financial services businesses in contravention of section 7(1) of the FAIS Act. The 10 year-sentence does not run concurrently with the fraud sentences, resulting in a total effective imprisonment of 25 years.

FSCA Debarment order: [Click Here](#)

FSCA Media release: [Click Here](#)

PART III: OVERVIEW OF STATISTICS PER ENFORCEMENT INTERVENTION

8. ENFORCEMENT POWERS

- 8.1 The FSR Act equips the FSCA with extensive powers to fulfil its mandate and take enforcement action against those that contravene the laws it oversees. Additionally, as a supervisory body under the FIC Act, the FSCA is vested with the authority to impose sanctions for non-compliance with anti-money laundering and counter-terrorism financing requirements.
- 8.2 The FSCA employs enforcement and intervention powers that best address misconduct, whilst also serving as a deterrent to prevent similar behaviour by others.
- 8.3 The FSCA strives to be fair, objective and consistent in applying its enforcement powers. A component of fairness is to ensure that all person's rights are protected during the investigation and enforcement process. The Deighton case study in Box 2 highlights the FSCA's robust enforcement powers and its commitment to protect these powers while ensuring fairness of its processes.
- 8.4 The enforcement intervention measures taken by the FSCA during this reporting period are outlined in the sections below.

Box 2: Deighton Judgement – Tongaat Hulett Investigation

CASE STUDY

DEIGHTON JUDGEMENT - TONGAAT HULETT INVESTIGATION

FSCA's investigative integrity upheld as Court rules no prior document access needed for fairness.

The FSCA welcomes the judgment by the full bench of the High Court; Gauteng Division Pretoria (sitting as a Court of Appeal), on 7 February 2024. The Court overturned the High Court's 8 July 2022 decision, which had declared the FSCA's investigation of Mr Michael Deighton (Mr. Deighton) unlawful on the basis that it was procedurally unfair.

Background

The FSCA is investigating alleged breaches of section 81 of the FMA involving alleged false and misleading statements published by Tongaat Hulett Limited during the 2017 and 2018 financial years. Mr. Deighton was the Managing Director of Tongaat Hulett Developments (Pty), a subsidiary of Tongaat Hulett Limited, during the relevant period. Tongaat Hulett Limited is a listed issuer of securities.

Mr. Deighton was identified by *PricewaterhouseCoopers* as one of several senior executives involved in undesirable accounting practices, including the backdating of land sale agreements, that resulted in revenue being recognized in earlier reporting periods than it should have been.

The Investigation and Application to Court

Mr. Deighton refused to be interviewed during the investigation unless granted access, before the interview, to all the documents and evidence in the investigators' possession, a request the FSCA declined.

Mr. Deighton approached the High Court to seek an order declaring the FSCA's investigation unfair, in particular that the denial of prior access to the documentation that would be canvassed during the interview, offended his right to a fair and just administrative process. On 8 July 2022, the High Court ruled in favour of Mr. Deighton, declaring the investigation unlawful and setting it aside.

Appeal Outcome

The FSCA appealed, and on 7 February 2024, the Court of Appeal ruled that:

- There was no basis to insist on immediate access to the documents that would be presented during the interview.
- Mr. Deighton was not prejudiced by lack of prior access to the documents.
- The documents were sensitive at that stage of the investigation and disclosure thereof had the risk of compromising the investigation.
- The decision not to provide Mr. Deighton with prior access to the documents was in line with the investigation process.
- A midstream review could not be justified and can only be instituted during an investigation stage if a grave injustice was demonstrated by an Applicant.

Mr. Deighton applied for special leave to the Supreme Court of Appeal (the SCA). The SCA declined leave to appeal and awarded costs in favour of the FSCA. Mr. Deighton has subsequently applied for leave to appeal to the Constitutional Court, the outcome of which is awaited.

Significance of the Judgment

This judgment bolsters the FSCA's enforcement efforts, ensuring investigations can proceed without undue interference.

Investigations are conducted in terms of statutory investigation powers. Their success relies on the ability of investigation teams to operate without interference. The judgment has a significant impact on the effectiveness of these teams, and the appeal judgment was therefore welcomed by the FSCA.

This case illustrates the FSCA's commitment to addressing legal challenges, particularly where it impacts on its powers to combat misconduct in the financial sector.

Judgment: [\(Click here\)](#)

Media release: [\(Click here\)](#)

9. INVESTIGATIONS⁴

- 9.1. The FSCA has a broad 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.
- 9.2. During the reporting period the FSCA had a slight increase (0.8%) in new cases from the previous reporting period. We finalised 418 cases, which is marginally less (2%) than the previous period. The number of ongoing cases has increased by 21%, bringing the total to 375 cases. This significant rise can be attributed primarily to two key factors. Firstly, there has been a noticeable uptick in the number of complex investigation cases. These cases are inherently more resource-intensive, requiring extensive time, effort, and specialised expertise. Secondly, there has been an increase in legal challenges against both the investigations and the sanctions imposed. These legal battles necessitate additional resources, further contributing to the overall workload. The combined effect of these factors has placed a substantial demand on available resources.
- 9.3. Case load management is a priority of the FSCA, and various measures have been implemented to ensure timely handling of investigations, especially those posing significant harm to the public. For example, we augmented the capacity of the FSCA's Enforcement Division and implemented a Case Selection Policy as mentioned in paragraph 4 above.
- 9.4. Most of the investigations referred to in Table 3 involve alleged contraventions of the FAIS and Insurance Acts. As with the previous reporting period, the majority of these cases relate to unauthorised FAIS and insurance business. Of the new cases received, unauthorised FAIS business constitutes 61% of the FAIS Act investigations, while most of the Insurance Act investigations involve unregistered insurance business in respect of funeral policies. See paragraph 25 below for the FSCA's response to unregistered insurance business involving funeral policies.
- 9.5. Additionally, 8% of the new cases under the FAIS Act, relate to fraud involving the FAIS regulatory examinations. This type of misconduct remains a concern as was highlighted in our previous report. We expect financial institutions to apply proper due diligence processes when appointing individuals to regulated roles, rather than merely relying on certificates without verifying their validity. Institutions must ensure rigorous vetting to prevent access to the financial sector by perpetrators of this type of fraud.
- 9.6. The increase in FSR Act investigations mainly stems from cases involving persons unlawfully impersonating the FSCA, its leadership and staff. Similarly, there has been an increase in the unlawful impersonation of authorised financial services providers by persons unlawfully soliciting investments from the public as discussed in more detail under Part V.
- 9.7. Table 3 reflects the number and status of the investigations per financial sector law. It is important to note that new, ongoing, and finalised cases in Table 3 will not reconcile as finalised cases were not necessarily received during the reporting period, and new cases were not necessarily finalised in the same period. Additionally, while the overall totals of new, ongoing, and finalised cases can be used for year-on-year comparison, the subtotals for each type of investigation may not reconcile with the following period's totals. This discrepancy occurs because, contraventions suspected at the commencement of the investigation may change depending on what is found during the investigation. Therefore, the categorisation of a finalised case may differ from its categorisation when it was new or ongoing.

⁴ Sections 134 to 139 of the FSR Act sets out the FSCA's investigation powers.

Table 3: Breakdown of Investigation Cases⁵

Type of investigation	New		Ongoing		Finalised	
	2022/2023	2023/2024	2022/2023	2023/2024	2022/2023	2023/2024
FMA (Market Abuse)	41	42	67	79	28	30
FMA (ODPs)	22	5	5	3	27	8
FAIS Act	254	292	168	199	190	256
Insurance Act*	81	78	55	67	69	66
PFA	-	2	2	3	1	1
CISCA	-	-	1	-	2	-
Friendly Societies Act	1	-	-	-	1	-
Other	3	17	-	11	5	9
No jurisdiction**	73	33	8	9	103	36
FSR Act	4	11	4	3	-	10
FIC Act	-	3	-	1	-	2
Totals	479	483	310	375	426	418

* Includes investigations into contraventions of the Long-term Insurance Act and the Short-term Insurance Act.

** Cases where FSCA conducted a desktop investigation and concluded that it does not have jurisdiction to investigate the matter.

9.8. The market abuse investigations in respect of FMA contraventions are outlined in Table 4, categorised by the suspected contraventions that formed the basis of each investigation. As with the previous reporting period, most cases related to insider trading.

Table 4: Breakdown of Financial Markets Investigation Cases⁶

Type of contraventions investigated	2022/2023	2023/2024
Prohibited Trading Practices	34	37
Insider Trading	42	50
False and Misleading Statements	14	11
Foreign Request: Market Abuse	1	8
Other	4	3

* The statistics are based on ongoing and finalised cases only.

⁵ The 2022/2023 statistics as previously reported have been revised due to identified allocation errors.

⁶ The 2022/2023 statistics as previously reported have been revised due to identified allocation errors.

10. ADMINISTRATIVE PENALTIES⁷

- 10.1 The FSCA may impose administrative penalties in appropriate cases to promote general and specific deterrence. The process the FSCA uses for imposing penalties is designed to fully comply with administrative law principles, and respondents are afforded reasonable opportunity to reply to the allegations and to provide reasons why a penalty should not be imposed.
- 10.2 During the reporting period, the FSCA imposed administrative penalties totalling approximately R943 million on 31 persons, marking a substantial increase from the previous period's approximately R100 million imposed on 44 persons. Significant penalties included R475 million on the late Mr Markus Jooste for market abuse contraventions, and approximately R216 million on Mr Coenraad Botha and R143 million on Mr Jacobus Geldenhuis. There has also been a significant increase in the value of penalties imposed for AML/CFT contraventions as illustrated by the R16 million penalty on Ashburton Fund Managers.⁸
- 10.3 The substantial increase in the value of administrative penalties is primarily due to the FSCA's approach to enhance effective deterrence. As such, a penalty must reflect the nature, seriousness and extent of the misconduct, the harm caused to financial customers, and the extent of financial benefit to the investigated party.
- 10.4 Additional material factors that are considered in determining the quantum of the penalty, is the extent to which the conduct was deliberate or reckless, and the cooperation or lack thereof by the investigated party with the investigation team.
- 10.5 Table 5 reflects the administrative penalties imposed by the FSCA during the reporting period categorised per relevant financial sector law. It is important to note that respondents have the option to apply for reconsideration of the FSCA's decisions on penalties (see Part IV of the Report). The applications for reconsideration lodged by the end of the reporting period are also reflected in the table.
- 10.6 Administrative penalties imposed by the FSCA is not retained by the FSCA. It is paid over to the National Revenue Fund. The only income for the FSCA is possible investigation and litigation cost recoveries.

Table 5: Administrative penalties imposed

Financial Sector Law	No. of Cases 2023/2024	No. of persons/ Funds 2023/2024	Penalties 2023/2024 (R)	Penalties 2022/2023 (R)
FMA – Market Abuse	1	1	475,000,000	20,020,000
FMA - ODPs	1	1	100,000	130,000
FIC Act ⁹	4	4	*19,773,000	420,000
CISCA	-	-	-	10,639,000
Insurance Act	2	4	520,000	75,000
FAIS Act	4	6	12,700,000	68,740,000
FSR Act	1	2	2,000,000	-
Banks Act	3	4	**432,910,068	-
Pension Funds Act	9	9	***367,500	622,300
Totals	25	31	943,370,568	100,646,300

⁷ See section 167 of the FSR Act.

⁸ Penalty of R216 051 141 imposed on Mr Coenraad Botha is subject to reconsideration by the Financial Services Tribunal.

⁹ Penalties were for late or non-submission of financial statements.

⁸ Ashburton Fund Managers (Pty) Ltd, an authorised FSP. Click on link to access the media release: [\(Link\)](#)

⁹ Penalties issued in terms of section 45(c)(1) of the FIC Act.

10.7. As referenced above, the Jooste and Geldenhuis cases made up a substantial part of the increase in penalties imposed during the year under review. The cases are included below as case studies.

Box 3: Geldenhuis, Wealth Method and Wealth Dias Administrative Penalties

CASE STUDY

GELDENHUIS, MY WEALTH METHOD AND MY WEALTH DIAS

Illegal deposit taking in contravention of the Banks Act versus the rendering of financial services in deposits

Introduction

The FSCA dealt with several cases regarding the solicitation of deposits from members of the public in contravention of section 11 of the Banks Act (illegal deposit taking or unlicensed banking business in instances where it related to so-called ponzi schemes). Two such cases resulted in significant sanctions by the FSCA. The first was the investigation in respect of Mr Jacobus Stephanus Geldenhuis (Mr. Geldenhuis) and Classic Financial Services that resulted in a penalty of R143 million on Mr. Geldenhuis for breaches of section 7(1) of the FAIS Act and section 11 of the Banks Act. The second case was in respect of My Wealth Method (Pty) Limited that resulted in a penalty of R58 739 075 on My Wealth Method and another penalty of R15 065 852 in respect of an associated entity; namely My Wealth Dias (Pty) Limited, for breaching the Banks Act.

Unlicensed Banking Business

To conduct the business of a bank, an entity must be registered as a bank. In terms of section 11 of the Banks Act, it is an offence to conduct the business of a bank without a banking licence. The business of a bank is defined in the Banks Act to include soliciting, advertising for, or the acceptance of, deposits from the general public as a regular feature of that entity's business.

A deposit is defined as an amount of money paid by one person or institution to another, subject to an agreement in terms of which an equal amount or any part thereof will be repaid on demand, on a specified or unspecified date, or in circumstances agreed upon between the parties involved.

In these cases, deposits were solicited from members of the public under the guise that their deposits would be channelled for investment purposes into some form of financial product. In some cases, this did not happen, or an insignificant amount was invested in a financial product, whilst the balance of the clients' funds was misappropriated. Returns that were paid to clients were invariably not derived from legitimate investments but from money invested by other investors in typical ponzi-scheme style.

Rendering financial services in deposits

The FAIS Act lists a deposit as defined in the Banks Act as a financial product. Financial services (advice and/or intermediary services) in respect of a deposit can only be rendered by persons who hold a FSP licence that authorise them to render such services in deposits.

The importance of the case

The amount of the penalties signifies the seriousness of unregistered business and the approach of the FSCA to such contraventions. It also reflects how extensive the contraventions of the Banks Act were by these persons in circumstances where they were not subjected to the stringent solvency and capital adequacy requirements that licensed banks are subjected to.

In addition to the penalties, the operators of the schemes were debarred for a period of 20 years from rendering financial services and the FSCA is actively assisting the SAPS with its criminal investigation.

Media release: Mr. Geldenhuis - ([Click here](#))

Media release: My Wealth Method & My Wealth Dias - ([Click here](#))

FSCA order: Mr. Geldenhuis

Debarment Order: ([Click here](#))

Penalty Order: ([Click here](#))

FSCA order: My Wealth Method and My Wealth Dias

Penalty Order: ([Click here](#))

Penalty Order: ([Click here](#))

- 10.8 As reflected above, the administrative penalty imposed on the late Mr. Jooste was a significant contributor to the increase in the total value of penalties for the year. This substantial penalty was due to the deliberate and prolonged nature of his misconduct, the sophisticated efforts to avoid detection, and the resulting substantial market loss of approximately R220 billion. The penalty aims to deter such conduct and underscore the importance of reliable price discovery in financial markets. See Box 4 below.

Box 4: Steinhoff – Markus Jooste

CASE STUDY

STEINHOFF: MARKUS JOOSTE

Record Fine: FSCA Penalises Steinhoff Executive for Massive Financial Fraud

On 19 March 2024, the FSCA imposed a record fine of R475 million on the late Mr Markus Jooste (Mr. Jooste) for publishing false financial statements from 2014 to 2017 half year. Mr. Jooste, along with Mr Dirk Schreiber (Mr. Schreiber), contravened section 81(1)(a) and (b) of the FMA by publishing misleading annual financial statements and integrated reports.

Mr. Schreiber, acting under Mr. Jooste's instructions, created transactions without economic substance to inflate Steinhoff International's operating profit. These false profits were disguised as irrecoverable receivables or cash equivalents, overstating the company's equity.

Mr. Schreiber entered into a leniency agreement with the FSCA, offering full cooperation in the investigation. The FSCA's leniency agreement, in terms of section 156 of the FSR Act, requires substantial cooperation and consideration of Mr. Schreiber's own involvement in the contraventions.

The inflated figures were reported in the 2014 integrated report, leading to misstatements of R3.26 billion in operating profit and R13.73 billion in cash equivalents. Similar misstatements in 2015 included R3.24 billion in operating profit and R31.38 billion in cash equivalents, and in 2016 amounting to EUR 271.3 million and EUR 2.18 billion for the same items.

Additionally, Messrs. Jooste and Schreiber inflated goodwill in Steinhoff UK by R3.93 billion in 2015 and EUR 253.2 million in 2016, unsupported by legitimate transactions.

The announcement of accounting irregularities and Mr. Jooste's resignation led to a 61.42% decrease in the Steinhoff share price on 6 December 2017, highlighting the market's reliance on accurate financial reporting.

Jooste Penalty Order: [\(Click here\)](#)

Schreiber Leniency Order: [\(Click here\)](#)

Press release: [\(Click here\)](#)

11. WITHDRAWAL AND SUSPENSION¹⁰ OF AUTHORISATION

Withdrawal of authorisation

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

Suspension of authorisation

- 11.2. The FSCA may also suspend a licence. This remedy is typically used if the non-compliance that prompted the suspension can be rectified, such as the non-submission of statutory returns. In such cases, the licensee is notified of the FSCA's intention to suspend the licence for non-compliance and is given an opportunity to rectify the issue or to provide reasons why the licence should not be suspended. If the non-compliance is not corrected and no good reason is provided to prevent the suspension, the FSCA will suspend the licence for a specified period.¹¹ During the suspension period, the licensee is prohibited from providing financial services. The FSCA may lift the suspension and reinstate the licence if the non-compliance is rectified during the suspension period.
- 11.3. During the reporting period, the FSCA suspended the licences of 1 061 FSPs. The number of suspensions constitute approximately 9% of the total number of FSP licenses.¹² Of the total number of suspensions, 1 035 (97%) suspensions related to the non-submission of statutory returns and/or non-payment of levies. In 624 (58%) matters the suspension of the licence was lifted.
- 11.4. The FSCA withdrew the licences of 75 FSPs. This is a substantial reduction from the previous reporting period. The decrease is primarily due to the process cycle for suspensions and withdrawals related to the non-submission of statutory returns spanning two reporting periods. The initial part of this process occurred in the current reporting period, while the latter part will take place in the next reporting period.

Table 6: No. of suspensions, withdrawals and reinstatements of licences

SUSPENSIONS		WITHDRAWALS*	
2022/2023	2023/2024	2022/2023	2023/2024
984	1 061	420	75
REINSTATEMENTS**			
2022/2023		2023/2024	
522		621	

* Excludes the cases that were set aside by the Financial Services Tribunal.

** Excludes cases where withdrawal decisions were set aside by the Financial Services Tribunal.

¹⁰ The FSCA may withdraw and suspend authorisations in terms of the financial sector laws in respect of which the authorisations were granted.

¹¹ The licence is suspended for a specified period of time (usually 3 months) during which time the licensee must rectify the non-compliance. Failing to do so, will generally result in the withdrawal of the licence.

¹² As at 7 April 2024 the total number of authorised FSPs were 11 826.

12. DEBARMENTS¹³

Debarments by FSCA

- 12.1 The FSCA has the authority to debar individuals if they have materially contravened a financial sector law, an enforceable undertaking, or a corresponding foreign law. Debarment may also be imposed if the individual has attempted, conspired with, aided, abetted, induced, incited or procured another person to contravene a financial sector law. A debarment prohibits the individual, for a specified period, from -
- providing, or being involved in the provision of, specified financial products or financial services, generally or in circumstances specified in the order;
 - acting as a key person of a financial institution; or
 - providing specified services to a financial institution, whether under outsourcing arrangements or otherwise.
- 12.2 Like the withdrawal of a licence, the FSCA's primary consideration when debarring an individual is the protection of financial customers. This measure is intended to prevent individuals who have engaged in misconduct from continuing to pose a risk to financial customers.
- 12.3 During the reporting period the FSCA debarred a total of **156** persons from providing financial services, a slight decrease from the previous period's total of 210 debarments. Most of these debarments were due to dishonest conduct. As in the previous year, a significant number of debarments resulted from representatives submitting false policies. The FSCA had highlighted this type of conduct as a concern in the previous report, and it will continue to be an area of focus.

Debarments by FSPs

- 12.4 In addition to debarments by the FSCA, FSPs are required under section 14(1) of the FAIS Act to debar a representative if they are no longer fit and proper or have materially contravened a provision of the FAIS Act. A section 14 debarment prevents the individual from providing any financial services as a representative of any FSP, not just the one initiating the debarment.
- 12.5 FSPs must inform the FSCA of these debarments, which the FSCA then publishes in the Central Register of Debarred Persons. During the reporting period, FSPs debarred **1,312** representatives, approximately 95% of which were for dishonest conduct. There was a 15 % increase in debarments by FSPs compared to the previous reporting period.
- 12.6 Table 7 provides a breakdown of the main reasons for these debarments.

Table 7: Debarments by FSPs

Debarment reasons	2022/2023	2023/2024
Non-compliance with competency requirements	37	41
Dishonesty	1100	1 263
Other material contravention of the FAIS Act	-	4
Other	-	4
TOTAL	1 137	1 312

- 12.7 The number of debarred representatives, including both FSCA and FSP debarments, constitutes approximately 0.8% of the total number of appointed representatives.¹⁴

¹³ See section 153 of the FSR Act.

¹⁴ At 7 April 2024 the total number of representatives is 181 672.

13. PUBLIC WARNINGS AND CONSUMER OUTREACH

- 13.1 Where the FSCA becomes aware of apparent unauthorised or unlawful activities that may have the potential to cause harm to the public, it endeavours to warn the public. The purpose of the public warnings is to warn financial customers against persons that may be conducting business in contravention of a financial sector law, to alert financial customers to activities that may constitute a risk to financial customers, and to protect the public interest.
- 13.2 During the reporting period, the FSCA published **104** public warnings, which is a significant increase (121%) compared to the previous period. These warnings mainly related to unregistered financial services, social media-based scams and impersonations.

Table 8: Number of Public Warnings Published

Public Warnings	2022/2023	2023/2024
Public Warnings	47	104

- 13.3 To ensure maximum reach of the warnings, a general media release is issued by the FSCA and the warnings are placed on the FSCA website and relevant social media platforms. The FSCA has also launched a weekly campaign called “Warning Wednesdays”, where the Authority shares warnings with the public on the latest scams, trends, and enforcement-related matters. The campaign includes interviews on various media platforms.
- 13.4 The FSCA, to further ensure that the public/consumers receive financial information and are aware of investment risks and scams, 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 licensed to sell the particular product or service they require. Consumer education campaigns have reached approximately **67 913 250** consumers during this period.

Table 9: Breakdown of Consumer Outreach Campaigns

Activity	Number of Activities		Consumers Reached	
	2022/2023	2023/2024	2022/2023	2023/2024
Webinar/Workshops + Outreach	98	74	10 777	11 723
Collaboration Campaigns	4	12	17 159	59 527 514
Media and Social Media engagements (only Media in 2024)	8	21	27 713 000	8 374 013
TOTAL	110	107	27 740 936	67 913 250

* Radio and television listener- and viewership numbers are as received from radio and television stations

* Social media statistics are based on number of views

14. STATUTORY MANAGERS & CURATORS

- 14.1 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 whole or any part of, the business of an institution. Alternatively, the FSCA can appoint a curator by mutual agreement with the institution without court intervention. Curatorship serves as a critical tool to safeguard the interests of financial customers by transferring control from the current management to the appointed curator.
- 14.2 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. The statutory manager's role is to protect customer interests while working alongside the existing management, without divesting them of their powers.
- 14.3 During the reporting period, one curatorship was terminated. Consequently, at the end of the reporting period, there were 9 ongoing curatorships, reflecting a slight decrease in ongoing cases from the previous period. The number of appointed statutory managers also decreased from three to two. There were no new curatorships or appointments of statutory managers during this reporting period.
- 14.4 Tables 8 and 9 below outline the number of new, ongoing and finalised curatorships and statutory managers across the different sectors.

Table 8: No. and status of Curatorship's per sector

FINANCIAL SECTOR	New		Ongoing		Finalised	
	2022/2023	2023/2024	2022/2023	2023/2024	2022/2023	2023/2024
FSPs	-	-	3	2	-	1
Retirement Funds	-	-	6	6	1	-
Collective Investment Schemes	-	-	1	1	-	-
Totals	-	-	10	9	1	1

Table 9: No. and status of Statutory Managements per sector

FINANCIAL SECTOR	New		Ongoing		Finalised	
	2022/2023	2023/2024	2022/2023	2023/2024	2022/2023	2023/2024
Retirement Funds	1	-	3	2	1	1
Totals	1	-	3	2	1	1

¹⁵ Section 151 of the FSR Act provide empowers the FSCA to enter into enforceable undertakings.

15. ENFORCEABLE UNDERTAKINGS¹⁵

15.1 Enforceable undertakings improve enforcement efficiency, especially where the outcome of a matter is predictable or there is a high level of cooperation. They eliminate the need for formal regulatory or enforcement actions.

Table 10: No. of Enforceable Undertakings per sector

Financial Sector	2022/2023	2023/2024
Retirement Funds	2	-
FSPs	-	5
Credit Rating Services	-	1
Insurance	-	35
TOTAL	2	41

15.2 There has been a substantial increase in use of enforceable undertakings by the FSCA, compared to the previous reporting period. The main reason for this is that it has proven to be an appropriate remedy in funeral parlour business investigations. This is more fully discussed in paragraph 25 below.

15.3 Additionally, the SPGRE-SA case study (see Box 5) highlights how enforceable undertakings can enhance enforcement efficiency by promoting cooperation and eliminating the need for formal regulatory action.



Box 5: SPGRE-SA**CASE
STUDY****S&P Global Ratings Europe Limited South Africa Branch
("SPGRE-SA")****Failure to comply with transparency requirements and lack of effective internal control mechanisms.****Background**

During November 2022 the FSCA conducted an onsite inspection on SPGRE-SA, a licensed Credit Rating Agency (CRA), covering the period between 1 October 2021 and 30 September 2022. The inspection evaluated risk management, independence, avoidance of conflicts of interest, internal control environment, and compliance with the regulatory framework. The inspection revealed failures by SPGRE-SA to comply with the CRS Act and BN 228 of 2013.

Applicable Statutory Provisions

The regulation of CRAs aims to ensure high-quality, independent, and objective credit ratings resulting from transparent and reliable processes, thus protecting investors. SPGRE-SA failed to comply with several provisions of the CRS Act and BN 228 of 2013, including:

- **Section 10(1)(a) of the CRS Act:** A CRA must publish any credit rating or any decision to discontinue a credit rating impartially and timeously.
- **Rules 8(5), 8(6), and 8(7) of BN 228 of 2013:** A CRA must publicly announce if it discontinues a rating and provide reasons for the decision.

These provisions ensure transparency around the characteristics of credit ratings, enabling users to understand the main reasons, limits, or uncertainties underpinning the ratings and perform their due diligence.

The Factual Basis for the Contraventions

During the inspection, it was found that SPGRE-SA withdrew the issuer ratings assigned to a company in August 2022. This withdrawal was triggered by the rating being in default for more than 1 000 days and a lack of engagement and information from the company. SPGRE-SA did not publish the withdrawal, in contravention of section 10 of the CRS Act and Rules 8(5), 8(6), and 8(7) of BN 228 of 2013. Additionally, this was a breach of SPGRE's internal Surveillance and Withdrawal Policy, which mandates issuing a notice in the same manner as the original rating. The FSCA requested SPGRE-SA to review its internal control mechanisms to ensure effective detection and deterrence of future contraventions. As a remedial action, SPGRE-SA updated its policies, adding a South African jurisdictional supplement to clarify the requirements for issuing publications for rating withdrawals, discontinuances, and suspensions.

The Enforceable Undertaking

Under section 151(1) of the FSR Act, SPGRE-SA agreed to an enforceable undertaking requiring it to publicly announce or notify its subscribers if it withdraws or discontinues a rating and provide reasons for the decision, as per section 10(1)(a) of the CRS Act and Rules 8(5), 8(6), and 8(7) of BN 228 of 2013.

The SPGRE-SA case highlights the importance of robust internal controls to ensure regulatory compliance. Financial Institutions must also be agile in updating policies to meet regulatory requirements and address any shortcomings.

Press Release: [\(Click Here\)](#)

PART IV: FINANCIAL SERVICES TRIBUNAL RECONSIDERATIONS

16. STATUS OF APPLICATIONS FOR RECONSIDERATION LODGED WITH THE FINANCIAL SERVICES TRIBUNAL

- 16.1 During the reporting period 33 new applications for the reconsideration of the FSCA's decisions were lodged with the Financial Services Tribunal. Table 12 details the status of these applications.
- 16.2 Table 13 provides a breakdown of the outcome of the cases finalised during this reporting period. It includes both new cases lodged during this period and ongoing cases rolled over from the previous reporting period. Of these cases, the FSCA's decisions were upheld in 16 cases. In the 11 cases where the applications were withdrawn, the FSCA's decisions remained to be in force. The FSCA's decisions were set aside in 5 cases, and in the remaining 11 cases, the FSCA agreed, by way of consent order, to have its decisions set aside and referred back for further consideration.
- 16.3 In several instances, the FSCA consented to set aside its decisions when the reasons for its decisions involved non-payment of levies or failure to submit statutory returns, provided the respondents subsequently paid the levies, submitted returns, or made satisfactory arrangements in this regard.
- 16.4 During the reporting period, the FSCA took 1 323 administrative actions, a small fraction of which were challenged through reconsideration applications. Most of these reconsiderations were finalised, with only a few resulting in the original decisions being overturned.

Table 12: Status of applications lodged with Financial Services Tribunal

Reconsiderations logged during the Reporting Period		Finalised		Ongoing	
2022/2023	2023/2024	2022/2023	2023/2024	2022/2023	2023/2024
59	33	41	43	18	9

Table 13: Outcome of finalised cases

Applications withdrawn		Dismissed		Consent Order		Decision set aside	
2022/2023	2023/2024	2022/2023	2023/2024	2022/2023	2023/2024	2022/2023	2023/2024
4	11	12	16	22	11	3	5

- 16.5 One of the high-profile cases before the Tribunal during this reporting period was the reconsideration of the late Mr. Jooste's administrative penalty for insider trading. Given the public interest in this case, a brief history and the outcome are detailed in the case study below.

Box 6: Tribunal Decision – Markus Jooste

CASE STUDY

TRIBUNAL DECISION: MARKUS JOOSTE

Tribunal Upholds R20 Million Penalty for Steinhoff CEO's Insider Trading Penalty

The late Mr Markus Jooste (Mr. Jooste), former CEO of Steinhoff International, contested a recalculated R20 million penalty imposed by the FSCA on 2 December 2022. Mr. Jooste was penalised for insider trading, specifically for encouraging others via SMS to trade in Steinhoff International shares while possessing insider information, violating section 78(5) of the FMA.

Initially, the FSCA's penalty calculation included tripling the loss avoided by three recipients of Mr. Jooste's SMS warning, plus investigation costs, and an additional R1 million for a fourth recipient who did not trade on the information. Mr. Jooste exercised his right to take the decision on reconsideration to the Tribunal during 2021.

Upon review, the Tribunal instructed the FSCA to recalculate the initial R161 million penalty to ensure it was balanced, proportionate, and fair. The Tribunal's findings included the need to use a different closing price for the recalculated penalty and a caution against using the maximum prescribed penalty as a benchmark. After Mr. Jooste had another opportunity to present mitigating circumstances, the FSCA recalculated the penalty and imposed an amount of R20 million.

Mr. Jooste took the matter on reconsideration again, with reference to a particular recipient of the information (Ocsan Investments). He submitted that because normal price fluctuations occurred in the market when the Ocsan Investments losses were calculated, no cognisable loss was avoided by Ocsan Investments. Mr. Jooste also contended that the post price sensitive information absorption of the share should be the average share price of the day of the publication of the news, and not the closing price that the FSCA utilised.

On 28 September 2023, the Tribunal upheld the recalculated R20 million penalty, finding that the FSCA exercised its discretion appropriately. The Tribunal emphasised the need for a value judgment in determining penalties and noted Mr. Jooste's refusal to submit his personal financial information, despite a request to do so.

Tribunal Decision (second review application – insider trading): [\(Click here\)](#)

Penalty Order: [\(Click here\)](#)

Press Release: [\(Click here\)](#)

PART V: FOCUS AREAS & TRENDS

17. INTRODUCTION

17.1 The FSCA has allocated significant resources, and will continue to do so, to address areas of heightened risk, many of which have been discussed in the previous report, such as the duties of board members of retirement funds, non-compliance with anti-money laundering regulations, unlicensed over-the-counter derivative provider activities, submission of fictitious polices, regulatory examinations fraud, etc. Below are some identified practices that will be focal points for the FSCA in the coming year.

18. COPY TRADING, SIGNALS AND INTRODUCING BROKERS

- 18.1 There has been a noticeable increase in cases where individuals are offering to assist clients with trading on internet-based platforms where high-risk derivative products are traded. These products are not suitable for most financial customers, without the protection of extensive and conservative risk management.
- 18.2 These individuals assist clients to open trading accounts on both local and international platforms, and either trade for the clients, or allow clients to copy their trades (referred to as copy trading or mirror trading). In many instances, clients receive statements with inadequate disclosures reflecting unrealistic gains. It is common knowledge that the success rate of trading on these platforms are low. The FSCA is investigating several cases related to copy trading and will be focusing on this activity in the coming months. Copy trading constitutes a financial services activity, requiring authorisation as an FSP.
- 18.3 The rise in individuals providing trading signals to clients poses similar risks. This activity constitutes the furnishing of financial advice and an FSP licence is required to conduct the activity. This poses substantial risk to the public, *inter alia* because of the high-risk nature associated with these activities, and the absence of the required authorisation resulting in no supervisory oversight. This means that material financial customer protection rules are not enforced, e.g., the prohibition against conflicts of interest, disclosure rules, and the requirement for regulated entities to always act in the best interest of their clients and with due care and diligence.
- 18.4 The FSCA will intensify efforts to address these unauthorised activities.
-

19. INVESTMENTS IN LIVESTOCK

- 19.1 The FSCA has observed entities soliciting deposits from the public for investment in agricultural products, such as livestock and harvests, promising investors a ring-fenced share in the profits. For example, the public is invited to invest in a cow with the promise to share in the profits of the sale of the cow or its offspring. It is the view of the FSCA that this activity amounts to receiving deposits from the public and is therefore a regulated activity.
- 19.2 This has become a popular opportunity for fraudsters as well, who encourage the public to invest in fraudulent schemes. Clients are not only promised unrealistic returns linked to the anticipated sale of the agricultural product (cows, fish, abalone etc.), but are also provided with fake pictures and fictitious updates of their “investment”.
- 19.3 We are actively investigating these activities and will prioritise enforcement actions in this area.

20. FINFLUENCERS

- 20.1 Social media influencers, defined as individuals with a significant following on social media platforms, have been shown to wield significant influence over consumer behaviour through social media content. This has inevitably led to the rise of *finfluencers*, referring to persons who post financial and investment related content, and sometimes specifically promote financial products through social media.
- 20.2 In some instances, *finfluencers* have played a positive role in enhancing the financial literacy of the public and contributing to increased financial customer participation in financial markets. However, it raises concern if the public is influenced in their financial decisions by social media and the advice of celebrities, rather than by recommendations of authorised financial advisers. The FSCA has seen evidence of *finfluencers* conveying misinformation, and perpetuating scams through social media. This presents a clear risk to the public.
- 20.3 In the upcoming year, we will closely monitor the impact of *finfluencers* and, where required take action to safeguard financial customers from potential harm.

21. UNAUTHORISED CRYPTO RELATED FINANCIAL SERVICES

- 21.1 Crypto assets were declared financial products on 19 October 2022 by the FSCA. This had the effect that crypto providers had to apply for a licence, and more specifically an FSP licence that included the category of crypto assets. The industry was afforded a grace period until 30 November 2023 to lodge licence applications with the FSCA. During this period, they were permitted to conduct crypto financial services subject to the prescripts of the FAIS General Code.
- 21.2 The FSCA has received numerous crypto asset service provider (CASP) license applications, including both new applications and variations to existing licenses. Several of these applications have been approved, some have been declined, and a number have been voluntarily withdrawn by the applicants. Many applications are still under consideration by the FSCA.
-

- 21.3 The Enforcement Division established an investigation team to deal specifically with persons or entities that did not apply for a licence or whose licence applications have been declined, and who are conducting crypto financial services unlawfully. There are currently 30 cases under investigation
- 21.4 In the interest of protecting the public and in support of fairness in the industry, the FSCA will act decisively against unlawful CASPs. The FSCA will make the outcome of its investigations known and will publish warnings if it discovers unregistered crypto business.

22. INCREASE IN ONLINE HARM

- 22.1 The FSCA focuses its enforcement efforts on safeguarding financial customers from harmful business practices and criminal activities. The increasing globalisation, interconnectedness, and technological advancements have provided fraudsters with more sophisticated tools and larger platforms to exploit financial customers requiring the FSCA and its enforcement efforts to continuously adapt. Some examples are highlighted below.

Rise of Deepfake Scams

- 22.2 With the advent of artificial intelligence and rapid software development, the FSCA has observed a surge in deepfake scams. Fraudsters use AI and other technologies to create fabricated, high-quality videos, images, audio, or text content that imitate public figures and successful businesspeople to promote scams.

Impersonation of Legitimate FSPs

- 22.3 The FSCA has encountered numerous instances where fraudsters impersonate legitimate FSPs to solicit funds from unsuspecting members of the public applying very sophisticated methods and tools. The public is urged to contact the FSCA to verify the legitimacy of entities offering trading or investment services.

Impersonation of Regulators

- 22.4 Criminal activities have extended to impersonating regulators. The FSCA has identified several instances where fraudsters impersonated the FSCA, its leadership officials and its staff members. These fraudsters reach out to the public, claiming to be employed by the FSCA, offering assistance to facilitate withdrawal requests or recover funds lost through scams.

Exploitation via Social Media Platforms

- 22.5 Social media platforms provide financial criminals with easy access to the public, and they exploit these opportunities. Telegram and WhatsApp are popular among fraudsters to access a high volume of potential victims.
- 22.6 Clients are often offered unrealistic returns, sometimes within a few hours of investing. Fraudsters share fake positive reviews and fabricated screenshots of returns in these groups. They portray wealthy lifestyles on social media and frequently request additional funds to “process their withdrawals”. To avoid detection and prosecution, fraudsters use mule accounts opened at banks and crypto exchanges.

23. LACK OF OVERSIGHT BY KEY INDIVIDUALS

- 23.1 The FSCA has repeatedly emphasised the importance of the duties of key individuals. Despite these efforts, numerous cases still arise where key individuals have significantly failed in their responsibilities, resulting in financial losses for clients. The FSCA wishes to re-emphasize the duties of key individuals by highlighting a recent decision by the Financial Services Tribunal, outlined in the Bhala case study in Box 7 below.
- 23.2 The Bhala decision underscores the crucial role of key individuals as the first line of defence against non-compliance by FSPs and their representatives with applicable laws. The role of a key individual is not passive but requires active management and oversight of the financial services provided to clients.
- 23.3 Importantly, when non-compliance is identified, the key individual is primarily accountable for the non-compliance with financial services laws.



Box 7: SR Bhala – Role of Key Individual**CASE
STUDY****SATISH KUMAR BHALA****The Role of Key Individual:****Introduction**

The Tribunal dealt with an application for reconsideration brought by Mr Satish Kumar Bhala (Mr. Bhala) against the decision of the FSCA to debar him for a period of 8 years from rendering financial services. Mr. Bhala was one of the key individuals of Stringfellow Financial Services (Pty) Limited over the period February 2016 to April 2018.

Background

Mr. Bhala's debarment followed an FSCA investigation which found that from May 2013 to November 2018, Stringfellow Financial Services, led by its founder Mr. Thomas Stringfellow, advised clients to invest over R130 million in debentures. For most of the period, Stringfellow Financial Services did not have authorisation to render financial services relating to debentures. During this period, at least R38 million of client funds were misappropriated, with the rest used to perpetuate an activity commonly referred to as a ponzi scheme. Stringfellow Financial Services and Mr. Stringfellow contravened several provisions of the FAIS Act and the FAIS General Code. The FSCA imposed significant sanctions on both Stringfellow and Stringfellow Financial Services, and is actively assisting with the ongoing criminal prosecution.

The contraventions occurred during Mr. Bhala's tenure as key individual of Stringfellow Financial Services. Mr. Bhala admitted that he had no knowledge of Mr. Stringfellow's misconduct. The crux of the FSCA's case against Mr. Bhala was that he enabled the contraventions to occur when he failed to properly execute his duties as a key individual.

The Tribunal's determination

The Tribunal reiterated the critical role of key individuals in managing and overseeing the activities of an FSP. Emphasizing the terms "manage" and "oversee," the Tribunal highlighted that these responsibilities are fundamental in understanding the role of a key individual.

The Tribunal highlighted that the role of a key individual is so critical that for a FSP to obtain authorisation, it must satisfy the FSCA that its key individuals meet the fit and proper requirements, to the extent required for such key individuals to fulfil their responsibilities. These standards are a continuous obligation and include qualities such as honesty, integrity, competence (experience, qualifications, and knowledge), operational ability, and ongoing professional development.

The Tribunal pointed out that the duties of key individuals are extensive, requiring them to oversee not only specific financial services but also the general operations of the FSP. This broad oversight responsibility of a key individual ensures that the FSP complies with the FAIS Act.

In this case, the Tribunal found Mr. Bhala to have been culpably remiss in his duties as a key individual, leading to his debarment for eight years. This decision reaffirmed the significant responsibility key individuals have in ensuring adherence to regulatory standards.

Financial Service Tribunal Decision: ([Click here](#))

24. FAILURE TO IMPLEMENT AML/CFT RISK MANAGEMENT AND COMPLIANCE PROGRAMME

- 24.1 As a designated supervisory body under item 1 of Schedule 2 to the FIC Act, the FSCA is responsible for overseeing and enforcing compliance with the FIC Act by relevant accountable institutions listed under items 4, 5, and 12 of Schedule 1 to that Act.
- 24.2 The failure to implement a Risk Management and Compliance Programme (RMCP), identify AML/CFT risks, and inadequacies in conducting customer due diligence, continue to be major concerns.
- 24.3 Similar to the previous period, trends identified during the reporting period include:
- (a) Deficient RMCP / Weak AML/CFT Controls: Many institutions have inadequate RMCPs, leading to insufficient AML/CFT controls.
 - (b) Failure to Conduct Customer Due Diligence and Risk Rate Clients: Institutions often do not perform thorough customer due diligence or appropriately risk rate their clients.
 - (c) Failure to Screen Clients Against the Targeted Financial Sanctions Lists: There is a notable lack of screening clients against these lists.
- 24.4 The decision by the Appeal Board established under the FIC Act as discussed in Box 7, highlights the crucial role of the RMCP in ensuring compliance with the FIC Act and combating AML/CFT activities. It also offers significant guidance on the application of the FIC Act.
- 24.5 To address the identified trends, the FSCA plans to enhance awareness of AML/CFT compliance and intensify its supervisory activities. Additionally, the FSCA has increased the amount of administrative penalties being imposed to reflect the severity of non-compliance, considering the broader impact on the country, and ensuring that the penalties serve as an effective deterrent.



Box 8: Jannie Parsons – RMCP Compliance**CASE
STUDY****JANNIE PARSONS FUTURE FINANCIALS (PTY) LTD****Confirmed FSCA Decision Emphasises Importance of RMCP Compliance**

On 18 and 19 October 2021, as part of its supervisory duties, the FSCA conducted an inspection of Jannie Parsons Future Financials (Pty) Ltd (JPFF), an authorised FSP.

On 14 December 2022, the FSCA imposed a financial penalty of R870 000 on JPFF for failing to comply with the following provisions of the FIC Act:

- Section 21(1): JPFF failed to verify the identity of 24 out of 33 sampled clients.
- Section 28A read with sections 26A – 26C: JPFF failed to screen all 33 sampled clients against the relevant Targeted Financial Sanctions Lists.
- Section 42(1): JPFF failed to develop, document, maintain and implement a RMCP for anti-money laundering and counter-terrorist financing.
- Section 42(2): JPFF failed to identify, assess, monitor, mitigate and manage the risks associated with its products and services that may involve or facilitate money laundering, terrorist financing and related activities.

JPFF appealed the FSCA's decision to impose the administrative penalty to the Appeal Board.

Appeal Board Decision

On 17 July 2023, the Appeal Board dismissed the appeal, confirming the FSCA's decision to impose the administrative penalty. The Appeal Board's decision provided significant guidance on the role and importance of the RMCP, emphasising that:

- **Section 42(1) of the FIC Act** requires all accountable institutions to develop, document, maintain and implement a RMCP. This requirement is not merely bureaucratic in nature and must be strictly adhered to.
- **Section 42(2)(a) of the FIC Act** mandates that the obligations placed on accountable institutions exist regardless of the risk rating of their clients and/or products. This risk rating is not considered a relevant factor under section 45C(2) of the FIC Act.
- **Section 58(5)(c) of the FSR Act** requires the FSCA to consider international regulatory and supervisory standards set by standard setting bodies in which it participates. In the context of FIC Act contraventions, this includes the standards developed by the Financial Action Task Force. Accordingly, under section 45C(2)(e) of the FIC Act, the FSCA must consider any other relevant factor when determining an appropriate sanction, ensuring that the sanction is effective, proportionate and dissuasive.

The Appeal Board's decision serves as a clear reminder to all accountable institutions of the imperative to fully comply with RMCP requirements to protect the financial system's integrity and prevent financial crimes.

Appeal Board Decision: [\(Click here\)](#)

Media release: [\(Click here\)](#)

25. UNREGISTERED INSURANCE BUSINESS IN THE FUNERAL PARLOUR INDUSTRY

- 25.1 In the previous report, we highlighted the creation of a dedicated investigation team within the Enforcement Division to deal with the proliferation of unregistered insurance and financial services provider business in the funeral parlour industry. The FSCA has observed a significant number of funeral parlours engaging in the self-underwriting of insurance policies and unauthorised collection of “premiums” from clients, contravening prevailing insurance legislation and exhibiting poor practices in relation to the distribution of funeral insurance.
- 25.2 These practices expose customers to various risks, including uncertainty about the availability of funds to settle claims in full and the lack of choice for funeral parlours (a cash alternative). The FSCA also recognises the importance of ensuring that families and communities can bury their loved ones in a timely and dignified manner.
- 25.3 Consequently, the FSCA and the Prudential Authority have initiated a collaborative project that specifically seeks to address the concerns of the Authorities and that of the industry representatives. This includes:
- (a) A review of the insurance regulatory framework affecting the funeral parlour market to identify areas for improvement.
 - (b) Enhanced compliance awareness and capability support.
 - (c) Improved supervision and enforcement strategies to achieve appropriate compliance levels, ensuring sound prudential principles and fair customer outcomes while minimising compliance costs.
 - (d) Development of strategies to enhance financial literacy and awareness among funeral insurance consumers.
- 25.4 The FSCA is currently implementing an enforcement strategy as contemplated in subparagraph (c) above. The FSCA recorded 67 new unregistered insurance and FAIS (funeral parlours) investigations during the reporting period. These cases were identified through referrals by the Ombuds, anonymous tip-offs, and complaints. A total of 25 investigations were finalised, while 42 are ongoing. We collaborated with amongst others, *the South African Funeral Practitioners Association and National Funeral Directors Association* during these investigations.
- 25.5 In 12 of the 25 finalised investigations, the funeral parlours were found to be non-compliant. In all these cases the parlours were offered the opportunity to regularise their businesses by applying for an FSP licence or becoming a juristic representative of an FSP, and ensuring that their clients were underwritten with by a licenced insurer.
- 25.6 The desired outcome in these cases was achieved by utilising enforceable undertakings to ensure the regularisation process was completed.
- 25.7 In 13 cases, the funeral parlours were correctly authorised and licenced, leading to the closure of these matters.
- 25.8 We have noted that some catering companies have entered the funeral industry, collecting “premiums” in return for providing catering services at funerals. Additionally, some burial societies have exceeded the maximum threshold for contributions to qualify for an exemption from the FAIS and Insurance legislation, leading to unregistered funeral insurance activities coming to our attention.

26. GUARANTEE POLICIES

GUARANTEE POLICIES: BECKER AND OTHERS V FINANCIAL SERVICES CONDUCT AUTHORITY AND OTHERS - 2024 (2) SA 348 (SCA)

- 26.1 The FSCA reported in the 2022/2023 Regulatory Actions Report that it had identified an issue of concern in the industry relating to persons posing as legitimate guarantee policy issuers. Guarantee policies are issued in favour of state entities that award tenders for infrastructure projects. Guarantee policies are insurance products and as such can only be issued by a licenced insurer.
- 26.2 The FSCA has conducted several investigations into these incidents and imposed numerous sanctions in the past. The investigations relate to persons or entities that do not hold an insurance licence. Although the FSCA's decisions have in some instances been challenged, none of the challenges to date have been successful.
- 26.3 One such matter is the case of Ilse Becker, Eugene Becker and Fusion Guarantees (Pty) Ltd /FSCA, Minister of Finance and NCR. The licence of Fusion Guarantees (Pty) Ltd (Fusion), an authorised FSP, was withdrawn on 8 February 2011 due to, amongst others, the fact that it had contravened section 7(1) of the STIA by issuing guarantee policies without being registered as a short-term insurer.
- 26.4 On 8 March 2013, following the withdrawal of Fusion's FSP license, Ilse Becker (the director and person in control) was debarred in terms of the FAIS Act from rendering financial services for a period of five years. At a later stage the FSCA also issued a Directive to the investigated parties to cease issuing guarantee policies and more recently, an intention to impose an administrative penalty.
- 26.5 Several applications were lodged against the FSCA's regulatory interventions (reconsideration, review, interdict and appeals), none of which have been successful, (except for a partly successful application in January 2015 before the erstwhile FSB Appeal Board.
- 26.6 The FSCA's ongoing interventions culminated in the investigated parties challenging some of the provisions of the FSR Act in terms of which the FSCA may impose sanctions (penalties/debarments. Following the dismissal of the application by the High Court during 2022, the investigated parties applied for leave to appeal to the Supreme Court of Appeal. Leave was granted and the appeal was heard on 15 September 2023.
- 26.7 The appellants challenged, amongst others, the constitutionality of section 154 (dealing with the issuing of a debarment) and section 167 (dealing with the imposition of an administrative penalty) of the Financial Sector Regulation Act No. 9 of 2017 (the Act). They argued that a distinction must be drawn between the Authority's finding that there is a contravention of a financial sector law and the appropriate administrative sanction that should be imposed if a contravention is found to have occurred. They contended that whilst the Act provides for a fair hearing before the Authority decides to impose a penalty or debarment, the Act does not provide for a hearing before it decides whether a person has contravened a financial sector law, rendering the sections unfair and unconstitutional.
- 26.8 The Supreme Court of Appeal handed down its judgment on 10 November 2023 and held that the correct interpretation of sections 154 and 167 is that the sections *include* a consideration whether a person has contravened a financial sector law. The determination regarding a contravention is an "essential premise" before an administrative sanction is imposed.
- 26.9 The court concluded that sections 154 and 167 are constitutionally compliant in terms of fair procedure. The Appellants have lodged an application for leave to appeal to the Constitutional Court, the outcome of which is awaited.



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