FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

Consultation paper: Financial Markets Conduct Act exemptions

13 March 2015

About this consultation paper

The FMA is working with the Ministry of Business, Innovation, and Employment (MBIE) to implement the Financial Markets Conduct Act 2013 (FMC Act).

The offer and management of most financial products will fall under the standard 'regulated offer' regime or within the Schedule 1 statutory exclusions. However, there are a few areas where the FMA may need to use class exemptions, frameworks, or methodologies and designations (the FMA's legislative tools).

We want preliminary comments on matters we believe should be considered for support by the FMA's legislative tools, but for which we have not yet developed policy proposals. Your feedback will be considered in the development of our proposals.

We also welcome comments on any additional matters, not addressed in this paper, that you believe should also receive support from the FMA's legislative tools.

Matters we want your preliminary comments on

We are looking for submissions on the treatment of the following 10 matters:

A. offers under foreign regimes
B. recognition of overseas audit regimes
C. charities raising funds by debt securities
D. funds raised through venture capital schemes
E. communal facilities offered with real property
F. interests in legal entities established for managing costs and providing services
G. racing livestock ownership syndicates
H. pre-payment facilities
I. co-operatives, and
J. employee share purchase schemes

Businesses and professionals who may be affected by these matters are able to continue to operate under the existing regime until at least 30 November 2015, and many until 30 November 2016. Our aim is to have solutions, for matters requiring transition by 30 November 2015, in place before the end of September 2015. Solutions for other matters will also be signalled at this time and will be in place well before transition deadlines.

Other matters being considered for the FMA's legislative tool support

We have included two appendices that summarise other matters under consideration:

Appendix 1: summarises matters we have developed proposals on. Many of these do not raise significant new policy issues. We aim to have solutions signalled on these matters in mid-2015 and in place well in advance of the deadlines for transition to the FMC Act.

Appendix 2: summarises matters where the FMA is continuing to work with MBIE on the development of regulations. When these are settled, those solutions, if any, may need to be supported by the FMA's legislative tools. The significance of the matters we may need to address will depend on the outcome of our work with MBIE, as well as issues raised by businesses and professionals.

Next steps

Generally businesses and professionals have until either 30 November 2015, or 30 November 2016 to transition to the FMC Act regime. There are a few exceptions, including those relating to financial reporting and audit requirements of listed issuers, and licensed banks and insurers.

In using our legislative tools to support the FMC Act regime, we want to accommodate market participants' ability to move to operation under the new regime within the transitional period. Do contact us if you have any questions about the transition timeframes where this is reliant on an exemption, or other legislative tool, being available.

Matters we want your preliminary comments on: We seek your comments on any aspect of these matters, including on the specific questions we have raised. We expect to consult in May and June this year on the more detailed proposals we develop following receipt of submissions.

These matters affect different sectors of our market, so the consultations will be targeted only to those affected and interested. Please let us know if you want to be consulted further on any of these matters.

Appendix 1 matters: With a few exceptions (noted in this paper) we will consult in more detail on these matters shortly.

These matters will also be targeted only to those affected. Please let us know by **20 March 2015** if you want to be consulted further on any of these matters.

Appendix 2 matters: We are continuing to work with MBIE on the development of regulations on these matters. We will consult further if these issues still require support from the FMA's legislative tools. This summary is provided for your information only. However, we welcome your comments.

Questions

If you have questions contact regulatory tools manager, Natalie Muir on 04 471 4616 or at exemptions@fma.govt.nz. Please title your email 'FMC Act class exemption development: [*Your entity name*]'. Questions about the FMA's legislative support to the FMC Act regime can be raised with us at any time. Please contact us with your preliminary comments by **2 April 2015.** The feedback form at the back provides more details.

Matters we want your preliminary comments on

A. Recognition of new offers and financial reporting under foreign regimes

Summary of issue

Historically the FMA has granted relief, in some instances, for foreign issuers to offer into NZ by largely relying on the requirements of the issuer's home jurisdiction offer regime:

- The first category, and most used, applies to offers extended only to NZ investors with an existing relationship with the issuer, whether by holding existing securities (eg, so enabling the extension of rights offers to NZ investors, or offers made in conjunction with company restructures) or being an employee. Requiring NZ-compliant documents would lead to many NZ investors missing out. The exemptions provide broad relief, including from NZ offer documents and (where applicable) supervision requirements. Examples of notices giving effect to exemptions in this category are the Securities Act (Overseas Companies) Notice 2013 and the Securities Act (Overseas Employee Share Purchase Schemes) Notice 2002.

- The second category applies where overseas offers are extended to the general NZ public. Enabling offers by overseas issuers, made concurrently (and regulated) in their own jurisdiction, to be extended to NZ investors, increases investment choices for NZ investors. Resulting exemptions tend to only recognise offers by entities listed on principle exchanges of well-regulated jurisdictions. Additional conditions include the need for a NZ investment statement and warnings to NZ investors about the risks of investing overseas. The main class exemption addressing this category of offers is the Securities Act (Overseas Listed Issuers) Exemption Notice 2002.

- In all cases, an underpinning principle was that we were comfortable the foreign regime was well regulated and required provision of material information to an equivalent standard to NZ law. Notwithstanding this general principle, we have been willing to extend exemptions more broadly in the case of offers made to persons who have existing connections with the foreign issuer. The second category of exemptions tend only to recognise offers made in significant jurisdictions by issuers listed on principal exchanges.

Further, the FMA has historically granted complimentary relief to foreign issuers from NZ financial reporting requirements. These exemptions include relief from the requirement to prepare financial statements in accordance with NZ GAAP and to have those audited by a NZ licensed auditor. (See the Financial Reporting (Overseas Issuers) Exemption Notice 2013). In addition, in the instance of issuers only offering to NZ investors they have an existing connection with (ie, the investors already having securities in the entity) we have commonly given relief from the filing requirements with the NZ Companies Office. (See the Financial Reporting (Overseas Companies) Exemption Notice 2013).

- In considering whether to grant these exemptions we have assessed the financial reporting requirements and auditor oversight requirements of each recognised jurisdiction for comparability with NZ requirements. We have looked for at least equivalent level of quality.

- We have also considered the extent of regulatory body co-operation available (particularly whether relevant foreign regulators are signatories to memorandum of understanding for information sharing and co-operation).

Solution proposed or being explored
We consider it remains appropriate to continue to recognise offers made under some foreign regimes. This enables offers to be extended to NZ investors when they would likely otherwise miss out on the investment opportunities. An exception is in the case of offers of employee share purchase schemes by overseas employers. Generally the Schedule 1 statutory exclusion will now provide appropriate relief. Also see our questions raised in matter J below. We will reconsider the scope and basis of criteria warranting recognition in respect of new offers under the FMC Act.

Questions:

A1: Do you think the scope of the NZ connection the issuer has should influence the extent of relief provided? Should greater relief be provided (allowing greater reliance on the foreign regime), where the connection to NZ investors is more limited, or ancillary, to the offer in the foreign jurisdiction?

A2: What criteria do you think should be considered in granting any relief from the NZ regime for offer and management of financial products? Further, in light of question A1, how (if at all) do you think this should differ in light of the connection of the issuer with NZ?

A3: What is the extent of relief you think should be granted? Should a PDS be required? Should a register entry be required?

A4: What conditions do you consider would provide important information or protections? Any warnings or information? An agent for service in NZ?

A5: Are there any circumstances you envisage would additionally require, and warrant, relief from NZ licensing requirements? Please explain.

A6: What criteria do you think should be considered in granting any relief from the NZ regime for financial statement preparation, audit and lodgement by issuers of financial products? Further, in light of question A1, how (if at all) do you think this should differ in light of the connection of the issuer with NZ? Please explain.

A7: In the past, the FMA has individually assessed the offer and financial reporting regime of each foreign jurisdiction. We also considered the extent of regulatory body co-operation available (in light of whether the relevant foreign regulators are signatories to memorandum of understanding for information sharing and co-operation). Rather than recognising a limited list of identified jurisdictions, are there general requirements that market participants could assess their own proposed offer against? Would this provide sufficient certainty to those relying on the exemption? Would it provide sufficient protection to NZ investors?

B. Broader recognition of overseas audit regimes

Summary of issue

In some circumstances, NZ investors may miss out on investment opportunities in overseas entities because of the costs resulting from the requirement that auditors of these entities must be licensed / registered in NZ.

A key reason for this is because the audit regime requires that both individual auditors are licensed, and firms are registered (Australia only focusses on the individual). The expense of obtaining the licence and registration may not be justified when an overseas audit firm only has a few clients in New Zealand.

Solution proposed or being explored

Historically the FMA's general policy has been that an overseas auditor must be licensed and the firm registered in NZ when it audits an entity making offers to NZ investors which are other than ancillary or incidental to the offers in the foreign jurisdiction. When an overseas entity makes an incidental or ancillary offer into NZ we do not require the auditor to be licensed/firm registered here.

We will consider the extent it may be appropriate to broaden the relief relating to overseas issuers who operate under an equivalent foreign audit regime. One option would be to only require an auditor to be licensed, and the firm be registered, in NZ if the auditor is auditing NZ incorporated entities or sets up business in NZ.

Questions:

B1: Do you have any comment on the appropriate scope of relief?

C. Charities raising funds by debt securities

Summary of issue

The financial markets law regime does not apply in any way to charities' fundraising activities where this is done by seeking donations (including tithing). It is only relevant where a financial product, such as a debt security, is issued by the charity. A debt security is created where a charity takes loans with a promise of repayment, even if no interest is payable on the loan.

Historically, charities offering debt securities have been exempt from the standard offer document and independent supervision requirements. At last review the FMA imposed a $15 million limit on funds able to be raised in reliance on the exemption; religious charities were previously not subject to any limit.

An annual reporting requirement was also added to enable the FMA to monitor reliance on the exemption. The reports and communications we have received indicate during the year ahead, we expect no more than 14 entities will rely on the FMA exemption in raising funds. Some appear to raise money in circumstances where they could alternatively look to structure their activities to rely on one of the new FMC Act Schedule 1 exclusions, which provide relief from the standard regulated offers regime.

Solution proposed or being explored

We will consider what, if any, relief is appropriate in addition to the Schedule 1 exclusions. In particular, charities could consider whether it may be appropriate for them to seek to structure their activities so they could rely on the exclusions from the standard regulated offers regime. Exclusions are available for small offers, fundraising from wholesale investors, and through licensed peer-to-peer lending providers.

The historical Securities Act exemption was last renewed through to 30 November 2016. This is the last date at which charities would be able to offer under the Securities Act regime. At the time of renewal, we noted:

- these Securities Act exemptions would not provide relief from the requirements of the FMC Act regime and cannot be relied on beyond the transitional period during which Securities Act offers can be made, and
- the FMA would consider and consult on whether any new relief was appropriate in light of the policy of the FMC Act.

It should not be assumed continued relief will be granted. If any relief is granted, our initial view is the limit on fundraising levels will likely be maintained or set at a lower level.

Questions:

C1: Given the risks raised by relief from standard disclosure and supervision requirements what grounds, if any, provide justification for relief from the standard requirements for charities raising money by the issue of debt securities beyond the relief available in Schedule 1??

C2: Do the exclusions in Schedule 1 cater for the majority of circumstances where charities seek to raise money by the issue of debt securities outside of the standard regulated offer requirements? If not, what are the outliers?

C3: What issues arise for charities if the current exemptions are not continued?

D. Venture capital schemes

Summary of issue

Historically, the FMA has granted an exemption from the standard regime for equity and participatory securities issued by SMEs seeking equity style investment. The exemption is available where the business raises the funds through a regional or industry-based economic development agency designated by the FMA as a 'venture capital scheme administrator'. The purpose of the administrator was to operate a responsible programme for matching interested investors with businesses seeking funds.

Solution proposed or being explored

The FMC Act regime introduced new opportunities for small-to-medium businesses seeking growth capital to raise funds without complying with the standard offers regime. These include the Schedule 1 exclusions for small offers, wholesale investor exclusion, and fundraising through crowd funding platforms.

There has been limited reliance on the historical FMA exemption. Currently there are three designated scheme administrators. Over the past few years, relatively limited funds have been raised under schemes operated by these scheme administrators. Only one administrator raised funds in 2014.

Additionally, from 1 December 2015 unlicensed financial product markets will be prohibited. If continuing, these platforms would need to get licensed, unless they fell within the small market statutory exemption (applies to markets on which there are less than 100 transactions annually or the value of transactions is less than $2 million a year).

In these circumstances our initial thoughts are that reduced offer requirements for fundraising through a designated scheme administrator, outside of the statutorily recognised crowd funding exclusion, may now be redundant and inappropriate.

Questions:

D1: Is there any appropriate basis to recognise an avenue for fundraising through a designated scheme administrator outside of the statutorily recognised crowd funding exclusion?

D2: If so, is there continuing market demand?

E. Communal facilities offered with real property

Summary of issue

Shares in a company, or memberships in a society, holding communal facilities offered with a lot in a real property development have historically been caught as 'securities'.

Under the FMC Act, memberships in a society are not caught as 'financial products' unless they are interests in a scheme within the meaning of the FMC Act. Usually the provision of interests in a society, which exists to hold communal land or facilities able to be used by residents of a subdivision, will not be a 'scheme'.

Shares in a company holding communal facilities however, remain caught as equity securities. The standard regime for the offers of equity securities would apply.

Solution proposed or being explored

We propose to develop a solution for shares in companies holding communal facilities, which are offered ancillary to the purchase of a lot, in a real property subdivision.

The proposed solution will recognise these shares facilitate the ownership and management of the communal facilities, and are not 'financial products' in the conventional sense. Substantial relief appears appropriate from the FMC Act regime via exemption or designation of these interests outside of the FMC Act regime.

Questions:

E1: In what circumstances (if any) does the holding of communal interests in a subdivision raise financial markets-related risks?

E2: If the FMA decides to use its legislative tools to provide relief from financial markets regulation for communal interests in a subdivision, how can we differentiate and define the circumstances of entities (including companies and incorporated societies) that do not raise financial markets-related risks?

E2: The exemption notices providing Securities Act relief, in relation to entities used for owning and managing communal property, require compliance with a number of conditions. To what extent do those conditions provide protections to property owners from financial markets-related risks? What are the compliance costs and impediments imposed by the conditions?

F. Vehicles for managing costs

Summary of issue
Historically, the FMA has granted relief from standard offer information and supervision requirements for interests in a society, or shares in a company, used as a vehicle to manage communally-owned property beyond real property in a subdivision (eg, irrigation assets and marina berths).
Solution proposed or being explored
As in the case for communally-owned property in a subdivision (discussed above), we will consider the extent of appropriate relief. As an alternative to various relief instruments addressing different types of property, we will consider the possible scope of appropriate generic relief for entities used as vehicles to manage common costs, rather than to create returns for participants.

Questions:

F1: In what circumstances does the holding of interests in these entities raise financial markets-related risks?

F2: If the FMA decides to use its legislative tools to provide relief from financial markets regulation of these interests, how can we differentiate and define the circumstances of entities (including companies and incorporated societies) that do not raise financial markets-related risks? Additionally please outline circumstances (commercial or otherwise) you are aware of where entities are established, not for investment purposes but, as a means to manage costs or coordinate the activities of members? What are the common characteristics of these arrangements?

F3: To what extent do the circumstances, or entities used, reflect, or differ from, entities established for owning and managing interests in communally-owned real property in a subdivision?

G. Racing livestock ownership syndicates

Summary of issue
Historically the FMA has granted broad relief, from standard offer information and supervision requirements, for offers of interest in horse and greyhound racing syndicates where the syndicate operator is bound by the rules of a relevant racing industry body. This broad relief has been granted on the basis the entity is complying with industry codes. No specific relief is targeted to racing syndicates under the FMC Act regime. In some cases however, operators may be able to offer, with substantial relief from the standard offer regime, under the Schedule 1 exclusions. Further, until 30 November 2016 they may continue to operate under the Securities Act regime (on the conditions prescribed by the current Securities Act class exemptions).
Solution proposed or being explored
We will consult on whether specific relief, beyond the Schedule 1 exclusions, is appropriate. We will consider whether there is merit in a designation, rather than an exemption approach.

Questions:

G1: Although racing syndicates may be a kind of investment, are they a financial markets matter?

G2: Is anything added to the prudent management and regulation of syndicates by financial markets regulation?

G3: Does the financial markets regime provide an important hook for regulation by the industry codes, or will the requirements of those industry codes continue to apply adequately, if there is a complete exemption or designation out of financial markets regulation, for these schemes? Please explain.

G4: Are the industry code requirements administered and monitored by statutory recognised bodies, or a self-regulatory regime?

G5: If no exemption or designation out of financial markets regulation was provided, to what extent (given the size and circumstances of syndicates) would the small schemes exclusion in Schedule 1 provide appropriate relief from the standard regulated offer requirements?

H. Pre-payment facilities

Summary of issue
Historically, relief has been granted for some pre-payment facilities that are not investments in the conventional sense (eg, pre-payment bus cards, cards and vouchers redeemable at stores that meet the definition of debt securities).
Solution proposed or being explored
We recognise relief may continue to be appropriate where these products are caught by the debt securities definition, but are not financial products in the usual sense. Given the large turnover, or total sums under management in some cases, care needs to be taken in considering the appropriate regulatory regime. It may be appropriate to establish a general exemption for small pre-payment schemes, but different considerations may need to apply to large schemes. For example, small schemes may warrant relief from licensed auditor requirements on the basis the auditor is a character accountant, albeit not licensed. Alternatively, in some circumstances, it may be appropriate to designate these schemes outside of the FMC Act regime.

Questions:

H1: Do you have any preliminary comment on the extent to which, if at all, pre-payment facilities should be regulated by financial markets law?

H2: Do some prepayment facilities have features that look more like financial markets products? If so, what are those features? If the FMA decides to use its legislative tools to provide relief from financial markets regulation for pre-payment facilities, how can we differentiate and define the circumstances of facilities that do not raise financial markets-related risks?

H3: To what extent is there an expectation or understanding by users of these services that financial markets law requirements, which usually apply to investments in financial products, would apply?

I. Co-operatives

Summary of issue
The FMC Act regime provides tailored equity disclosure suitable for offers of co-operative shares. The disclosure can be tailored to focus on the benefits and risks of share ownership, which may (or may not) relate predominantly to the opportunity for financial returns earned by holding the shares.
Solution proposed or being explored
The FMC Act equity regime contains particular tailoring for co-operative companies. This means that the FMC Act provisions will be appropriate in most cases. However there may be some exceptional instances where further relief is appropriate. An example may be where the level of financial investment is nominal, and the key reason for the investment is the opportunity to supply goods or services, rather than an investment opportunity.

Questions:

I1: In light of the existing tailoring for co-operative company shares in the equity Product Disclosure Statement, what (if any) additional relief do you think should be provided from the standard regulated share offer requirements for shares issued in a co-operative company where those shares are purchased for nominal value?

I2: Are there any other circumstances where you consider relief should be provided? What relief do you propose, and on what basis?

J. Employee share purchase schemes

Summary of issue

Under the Securities Act, the FMA provided exemption support to allow companies to offer certain securities to employees without complying with the usual disclosure requirements. Conditions required alternative disclosures. Generally, the relief applied to offers of shares, rights and interests in shares and 'savings scheme securities' (debt or participatory securities offered in connection with employee share purchase schemes). It allowed for offers to employees, directors, persons providing personal services other than as an employee, relatives, trusts of which the employee was a beneficiary and closely-controlled companies.

There is a Schedule 1 exclusion from the standard regulated offers regime for offers of 'specified financial products' (shares and other products that may be prescribed) under an employee share purchase scheme. 'Shares' include options to acquire shares by way of issue and offers of rights attaching to legal or equitable interests in shares. Offers must be made to 'eligible persons' (employees, directors and those providing personal service other than as an employee). There is also a related exclusion for an offer to an entity that is under the control of an employee in clause 9 of the schedule.

The Schedule 1 exclusion will apply if the offer is part of the employee's remuneration or made in connection with the employment and the primary purpose is not to raise funds. In addition, the company must not, in any 12 month period, issue shares in reliance on the exclusion that exceed 10 per cent of the total shares of that class issued at the commencement of that period. The FMC Regulations require a warning statement and other information to be provided before an application is made.

Queries have been raised about:

- whether the exclusion extends to offers under a scheme where shares are issued to a trust, closely-held company or relative
- whether the exclusion covers financial products such as 'saving schemes securities' or 'phantom shares' (entitlement to be paid an amount of money based on the performance of the employer's share price, plus any dividend returns), and
- whether the 10 per cent limit allows an offer to be made where the scheme involves a trust and the employee receives an equitable interest in the shares. (There is a concern that the 10 per cent limit will be applied against a starting point when no equitable interests are in existence.)

Solution proposed or being explored

We believe there is unlikely to be a need for continued exemption support under the FMC Act. This is on the basis of our initial views that:

- schemes where shares are offered to employees, but issued to another person (such as a trust, relative or closely-controlled company), fall within the exclusion because the offer is still made to the employee (who is an 'eligible person') and this is the person who is making the decision to invest
- a technical consequence of the above approach that may need to be addressed is the 10 per cent limit calculated under clause 8(1)(c) may not apply to products issued to the trust, relative etc.
- offers to closely-held companies fall within the exclusion for entities under control of the employee under clause 9 of Schedule 1
- offers of saving scheme securities by registered banks fall within the Schedule 1 exclusion for registered banks
- if an employee bonus scheme offering 'phantom shares' amounts to the offer of derivatives, then in most cases, the Schedule 1 exclusion for derivatives offered by a person who is not a derivatives issuer will provide relief from standard derivatives compliance requirements
- relief is not required in relation to the 10per cent limit for schemes where shares are issued to trustees and the employee obtains an equitable interest in the shares. The 'specified financial products' offered to the employee for the purposes of the 10per cent limit are shares rather than the equitable interests.

If feedback indicates further support is needed to the regulatory regime then we will consider and develop further proposals for consultation.

Questions:

J1: Do you have any comments on our view that the Schedule 1 exclusion applies to offers made to eligible persons under the scheme, even if the shares are then issued to a person who is not an eligible person ie, a trust, closely held company, relative? Do you see any risks or difficulties with this interpretation?

J2: Do you see any substantive difficulty with the 10 per cent calculation? If so please explain. Do you see any technical difficulty with the 10 per cent calculation? If so please explain.

J3: Are savings scheme securities still offered in conjunction with employee share purchase schemes? If so, is exemption support needed to allow these to be offered by overseas banks under employee schemes?

J4: Are there any other issues in relation to the application of the Schedule 1 exclusion or the associated warning and other disclosure requirements in the FMC Regulations that may require exemption support?

J5: Is there sufficient clarity around the treatment of phantom shares?

J6: Do you have any other comments in relation to exemptions for employee share purchase schemes?

Appendix 1: Other matters being considered for the FMA's legislative tool support

We are aware of a number of matters where the FMA's legislative instrument tools may be useful to support effective operation of the FMC Act regime. The following table summarises the issues and the FMA's proposed solutions. Targeted consultation proposals are currently under development. Let us know if you want to be included in the targeted consultation for any of these matters.

Exemptions to address legacy matters:

1. Inactive legacy issues – financial reporting and governance relief
2. Independent custody for inactive legacy schemes

Exemptions to address transitional matters:

3. Derivatives issuers – arrangements for investor money or property

Exemptions to address technical issues:

4. Timing of requirement for 'wind-up' financial statements
5. Unsolicited offers to acquire shares for charitable gifting
6. AFAs providing DIMS
7. Flexibility in timeframe for custodian audit
8. Flexibility on timing of lodgement of financial statements for schemes and manager

Exemptions consistent with existing exemption policy:

9. Scrip offers in takeovers
10. Commercial bill dealers
11. Financial reporting relief for dual listed issuers

Matters establishing new policy, where initial policy proposals have been developed:

12. Recognition of overseas financial reporting and audit requirements for banks and insurers
13. Recognition of financial reporting and audit requirements for derivative issuers
14. Financial reporting and audit requirements for small DIMS licensees
15. Wholesale investor warning and investor acknowledgement
16. Fund update and risk indicator for managed funds

Matters the FMA is considering whether to support by use of its legislative tools

Name		Summary of issue	Solution proposed or being explored
Exemptions to address legacy matters			
1.	Inactive legacy issues – financial reporting and governance relief	Where securities were issued under a Securities Act offer the issuer will become an FMC Reporting Entity, and the securities will transition to being financial products under the FMC Act regime, at the end of the transition period. Unless ongoing relief is granted, this will mean the governance and financial reporting requirements will apply even where the offer was made in reliance on existing exemptions recognising overseas regimes and providing relief from the NZ requirements. This includes exemptions relating to a range of recognised foreign jurisdiction regimes, including Australian regimes that predate the 2008 mutual recognition regulations.	We propose ongoing relief for these legacy situations from governance and financial reporting obligations.
2.	Independent custody for inactive legacy schemes	Property for a registered managed investment scheme (MIS) must be held by a licensed supervisor or an independent custodian. Some existing pooled investment vehicles (particularly real property proportionate ownership schemes) were relieved from the requirement to have a supervisor. In addition, scheme property was held by a custodian associated with the scheme manager. At the end of the transitional period, unless further relief is granted, the standard governance rules will apply. In these legacy cases we recognise that the investment offer was made, and priced, without taking into account the protections, or expense, of independent supervision and/or custody.	We propose to grant relief where the MIS has alternate, but appropriate, governance structures in place and the scheme is closed to new investors. To give effect to this it may be appropriate to grant relief on a class basis, or to determine a general policy against which applications for individual relief are considered. The key reason for establishing a general policy against which to consider relief is where the merits of a range of alternative supervision arrangements particular to a scheme require consideration and uniformly appropriate criteria cannot be determined.
Exemptions to address transitional matters			
3.	Derivatives	We understand that MBIE is considering amendments to certain	We propose a temporary exemption to support derivatives

Name		Summary of issue	Solution proposed or being explored
	issuers – arrangements for investor money or property	investor money and property requirements for derivatives issuers. MBIE has indicated, given the likely timeframe for regulatory change, some temporary exemption support may be required.	issuers transitioning to the FMC Act regime. The proposed exemption will extend the timeframe for these issuers to comply with new client money and property holding requirements.
Exemptions to address technical issues			
4.	Timing of requirement for 'wind-up' financial statements	The FMC Act regime requires audited financial statements for schemes both immediately prior to distribution of the assets on its winding up and also for the year ended in which the assets were distributed (essentially nil accounts). The value of the audit post distribution is questionable when other procedures could be performed to ensure funds have been appropriately distributed.	We propose relief from preparing financial statements after the funds have been distributed where the supervisor is satisfied all funds have been appropriately distributed. This will reduce regulatory costs where there is no commensurate benefit to investors.
5.	Unsolicited offers to acquire shares for charitable gifting	Some of the information and protections, prescribed by the disclosure requirements, for unsolicited offers of shares are redundant where the offer is to take the shares for no consideration to facilitate charitable gifting, rather than to buy the shares. The purpose of the unsolicited offer regulations is to protect against predatory offers at less than market prices and ensure relevant information is given about the offer, market price of the shares, expenses payable and other options for sale of shares. Where no consideration is offered by a charitable organisation, the risk of investors being misled is reduced.	We propose relief from redundant information requirements where the offer is to take the shares for no consideration for charitable purposes.
6.	AFAs providing DIMS	Schedule 1 provides a statutory exclusion from the standard disclosure regime for offers of financial products made through a DIMS licensee. The same principles apply in relation to offers made through an AFA who is authorised to provide DIMS, but there is no statutory relief in this case.	We have received market feedback that some issuers may not be prepared to extend offers to AFAs providing DIMS in circumstances where the statutory exclusion does not cover offers through an AFA who is authorised to provide DIMS. In view of this feedback we are considering whether exemption relief may be required.

Name		Summary of issue	Solution proposed or being explored
			If an exemption was to be given this would be for clarification and to promote confident participation and fairness in the financial markets. The FMA understands that the statutory exclusion for offers made through DIMS licensees was included in the FMC Act for the avoidance of doubt. It makes it clear that issuers making an offer to a DIMS provider are not required to provide a PDS to that provider's clients. However disclosure to the clients would not be required in any case. The offer is made to the DIMS provider and this is the person who makes the investment decision.
7.	Flexibility in timeframe for custodian audit	Scheme custodians are required to get an audit (more accurately described as 'an assurance engagement') done within four months of the close of the custodian's accounting period in respect of both the custodian's systems and processes and scheme property. Some custodians already have more frequent reporting aligned with client reporting periods or have other similar, but differently scheduled, reporting obligations.	We are working with MBIE on whether regulatory amendment can address this technical issue. In light of the timeframe within which regulatory change can be achieved, we envisage exemption support may be appropriate. We propose a class exemption giving flexibility around the time of the audit but still requiring an annual audit. This would reduce compliance costs without affecting the frequency or scope of the audit.
8.	Flexibility on timing of lodgement of financial statements for schemes and manager	The FMC Act requires managers to register scheme financial statements within four months of its balance date. Where a manager's balance date is not the same as its various schemes' balance dates this makes compliance difficult or impossible. The transitional provisions also do not work well where a scheme and a scheme manager have different financial year ends.	Where the scheme and manager have a different balance date we propose relief to require the financial statements of the scheme to be registered within four months of the balance date of the scheme rather than the manager. A solution to address this technical matter is already under development. Further targeted consultation is not required for us to finalise this solution.
Exemptions consistent with existing exemption policy			
9.	Scrip offers in	Historically the FMA has granted relief for equity securities offered in	We are not aware that the Securities Act exemption for

Name		Summary of issue	Solution proposed or being explored
	takeovers	a 'scrip bid' (a takeover bid with equity securities rather than cash offered as consideration). This relief was discontinued in relation to quoted equity securities following the enactment of the new statutory 'same class exemption' for quoted securities. The reason for this is that the new statutory exemption provided fuller, and more effective, relief. The relief retained for unquoted equity securities exempts the issuer from compliance with some disclosure requirements where the information is already in the takeovers notice.	unquoted equity securities is relied on. Further, the PDS regime requirements are more efficient than current offer document requirements. In these circumstances it is unclear if any further similar exemption would materially assist the market. We propose to test this by consultation. The general policy we propose is for relief where it reduces duplication of information to which investors already have readily available access (eg, historical financial information of the target company where the offerees are shareholders of the target company).
10	Commercial bill dealers	Historically relief has been available for offers of commercial bill debt securities endorsed or accepted by a bank from standard supervision and prospectus requirements. An investment statement is still required. The relief recognises that a bank is prudentially regulated. The original issuer of the bill also has a complete exemption from the offer document and trustee requirements given the greater relevance of the bank's liability in respect of the commercial bill. In particular the relief applies to: - promissory notes endorsed (without negating or limiting liability) but not made by a registered bank - bills of exchange drawn, accepted, or endorsed (without negating or limiting liability) by a registered bank - negotiable or transferable debt securities, not being promissory notes or bills of exchange, in respect of which a registered bank is directly or indirectly liable otherwise than as the original allotter. The Schedule 1 exclusion for banks' debt securities will apply to any such offers by a bank made under the FMC Act. This means a limited	The FMA does not consider that any relief is required in respect of offers of these commercial bills by banks as the limited disclosure statement is appropriate and equivalent to the existing requirement for banks to have an investment statement. The FMA invites feedback on whether relief is still required for the original issuer of the commercial bill in line with existing exemption policy.

Name		Summary of issue	Solution proposed or being explored
		disclosure document will required in respect of the offer.	
11	Financial reporting relief for dual listed issuers	Where an issuer is listed on a foreign exchange, and also has a secondary listing on NZX, that issuer would be required to prepare NZ GAAP financial statements, and have those audited by a NZ licensed auditor, in addition to complying with their home jurisdiction financial reporting and audit requirements. Historically the FMA has granted an exemption from the financial reporting and audit requirements on the basis of compliance with home jurisdiction requirements for these secondary listed entities.	We are finalising a new FMC Act exemption, replicating the existing Financial Reporting Act exemption (and so continuing the relief on the basis of compliance with the foreign financial reporting and audit requirements). Most relief under the FMC Act regime for foreign entities will be considered afresh (see item 'A' in part 1 of this consultation paper). There is a significant transitional period for foreign entities currently relying on Securities Act exemptions to move to operation under the FMC Act regime – so the September 2015 objective for having new FMC Act solutions in effect will generally be sufficient. However dual listed entities, as a consequence of their listed status, are already FMC Reporting entities. Some will need to file the first financials under the FMC Act regime in August 2015, and these need to be lodged with NZX in June 2015. The FMC Act proposed exemption replicates existing policy and was consulted on in 2014. Further consultation is not required for us to now finalise this solution.
Matters establishing new policy, where initial policy proposals have been developed			
12	Recognition of overseas financial reporting and audit requirements for banks and insurers	All registered banks and licensed insurers are FMC reporting entities and must lodge NZ GAAP financial statements that have been audited by a NZ licensed auditor. Many overseas banks and insurers operate in NZ via a branch rather than an incorporated subsidiary. As a result the overseas entity as a whole is an FMC reporting entity even though its NZ operations may form a small portion of its business. When considering banking and insurance licence applications, the Reserve Bank of New Zealand (RBNZ) considers the quality of	We propose a class exemption from the preparation and audit requirements of the FMC Act for overseas banks and insurers on the basis that the RBNZ has already assessed their financial reporting and audit requirements to be adequate for the purposes of their respective legislation. We propose to rely on the RBNZ assessment and thereby reduce unnecessary compliance costs and minimise duplication of regulatory resources. Different factors may be relevant for

Name		Summary of issue	Solution proposed or being explored
		financial reporting and audit for the purposes of the Reserve Bank and Insurance (Prudential Supervision) Acts. The RBNZ licenses entities where they consider that, by meeting home jurisdiction requirements for the preparation and audit of financial statements, requiring them to also prepare financials under NZ GAAP and be audited by a NZ licensed auditor would be excessively burdensome.	the assessment of adequacy of the regimes for banks and insurers.
13	Recognition of financial reporting and audit requirements for derivative issuers	Derivative issuers are FMC reporting entities. Some derivative issuers who are licensed by ASIC, the UK Financial Services Commission or other regulators operate in a branch structure in NZ. As with banks and insurers this makes the overseas entity a FMC reporting entity, even though its NZ operations may form a small part of their business. Similarly, we consider it unnecessary to impose additional regulatory costs on these derivative issuers where they are producing financial reporting and having this audited under an equivalent regulatory regime.	We propose a class exemption for derivative issuers in jurisdictions we will recognise on the basis of the following criteria: - GAAP requirements provide high quality financial information - audit oversight regime is at least equivalent to the NZ regime - the securities regulator is a member of the IOSCO MMOU (which facilitates regulatory co-operation).
14	Financial reporting and audit requirements for some DIMS licensees	The FMC Act regime requires DIMS providers to prepare, have audited and lodge financial statements. The costs incurred by this, particularly for small providers, may outweigh the benefits received by investors. This is because DIMS licensees do not hold client assets and the purpose of minimum financial resources requirements is only to maintain the running of the business. Client assets are held by an independent custodian who is subject to an assurance engagement. For a small business, if the DIMS provider went out of business it would be relatively easy to arrange for the services to be provided to clients by another DIMS provider.	To reduce regulatory costs, where there may not be a commensurate benefit to investors, we propose relief for some DIMS providers from the FMC Act requirements relating to preparation, lodgement and audit of financial statements. We welcome comments on the criteria and appropriate thresholds we might apply.
15	Wholesale investor warning and investor	Schedule 1 provides a statutory exclusion from the standard regulated offers regime for offers to wholesale investors if the minimum investment is at least $750,000. To rely on this exclusion,	We query the need for additional relief. There are a number of other bright-line exclusions provided in Schedule 1 for offers to wholesale investors. The FMC Act regime provides an

Name		Summary of issue	Solution proposed or being explored
	acknowledgement	offer documents must have a warning and an investor acknowledgement is required. Concerns have been raised that these requirements might adversely affect NZ's debt capital markets as a result of compliance costs and the absence of a straightforward test for overseas issuers to identify NZ wholesale investors. It has been suggested that in some circumstances these requirements may mean that the statutory exclusion is not relied upon and offers by overseas issuers are not extended to NZ.	opportunity for businesses to review how they can most effectively operate under the regime. Certificates such as investor acknowledgements are also common features in a number of jurisdictions and often form part of a broker's process in receiving new investors. In addition to testing the need for additional relief, we are interested in exploring if there is an opportunity to provide relief from the investor acknowledgement, where we are confident, due to the circumstances of the transaction, that the only investors are institutional investors.
16	Fund update and risk indicator for managed funds	The FMC Act requires a manager of a managed fund to provide periodic fund updates. The Regulations allow the format of the fund update to be specified in a template in the form of a framework or methodology. The Regulations require that a risk indicator is included in the PDS, on the register and in fund updates for a managed fund. The Regulations provide that the FMA may issue frameworks or methodologies for risk indicators. Consultation was undertaken on a proposed template and guidance in late 2014, and has indicated support for a framework or methodology and guidance to assist the industry.	We propose to publish a framework or methodology as a fund update template to set out the information required by the Regulations but with additional comments and further detail on how the information should be presented to ensure clarity and context for investors. We also propose to issue guidance on how to calculate the risk indicator for a fund. Although the Regulations provide that the FMA may issue frameworks or methodologies for risk indicators, we consider that a guidance note is more appropriate. The policy underpinning the NZ requirements for risk indicators is based on European standards and methodologies for calculating risk (European Guidelines). Rather than duplicating the European standards, the proposed guidance will focus on how managers may use the European Guidelines to assist them in meeting NZ requirements. We have already consulted and will only consult again if our analysis of the submissions and further thinking raises new questions for stakeholder comment.

Appendix 2: Matters to be addressed by regulatory change

The FMA is continuing to work with MBIE on the development of regulations in respect of a number of issues to ensure an effective regime. The following information table summarises these issues and the legislative framework being explored.

Issues being addressed by regulatory change – further need for any FMA exemption currently unknown

	Name	Summary of issue	Understanding of legislative regime
1.	Banks' regulatory capital	There is existing Securities Act relief for banks offering regulatory capital (in the form of convertible securities) from the requirement to have a prospectus and investment statement for the shares that will be issued on conversion. Conditions require that the investment statement for the convertible securities has information about the shares and tailored warning statements, and that certain ongoing requirements on listing and continuous disclosure are met. Transitional provisions under the FMC regime allow banks to offer regulatory capital under the Securities Act during the transition period even where conversion (and allotment of the underlying security) may occur beyond the end of the transition period.	We anticipate that the issues addressed by the current Securities Act notice are unlikely to require continued exemption support under the FMC regime. The FMC Act provides that an offer of a convertible is an offer both of the convertible and of the financial product into which it converts. Regulations are to be made prescribing specific disclosure requirements for offers of convertibles. It is anticipated that these regulations will be in place in 2015. We will assess whether any relief is required once the regulations have been developed. In particular we will consider whether the regulations require appropriate warnings and information for investors in light of the particular risks with these products.
2.	Rights, options and convertible securities	There is existing Securities Act relief from certain disclosures (including in some cases the need for a prospectus and investment statement) that would otherwise be required for the issue of securities on conversion of a convertible security or the exercise of an option. Conditions require disclosure of information about the new or underlying securities in the offer document for the option or convertible security and compliance with ongoing disclosure requirements. There is also existing Securities Act relief from the requirement to provide an investment statement to a subscriber prior to allotment where an offer of securities under a rights issue has been renounced in favour of that	We anticipate that most issues addressed by the current Securities Act relief are unlikely to require FMA exemption support under the FMC regime. Convertible securities: The FMC Act provides that an offer of a convertible is an offer both of the convertible and of the financial product into which it converts. Regulations are proposed to prescribe specific disclosure requirements for offers of convertibles with those regulations to be in place in 2015. We will assess whether any relief is required once the disclosure requirements have been developed. Options: The FMC Act provides that an offer of an option to acquire a financial product is an offer both of the option and of the underlying

	Name	Summary of issue	Understanding of legislative regime
		subscriber.	financial product. A financial product includes an option to acquire, by way of issue, a financial product of that kind. The FMC Regulations provide that a PDS may relate to offer of more than one financial product providing the financial products are the same. This means one PDS can relate both to an offer of an option and an offer of the underlying financial product. In view of this the FMA does not expect that any further exemption support is required. Rights offers: We understand that rights offers are generally made by listed issuers. This means Schedule 1 statutory relief from disclosure will generally be available under the 'same class' exclusion. In these circumstances we do not consider that continued exemption support will be required.
3.	Multiple employer superannuation schemes	Historically relief has been provided for trustees and employer participants in multiple employer superannuation schemes that take the form of master trusts. The relief provides that offer documents only need to include information relating to a particular employer participant and its directors (eg fees, directors details), provided a supplement contains information relating to the particular participant employer relevant to the prospective investor. The FMC Act regime requires disclosure documents for each scheme so, unless the regulations are amended or relief provided, each participant scheme must disclose information that is likely to be irrelevant (and also therefore confusing) for its investors.	MBIE is considering amending the regulations to allow easier use by multi-employer superannuation trusts. It is possible notwithstanding regulatory change, or in light of the timeframe within which regulatory change can be achieved, exemptive support will also be appropriate. If so, we propose an exemption to avoid provision of irrelevant information to investors (relating to offers not open to them).
4.	Schemes with multiple funds and investment options	Some schemes offer many funds and investment options. These include schemes that allow for investors to choose from a large range of investments, and schemes that have investment options that regularly change investors' asset allocations based on age.	MBIE is considering amending the regulations to provide for an alternative version of the managed fund PDS which incorporates, or allows use of, fund updates. This may address some of the difficulties for these schemes.

	Name	Summary of issue	Understanding of legislative regime
		We are aware of participant concerns that the PDS 12 page limit in the regulations is not viable for these schemes.	However, it is possible further exemption support will be necessary and appropriate. We propose to consult on the parameters that may be suitable for exemption. It is possible that, if any exemption is appropriate, it would need to be assessed on a case by case basis. The reason being that quite different policy analysis and conditions may be suitable for a scheme such as one that enables selection from many investments (which may be shares of listed companies for which information is publicly available) and a scheme such as one that re-arranges the asset class weightings at defined intervals for an investor based on their age.

Feedback: Financial Markets Conduct Act class exemption development

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'FMC Act class exemption development: [Your entity name]' in the subject line.

- Please let us know which Appendix 1 matters you seek further consultation on, by **20 March 2015**.
- Please provide any substantive comments on the 'matters we want your preliminary comments on,' and note which of these matters you seek further consultation on, by **2 April 2015.**

Date: Number of pages:
Name of submitter:
Company or entity:
Organisation type:
Contact name (if different):
Contact email and Phone:

List matters you want to be further consulted on

Substantive comments	
Matter # Question # (if applicable)	**Comment**

Any other comments	
Matter # Question # (if applicable)	**Comment**

Other matters you consider require support by the FMA's legislative tools.
Please explain any issue, not already addressed in this paper, you think requires support by the FMA's legislative tools. Explain your proposed solution and why you consider it appropriate.

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.