

Consultation paper

17 December 2015



Consultation Paper: Forestry scheme issues and exemption proposals

About this consultation paper

The Financial Markets Authority (FMA) is considering possible exemptions to address some issues faced by forestry schemes in complying with the Financial Markets Conduct Act 2013 (FMC Act). The paper also discusses how schemes can approach some of their compliance obligations.

We would like your feedback on our proposals.

Submissions close on 19 February 2016.

About this consultation paper:

This consultation is for:
Forestry scheme issuers, supervisors,
managers and investors.

It aims to:
Seek views from the industry and investors on
whether forestry schemes should be granted
exemptions from certain obligations, and outline
FMA's view on how schemes can approach some
compliance obligations.

Next steps

We plan to announce our decision by 31 March 2016.

Submissions close on 19 February 2016. The form at the back provides more details.

Document history

This version was issued in December 2015 and is based on legislation and regulations as at the date of issue.

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Executive summary

1. Many forestry schemes will be managed investment schemes (MIS) under the FMC Act and will need to comply with the FMC Act by 30 November 2016. These schemes should now be making their transition to become compliant with the FMC Act. We encourage schemes to begin this work as early as possible. You can find out more information about MIS obligations and the transition [here](#).
2. A number of questions have been raised about how forestry schemes can comply with some of the requirements of the FMC Act, and if exemptions are necessary and appropriate.
3. In most cases we consider forestry schemes will be able to comply with the FMC Act requirements. This paper discusses how forestry schemes can comply with these obligations.
4. In some limited cases however we consider exemption support may be appropriate. This paper explains our exemption proposals and invites submissions.
5. Two of our exemption proposals relate to both existing forestry schemes and new forestry schemes yet to be offered. These are:
 - to exempt forestry schemes from the requirement to provide their supervisor with a 'nil return' quarterly report on departures from the statement of investment policies and objectives (SIPO) for quarters when no limit break occur
 - in cases where a forestry scheme is structured as a limited partnership, to exempt the corporate general partner from disclosure and financial reporting requirements. The general partner company does not own the scheme assets or liabilities and so the disclosure and financial information is not relevant or useful for investors.
6. Most of our exemption proposals relate to small closed schemes. By 'closed' we mean the scheme is not offered to new investors (although existing scheme participants may be able to transfer their interests). These proposals are to exempt these small closed schemes from:
 - the requirement to transfer scheme real property to the scheme supervisor or independent custodian, if there are effective alternative safeguards to protect investors' interests in real property
 - the requirement to have a licensed manager in the period before harvest planning and work begins.
7. Further we propose more comprehensive exemptions for small closed schemes approaching wind up, namely:
 - to exempt schemes approaching harvest and wind up from having to update their governing documents where they have existing systems and processes that protect investors' interests
 - to exempt schemes that are already in the wind up process and will have closed down within one year from having to update any of their governance documents.
1. We are consulting separately on whether syndicates and schemes that invest in real property other than forests should be granted exemptions from certain MIS obligations under the FMC Act. You can find a copy of our property schemes consultation paper [here](#).



Background

FMC Act replaces the Securities Act

2. Forestry schemes were treated as participatory securities under the Securities Act 1978. Under the Act, these schemes had to be established under a deed of participation, and have a statutory supervisor which was a party to that deed. Interests in the schemes were offered and issued under a registered prospectus.
3. The FMC Act 2013 has replaced the Securities Act. We consider most forestry schemes will be MIS under the FMC Act.
4. Under the FMC Act, a MIS must be registered on the Disclose Register and have:
 - a licensed manager and an independent licensed supervisor
 - compliant governing documents
 - a SIPO
 - scheme property held by the supervisor or (if permitted under the governing document) an independent custodian
 - Financial statements that comply with generally accepted accounting principles (GAAP).

Structures used for forestry schemes

5. Forestry schemes use a range of structures. Different issues may arise depending on the particular structure. Structures include:
 - general partnerships
 - limited partnerships
 - joint ventures
 - special partnerships
 - companies
6. Within these structures, there are differences in how scheme property is held. Land, forestry rights and other property is sometimes held directly by investors, and sometimes held by a separate entity such as a company, a nominee company, or by the statutory supervisor. Some schemes have a permanent manager and others do not. Investors have different degrees of involvement in management, and also contract for management and other services.



Which structures are MIS?

What is a MIS?

7. In general terms, a MIS pools money from a number of investors, who rely on the investment expertise of the scheme manager. The definition in the Act (s 9) is broad and will include most of the structures listed above, including those that were participatory securities under the Securities Act 1978.
8. The focus of this paper is on forestry schemes that are MISs.

Some schemes may not be a MIS

9. A scheme will not be a MIS if the investors principally produce the financial benefits or have day-to-day control of the operation of the scheme (ss 9(1) (b) and (c) of the FMC Act). Deciding whether a scheme is not a MIS is a factual question for schemes and their advisers, and will involve identifying:
 - **What activities principally produce the financial benefits, and who performs them (s 9(1) (b)).** For some forestry schemes, a forestry manager will exercise skill, and provide expertise and decision-making in managing the forest and the investors will have an oversight role. In that situation, the forestry manager plays the principal role in producing the financial benefits. For other schemes, the investors manage the scheme and contract with different specialists for limited purposes only, and have the right to appoint and dismiss a forest manager.
 - **Who has day-to-day control (s 9(1) (c)).** Investors may have this role, or their input may be limited to more high level control, and they may leave the day-to-day control to a forestry manager. In some years there will be little day-to-day activity by anyone, but in early years, and also as harvest approaches, there will be more activity. Identifying who exercises the day-to-day control will therefore involve looking at the whole of the forest's life.
10. Small schemes are more likely than larger schemes to fall outside the statutory definition as the investors are more likely to be actively involved in producing the financial benefits and in day-to-day control. For efficiency reasons, larger schemes might need to devolve management responsibilities and day-to-day tasks and they will generally be MISs.
11. A scheme is not a MIS if it meets the criteria in s 9(2). One of these criteria is that the value of an investor's interest is not substantially dependent on contributions by other participants or the use of other participants' contributions. In the case of forestry schemes, we consider this criterion would usually not be met, as the value of each person's interest would usually be dependent on the use of other participants' contributions, because of the likely better returns obtained from the ability to invest in larger forests and to share costs.

Companies are not MIS

12. If investors receive shares but no other interest in a scheme, then the scheme is not a MIS. Shares are equity securities under the FMC Act. Companies who issue equity securities are subject to different obligations under the FMC Act from a MIS. Unlike a MIS, companies are not required to have a licensed manager or supervisor, or a governing document. Other obligations apply under the Companies Act 1993 to protect shareholders' interests, such as directors' duties. There is more detail about companies' FMC Act obligations here.
13. Note that if a company is part of a MIS, such as a land-owning company where the shares are held by the partners in a limited partnership, the scheme will still have obligations under the FMC Act as a MIS.



14. We have a power to designate how financial products are categorised under the FMC Act. This power applies only to new financial products. A relevant consideration is the economic substance of the investors' interests in the scheme. For example, if a share has terms that mean, in substance, it is similar to a managed investment product, we can declare it to be a managed investment product in a MIS. You can find out more about designations [here](#). We are also consulting on designations which would result in certain types of shares in 'investment companies' being treated as managed investment products in a MIS. You can find that paper [here](#).

Statutory exclusion for new small schemes

15. Under the FMC Act there is a statutory exclusion for small schemes (cl 16 of schedule 1, small schemes exclusion). Offers of interests in an MIS are not regulated under the FMC Act where:
 - there are five or fewer scheme participants
 - the scheme is not promoted by a person who is in the business of promoting schemes or their associate.
16. This small schemes exclusion only applies to new schemes offered under the FMC Act.
17. The exclusion recognises that investors in small schemes will be more likely to have access to information and to take part in management of the scheme than investors in large schemes. The costs of compliance may also be proportionately higher for investors in small schemes. Without relief, these factors may inhibit the establishment of small property schemes and therefore reduce investment opportunities in the market.
18. When counting the scheme participants, joint owners are counted as one, and an interest held on trust may be taken to be held by the beneficiary. Also, we have the power to determine that all participants in several schemes are counted as if they were one scheme.



Operating under the new regime

19. Existing forestry schemes need to comply with the FMC Act by 30 November 2016 (or earlier if they choose an ‘effective date’ before then). As well as meeting the new requirements, scheme managers and supervisors will need to review their systems and processes in light of new accountabilities and responsibilities. We encourage schemes to begin this work as early as possible. You can find out more information about MIS obligations and transition [here](#).
20. Given the nature and structure of forest schemes are different to more conventional MISs that invest in financial products, a number of questions arise about how the FMC Act applies to these schemes. In particular, we are aware of the following issues:
 - **Licensed manager and independent licensed supervisor:** whether there is a need for a licensed manager and supervisor, particularly for schemes that do not have a dedicated manager or where a forest is at a stage of its life where there is little management required
 - **Licensing process:** how our licensing information and process applies to forestry schemes
 - **Governance documents:** whether governance documents for certain schemes must be updated to comply with the new governance requirements
 - **SIPO:** given a forestry scheme has only one type of investment, what should be in a forestry scheme’s SIPO?
 - **Custody of assets:** whether for closed schemes the supervisor must hold scheme property, or are other structures or mechanisms that protect investors’ interests sufficient
 - **Limited partnership structures:** what the disclosure and financial reporting obligations should be a corporate general partner of a limited partnership
 - **GAAP compliance:** are financial statements that comply with GAAP required, particularly for the years where schemes have little activity
 - **Relief for small closed schemes being wound up:** whether small, closed schemes that are currently harvesting or winding up should be exempt from certain FMC Act requirements.
21. We discuss in this paper how schemes can approach these matters. In most cases, we consider forestry schemes should comply with their new obligations under the FMC Act.
22. However, in some limited cases, we think an exemption from some obligations is appropriate to support the effective operation of the FMC Act.
23. Our power to grant exemptions is an effective tool to assist the operation of the FMC Act. Our ability to grant exemptions however is limited, and can be exercised only where it is necessary, or desirable, to promote one or more of the purposes of the FMC Act (see para 25). Further, an exemption can be no broader than what is necessary to address the matters that gave rise to the exemption. We may grant exemptions for up to five years



24. The main purposes of the FMC Act are to:

- promote confident and informed participation of businesses, investors, and consumers in the financial markets
- promote and facilitate the development of fair, efficient, and transparent financial markets.

25. The FMC Act's additional purposes are to:

- provide for timely, accurate and understandable information to help people make decisions about financial products and financial services
- ensure appropriate governance structures apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks
- avoid unnecessary compliance costs
- promote innovation and flexibility in the financial markets.

26. You will see from some of the exemption proposals discussed below, that we may consider granting an exemption from certain FMC Act obligations where we can identify a class or classes of schemes where, given the common features of the schemes, an exemption (with appropriate conditions) will best promote the purposes of the Act. We must balance compliance costs against the other FMC Act purposes when we consider these forestry schemes. The statutory test is whether compliance costs are 'unnecessary'.

27. We discuss below each of these issues and how FMC obligations apply to forestry schemes and the limited cases where we consider exemption support is appropriate.



Licensed manager and independent licensed supervisor

Background

28. Under the FMC Act, a MIS must have a licensed manager as well as a licensed supervisor.
29. A licensed manager has strict responsibilities and liabilities for managing scheme property and investments. Having a licensed manager is important to protect investors' interests. Good management of a forestry scheme may safeguard scheme investors' investments and maximise the return on their investments. Licensing ensures that a manager is capable of meeting the requirements.
30. A licensed supervisor provides an additional layer of protection for scheme investors. The licensed supervisor actively supervises the manager's performance, the issuer's obligations, the financial position of the manager and the scheme. They act on behalf of the scheme's investors to ensure the manager, governing document, and issuer comply with the FMC Act obligations.
31. Many forestry schemes were set up to have only a licensed supervisor, and not a licensed manager. These schemes will need to appoint a licensed manager or have their existing manager licensed.
32. Forestry schemes have some different characteristics from other types of MIS. The degree of management required will vary at different stages of the forest's life. We have been asked whether it is therefore necessary for forestry schemes to have a licensed manager.
33. Under current structures, some forest schemes – typically smaller schemes – do not have a single manager, and the management activities are performed by different people. The investors in some schemes take an active role in managing the forest, and in other schemes, the investors take some part in managing the forest, but contract with forestry or other type of expert for particular services.
34. As we said earlier, if the investors themselves manage the forest scheme, it may fall outside the definition of a MIS.
35. Our view is that in most cases forest schemes that are MIS should have a licensed manager. Investors' returns will depend on how well the forest is managed throughout its life, and particularly in its early years and during harvest. A well-managed harvest will involve planning and work some years before harvest.

Proposed exemption

36. However, we consider there might be a case for an exemption for small, closed forestry schemes to have an exemption during inactive periods. If investors are closely involved in a scheme and have some involvement in important decisions affecting the scheme, they are likely to understand the risks of not having a manager for the period in a forest's life when there is little activity. There would be a number of features we consider relevant:
 - size, and we propose a threshold of 20 investors or less
 - the existence of scheme processes and systems that protect investors' interests
 - investors have the ability to influence decisions
 - all investors agreed to opt out of the requirement for a licensed manager
37. There may also be other relevant features.



38. Any exemption would be granted on terms that ensure schemes have a manager appointed for the harvest and wind up period. We propose an exemption that applies only for the period from completion of planting up until harvest planning and work is about to begin.
39. The manager would be required to become licensed or a licensed manager engaged at that point. Alternatively, it could be a condition of the exemption that the manager has the same obligations and responsibilities as if it were a licensed manager. The second option would not involve the cost of licensing the manager. Our preference is for the first option, because that ensures there is a licensed manager in place for harvest planning and work. The licensing process is a good way to ensure the manager is capable, and that good systems and processes are in place.
40. In order for a MIS manager to ensure they are able to obtain a licence by 30 November 2016, the FMA must receive a licence application, in the form required, by the end of September 2016. Information about applying for a MIS manager licence can be found [here](#).

Questions

1. What comments do you have on our proposal to grant an exemption from the requirement to have a licensed manager for the period from completion of planting until harvest planning and work begins, and where schemes are small, closed and have other specific features?
2. Do you agree the criteria of:
 - less than 20 investors,
 - involvement in decision-making,
 - systems and processes that protect investors, and
 - a requirement for investors' agreement to not have a manager for a periodestablish that investors sufficiently understand the risks of not having a licensed manager? Are there other criteria?
3. Is five years before harvest an appropriate period to have a licensed manager in place to ensure a well-managed harvest? If not, what is an appropriate period?
4. What events would mark the start of harvest?
5. What are the risks and benefits (including cost savings) of this proposal?

Licensing process – no exemption proposed

41. When we grant licenses to MIS managers, we are guided by certain principles. Our approach is to promote the purposes of the FMC Act (see para 25) and not unnecessarily restrict the licensing of persons.
42. We have published a [licensing guide](#) to help all MIS managers prepare their applications. All licence applications are assessed against the same minimum standards, because these give an investor the necessary consumer



protection. But, as noted on page 3 of the guide, our assessment against the minimum standards takes into account schemes' unique aspects including the nature of their underlying assets. Where a particular standard does not seem relevant, managers will need to explain how they came to that conclusion, and how they will meet the intent of that standard and the summary statement (in italics above the minimum standards) for that particular category. Therefore, we do not propose any different approach to licensing managers is needed for forestry schemes.

43. Some of the information about applying for a licence on our website is directed towards a MIS that manages financial products. This has raised questions about how forestry scheme managers should approach applying for a licence. Some of this information is relevant, and some is not applicable. For example, the process for outsourcing is likely to be very relevant, but questions about the number of staff a scheme employs may not be applicable. Other information, while not directly relevant, may give you some general guidance about how to approach applying for a licence. Overall, the minimum standards assess: whether the manager is fit, proper and capable; and the operational infrastructure, financial resources and governance systems and processes. The process should be approached with this in mind. You can find more information about our licensing processing for MIS [here](#).

Process for renewing licenses

44. Similarly, we do not propose any change to our standard five-year period for MIS manager licenses. Harvest age is typically 25-35 years, and scheme assets may not change significantly in certain stages of a forest's life. There may need to be several licence reissues during some scheme's lives, and it may be that there has been minimal activity since the last renewal. However, we consider there is benefit in managers getting back in touch with us and for us to reconsider the matters a licence renewal requires.
45. We will take a pragmatic approach however to licence renewals to ensure schemes do not have to duplicate work.
46. We understand that many of the smaller schemes are close to harvest, so renewals may not be relevant to many schemes.

Questions

6. Do you have any comments on the appropriate approach to renewing licences?

Governance documents

47. A MIS must have governing documents that meet the requirements of the FMC Act. This means schemes may need to amend their governing documents. Some of the matters that must be in the governing documents are:
 - whether investors' interests in the MIS are transferrable or redeemable and how that is achieved
 - the rules for becoming a member or for withdrawing
 - the contributions payable
 - The method for valuing scheme assets.

The full list of matters that must be in the governing documents is contained in [s 135](#) of the FMC Act.



48. Generally, we consider forestry MIS should have governing documents that contain all these matters. This is because these statutory requirements are designed with the objective of holding product providers to account through the tools contained in those schemes' governing documents.
49. Schemes will need to look at the specific amending provisions in the existing governing document(s) to determine the process for making amendments to meet the new requirements. This will vary between schemes. We note that the FMC Act makes provision for a transitioning scheme's existing governing documents to be amended or replaced with the FMA's consent. This path is available where it is impracticable to comply with the usual procedure for replacement or amendment in a scheme's governing document. The FMA will consent to an amendment if it is satisfied that this is necessary or desirable to ensure that document complies with the FMC Act requirement (cl 26(2) (a), Schedule 4). Any such amendment or replacement is treated as if it were made in accordance with the governing document.

Proposed exemption

50. We consider an exemption may be appropriate in some limited circumstances when the costs involved in amending governing documents are disproportionately high relative to the benefits for investors. We consider the circumstances where this may occur are when the scheme is small, closed, nearing harvest, and where the scheme has existing governing documents and features that sufficiently protect investors' interests and ensure sound processes. Thresholds where we consider relief may be justified are schemes:
 - with 20 or less investors
 - that are within five years of beginning harvest.

Questions

7. What common governance features would provide sufficient protection to investors to support an exemption from updating governing documents?
8. Do you agree with our proposed thresholds of 20 or less investors and five years from harvest? If you disagree, what are appropriate thresholds of size of a scheme and proximity to harvest that would mean the costs of updating governance documents are disproportionately high?
9. What do you estimate the costs are to update a scheme's governing documents?
10. What do you think the risks and benefits (including cost savings) for investors are of either granting or not granting this exemption?

SIPO

51. We have been asked what a forestry scheme's SIPO should contain, and what a manager should report on. A SIPO describes how the manager will manage the scheme and sets out the investment objectives and parameters for the scheme. It enables a supervisor to ensure a manager is managing investments within established parameters. The parameters should reflect the terms on which the scheme was presented to scheme participants.



52. We consider a forestry scheme's SIPO should describe the investment philosophy and strategies at a general level and explain, in a practical way, how the investment strategy is implemented and monitored. The aim is to inform investors of key policies affecting the management of their investments, of any decisions to change that approach, and of any scheme activities that are inconsistent with it.
53. Key policies that should be outlined in a forestry scheme's SIPO are likely to include management policies and objectives for forest maintenance, insurance, emissions trading units and the timing and approach to harvesting. Some schemes may already have a governing document that sets out these matters, and so would not need to do anything further. Other schemes will need to amend their documents or create a new document.

No exemption from the requirement to have a SIPO

54. We consider a SIPO is relevant and important even for schemes that are close to harvest and winding up, because the investors' return is very dependent on the harvest being well-managed, and the scheme's wind-up is the time when investors realise their investment. We therefore do not consider an exemption from the need to produce a SIPO is necessary or appropriate.

Proposed exemption from quarterly SIPO limit break 'nil reports'

55. A MIS manager must report on any departures from the investment policies and objectives in the SIPO (referred to as 'limit breaks'). If the limit break is not corrected within five days, managers are obliged to report these to the supervisor immediately. Managers must also report quarterly to the supervisor about limit breaks that were rectified within five days.
56. Given the significant nature of the matters in a SIPO, we consider it important that managers report limit breaks to the supervisor. However, because there is minimal activity for some years of a forest's life, there may be nothing to report in quarterly limit break reports and there are likely to be many 'nil reports'. We propose an exemption from quarterly limit break reporting, but on the condition that if a break occurs in a quarter, the manager submits a quarterly report.
57. You can find more information about SIPOs [here](#) and reporting on limit breaks [here](#).

Questions

11. Do you consider forestry scheme managers should report quarterly to the supervisor on limit breaks? If so, please explain the issues and what the consequences are for schemes.
12. What are the risks and benefits (including cost savings) for investors in requiring the manager to prepare quarterly limit break reports only for periods when limit breaks occur?

Custody of assets

58. One of a MIS supervisor's obligations is to hold the scheme property (s 156 of the FMC Act). This obligation can also be satisfied by the supervisor contracting the holding of the scheme property to another person who meets the external custodian requirements. The purpose of this requirement is to ensure that the scheme property is properly safeguarded and monitored.



59. A forestry scheme's property may include land and standing timber, forestry rights, contributions by investors, carbon lease rental, New Zealand Units under the Emissions Trading Scheme, revenue from the sale of logs, and other income such as grazing rental.
60. For many existing forestry schemes, property will be held by the manager or an associated nominee company. The question arises as to whether the scheme should be required to transfer the property to an independent licenced supervisor or independent custodian to comply with FMC Act requirements. We understand this may result in additional compliance costs that are disproportionately high for schemes that have a small number of investors, are closed and nearing harvest.

Proposed exemption

61. We consider a transfer of assets may not be necessary for those types of scheme property where investors' interests in that property can be sufficiently protected in some other manner. Our proposal is that any exemption:
 - a. would only relate to real property assets of a forestry scheme (ie land and standing timber). The reason is that these are immovable assets and a registration system means no legal interest in land may be created except by registration, thus limiting risk of loss; and
 - b. would require alternative measures to be in place to ensure the property is protected. Two alternative safeguards we are proposing to recognise at this stage are that the supervisor holds a registered encumbrance over real property or that a caveat on transfer without consent of the supervisor has been lodged against the title; and
 - c. would only apply to small, closed schemes nearing harvest where the costs of transfer of assets are likely to outweigh the benefits to investors. Thresholds we consider where this would be the case are schemes with less than 20 investors and that are within five years from beginning harvest and winding up.
62. Additionally, a concern has been raised that it is not appropriate for the supervisor to hold the property as it may give rise to liabilities under other legislation, such as the Emissions Trading Scheme legislation. We seek information on whether this is the case. We would be interested in hearing whether any residual liabilities would fall on the supervisor if scheme property is held by the supervisor. We would also like to know, if there are potential residual liabilities, whether these could be avoided by appropriate structures such as a nominee company holding the property on behalf of the supervisor.



Questions

13. If real property (ie land and standing timber) is not held by the scheme supervisor (or another person who meets the external custodian requirements) what safeguards could schemes have that sufficiently protect investors' interests in this scheme property?
14. Are there any other types of scheme property for which similar safeguards could be put in place? If so, what types of property are they and what are the safeguards?
15. Do you agree with our proposed thresholds of 20 or less investors and five years before harvest begins? If you disagree, what are appropriate thresholds of size and proximity to harvest that would mean the costs of transferring property to a supervisor or independent custodian will be disproportionately high?
16. What are the benefits of this proposal, compared to the benefits of the supervisor or independent custodian holding scheme property?
17. What are the costs of asset transfer?
18. What are the costs of appropriate safeguards such as encumbrances and caveats?
19. We are interested in your comments on whether a supervisor has residual liabilities under other legislation if it holds real property. If so, could these be avoided by appropriate structures (such as a nominee company holding the property on behalf of the supervisor)?

Limited partnerships – disclosure and reporting by a general partner

63. 'FMC reporting entities' have disclosure and financial reporting obligations under the Act. Forestry MIS are often structured as limited partnership with a general partner that is a company. In these structures, partners hold shares in the general partner, and that gives them decision-making rights. This structure has two FMC reporting entities – the limited partnership, which is a MIS, and the corporate general partner, and both have FMC Act obligations.
64. For new offers, both the limited partnership and the general partner would have to lodge a product disclosure statement (PDS). As the general partner does not have any assets and does not trade, its PDS would not be of any value to investors.
65. The general partner would also need to prepare ongoing annual financial statements. Similarly, however, the general partner's financial reports would not give investors any useful information as they would be nil accounts. (Note the issue may not arise if the general partner has less than 50 shareholders - see s 452 of the FMC Act).

Proposed exemption

66. We consider an exemption from FMC disclosure and financial reporting obligations is appropriate for a corporate general partner of a limited partnership. We think it would be important however that the limited partnership's PDS should explain the structure and the role of the general partner.



Questions

20. Do you have any comments on our proposal to exempt corporate general partners from PDS disclosure and reporting obligations when the limited partnership is also an FMC reporting entity?
21. Are there other structures that give rise to this issue apart from limited partnerships with a corporate general partner?
22. If an exemption is granted, is there any information relevant to investors' understanding of their investment that they would not receive as part of the limited partnerships' disclosure and reporting information?

GAAP compliance – no exemption proposed

67. MIS must keep proper accounting records and complete financial statements that comply with GAAP within four months of balance date. For forestry schemes, financial statements will include a valuation of the forest. We have been asked whether forestry MIS financial statements could be prepared to a lower standard during those years in a forest's life when there is little activity. In particular, some have questioned whether an annual valuation is necessary.
68. Our view is that these financial reporting obligations are important in informing investors about their interests in their scheme, and any exemption would not be consistent with the purposes of the Act. Also, the External Reporting Board sets the financial reporting framework, which includes a specific financial reporting standard for Agriculture (IAS 41). An FMC Act exemption would be out of step with this framework. We note valuations may be required for other purposes such as insurance or if investors wish to leave the scheme.

Relief for small closed forestry schemes that are being wound up

69. We recognise that there may be some forestry schemes that will be close to being wound up when they are required to transition to the FMC Act regime. For these schemes, the costs of transitioning to comply with full MIS requirements may outweigh the benefits for investors where the protections provided by the FMC Act will only apply for a limited time because the scheme is being wound up.
70. We are, therefore, proposing a class exemption from certain MIS governance requirements for existing property schemes that are winding up where those requirements will impose obligations that are additional to the scheme's existing obligations under the Securities Act regime. Schemes relying on the exemption would still need to be registered. However we propose that:
 - schemes would not need to have a licensed manager
 - schemes with no supervisor would not need to appoint an independent licensed supervisor
 - if scheme assets are held by the manager or an associate then the scheme assets would not need to be transferred to the licensed supervisor or an independent custodian
 - the governing document would not need to be updated if it is not compliant
 - a scheme would not need to prepare a SIPO.



71. We consider these schemes should still be required to become registered on the Disclose Register, because that brings with it FMC Act obligations for the process of winding down.
72. Given the higher risks faced by investors without these protections, we consider that the exemption would only be appropriate for a short period to allow existing schemes in the process of being wound up time to complete this process. Because investors' returns are very dependent on harvest strategy and the harvest being well-managed, we think any exemption for forest schemes should apply only to schemes already in the process of winding up, or very close to it, and where the scheme will not replant. We consider the exemption should apply therefore where there are contracts in place for felling, transport, and sale and land restoration.
73. In terms of setting a timeframe threshold, we consider that a maximum of one year beyond the 30 November 2016 transitional period already available sets an appropriate balance. The risks of providing relief from FMC Act requirements are more significant and in our view outweigh the compliance costs for investors for any longer period.
74. We propose to require schemes to notify the FMA in advance if they intend to rely on the exemption and provide confirmation that investors are fully informed. This is to ensure investors are fully informed and that we can monitor compliance with the requirements that apply.
75. We also consider that the exemption should not apply to large schemes. This is because large schemes present more significant risks for investors and we do not consider any further time beyond the 30 November 2016 transitional period should be provided for these schemes to meet the requirements and have the protections for investors in place. Compliance costs for larger schemes would also be comparatively lower for scheme participants. In setting a threshold we consider an appropriate balance between the positive impact of the protective measures and the negative impact of the compliance cost would be to provide relief to schemes that are not large (do not have more than 50 scheme investors, have only one forest and the value of their total assets does not exceed an appropriate financial threshold).
76. In view of these factors, we propose that schemes would only be able to rely on this exemption where they:
 - will be wound up by 30 November 2017
 - are not large (ie none of the following apply: they manage more than one forest, they have more than 50 scheme participants, or the value of their scheme assets exceeds a certain financial threshold)
 - notify the FMA by 1 September 2016 that they intend to rely on the exemption and confirm that they have written to all scheme participants advising them that they intend to rely on the exemption, providing information regarding the process and timetable for winding up the scheme, and advising them what the consequences of the exemptions are for scheme participants.



Questions

23. Do you support an exemption for existing forestry schemes that are being wound up on the basis described above? Please give reasons for your view.
24. Do you have any information about the likely costs that schemes of different sizes and characteristics will incur to become fully compliant under the FMC Act if no exemption is granted?
25. Do you agree that 30 November 2017 is sufficient time for most schemes being wound up to complete that process?
26. Do you agree that the risks of not requiring compliance with usual FMC Act requirements for schemes being wound up become more significant and outweigh the compliance costs for investors more than one year beyond the end of the transitional period ending 30 November 2016?
27. Do you agree that schemes that are large should not be able to rely on this exemption? If not, please explain. Do you agree that 50 investors is an appropriate threshold? What do you consider is an appropriate financial threshold for a large forestry scheme with 50 or more investors? Do you agree schemes managing more than one forest should be excluded?
28. Do you agree with our proposal that a scheme should be required to give notice to the FMA by 1 September 2016 to rely on the exemption together with confirmation that they have provided relevant information to scheme investors? If not, please explain.
29. Are there any other requirements you think should apply?

Additional questions

30. What other difficulties do forestry schemes face in complying with the FMC Act for which an exemption may be appropriate?
31. In any of these cases, do you consider an exemption would be appropriate to address these issues? What conditions or limits would be necessary and appropriate to give effect to the purposes of the FMC Act?



The next steps

[How do I make a submission?](#)

Please use the form on the next page – it gives the details of what you need to do. Forms must be submitted electronically in both PDF and word formats and emailed to consultation@fma.govt.nz – please put 'Forestry scheme issues and exemption proposals: your organisation name' in the subject line.

Submissions close on 19 February 2016.

[Where can I get more information?](#)

You'll find more information on our website www.fma.govt.nz.

If you have questions about the consultation process, please get in touch on 0800 434 567



Feedback: Forestry scheme issues and exemption proposals

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Forestry scheme issues and exemption proposals: your organisation name' in the subject line. Thank you.

Submissions close on 19 February 2016.

Date: _____ Number of pages: _____

Name of submitter: _____

Company or entity: _____

Organisation type: _____

Contact name (if different): _____

Contact email and Phone: _____

Question Number	Response
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You don't need to quote from the consultation document if you note the paragraph numbers.

Q1	
Q2	

Feedback summary – *if you wish to highlight anything in particular*

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.