

# Determining whether you are acquiring a business or assets

Under the Financial Markets Conduct Regulations 2014 (the Regulations), issuers making regulated offers of debt and equity securities are required to provide investors with a Product Disclosure Statement (PDS) that contains prescribed financial information for recent or proposed business acquisitions. This guidance sets out our view of what constitutes a 'business' for these purposes, as opposed to an asset. It also sets out additional information issuers should consider disclosing for asset acquisitions.

## Requirements<sup>1</sup>

If you intend to issue debt or equity securities, you must disclose prescribed financial information if:

- a. either or both of the following apply:
  - i. a member of the issuing group acquired a business, or became your subsidiary, at any time in a relevant period
  - ii. the PDS contains a statement to the effect that a member of the issuing group intends to acquire a business or to acquire equity securities that will result in a body corporate becoming your subsidiary and
- b. the information required [...] in relation to the business, subsidiary, or body corporate is material information.

In the PDS, you must include the following prescribed financial information for an offer of debt or equity securities:

- a. in one or more tables, selected financial information for the business, subsidiary or body corporate (e.g. revenues, net profit after tax, assets, liabilities and net cash flows from operating activities); and/or
- b. pro-forma financial information as if the business, subsidiary or body corporate was part of the issuing group.

If you are issuing equity securities, you must also disclose financial statements for the business, subsidiary or body corporate, together with any auditor's report on those financial statements, on the Disclose Register.

## When acquiring a business

You should use the definition and guidance in generally accepted accounting practice to help you determine whether you have acquired a 'business' for the purposes of disclosing the prescribed financial information. If you are a for-profit issuer, you should refer to [NZ IFRS 3: Business Combinations](#) (or any replacement standard)<sup>2</sup>.

1. See Schedule 2 (Debt Securities) [Clause 37\(4\)-\(5\)](#); Schedule 3 (Equity Securities) [Clause 35\(2\)-\(3\)](#); [Clause 53\(1\)\(b\)](#)

2. GAAP for for-profit entities is the New Zealand equivalent to International Financial Reporting Standards. Public benefit entities should refer to the guidance under PBE IFRS 3: Business Combinations.

## When acquiring assets

If you have acquired or intend to acquire assets, and financial information for the assets is material, we expect you to consider what additional information should be disclosed to help investors understand the value of the assets.

In particular, we expect you to refer to what is set out in Schedule 5: Managed Investment Products in Other Schemes on the acquisitions of key property when considering what additional information you should disclose. For example, where relevant, your PDS should include the following information:

- a description of each asset and a brief description of how it will be managed and by whom
- a recent valuation of each asset, including a statement as to whether or not an independent valuation was obtained from registered valuers (and if not obtained, a statement as to why not)
- key sources of borrowing used, or to be used, to acquire each asset; the gearing and/or interest-cover ratio, if relevant, as well as a statement as to whether a security interest exists
- a summary of the independent valuation reports, including their basis, the methodologies used and the material or adverse findings
- a summary of the due diligence done for the acquisition, including any material or adverse findings.

The above are non-exhaustive examples.

You should disclose additional information in the PDS (for example after section 4 and/or section 9 in a PDS for debt securities, or after section 2 and/or section 9 in a PDS for equity securities), provided it does not detract from the prominence of the required information, and still adheres to PDS length restrictions.

You should also consider whether any additional information should be included in the register entry. We expect you to consider the requirements in Schedule 5 for this purpose as well. For example, if the PDS refers to an independent valuation report, you should include a copy of that report in the register entry.

## Contacting the FMA

If you have questions about how this guidance applies to your PDS, we encourage you to engage with us as soon as possible, as this guidance is an important reference point for any review we undertake.

We also offer a pre-registration review service to help issuers and their directors feel more confident that their offer documents are likely to satisfy our expectations. More details about this service can be found [on our website](#).

### Are you making a property investment by issuing shares?

If so, you should read the Financial Markets Conduct (Shares in Investment Companies) Designation Notice 2017. This notice designates certain shares as managed investment products rather than equity securities. This is because the shares that the designation applies to are, in economic substance, managed investment products. The company issuing the shares is designated as a managed investment scheme. If the designation applies, it is appropriate that the requirements of the MIS regime apply, rather than the requirements of the equity regime.

#### AUCKLAND

Level 5, Ernst & Young Building  
2 Takutai Square, Britomart  
PO Box 106 672, Auckland 1143

Phone: +64 9 300 0400

#### WELLINGTON

Level 2, 1 Grey Street  
PO Box 1179, Wellington 6140

Phone: +64 4 472 9830

