

# Recognition of overseas regimes – proposed exemption relief

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## About this consultation paper

We are consulting on possible exemptions from the FMC Act for overseas issuers and overseas FMC reporting entities. We are proposing to provide exemptions from:

- disclosure and governance requirements for ancillary or incidental offers made by overseas issuers. These issuers would instead be required to comply with the requirements of their overseas jurisdiction
- offer document information requirements to allow certain classes of issuers to use their overseas financial information and auditor in a PDS
- financial reporting and audit requirements to allow overseas FMC reporting entities to use their overseas financial statements and auditor as an alternative to New Zealand compliant financial statements and auditors
- disclosure, governance, financial reporting and audit requirements for overseas issuers in relation to securities already issued in reliance on exemptions from the Securities Act 1978 and the Financial Reporting Act 1993

We would like your feedback on our proposals.

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Submissions close on Friday, 26 February 2016. The form at the back has more details.

### About this consultation paper:

This consultation is for: overseas issuers, overseas FMC reporting entities, their advisers and auditors.

It aims to: test the appropriate level of disclosure, governance, financial reporting and audit relief required by overseas entities under the Financial Markets Conduct Act 2013.



Document history

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This version was issued in December 2015 and based on legislation and regulations as at the date of issue.

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# Executive summary

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## Policy considerations

1. Historically overseas issuers have been able to rely on a number of exemptions from the disclosure, governance, financial reporting and audit requirements of the Securities Act 1978 (Securities Act) and the Financial Reporting 1993 (FRA 1993). These exemptions primarily apply where an overseas issuer makes an offer from a jurisdiction that has a high quality regulatory regime and New Zealand investors are not the primary targets of the offer.
2. After 30 November it will no longer be possible for overseas entities to rely on the Securities Act or any exemptions from that revoked Act. We are therefore considering potential exemptions from the Financial Markets Conduct Act (FMC Act) for overseas issuers and overseas FMC reporting entities.
3. Before granting an exemption, we must be satisfied the exemption is necessary or desirable to promote the purposes of the FMC Act. The main purposes are to:
  - promote confident and informed participation of businesses, investors and consumers in the financial markets
  - promote and facilitate the development of fair, efficient and transparent financial markets.
4. The FMC Act's additional purposes are to:
  - help investors make informed decisions with timely, accurate, understandable information of financial products and services
  - allow effective monitoring and reduced governance risks with appropriate governance arrangements for financial products, and certain financial services
  - avoid unnecessary compliance costs
  - promote innovation and flexibility in the financial markets.

## What we are proposing

5. For overseas entities, our view is that in certain circumstances it may be appropriate to grant exemptions from the disclosure, governance, financial reporting or audit requirements of the FMC Act to avoid unnecessary compliance costs and promote flexibility in the financial markets. Reducing the compliance costs facing overseas entities will encourage broader participation by these entities in the New Zealand market. This aligns with our strategic priority of capital market growth and integrity.
6. This paper sets out a series of proposed exemptions. We've also included an outline of the thinking behind these proposals. A summary of these proposals is set out below.

## Our exemption proposals

### Section 2: Disclosure and governance

- We propose exemptions from the disclosure and governance requirements of the FMC Act for ancillary or incidental offers made by overseas issuers. These issuers would instead be required to comply with the requirements of their overseas jurisdiction
- We also propose to allow certain classes of overseas issuers who are making an offer in New Zealand to use their overseas financial information and auditor to meet the requirements of part 3 of the FMC Act and the FMC Regulations 2014 (FMC Regulations).

### Section 3: Financial reporting and audit

- For certain classes of overseas entities, we propose to accept overseas financial statements and auditors as an alternative for the financial statement and audit requirements of part 7 of the FMC Act (to the extent that it requires New Zealand GAAP)

### Section 4: Overseas legacy securities

- We propose exemptions from the disclosure, governance, financial reporting and audit requirements of the FMC Act for overseas issuers in relation to securities already issued in reliance on exemptions from the Securities Act and the FRA 1993. Issuers would instead continue to primarily comply with the requirements of their overseas jurisdiction.

## Timing and submissions

7. Submissions on this paper are due by **Friday 26 February 2016**. We would like your feedback on our proposals.
8. We are aiming to determine (and announce to the market) the specific form of any exemptions for overseas entities under the FMC Act in early May 2016. We will then seek to have that relief in place by 1 June 2016.

## Section 2: Disclosure and governance relief

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### What this section is about

9. This section discusses our proposed approach to the recognition of overseas disclosure and governance requirements under the FMC Act. We detail our proposals for when and how an overseas issuer will be able to rely (in whole or in part) on the disclosure and governance requirements of their own jurisdiction in place of complying with part 3 and part 4 of the FMC Act.
10. We also consider the appropriateness of allowing overseas issuers who are making an offer using a product disclosure statement (PDS) to use their overseas financial information and auditor to meet the requirements of part 3 of the FMC Act and the FMC Regulations.

### Background

11. Under the Securities Act, issuers must prepare a prospectus and investment statement if they offer securities to the New Zealand public. Issuers must also satisfy the governance requirements of the Securities Act. These requirements apply regardless of where the issuer is incorporated or whether they are subject to overseas regulation.
12. In the past, we have considered an exemption to be appropriate when:
  - a. the overseas issuer makes an offer from a jurisdiction that has a high quality regulatory regime, including disclosure requirements broadly equivalent to New Zealand
  - b. New Zealand investors are not the primary targets of the offer.
13. From a policy perspective, we consider it desirable for New Zealand investors to be able to participate in these offers. Without an exemption, these offers are unlikely to be extended to New Zealand investors due to the time and expense involved in complying with the requirements of New Zealand securities law in addition to those of the overseas jurisdiction.
14. For overseas issuers, relief is primarily available for two different types of offers:
  - a. incidental offers
  - b. ancillary offers.
15. A brief summary of the relief available to each of these offer types is set out below.
16. In cases where New Zealand investors are a significant part of the target investor group, it is reasonable to expect the issuer to either prepare New Zealand compliant offer documents, or offer through a facility such as the trans-Tasman mutual recognition scheme (TTMR).

## Incidental offers

17. There are several Securities Act exemptions that apply to ‘incidental offers’. We consider an offer to be ‘incidental’ when:
- the offer is made under the laws of an overseas jurisdiction
  - the offer is made to New Zealand investors solely because they hold financial products on an overseas stock exchange
  - the participating New Zealanders can reasonably be expected to understand that the offer and ongoing obligations of the issuer are under the laws of the overseas jurisdiction.
18. We consider issuers making incidental offers are unlikely to be targeting New Zealand investors. Instead the offer to New Zealanders will be an inadvertent element of a larger offer. For example, a company listed on the London Stock Exchange may have a small number of New Zealand shareholders. An offer extended to all shareholders would therefore trigger New Zealand securities law.
19. Because New Zealand investors are inadvertent recipients of incidental offers, it was considered appropriate to provide an exemption from the disclosure and governance requirements of the Securities Act. In the absence of an exemption, the issuer is unlikely to offer to people in New Zealand at all. Where New Zealanders are participating on overseas financial markets, we consider it important that they are not deprived from being able to participate in capital raisings or corporate actions (such as restructurings) that affect their holdings. For example, New Zealand shareholders might see their interests diluted if they are unable to participate in a rights issue conducted by an overseas issuer.
20. The primary class exemption applying to incidental offers is the Securities Act (Overseas Companies) Exemption Notice 2013. The notice provides exemptions for securities offered by overseas companies from most requirements of the Securities Act including the prospectus, investment statement, trustee and statutory supervisor requirements. The notice applies to securities of overseas companies that are listed (or will be listed) on a stock exchange in the United Kingdom, Australia, Canada, the United States, Spain or Hong Kong. Offers may only be made to New Zealanders who are existing security holders in that overseas company, holders of securities in a related or associated overseas company that is a promoter of the offer, or persons in whose favour an offer is renounced.

## Ancillary offers

21. In addition to incidental offers, there is also a Securities Act exemption that applies to ‘ancillary offers’. We consider an offer to be ‘ancillary’ when:
- the issuer is making a larger offer on a major exchange under the laws of a an overseas jurisdiction and then extending that offer to New Zealand
  - New Zealanders are only a minor target of the offer
  - the high quality regulatory regime on the major exchange means that an exemption would not be seen by issuers as providing a lighter compliance path for making an offer primarily targeting New Zealand.

22. In contrast to incidental offers, the exemption for ancillary offers is available to overseas issuers in fewer jurisdictions and is subject to more conditions. Relief for ancillary offers has been limited to issuers quoted on the 'principal list' of a small number of major exchanges. We consider that offers from these exchanges are likely to be of sufficient size that the predominant target is not New Zealand investors.
23. The class exemption addressing this category of offers is the Securities Act (Overseas Listed Issuers) Exemption Notice 2002. The notice allows issuers from England, Wales, Scotland, Northern Ireland, and the US to offer securities in New Zealand using an overseas offer document and a New Zealand investment statement. The securities offered must be listed on the principal official list of the London, NASDAQ or New York exchanges. For an offer of debt or participatory securities, there is no need to appoint a trustee or statutory supervisor.

## Impact of changes between the Securities Act and the FMC Act

24. As under the Securities Act, the disclosure and governance requirements of the FMC Act apply regardless of where the issuer is incorporated or whether they are subject to overseas regulation. However, there have been a number of policy changes that may impact overseas issuers. These include:
  - a. schedule 1 exclusions
  - b. more comprehensive governance requirements
  - c. more targeted disclosure requirements
  - d. recognition of derivatives.

### Schedule 1 exclusions

25. Schedule 1 of the FMC Act sets out a series of statutory exclusions where lighter compliance paths are considered appropriate.
26. All issuers (including overseas issuers) now have access to schedule 1 exclusions for several types of offers that previously required specific exemptions. These include offers made under employee share purchase schemes, offers of renewals and variations, and dividend reinvestment plans. Additionally offers of under \$2m may be made under the 'small offers' exclusion where the relationship between the overseas issuer and the New Zealand investors is sufficient to result in a 'personal offer'.
27. In our view, these schedule 1 exclusions remove the need for specific exemption relief for overseas issuers making these types of offers.



### More comprehensive governance requirements

28. Part 4 of the FMC Act sets out the governance requirements for debt securities and 'managed investment products' (MIP). The concept of a MIP replaces the variety of products that existed under the Securities Act, such as unit trusts and participatory securities.
29. A MIP is an interest in a managed investment scheme. Managed investment schemes are subject to a more comprehensive governance regime than existed under the Securities Act. For example, a managed investment scheme (MIS) now requires a licensed manager and an independent licensed supervisor.
30. Because the governance requirements for managed investment schemes are now significantly enhanced, offers we previously considered appropriate (on the basis of the comparability and sufficiency of the regulatory settings in an overseas jurisdiction) will need to be reassessed against the requirements of FMC Act.

### More targeted disclosure requirements

31. The FMC Act changes the form of disclosure that must be provided to retail investors (PDS/register entry rather than investment statement/prospectus). As part of these changes, significant thought has been given to the suitability of disclosure for retail investors. The content of the PDS is heavily prescribed and must be 'clear, concise and effective'.
32. The format for the PDS now diverges from the typical format of overseas offer documents, particularly for equity. One of the policy objectives behind the FMC Act is to standardise disclosure and allow investors to more easily compare financial products. Allowing overseas issuers to generally use offer documents from their own jurisdiction may run counter to this objective. As with governance, the appropriateness of the disclosure settings in an overseas jurisdiction will need to be reassessed against the requirements of the FMC Act.

### Recognition of derivatives

33. Derivatives are a financial product subject to the requirements of the FMC Act, including disclosure and governance. Derivatives issuers offering to retail investors need to prepare a PDS and hold a market services licence.
34. We do not consider it appropriate to offer disclosure and governance relief to overseas issuers of derivatives at this stage. The proposed relief discussed in this section is therefore limited to equity, debt and MIP. We consider further time is required for the FMC Act regime for retail derivative offers to become established, and note that offers of derivatives are not eligible for TTMR.
35. Derivatives are predominantly a wholesale product and primarily used for hedging purposes. In the short term, we have a lower level of concern that New Zealanders will be denied investment opportunities.

## Our proposed approach

36. We consider that the broad policy behind the treatment of offers by overseas issuers remains relevant. We therefore propose to retain exemptions for incidental offers and ancillary offers. In the absence of exemptions we consider it likely that New Zealand investors will be denied access to investment opportunities.
37. We also propose certain refinements to our policy. We consider these refinements appropriately extend the relief available to overseas issuers. Most notably, in certain circumstances we propose to allow overseas issuers

to use their overseas financial statements and audit certificate to meet the PDS/register requirements of the FMC Act and the FMC Regulations.

38. For both incidental offers and ancillary offers it remains fundamental that the offer to New Zealand retail investors is made from a jurisdiction that has a high quality regulatory regime, including appropriate disclosure and governance requirements. For an overseas issuer, we consider the relevant regime is the jurisdiction or market in which the issuer is listed (and therefore regulated) rather than incorporated.

### Incidental offers: proposed exemption

39. For incidental offers we are proposing that issuers should be able to rely almost exclusively on the requirements of their overseas jurisdiction. Issuers will receive almost complete relief from the disclosure, governance and financial reporting requirements of the FMC Act.
40. The exemption will be available to issuers with a primary listing (and therefore regulated) in a specified jurisdiction.

Specified Jurisdictions	Specified GAAPs
Australia	Australian IFRS
United States of America	US GAAP
Ontario, Canada	Canadian IFRS
United Kingdom	EU IFRS
Republic of Ireland	IFRS (unmodified international standards)
France	Singapore Financial Reporting Standards
Germany	Hong Kong FRS
The Netherlands	
Switzerland	
Singapore	
South Africa	

41. The exemption would allow, for example, a company listed in France to extend a rights issue to its New Zealand shareholders without the need to prepare a PDS or register entry.
42. In assessing specified jurisdictions we have considered the extent of regulatory body co-operation we are likely to receive from the relevant overseas regulator. We are satisfied with the level of likely co-operation if the relevant overseas regulator is a signatory to such international agreements as the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding on Consultation and Cooperation (IOSCO MMoU).
43. The list of specified jurisdictions is consistent with those we propose offering financial reporting and audit relief to in section 3 of this paper. Issuers will also have to prepare their financial statements in specified GAAP. We do not intend to provide disclosure and governance relief to overseas issuers making offers from jurisdictions

that do not have financial reporting and audit standards that are comparable to New Zealand given the quality of this information is fundamental to the quality of the offer document provided to investors.

### Proposed FMC Act exemptions

Part 3: Disclosure	<ul style="list-style-type: none"> <li>• We propose to exempt issuers from the requirement to prepare or lodge a PDS, establish a register entry for the offer or meet ongoing disclosure requirements</li> <li>• We propose to make this exemption subject to the condition that the offer is made in accordance with the laws of the specified jurisdiction in which the issuer is listed</li> </ul>
Part 4: Governance	<ul style="list-style-type: none"> <li>• We propose to exempt issuers from the part 4 governance requirements of the FMC Act</li> <li>• We propose to make the exemption subject to the condition that the issuer complies with the governance requirements of their specified jurisdiction</li> </ul>
Part 7: Financial reporting	<ul style="list-style-type: none"> <li>• We propose to exempt issuers from the requirement to satisfy the ongoing financial reporting requirements in part 7 of the FMC Act. We propose this relief be subject to the condition that the issuer complies with the laws of the specified jurisdiction governing the preparation, content, auditing, and public filing of financial statements</li> <li>• We propose to exempt issuers from the requirement to lodge financial statements in New Zealand</li> <li>• We propose to make the exemption subject to the condition that the issuer's financial statements are prepared using a specified GAAP</li> </ul>

### Application

Issuers	<ul style="list-style-type: none"> <li>• We propose to limit the exemption to issuers listed in a specified jurisdiction</li> </ul>
Offers	<ul style="list-style-type: none"> <li>• We propose that relief should apply where the only New Zealanders receiving offers are existing holders. Relief will apply to offers of quoted securities and corporate restructurings such as takeovers, schemes and capital reductions</li> </ul>
Products	<ul style="list-style-type: none"> <li>• Debt, equity and MIP</li> </ul>

## Ancillary offers: proposed exemption

44. We propose that ancillary offers should also be able to rely primarily on the requirements of their overseas jurisdiction. However, we are including more significant disclosure conditions than for incidental offers. This is because:
- the issuer has made a conscious decision to extend the offer to New Zealand investors
  - investors cannot be assumed to have an existing understanding of the issuer or the market in which they are investing.
45. The proposed conditions will highlight aspects of the offer relevant to New Zealand investors and ensure investors have appropriate access to information.
46. In contrast to the Securities Act (Overseas Listed Issuers) Exemption Notice 2002, we propose removing the requirement for the issuer to prepare a New Zealand offer document (in that case an investment statement). We consider the investment statement requirement provided a high barrier to offers being made that was not justified where investors are already receiving the offer documents required by a high quality overseas market.
47. For ancillary offers we need to be satisfied New Zealand investors are not one of the primary targets of an issuer whose principal motive is to offer to investors on the basis of a lighter compliance regime. We are therefore limiting relief to the 'principal list' of specified markets. Where securities are listed on a the principal list of a specified market:
- the issuer is subject to a greater level of regulatory and public scrutiny
  - offers are likely to be of significant size and not targeted predominantly at New Zealand investors.
48. As with incidental offers, issuers will need to prepare their financial information in a Specified GAAP.

### Specified Markets

London Stock Exchange  
NASDAQ Stock Market  
New York Stock Exchange

### Specified GAAPs

Australian IFRS  
US GAAP  
Canadian IFRS  
EU IFRS  
IFRS (unmodified international standards)  
Singapore Financial Reporting Standards  
Hong Kong FRS

49. The exemption would allow, for example, a company listed on the NASDAQ to extend a debt offer to New Zealand retail investors without the need to prepare a PDS.
50. We are prepared to consider adding specified markets if we are provided with sufficient information on both the regulatory regime. In assessing the regulatory regime, we consider that a specified market must be:
- a member of the World Federation of Exchanges
  - overseen by a regulator that is a signatory to the IOSCO MMoU
  - based in a jurisdiction that has received at least a 'broadly implemented' grade on the Principles for Issuers in its latest IMF Financial Sector Assessment Programme.

51. In addition, before adding a specified market we need to be confident there is demand for relief. Historically we understand that there has been very little reliance on the current Securities Act (Overseas Listed Issuer) Exemption Notice 2002.
52. We propose that the exemption should apply to debt and equity.
53. We do not initially propose to extend the exemption to offers of MIP. For offers of MIP we need to be satisfied that there is a governance and investor protection regime that is comparable to New Zealand. For MIPs, there may be scope to extend relief for certain product types, in a manner similar to the earlier Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 2005. This relief would be dependent on market participants demonstrating realistic demand for such product offers in New Zealand.

### Proposed exemptions

#### Part 3: Disclosure

- We propose to exempt issuers from the requirement to prepare or lodge a PDS
- We propose to make this exemption subject to the following conditions:
  - the offer is made in accordance with the requirements of the specified jurisdiction on which the issuer is listed
  - the offer is also made in – and complies with the laws of – the overseas jurisdiction where the specified market is based
  - the issuer establishes a registry entry for the offer, containing the overseas offer document plus any documents required in the overseas jurisdiction
  - there is an overseas offer document for the offer, and this document as well as any supplementary documents on the specified market must be in English or have an English translation attached.
  - the overseas offer document as any supplementary documents are provided to New Zealand investors on request
  - the offer includes or has a prescribed warning statement attached to the overseas offer document which highlights certain risks associated with these types of investment (namely currency, taxation and the challenges relating to the enforcement of New Zealand securities law on overseas issuers)
  - the issuer appoints an agent for service in New Zealand

#### Part 4: Governance

- We propose to exempt issuers from the part 4 governance requirements of the FMC Act, subject to compliance with the governance requirements of their specified market

#### Part 7: Financial reporting

- We propose to provide issuers with the financial reporting relief

provided by the broader class exemption for overseas FMC reporting entities discussed in section 3 of this paper. This exemption will provide issuers relief from the ongoing financial reporting requirements in part 7 of the FMC Act to the extent those requirements require financial information to comply with New Zealand GAAP and be audited by an auditor registered under the Auditor Regulation Act 2011

- We propose the exemption be subject to the condition that the issuer's financial statements must be prepared in a specified GAAP
- We propose to require the issuer to lodge financial statements in New Zealand

### Application

Issuers	<ul style="list-style-type: none"> <li>• We propose to exempt offers made on the principal list of a specified market and extended into New Zealand</li> </ul>
Products	<ul style="list-style-type: none"> <li>• Debt and equity</li> </ul>

## PDS financial information: proposed exemption

54. The exemptions for incidental offers and ancillary offers apply where an offer complies with the laws of an overseas jurisdiction.
55. Overseas issuers may also want to make offers that comply with the FMC Act. For example, an Australian insurance company may wish to prepare a PDS and offer debt securities to New Zealand retail investors.
56. Part 3 of the FMC Act and the FMC Regulations require that the financial information in the PDS and register is prepared in New Zealand GAAP. Where an overseas issuer is already required to prepare high quality financial statements and is subject to appropriate financial reporting regulation in another jurisdiction, we do not consider the additional cost to prepare accounts in New Zealand GAAP provides sufficient value to market participants.
57. We therefore propose to allow overseas issuers who are making an offer in New Zealand to use their overseas financial information and their auditor to meet the requirements of part 3 of the FMC Act, and the FMC Regulations (to that extent that the information must be in New Zealand GAAP). The issuer would have to satisfy all other FMC Act disclosure and governance requirements.
58. For the exemption to apply, overseas issuers will need to be regulated in a specified jurisdiction and prepare their financial statements in a specified GAAP. Given the progressive harmonisation of financial reporting and auditing requirements, we are confident that issuers who satisfy those conditions are subject to standards broadly equivalent to those in New Zealand.

## Proposed FMC Act exemptions

Part 3: Disclosure	<ul style="list-style-type: none"> <li>We propose to exempt issuers from the requirement of the FMC Act and the FMC Regulations to the extent that financial information must be in New Zealand GAAP</li> </ul>
Part 7: Financial reporting	<ul style="list-style-type: none"> <li>We propose to provide issuers with the financial reporting relief provided by the broader class exemption for overseas FMC reporting entities discussed in section 3 of this paper. This exemption will provide relief from the requirement to satisfy the ongoing financial reporting requirements in part 7 of the FMC Act to the extent those requirements require financial information to comply with New Zealand GAAP and be audited by an auditor registered under the Auditor Regulation Act 2011</li> <li>We propose to require the issuer to lodge financial statements in New Zealand</li> </ul>

## Application

Issuers	<ul style="list-style-type: none"> <li>We propose to make the exemption available to issuers listed on an exchange or prudentially regulated as a bank in a specified jurisdiction</li> <li>We propose to make the exemption subject to condition that the issuer's financial statements are prepared in a Specified GAAP</li> </ul>
Products	<ul style="list-style-type: none"> <li>Debt, equity and MIP</li> </ul>

## Questions

### *Policy proposals*

- Do you agree with proposal that overseas issuers should be granted exemptions from the disclosure and governance requirements of the FMC Act? If not, please explain your reasoning.
- If you think that exemptions should be granted, what criteria do you think should be considered when determining the appropriate relief from the FMC Act?
- Do you agree with our proposal to distinguish between incidental offers and ancillary offers? If not, what approach would you suggest?
- Do you have any additional comments on our proposals?

*Market impact*

5. What impact do you believe our proposed exemption might have on overseas issuers? We are particularly interested in the estimated additional costs incurred or saved by an overseas issuer as a result of our proposals.
6. Do you think the availability of such an exemption will encourage overseas entities to participate in New Zealand's financial markets? Please give examples if possible.
7. Do you see any other significant impact on New Zealand's financial market from our proposals?
8. What impact do you believe our proposed exemptions might have on investors? We are particularly interested in any benefits you consider investors will receive, or additional risks they might face, as a result of our proposals.
9. What (if any) risks do you see in relation to monitoring and compliance by the FMA or overseas regulators?

*Incidental offers*

10. Do you agree with our proposed approach to incidental offers? If not, please explain your reasoning.
11. Do you consider our proposed conditions for incidental offers appropriately balance the risks associated with disclosure and governance relief? If not, what conditions would you suggest?
12. We have proposed a list of specified jurisdictions and specified GAAPs for incidental offers. Do you consider these jurisdictions and GAAPs are appropriate alternatives to New Zealand disclosure and governance requirements?
13. Do you consider that we should include other specified jurisdictions or specified GAAPs? If so, which ones? Please provide information regarding the nature of these specified jurisdictions (including equivalency to New Zealand) where possible.

*Ancillary offers*

14. Do you agree with our proposed approach to ancillary offers? If not, please explain your reasoning.
15. Do you consider our proposed conditions for ancillary offers (register entry, warning statement, agent for service) appropriately balance the risks associated with disclosure and governance relief? If not, what conditions would you suggest?
16. Do you agree with our proposal that the exemption for ancillary offers should initially be limited to equity and debt? If you consider the exemption should also be available to MIP and/or derivatives, please explain your reasons.
17. We have set out a proposed list of specified markets and specified GAAPs for incidental offers. Do you consider these markets and GAAPs are appropriate alternatives to New Zealand disclosure and governance requirements?
18. Do you consider that we should include other specified markets? If so, which ones? Please provide information regarding the nature of these specified markets where possible.
19. In paragraph 49 we set out three conditions we would need to see satisfied before adding a specified market. Do you consider these conditions are appropriate? If not, what conditions (if any) would you propose?



### *PDS financial information*

20. Do you agree with our proposal to allow overseas issuers to use their overseas financial statements and auditors to meet the PDS/register entry requirements of the FMC Act? If not, why not?
21. Do you consider our proposed conditions appropriately balance the risks associated with this relief? If not, why not?

## Section 3: Financial reporting and audit relief

### What this section is about

59. This section discusses when and under what circumstances an overseas entity will be able to rely on the financial reporting and audit requirements of an overseas jurisdiction as an alternative to complying with part 7 of the FMC Act.

### Background

60. As discussed in section 2 of this paper, under the Securities Act overseas issuers were able to offer into New Zealand in reliance on a number of exemptions.

61. The overseas issuers who made offers in New Zealand had, under the FRA 1993, ongoing financial reporting obligations to prepare New Zealand GAAP financial statements. These statements had to be audited by a qualified auditor under the Auditor Regulation Act 2011. To be a qualified auditor, an individual auditor must be licensed in New Zealand and the audit firm must be registered.

62. For overseas issuers it was difficult to justify the additional cost of getting financial statements audited and prepared to comply with the FRA 1993, particularly on an ongoing basis. Additionally, overseas auditors found it difficult to justify the cost of applying for a licence and becoming registered in New Zealand where they only had one or two clients making offers into New Zealand. This deterred overseas issuers from making an offer into New Zealand. Corresponding relief was therefore required under the FRA 1993 to enable offers to be made under the various Securities Act exemptions.

63. In broad terms, we considered exemption relief for overseas issuers from the FRA 1993 was appropriate where:

- The issuer was listed and incorporated in a jurisdiction whose financial reporting and audit requirements provide New Zealand security holders with adequate financial information about the ongoing performance of the issuer. We considered that providing ongoing financial reporting relief from the New Zealand requirements was not detrimental to security holders because the ongoing financial information would be prepared on the same basis as that in the issuer's offer documents
- we could be confident there was a high degree of regulatory oversight over both the issuer and their auditor.

### Financial reporting under the FMC Act

64. As part of the FMC Act reforms, there have been substantial changes to the legislative framework for financial reporting. The financial reporting requirements for market participants are now in Part 7 of the FMC Act.

65. Due to the new FMC Act requirements, all 'FMC reporting entities' must comply with Part 7 of the FMC Act, not just issuers. The definition of 'FMC reporting entity' includes most entities who were issuers previously, as well as entities that are subject to regulatory oversight. The table below is a summary of FMC reporting entities.

### FMC reporting entities

Issuers of financial products under regulated offers	– those who make regulated offers under the FMC Act
Market services licensees (except independent trustees)	– MIS managers, DIMS providers, derivatives issuers, providers of peer-to-peer lending services and crowdfunding services
Licensed supervisors	– under the Financial Markets Supervisors Act 2011
Listed issuers	– those listed on a market licensed under the FMC Act
Operators of licensed markets	– except overseas-regulated markets
Recipients of money from conduit issuers	– recipients of funds from regulated offers under the FMC Act and, after the transitional period, recipients of money from public offers under the Securities Act
Registered banks	– under the Reserve Bank of New Zealand Act 1989
Licensed insurers	– under the Insurance (Prudential Supervision) Act 2010
Credit unions	– under the Friendly Societies and Credit Unions Act 1982
Building societies	– under the Building Societies Act 1965
People who have made excluded offers called in by regulations	– people that have relied on exclusions in Schedule 1 of the FMC Act and are deemed to be FMC reporting entities by regulations.

66. Under the FMC Act, all FMC reporting entities must prepare and lodge New Zealand GAAP financial statements and have them audited by a qualified auditor. To be a qualified auditor, an individual auditor must be licensed in New Zealand and the audit firm must be registered.
67. If an overseas FMC reporting entity operates in New Zealand, they are also required to prepare, audit and lodge New Zealand GAAP branch financial statements for their New Zealand operations.

### 2014 consultation paper

68. The financial reporting requirements of the FMC Act applied to a number of issuers from 1 April 2014. Examples include listed issuers and registered banks. In early 2014, we consulted on our regulatory policy for financial reporting exemptions under the FMC Act (2014 paper).

69. In the 2014 paper, we noted that the requirement for financial statements to be prepared in accordance with New Zealand GAAP and audited by an auditor licensed in New Zealand imposed significant costs on overseas FMC reporting entities. We therefore noted that we would consider granting exemptions from the requirement to prepare financial statements under New Zealand GAAP where the FMC reporting entity is required to prepare high quality financial reporting and is subject to appropriate financial reporting regulation. In these cases, we do not consider the additional cost of FMC Act compliance provides sufficient value to market participants nor is warranted by the additional risks that are presented to investors.
70. In the 2014 paper, we also noted that we would consider granting audit exemptions for incidental offers or ancillary offers. However we noted that we were unlikely to grant audit exemptions for offers made solely or primarily in New Zealand, unless we were satisfied that both the entity and its auditor had the same level of regulation and oversight as a New Zealand issuer and its auditor.
71. We have subsequently granted a number of class exemptions reflecting the policy considerations contained in the 2014 paper, including:
- the Financial Markets Conduct (Dual-listed FMC Reporting Entities) Exemption Notice 2015
  - the Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015.

## Our proposed approach

72. We consider the policy considerations discussed in the 2014 paper remain relevant.
73. We also consider there are strong policy grounds for a targeted extension of our policy to recognise overseas auditors. Given the progressive harmonisation of financial reporting and auditing requirements we are confident that the standards of certain jurisdictions are broadly equivalent to those in New Zealand.
74. We therefore propose to exempt two classes of entities from certain elements of part 7 of the FMC Act. These entities are set out below.

### Overseas Issuers

- Entities that have a primary listing on a market in a specified jurisdiction
- Entities that are prudentially regulated as a bank in a specified jurisdiction but are not registered with the RBNZ

### Market Service Providers

Overseas entities that are licensed or authorised to provide market services in New Zealand, and are incorporated in a specified jurisdiction:

- a market service provider licensed under part 6 (eg, MIS managers)
- an operator of a financial product market in an overseas jurisdiction licensed under section 316 of the FMC Act
- an operator of a financial product market in NZ licensed under part 5

75. We do not propose to exempt overseas issuers or market service providers from part 7 of the FMC Act in its entirety. Instead, we propose to accept overseas financial statements and auditors as an acceptable alternative for the financial statement and audit requirements of the FMC Act (to the extent that it requires New Zealand GAAP). Under our proposal, overseas issuers and market service providers would still need to lodge financial statements in New Zealand.
76. The exemption would allow, for example, a UK fund manager holding a MIS manager license to meet their ongoing financial reporting and audit requirements by using their overseas financial information and auditor.
77. In order for overseas issuers or market service providers to receive an exemption, we require confidence that the entity produces high quality financial statements comparable to New Zealand GAAP and is subject to independent auditor oversight. For overseas issuers we gain this confidence where the issuer is listed on a market or subject to prudential regulation in a specified jurisdiction and prepares financial statements in a specified GAAP. For market service providers we have oversight of the entity through the licensing process and ongoing monitoring.
78. A list of specified jurisdictions and specified GAAPs that we propose would enable reliance on the exemption is listed below. The specified jurisdictions and specified GAAPs are the same as those applicable to ancillary offers in section 2.

#### Specified Jurisdictions

Australia  
United States of America  
Ontario, Canada  
United Kingdom  
Republic of Ireland

#### Specified GAAPs

Australian IFRS  
US GAAP  
Canadian IFRS  
EU IFRS  
IFRS (unmodified international standards)

France  
Germany  
The Netherlands  
Switzerland  
Singapore  
South Africa

Singapore Financial Reporting Standards  
Hong Kong FRS

79. In assessing specified jurisdictions we need to be confident we can receive co-operation from the relevant overseas regulator. In our view, we are likely to get co-operation if the relevant overseas regulator is a signatory to the IOSCO MMoU. Each of the specified jurisdictions are either within the EU, or recognised as having independent audit regulation that is equivalent to the EU states.
80. The use of a specified GAAP will be linked to where the overseas entity is regulated, rather than incorporated. If the overseas entity is incorporated in Bermuda, for example, but is listed (and therefore regulated) in the United States, an exemption would accept financial statements under US GAAP, providing you must do this under United States law.

### Branch financial statements

81. In general, the considerations that apply to the FMC reporting entity's financial statements also apply to its New Zealand branch financial statements. We are therefore prepared to accept New Zealand branch financial statements prepared in a specified overseas GAAP and audited by an overseas auditor subject to regulation in the related specified jurisdiction.

### Exemptions for other overseas FMC reporting entities

82. The proposed exemption will not apply to two other types of overseas entity that have their own more comprehensive relief.
- Issuers making incidental offers are exempt from part 7, provided they comply with the laws of the jurisdiction in which they are listed that relate to the preparation, content, auditing, and public filing of financial statements.
  - The FMC (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015 will apply to overseas entities that are registered as a bank or licensed as an insurer in New Zealand. Under this exemption notice, registered banks or licensed insurers do not need to be incorporated in a specified jurisdiction or prepare financial statements in a specified GAAP. The Reserve Bank of New Zealand (RBNZ) assesses the financial reporting and audit requirements of the home jurisdiction of any overseas bank or insurer seeking registration and licensing in New Zealand. In these circumstances, we are satisfied this ensures that both investors and regulators have access to appropriate information.

## Proposed exemptions

### Part 7: Financial reporting

- We propose to exempt overseas issuers and market service providers from part 7 to the extent that it requires the financial statements to be prepared, maintained and lodged in New Zealand GAAP. This relief will also apply to the New Zealand branch financial statements of all overseas issuers and market service providers.
- We propose to make this exemption subject to the following conditions:
  - The overseas issuer or market service provider complies with the legal and regulatory requirements for accounting records, preparation, audit and lodgement of financial statement of their overseas jurisdiction.
  - The overseas financial statements are in English or have an English translation attached.
  - The overseas issuer or market service provider lodges their financial statements with the registrar, including New Zealand branch financial statements (if any). Lodgement will need to take place within four months of their balance date. When financial statements are provided to the registrar, we will require they are accompanied by a notice stating that the overseas issuer or market service provider is relying on an FMC Act exemption.
  - Overseas issuers or market service providers keep appropriate records for their New Zealand branch financial statements (if any).

### Part 7: Audit

- We propose to exempt overseas issuers and market service providers from part 7 to the extent that it requires the financial statements to be audited by a New Zealand licensed auditor. The exemption is conditional upon the auditors being approved or authorised to carry out audits and reporting in the overseas jurisdiction.
- We propose that Australian auditors should be able to audit New Zealand branch financial statements even if Australia is not the specified jurisdiction of the overseas FMC reporting entity. This reflects that some overseas FMC reporting entities operate their Australasian business out of Australia and therefore the accounting records for the New Zealand business are kept there.

## Questions

### *Policy proposals*

22. Do you agree with our proposal that overseas FMC reporting entities should be granted exemptions from the financial reporting and audit requirements of the FMC Act? If not, please explain your reasoning.
23. If you consider exemptions should be granted, what FMC Act obligations do you think overseas entities should be exempt from, and why?
24. Do you agree with our proposal to accept overseas financial statements and auditors as an acceptable alternative for the financial statement and audit requirements of the FMC Act? If not, what approach would you suggest?
25. Do you agree with our proposal to provide exemptions to both overseas issuer and market service providers? If not, what approach would you suggest?
26. Do you consider our proposed conditions for financial reporting and audit relief are appropriate? If not, what conditions would you suggest?
27. Do you agree with our proposal that New Zealand branch financial statements should receive the same exemptions as group financial statements? If not, please explain your reasoning.
28. Do you have any additional comments on our proposals?

### *Market impact*

29. What impact do you believe our proposed exemption might have on overseas FMC reporting entities? We are particularly interested in the estimated additional costs incurred or saved by an FMC reporting entities as a result of our proposal.
30. Do you think our proposed exemption will encourage overseas entities to participate in New Zealand's financial markets? Please give examples if possible.
31. Do you see any other significant impacts on New Zealand's financial market from our proposal?
32. What impact do you believe our proposal test might have on investors? We are particularly interested in any benefits you consider investors will receive, or additional risks they might incur, as a result of our proposal.
33. What (if any) risks do you see for market participants from the proposed exemption?
34. What (if any) risks do you see in relation to monitoring and compliance by the FMA or overseas regulators?

### *Application*

35. We have set out a proposed list of specified jurisdictions and specified GAAPs. Do you consider these jurisdictions and GAAPs provide an appropriate alternative to New Zealand requirements?
36. Do you consider that we should include other jurisdictions or GAAPs? If so, which ones? Please provide information regarding the nature of these jurisdictions or GAAPs where possible, including their equivalence to New Zealand.



## Section 4: Relief for overseas legacy securities

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### What this section is about

83. This section discusses our proposed approach to relief under the FMC Act for overseas entities that have previously relied on relief provided by the Securities Act and the FRA 1993 when making offers made to New Zealand investors.

### Background

84. Some overseas issuers have made offers into New Zealand relying on historical exemptions from the disclosure and governance requirements in the Securities Act, and the financial reporting and audit requirements in the FRA 1993. A number of these issuers still have securities that were offered into New Zealand on issue (overseas legacy securities).
85. The ability to operate under the revoked Securities Act and FRA 1993 regimes, and the ability to continue to rely on that relief, ends on an issuer's 'effective date'. The last possible effective date is 30 November 2016. Additionally, the transitional provisions of the FMC Act provide that on the effective date, the ongoing requirements of the FMC Act will apply to securities offered under the Securities Act where a prospectus and/or an investment statement was required (or would have been required but for an exemption granted by the FMA or of the Securities Commission).<sup>1</sup>
86. This means, unless exemptions are granted, the overseas legacy securities will be subject to (and will not be compliant with) the ongoing disclosure, governance, financial reporting and audit requirements in the FMC Act from the date they transition into the FMC Act.

### MRSO 2008

87. Since June 2008, Australian issuers have been able to offer financial products under the Securities (Mutual Recognition of Securities Offerings – Australia) Regulations 2008 SR 2008/153 (MRSO 2008). Australian issuers may elect to offer financial products under either MRSO 2008 or under part 9 of the FMC Act (FMC Act MRSO) until 30 November 2016. From 1 December 2016, Australian issuers will not be able to make offers under MRSO 2008 but may make offers under FMC Act MRSO.
88. Existing securities issued under MRSO 2008 will not automatically transition to the FMC Act. This is because these offers did not require a prospectus or investment statement (nor was an exemption granted from these requirements by the FMA or the Securities Commission under the Securities Act), rather the exemption from these offer document requirements was statutory. This means that there is no automatic triggering of the

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<sup>1</sup> See part 2 of schedule 4 of the FMC Act which prescribes the transitional provisions relating to securities allotted under the Securities Act 1978.

transition provisions of the FMC Act for securities allotted under the Securities Act. The impact of these transitional provisions on securities issued under MRSO 2008, and particularly the extent of the offerors' ongoing obligations for securities still on issue after 1 December 2016, will be considered by MBIE. It is outside the scope of this exemptions review.

## Policy considerations

89. Historically, exemptions for overseas issuers fell into two key categories, relief for Australian issuers and relief for overseas issuers from a wider range of jurisdictions.
90. In all cases, the exemptions largely relieved issuers from having to meet NZ law requirements provided they complied with the requirements of the regime where they were regulated. In some instances, where ancillary offers intentionally targeted NZ investors, the issuers were additionally required to lodge their financial statements with the NZ Companies Registrar. This was to provide easier access to on-going financial statements by NZ investors.
91. The exemptions were granted in recognition of the broadly equivalent quality of securities and financial markets law in the jurisdiction where the various issuers are regulated. Further, it is relevant to note that investors in these securities invested on the basis of the information regime in place at the time of the offer. It would now be a significant compliance hurdle for issuers that have previously issued securities to New Zealand investors (in some cases many years ago) and on an incidental or ancillary basis to comply with the ongoing requirements of the FMC Act.

## Exemptions proposed

92. In these circumstances we consider it is appropriate to continue significant relief for overseas legacy securities issued into New Zealand pursuant to historical Securities Act exemptions. These include securities issued under the following notices:
  - Securities (Australian Transitional Issuers) Exemption Notice 2013 and the Securities Act (Australian Issuers) Exemption Notice 2002
  - Securities Act (Australian Registered Managed Investment Scheme) Exemption Notice 2003 and the Securities Act (Australian Registered Managed Investment Scheme) Exemption Notice 2013
  - Securities Act (Overseas Companies) Exemption Notice 2013
  - Securities Act (Overseas Employee Share Purchase Scheme) Exemption Notice 2002
  - Securities Act (Overseas Listed Issuers) Exemption Notice 2002
  - Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 2004
  - Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice 2010, and all preceding notices and amendments to those notices.

93. The exemptions would be on the condition the issuer continues to comply with the laws in the jurisdiction where it is predominantly regulated.
94. The relief would be from:
- all on-going disclosure requirements in part 3 of the FMC Act
  - all on-going governance requirements in part 4 of the FMC Act
  - all on-going financial and audit requirements in part 7 of the FMC Act, with the exception that where the terms of the notice under which they issued the securities into New Zealand required financial statements to be lodged in New Zealand, this will continue to apply. (Broadly this will apply to offers that were ancillary to an overseas offer, but intentionally targeted NZ investors.)

## Broader relief used by overseas issuers

95. Overseas issuers may have also relied on relief available more broadly to all issuers (both overseas and New Zealand issuers). In particular, the Renewals and Variations Notices<sup>2</sup> and the Dividend Reinvestment Notices<sup>3</sup> may have been used by overseas issuers to make offers into New Zealand.
96. We are not clear to what extent overseas issuers may continue to have securities that were issued and offered that relied on these exemption notices. Any issuer in this circumstance should contact us to discuss the appropriate treatment of those securities under the FMC Act.

## Individual exemptions

97. Over the years individual exemptions from Securities Act requirements were also granted for overseas issuers who broadly fitted the general policy of one or more of the class exemptions, but were tailored to address specific characteristics of the issuer which prevented them from relying on those class exemptions.
98. Some securities issued under these notices may still be on issue. If these securities remain on issue they will automatically transition into the FMC Act. The standard requirements of the FMC Act regime will apply unless relief is granted.
99. Where the individual notices follow the same general policy as the class notices, for the same reasons discussed above, we consider it is also appropriate that these securities be subject to equivalent on-going relief. We invite any issuer with such securities remaining on issue to contact us.

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<sup>2</sup> Securities Act (Renewals and Variations) Exemption Notice 2013, and all other preceding notices.

<sup>3</sup> Securities Act (Dividend Reinvestment) Exemption Notice 1998, and all other preceding notices.

## Questions

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37. Do you agree with or have any comments on our policy considerations? If you do not agree with them, please explain your reasoning.
38. Do you think that our policy considerations strike the right balance between the interests of issuers that have offered into New Zealand (based on recognition of an overseas regime) and the interests of New Zealand investors in these offers?
39. What impact might there be on issuers if we do not grant our proposed relief from the FMC Act for Overseas Legacy Securities? We are particularly interested in any estimated costs that issuers might incur or save if we implement our proposals versus us not implementing our proposals.
40. Do you believe that there are any additional risks for investors if we provide the proposed relief? If yes, please provide details. We are particularly interested in any estimated costs that investors might incur as a result of us implementing our proposals.
41. If you are aware of any instances where overseas issuers have relied on other class exemption notices that were available to all issuers (New Zealand issuers and overseas issuers), please provide us with details and contact us to discuss the appropriate treatment of those securities under the FMC Act.
42. If you are aware of any instances where overseas issuers have relied on individual exemption notices that follow the same general policy as the overseas class notices, please provide us with details and contact us to discuss the appropriate treatment of those securities under the FMC Act.

## Feedback form: Recognition of overseas regimes – proposed exemption relief

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: Recognition of overseas regimes – proposed exemption relief' in the subject line. Thank you. **Submissions close on 26 February 2016.**

Date: \_\_\_\_\_ Number of pages: \_\_\_\_\_

Name of submitter: \_\_\_\_\_

Company or entity: \_\_\_\_\_

Organisation type: \_\_\_\_\_

Contact name (if different): \_\_\_\_\_

Contact email and Phone: \_\_\_\_\_

**Paragraph or  
Question  
Number**

**Response**

*You don't need to quote from the consultation document if you use a paragraph number or question number.*

**Feedback summary** – *if you wish to highlight anything in particular*

**Please note:** Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

**Thank you for your feedback – we appreciate your time and input.**

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