

Guideline: Issuers of securities and participants in issues

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About this guideline

This guideline is for businesses registered on the Financial Services Providers Register (FSPR) as an issuer of securities or who participate in issues of securities. If you are either of them, this guideline will help you to determine if you have obligations under the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009 (AML/CFT Act).

We recommend that you read this guideline in conjunction with the 'Interpreting the Ordinary Course of Business' guideline.

This guideline does not constitute legal advice. We encourage you to seek legal advice to determine if you are an issuer of securities and have compliance obligations under the AML/CFT Act. It is your responsibility to determine this.

This guideline refers to legislative requirements that come into full effect on 30 June 2013. It will be updated to consider future legislative changes if required.

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Introduction

1. The AML/CFT Act comes into force on 30 June 2013. It places compliance obligations on financial institutions and casinos.
2. Financial Markets Authority (FMA) is the supervisor under the AML/CFT Act for financial institutions who are issuers of securities, trustee companies, futures dealers, collective investment schemes, brokers and financial advisers.
3. The Reserve Bank of New Zealand (RBNZ) is the supervisor for banks, life insurers and non-bank deposit takers. The Department of Internal Affairs is the supervisor for casinos, non-deposit-taking lenders, money changers, and other reporting entities that are not covered by the RBNZ or FMA.
4. This guide will help issuers of securities and participants in securities issues to determine if they have compliance obligations under the AML/CFT Act and whether FMA is their supervisor.

What types of issuers and participants have AML/CFT obligations?

5. If you are an issuer of securities under the Securities Act 1978 and are also a financial institution under the AML/CFT Act, you will be a reporting entity under the AML/CFT Act. This means you will have some AML/CFT Act compliance obligations.
6. Issuers of retail debt securities generally fall under the definition of financial institutions, because their ordinary course business involves accepting deposits or other repayable funds from the public. Managers of collective investment schemes, who issue securities in relation to their scheme, and certain other participants in securities issues, will be financial institutions because their ordinary course of their business involves managing individual or collective portfolios or investing, administering, or managing funds or money on behalf of other persons.
7. Certain other participants in securities issues will also be financial institutions under the AML/CFT Act, and therefore reporting entities, by virtue of participating in securities issues and providing financial services related to those issues. There may be some uncertainty as to whether issuers of equity securities are financial institutions under the AML/CFT Act. A key objective of this guideline is to provide more clarity in relation to these matters.
8. In particular, an issuer of equity securities who is not otherwise a financial service provider will generally only be a financial institution under the AML/CFT Act if in the ordinary course of its business it 'participates in securities issues and provides financial services related to those issues'. While an issuer of equity securities that is not otherwise a financial service provider participates in its own equity issues, it will not usually provide financial services related to those issues. An issuer of equity securities who is not otherwise a financial service provider is therefore unlikely to be a financial institution under the AML/CFT Act.

Am I an issuer as defined by the AML/CFT Act?

10. The AML/CFT Act does not define 'securities' or 'issuers of securities'. FMA will therefore use the Securities Act 1978 definitions. The definitions are attached as an Appendix.

11. Table 1 summarises these definitions.

Table 1: Security and issuer

Security type	Who is the issuer?
Security means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and any renewal or variation of the terms or conditions of any such interest or right. They include:	An issuer is:
An equity security	The person on whose behalf any money paid in consideration of the allotment of the security is received
A debt security	The person on whose behalf any money paid in consideration of the allotment of the security is received
A unit in a unit trust	The manager
An interest in a superannuation scheme (includes restricted KiwiSaver schemes)	The superannuation trustee
An interest in a KiwiSaver scheme (other than a restricted KiwiSaver scheme)	The manager
A life insurance policy	The life insurance company that is liable under the policy
Any interest or right that is declared by regulations to be a security for the purposes of this Act	The person declared by regulations to be the issuer
Participatory security (a security that is not one of those listed above)	The manager or contributory mortgage broker

Am I a financial institution as defined by the AML/CFT Act?

12. To be a financial institution under the AML/CFT Act, an issuer of securities must engage, in the ordinary course of its business, in at least one activity listed in the table below.

Table 2: Financial institutions

AML/CFT Act Financial Institution	
A financial institution is a person who in the ordinary course of business conducts any of the following activities:	
i.	Accepting deposits or other repayable funds from the public
ii.	Lending to or for a customer, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions (including forfeiting)
iii.	Financial leasing (excluding financial leasing arrangements in relation to consumer products)
iv.	Transferring money or value for, or on behalf of, a customer
v.	Issuing or managing the means of payment (for example, credit or debit cards, cheques, traveller's cheques, money orders, bankers' drafts, or electronic money)
vi.	Undertaking financial guarantees and commitments
vii.	Trading for the person's own account or for the accounts of customers in any of the following: <ul style="list-style-type: none"> a) foreign exchange b) exchange, interest rate, or index instruments c) transferable securities d) commodity futures trading
viii.	Participating in securities issues and the provision of financial services related to those issues
ix.	Managing individual or collective portfolios
x.	Safe keeping or administering of cash or liquid securities on behalf of other persons
xi.	Investing, administering, or managing funds or money on behalf of other persons
xii.	Issuing, or undertaking liability under life insurance policies as an insurer
xiii.	Includes a person or class of persons declared by regulations to be a financial institution for the purposes of the AML/CFT Act

How does FMA interpret 'participating in securities issues'?

13. The AML/CFT Act does not define 'participating'. FMA considers your business to be 'participating in securities issues' in the ordinary course of business if it is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) for:

- Participating in an offer of securities to the public in either of the following capacities (within the meaning of those terms under section 2(1) of the Securities Act 1978): (i) as an issuer of securities; and/or (ii) as a promoter.
- Acting in any of the following capacities (within the meaning of those terms under section 2(1) of the Securities Act 1978) in respect of securities offered to the public as a:
 - (i) trustee
 - (ii) unit trustee
 - (iii) superannuation trustee
 - (iv) collective investment scheme fund manager.
- Other financial services (for example broking services, financial advisers services, or providing financial guarantees) where those services are provided in connection with an issue of securities to the public pursuant to a contract with the issuer or another person participating in the issue.

14. FMA considers that the interpretation of a financial institution under the AML/CFT Act, set out in the above Table 2 paragraph (viii), is **not restricted to issues of securities to the public**. FMA also considers your business to be ‘participating in securities issues’ in the ordinary course of business, if it participates in a wholesale offer of securities as an issuer and/or a promoter, acting as a trustee, unit trustee, superannuation trustee or collective investment scheme fund manager.

How does FMA interpret ‘financial services’?

15. The AML/CFT Act does not define ‘financial services’. FMA will use the definition of financial services in section 5 of the FSP Act to determine if you provide financial services in relation to a securities issue. Using this definition you will be providing financial services related to a securities issue if in the ordinary course of your business, you conduct any of the following activities related to that issue:
- Providing a financial adviser service, including financial adviser services provided to the issuer or another person participating in the issue.
 - Providing a broking service, including broking services provided to the public, pursuant to a contract with the issuer or another person participating in the issue.
 - Providing financial guarantees, including underwriting arrangements.
 - Promoting the issue of those securities.
 - Acting as at least one of the following in relation to those securities. The:
 - (i) trustee
 - (ii) statutory supervisor
 - (iii) unit trustee
 - (iv) superannuation trustee
 - (v) fund manager.
16. A securities issuer participant is a financial institution if its ongoing business involves supplying financial services for securities issues. Therefore, it is unlikely that a person involved in a single securities issue will be considered to be ‘participating in securities issues and the provision of financial services related to those issues’, in the ordinary course of the business.

Applying FMA's interpretation

17. If you are a securities issuer, you will be a reporting entity if you [provide financial services](#) in relation to the securities issue.¹
18. If you are not the issuer but participate in the securities issue, you will be a reporting entity if you also [provide financial services](#) in relation to the issue.
19. However, as noted in paragraph 6, many issuers and other participants in securities issues will in any case be AML/CFT Act financial institutions, because in the ordinary course of their business they conduct one or more of the other activities in the definition of financial institution in the AML/CFT Act.
20. Table 3 below summarises the persons who would be regarded to be 'participating in securities issues and the provision of financial services related to those issues' for the different types of securities:

Table 3: Security type participating financial service providers

Type of security	Participating financial service providers
Equity security	Underwriter Institutional financial advisers Financial adviser Broker Issuers whose on-going business involves supplying financial services to the issue
Debt security	Licensed trustee (for offers to the public) Trustee (for other offers) Underwriter Institutional financial advisers Financial adviser Broker Issuers whose on-going business involves supplying financial services to the issue
Interest in an Unit Trust	Trustee of the Unit Trust Manager of the Unit Trust Financial adviser
Interest in a KiwiSaver scheme	KiwiSaver trustee Manager of the scheme Financial Adviser
Interest in a contributory mortgage	Contributory mortgage broker Financial Adviser
Participatory securities e.g. bloodstock schemes	Licensed statutory supervisor Manager whose ordinary course of business involves providing financial services in relation to

¹By virtue of para (viii) of the definition of financial institution in the AML/CFT Act.

	securities issued under the scheme Financial Adviser
Interest in registered superannuation scheme	Trustee of the scheme Manager of the scheme Financial Adviser
Life insurance policy	Financial adviser Broker

Exempt issuers

21. Issuers that are exempt from compliance with certain provisions of the Securities Act 1978, in relation to their securities issues should not assume that they are also exempt from the AML/CFT Act. Exempt issuers who participate in securities issues and provide financial services in relation to those issues will have AML/CFT Act compliance obligations.

AML/CFT Supervisors' Guideline interpreting 'Ordinary Course of Business'

22. AML/CFT supervisors have jointly issued a guideline on the term ordinary course of business as used in section 5 of the AML/CFT Act ([Ordinary Course of Business Guideline](#)).
23. We suggest you read the Ordinary Course of Business Guideline to help you to determine if in the ordinary course of your business you issue securities, participate in, and provide financial services to, securities issues.

Is FMA your AML/CFT supervisor?

24. The ordinary course of business of persons who participate in retail or wholesale securities issues and provide financial services related to those issues, is likely to also involve some of the other activities set out in the AML/CFT Act's definition of a financial institution. The core financial activity of a person will determine the person's AML/CFT supervisor.
25. FMA will supervise reporting entities who participate in securities issues and provide financial services related to those issues and are also one or more of the following:
- An issuer
 - A trustee company
 - A futures dealer
 - A manager of a collective investment scheme
 - A broker whose ordinary course of business would make it a financial institution
 - A financial adviser
26. It is FMA's opinion that persons who solely issue securities and do not provide financial services related to their issue or undertake any of the other activities in the definition of financial institution in the AML/CFT Act will not be reporting entities.

27. It is likely that some persons who participate in securities issues and provide financial services in relation to those issues will be supervised by another AML/CFT supervisor – for example, registered banks and non-bank deposit takers who will be supervised by the RBNZ.

28. If you cannot determine who will be your AML/CFT Act supervisor please contact the supervisor you believe is your supervisor for confirmation.

AML/CFT Supervisors' contact details

Reserve Bank of New Zealand
2 The Terrace
Wellington 6011
New Zealand

Department of Internal Affairs
46 Waring Taylor Street
Wellington 6011
New Zealand

Financial Markets Authority
Level 2,
1 Grey Street
Wellington 6011
New Zealand

Phone: 64 4 472 2029

Email: amlcft@rbnz.govt.nz

Phone 64 4 495 7200

Email: amlcft@dia.govt.nz

Phone 64 4 472 9830

Email: aml@fma.govt.nz

29. FMA has a list of its reporting entities on its [website](#). The list is not definitive and represents our current assessment of who are FMA's reporting entities and will be subject to change from time to time.

Appendix

Securities Act 1978 – s2D - meaning of security

(1) In this Act, unless the context otherwise requires, the term **security** means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and includes:

- a) an equity security; and
- b) a debt security; and
- c) a unit in a unit trust; and
- d) an interest in a superannuation scheme; and
- e) a life insurance policy; and
- f) any interest or right that is declared by regulations to be a security for the purposes of this Act; and
- g) any renewal or variation of the terms or conditions of any such interest or right;—

but does not include any such interest or right (other than a security referred to in paragraph (f)) that is declared by regulations not to be a security for the purposes of this Act.

(2) Where the terms of a security require or allow the subscriber to pay separate amounts of money at different times, each such payment shall, for the purposes of this Act, be treated as payment for the same security as each other payment.

Section 2D: inserted, on 1 October 1997, by section 4 of the Securities Amendment Act 1996 (1996 No 100).

Securities Act 1978 – s2- interpretation of issuer

Issuer means,—

- a) in relation to an equity security or a debt security, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to an equity security or a debt security, or to a trust deed that relates to a debt security, the person on whose behalf any money paid in consideration of the allotment of the security is received:
- b) in relation to a participatory security, or to an advertisement, investment statement, prospectus, or registered prospectus, or to a deed of participation that relates to a participatory security, the manager:
- c) in relation to an interest in a contributory mortgage offered by a contributory mortgage broker, or to an advertisement that relates to such an interest, the contributory mortgage broker:
- d) in relation to a unit in a unit trust, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to such a unit, the manager:
- e) in relation to a life insurance policy, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to a life insurance policy, the life insurance company that is liable under the policy:
- f) in relation to an interest in a superannuation scheme (including a restricted KiwiSaver scheme but not any other KiwiSaver scheme), or to an advertisement, investment statement, prospectus, or registered prospectus that relates to such an interest, the superannuation trustee of the scheme:
- g) in relation to an interest in a KiwiSaver scheme other than a restricted KiwiSaver scheme, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to such an interest, the manager of the scheme