

New governance and accountability framework for MIS managers and their licensed supervisors

The Financial Markets Conduct (FMC) Act 2013 changes the governance and accountability framework for financial products. Find out what these changes mean for managed investment scheme (MIS) managers and their licensed supervisors...

What's changing?

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

The new requirements include a statutory duty of care on both managers and supervisors of managed investment schemes. Both must also act in the best interests of investors. Managers and supervisors need to have a clear understanding of their respective 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.

When do the changes take effect?

- Provisions in Part 4 of the FMC Act, which sets out the roles and duties of MIS managers and supervisors, 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.

Key accountabilities and responsibilities under the FMC Act

Managers

The manager of a MIS offers and issues the MIS products, administers the scheme and manages scheme property and investments. In doing so a manager must:

- Comply with fair dealing requirements.
- Act in the best interests of the scheme participants and treat them equitably.
- Ensure no improper use of information acquired as manager to gain improper advantage or cause detriment.
- As a professional manager, exercise the care, diligence and skill that a prudent person engaged in that profession would exercise in the same circumstances (or in the case of a trustee of a restricted scheme who is not a professional manager, exercise the care, diligence and skill that a prudent person of business would exercise in the same circumstances).



- Comply with all governing documents, issuer obligations (including in relation to the SIPO for the scheme), statutory processes and any rules around prohibited activities.
- Monitor contracted out functions. The manager remains liable and must monitor the contractor's performance.
- Comply with the general prohibition on managers entering into transactions giving related party benefits.
- Report to FMA (reporting requirements will be confirmed in regulations due out in mid-2014).

Supervisors must:

- Comply with fair dealing requirements.
- Act honestly and in the best interests of scheme participants.
- Meet the supervisor's professional standard of care: 'exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances'.
- Not delegate functions (other than custodianship of scheme property).
- Hold scheme property or, if custody is contracted out, monitor activities of external custodians.
- Supervise the MIS manager's performance of its functions and its issuer obligations.
- Supervise the financial position of the MIS manager and the scheme in respect of the MIS product to confirm it is adequate.
- Look at how the manager controls and supervises services provided by related entities included as authorised bodies on the manager's licence.
- Comply with the statutory processes relevant to trust deed amendments/replacement.

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.