FMA legislative notices supporting the FMC Act regime

3 October 2016

To support businesses implementing the Financial Markets Conduct Act 2013 (FMC Act), the FMA has been consulting with the sector on various legislative tools such as exemptions, frameworks, methodologies, public accountability notices, and designations (the FMA's legislative tools).

We have also been working with the Ministry of Business, Innovation, and Employment (MBIE) on the amendments to the Financial Markets Conduct Regulations 2014 (FMC Regulations). These tools and regulatory amendments are designed to help businesses and individuals comply with the requirements of the FMC Act regime.

This update consolidates information up to the end of September 2016 to give a picture of our progress and plans. It provides a summary of:

- legislative notices we have already issued to support the FMC Act regime
- decisions made to implement legislative notices where we are still finalising the drafting of those notices
- the few remaining matters for which we are still exploring legislative tool solutions.

Generally, businesses and professionals who may be affected by these matters are able to continue operating under the Securities Act regime until 30 November 2016. By signalling the solutions that are to be provided, affected businesses and professional can understand the obligations that will apply to them from 1 December 2016. Except where explained in the table, our aim is to have these signalled solutions in place before the transition deadline.

In addition to our legislative notices, some matters may be addressed by changes to the regulations. MBIE is working on a small number of legislative changes. For an update, or if you have any matters you'd like to raise, you can contact MBIE at investment@MBIE.govt.nz.

Table 1: Exemptions granted

This table summarises the exemptions already in place.

Table 2: Matters where support from FMA's legislative tools is not necessary or desirable

This table summarises matters where we do not think it necessary or desirable to grant a class exemption, or use another class legislative tool provided under the FMC Act. Some of these matters have been addressed by amendments to the FMC Regulations.

Table 3: Policy decision made, legislative notice to be put into effect

This table summarises matters where we have decided support from a legislative notice is necessary or desirable. We are developing exemption notices to address these matters.

Table 4: Policy decision still to be made

This table summarises matters that have been brought to our attention, and where we are continuing to explore whether support from a legislative notice is necessary or desirable. In the table, we summarise our current thoughts on the policy direction being considered.

Table 1: Exemptions granted

Please refer to current exemptions at any time for an updated list of exemption notices and their details.

Exemption / Dates in effect	Summary
Financial Markets Conduct (Derivatives Issuers—Link to Financial Statements) Exemption Notice 2015 1/06/15- 30/11/15	When making offers, derivative issuers are usually required to include audited NZ GAAP financial statements that comply with the FMC Act. However, some issuers may not have previously prepared that information or are not yet required to register that information. This is a short-term transitional exemption for licensed derivative issuers with a balance date within the period 1 February 2015 to the close of 31 May 2015. It allows derivative issuers to use financial statements they were required to prepare (if any) before being licensed for their initial FMC regulated offers. Once an issuer has registered FMC Act compliant financial statements, those will replace any previous reporting. This transitional exemption has now expired. No further exemptive relief is proposed on this issue.
Financial Markets Conduct (Derivatives Issuers—Responsibilities in Event of Shortfall) Exemption Notice 2015 1/06/15 - 30/11/15	Regulatory requirements for cash-based reconciliation are not wholly suitable for some types of derivatives-related activity. This exemption provided all derivatives issuers with a temporary alternative method of reconciliation and compliance with the FMC Regulations until 1 December 2015. This allowed time for the Government to determine whether amendments were required to provide for alternative methods of reconciliation for derivatives issuers. See the Financial Markets Conduct Amendment Regulations 2015 which provide clarification about reconciliation of derivatives investor money held in trust and a transition period for compliance. This transitional exemption has now expired. No further exemptive relief is proposed on this issue.
Financial Markets Conduct (DIMS Providers—Reporting on Percentage-based Charges) Exemption Notice 2015 2/10/15 – 31/1/17	This is a temporary 12-month exemption from the requirement for DIMS licensees to report to investors on percentage-based charges for associated funds. The exemption provides time for DIMS licensees and their custodians to develop computer systems to comply with their reporting obligations under the FMC Regulations. The exemptions were granted on the condition that the DIMS provider reports to investors on a specified alternative basis. This exemption was effective for the quarterly reporting period through to 30 September 2016, and expires on 31 January 2017. No extension of the exemptive relief is proposed.
Financial Markets Conduct (Disclosure of Relevant Interests by Directors and Senior Managers) Exemption Notice	This exemption is carried over from the Securities Markets Act 1988 regime, with modifications that take into account FMC Act concepts. It exempts a director or a senior manager of a listed issuer from disclosing relevant interests in quoted financial products if: • the financial products are the managed investment products of a passive fund, or

Exemption / Dates in effect	Summary
2014 1/12/14 - 30/11/19	• financial products of the listed issuer are approved for trading on a securities exchange in Australia or the United Kingdom. It provides relief for relevant directors who would otherwise be subject to disclosure obligations that would raise significant practical compliance issues. Compliance with the disclosure regime in these circumstances is unlikely to provide information that furthers the market information or anti-insider trading purposes of the disclosure regime.
Financial Markets Conduct (Dual-listed FMC Reporting Entities) Exemption Notice 2015 29/05/15 - 28/05/20	This exemption applies to overseas-incorporated entities with a primary listing in specified jurisdictions and a secondary listing in New Zealand. It allows those entities to use their overseas financial reporting to comply with the main financial reporting requirements of the FMC Act. This exemption also allows overseas entities to use a specified overseas GAAP and their overseas auditor to meet their financial reporting obligations for their New Zealand business (if any). The specified jurisdictions are Australia, Ontario (Canada), Singapore, the UK, and the USA.
Financial Markets Conduct (Financial Reporting: Balance Dates of Managers and Registered Schemes) Exemption Notice 2015 30/7/15 – 29/7/18	The FMC Act requires managers to register scheme financial statements within four months of their balance date. Where a manager's balance date is not the same as its various schemes' balance dates, this makes compliance difficult or impossible. This exemption allows managers to register scheme financial statements within four months of the balance date of the scheme.
Financial Markets Conduct (Financial Reporting—DIMS Licensees) Exemption Notice 2015 5/06/15 - 4/06/20	The FMC Act regime requires discretionary investment management services (DIMS) providers to prepare, have audited and lodge financial statements. The value of this to investors is questionable, given the costs for a small DIMS provider not also providing other financial services. This is because DIMS licensees do not hold client assets and the purpose of minimum financial resources requirements is for continuing the business. Additionally, client assets are held by an independent custodian who is subject to an assurance engagement. This exemption relieves small- and medium-sized providers of DIMS from certain financial reporting obligations. The extent of the exemptions depends on the size of the licensee's business based on the retail funds under management (FUM). The exemptions do not apply if a DIMS licensee is an FMC reporting entity for any other reason, doesn't have an independent custodian, or the licensee has more than $250 million in retail FUM.

Exemption / Dates in effect	Summary
Financial Markets Conduct (FMC Reporting Entities with Higher Level of Public Accountability) Notice 2014 1/12/14 – ongoing (no five-year limit on HPA notices)	All FMC reporting entities have a designated level of public accountability. This influences which tier of the External Reporting Board Accounting Standards Framework the entity must report in, and whether it must use full accounting standards (eg, NZ IFRS) or reduced accounting standards (eg, NZ RDR) when preparing its financial statements. The FMC Act identifies classes of entities it deems to have higher public accountability — all other classes of entities have lower public accountability. These are default designations set out in the FMC Act. The Act also allows the FMA to vary designations for either individual FMC reporting entities or classes of FMC reporting entities. Generally speaking, where investors invest directly in an entity, that entity will have a higher level of public accountability. This notice re-designates recipients of funds from conduit issuers and licensed derivative issuers to have a higher public accountability under the FMC Act regime.
Financial Markets Conduct (NZCDC Settlement System) Exemption Notice 2014 1/12/14 - 30/11/19	The Securities Markets Act 1988 regime's substantial security holders' disclosure is largely replicated in subpart 5 of Part 5 of the FMC Act. Disclosure of relevant interests is required if a person begins to have a substantial holding in a listed issuer, or the number of financial products held by the substantial product holder changes by 1% or more. The FMC Act specifies situations that do not lead to relevant interests, including operators of a designated settlement system, acting in the ordinary course of that business. This relief for operators of the NZCDC settlement system was historically provided through a Securities Markets Act exemption. It is now incorporated into the FMC Act. However, the Act does not specifically exclude clearing participants and depository participants in NZCDC. This additional exemption remains appropriate.
Financial Markets Conduct (NZX–NXT Market) Exemption Notice 2014 1/12/14 - 30/11/19	The NXT market is NZX's stepping stone growth market. To encourage growth companies to list, the FMC Act regime provides relief from standard continuous disclosure requirements for participants listed on NXT. This exemption provides issuers on the NXT market relief from various product disclosure statements (PDS) and register entry requirements in the FMC Regulations. The main changes to the PDS for an offer of shares by an NXT issuer are that a new warning statement about the risks of investing on the NXT market will be contained at the start of the PDS, and prospective financial information will not have to be disclosed (but may be). Instead, key operating milestones have to be disclosed. The main change to the register entry for an offer of shares by an NXT issuer is that prospective financial information does not have to be included.

Exemption / Dates in effect	Summary
Financial Markets Conduct (Offers of Financial Products Through Authorised Financial Advisers Supplying Personalised DIMS) Exemption Notice 2015 6/11/15 - 5/11/17	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 to offers made through an AFA authorised to provide DIMS, but there is no relief in this case. This exemption provides relief for offers of financial products made through AFAs providing a personalised DIMS service under the Financial Advisers Act 2008. Under this exemption, such offers will no longer need to comply with the disclosure requirements in Part 3 of the FMC Act, and will be unregulated offers. It puts offers made through AFAs providing personalised DIMS on the same footing as offers made through an FMC Act DIMS licensee.
Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015 29/05/15 - 28/05/20	Registered banks and licensed insurers are FMC reporting entities and must lodge financial statements compliant with New Zealand GAAP that have been audited by a New Zealand licensed auditor. Many overseas banks and insurers operate in New Zealand 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 New Zealand operations may form a small portion of its business. This exemption allows certain overseas banks and insurers registered or licensed in New Zealand to use their overseas financial statements and audit regime to comply with the financial reporting requirements of the FMC Act (including New Zealand branch requirements). It does not remove any obligation to prepare and have audited separate branch financial statements for their New Zealand business. The auditor for these branch financial statements may be an overseas auditor or a New Zealand auditor.
Financial Markets Conduct (US Futures Commission Merchants) Exemption Notice 2015 6/11/15- 30/10/20	The FMC Regulations impose requirements on derivative participants for the holding of derivatives investor money and derivatives investor property. This exemption exempts US futures commission merchants who are participants on NZX's derivatives market from these requirements, on the basis that these merchants comply with equivalent requirements under US laws.
Securities Act (Revocation of Certain Futures Contracts Exemptions) Notice 2015 1/12/15 – 31/12/15	Revokes exemptions granted under the Securities Act 1978 that have been in force under the transitional provisions in the FMC Act and FMC Regulations. This clarifies that from 1 December 2015, those exemptions can no longer be relied upon to make an offer of derivatives.

Exemption / Dates in effect	Summary
Financial Markets Conduct (Wholesale Investor Exclusion—$750,000 Minimum Investment) Exemption Notice 2016 5/2/2016 – 4/2/2017	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, offer documents must have a warning and an investor acknowledgement is required. Concerns were raised these requirements might adversely affect New Zealand's debt capital markets as a result of compliance costs and the absence of a straightforward test for overseas issuers to identify New Zealand wholesale investors. In particular, NZ banks raised concerns that these requirements may discourage reliance on the statutory exclusion and reduce offers by overseas issuers to NZ investors. To address this, relief is provided from the requirement for investor warnings and acknowledgements for offers of Kauri bonds and unsubordinated debt securities. No conditions apply for Kauri bond offers. A single investor warning on the principal terms sheet will be required for primary offers of unsubordinated debt securities. A warning is also required for secondary sales of these financial products. This must be given in any principal terms sheet given to the investor and can be given on the Bloomberg webpage for the debt securities. We are currently reviewing conduct of offers made in reliance on this notice to determine whether it should be extended.
Financial Markets Conduct (Employee Share Purchase Schemes) Exemption Notice 2016 8/8/2016 – 6/8/2021	Under Schedule 1 of the FMC Act shares offered under employee share purchase schemes are excluded from the standard regulated offers regime. The framing of the exclusion means it can't easily be relied on for: • offers made to employee trusts and relatives • offers made under share schemes that have an ancillary debt or managed investment scheme component, for example saving scheme securities. We have provided relief to extend the benefit of the statutory exclusion in these instances. We have also addressed difficulties with the operation of the 10% limit on the number of equity securities that can be issued or transferred in a 12-month period where the employer provides employees interests by creating equitable interests in existing voting securities. To do this, we have provided relief to allow non-voting equitable interests to be issued up to 10% of the corresponding class of voting securities. In calculating this figure we have avoided double counting of the equity securities and equitable interests. This solution does not address the circumstances where an employer may wish to issue a completely new class of non-voting securities that does not provide an equitable interest in a corresponding equity security. This would be difficult to achieve by exemption, and to address this it is likely a change to the Schedule 1 exclusion would be required.

Exemption / Dates in effect	Summary
Financial Markets Conduct (Licensed Independent Trustees of Restricted Schemes) Exemption Notice 2016 16/9/2016 – 15/9/2021	A restricted scheme must have a licensed independent trustee. Under the FMC Act, the scheme can use a sole corporate trustee, provided it has at least one licensed independent trustee director. However, if the sole corporate trustee is related to the scheme provider, the director will fail the independence test. The purpose of the requirement is to ensure the independence of the licensed independent trustee, rather than any corporate structure in which that licensed independent trustee sits. An amendment to the legislation is to be considered to address the issue. We have provided an exemption until this can be addressed.

Table 2: Matters where support from FMA's legislative tools is not necessary or desirable

Subject	Summary of issue	Our decision
Charities raising funds by debt securities	Historically some exemption relief was given to charities issuing debt securities. The Securities Act (Charity Debt Securities) Exemption Notice 2013 exempted registered charities offering debt securities from standard offer document and governance requirements. However this relief cannot be relied on after 30 November 2016, as there is no further ability to operate under the Securities Act after this date. As part of our review of financial markets law in the transition to the FMC Act, we have considered whether it's appropriate to provide any continued relief for charities issuing debt securities under current New Zealand law.	The FMA has decided not to grant a general class exemption from the standard requirements in the FMC Act for charities offering debt securities to investors. In our view, the required test for us to consider the exemption necessary or desirable to promote the purposes of the FMC Act has not been met. This decision recognises the tailored approach the FMC Act takes in prescribing requirements for wholesale and retail investors. In doing this the FMC Act regime seeks to strike a balance between compliance costs, and providing appropriate disclosure, governance, supervision, and financial reporting requirements. We have produced a resource for charities wishing to raise funds, outlining options available to them under the FMC Act regime. We will grant transitional exemptions for charities with existing debt securities on issue, to enable them to repay those debt securities within a prudent timeframe. We are working with affected charities to consider the appropriate exemption period. There is more information below.
Commercial bill dealers	Historically we have provided an exemption from the standard governance and disclosure requirements of the Securities Act for offers of 'commercial bills'. Commercial bills are a negotiable debt security that is accepted or endorsed by a registered bank. The exemption requires the registered bank offering the commercial bills to prepare an investment statement. The original issuer of the bill is exempted from disclosure and governance requirements, given the greater relevance of the registered bank's liability for the commercial bill.	We decided that no on-going relief is required for offers of commercial bills under the FMC Act. There is no evidence of on-going reliance on the existing Securities Act exemption. We encourage any market participants who believe relief remains appropriate to contact us.

Subject	Summary of issue	Our decision
Flexibility in timeframe for custodian audit	Scheme custodians are required to get an assurance engagement for both their systems and processes, and scheme property completed within four months of the close of their accounting period. Similar obligations apply to DIMS custodians. Some custodians already have more frequent reporting aligned with client reporting periods, or have other similar but differently scheduled reporting obligations. Custodians may need more flexibility so that they can align the assurance engagement with other obligations.	An exemption is not necessary. The Financial Markets Conduct Amendment Regulations 2015 provide a scheme custodian more flexibility about when it must obtain an assurance engagement with a qualified auditor.
NZX—share and unit purchase plan exemption	Historically we have granted NZX-listed issuers relief from the offer document requirements of the Securities Act when they are offering share or unit purchase plans. Share purchase plans offer existing share or unit holders the opportunity to purchase more shares or units, usually at a discount to the current market price. The exemption was conditional on the share or unit purchase plan complying with certain requirements. The total price of securities issued under the exemption was limited to $15,000 per security holder in any 12-month period.	Following targeted consultation we decided to let the exemption expire on 31 October 2015. We consider there is no requirement for an on-going exemption. Issuers can rely on the 'same class' exclusion in Schedule 1 of the FMC Act to offer share and unit purchase plans. This exclusion is more flexible. Offers made under the 'same class' exclusion during the transitional period will not require the issuer to transition to the FMC Act before the end of the transition period.
Risk indicator and description of managed fund	The FMC Regulations require managed funds to include a 'risk indicator' in the PDS, on the register and in fund updates.	We issued a Guidance note on risk indicators and description of managed funds which alleviates the need for a framework or methodology. The policy underpinning the New Zealand requirements for risk indicators is based on European standards and methodologies for calculating risk. Our guidance note focuses on how managers may use the European standards to help them meet New Zealand requirements.

Subject	Summary of issue	Our decision
Scrip offers in takeovers	We have historically granted exemptions for equity securities offered in a 'scrip bid.' A 'scrip bid' is a takeover bid where securities are offered wholly or partly in place of cash. In a scrip bid, the issuer is required to prepare a takeovers notice. The exemption provided relief from disclosure requirements already addressed by the takeovers notice. Relief for quoted securities became redundant when the simplified disclosure prospectus for securities of the same class as listed securities was introduced, and this aspect of the exemption discontinued.	Following consultation, we decided that an exemption is unnecessary under the FMC Act. Issuers offering listed scrip can rely on the 'same class' exclusion in Schedule 1 of the FMC Act, and we think there is no need for an on-going exemption for offers of unlisted scrip. These offers have not been a recent feature in the New Zealand market, and there has been no reliance on the existing Securities Act exemption. We will consider individual exemption applications for these offers.
Timing of requirement for 'wind-up' financial statements	It was understood that the FMC Act regime requires audited financial statements for schemes immediately prior to distribution of assets on winding up, and also for the financial year 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.	Following consultation we decided that an exemption is unnecessary. Final audited financial statements are required as part of the winding-up report for registered schemes. However, we believe there is no requirement for end of year financial statements for schemes that have been wound up because these schemes are not FMC reporting entities.
Two-person Schedule 3 schemes	The stated purpose of Schedule 3 schemes is to provide for statutory recognition of single-person, self-managed superannuation schemes. There are a small number of retirement schemes that would transition to be Schedule 3 schemes, but can't because two people are involved, usually husband and wife.	Following consultation with representatives of these schemes, we believe there is no need for a class exemption. These schemes have made arrangements to transition to the FMC regime that suit their circumstances. If there is a need for relief then we will consider individual exemption applications.
Unsolicited offers to acquire shares for charitable gifting	Some of the information and protections prescribed by the unsolicited offer disclosure requirements are redundant when the offer to take shares is solely for the purpose of charitable gifting.	While we believe relief from redundant information requirements is appropriate where the offer is to take the shares solely for charitable purposes, we do not believe a class exemption is required. If there is a need for relief then we will consider individual exemption applications.

Subject	Summary of issue	Our decision
Venture capital schemes	Historically we have granted an exemption from the standard disclosure regime for small- and medium-sized businesses seeking to raise growth capital through offers of equity and participatory securities. This applied where the offer was made through a venture capital investment scheme under the supervision of an independent scheme administrator. The role of the scheme administrator (typically a regional or industry-based economic development agency) was to oversee a responsible programme for matching interested investors with businesses seeking funds. There was a $5-million limit on the total funds that a business could raise under the exemption.	Following targeted consultation, we believe there is no need for a class exemption under the FMC Act. Because the FMC Act provides a number of lighter compliance pathways for small- and medium-sized entities seeking to raise capital (small offers and crowdfunding), we believe an exemption for venture capital schemes is neither necessary, nor appropriate.
Extension of mutual recognition regime to soft-closed Australian registered management investment schemes	In Australia, 'soft-closed fund' offers do not require an offer document. Soft-closed funds are funds where interests are issued to existing investors but closed to new investors. These offers cannot be extended into NZ under the mutual recognition of securities offerings provisions because they are not a 'recognised offer.'	We believe an exemption is not appropriate. The mutual recognition regime enables recognition of Australian offers subject to broadly equivalent regulation as in New Zealand (for example an Australian prospectus instead of New Zealand PDS). Where the two regimes take a divergent approach, the mutual recognition regime does not apply. For example, offers made under the FMC Act Schedule 1 exclusions from the standard regulated offers regime (such as 'same class' offers, or employee share offers) cannot be extended into Australia by the mutual recognition regime. In addition, we have granted exemptions allowing Australian offers to be made into New Zealand where the offer is made in a similar manner to that required here. For example, in both jurisdictions offers by dividend reinvestment can be made with a lighter compliance path. In contrast, in New Zealand offers of soft-closed funds cannot be made to NZ retail investors without a PDS. In practice, the requirement for a NZ PDS will likely mean offers by soft-closed funds are not extended to NZ retail investors. This is not an issue specific to soft-closed funds. It reflects a broader issue with the application of mutual recognition of securities offerings (MRSO) to lesser compliance pathways.

Subject	Summary of issue	Our decision
		There may be a case to consider whether there is scope for a broadening of MRSO to account for the increasing use of reduced disclosure carve-outs in both regimes.
Pre-payment facilities — designation and exemption	Historically we have granted relief from standard offer information and supervision requirements for pre-payment facilities that are not investments in the conventional sense. Examples include pre-payment bus cards and cards and vouchers redeemable at stores that are inadvertently captured by the definition of debt securities.	Last year we consulted on whether class relief should be explored for offers of pre-payment facilities made under the FMC Act. Following consultation, we decided there is insufficient demand for class relief. We will consider limited relief on an individual basis instead.
Fund update for managed funds	The FMC Act requires managed funds to provide periodic fund updates. The FMC Regulations enable the FMA to specify the format of the fund update in a template by a framework or methodology. We consulted on a fund-update template in late 2014. While industry voiced support for FMA assistance, we don't believe we can add value by developing a template, as the flexibility provided by current regulations is limited. We discussed with MBIE whether it was desirable to introduce more flexibility into the requirements for fund updates. It was our joint view that this was not advisable at this stage as it would create delays, uncertainty and additional cost.	We have been working with market participants who are putting together their first fund updates under the FMC regime and have been generally happy with the documents produced. We expect these will set the standard. Therefore we do not believe a framework is required at this stage. However, we will keep this under review as we continue to work with participants. We intend to publish an information sheet for managed funds on how to produce fund updates that maximise investor understanding. We will also publish a guide to help investors understand fund updates.

Table 3: Policy decision made, legislative notice to be put into effect

Subject	Summary of issue	Our decision
Transitional support for charities that have debt securities issued under Securities Act exemptions	Following consultation, we decided not to grant a class exemption from FMC Act requirements to charities issuing debt securities. We agreed in principle to grant transitional exemptions for charities that have debt securities issued under the Securities Act exemptions to enable them to repay those securities in a well-managed way.	We have consulted with charities on the extent of the transitional support required. It appears a small number of charities will benefit from transitional exemptions. We are currently working with those organisations to provide them appropriate relief while they make changes to ensure they comply with the law or repay the debt securities.
Property schemes	Most existing property syndicates will be managed investment schemes and will need to comply with obligations under the FMC Act by 30 November 2016.	Policy decisions have been made to grant exemptions providing relief: • from the requirement for real property to be held independently where there is a first-registered encumbrance or mortgage in favour of the supervisor • for custodians from having to get an annual assurance engagement unless the supervisor decides the assurance engagement is required to ensure reasonable assurance of the scheme property under custody. This relief will not apply to schemes with a manager who has more than $200 million in value under management • for custodians from daily cash reconciliation requirements, provided cash records are reconciled at a frequency suited to the level of transactions for the scheme. Additionally a policy decision has been made that individual exemptions may also be available (on application) for relief from governance and licensing requirements for existing property schemes that are closed to new investors, and will be wound up within 18 months of the end of the transition period. The exemptions will be subject to alternative reporting and disclosure requirements.
Forestry schemes	Many forestry schemes will be managed investment schemes and will need to comply with obligations	Policy decisions have been made to grant exemptions providing relief: • from the requirement for real property to be held independently

Subject	Summary of issue	Our decision
	under the Act by 30 November 2016. Industry participants raised questions about the availability of relief from the new licensing and governance requirements. We have also been asked how certain obligations apply given the nature and structure of forestry schemes.	where there is a first registered encumbrance in favour of the supervisor • for custodians from having to get an annual assurance engagement unless the supervisor decides the assurance engagement is required to ensure reasonable assurance of the scheme property under custody. • for custodians from daily cash reconciliation requirements, provided cash records are reconciled at a frequency suited to the level of transactions for the scheme (this exemption is the same as that provided for property schemes) • from quarterly reporting on statement of investment policy and objectives (SIPO) limit breaks during low activity periods when no limit break has occurred • from disclosure and reporting requirements for shares in the corporate general partner of a limited partnership where that general partner's role is to provide voting rights for investors • for managers who are not issuing new schemes or new interests in existing schemes from the requirement to be licensed and to update governing documents. The exemption will apply where the manager has less than $40 million in value under management, and there is a low level of manager activity because there are a very small number of schemes under management, or the schemes are close to harvest and wind up. We are also considering whether relief from independent custody requirements for real property should extend to carbon credits held by the scheme on a similar condition that there is a first-registered security interest over the carbon credits in favour of the supervisor. We have also issued a licensing guide for forestry managers to help them complete the licensing process.

Subject	Summary of issue	Our decision
Balance date alignment for FMC reporting entity subsidiaries	The FMC Act requires that the balance date of an FMC reporting entity is the same as the balance date of its subsidiaries. Compliance may be difficult or impossible for entities with subsidiaries in overseas jurisdictions that have inflexible balance dates. These entities previously received exemptions from the Registrar of Companies.	We recognise there may be good policy reasons to have unaligned balance dates. Where an overseas entity has inflexible balance dates, and default requirements in legislative settings result in unaligned balance dates, an exemption will apply.
Exemption relief for overseas banks offering simple debt securities in New Zealand	Several overseas banks not registered in New Zealand, such as HSBC, offer simple debt products such as call deposits and term deposits to New Zealand investors. These offers typically occur when individuals move to New Zealand from an overseas jurisdiction but wish to maintain their banking relationship, or when New Zealanders are looking to emigrate. Historically we have granted individual exemptions to address this.	A policy decision has been made to provide exemptions to enable overseas banks in certain recognised jurisdictions making offers of simple debt products such as call deposits and term deposits on a similar basis to those offered by New Zealand registered banks. This recognises that the prudential regulation and supervision that applies to the overseas bank is broadly equivalent to that applicable to New Zealand banks. The exemption will not be able to be relied upon by overseas banks directly marketing to new New Zealand investors except through New Zealand-registered banks within the same banking group.
Recognition of overseas disclosure, governance, financial reporting and audit regimes for both new offers and securities already issued under Securities Act exemptions **This includes a previously separate project: whether relief should be provided to overseas companies offering under the dividend reinvestment exclusion.**	Historically, we have granted overseas issuers Securities and Financial Reporting Act relief from disclosure, governance, financial reporting and audit requirements of the Securities Act and Financial Reporting regimes where: • the overseas issuer makes an offer from a jurisdiction that has a high quality regulatory regime, with requirements broadly equivalent to New Zealand's • New Zealand investors are not the primary target.	We have made policy decisions to provide the following relief to overseas issuers from certain recognised jurisdictions where financial reporting requirements and the nature and extent of regulatory oversight are broadly equivalent to New Zealand: • exemptions from disclosure, governance, financial reporting and audit obligations of the FMC Act where the issuer makes an offer to existing holders of securities listed in an overseas jurisdiction and a number of New Zealand investors incidentally receive that offer (eg, a rights offer) • exemptions from disclosure, governance, financial reporting and audit obligations of the FMC Act where an issuer listed on a major recognised exchange makes an offer under the laws of an overseas jurisdiction and extends that offer to New Zealand investors • exemptions from governance, financial reporting and audit

Subject	Summary of issue	Our decision
		obligations, as well as the minimal ongoing disclosure obligations that would otherwise apply under the FMC Act for securities already allotted under Securities Act exemptions recognising overseas regimes • exemptions from financial reporting and audit obligations of the FMC Act to allow for the use of certain recognised overseas GAAPs in place of New Zealand GAAP, and an overseas qualified auditor in place of a New Zealand qualified auditor • exemptions from disclosure obligations under the FMC Act to allow for the use of certain recognised overseas GAAPs in place of New Zealand GAAP, and an overseas qualified auditor in place of a New Zealand qualified auditor for the financial information in a PDS or register entry.
Overseas registered banks and licensed insurers	An existing FMC Act exemption, the Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015, exempts overseas registered banks and overseas insurers from financial reporting and audit obligations of the FMC Act. They are allowed to use certain overseas GAAP in place of New Zealand GAAP, and an overseas qualified auditor in place of a New Zealand qualified auditor for the preparation of financial information. Questions were raised on the sufficient flexibility of the notice to recognise the use of Australian qualified auditors preparing New Zealand business financial statements and the financial statement signing procedures used in other jurisdictions.	A policy decision has been made to grant an enhanced notice. This will replace the existing notice and address the issues raised: • enabling Australian qualified auditors to audit New Zealand business financial statements • removing the New Zealand-specific signing requirement.
Recognition of overseas auditors for purposes of custodian assurance engagements	The FMC Regulations require custodians of registered schemes to get an assurance engagement (audit) completed by a 'qualified auditor'. The assurance engagement requires a review of the custodian's	We have decided to grant exemptions for overseas custodians from certain recognised jurisdictions from requirements under the Financial Markets Conduct Regulations 2014 and the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014 to obtain an

Subject	Summary of issue	Our decision
	systems and processes and the scheme property. The term 'qualified auditor' means a New Zealand-licensed auditor or a New Zealand-registered audit firm. Custodians based overseas (other than in Australia) will find it difficult to satisfy this requirement without extra costs because it's usually not feasible for a NZ auditor to undertake the work when the processes, procedures and controls are conducted outside of NZ.	annual assurance engagement from a New Zealand qualified auditor. Where the custodian already conducts a robust assurance engagement in the country in which they are based, it is our view that the costs of engaging a New Zealand auditor may potentially be disproportionate to the benefits to investors. The exemption will initially only be available for one year. This is because within this timeframe the International Federation of Independent Audit Regulators is developing a multi-national agreement on minimum audit standards and co-operation between audit regulators. We will review the jurisdictions we recognise in the exemption in the light of considering which audit regulators sign up to the agreement.
Designation and exemption: Communal facilities offered with real property	Shares in a company, or memberships in a society holding communal facilities offered with real property developments have historically been caught as 'securities'. Relief was granted on the condition disclosure about the development was provided. This created significant compliance costs. Under the FMC Act, memberships in a society are not caught as 'financial products' unless they are interests in a managed investment scheme. Shares in a company holding communal facilities, however, remain caught and the standard regime for equity securities would apply.	We have decided to issue a class designation that new shares in companies that own and manage communal facilities in real property developments are not financial products. Companies will need to meet certain criteria for the designation to apply. We have also decided to grant equivalent exemption for existing shares in communal facilities companies that have been offered relying on existing Securities Act exemptions. Our view is holding shares in a communal facilities company is not a financial product investment in the conventional sense but is something ancillary to the purchase of land in a real property development.

Subject	Summary of issue	Our decision
Racing syndicates	Historically, the FMA has granted relief from standard offer information and supervision requirements for offers of interests in horse and greyhound syndicates, and companies where the entity is complying with racing industry codes and is supervised by an industry body. Under the FMC Act some smaller offers may be made under Schedule 1 exclusions.	We have decided to exempt offerors of horse bloodstock syndicates and bloodstock companies from the disclosure, governance, financial reporting and audit requirements of the FMC Act. Those offerors must however comply with their industry body's rules of racing. We intend also to declare that offers of interests in horse bloodstock syndicates and bloodstock companies would not be 'regulated offers' under the FMC Act. The ability to rely on the exemption does not derogate from any ability for certain offers to be made under the Schedule 1 exclusions where these apply. We have also decided not to grant a similar exemption for greyhound bloodstock syndicates and companies as no need for relief has been identified. Offerors are able to rely on the Schedule 1 exclusions.
Small co-operatives	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 from share ownership. Additionally, some smaller offers may be made under Schedule 1 exclusions. Cooperatives and industrial and provident societies have requested further relief for lower value equity issues.	We have made a policy decision to exempt cooperative companies and industrial and provident societies that: • have a small per shareholder capital investment from the disclosure requirements (a simplified disclosure document is still required) , the governance requirements (except the requirement to keep a register of interests), and the financial reporting and audit requirements of the FMC Act • have low revenue from the financial reporting and audit requirements of the FMC Act. Cooperative companies and industrial and provident societies will still have financial reporting and auditing obligations under the Companies Act or Industrial and Provident Societies Act. The provision of an exemption does not prevent offers being made under the Schedule 1 exclusions where these apply.

Subject	Summary of issue	Our decision
Relief for small issuers with securities allotted under Securities Act regime from financial reporting obligations - particularly securities allotted under employee share purchase schemes	Securities may have been issued under the Securities Act which, if issued under the new regime, could have been made relying on Schedule 1 exclusions. This would avoid requirements such as standard disclosure, governance and financial reporting applying to regulated offers. However those relying on Schedule 1 exclusions must provide warnings and other requirements apply.	We have decided to grant exemptions from financial reporting requirements and the ongoing minor disclosure and governance requirements for New Zealand issuers that have only offered under the Securities Act (Employee Share Purchase Schemes – Unlisted) Exemption Notice 2011 and any related individual exemption notices. The exemption will remove the need for the companies that have issued these securities to prepare and audit financial statements (unless otherwise required to do so on another basis under the FMC Act or other legislation). This aligns the obligations of these companies with those making offers under the FMC Act Schedule 1 exclusion for employee share purchase schemes and our proposed treatment of overseas employee share purchase schemes.
Designation: Offers of equity that are in substance managed investment products	Companies are sometimes used as a structure for the offer of collective investments. We have seen examples of companies offering shares with certain features that raise questions about where the boundaries should be between an MIS and an investment company. Designating certain types of shares as managed investment products rather than equity securities would ensure these investments are subject to appropriate licensing, disclosure and governance requirements.	We have decided to designate shares that are in economic substance more akin to MIPs than equity securities as MIPs in an MIS. We will issue the following class designations that will impact shares issued after the designation comes into force: • Designation of shares as MIPs where: o the company is an 'investment company' o the terms of the share offer are such that investors would be deprived of usual equity voting rights (ie, they lose their shareholder voice), and/or the investment/asset manager would be entrenched (such that shareholders' voting rights would effectively be frustrated) o the company does not fall within one of the following categories of excluded companies: i. holding companies of non-investment companies ii. companies that provide investment-related services but are not investment companies themselves (eg, underwriters, brokers, or other market services providers) iii. companies listed on the main board of NZX. • Designation of the scheme (ie, the company) which issues those

Subject	Summary of issue	Our decision
		shares as a MIS. • Designation preventing reliance on the schedule 1 exclusion that would otherwise apply to these shares if offered through a crowd funding platform (to prevent issuers using this as a way of avoiding standard MIP and MIS obligations). These designations will ensure that the FMC Act obligations applying to shares of this nature are appropriate given the economic substance. We are working to implement these designations as soon as possible. It may not be before 1 December 2016, however we will consider the use of our power to issue an individual designation notice in respect of any shares proposed to be issued with these characteristics in the interim period before our class designation comes into effect.
Relief for managed investment schemes that are in the process of winding up and debt issuing companies that are in liquidation or receivership	Unless relief is granted these issuers would need to comply with the ongoing obligations of the FMC Act that apply to MIS or debt securities (as applicable) by 1 December 2016. This would apply even if they are in the process of winding up.	We have decided to grant an exemption from the ongoing requirements of the FMC Act to these managed investment schemes and companies that have, prior to 1 December 2016, taken certain recognised steps to start winding up. This matter was recently raised with the FMA, so it is unlikely this exemption will be in effect before 1 December 2016. We have been in touch with schemes and companies we are aware may want to rely on this relief to discuss expectations of their conduct in the meantime. Do contact us if you are looking to start the winding-up process before 1 December 2016 and have not already been in contact.

Table 4: Policy decision still to be made

Subject	Summary of issue	Solution being explored
Irrigation schemes **Previously noted as being considered as part of a broader project on vehicles for managing costs**	Historically, in some cases, we have 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. Examples include irrigation assets and marina berths. (Also see the decision above on communal facilities offered with real property.) Under the FMC Act, memberships in a society are not 'financial products' unless they are interests in a managed investment scheme. Shares in a company used to manage communally-owned property however remain caught as equity securities. The standard regime for equity securities applies, including minimal ongoing disclosure obligations (such as major event disclosures) and financial reporting and audit requirements.	In light of feedback from consultation we understand that relief may be warranted for some irrigation companies. We understand most irrigation companies structured as cooperative companies or industrial and provident societies will be able to rely on the relief to be provided by the small cooperatives exemption (see decision above on small cooperatives.) We are considering whether irrigation companies structured differently but operating under cooperative principles may warrant similar relief. We are also considering whether it would be appropriate to grant further relief allowing these irrigation companies to use tailored disclosure documents in connection with share offers similar to those allowed for co-operative companies. We are undertaking a targeted consultation with irrigation companies that have indicated an interest in this matter. Submissions are due on 5 October 2016 at which time we will finalise our proposals for decision. Any relief to be determined will be new relief, previously not available to these entities, and does not continue a status quo under the Securities Act regime. In these circumstances, the 1 December 2016 transition date is not a relevant trigger for any of the obligations in respect of which the relief is being considered. However we will work to have any relief, once determined, in place as promptly as possible.
Exemptions for schemes offering self-select investment options	The disclosure regime for managed funds under the FMC Act does not work well for 'self-select' schemes which sometimes have hundreds of investment options, each of which is a fund. Rather than offering pre-selected investments, self-select schemes provide an array of investments from which the investor can construct an individual portfolio. Some information required may not be useful for	We have decided to grant relief through specific individual exemptions (on application) for self-schemes. This relief will be tailored, taking into account: • disclosure requirements that should apply so that investors are provided with alternative and more useful disclosures in light of the unique structure of these schemes • the overall fees and levies that should apply.

Subject	Summary of issue	Solution being explored
	investors or may result in lengthy and confusing disclosures, with high compliance costs for scheme providers. The fee and levy requirements are likely to impose prohibitive costs for these schemes given the legislative regime provides for their calculation on a per-fund basis.	Additionally, we will consider whether class relief is appropriate for these schemes. This will include a first principles consideration of how self-select schemes fit within the FMC Act regime and the most appropriate classification or regulatory requirements for them. We envisage any broader class relief will be available in the first quarter of next year.
Exemption: multi-employer superannuation schemes participation agreements	Managers of multi-employer superannuation schemes are required to register (on the scheme's register) participation agreements they have with the various employers they service as part of the scheme's governing document. Registration of a large number of participation agreements may create issues for the useability of the governing document section of the register. The participation agreements may also contain sensitive information.	We are considering whether to grant a class exemption to provide relief from the registration requirement, subject to conditions of what alternatives are available to employees. Given the issues involved and consideration required, it is unlikely any relief (if concluded appropriate) will be in effect before 1 December 2016. We are in touch with the relevant scheme managers and have discussed expectations of their conduct in the meantime.