Information Sheet – May 2014

FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

New governance and accountability framework for debt issuers and their licensed supervisors

The Financial Markets Conduct (FMC) Act 2013 changes the governance and accountability framework for financial products. Find out what these changes mean for debt issuers and their licensed supervisors...

What's changing?

Part 4 of the FMC Act consolidates and strengthens existing laws for the offer of debt securities.

There are specific fair dealing requirements for debt issuers. Part 4 also introduces a statutory duty of care on supervisors of debt securities and a requirement to act in the best interests of investors.

Debt issuers and their supervisors need to have a clear understanding of their respective roles, and understand they will be held to account for their actions.

Why are these changes important?

Accountability is vital to developing and maintaining fair, efficient and transparent financial markets and to growing market confidence. This is key to building investor trust which is central to the objectives of the FMC Act.

Key accountabilities and responsibilities under the FMC Act

Debt issuers must:

- Comply with fair dealing requirements.
- Comply with trust deed requirements and all issuer obligations.
- Meet all reporting requirements to the Supervisor and FMA – including reporting of contraventions and serious financial problems (reporting requirements will be confirmed in regulations due out mid-2014).

Supervisors must:

- Act honestly and in the best interests of debt security holders.
- Exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.
- Act on behalf of debt security holders in relation to the debt issuer, the trust deed, the terms of a regulated offer, and any actual or alleged breaches of issuer obligations.
- Exercise reasonable diligence in carrying out supervisory functions.
- Not delegate functions (other than as permitted by the FMC Act and subject to the Securities Trustees and Statutory Supervisors Act 2011 (to be renamed the 'Financial Supervisors Act 2011').
- Supervise the debt issuer's performance of its issuer obligations and functions.
- Confirm the assets of the debt issuer and each guarantor to meet debt securities as they become due.

- Exercise their powers to cause breaches of issuer obligations to be remedied.
- Act in accordance with special resolutions of debt security holders.
- Ensure processes for meetings of debt security holders are complied with.
- Ensure statutory processes relevant to trust deed amendments and/or replacement are complied with.

When do the changes take effect?

There is a two year transition period 1 December 2014 – 1 December 2016.

If you are an existing continuous issuer you can select an 'effective date' any time between 1 December 2014 and 1 December 2016 to come into new regime.

Former enactments continue to apply until your effective date. After your effective date the FMC Act applies.

By your effective date you need to ensure that:

- any changes that need to be made to your trust deed for it to comply with the FMC Act have been made, and
- your updated trust deed is registered.

You must also give FMA and the Registrar at least 20 working days' notice of your chosen effective date.

Where can I find more information?

You can find more details about these changes on our website. Refer to the 'Future of Financial Markets' section, and 'When will you need to comply'. You can also subscribe to receive FMA Updates for the latest news.

Please note: This factsheet provides background information only. It should not be viewed as formal FMA guidance and is not legal advice. You should seek your own professional legal advice about how the FMC Act affects you.