

Consultation Paper: Request for Feedback – Guidance Note: Effective Disclosure

January 2012

About this consultation paper

In this paper we consult on our proposed guidance on how to prepare and present prospectuses and investment statements. The draft guidance note is at the end of this paper (attachment A).

Why are we issuing this consultation paper?

Effective disclosure is a critical issue for financial markets and its participants. FMA believes our guidance should be finalised only after full consultation with all stakeholders. We invite and welcome submissions.

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Consultation

Why is a guidance note needed?

1. We propose to issue a guidance note because:
 - (a) Our functions include promoting the confident and informed participation of businesses, investors and consumers in the financial markets. We believe this guidance note will assist that function;
 - (b) Issuers have asked us for guidance on our powers, duties and functions, particularly following the enactment of the *FMA Act*;
 - (c) We want to provide more guidance for issuers and their advisers as a means of assisting them to meet their obligations; and
 - (d) We are streamlining some processes within FMA and wish to share the changes with the financial markets.

Why consult?

2. We wish to consult with all stakeholders affected by New Zealand's disclosure requirements. We wish to understand and assess the impacts of our proposed 'Guidance note: Effective disclosure' such as:
 - (a) Impact on consumers, investors and issuers;
 - (b) Likely compliance costs;
 - (c) Effect on competition; and
 - (d) Other benefits and drawbacks.
3. Historically the Ministry of Economic Development provided a pre-registration vetting service for prospectuses, and FMA inherited this function in May 2011. As has been signaled by FMA's Chief Executive since January 2011, we intend to discontinue pre-registration prospectus vetting by the end of March 2012. We wish to ensure issuers have a clear understanding of our expectations. They can therefore streamline preparation of disclosure documents they can be confident are unlikely to be subject to regulatory action by FMA after they have been published to the market and to the public.

Timeline

4. We propose that this guidance note will be published by 31 March 2012 and will apply to all new disclosure documents issued on or after Tuesday 1 May 2012.
5. The timeline we are currently working to is:

| Date | Deadline |
|---|---|
| Thursday 26 January 2012 | Consultation paper & draft guidance note issued. |
| Friday 9 March 2012 | Written submissions due to FMA. |
| Week beginning Monday 26 March 2012 | Final guidance note published. |
| Friday 30 March 2012 | Pre-registration vetting facility ceases. |
| Tuesday 1 May 2012 | All newly issued disclosure documents to comply with guidance note. |
| Tuesday, 1 January 2013 | Transitional period ends; all current disclosure documents to comply with guidance note as well as newly issued disclosure documents. |

6. This guidance note is aimed primarily at new disclosure documents. However we expect all issuers to familiarise themselves with the contents of this guidance and to make changes to their disclosure documents at the next available opportunity. Because we are publicly consulting on the contents of this guidance note, and it will be finalised and published by 31 March 2012, we will expect all:
 - (a) new disclosure documents issued after 1 May 2012 to be compliant with this guidance note; and
 - (b) existing disclosure documents to be compliant by 1 January 2013.
7. Our preference was for all existing disclosure documents to be compliant by 1 October 2012. However we wish to avoid, as far as possible, imposing additional cost that may ultimately be borne by investors. We have therefore set a final date for compliance of 1 January 2013.

Submission process

8. All stakeholders and any interested parties are invited and encouraged to:
 - (a) comment on the proposed guidance note;
 - (b) answer the questions in this consultation paper, with constructive comments please and your explanations (if you do not agree, why not); and

- (c) make any other general comments or suggestions you wish to.
9. We attach a template for submissions (attachment B) and ask all submitters to use this template.
 10. Please provide us with two versions of your submission: a PDF and a Word document.
 11. Please send your submission:
 - (a) by using FMA's website '[Contact Us](#)' form, selecting 'make a comment' and labelling the form clearly as 'Attn, Manager Regulatory Policy – Submission on Effective Disclosure'; or
 - (b) by e-mail only (no posted or delivered versions please) to consultation@fma.govt.nz
 12. The deadline for submissions is 5pm Friday 9 March 2012.
 13. We will not treat any part of your submission as confidential unless you specifically request we do so. Submissions will be subject to the Official Information Act 1982. We may make submissions available on our website, may compile a summary of the submissions or draw attention to individual submissions in internal or external reports.
 14. If you would like us to withhold any commercially sensitive, confidential or proprietary information included in your submission, please clearly state this in your submission and identify the relevant sections. We will consider any request to have information withheld in accordance with our obligations under the Official Information Act.

Section A: Effective disclosure requirements

Background

15. Our main objective is to promote and facilitate the development of fair, efficient and transparent financial markets¹.
16. Our principle functions are set out in the FMA Act and include:
 - (a) Monitoring compliance with various obligations which apply to financial markets participants. Our role in regulating disclosure documents falls within this function; and
 - (b) Promoting confident and informed participation in the financial markets. Our role in issuing guidance falls within this function.
17. Increasing our regulatory oversight of market participants is an important part of restoring investor confidence. A greater range of entities will be licensed and monitored by us, and we will be actively enforcing the rules.
18. Disclosure is one of the pillars of fair, efficient and transparent financial markets. Transparency comes from effective disclosure. It is a necessary pre-requisite for efficiency and fairness.
19. We are aware of considerable international debate and regulation about effective disclosure and have taken this into account in preparing the draft guidance note.
20. Every issuer of securities must comply with all legal requirements for disclosure documents. Compliance is not always achieved; in some cases an overly technical approach to compliance can lead to ineffective disclosure documents. The finance company collapses, and subsequent Investigations and convictions, have highlighted significant shortcomings in the quality and effectiveness of disclosure.

FMA's view on disclosure

21. Since establishment of FMA on 1 May 2011, we have maintained a clear focus on disclosure. The draft guidance note includes input from a wide range of stakeholders including:
 - (a) our Board;
 - (b) FMA's leadership team and managers;
 - (c) external advisers;

¹ Section 8 FMA Act

- (d) guidance issued by international regulators – notably ASIC and FSA, which have issued a considerable body of guidance on their expectations of disclosure documents and processes;
- (e) the experience of our staff from their ongoing work, including conducting pre and post registration vetting, responding to queries from the market and considering exemption requests from Securities and other financial markets legislation: and
- (f) unsolicited feedback from other interested parties.

22. We have identified concerns including:

- (a) General style and presentation of disclosure documents. For example:
 - (i) marketing information dominating disclosure documents;
 - (ii) too much jargon and complex explanations, particularly of some items required by the *Regulations*;
 - (iii) unnecessary length;
- (b) Too much complex information;
- (c) Directors failing to ensure that disclosure documents give an accurate overall understanding about the offer, and the issuer, that is both relevant and material to an investment decision. Sometimes it seems directors ‘ticked all boxes’ without ensuring the disclosure documents conveyed an accurate impression of the offer and its associated risks;
- (d) For some sectors, issuers including information which may be misleading: and
- (e) Use of a templated approach to disclosure documents, with little regard to the circumstances of the particular offer.

23. The primary benefit of improved disclosure will be in improved fairness, efficiency and transparency of the market. This will bring improved confidence, with increased investment over time and will clearly benefit issuers both directly and indirectly. Disclosure documents that meet the standards set out in the guidance note will directly improve potential investors’ ability and willingness to read, and understand, disclosure documents. They will also indirectly raise levels of informed participation in the market.

24. Overall, we expect two fundamental components in effective disclosure documents:

- (a) Truthful and complete information about an offer, and about the issuer, that is both relevant and material to an investment decision. You must ask yourself whether the disclosure documents convey an accurate impression of an investment offer and its associated risks; and
- (b) Wording and presentation in a clear, concise, and effective manner. Disclosure documents therefore need to:
 - (i) contain clear information;

- (ii) be concise and avoid superfluous information that might confuse; and
 - (iii) be effective.
- 25. The guidance note has a specific section on how to prepare documents that are 'clear, concise and effective'. It also contains other information which is aimed at focusing issuers and their advisers on providing an accurate impression in disclosure documents.
- 26. We are issuing this guidance note because:
 - (a) Our functions include promoting the confident and informed participation of businesses, investors and consumers in the financial markets. We believe this guidance note will assist that function;
 - (b) Issuers have asked us for guidance on our powers, duties and functions, particularly following the enactment of the Financial Markets Authority Act 2011;
 - (c) We want to provide more guidance for issuers and their advisers as a means of assisting them to meet their obligations; and
 - (d) We are streamlining processes within FMA to ensure our processes are more efficiently targeted and utilised and wish to explain these changes to financial markets participants.
- 27. Where terms are defined in the guidance note, we use the same definitions in this consultation paper. These are in italics for ease of reference.

Implementation

- 28. We propose that this guidance note will apply to registered prospectuses and investment statements. There are differences between the expectations of each which are explained in the guidance note.

Question 1: Do you agree the guidance note should only apply to these two documents?

- 29. We propose to review prospectuses and investment statements for new offers registered or issued on or after 1 May 2012 having regard to the expected standards of disclosure set out in the guidance note. We will not apply the standards in this guidance note in full to documents already registered or issued before 1 May 2012. However, it is our proposal that all disclosure documents should reflect the standards of disclosure outlined in the guidance note, and therefore comply with it, by 1 January 2013.
- 30. We welcome your submissions on an appropriate transition process and period.
- 31. The consultation and transition periods will not affect our oversight of all current disclosure obligations. We will take action on any disclosure document that deceives,

misleads or confuses or fails to comply with the *Act* or *Regulations* as described in the guidance note, at paragraph 16.

32. We recognise issuers may have concerns about whether complying with the guidance note will increase compliance costs to an unreasonable level. We welcome your specific and measurable feedback on the impact on compliance costs and on benefits which improved disclosure will bring.
33. We will weigh the benefits against any increased compliance costs, in finalising the guidance note.

Section B: Clear, concise and effective

General comments

34. In our view, a requirement for 'clear, concise, and effective' disclosure is appropriate for the New Zealand financial markets and is also consistent with requirements under Australian laws. New Zealand laws do not specifically include this phrase; however it encapsulates all the essential elements and requirements for effective disclosure. We therefore propose adopting this standard as our basis for effective disclosure in the guidance note.
35. Disclosure documents which are clear, concise, and effective will improve the quality of disclosure, and so help potential investors make better investment decisions. These general comments apply to the registered prospectus and investment statement equally. A prospectus should be understandable by the intended audience. It can be requested by a non-expert investor and therefore should also be readily understandable by them.
36. The guidance note sets out some detail on each element of this standard, to help issuers and their advisers, and gives examples.

Question 2: Do you agree that the standard of 'clear, concise, and effective' disclosure' is appropriate?

Clear (paras 20 to 22)

37. We propose to recommend using plain language. (This will also help with the other aspects of the test, being concise and effective.) We want issuers to achieve this approach for every disclosure document, as well as any marketing documentation.

Question 3: Would it help to prescribe plain language techniques rather than having illustrative examples?

38. Information which is legally required must be disclosed prominently.

Question 4: Are there any specific legal requirements that make it difficult to achieve prominence and clarity? Please provide examples.

Concise (paras 23 to 24)

39. We propose to require disclosure documents to be concise. We recognise that in some cases content and/or the order of content is largely prescribed by law. This aspect addresses *other* techniques and tools to keep content concise.
40. Some disclosure documents contain a high volume of *brand information*/images and photographs. The information in the first few pages of a disclosure document is key to ensuring investors read and understand the document. We are therefore concerned that retail investors may form impressions about the issuer and the offer based on the disclosure documents' *brand information*/images and photographs, rather than making informed investment decisions based on key information about the issuer and the offer. Use of images of celebrities may also give the impression to retail investors that the celebrity endorses the offer.
41. We propose to give guidance on how *brand information*/images and photographs can be used. This is because it is an area where disclosure needs to be improved. *Brand information*, images and diagrams should only be used to improve or enhance disclosure, and should not mask it. For example:
- (a) Images of any kind should not distract from the substantive disclosure;
 - (b) The first few pages of any document are the pages most likely to be read. We therefore believe that the key information should appear on these pages, rather than images;
 - (c) Including celebrity photographs can lead to product endorsement and needs careful consideration;
 - (d) Issuers need to keep a balance between informing potential investors and appealing to them through images.

Question 5: Do you agree with our proposed guidance on:

- (i) *brand information*; and
- (ii) photographs and other images?

Effective (paras 25 to 28)

42. We propose to issue guidance that effectiveness requires an overall assessment of whether a disclosure document provides sufficient information to aid investment decision making.
43. In our view, effective disclosure documents will give truthful information to potential investors. Critically, just 'ticking the box' on whether a document is 'clear' and 'concise' will not be enough; more is required.

Question 6: Do you agree with our proposed requirement for effectiveness?

Question 7: Is there any other test for effectiveness you believe we should include?

Section C: Key information

General comments

44. All material matters relating to the offer must be fully disclosed in the prospectus. We recognise that all matters relating to the proposed investment or business plan may not be certain. But we expect disclosure documents to identify and explain as a minimum:
 - (a) key information about the overall nature of the investment;
 - (b) the business model underlying the investment;
 - (c) the directors and *senior management* who are involved in the investment business;
 - (d) risks associated with the investment;
 - (e) related party transactions; and
 - (f) credit ratings where relevant.

Key information (paras 31 to 51)

45. We propose that key information will include:

Business model (para 34)

- (a) The business model which underpins the offer.

Question 8: Do you agree that this is key information?

Question 9: If the term business model is not always appropriate, what other structural information about an issuer or offer should be disclosed?

Question 10: Does the guidance note at Table V contain appropriate content and level of detail?

Directors *senior management* and auditors (paras 35 to 38)

- (b) Potential investors will need to judge the capability and capacity of the directors, *senior management* and auditors, in order to make an investment decision.
- (c) You should disclose at least the relevant skills, experience and expertise for all directors and *senior management*. This will:
 - (i) include their relevant qualifications and employment history;
 - (ii) portray a balanced view of their corporate, employment and professional history.

Question 11: Do you agree with the requirement for disclosure of each individual's relevant skills, experience and expertise?

Question 12: Do you agree with the requirement for disclosure of the matters in paragraph 38 for auditors?

Question 13: Do you consider the examples in the guidance note at Table VI are relevant and/or sufficient?

Risks (paras 39 to 42)

- (d) Risks associated with the issuer and with the investment should be disclosed. Risks need to be specific and relevant. Disclosure should be based on a formal risk evaluation process.

Question 14: Do you agree with the requirement to disclose relevant risks?

Question 15: Do you agree with the distinction proposed between risk disclosure in a prospectus and risk disclosure in an investment statement?

Question 16: Do you consider the examples given in the guidance note at Table VII are relevant and/or sufficient?

Related parties and transactions (paras 43 to 47)

- (e) Information about the existence of related parties and transactions between you as issuer and related parties is likely to be relevant to a potential investor and therefore likely to be material. Related parties may enter into transactions that unrelated parties would not. Investors must be able to understand key information about how related party transactions affect you and the benefits and risks which the related party transactions bring. (These aspects may also raise key risks.) This information must be disclosed in the key information section of a disclosure document.
- (f) We propose to adopt the definition of related party transaction as set out in NZ IAS 24. If this is not used in a disclosure document, then we propose to require an issuer to disclose that they are using a different definition and why.

Question 17: Do you agree that related party transactions should be disclosed in the key information section of all disclosure documents?

Question 18: Do you agree that the NZ IAS 24 definition is generally appropriate?

Question 19: Do you consider the examples given in the guidance note at Table VIII are relevant and/or sufficient?

Credit ratings (paras 48 to 51)

- 46. Credit ratings for issuer and offer, and potentially related parties or third parties, should be:
 - (a) disclosed if they exist; and
 - (b) issued by a recognised credit rating agency.

Question 20: Do you agree with the requirements outlined in the guidance note at paras 48 and 49?

Question 21: Do you agree that credit ratings for third parties or related parties may be material?

Question 22: Do you consider the examples given in the guidance note at Table IX are relevant and/or sufficient?

Section D: *Financial information*

General comments

47. Financial performance & position information is a key component of disclosure documents. It includes any information relating to an issuer's past or prospective financial performance or position, whether audited or not. We use the term *financial information* to describe this broad category of information.
48. We propose to allow disclosure documents to include other *financial information*. We also propose to require that an issuer should disclose all *financial information*:
- (a) in a clear, concise, and effective way; and
 - (b) with appropriate cautions where information is incomplete or uncertain.

Question 23: Do you agree with our proposed definition of *financial information*?

Question 24: Do you agree with the requirements in the guidance note at para 53 for disclosure of optional additional *financial information*?

Past *financial information* (paras 55 to 57)

49. Guidance note para 55 sets out the minimum legal requirements for disclosure of past *financial information*.
50. We propose that if issuers wish to disclose further information, they should do so only as outlined in guidance note para 56 and 57. This is a key area in our view; disclosure must not mislead.

Question 25: Do you agree that issuers should be able to disclose more than the minimum *financial information*?

Question 26: Do you consider the examples given in the guidance note at Table X are relevant and/or sufficient?

Prospective *financial information* (paras 58 to 63)

51. Guidance note para 58 summarises the minimum legal requirements for disclosure of prospective *financial information*. This information can be more risky or challenging to disclose.

52. In some circumstances, issuers may wish to go further and disclose more information. If so, we propose they should do so only as outlined in guidance note paras 58 to 61.
53. In other cases, it may be appropriate to leave out prospective *financial information*. If so, the guidance note suggests inserting a statement to that effect.

Question 27: Do you consider that prospective *financial information* can be uncertain and therefore more risky and challenging to disclose?

Question 28: Do you agree that issuers should be able to disclose more than the minimum prospective *financial information*?

Question 29: Do you consider the examples given in the guidance note at Table XI are relevant and/or sufficient?

Question 30: Do you agree that, if prospective *financial information* is omitted because there are no legal or other grounds for it, an issuer should insert a statement to that effect?

Question 31: Are there any other factors which should be disclosed in the key information section of a disclosure document?

Section E: Sector specific issues

General comments

54. We have disclosure expectations which are relevant to specific categories of offerings:
- (a) KiwiSaver disclosure documents, given the importance of KiwiSaver to New Zealand's capital markets, and its features such as the long term lock in investment;
 - (b) debt securities including finance company deposits, debentures and other forms of deposit;
 - (c) property-related disclosure documents; and
 - (d) cash-box investment disclosure documents.
55. These categories reflect our recent experiences and therefore we believe guidance will be useful to you. We will publish additional guidance from time to time to supplement this guidance and welcome industry's suggestions on areas of interest.
56. These requirements are in addition to the other disclosure requirements in the guidance note.

Question 32: Do you agree with these categories?

Question 33: Are there any other categories, sector or themes which should be included in the guidance note as requiring special or additional disclosure requirements?

KiwiSaver (paras 66 to 78)

57. KiwiSaver prospectus issuers must disclose investment performance information, for each of the preceding five years, in the ordinary course of its mandate.
58. We propose to require disclosure of other material information including:
- (a) factors other than investment returns which impacted the fund performance;
 - (b) extraordinary non-investment income and/or rebated fees – both the fact of these categories and their impact on investment performance;
 - (c) investment policy and objectives – and how these can be changed;
 - (d) the issuer’s investment intentions for the period of the prospectus in some circumstances;
 - (e) material direct and indirect costs; and
 - (f) any lack of awareness on costs, and why this investment remains appropriate when costs are not certain.

Question 34: Do you agree with each of the requirements outlined in the guidance note at paras 66 to 78? (Address each separately if you have views on each paragraph.)

Question 35: Are there any other categories of information which should be disclosed by KiwiSaver issuers?

Debt securities (paras 79 to 87)

59. For debt securities (including those issued by finance companies and by other corporate entities) we propose to require prominent disclosure of:
- (a) risks associated with debt securities in particular; and
 - (b) considerable detail about the issuer, its directors and *senior management*.

60. We also propose specific disclosure requirements in Table XII.

Question 36: Do you agree with the reasoning for these additional disclosure requirements in the guidance note?

Question 37: Are there other factors we have overlooked?

Question 38: Do you consider the requirements in the guidance note at Table XII are relevant and/or sufficient?

Property-related offers (paras 88 to 89)

61. We propose to require issuers of disclosure documents relating to *mortgage schemes* to make the disclosures in Table XIII.

Question 39: Do you consider the requirements in the guidance note at Table XIII are relevant and/or sufficient?

62. We propose to require issuers of disclosure documents relating to *property schemes* to make the additional disclosures in Table XIV.

Question 40: Do you consider the requirements in the guidance note at Table XIV are relevant and/or sufficient?

Cash-box entity offers (paras 90 to 91)

63. For the reasons set out in guidance note para 90, we propose to require issuers of disclosure documents relating to cash-box entities to make the disclosures set out in that paragraph.
64. This may be covered in part by the key information disclosures. But in our view, issuers need to disclose even more about the key people who will lead the business.

Question 41: Do you agree that for cash-box entities, there should be an extra category of key person (which we have referred to as *leaders*)?

Question 42: Do you agree with the additional disclosure requirements in guidance note para 91?

Disclosure issues not addressed

Any other feedback

- 65. We welcome feedback on any disclosure issue we have not addressed in this consultation paper that you believe we should consider.
- 66. This will be considered in relation to the guidance note and also may be used for any future guidance on disclosure issues.

Question 43: Are there any other disclosure issues you wish to provide feedback on?

Question 44: Have we overlooked any important considerations?

- 67. This guidance note is aimed primarily at new disclosure documents. However we expect all issuers to familiarise themselves with the contents of this guidance and to make changes to their disclosure documents at the next available opportunity and, in all cases, before 1 January 2013.

Future guidance

- 68. Significant changes will come into force when the Financial Markets Conduct Bill (the *Bill*) is enacted. It is not possible to future proof this guidance note and it therefore refers to current requirements. This guidance note will be amended when the *Bill* is enacted and we know the new disclosure requirements and timeframes.
- 69. Securities may also be offered or promoted through other advertisements, but this guidance note does not address the requirements for advertisements.

Question 45: Do you agree that this guidance note should not apply to advertisements?

Question 46: Do you have any suggestions about guidance which should apply to advertisements in future?

Benefits and costs

70. We believe the guidance will assist our primary objective of promoting and facilitating the development of fair, efficient, and transparent financial markets. Increased confidence in their ability to make informed investment decisions, and to understand the risks associated with investing, will encourage potential investors to re-enter the investment and capital markets.
71. There will be more immediate benefits to issuers and their advisers, as well as to potential investors:
 - (a) issuers will better understand our expectations and be able to streamline preparation of disclosure documents; and
 - (b) potential investors will be able to make informed investment decisions, based on documents that clearly describe the product and the risks associated with it.
72. To ensure that we can weigh up the costs and the benefits, we seek input from the market, investors and consumers.

Question 47: Do you agree with the benefits we have outlined?

Question 48: Do you see other benefits which we have not identified?

Question 49: Can you identify and quantify any increased compliance costs?

Question 50: Can you identify and quantify any costs savings?

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Attachment A: Draft Guidance Note: Effective Disclosure



Guidance Note: Effective Disclosure

January 2012
Consultation draft

About this guidance note

This guidance note is intended for issuers of securities, their directors and advisers. It sets out the Financial Market Authority's (*FMA*) expectations on how to prepare and present prospectuses and investment statements.

Significant changes will come into force when the Financial Markets Conduct Bill (the *Bill*) is enacted. It is not possible to future proof this guidance note and it therefore refers to current requirements. This guidance note will be updated when the *Bill* is enacted and we know the new disclosure requirements.

Status of this guidance note

We are issuing this guidance note to describe our intended approach and the issues we will consider when reviewing disclosure documents using our statutory powers. This guidance note has no other legal status; it is not binding on the Courts or third parties. We provide examples for illustration. The examples are not exhaustive and do not impose or imply particular rules or requirements.

Every issuer must comply with all legal requirements for disclosure documents. We do not repeat all legal requirements in this guidance note, although we refer to some where this is appropriate.

This guidance note does not constitute legal advice. We encourage you to seek your own professional advice to find out how the legislation discussed and any other applicable laws apply to you, as it is your responsibility to determine your obligations.

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Introductory comments

1. FMA's principal objective is to promote and facilitate the development of fair, efficient, and transparent financial markets. To perform our functions and deliver on this objective, we seek to ensure that:
 - financial markets participants have clear and well understood responsibilities; and
 - retail investors have access to the information they need to make informed investment decisions.
2. Issuers provide information to potential investors through disclosure documents. Disclosure documents are intended to help potential investors make informed investment decisions by telling them about:
 - the risks and returns associated with an offer of securities;
 - the entity offering investment and its business.
3. We require you as issuer to comply with all the legal requirements for disclosure documents. But more than that; disclosure requires documents which are more than the sum of their individual compliant parts. We expect issuers to consider their disclosure documents holistically and not to merely 'tick the boxes' through a compliance checklist.
4. Overall, we expect two fundamental components in effective disclosure documents:
 - Disclosure documents must give truthful and complete information about an offer, and about the issuer, that is both relevant and material to an investment decision. You must ask yourself whether the disclosure documents convey an accurate impression of an investment offer and provide a balanced disclosure of the benefits and the risks; and
 - We expect you to word and present all disclosure documents in a clear, concise, and effective manner. Disclosure documents therefore need to:
 - o contain clear information;
 - o be concise and avoid superfluous information that might confuse; and
 - o be effective.
5. These two fundamental components include complying with all relevant legal requirements.
6. An investment statement needs to be readily understandable by a prudent but non-expert investor. A prospectus should also be understandable by the intended audience. It can be requested by a non-expert investor and therefore should also be readily understandable by them. Importantly, documents that are not clear, concise, and effective can be misleading to investors.

7. This guidance note sets out how issuers can meet this clear, concise, and effective objective and covers the key areas in Table I.

Table I

| Topic | What our guidance covers | Where to find it |
|-------------------------------|---|---------------------------|
| Disclosure requirements | The <i>Act</i> and the <i>Regulations</i> . | Section A |
| Clear, concise, and effective | Guidance on wording and presentation. | Section B |
| Key information | How to present key information such as offer terms, business model, directors and <i>senior management</i> , and risks. | Section C |
| <i>Financial information</i> | What to include on past and prospective <i>financial information</i> . | Section D |
| Sector specific issues | KiwiSaver, debt securities, property related offers, <i>cash-box entities</i> . | Section E |
| FMA's ongoing role | Consultation and document approvals. | Section F |

8. This guidance note is not a checklist to use in isolation from the special circumstances relating to your offer. While professional advisers, such as lawyers and accountants, and other advisers can provide useful assistance to issuers in preparing disclosure documents, it is the responsibility of the issuer and its directors to ensure that the documents are correct, both taken as a whole and in each particular disclosure. We encourage issuers and their directors to take ownership of the task of ensuring the documents meet our requirements and not to cede responsibility for this task to professional or other advisers.
9. This guidance note is aimed primarily at new disclosure documents however we expect all issuers to familiarise themselves with the contents of this guidance and to make changes to their disclosure documents at the next available opportunity. Because we are publicly consulting on the contents of this guidance note, and it will be finalised and published by 31 March 2012, we will expect all:
- new disclosure documents issued after 1 May 2012 to be compliant with this guidance note; and
 - existing disclosure documents to be compliant by 1 January 2013.
10. If you offer continuous issues, you must ensure that their disclosure documents continue to meet the required standards and remain accurate at all times securities are offered and allotted under them. You should put in place processes to ensure that any material adverse change in circumstance is promptly identified, and the disclosure documents are appropriately amended.
11. The glossary sets out terms in this guidance note which are defined (and italicised).

Section A: Disclosure requirements

Current requirements

12. The *Act* applies when an offer of securities is made for subscription to the public in New Zealand.
13. The most important disclosure documents are the registered prospectus and the investment statement. This guidance note applies to those two documents. Securities may also be offered or promoted through advertisements. This guidance note does not address the requirements for advertisements.
14. A registered prospectus (other than a short form prospectus or a simplified disclosure prospectus for offers of securities of the same class as listed securities) is intended to contain all information material to an offer of securities:
 - The general obligations to register a prospectus and to prepare and distribute an investment statement are set out in the *Act*.
 - The *Regulations* contain more specific requirements. The information required depends on the nature of the securities, and the circumstances in which they are being offered. You must comply with the relevant *Regulations* and applicable Schedule.
 - In addition to these specific requirements, the *Regulations* incorporate a general requirement that a registered prospectus include all other information material to the offer of securities. The Courts have held material matters are all matters which might reasonably affect the judgment of an intending investor when making a decision as to whether or not to invest.
15. An investment statement provides simplified disclosure for a potential investor, using a question and answer format and referencing other documents. The purposes of an investment statement are to:
 - provide key information that is likely to assist a prudent but non-expert person to decide whether or not to subscribe for securities; and
 - bring to the attention of such a person the fact that other important information about the securities is available to that person in other documents.
16. The *Act* gives us broad powers to:
 - cancel registration of a prospectus; or
 - prohibit the allotment of securities
 - prohibit distribution of an investment statement in certain circumstances.

These circumstances are set out fully in sections 43F -43G of the Act and include circumstances where FMA is of the opinion that:

- in relation to an investment statement, it is likely to deceive, mislead or confuse, or is inconsistent with any registered prospectus referred to in it; or
- in relation to a registered prospectus, where it is false or misleading as to a material particular, , or contains a material misdescription or error, or any material matter that is not clearly legible; and
- in relation to investment statements and/or registered prospectus, where they do not comply with the *Act* or *Regulations*.

Section A reminders

The registered prospectus and the investment statement are the two key disclosure documents available to potential investors. This guidance note applies to these two documents.

Issuers and directors should consider:

- Are you familiar with the requirements of the *Act* and the *Regulations*?
- Does your prospectus contain all the information which it is required to?
 - What other information are you aware of that might be material to the offer?
- Does your investment statement provide key information that is likely to assist a prudent but non-expert person to decide whether or not to subscribe for securities?

Section B: Clear, concise and effective

General comments about this requirement

17. Clear, concise, and effective disclosure documents improve the quality of disclosure, and help potential investors make better investment decisions. We therefore require disclosure documents to be clear, concise, and effective.
18. A prospectus should be understandable by the intended audience. It can be requested by a non-expert investor and therefore should also be readily understandable by them.
19. We expect you to prepare and present registered prospectuses and investment statements in a 'clear' and 'concise' and 'effective' manner. Each concept qualifies the other and you need to consider all three aspects.

Clear

20. Disclosure documents are clear if they:
 - use plain language;
 - are logically ordered and easy to navigate;
 - highlight key information;
 - explain complex information, including any technical terms;
 - avoid industry or legal jargon;
21. Plain English is a style of writing in which the language, structure, and presentation of a document all work together to help the reader. A document written in plain English is easy to read, understand, and act upon after just one reading. There are many plain language techniques which can be used to make a disclosure document clear for a potential investor. We do not prescribe any particular technique. Table II contains technique examples.

Table II

| Technique | Explanation | Examples |
|------------------|---|--|
| Active tense | Express the subject's actions in the active tense (subject, verb, object), rather than the passive. | 'We will pay you' rather than 'You will be paid by us' |

| Technique | Explanation | Examples |
|------------------------------|---|--|
| Pronouns not labels | Use 'you', 'we' and 'us' instead of labels such as 'the applicant' and 'the company'. | 'We will pay you' rather than 'The company will pay the security holder' |
| Avoid double negatives | It is easier to understand sentences phrased positively. | 'It is likely that ...' rather than 'It is not unlikely that ...' |
| Minimise definitions | If a reader has to refer to a definitions section too often, the document may not be clear. | Do not define commonly understood words |
| Do not use jargon | Jargon is not clear for a reader who is not experienced in the relevant business or profession. | Any finance terms which are not used in every day language such as 'loan-to-value ratio' or 'annuity'. |
| Short sentences | Each idea in a separate sentence. Remove superfluous words. | 'You can apply if ...' rather than 'You may be able to apply if ...' |
| Layout | Use white space, headings and structure effectively so the reader can follow the document easily. | Use clear headings, colour and notes to help the reader. |
| Navigation tools | Tools which help a reader follow the flow of a document. | Hyperlinks, cross-referencing, heading structure and colour. |
| Page and paragraph numbering | Assist with the flow. | Self-evident. |
| Prominent | Techniques to make sure information stands | Use clear headings, |

| Technique | Explanation | Examples |
|--------------|------------------------------------|---|
| presentation | out and attracts the reader's eye. | colour or highlighting, distinct font, bold font. |

22. To be clear, we expect information required by law (which includes the information required by the *Regulations*) will:

- not be in small print;
- not be at the back of a disclosure document;
- be prominent.

Concise

23. The content, and in some cases the order, of the disclosure documents is largely prescribed. Therefore this aspect of this guidance note addresses form, format and other tools to keep content as concise as possible. Table III contains examples.

Table III

| Technique | Explanation |
|------------------------------|--|
| Short sentences | Each idea in a separate sentence. Remove extra words which are not needed. |
| Highlight key information | Use overviews and/or summaries and publishing tools to highlight key information for the reader. |
| Diagrams and graphs | Simple diagrams and graphs can summarise information clearly, and more effectively, than long sections of text. |
| <i>Brand information</i> | Can and should support, but not dominate, a disclosure document, otherwise you risk selling the brand rather than the offer. |
| Photographs and other images | Should only be used if relevant to your offer and clearly labelled. They should only be placed after any key information section (as these are the pages most likely to be read). Use white space and layout techniques to break up text if need be. |

24. We regard information such as photographs, images and logos in disclosure documents as *brand information*. *Brand information* should only be used if it helps to make a disclosure

document clear, concise, and effective. *Brand information*, images and diagrams should only be used to improve or enhance disclosure and should not mask it. We expect that:

- images of any kind should not distract or detract from the substantive disclosure;
- the key information should appear in the first few pages of any document, rather than images;
- other than the front page, *brand information* does not dominate any disclosure document or detract from the required disclosures;
- *brand information* should only be used if it is relevant to your business and the offer;
- celebrity photographs are included only when appropriate and after careful consideration;
- overall a disclosure document must give investors the relevant information about the offer and should not seek to rely on selling the securities through alignment with a known brand.

Effective

25. Effectiveness requires an overall assessment of whether a disclosure document provides sufficient information to aid investment decision making. It primarily looks at the disclosure document as a whole, rather than its individual components. Clarity and conciseness help to achieve effectiveness. But they are not the only two elements of the test.
26. Effective disclosure documents will give truthful and complete information about an offer to potential investors. Directors and issuers must ask themselves whether the disclosure documents, taken as a whole, convey an accurate impression of:
 - the issuer and its business; and
 - an investment offer and its associated risks.
27. Tools and techniques such as document layout, font and structure help to make a document effective.
28. If a prospectus and investment statement are combined, then the clear, concise, and effective test will only be met when the information required to be in the investment statement is:
 - close to the front of the disclosure document; and
 - prominent and easily accessed.

Investment statement – specific requirements

29. The 'clear, concise, and effective' test is critical for an investment statement to comply with this guidance note.
30. There are specific requirements for explaining the existence and availability of certain other information in Schedule 13, *Regulations*. Regulation 19 requires this information to be included in a 'succinct manner'.

Section B reminders

Disclosure documents covered by this guidance note must be clear, concise, and effective.

Issuers and directors should consider:

- Do your disclosure documents use
 - plain English?
 - tools such as structure and layout to make them clear?
- Have you included only information which is necessary?
- Are logos, *branding information* and photographs used only where they do not dilute, distract from or hide the key information?
- Do your disclosure documents give truthful and complete information about an offer?
- Have you used techniques to make your disclosure document clear, concise, and effective?

Section C: Key information

General comments

31. All material matters relating to the offer must be fully disclosed in the prospectus. We recognise that some matters relating to the proposed investment or business plan may be uncertain. But we expect disclosure documents to identify and explain as a minimum:
- key information about the overall nature of the investment;
 - the business model underlying the investment;
 - the directors and *senior management* who are involved in the investment business;
 - risks associated with the investment;
 - related party transactions; and
 - credit ratings where relevant.

Key information section

32. The *Regulations* set out minimum requirements for each disclosure document:
- An investment statement must include the prescribed requirements in Schedule 13 to the *Regulations*. You must follow these requirements as your key information section.
 - A prospectus must include the prescribed requirements in the relevant Schedule to the *Regulations*. For a prospectus to be effective, it should identify key information early and prominently in a key information section. This should:
 - o be the first substantive section of a disclosure document following any statements or disclosures required by law;
 - o contain a meaningful summary of the information which is key to an investment decision; and
 - o provide a balanced disclosure of the benefits and the risks.
33. In particular you should disclose the factors described in Table IV as well as the requirements in the rest of this Section C.

Table IV

| Topic | Requirement |
|--------------|---|
| Offer terms | Describe the overall nature of the investment. Explain how investments can be on-sold (such as trading on an exchange). Detail any guarantees and whether the offer is underwritten. |
| Benefits | Explain key financial benefits and terms of the offer and how you plan to use investors' funds. |
| Fees | Be specific and clear about the fees and all other costs for an investor. For example, your investment statement must answer the question 'What are the charges?' Prospectuses must also address all costs. (If applicable, refer to our guidance note on KiwiSaver performance fees, issued for consultation in November 2011, which gives guidance on KiwiSaver fee disclosure requirements.) |

Business model

34. You should ensure the disclosure documents clearly describe the business model underpinning the offer. Essentially, you should explain how you will make money and generate income or capital for investors. Table V sets out the factors to include.

Table V

| Topic | Requirement |
|---------------------|---|
| Nature of business | The nature of the business, including your stage of development and/or any industry wide issues. |
| Corporate structure | The corporate structure of the business and any corporate group it is part of. |
| Strategy | Your strategy and business plan for the future. |
| Financing | Financing plans for the future, particularly as they relate to the purpose of the offer and any future capital expected to be raised from the public. |
| Assumptions | Key assumptions underlying the business plan for the future (whether specific to the business or to wider socio-economic issues) and expert analysis or opinion supporting those assumptions. |
| Dependencies | Key dependencies for your ongoing operations. |
| Competition | Your competitors and any barriers to entry. |

| Topic | Requirement |
|---------------|---|
| Other matters | Any other material matters relating to the business model or to the industry. |

Directors, senior management and auditors

35. Potential investors will need to judge the capability and capacity of the directors, the *senior management* and auditors, in order to make an investment decision. Effective disclosure documents therefore need this information.
36. You should disclose at least the relevant skills, experience and expertise for all directors, *senior management*. This will:
- include their qualifications and their employment history;
 - portray a balanced view of their corporate, employment and professional history.
37. We expect to see information tailored to the offer. Table VI contains examples of information which may be material and/or relevant to a potential investor.

Table VI

| Topic | Requirement |
|-------------------------------|--|
| Role | Each person's full name, role title and brief description, availability, involvement in any governance committees. |
| Expertise | Each person's qualifications, expertise and experience relevant to the role. |
| Other appointments | For each person, their past and present director or <i>senior management</i> roles in the past five years. |
| Independence | Each person's shareholder affiliations and any shares held directly or indirectly. If they are an independent director, confirm this and explain why the person is seen as independent. |
| Remuneration | Details of remuneration including any contingent or non-cash entitlements. |
| Honesty | Provide any information that would be material to a potential investor about the honesty or character of each person. |
| Legal or disciplinary history | Explain the matters required by Schedule 1, clause 5 of the <i>Regulations</i> . In addition to this, where you are advertising the skills knowledge and expertise of a particular director or senior manager, you should disclose any other relevant matters so that a balanced view of that individual is presented. You should consider disclosing matters about any legal or disciplinary actions against either the person or any entities of which |

| Topic | Requirement |
|--|--|
| | <p>they were a director at the time. (Information is relevant whether it relates to New Zealand or overseas. Information which only relates to a person's private capacity and does not bring into question their honesty may not be material.) Include any of the following:</p> <ul style="list-style-type: none"> • criminal convictions involving dishonesty; • bankruptcy or insolvency or company failure for any reason; • civil proceedings and settlements • enforcement proceedings by any government agency; • disciplinary action by a professional body or regulator of securities markets; and • refusal, suspension or cancellation of membership of a professional organisation. |
| Insolvent companies or failed businesses | Explain if each person was or is a director or <i>senior manager</i> of a company or business that entered into liquidation, receivership, winding up or any other form of administration, and their role was current at the time of or within 12 months before that event. |

38. For auditors, you need to consider disclosing the matters set out in table VI above to the extent material to a potential investor. This will include, at least, their expertise, independence, honesty and legal and disciplinary history.

Risks

39. You should disclose the risks associated with the issuer and with the investment, in a logical order. A prospectus should contain more detailed information on risks than the investment statement which should outline key risks.
40. Risk descriptions need to be specific and relevant to the offer, rather than generic or standard. It may be misleading or deceptive to list all risks that might impact any issuer.
41. Your disclosure should be based on a formal risk evaluation process undertaken by you (or on your behalf). This would assess risk likelihood, potential severity or impact and relevant mitigation plans. The risk evaluation process should include strategic and/or operational risks relevant to the offer.
42. You should address issues such as the examples set out in Table VII.

Table VII

| Topic | Requirement |
|------------------------------------|---|
| Key risks, likelihood and severity | Assess the key risks relevant to the offer, their likelihood and severity of impact. Key risks are usually those which could have a material impact on the issuer's financial position or performance or on the value of an investment. Disclose the key risks clearly and prominently. Use a scale, diagram or graph to explain if this aids clear and effective disclosure. |

| Topic | Requirement |
|-------------------|--|
| Specify key risks | Specify whether each risk relates to the nature of the securities or to the issuer. |
| Topics considered | Identify topics considered in your risk evaluation so it is clear an appropriate range of business risks have been considered by you as issuer; This might include risks about: <ul style="list-style-type: none"> • lending and/or liquidity; • currency; • major events which you have considered; • property development; • product development; • potential public or product liability; • any issues of concern or risk about the ongoing viability of your business; • intellectual property; • material or equipment where supply is critical; • personnel with specialised skills; • key relationships; • any consents you must have; • geographical concentrations or other lack of diverse investment; • any past regulatory non-compliance and steps taken to rectify this. |
| Mitigation | Explain steps taken to mitigate risks. You should not suggest these steps eliminate the risks. |
| Balance | Balance benefits and risks, to give a fair description of the investment overall. |
| Model | Explain the risk model you have used, and the scale for judging likelihood and severity of impact. |
| New business | If the offer relates to a new business, then highlight the key risks that brings. |

Related parties and transactions

43. Information about the existence of related parties and transactions between you as issuer and related parties is likely to be relevant to a potential investor and therefore likely to be material. (These aspects may also raise key risks.) This information should be disclosed in the key information section of a disclosure document.
44. A related party transaction is a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.
45. We will use the definition of related party transactions (and the definition of related party) from *NZ IAS 24*. (The objective of this Standard, as stated in the Standards is to '... ensure that an entity's financial statements contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the

existence of related parties and by transactions and outstanding balances, including commitments, with such parties...'). This objective is consistent with our aims in seeking disclosure on this issue. We do not expect you to take an overly technical approach. But if NZ IAS 24 would apply to a transaction, it should be disclosed.

46. If, for any reason, you have used a different definition for transactions between related parties, disclose that you have used a different definition, and explain why. You should then make disclosure of any transactions which fall into that different definition.
47. Related parties may enter into transactions that unrelated parties would not enter into. Investors must be able to understand key information about how related party transactions affect you and the benefits and risks which the related party transactions bring. Your disclosure should include the requirements in Table VIII.

Table VIII

| Topic | Requirement |
|----------------------------|--|
| Context | Explain the context in which the related party transactions were established. Why is the related party the best entity or person to deal with? |
| Relationship | Explain the nature of the relationship(s) between the parties, and any legal requirements the relationship raises. |
| Arm's length | Are the related party transactions at arm's length or on favourable terms? |
| Fairness between investors | Are there any factors which raise fairness or equity issues between investors? |
| Value | Explain the financial value and impact of the related party transactions and the impact of not having the related party transactions in place. Ensure any current outstanding balances are explicitly disclosed. |
| Conflict of interest | How has an actual or perceived conflict of interest been handled? |
| Risk | Identify the risks to you which the related party transactions bring, likelihood and severity and mitigation steps. |
| Process | Explain your processes for identifying and managing related party transactions and checking compliance with those processes. |

Credit ratings

48. If you are required to, or if you choose to, disclose a credit rating, it must have been issued by a recognised credit rating agency. We consider that Standard and Poors Rating Services, Moodys Investor’s Service and Fitch Ratings are all recognised and reputable credit rating agencies. If you are an *NBDT*, then you must meet the requirements of the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010 as well as this guidance.
49. If you have a credit rating from a reputable agency then it is likely to be material information and should be disclosed in any disclosure document.
50. The credit rating and type of rating of any related parties or third parties you deal with may also be material, depending on the circumstances. If a default by the third party or related party would have a material and adverse impact on you, then the third party’s credit rating and type of rating (or that of the related party) should be disclosed.
51. Disclosure should include at least the factors in Table IX.

Table IX

| Topic | Requirement |
|---|--|
| Your rating information (including type of rating) – both for issuer and for the investment offer | Rating, type of rating, meaning, date issued, scale of potential ratings, agency which gave the rating. The investment offer’s credit rating should be more prominent than that of the issuer. |
| Clear | Ensure a reader can understand the significance and context of the rating. |
| Report by rating agency | If a report was issued, whether that report is available to potential investors. |
| Third party rating information | Rating, type of rating, meaning, date issued, scale of potential ratings, agency which gave the rating and relevance/implications for your business. |

Section C reminders

Disclosure documents must identify and explain at least key information about the investment offer.

Issuers and directors should consider:

- Do your disclosure documents identify and explain the key information set out in this section C?
- Is that information placed early and prominently?
- Overall, does each document provide balanced disclosure of the benefits and the risks?
- Is the risk section based on a formal risk evaluation process?
- If you have any related party transactions, are these fully explained?
- If applicable, have you disclosed adequate credit rating information as outlined in Table IX?

Section D: *Financial information*

General comments

52. Financial performance and position information is a key component of disclosure documents. It includes any information relating to your past or prospective financial performance or position, whether audited or not. For the purposes of this guidance note, we use the term *financial information* to describe this broad category of information.
53. The *Regulations* prescribe disclosure of specific *financial information*.
54. You can include other *financial information*. However, you should disclose all *financial information*:
- in a clear, concise, and effective way; and
 - with appropriate cautions where information is incomplete or uncertain.

Past financial information

55. The minimum requirements for disclosure of past *financial information* for issuers with a trading history are prescribed by law:
- A prospectus must contain summary financial statements, compiled from registered financial statements, which comply with *FRS 43*. These summary financial statements must relate to the previous five accounting periods;
 - An investment statement must:
 - o refer to any prospectus (or disclosure statement for debt securities issued by a registered bank) and the fact that financial statements (if any) are available;
 - o explain how to get a free copy; and
 - o explain where they are registered.
56. Any additional past *financial information* can be disclosed if you ensure:
- the disclosure document remains clear, concise, and effective; and
 - the past *financial information* is:
 - o material;

- o reliable (there is a reasonable basis for it);
- o not misleading, on its own or in the context of the whole document.

57. The information in Table X explains this further.

Table X

| Topic | Requirement |
|-------------------------------|---|
| Clear, concise, and effective | Clearly explain the nature of the past <i>financial information</i> being used. Measures such as financial returns over past periods and references to indexes (or other comparatives such as industry benchmarks) need good explanations to meet this requirement. Use appropriate benchmarks to explain performance results. |
| Not misleading | Past <i>financial information</i> should be presented in a balanced way. For example: <ul style="list-style-type: none"> • Do not ‘cherry pick’ results such as performance periods to give an overly favourable impression. • If you have a higher risk strategy than competitors, and a higher return, mention both factors, not just the higher return. • Consider commenting on relevant market conditions, underlying economic factors or the performance of others. • Present revenue growth results alongside relevant profitability results. • Disclose information on operating cash flows and investment/financing cash flows. • Use appropriate and prominent cautionary notes. We expect you to note, as an example, that past performance is not necessarily indicative of future performance. • Any statement giving the impression investors could expect substantially the same returns in future would be misleading. • Disclaimers in small print will not be sufficient disclosure if the information is otherwise misleading. |
| Audited information | Clearly distinguish between audited <i>financial information</i> and other non-audited <i>financial information</i> . |
| Accounting standards | Summary <i>financial information</i> must comply with <i>FRS 43</i> . If the summary <i>financial information</i> has not been prepared using professional accounting or industry standards, you should explain reasons for departing from the relevant standard. |

Prospective financial information

58. The *Act* prescribes the prospective *financial information* you must include in disclosure documents. (This varies for each type of security; links to further details are at the end of

this document.) For some types of security, you must include prospective *financial information* unless, in the opinion of the directors, it would be misleading to include it.

59. Prospective *financial information* is inherently more risky to disclose because it is uncertain and is based on a series of assumptions. But it can and should inform potential investors of the likely financial outlook for the term and duration of the investment. Issuers and their directors should seek advice and form their own view on the legal requirements for disclosure of prospective *financial information* for the particular offer.
60. When including prospective *financial information* you should ensure:
- the disclosure document remains clear, concise, and effective; and
 - the prospective *financial information* is:
 - o material;
 - o reliable because there is a reasonable and justifiable basis for it;
 - o not misleading, on its own or in the context of the whole document;
 - o supported by an expert’s report;
 - o based on only reasonable short term estimates;
 - o unambiguous about material risks; in particular:
 - risks associated with a particular asset class; or
 - risks specific to the proposed investment strategy (having regard to those outlined in the *Regulations*, Schedule 13, clause 11).
61. Further details about disclosure of prospective *financial information* follow in Table XI.

Table XI

| Topic | Requirement |
|---------------------------------|--|
| Reasonable short term estimates | Estimates for prospective <i>financial information</i> are reasonable if they are up to two years, relating to an existing business and based on events which <i>senior management</i> reasonably expect to occur. If you wish to disclose prospective <i>financial information</i> beyond this two year horizon, you should have independent or objective sources of information to support the information. You can include information covering a period of less than two years if this is a more appropriate period on which directors can confidently rely. |
| Expert’s or accountant’s report | An independent relevant expert’s or accountant’s report, which: <ul style="list-style-type: none"> • is from a credible expert or qualified accountant; • has verified the information used to support the report; • meets relevant professional standards; • sets out the assumptions relied on; and • supports the information and assumptions as reasonable May provide a reasonable basis for disclosure. |

| Topic | Requirement |
|----------------------|---|
| | If you rely on this basis, then the report should: <ul style="list-style-type: none"> • be included in the disclosure document; and • explain the scope of engagement and extent of analysis performed. |
| Contracts | Contracts which lock in key revenue, supply or expenses may provide a reasonable basis for disclosure. An option is not enough; there should be a reasonable basis for believing an option will be exercised before relying on it to disclose prospective <i>financial information</i> . |
| Assumptions | All assumptions, both explicit and implied, should have a reasonable basis. This is particularly relevant to forecasting returns, exchange rates and performance against benchmarks. |
| Accounting standards | Prospective <i>financial information</i> must comply with <i>FRS 42</i> and <i>FRS 43</i> . If the prospective <i>financial information</i> has not been prepared using professional accounting or industry standards, you should explain reasons for departing from the relevant standard. |
| Presentation | Prospective <i>financial information</i> should be displayed in a balanced way, with assumptions and any limitations placed with the information. |
| Warning | Disclosure should make it clear the prospective <i>financial information</i> : <ul style="list-style-type: none"> • is predictive; • may be affected by a range of factors; and • may ultimately differ materially from actual results. |
| Best estimates | Best estimates by the directors of the issuer, and promoters are not a reasonable basis for prospective <i>financial information</i> . |

62. If a disclosure document does not contain prospective *financial information*, there should still be adequate disclosure about the financial benefits and risks of the investment. Adequacy will depend on context. If prospective *financial information* has not been included because there are no legal or other grounds for it, you should insert a statement to that effect.
63. We also intend to issue further guidance on the use of alternative performance measures. Please see our website at: <http://www.fma.govt.nz/keep-updated/reports-and-papers/fma-signals-its-intention-to-provide-guidance-on-the-use-of-alternative-performance-measures/>

Section D reminders

Financial information is a key component of disclosure. You must disclose some ***financial information*** and you have the option of disclosing additional ***financial information***. Prospective ***financial information*** must be disclosed unless in the opinion of the directors, inclusion would be misleading.

Issuers and directors should consider:

- Is your disclosure of past *financial information* clear, concise, and effective?
- Is it appropriate or necessary for you to disclose prospective *financial information*?
 - If so, is the prospective *financial information*:
 - material?
 - reliable?
 - not misleading?
 - If not, have you included a statement explaining why it is not appropriate to include prospective *financial information*?

Section E: Sector specific issues

General comments

64. For effective disclosure, we have expectations about specific categories of offerings:
- KiwiSaver disclosure documents, given the importance of KiwiSaver to New Zealand's capital markets, and its features such as the long term lock-in investment;
 - debt securities including finance company deposits, debentures and other forms of deposit;
 - property-related investments; and
 - cash-box investments.
65. These requirements are in addition to the other disclosure requirements in this guidance note. They are not exhaustive and we may issue further guidance on sector specific issues from time to time.

KiwiSaver – investment performance and costs disclosure

66. A KiwiSaver prospectus must disclose:
- the investment performance of the scheme, or of each fund within the scheme, over each of the preceding five years; and
 - a statement of the basis on which that was calculated.
67. You should also disclose investment performance and fund performance accurately and in a clear, concise, and effective way.
68. The KiwiSaver scheme's name and any fund descriptions should fairly reflect the true nature of the fund's investment objectives and policy. For example:
- a fund which invests in high risk investments cannot be called or described as 'conservative: and
 - a fund which invests in a limited range of assets cannot be called or described as 'diversified'.
69. We expect disclosure of the investment performance achieved by the fund in the ordinary course of its investment mandate.

Factors other than investment returns

70. The fund's financial performance may be affected by a number of factors as well as investment returns such as:
- level of fees charged to the fund;
 - extraordinary non-investment income;
 - fees and expenses rebated to the fund;
 - related party transactions on terms which are not arms' length.
71. Disclosure should identify and exclude these factors, and any others outside investment returns.

Calculating investment performance

72. If you calculate investment performance using unit prices by reference to a fund's net asset values, the outcome may be affected by extraordinary non-investment income and/or rebated fees (for management or administration). If this is the case, you should exclude these factors and disclose their nature and effect on investment performance.
73. You cannot promote a fund on the basis of its short terms returns where those are not consistent with the fund's long term returns.

Non-investment income or returns

74. You should separately report on any non-investment income or returns and non-recurring transactions.

Investment mandates and practices

75. You should disclose:
- the scheme's (or the fund's) objectives and policy, and a statement specifying how those can be changed; and
 - your actual investment intentions for the prospectus's duration, if you have unlimited investment discretion.
76. This disclosure should enable potential investors to identify the nature of the fund, the risks, and likely returns.

Disclosure of direct and indirect costs

77. You should disclose:
- charges that are or may be payable to you as issuer or to a promoter (or an associated person of either). These are direct costs; and
 - any indirect costs incurred through investment in other entities or schemes (intermediate entities, whether related or unrelated).
78. We expect disclosure of both direct and indirect costs, where these are material. If you cannot access the exact details of indirect costs, you should disclose that lack of awareness

and why you consider this investment is appropriate without knowing or understanding all investment costs.

Debt securities

Finance companies

79. Since 2006, a significant proportion of the finance company sector in New Zealand has collapsed. Experience since then has shown that the true nature and risks of investments were not adequately disclosed by many finance companies.
80. We have a strong focus on increasing standards of disclosure and investor access to the information they need to make informed decisions about investing in debt securities.
81. Potential investors may believe these investments offer capital stability and consistent, ongoing returns. That is not always the case. It is important disclosure on risks associated with debt securities is made so a potential investor can make an informed decision.
82. We expect to see clear, concise, and effective disclosure of particular risks relevant to debt securities which enable potential investors to understand the risks and decide whether to invest.
83. Key information may include considerable detail about the issuer and its directors and *senior management*. Potential investors will need to judge the issuer's capability, and that of its directors and *senior management*, from the skills and experience they bring (including their track record such as involvement with any failed issues) and from the time and effort they can contribute to the issuer.
84. Disclosure will need to be prominent to be effective. Disclosure requirements for specific types of debt securities are set out below.

Debentures and other forms of deposit

85. Offers of debentures, notes and other forms of deposit are used in many different ways as a source of finance for a diverse range of entities and individuals and as an investment for an investor.
86. But these offers contain particular risks. Investors cannot assess and then monitor performance or value to external benchmarks such as a securities market. Exit opportunities are prescribed and may be very limited if the issuer is in financial difficulty. If funds are on-lent for example, in the case of property-related developments, there are usually liquidity challenges and valuation risks. Potential investors therefore need good disclosure to make informed investment decisions.

All debt securities

87. We expect you to disclose clearly, concisely and effectively at least the information in Table XII.

Table XII

| Topic | Requirement |
|----------------------------|--|
| Equity ratio | Ratio of equity to total assets. NBDTs should also disclose the minimum capital ratio requirements and their actual capital ratio, and also comply with any regulatory disclosure requirements for <i>NBDTs</i> . |
| Liquidity | <ul style="list-style-type: none"> • An analysis of liabilities and when they fall due compared to expected cash flows from financial assets; and • Disclosure of assumptions such as debenture re-investment rates. • Details of committed funding facilities and other sources of liquidity. • Risk-based assessments of lower than expected liquidity. This should address your ability to meet debt obligations on time; |
| Rollovers | The process you will use, how investors will receive information and any other material information; |
| Trust deeds | Any financial covenants; |
| Loan portfolios | <p>For offers made by entities that are lenders:</p> <ul style="list-style-type: none"> • your lending practices including the credit quality of typical borrowers and the type of security required to support loans; • A maturity analysis of existing debt, assumptions underlying this analysis and any risks identified by this analysis; • Analysis of the loan book by borrower type, impaired assets, type of lending, past due status, security, geographic location, product type (interest only/amortising loans), restructured loans, accrual of interest not payable until maturity and any significant exposures to particular borrowers or groups of related entities. |
| Related party transactions | <p>Your approach to related party transactions including:</p> <ul style="list-style-type: none"> • Any trust deed provisions such as definition of <i>related parties</i> and limitations on related party transactions; • Any waivers or exemptions granted by trustees; • Number and value of loans to related parties; • Value of those loans as a percentage of total assets; • Processes for assessing and approving loans which will be related party transactions; and • Policies applicable to related party transactions such as interest rates, security and loan-to-valuation ratios. |
| Valuations | <p>Where funds are lent for property-related transactions, provide full details of:</p> <ul style="list-style-type: none"> • valuations; and • your lending principles including loan-to-valuation ratios. |

Property-related disclosure documents

Mortgage schemes

88. If you wish to issue disclosure documents about an offer relating to a mortgage scheme, we expect you to disclose at least the information in Table XIII.

Table XIII

| Topic | Requirement |
|----------------------------|---|
| Liquidity | <ul style="list-style-type: none"> • An analysis of liabilities and when they fall due compared to expected cash flows from financial assets; • Short term commitments; • Details of committed funding facilities and other sources of liquidity; • Risk-based assessments of lower than expected liquidity. This should address your ability to meet debt obligations on time. |
| Scheme borrowing | If you also intend to borrow against the funds invested, disclose lending policies and any potential for short term debt issues. |
| Rollovers | The process you will use, how investors will receive information and any other material information. |
| Loan portfolios | <p>For offers where you will on-lend funds:</p> <ul style="list-style-type: none"> • your lending practices including disclosing security for loans; • the maturity profiles of existing debt and any risks that arise because of this; • lending for developments; • any issues relevant to contractual maturity compared with expected maturity; and • diversification of lending by type of property, geographic location and any maximum lending to particular borrowers. |
| Related party transactions | <p>Your approach to related party transactions including:</p> <ul style="list-style-type: none"> • number and value of loans to related parties; • value of those loans as a percentage of total assets; • related party limits in any trust deed (including the trust's definition of related parties if applicable and any waivers or exceptions granted by trustees);- • processes for assessing and approving loans which will be related party transactions; and • policies applicable to related party transactions such as interest rates, security and loan-to-valuation ratios. |
| Valuations | <p>Full details of:</p> <ul style="list-style-type: none"> • policy concerning and details of valuations; and • your lending principles including loan-to-valuation ratios and how you intend to treat loans for development purposes. |

Property schemes

89. If you wish to issue disclosure documents about an offer relating to a property scheme, we expect you to disclose at least the information in Table XIV.

Table XIV

| Topic | Requirement |
|--------------------------------|--|
| Gearing ratio | Total interest bearing liabilities to total assets, both for any existing properties and for any new purchases. |
| Liquidity | <ul style="list-style-type: none"> • An analysis of liabilities and when they fall due compared to expected cash flows from financial assets; • Disclosure of assumptions; • Details of committed funding facilities and other sources of liquidity; • Risk-based assessments of lower than expected liquidity. This should address your ability to meet debt obligations on time. |
| Scheme borrowing | If you also intend to borrow on the funds invested, disclose lending policies and any potential for short term debt issues. |
| Interest cover ratio | Earnings to expected interest expense, both for any existing properties and for any new purchases. |
| Rollovers | The process you will use, how investors will receive information and any other material information. |
| Loan portfolio diversification | <p>For offers where you will on-lend funds:</p> <ul style="list-style-type: none"> • your lending policies and practices including disclosing security for loans; • the maturity profiles of existing debt and any risks that arise because of this; • lending for developments; • any current or historical information about irrecoverable loans; and • diversification of lending by type of property, geographic location and any maximum lending to particular borrowers. |
| Related party transactions | <p>Your approach to related party transactions including:</p> <ul style="list-style-type: none"> • number and value of loans to related parties; • value of those loans as a percentage of total assets; • processes for assessing and approving loans which will be related party transactions; • any limits on related party transactions in the trust deed; and • policies applicable to related party transactions such as interest rates, security and loan-to-valuation ratios. |
| Valuations | Full details of: |

| Topic | Requirement |
|-------|--|
| | <ul style="list-style-type: none"> • policy concerning and details of valuations; and • your lending principles including loan-to-valuation ratios and how you intend to treat loans for development purposes. |

Cash-box entity offerings

90. We regard a newly-formed investment company, which will invest but where the investment strategy has not been finalised at the time of the prospectus being issued, as a *cash-box entity*. The key information section in disclosure documents for a *cash-box* entity should include considerable detail about the directors, the *senior management* and the *leaders*. Potential investors will need to judge the capability and capacity of all of these people in order to make an investment decision. Effective disclosure documents therefore need this information.
91. You should disclose at least this information on all *leaders*, directors and *senior management*:
- Their relevant skills, experience and expertise. This will include their qualifications and employment history. It should portray a balanced view of their corporate and professional history. We expect to see very detailed disclosure including all of the requirements of Table VI for directors, *senior management* and for any *leaders*.
 - Anticipated availability: how much time has each person committed to working in your business?

Section E reminders

We have additional disclosure expectations for some categories of offerings.

Issuers and directors should consider:

- Does your offer fall into one of these categories:
 - KiwiSaver?
 - Debt securities?
 - Property related offers?
 - *Cash-box entities*?
- If so, have you met the applicable requirements of this Section E such as disclosing:
 - KiwiSaver investment performance?
 - risks relevant to debt securities?
 - relevant ratios and investment policies and processes?
 - specific details on the capability and capacity of your directors, *senior management* and any *leaders*?

Section F: FMA's ongoing role

Future consultation

92. We will engage with issuers and their advisers on an ongoing basis. This will help to identify and act on issues of concern. We expect to consult in a variety of ways after this guidance note is published including:
- Further guidance notes and updates;
 - Seminars, workshops and newsletters; and
 - Informal consultation with issuers and their advisers, which is a two-way process.

Pre-vetting facility

93. We will stop providing our pre-vetting facility at the end of March 2012.
94. As part of our surveillance activities we will continue to review offer documents after registration using a risk based framework. This includes any reviews performed under the consideration timeframe for FMA of five working days introduced by the Securities Amendment Act 2011².
95. We will help you and your advisers with the transition process as we move to post-registration consideration from 2 April 2012.

² Sections 43C and 43D Securities Act 2011

Glossary of terms

96. In this guidance note, any term defined in the *Act*, the *Regulations* or the *FMA Act*, has the same meaning as in the relevant *Act* or *Regulations*.
97. Other defined terms, as shown in italics, appear below:

Table XVI

| <i>Term</i> | Meaning |
|------------------------------|---|
| <i>Act</i> | Securities Act 1978. |
| <i>Bill</i> | Financial Markets Conduct Bill as at December 2011. |
| <i>Brand information</i> | Logos, entity names and all other images or words which relate to your business name, brand, or other business identity. |
| <i>Cash-box entity</i> | A newly formed investment company which will invest but where the investment strategy has not been finalised at the time of the prospectus being issued. |
| <i>Financial information</i> | Information about your past or prospective financial performance and/or position, including the requirements prescribed by the <i>Regulations</i> . |
| <i>FMA Act</i> | Financial Markets Authority Act 2011. |
| <i>FRS 42</i> | Financial Reporting Standard 42 Prospective Financial Statements published by the New Zealand Institute of Chartered Accountants 2005. |
| <i>FRS 43</i> | Financial Reporting Standard 43 Summary Financial Statements published by the New Zealand Institute of Chartered Accountants 2007. |
| <i>Leaders</i> | The directors and <i>senior management</i> of the issuer plus any other managers who will have responsibility for investment policy or activity. |
| <i>Mortgage schemes</i> | Any offer of investment where funds are on-lent by the issuer to a borrower(s) and secured by way of mortgage over real property (whether or not this is a first mortgage). |
| <i>NBDT</i> | Non-Bank Deposit Taker under the Reserve Bank of New Zealand Act 1989. |

| Term | Meaning |
|--------------------------|--|
| <i>NZ IAS 24</i> | New Zealand equivalent to International Accounting Standards 24 issued by the New Zealand Institute of Chartered Accountants November 2009. |
| <i>Property schemes</i> | Any offer of investment that has, or is likely to have, at least 50% of its assets invested in real property and/or unlisted property schemes. |
| <i>Regulations</i> | Securities Regulations 2009. |
| <i>Senior management</i> | The chief executive of an entity (regardless of title) and all management who report directly to the chief executive. |

Further information

98. You can access more information from these sources:

Table XVII

| Issue | Source of information |
|--|---|
| Prescribed requirements for prospective <i>financial information</i> : | <p><i>Regulations</i></p> <ul style="list-style-type: none"> • Regulations 14 and 28 • Equity securities: Schedule 1 clause 28(2) • Debt securities: Schedule 2, clause 22(2) • Participatory securities: Schedule 3, clause 7 (2) to (5) and clause 25(2) • Units in unit trusts: Schedule 4, clause 18(5) • Life insurance policies: Schedule 5, clause 12(6) • KiwiSaver schemes: Schedule 5A clause 14(5) • Superannuation schemes: Schedule 6 clause 12(5) |
| Prospective financial statements prepared in accordance with FRS 42 | <ul style="list-style-type: none"> • Equity securities: Schedule 1, section 11 (1) • Participatory securities: Schedule 3, clause 7 (6) |
| Disclose material matters which are not disclosed elsewhere | <ul style="list-style-type: none"> • Equity securities: Schedule 1, clause 26 • Debt securities: Schedule 2, clause 20 • Participatory securities: Schedule 3, clause 23 • Units in unit trusts: Schedule 4, clause 20 • Life insurance policies: Schedule 5, clause 14 • KiwiSaver schemes: Schedule 5A, clause 16 • Superannuation schemes: Schedule 6, clause 14 |

Attachment B: Submission template

Submission on the Guidance Note: Effective Disclosure

Please submit both as a PDF and in Word

Send electronically only; either through our website or to consultation@fma.govt.nz by Friday 9 March 2012

Submission by:

Company or entity: _____

Organisation type: _____

Contact person: _____

E-mail: _____

Phone: _____

Other contact info: _____

Total pages: _____

Date: _____

There is no need to repeat or quote contents of the guidance note or the consultation paper if you use the relevant para, table or question reference.

| Guidance Note para or table | Consultation Paper question | Submission | Recommendation | Statutory References (if applicable) |
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Submission summary:

[Complete this if you wish to highlight key points and/or recommendations.]

Thank you for taking the time to consider our proposals and to make this submission.