

Summary of Schedule 1 exclusions under the Financial Markets Conduct Act 2013 (FMC Act)

Schedule 1 exclusion	FMC Act references	Application of exclusion from Part 3 Disclosure	Disclosure and other requirements in FMC Regulations (if any)
Offers to wholesale investors	Clause 3 , Schedule 1	<p>There are a number of different categories of wholesale investor that do not require disclosure under Part 3 of the FMC Act:</p> <ul style="list-style-type: none"> Wholesale investor – Investment business (Clause 37) Wholesale investor – Investment activity criteria (Clause 38) Wholesale investor – Large (Clause 39) Wholesale investor – Government agency (Clause 40) Wholesale investor – Eligible investors (Clause 41– 43) 	<p>In order to be categorised as an Eligible Investor, a person must sign a certificate which contains a prescribed warning statement (clause 47, Schedule 8 FMC Regulations). The certificate must contain the grounds for the certification and an AFA, chartered accountant or lawyer must also sign a written confirmation of the certification. The certification is valid for 2 years.</p> <p>Offerors may also (but are not required to) rely on a 'safe harbour' certificate for the other categories of wholesale investor in clause 3(2). The certificate contains a prescribed warning statement and is signed by the investor who states which category they fall within (clause 48, Schedule 8 FMC Regulations) The safe harbour certificate is valid for 2 years.</p> <p>Each certificate can be revoked by the investor in writing.</p>
		<ul style="list-style-type: none"> Wholesale investor – Underwriting agreement (Clause 3(3)(b)(iii)) Wholesale investor – Derivative \$5 million minimum (Clause 3(3)(c) and 49) 	



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		<p>Wholesale investor – \$750,000 minimum investment (Clause 3(3)(b)(i) and (ii))</p> <p>Note this is a higher than the \$500,000 threshold in section 3(2)(a)(iia) and (iib) of the Securities Act 1978. Transitional provisions (clause 57, Schedule 4, FMC Act and clause 16, Schedule 1, FMC Regulations) provide the ability to make offers in reliance on the exemptions in sections 5(2CB), 5(2CBA) and 3(2)(a)(i) to (iii) of the Securities Act through to 1 June 2015.</p>	<p>In order to rely on this exclusion an offeror must provide a prescribed warning statement in a document that contains the key terms of the offer (FMC Regulations Schedule 8, clause 4) and receive written acknowledgment from the investor in a prescribed form prior to accepting an application (whether for the offer in question or a different offer) (Schedule 8, clause 5)</p>
Offers to close business associates	Clause 4 , Schedule 1	<p>An offer to a close business associate.</p> <p>Close business associate is defined in clause 4.</p>	No disclosure required.
Offers to relatives	Clause 5 , Schedule 1	<p>An offer to a relative.</p> <p>Relative is defined in clause 5.</p>	No disclosure required.
Offers of financial products through licensed intermediaries – crowd funding and peer-to-peer lending	Clause 6 , Schedule 1	<p>An offeror can raise an aggregate of \$2 million in any 12 month period through the following licensed intermediaries:</p> <ul style="list-style-type: none"> crowd funding services – provides companies a way of raising funds through offers of shares in companies from many investors who are seeking to invest relatively small amounts (defined in regulation 185, FMC Regulations) <p>peer-to-peer lending service – matches lenders with borrowers who are seeking loans for personal, charitable, or small business purposes via offers of debt securities (defined in regulation 185, FMC Regulations) Note that the calculation of the \$2million aggregate limit includes offers made in reliance on this exclusion as well as offers made in reliance on the small offer exclusion in clause 12, Schedule 1, FMC Act (See clause 6 – 8, Schedule 8, FMC Regulations)</p>	<p>No disclosure required by offeror to investors.</p> <p>Provider of licensed intermediary service has disclosure and other obligations (see Part 6, FMC Act and Part 6, FMC Regulations).</p>
Offers of	Clause 7 ,	An offer of financial products when the offer is	No disclosure required by offeror to



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financial products through DIMS licensees	Schedule 1	through a Discretionary Investment Management Service (DIMS) licensee that decides whether to acquire the financial products on behalf of the person in the course of supplying a discretionary investment management service.	investors. Provider of DIMS has disclosure and other obligations (see Part 6 of the FMC Act and Part 6 of the FMC Regulations).
Offers under employee share purchase schemes	Clause 8, Schedule 1	An offer to an employee or a director of the issuer under an employee share purchase scheme in certain circumstances set out in clause 8. The exclusion imposes a limit on the number of financial products that may be issued or transferred in a 12-month period. During the transition period the calculation for the permitted amount of financial products includes offers under former law (clause 24 , Schedule 1, FMC Regulations)	Limited disclosure required <ul style="list-style-type: none"> • Prominent warning statement • Description of scheme • Access to annual report and financial statements See clause 9 – 12 , Schedule 8, FMC Regulations
Offers to persons under control	Clause 9 and 48, Schedule 1	An offer to an entity controlled by a person that does not require disclosure under Part 3 due to one of the above exclusions applying (i.e. wholesale investor, close business associates, relatives, offers through licensed intermediaries or DIMS licensee, or offers under employee share purchase schemes) does not require disclosure under Part 3.	Limited disclosure requirements (if any) correspond to those applicable to the relevant exclusion in clause 3 – 8 of Schedule 1 that applies to the person in control of the entity.
Offers of financial products under dividend reinvestment plans	Clause 10, Schedule 1	An offer of equity securities in a company or managed investment products to a person under a dividend reinvestment plan if the person already holds financial products of the same class and the dividend reinvestment plan contains certain provisions (see clause 10).	Limited disclosure required <ul style="list-style-type: none"> • Description of dividend reinvestment plan • Access to annual report and financial statements See clause 13 – 15 , Schedule 8, FMC Regulations
Offers of financial products for no consideration	Clause 11, Schedule 1	An offer of financial products if no consideration is to be provided for the issue or transfer of the products. The exclusion also includes offers of options if there is no consideration both for the issue or transfer of the option and the underlying financial products on the exercise of the option. Note that this exclusion does not apply to certain	No disclosure required. Note that this exclusion covers, for example, bonus shares but does not include offers of debt securities where no interest is payable to the investor.



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		financial products set out in clause 11(3) including interests in a KiwiSaver scheme, a superannuation scheme, a workplace savings scheme, and derivatives other than options.	
Small offers	Clause 12, Schedule 1	<p>Small offers for either issue or sale that are personal offers of equity or debt securities to no more than 20 investors raising no more than \$2 million in any 12-month period.</p> <p>Personal offer is defined in clause 12 and clause 14 outlines how to calculate the \$2million limit for offers for issue and sale. During the transition period the \$2million limit takes into account offers under former law (clause 24, Schedule 1, FMC Regulations).</p> <p>Note advertising restriction for small offers exclusion (clause 13).</p>	<p>Limited disclosure required</p> <ul style="list-style-type: none"> • Notification to FMA of reliance on exclusion and details of offer and issue or sale • Prominent warning statement <p>See clause 16 – 18, Schedule 8, FMC Regulations</p>
Offers for transfer of controlling interest	Clause 15, Schedule 1	<p>Offers of controlling interests (consisting of more than 50% of voting products of an entity) where five or fewer investors acting jointly or in concert acquire the equity securities.</p> <p>Investors under this exclusion must be in a position to assess, or obtain information about, the merits of the offer.</p>	No disclosure required.
Offers in small schemes	Clause 16 – 18, Schedule 1	<p>An offer of managed investment products if the relevant managed investment scheme has 5 or fewer scheme participants and is not promoted by a person (or their associate) who is in the business of promoting managed investment schemes.</p> <p>Note advertising restriction for small schemes exclusion (clause 17).</p>	No disclosure required.



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Offers of financial products of same class as quoted financial products	Clause 19, Schedule 1	<p>Offers of equity securities, debt securities or managed investment products of the same class as financial products quoted (for at least the last three months) on a licensed market that has market rules containing continuous disclosure provisions.</p> <p>Clause 19 imposes as a term of the offer that the financial products will be quoted immediately after issued or sale.</p> <p>Note this exclusion does not apply to offers of derivatives and clause 46, Schedule 8, FMC Regulations outlines certain circumstances where the exclusion for offers of financial products of the same class as quoted financial products does not apply.</p>	<p>Limited disclosure required</p> <ul style="list-style-type: none"> • Issuer to provide notice to licensed market operator containing certain information for purpose of notifying market • Obligation to correct defects in notice to licensed market operator that arise within 12 months of issue or transfer • Prominent statement containing key terms of the offer in respect of offers of debt securities <p>Other requirements</p> <ul style="list-style-type: none"> • Issuer is in compliance with continuous disclosure and financial reporting obligations <p>See clause 19 – 22, Schedule 8, FMC Regulations</p>
Certain offers of derivatives	Clause 20, Schedule 1	<p>Offers of derivatives for issue or sale if the person who offers or issues the derivative is not a derivatives issuer (i.e. a person in the business of entering into derivatives).</p> <p>Offers of quoted derivatives for issue or sale if the derivative is issued by a participant in the licensed market on which the derivative is quoted.</p> <p>Offer of derivatives for issue or sale if the derivative is approved for trading on a prescribed overseas market and issued by a prescribed person or class of persons.</p>	No disclosure required.



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Offers of category 2 products or debt securities by registered banks	Clause 21 , Schedule 1	Certain financial products issued by registered banks or a registered bank's subsidiary : <ul style="list-style-type: none"> category 2 products issued by a registered bank (clause 21(a)) currency forwards issued by a registered bank or a subsidiary of a registered bank (clause 21(d) and clause 44(2), Schedule 8, FMC Regulations) 	No disclosure required.
		<ul style="list-style-type: none"> debt securities issued by a registered bank (clause 21(b)) 	Limited disclosure required <ul style="list-style-type: none"> Limited disclosure document, that complies with specific requirements as if the offer was a regulated offer and contains information specified in Schedule 9, FMC Regulations, lodged with Registrar and provided to investor Offerors must also comply with specific ongoing disclosure duties and other disclosure and process requirements See clause 23 – 26 and 37 – 43, Schedule 8, and Schedule 9 , FMC Regulations
		<ul style="list-style-type: none"> certain category 2 products (PIE funds and bank notice products) issued by a subsidiary of a registered bank (clause 21(c) Schedule 1 of the Act and clause 44(1), Schedule 8, FMC Regulations) 	No disclosure requirement Other requirements – Governance requirements: <ul style="list-style-type: none"> governing document must comply with specific requirements and contain certain terms as if scheme were a registered scheme licensed supervisor See clause 27 – 28, Schedule 8, FMC Regulations



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Offers by the Crown etc.	Clause 22 , Schedule 1	An offer of financial products where the issuer is the Crown or a public agency listed in clause 22.	Limited disclosure required: <ul style="list-style-type: none"> Limited disclosure document, that complies with specific requirements as if the offer was a regulated offer and contains information specified in Schedule 9, FMC Regulations, lodged with Registrar and provided to investor Offerors must also comply with specific ongoing disclosure duties and other disclosure and process requirements See clause 29 – 31, 37 – 43, Schedule 8, and Schedule 9 , FMC Regulations
Retirement villages	Clause 23 , Schedule 1	An offer of an interest in a retirement village if the interest is exempted from Part 3 by section 107(1) of the Retirement Villages Act 2003.	No disclosure required.
Offers of variations	Clause 24 , Schedule 1	An offer of a variation of the terms or conditions of a financial product.	Limited disclosure required <ul style="list-style-type: none"> Limited disclosure document See clause 32 – 35, Schedule 8, FMC Regulations. If the offer of the variation proposes a moratorium or changes the issuer of the financial product there are additional limited disclosure and process requirements: <ul style="list-style-type: none"> Limited disclosure document, that complies with specific requirements as if the offer was a regulated offer, lodged with Registrar and provided to investor See clause 37 – 43, Schedule 8, FMC Regulations.
Offers of renewals	Clause 24 , Schedule 1	An offer of a renewal of the terms or conditions of a financial product	Limited disclosure required if PDS or register entry is deficient Supplementary document containing information to correct the deficiency: See clause 36 , Schedule 8, FMC Regulations