

MAY 2026

# Consultation: Related party transactions insights

## About this consultation

The Financial Markets Authority – Te Mana Tātai Hokohoko (FMA) is seeking feedback on a draft paper that explains our position on certain related party transactions involving registered managed investment schemes (MIS).

The paper covers:

- the ‘why’ behind the related party transaction provisions in the Financial Markets Conduct Act 2013;
- a brief overview of the legislative requirements; and
- how we think certain key aspects of the requirements should be applied in practice.

The paper is intended to give MIS managers and supervisors greater clarity on how we expect the existing law to be applied. It does not introduce new obligations or change current legal requirements. It also does not cover the related party transaction rules that apply to DIMS licensees or FMC reporting entities for financial reporting purposes.

## Have your say

We invite your feedback to support development of this paper. Please use the feedback form provided on the web page for this consultation at [www.fma.govt.nz/business/focus-areas/consultation](http://www.fma.govt.nz/business/focus-areas/consultation). Note that all feedback received is subject to the Official Information Act 1982, and may be made available on our website or other external channels. See the feedback form for more information about your privacy and confidentiality options.

**Submissions close at 5pm on 12 June 2026.**

This consultation is for managed investment scheme (MIS) managers and their supervisors, and other interested governance, compliance and financial services professionals.

It seeks feedback on a draft paper that explains the FMA’s position on certain related party transactions involving registered managed investment schemes.

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# Draft paper

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## About this document

The purpose of this paper is to provide managed investment scheme (**MIS**) managers and their supervisors with clarity on the position of the Financial Markets Authority – Te Mana Tātai Hokohoko (**FMA**) on aspects of related party transactions involving registered schemes.

This is not a comprehensive guide to related party transactions. It does not separately consider the related party transaction rules that apply to discretionary investment management service (**DIMS**) licensees or FMC reporting entities in respect of their financial reporting obligations. While there are parallels between the related party requirements for MIS and DIMS licensees, the requirements and the risks are not identical, so we have adopted a narrower focus for the purposes of this paper. However, there will likely be aspects that are relevant to DIMS providers.

We do not purport to amend or add to the legal obligations in this area; rather we explain how we consider the existing law should be applied.

Some of our insights arise out of legal proceedings that are ongoing as at the time of publication and others from our engagement with supervisors and market participants. This report will help create broader awareness of some key issues and the FMA's expectations.

We understand from our engagements that providing clarity on these issues will support the sector and help ensure a more consistent approach to related party transactions involving registered schemes.

## Background

In the MIS sector, it is common for registered schemes (also known as retail schemes) to have some exposure to related parties. This exposure can take many different forms. For example, it might be a direct investment into an unregistered scheme (also known as a wholesale scheme) managed by a related party, or an indirect investment into a related party company. These related party transactions give rise to a conflict of interest and a risk of investor harm. It is important this conflict of interest is recognised and carefully managed.

We have become aware of questions that have been asked by market participants since commencement of the legal proceedings<sup>1</sup>. The questions are about how to apply certain requirements of the Financial Markets Conduct Act 2013 (**FMC Act**) to related party transactions, as market participants consider and review their own practices.

We welcome these reviews of practices by market participants and have produced this paper to address certain questions and clarify the FMA's position. This will help ensure due consideration of investor interests while also supporting efficient operation of the market. In particular, we set out:

- the 'why' behind the related party transaction provisions in the FMC Act;

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<sup>1</sup> <https://www.fma.govt.nz/about-us/enforcement/cases/booster-investment-management-limited/>

- a brief overview of the legislative requirements; and
- how we think certain key aspects of the requirements should be applied in practice.

This information is supported with reference to examples.

## Purpose behind related party transaction provisions

The default position under the FMC Act is that related party transactions are prohibited unless an exception applies. The prohibition exists because these transactions may be improperly influenced by the interests of the related party and so not in the best interests of scheme participants. However, the FMC Act permits related party transactions in some circumstances, and we acknowledge they can benefit investors, such as through increased economic efficiency.

The related party provisions effectively impose an obligation on the manager to positively demonstrate that the decision to enter a transaction is not improperly influenced by the related party connection. This obligation is in addition to the overarching duties of a manager in Part 4 of the FMC Act, including the obligation to act in the best interests of scheme participants and exercise the care, diligence, and skill of a prudent professional. In turn, the legislative design obliges the supervisor to oversee related party transactions and request further information as needed to satisfy themselves the transactions are permitted.

A fundamental aspect of this design is the need for managers to provide and supervisors to receive sufficient information to understand the context of a proposed related party transaction and whether the conflict of interest has been adequately managed and therefore the transaction is permitted.

It is important to document the decisions made under the statutory requirements and to ensure all relevant facts and circumstances are considered, together with the best interests of investors. These decisions require an exercise of judgement. It is essential that in using that judgement, there is a good level of understanding of the transactions and relevant context, overlaid by careful consideration of the law and the purpose behind it. This in turn enables well-informed risk-based decision-making to ensure the purpose of the legislation is met.

The related party transaction requirements do not occur, nor should they be considered, in isolation from the broader obligations of the manager. In practice, they should be considered alongside robustness of governance arrangements, management of conflicts of interest, investment decision making, and nature and types of products.

## Legislative requirements

### The legislation

Sections 172 to 176 of the FMC Act are relevant to related party transactions involving registered MIS.

Section 173 of the FMC Act prohibits transactions that provide for a related party benefit to be given by a manager and any investment manager, administration manager, or other person to whom the manager has contracted out some or all of its functions as a manager, except in certain circumstances. The prohibition

does not apply to a “transaction or series of transactions” if the manager notifies the supervisor in accordance with the FMC Act.

A key defined term is **related party benefit**, which in relation to a registered scheme, is a benefit:

- (a) that either is given out of scheme property or creates an exposure to loss for scheme property; and
- (b) that is given to, or received by, a related party of the scheme; but
- (c) does not include fees or expenses that are paid or reimbursed to the manager in accordance with the FMC Act or the governing document of the scheme.<sup>2</sup>

## Key requirements and application

We have identified aspects of market participants’ processes and decisions around related party transactions that may not align with the FMA’s expectations about how the law is applied. Our objective is to ensure the intent of the related party transaction provisions is achieved in a way that effectively reduces the risk of investor harm linked to related party benefits, while avoiding unnecessary regulatory burden.

### What is a ‘benefit’?

Before there can be a related party benefit under the FMC Act, there must first be a benefit. We understand there is some uncertainty in the market about what amounts to a benefit.

The FMC Act does not define the term benefit. The ordinary meaning of benefit is “a helpful or good effect”, or “an advantage”.<sup>3</sup> There are no words in the FMC Act that limit the term ‘benefit’. For example, if the term was preceded with any of the words: financial, material, net or direct, those terms would have a narrower meaning than the word benefit alone.

Where it is not obvious, the benefit might be identified by asking why the related party is interested in entering the transaction and what they get out of it.

#### Example 1

In a managed investment scheme context, a benefit may arise where value or opportunity is being diverted from, or risk is diverted towards, the scheme or its investors. Examples of non-financial benefits include:

- a guarantee of contractual obligations is given
- support is given for liquidity or cash-flow flexibility
- increased scale to attract more capital.

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<sup>2</sup> Section 172 of the FMC Act

<sup>3</sup> Cambridge online dictionary at [www.dictionary.cambridge.org](http://www.dictionary.cambridge.org)

## Consultation questions for this section

Question 1	Do you agree the ordinary meaning of the word 'benefit' is appropriate and that what may amount to a 'benefit' is not limited in any way?
Question 2	Do you agree with the examples of non-financial benefits? Are there other useful examples of non-financial benefits?

### What is a 'related party benefit'?

A related party benefit is defined in the FMC Act.<sup>4</sup> It requires the benefit:

- (a) either to be given out of scheme property or to create an exposure to loss for scheme property; and
- (b) either to be given to, or received by, a related party of the scheme.

Fees or expenses paid or reimbursed to the relevant MIS manager in accordance with the FMC Act<sup>5</sup> or the governing document of the scheme (**manager's fee**) are not captured by the definition of 'related party benefit' and are therefore not caught by the related party transaction rules. As often stipulated in the governing documents, these fees or expenses need to be reasonable and properly incurred.

#### ***(a) Given out of scheme property or creating an exposure to loss***

Under this limb, the benefit must either be given out of scheme property or create an exposure to loss for scheme property. It is not necessary for both elements to be satisfied. However, where scheme property is transferred to a scheme managed by a related party there will likely be a benefit arising that is given out of scheme property or creates an exposure to loss for scheme property.

Examples include money paid, or a contingent obligation to pay money out of scheme property to a related party (for example, under a capital commitment or guarantee). An exposure to loss may also arise where the scheme's assets, liquidity, risk capacity or strategic position are used in a way that exposes investors to downside risk (including investment risk), opportunity cost or adverse outcomes, whether or not loss is actually suffered.

#### ***(b) Benefit given to, or received by, a related party of the scheme***

To determine whether a benefit has been given to, or received by, a related party of the scheme, there needs to be an assessment of whether the transaction in substance confers an advantage, value, opportunity or strategic benefit on the related party, whether directly or indirectly. A benefit may be received by a related party even where it is not paid to them in the form of a fee or other direct financial transfer.

Examples include:

- an increase in assets or funds under management (FUM);
- the ability to deploy scheme capital to support the related party's investment strategy or commercial objectives;

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<sup>4</sup> Section 172(1)

<sup>5</sup> Section 172(1)(c)

- improved liquidity or balance sheet strength;
- reduced funding costs;
- enhanced credibility or scale;

or other financial or non-financial advantages that arise because scheme property is made available to, or put at the disposal of, the related party.

In assessing this limb, the focus is on the effect of the transaction on the related party, rather than any benefit that may also accrue to the scheme or its investors. The fact that a transaction may be entered into for operational, efficiency or investor-focused reasons does not preclude it from also resulting in a benefit being given to, or received by, a related party, and therefore being caught by the related party transaction rules.

### Example 2

Where a director or senior manager of a MIS manager invests into a registered scheme managed by that MIS manager on the same terms (including fees) as other investors, a benefit to the director or senior manager is the service provided by the MIS manager. Provision of that service is not given out of scheme property, nor does it create an exposure to loss for scheme property. Accordingly, the benefit will not be a related party benefit.

### Example 3

Where a MIS manager contracts out administration services to a related party and the fee is paid out of scheme property (and not the manager's fee) the fee paid will be a related party benefit.

### Example 4

Where a MIS manager (A) of a registered scheme contracts the investment of some or all of the scheme property to an investment manager (B), both A and B will be related parties of the scheme. If fees are paid to B out of scheme property (and not out of A's manager fee) the fees will be a related party benefit.

### Example 5

It is common for the manager of a registered scheme (**Scheme A**) to invest scheme property into an unregistered scheme (**Scheme B**). This is often done for operational efficiency reasons for Scheme A, such as achieving efficient exposure to asset classes, or to streamline portfolio rebalancing. The related party benefits that may arise in these circumstances will depend in part on whether the schemes are managed by the same manager or a related party.

### Scenario 1

If Scheme A and Scheme B are managed by the same manager, the transfer of scheme property will not result in an increase in FUM for the manager (as there will be no change in the total pool of assets under management). The manager may, however, receive other types of related party benefits as a result of Scheme A property being invested into Scheme B. These could include the ability of the manager to achieve market scale or acquire other financial or non-financial benefits as a result of the increased funds managed in Scheme B.

### Scenario 2

If Scheme A and Scheme B have different managers, and the manager of Scheme B is a related party of Scheme A, then the transfer of scheme property from Scheme A to Scheme B will result in an increase in FUM for the manager of Scheme B. This increase in FUM will be a related party benefit because the Scheme B manager will be able to use the increase of FUM for marketing purposes, operating leverage, or to attract additional funding from other sources. There may also be other types of related party benefits as noted in Scenario 1 above.

In both scenarios above, where Scheme B is used solely for operational or efficiency purposes, we would expect the consideration of related party benefits, and associated certification and supporting processes, to be reasonably straightforward, reflecting the lower risk of such transactions.

## Consultation questions for this section

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|------------|---|
| Question 3 | Do you agree with the position taken in the examples above?   |
| Question 4 | In Example 5, do you agree that there is no increase in FUM in Scenario 1?  |
| Question 5 | <p>In Example 5, Scenario 2:</p> <ol style="list-style-type: none"><li>Do you agree that an increase in FUM is a benefit on the basis that the manager of the scheme receiving the increase of FUM will use it for purposes such as marketing, operating leverage or to attract additional funding;</li><li>For the purposes of s172(1)(a) of the Act do you consider that an increase in FUM is a related party benefit because it is a transfer of scheme property from Scheme A to Scheme B that:<ol style="list-style-type: none"><li>is given out of scheme property</li><li>creates an exposure to loss, or</li><li>both of the above</li></ol></li><li>Alternatively, do you consider that an increase in FUM, is not of itself a benefit, but may give rise to a benefit through the advantages that may flow from that increase?</li></ol> |
| Question 6 | Are there other helpful examples we can consider? If so, please provide details.  |

## When is another investment manager a 'related party'?

Section 172(2) of the FMC Act defines the term 'related party' of a scheme as:

- (a) any of the following persons (a **scheme-connected person**):
- (i) the manager of the scheme or any trustee of a restricted scheme; and
  - (ii) any investment manager, administration manager, or other person to whom the manager has contracted out some or all of its functions as a manager; and
  - (iii) for a restricted scheme that is identified on the register of managed investment schemes as an employer-related scheme, any contributor to the scheme who is not a scheme participant (other than the Crown); or
- (b) an associated person of a scheme-connected person.

An investment manager to whom the manager has contracted out some or all of its functions as a manager will be a related party of the relevant scheme<sup>6</sup> and subject to the general prohibition on related party transactions<sup>7</sup>.

An investment manager (referred to in s172(2)(a)(ii)) in relation to a MIS is defined in the FMC Act as a person to whom a manager of the scheme has contracted the investment of some or all of the scheme property. We understand there is a view in the market that investment by a registered scheme into an (otherwise unrelated) unregistered scheme makes the manager of the unregistered scheme an investment manager, and therefore a related party of the registered scheme.

We consider there is a distinction between a MIS manager:

- investing in other financial products (including other managed investment products); and
- contracting the investment of some or all of the scheme property.

Investing in other financial products (including other funds) alone will not mean the issuer of those financial products is an investment manager. Appointing a third party to provide investment management services will be contracting out the function of investment management and the third party will be an investment manager.

The terms 'administration manager' and 'associated person' are also defined in the FMC Act<sup>8</sup>. These terms require careful consideration, and managers and supervisors need to be familiar with them to identify and ensure adequate oversight of related party transactions.

### Example 6

Where the manager of a registered MIS (**A**) invests in an unregistered MIS (**B**) on the same terms and conditions as other unrelated parties, the manager of B will not be an investment manager.

Where A and B enter into an Investment Management Agreement (or similar) where B will execute some or all of the investment management function for A, B will be an investment manager for A.

<sup>6</sup> Section 172(2)(a)(ii)

<sup>7</sup> Section 173(1)

<sup>8</sup> Sections 6(1) and 12

Determining whether a third party is an investment manager under the FMC Act requires consideration of all relevant facts and circumstances including:

- the nature and purpose of contractual arrangements
- the extent of discretion retained by the registered MIS manager
- the extent to which the manager retains the resource and capability to fulfil the investment management function itself.

### Consultation questions for this section

Question 7 Do you agree with the distinction between investing in other financial products and contracting the investment of scheme property?

Question 8 What are the key factors that distinguish between investing in other financial products, and contracting the investment of scheme property?

Question 9 Are there other examples we can consider? If so, please provide details.

### Indirect transactions

For the purposes of ss 172–177 of the FMC Act, the FMA considers that the relevant transaction may extend beyond the immediate legal counterparty to include downstream entities where that reflects the transaction in substance and purpose of the manager’s decision.

Related party benefits may arise through indirect transactions, including where scheme property is invested through one or more intermediary entities before ultimately benefiting a related party of the registered scheme. In such cases, the FMA considers that the related party transaction provisions should be applied having regard to the substance, purpose and effect of the arrangement, rather than being assessed narrowly by reference to a single contractual step.

The purpose of the related party transaction regime is to prevent improper influence in decision-making that may result in value or opportunity being diverted from, or the transfer of risk to, registered scheme investors for the benefit of related parties. That purpose would be undermined if transactions were assessed in constituent parts (for example, only between the managers of Scheme A and Scheme B), where the Scheme A manager’s decision in substance contemplates, enables or is directed towards an outcome further down the transaction chain.

Accordingly, where the manager of a registered scheme invests scheme property with an intermediary entity (for example, an unregistered scheme or investment vehicle), and the manager knows, or ought reasonably to know, that the investment will result in scheme property being applied for the benefit of a related party, the FMA considers the relevant “transaction or series of transactions” may extend to that downstream application of scheme property. In such circumstances, the related party transaction provisions

should be considered by reference to the transaction as a whole, including any indirect related party benefits.

The assessment to determine what, in substance, is the transaction or series of transactions, will depend on the relevant facts and circumstances, including:

- the purpose for which the decision to enter the transaction was made;
- the degree of knowledge or expectation at the time of the decision as to how scheme property would be applied;
- the extent to which downstream transactions were reasonably foreseeable or integral to the arrangement; and
- whether the structure has the effect of conferring a benefit on a related party or transferring risk to scheme investors.

It would be inconsistent with the purpose of the related party transaction provisions in the FMC Act if a manager could circumvent the related party transaction provisions solely by using an intermediary, where the substance of the decision is to use scheme property in a way that benefits a related party. This is supported by the wording of s172(1)(b), which is not confined by contractual form and expressly includes a benefit being given to, or received by, a related party of the scheme. An alternative interpretation that limits the analysis to the immediate counterparty would risk elevating form over substance and frustrating the intent of the related party transaction provisions.

That said, the FMA recognises that not every downstream investment or activity of an intermediary will give rise to an indirect related party transaction. Where a manager has acted in good faith, followed appropriate processes, and could not reasonably have identified that scheme property would be applied for the benefit of a related party, the manager's decision would not, of itself, have been improperly influenced.

We acknowledge the wording in section 173(1) of the FMC Act does not use the term "directly or indirectly". We believe the appropriate interpretation of that section is to interpret the term "transaction" as including both direct and indirect, for the reasons above.

## Consultation questions for this section

Question 10 Do you agree that related party benefits can arise through indirect transactions? If not, why not?

Question 11 Do you agree that if a manager knows, or ought reasonably to know, that an investment will result in scheme property being applied for the benefit of a related party, that will be a part of the relevant transaction or series of transactions?

Question 12 Do you agree with the facts and circumstances detailed above being relevant considerations? Are there other facts or circumstances that may be relevant?

### Example 7

The following example illustrates the FMA’s view of what constitutes a transaction:

A registered managed investment scheme (**Scheme A**) invests scheme property into an unregistered wholesale fund (**Scheme B**). The manager of Scheme A is aware, at the time the investment decision is made, that Scheme B’s investment strategy is to invest a significant proportion of its capital into a specific operating company (**Company C**). Company C is a related party of Scheme A.

Although Scheme A’s direct contractual transaction is an investment into Scheme B, the manager’s decision is made on the basis that scheme property will be deployed, in substance, into Company C. There will be a benefit given to or received by Company C, and the investment into Scheme B is a necessary step to achieve that outcome.

In these circumstances, the FMA considers that the relevant “transaction or series of transactions” for the purposes of ss 172–177 of the FMC Act includes the downstream application of scheme property to Company C. The related party transaction provisions should therefore be considered by reference to the full arrangement, rather than being limited to the initial investment by Scheme A into Scheme B.

### Example 8

We also consider the level of scrutiny to be applied to a related party transaction should reflect the level of risk of harm to investors around the particular transaction. For this reason, we have included a risk scale alongside the examples below.

These aim to illustrate indirect scenarios, taking into account the risk of improper influence – although because the facts and circumstances vary, by necessity these are illustrations only.

Where A is a registered scheme and:



- A invests in B (scheme) at the request of C (a company and related party of A) with approved funding from A – it is a direct investment by A into B, and an indirect investment by A into C.
- A invests in B (a private equity investment fund), which invests in C (a private company and related party of A) – where A knows B has invested in C before, and knows, or ought to know, that a further investment is likely, it is a direct investment by A into B and an indirect investment into C.
- A invests in B (a scheme), which invests in C (an LLP), which invests in D (a company and related party of A) – where A knows the investment into B will likely lead to a transfer of the benefit to C and then D, it is a direct investment by A into B, and an indirect investment by A into both C and D.

## Consultation questions for this section

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|-------------|---|
| Question 13 | Do you agree with the position taken in the examples above? If not, please provide rationale. |
| Question 14 | Do you agree with the relative risk ratings in Example 8?                                     |
| Question 15 | Are there other helpful examples we could consider? If so, please provide details.            |

### What are 'arm's-length terms'?

As noted above, the FMC Act generally prohibits transactions that give rise to related party benefits unless a specified exception applies. One such exception is where a related party benefit is given on arm's-length terms. Other exceptions include investments in other registered schemes and certain registered bank investments.

Based on our engagement with industry, reliance on the arm's-length terms exception appears to be one of the most common grounds for certifying the permissibility of a related party benefit. It is also the area where the greatest uncertainty and variability in market practice arises. Accordingly, our focus in this section is on the arm's-length terms exception. We set out below matters that we consider relevant to assessing, evidencing and documenting reliance on that exception.

A benefit is given on arm's-length terms where the terms:

- would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or
- are less favourable to the related party than the terms referred to in the bullet point above.<sup>9</sup>

The purpose of this wording is to allow related party transactions where the terms of the benefit are no more favourable to the related party than they otherwise would be with a non-related party.

Whether an investment with a related party is on arm's-length terms is a matter of judgement, which requires an understanding of what would be reasonable, in the circumstances, between non-related parties.

To understand whether the terms of a benefit given are reasonable in the circumstances, some or all of the following considerations will likely be relevant:

- standard market terms for transactions of a similar nature, if any;
- assessment of value, taking into account available market data for comparable transactions between unrelated parties (such as independent valuations and public benchmarks);
- comparability with similar related party transactions, using available industry data;
- whether there are alternative transactions available with unrelated parties;
- whether each party to a transaction is sufficiently knowledgeable and well advised in its own right as to whether a transaction is in its best interest (and including the best interest of investors);

<sup>9</sup> Section 174(a) of the FMC Act

- the extent to which the proposed transaction is the outcome of a commercial negotiation between the parties;
- the strength of internal controls;
- the independence of the decision makers;
- the robustness of conflict management processes;
- the liquidity of the scheme;
- independent valuations of scheme property;
- implications for the scheme giving the benefit for its financial position or performance;
- whether the terms are fair in the context of expected return and investment risks (including relative liquidity); and
- whether the terms appear to be overly generous to a party receiving the benefit.

The above is not an exhaustive list, and generally reflects factors relevant to any investment decision by a prudent manager, not just related party transactions.

When certifying a transaction or series of transactions as having benefits being given on arm's-length terms, it needs to be clear from the evidence provided as part of the certification why the manager is certifying that the benefit is reasonable in the circumstances. A statement that an agreement is in the standard form, without considering the specific terms (including an assessment of the monetary value of the benefit, or the nature and extent of any benefit if monetary value cannot be quantified) or articulating why the terms are reasonable in the circumstances, is unlikely to be sufficient.

Where the level of risk of harm to investors is high, we expect a greater level of scrutiny will be applied to an assessment of arm's-length terms relative to circumstances where the level of risk of harm is low.

### Consultation questions for this section

Question 16 Do you agree with the list of relevant considerations?

Question 17 What other considerations may be relevant?

### Notification and certification of related party transactions

The general prohibition on a transaction giving related party benefits does not apply if the manager notifies the supervisor of the transaction, including the related party benefits and key terms, and either:

- the manager obtains the supervisor's consent to the transaction; or
- the manager certifies to the effect that certain circumstances apply to the transaction.

The FMC Act specifies the requirements for the notification of a related party transaction (or transactions) and the content of a manager certification, known as a related party certificate (**RPC**). The requirements<sup>10</sup> include stating:

- the specific grounds on which the RPC is given under section 173 and (if relevant) section 174 and the basis for relying on those grounds;
- if the monetary value of the related party benefit or benefits to which the certificate relates can be quantified, the nature and monetary value of that benefit or those benefits, with reasonable supporting evidence; and
- if the monetary value of the related party benefit or benefits to which the certificate relates cannot be quantified, the nature and extent of that benefit or those benefits, with reasonable supporting evidence.

We understand it is common for managers to engage with their supervisors in relation to a proposed related party transaction, provide a draft RPC for supervisor comments, and address those comments prior to or at the time the formal notification and RPC are provided to the supervisor under s173(2). We consider this to be good practice. With this approach, notification of key terms and benefits for the purposes of s173(2) is taken to occur at the same time the RPC is provided.

Where notification and the RPC are given at the same time, it is important for managers and supervisors to turn their minds to the different requirements for both. In considering the permissibility of a transaction, the key terms and benefits must be considered together with the matters to which the manager is certifying (e.g. a benefit being on arm's-length terms). Where a related party transaction is not permitted, the law assumes undue influence and there is a presumption that the transaction is not in the best interests of investors.

Importantly, for an RPC to be effective in relation to a transaction, the notification and RPC must be completed before the transaction is entered into. If it is not, the transaction will breach s173(1), given that the general prohibition will apply at the point in time when the manager has "enter[ed] into the transaction".

We note that related party benefits given under a transaction and the key terms of the transaction must be known and included in the notification, and the RPC requirements in reg 105 of the Financial Markets Conduct Regulations 2014 (**FMC Regulations**) must be met before the RPC can be relied upon.

We consider that strong internal governance controls, good processes, record keeping, and documentation are important aspects of this process. For instance, where the nature of the related party transaction raises questions, managers should have an internal escalation process to senior committees or independent directors. We also consider that managers should ensure supervisors are given sufficient time to properly analyse the RPC and associated information.

## Consultation questions for this section

Question 18 Do you agree with the above?

Question 19 Are there other market practices we should consider?

<sup>10</sup> Section 175(1) of the FMC Act and Regulation 105 of the FMC Regulations

## When can one notification and RPC be used for a series of transactions?

The FMC Act specifically allows a manager to notify the supervisor of a series of related party transactions and certify that series. The requirements of the RPC are the same whether it is for one transaction or a series.

One notification and RPC could cover a series of transactions if the requirements can be addressed for all transactions in the series. This is likely to be more appropriate for transactions that repeat with the same, or very similar, key terms. Where the key terms of any transaction are not known, it is not possible to treat that transaction as part of a series and a separate notification and RPC will be required.

Put another way, for a single notification and RPC to apply to a series of transactions, there needs to be sufficient certainty about the key terms of all transactions contemplated, together with the related party benefits and the reasons why the transactions are permitted. A lack of certainty around these aspects will mean the detail is insufficient, so the manager will be unable to certify that the grounds are met. In this circumstance we would expect the supervisor (acting on behalf of scheme participants) to work with the manager to ensure it complies with its obligations, and ultimately use its powers to stop a transaction if the RPC is non-compliant.

Where a manager is seeking to conduct a transaction as part of a series of transactions under an existing notification and RPC, the notification and RPC must clearly contemplate the transactions.

An existing notification and RPC do not apply to a subsequent transaction merely because it is similar to a prior transaction. There can be many reasons why a benefit that is given on arm's-length terms at one time cannot be said to be given on arm's-length terms at a later date, even if the terms of the transaction conferring the benefit are the same. Any change to the relevant facts and circumstances surrounding the transaction in the intervening period will need to be considered.

We expect managers seeking to enter into a series of transactions that give related party benefits to consider and determine whether an existing notification and RPC continue to accurately reflect future transactions in that series before continuing to rely on them. Managers should evidence they are doing this.

### Example 9

A KiwiSaver scheme regularly invests into a related party wholesale property fund, which in turn invests in New Zealand listed property, in line with the SIPO, on an ongoing basis. The fees charged by the wholesale property fund are included in the manager's management fee disclosed in the KiwiSaver scheme's product disclosure statement and are permissible under governing documents. Given the investment transactions are being undertaken as part of secondary market trading with transparent and public market pricing, the key terms and benefits of the transactions will likely remain the same. Therefore an RPC for a series of transactions between the manager of the KiwiSaver scheme and the wholesale property fund may be appropriate.

### **Example 10**

A KiwiSaver scheme invests into a related party wholesale property fund, which in turn invests in unlisted private companies, including related parties of the manager of the KiwiSaver scheme. It is unlikely that reliance on a notification and RPC that generically covers investments from the scheme into the related party wholesale property fund will meet the requirements. The key terms, benefits and reasons for benefits being on arm's length terms are unlikely to be the same or materially similar for each transaction, so separate RPCs will be required.

### **Example 11**

A KiwiSaver scheme invests (directly or indirectly) alongside other investors into a related party company. The investment agreement contemplates future investments using an agreed pricing formula but does not commit the investors to invest. As the terms of any future investment are agreed, the scheme may complete an RPC for any transactions made under this agreement, in reliance on the arm's-length terms provision where the key terms, benefits and reasons for supporting the arm's-length terms assessment are the same.

### **Example 12**

A registered scheme agrees to invest a fixed dollar amount into a related private company over a period of time, either:

- in defined instalments (\$y every six months for two years, being a total investment of 4x\$y); or
- on call, where the private company makes a call for further investment under a committed capital agreement.

Because the contractual terms are determined and assessed at the outset and not subject to further negotiation or agreement, and assuming each call is within the scope of what was agreed, then the transfers from the registered scheme to the private company can be considered a series of transactions. An RPC may still be required if the private company intends to invest the funds in a related party of the registered scheme, as discussed in the 'Indirect transactions' section above.

### **Example 13**

A registered scheme agrees to make investments into a related party wholesale fund. The terms of the future investments by the wholesale fund to related parties are not known or are changeable, and are to be specified in the future Information Memorandums or other offer documents. Assessment is therefore required of whether the key terms, parties, associated benefits, and grounds for whether something is on an arm's-length basis may differ for subsequent investments made by the wholesale fund with the money received from the scheme property.

## What is meant by 'key terms'?

The key terms that need to be provided in the notification to the supervisor will need to be determined on a case-by-case basis. These terms will be considered by the manager as part of any investment decision-making process.

The key terms of a transaction may include the following:

(a) Consideration:

- this could include money, a service, goods, refraining from an act, or the release from an obligation;
- the monetary value if applicable:
  - one-off or the total value if ongoing consideration;
  - fixed fee or performance based;
- if the monetary value of the consideration cannot be quantified, the nature and extent of the consideration

(b) Payment terms:

- whether one-off or ongoing commitments in the future;
- who payment is to be made to;

(c) Term of the transaction;

(d) Default or penalty provisions;

(e) Warranties, guarantees or indemnities;

(f) Any terms that appear excessively generous, onerous or otherwise unusual for similar transactions between unrelated parties.

The key terms of the transaction should be outlined with sufficient detail to clearly describe the transaction that is being notified and allow this transaction to be differentiated from other transactions.

## Consultation questions for this section

Question 20 Do you agree with the list of key terms above?

Question 21 Are there other key terms you think should be included?

## How much detail should be included in the notification and RPC?

The level of detail required in the notification and RPC will be fact and circumstance dependent. The information must be sufficient to allow the supervisor, acting on behalf of scheme participants and in performing its functions, to be satisfied that the transaction is permissible.

For simple and well-understood transactions, the level of detail can be less than for more complex and unusual transactions, where more detail will be needed to ensure the notification and RPC accurately

describe the key terms and the related party benefits. The level of detail needs to enable the supervisor to assess the permissibility of the transaction(s).

Similarly, the more complex and unusual the arrangements, the greater the level of enquiry will be needed by supervisors to satisfy themselves:

- that the notification and RPC are compliant
- as to the accuracy and completeness of the information provided; and
- that the manager is complying with its general obligations under Part 4 of the Act.

### Consultation question for this section

Question 22 Do you agree with this approach to determining the appropriate level of detail?

### What is 'reasonable evidence'?

Regulation 105 of the FMC Regulations requires that a certificate under section 173 of the FMC Act must provide, or have attached to it, reasonable evidence supporting the statements regarding the value of the related party benefit and the stated basis for relying on a ground in section 173 and section 174 of the FMC Act to establish transactions as permissible.

What is 'reasonable' will be fact and circumstance dependent. The higher the risk of harm to investors and more finely balanced the consideration is of whether something is a permissible transaction, the more conclusive the supporting evidence will need to be.

Indicators of higher risk may include the number of related party entities, weakness in governance and conflicts management arrangements, uncertainty relating to the valuation of assets, or lack of alternative transactions with unrelated parties.

A risk-based approach aims to be proportionate in respect of the evidence that is required. For lower-risk or routine transactions, high-level evidence may suffice, such as comparable market pricing, standard fees schedules and relying on existing contractual terms. For higher-risk, novel or bespoke transactions, more robust evidence may be required, such as independent valuations, external benchmarks, and specialist advice. Early engagement with the supervisor is encouraged, particularly for novel, complex and bespoke transactions.

Good practice may include the following considerations:

- Whether independent valuations are required;
- Benchmarking the related party transaction against comparable unrelated transactions;
- Retention of negotiation records;
- Use of internal pricing models or cost allocation methodologies;
- Clear audit trails;
- Relevant board and committee decisions or minutes;
- Due diligence evidenced with sign-off by boards;

- Ensuring there are appropriate policies and frameworks to manage RPCs, such as maintaining a related party transactions register and the register being subject to regular compliance assurance programme testing.

### Consultation questions for this section

Question 23 Do you agree with a risk-based approach to setting out reasonable evidence?

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Question 24 What do you consider to be good practice on this issue?

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### RPCs to be kept under review

Any RPC for a series of transactions must be kept under review. Where there is a change to a specific term of a transaction, a benefit or the basis on which the transactions are permitted, that ought to be reviewed and, if appropriate, a new notification and RPC issued in respect of future transactions.

Managers and supervisors should have an adequate process to consider the validity of a notification and an RPC at the time they are provided, as well as processes and controls to ensure RPCs are only relied on for subsequent transactions where appropriate. This could be enhanced by having a related party transactions register, and ensuring RPCs are subject to a compliance assurance programme testing.

Changes that may be material and require an RPC to be reviewed include:

- Changes in the fees structure;
- Changes in investment mandates or strategies;
- Changes in relevant related party relationships;
- Deteriorating governance or conflicts management frameworks.

### Consultation question for this section

Question 25 Do you agree with the position that the RPCs for a series of transactions must be kept under review? Are there other examples that we should include in the changes that may be material?

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## Risk management considerations and strategies

Where related party transactions are entered into with robust governance, clear investor-centred rationale, transparent assessment of value to investors and proportionate evidence, the FMA considers the risk of investor harm to be lower. Conversely, arrangements that obscure the substance of related party benefits, minimise or disregard exposure to loss, or appear to prioritise group or related party interests over those of scheme participants are more likely to attract close regulatory scrutiny.

The FMA recognises that there is common use of related party transactions in the MIS sector, often arising from commercial group structures. While they are not inherently inappropriate, they carry a heightened risk of conflicts of interest, which in turn may increase the risk of investor harm if not carefully identified, assessed and managed.

The FMA considers the following to be indicators of higher-risk related party transactions:

- The transaction structure is complex or layered;
- Related party involvement is indirect, contingent or embedded within broader arrangements;
- The transaction could reasonably be perceived as designed to obtain a favourable outcome for a related party while limiting scrutiny;
- Terms are difficult to benchmark (e.g. illiquid assets, bespoke fees, opaque services);
- The transaction is material to scheme outcomes (e.g. NAV impact, liquidity profile, unit pricing or performance fees);
- Valuation, liquidity or financing features increase uncertainty, reliance, or contingent exposures;
- Decision-makers have overlapping roles or incentives across related entities;
- Governance and independence are constrained, including where there is limited evidence of meaningful challenge or late escalation.

Each situation should be considered on its own facts and in light of the materiality of the relevant information in context. There are, however, strategies that may assist managers to better manage the risk of potential investor harm, including the following:

- **Identify early and in substance:** look through structures and transaction chains to detect indirect or embedded related-party benefits or exposures.
- **Strengthen governance and independence:** ensure meaningful challenge, clear escalation, and appropriate management of conflicts (including separation of roles/recusal where relevant).
- **Assess exposure to loss (investor lens):** document direct and contingent risks, opportunity costs, reduced flexibility and downside scenarios – avoid relying on terms such as “no loss has occurred” as comfort.
- **Evidence arm’s-length terms:** support conclusions with credible, proportionate benchmarking and analysis, including consideration of non-financial benefits.

- **Address valuation, liquidity and fee conflicts:** apply heightened controls where related party transactions affect valuation/pricing (especially illiquid assets), liquidity/financing reliance, or fees/expenses (including 'fee leakage' via related service providers).
- **Maintain clear records and conduct ongoing reviews:** document rationale, evidence, approvals and conditions; refresh assessments when circumstances change; avoid routinely reusing certificates without reassessment.
- **Engage the supervisor early for higher-risk transactions:** provide sufficient information for meaningful oversight, particularly for complex, novel or material arrangements.

### Consultation question for this section

Question 26 Do you have any comments on this section?

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### Final consultation questions

Question 27 Do you have any suggestions about how this paper could be improved?

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Question 28 Are there additional examples that would be useful to include? If so, please provide details.

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Question 29 What other issues with related party transactions would be useful to include in this paper?

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