

Reporting duties under Part 4 of the FMC Act

This information sheet outlines the new reporting duties under the Financial Markets Conduct Act 2013 (FMC Act) for debt issuers, managers of managed investment schemes, supervisors, auditors, investment managers, administration managers, custodians and actuaries.

Understanding your reporting requirements

Issuers, managers and supervisors have core reporting duties under the FMC Act. Alongside this, auditors, investment and administration managers, actuaries and custodians also have reporting duties.

Under the FMC Act all of these groups become key participants in the Part 4 governance framework. They need to work together and recognise they each have an important role to play in the governance of debt issues and managed investment schemes.

Trustees of restricted schemes must consider their reporting requirements under Part 4 collectively as the manager of a restricted scheme and therefore subject to manager reporting requirements.

Your reporting duties

To help you understand your reporting duties we have developed a table that outlines the duties of the various parties who must report.

Liability and protections for persons with duty to report

- Failure to comply with the various duties to provide reports and report on serious problems may lead to civil liability on the part of the person who has the duty to report.
- Some of the reporting requirements are protected disclosures (see section 214 FMC Act). A protected disclosure must be made in good faith. It provides the following protections:
 - No civil, criminal or disciplinary proceedings may be brought against the person who discloses
 - A person's appointment cannot be terminated
 - No tribunal, body or authority that has jurisdiction for the professional conduct of a person may make an order against, or take action in relation to, the person
- The FMC Regulations will introduce an implied provision into the governing document for restricted schemes protecting an independent trustee against action by the other trustees in relation to reports or disclosures to the FMA under the conditions of the independent trustee's licence.

What should I do to get ready?

- Issuers/managers and supervisors need to start working together to establish a mutually agreed reporting framework that meets their overarching duties to exercise a professional standard of care and act in the best interests of investors. Our expectation is that reporting standards and frameworks will deliver both accountability and greater protection to investors.
- Systems and processes need to be reviewed to ensure that all reporting requirements are identified and can be met.
- Auditors and other parties who must report on matters to the supervisor need to develop effective working relationships to understand the frontline-supervisory model.
- Contractual documents and terms of engagement may need to be revised to reflect the new mandatory reporting requirements. This is to enable information flow and ensure Part 4 governance requirements operate effectively.
- Review current reporting practices between the issuer/manager and supervisor. We expect in most cases that the current practice of issuers/managers includes periodic reporting to supervisors.
- Managers should also consider the reporting requirements related to material limit breaks in SIPOs and for pricing errors and pricing methodologies.

Key questions to consider

Consider what processes you will need to have in place to effectively fulfil your role under the FMC Act:

- Are your relationships with the persons you need to report to or receive reports from effective and robust?
- Are your systems and processes adequate and effective to ensure you comply with future Part 4 reporting requirements and that you can properly carry out your role?

Start planning now

We encourage you to plan and be ready for the new regime. Plan what you need to do to ensure you can properly meet your Part 4 reporting duties.

Where can I find more information?

Our guidance note, [Governance under Part 4 of the FMC Act](#), outlines our expectations for how issuers of debt securities, managers of managed investment schemes and their supervisors should approach their governance responsibilities and accountabilities.

For more general information about the FMC Act, visit the FMC Act implementation section of our website – www.fma.govt.nz. You can also subscribe to receive FMA Updates for the latest news.

Reporting duties under Part 4 FMC Act

Duty to report	Debt issuer	MIS Manager / trustees of restricted scheme	Supervisor	Auditor	Custodian	Actuary	Investment Manager	Administration Manager
Provide prescribed reports to supervisor (or to the FMA for a restricted MIS) – to be prescribed by Regulations (section 114 in respect of issuer and s147 in respect of MIS managers).	✓	✓						
Provide requested information and reports to supervisor (section 115 in respect of issuer and s148 in respect of MIS managers).	✓	✓						
Report contravention or possible contravention of issuer obligations to supervisor (or the FMA for a restricted scheme) (section 116 in respect of issuer and s149 in respect of MIS managers).	✓	✓						
Report serious financial problems to supervisor (or the FMA for restricted scheme) (section 118 in respect of issuer and s151 in respect of MIS managers).	✓	✓						
Provide copy of documents required by the Act or a trust deed to the supervisor (or the FMA for restricted scheme) (FMC Regulations) <i>Protected disclosure provision</i>				✓				
Provide reports to issuer and copy supervisor (or the FMA) on matters (section 198). <i>Protected disclosure provision</i>				✓				
Provide information about the issuer or scheme requested by the supervisor (section 115 in respect of issuer and s148 in respect of MIS managers). <i>Protected disclosure provision</i>				✓				
Report to supervisor or to the FMA if reasonable grounds to believe that a specified “serious problem” has arisen in relation to a financial product: <ul style="list-style-type: none"> • Contravention/likely contravention of issuer obligation • Issuer or scheme is/likely to become insolvent • Financial position or issuer or scheme or security of benefits or management of scheme or issuer is otherwise inadequate • Manager has materially contravened/may have/is likely to contravene market services licensee obligation • supervisor or the scheme has contravened/may have contravened/is likely to contravene any of the supervisors licensee obligations under the Financial Markets supervisors Act • Custodian of the scheme has contravened/may have contravened/ is likely to contravene any of the custodian’s obligations in a material respect. 				✓	✓	✓	✓	✓

Duty to report	Debt issuer	MIS Manager / trustees of restricted scheme	Supervisor	Auditor	Custodian	Actuary	Investment Manager	Administration Manager
(Section 199). <i>Protected disclosure provision</i>								
Auditor must advise if auditor considers Subpart 4 (Registers and keeping copies of documents) not being complied with (section 219). <i>Protected disclosure provision</i>				✓				
Report, as prescribed, to Manager on scheme property held (section 159).					✓			
Supervisor to attest to issuer's compliance with issuer obligations if required by the FMA (section 202). <i>Protected disclosure provision</i>			✓					
Report contravention or possible contravention of issuer obligations to the FMA (section 203). <i>Protected disclosure provision</i>			✓					
Report serious financial problems with issuer or scheme to the FMA (section 204). <i>Protected disclosure provision</i>			✓					
Duty to provide a winding up report to the FMA (section 213).			✓					
Duty of NBDT to provide reports to supervisor (FMC Regulations).	(if NBDT) ✓							
Manager to report to supervisor (or the FMA for restricted scheme) in event of limit break (section 167).		✓						
Manager to provide quarterly reports to supervisor (or the FMA) about limit breaks (FMC Regulations).		✓						
Manager to report to supervisor (or the FMA) about pricing error or failure to comply with pricing methodologies (section 168).		✓						
Manager to report to supervisor (or the FMA) on related party transaction certificates (section 173).		✓						