

New governance and accountability framework for restricted schemes and their trustees

The Financial Markets Conduct (FMC) Act 2013 changes the governance and accountability framework for financial products. Find out what these changes mean for restricted schemes and their trustees...

What's changing?

The FMC Act introduces a new accountability framework for managed investment schemes (MIS) – including restricted schemes.

The new requirements include a statutory duty of care on managers of MIS. Managers of MIS must also act in the best interests of investors. The manager of a MIS that is a restricted scheme is its trustees collectively. Trustees of restricted schemes, and in particular licensed independent trustees, need to have a clear understanding of their roles and understand they will be held to account for their actions.

Why are these changes important?

Accountability is vital to developing and maintaining fair, efficient and transparent financial markets and to growing market confidence. This is key to building investor trust which is central to the objectives of the FMC Act.

Key accountabilities and responsibilities under the FMC Act

As manager, the trustees of a restricted scheme offer and issue the MIS product, administer the scheme and manage scheme property and investments. In doing so they must:

- Comply with fair dealing requirements.
- Act in the best interests of the scheme members and treat them equitably.
- Meet the 'care, diligence and skill' tests:
 - Licensed independent trustees of restricted schemes are classified as 'professional managers' so must...exercise the care, diligence and skill that a prudent person engaged in that profession would exercise in the same circumstances,
 - Trustees of restricted schemes who are not classified as professional managers must...exercise the care, diligence and skill that a prudent person of business would exercise in the same circumstances.
- Not use information acquired as manager to gain improper advantage or cause detriment to scheme participants.
- Comply with all governing documents, issuer obligations (including in relation to the Statement of Investment Policy and Objectives (SIPO) for the scheme), statutory processes and any rules around prohibited activities.
- Monitor contracted-out functions. The trustees as the manager remain liable and must monitor the contractor's performance.
- Provide appropriate custody arrangements. Scheme property must be held on trust in accordance with the Act.
- Comply with the general prohibition on managers entering into transactions giving related party benefits

- Manage the 5% ratio restrictions on the acquisition of in-house assets.
- Ensure statutory processes relevant to trust deed amendments/replacement are complied with.
- Ensure a SIPO is in place, which reflects any trust deed limitations and requirements of the FMC Act.
- Report to FMA (reporting requirements will be confirmed in regulations due out in mid-2014).

In addition, the licensed independent trustee of the restricted scheme must disclose and report serious problems to FMA.

When do the changes take effect?

- The provisions in Part 4 of the FMC Act, which sets out the roles and duties of MIS managers, are effective from 1 December 2014.
- There is a two year transition period from 1 December 2014 up to 1 December 2016.
- If you are an existing continuous issuer, you can select an Effective Date to come into the new regime any time in the transition period.

See our factsheet on [‘Preparing for the FMC Act – Transition for Managed Investment Schemes’](#) for more details.

Where can I find more information?

You can find more details about these changes on our website. Refer to the [‘Future of Financial Markets’](#) section, and [‘When will you need to comply’](#). You can also subscribe to receive [FMA Updates](#) for the latest news.

Please note: This information sheet provides background information only. It should not be viewed as formal FMA guidance and is not legal advice. You should seek your own professional legal advice about how the FMC Act affects you.

