

Research reports for IPOs under the Financial Markets Conduct Act 2013

Introduction

The Financial Markets Authority (FMA) is focused on capital market growth and integrity, including making sure investors can get resources to help them make informed financial decisions. The Financial Markets Conduct Act 2013 (FMC Act) has put in place a new framework for those offering equity securities in New Zealand, including new, more flexible rules for advertisements and other promotional activities.

This information sheet discusses the availability of research reports about issuers on initial public offerings (IPOs). It is intended for issuers, research analysts and brokers.

Making research and other information available to retail investors

Over the last couple of years, there has been a steady growth in New Zealand's capital markets and an increase in companies listing on NZX. The current market practice for promoting an initial public offer (IPO) has led to an imbalance in the information available to institutions and retail investors. While certain institutional clients of the joint lead managers (JLMs) have access to valuable research, retail investors and their advisers often have limited access to quality contextual information to help with investment and trading decisions.

This imbalance of information does not benefit the wider market, particularly in a market the size of New Zealand where independent research may be scarce or non-existent. The product disclosure statement (PDS) together with the register entry for an IPO must contain all material information relating to a share offer. However research reports often contain significant contextual information useful to investors or their advisers.

Black-out periods do not apply in NZ

Black-out periods do not apply in New Zealand. While New Zealand firms often follow global practices and impose black-out periods restricting research publication immediately before and after an IPO, there are no requirements under the FMC Act (or NZX rules or other New Zealand law) to restrict the publication of research of a company making an IPO. In fact, research may be published by participants at any stage during an IPO.

Research reports may also be shared with retail investors, or their advisers, as well as institutional investors.



The broad FMC Act obligations on fair dealing and the new, more flexible advertising regime encourage fair, efficient and transparent promotion of financial products. This gives those in the industry an opportunity to re-examine how and when they share information such as research reports.

We strongly encourage participants to make research reports available to retail investors and/or their advisers, although we recognise that this is a decision for each business to make. Where multiple JLMs are involved in an offer, participants should not unnecessarily restrict other JLMs from making their research available to retail investors and/or their advisers.

Research reports promoting an offer

Research material designed to promote an offer should be clear about its purpose. Promotional material must comply with sections 89 to 94 of the FMC Act, as applicable, which are considerably more flexible than the old Securities Act advertising regime.

Impartial research reports

Research reports produced by a broker's research department can be impartial if they are produced without influence from staff providing investment banking, corporate advisory, consulting or dealing services to the company being researched. In this case, the research won't generally be considered to be promoting an offer. Therefore, the research won't fall within the definition of an 'advertisement' under the FMC Act. However appropriate and effective conflicts of interest policies must be in place, to ensure impartiality is maintained. We discuss measures to ensure management of conflicts of interest below.

Where possible, it is best practice for research providers to check the facts in their research reports with the relevant issuer or their representatives. This fact checking doesn't breach our expectations around conflicts of interest controls and wouldn't on its own mean the research report is deemed to be authorised or instigated by the issuer.

Class or personalised advice

Providing research reports may be 'class financial advice' under the Financial Advisers Act 2008, if the reports contain an opinion or recommendation about the securities. Simply distributing a research report by a research provider does not constitute the provision of personalised financial advice.


Conflicts of interest

There is an obvious conflict of interest when a firm selling an offer also produces research reports on the issuer. In this case, we expect broker firms to already have well-established policies in place to identify, manage and monitor conflicts of interest in their businesses.

The principles of managing conflicts of interest within brokers' research departments are well documented in:

- the Global Analyst Research Settlements¹ between the US Securities and Exchange Commission and several large investment firms in April 2003, and

¹ See [2003 SEC Factsheet on Global Analyst Research Settlements](#)

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- the Australian Securities & Investments Commission's regulatory guide 79 '[Research report providers: Improving the quality of investment research](#)'.

Examples of controls

Where firms wish to provide impartial research, this should be clearly separated from promotional activity. Firms may find different ways of achieving this separation in a manner that is appropriate for their size, activities and structure. Some typical controls we expect to be adopted are listed below.

- Research and investment banking teams are separated, including physical separation, separate reporting lines, and separate budgeting processes.
- Research analysts' compensation is not linked to non-research performance.
- Investment bankers do not evaluate research analysts.
- Investment bankers do not decide which companies research analysts cover.
- Research analysts are not involved in efforts to solicit investment banking business.
- Policies and procedures are designed and implemented to reasonably ensure personnel do not seek to influence the contents of research reports to obtain or retain investment banking business.
- Firewalls are created between research and investment banking, and are reasonably designed to prohibit improper communications between the two. Communications should be limited to those enabling research analysts to fulfil a 'gatekeeper' role for distributing information.
- Research reports should disclose the nature of any non-research services provided to the product issuer.

Where to find more information

This information sheet does not include an exhaustive list of the legal requirements that apply to an IPO, but is intended to highlight the flexibility of the new FMC Act regime, and to encourage wider distribution of research.

The FMA regularly engages with issuers and their brokers and advisers who are looking to offer shares and list on a licensed market. We can help and guide you on matters raised in this information sheet. You can contact us by sending an email to compliance@fma.govt.nz (ensure you insert "IPO HELP" in your subject line) or by phone - 0800 434 567 (+64 3 962 2698 for overseas callers).