

# Financial regulation and registration requirements for marinas

The Financial Markets Conduct Act 2013 (FMC Act) changes the way interests in marinas are regulated. Marinas will generally not be regulated under the FMC Act and will no longer need to register on the Financial Service Providers Register. Find out more...

## Marinas will generally not be regulated after 1 December 2016

Under current law (the Securities Act 1978), most interests in marinas are participatory securities. This means they must comply with the disclosure obligations (prospectus and investment statement requirements) and other obligations (including having a statutory supervisor).

The FMC Act comes into force on 1 December 2014 and replaces the Securities Act 1978 which will be phased out by 1 December 2016 after a two year transition period.

There is no concept of participatory securities in the FMC Act. Instead the FMC Act regulates financial products.

### Interests in marinas structured as financial products will be regulated

Interests in marinas will be regulated under the FMC Act if they are financial products (for example, equity (shares) or a managed investment product).

Managed investment products are interests in managed investment schemes. A managed investment scheme is a scheme to which each of the following applies:

- the purpose of the scheme is to enable persons to contribute money to acquire interests in the scheme; and
- those interests are rights to participate in, or receive, financial benefits produced principally by the efforts of another person under the scheme; and
- the holders of those interests do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions).<sup>1</sup>

Most marina schemes will not meet the requirements of (b) because the interest in the marina will not include a right to participate in, or receive, a financial benefit. In these cases, marinas will not be regulated under the FMC Act as these interests in a marina will not be financial products.

Some offers of interests in marinas will be regulated. An example would be where investment in development of a marina may include a right to participate in, or receive a financial benefit produced principally by the efforts of another person.

In the event that the offer of interests in a marina is regulated under the FMC Act, one of the exclusions in the FMC Act may apply. More information about exclusions will be available on the 'New offers under the FMC Act' section of our website from 1 December 2014.

<sup>1</sup> See section 9(1) of the FMC Act.



## Marinas can choose to be unregulated after 1 December 2014

Interests in existing marina schemes are currently regulated under the Securities Act 1978. If a marina scheme does nothing it will continue to be regulated under the Securities Act 1978 until 1 December 2016.

However, marinas may choose to be unregulated by opting in to the FMC Act from 1 December 2014. If a marina opts in to the FMC Act they will no longer be regulated under the Securities Act 1978.

### Marinas opt-in by notifying the Registrar and the FMA

Existing marinas can opt in to the FMC Act at any time from 1 December 2014 by choosing an 'effective date' and giving the FMA and the Registrar of Companies at least 20 working days' notice that they are opting in.<sup>2</sup> You can give notice to the Registrar and the FMA by completing the notice of effective date on [www.business.govt.nz/disclose](http://www.business.govt.nz/disclose).

The manager of the marina must, before or within three months after the effective date, send a written notice containing prescribed information to each security holder.<sup>3</sup> By opting in to the FMC Act a marina is no longer regulated under the Securities Act 1978 and, if interests in the marina are not financial products, the marina will not be regulated under the FMC Act.

Marinas that have an exemption from the requirement to have a prospectus must comply with the Securities Act 1978 unless they elect for the FMC Act to apply by giving notice to the FMA that the FMC Act applies and including a copy of that notice on an Internet site maintained by the marina.<sup>4</sup>

### Unregulated marinas no longer need a statutory supervisor

Marinas may remove their statutory supervisor by passing a resolution approved by holders holding 75% or more of the value of the securities.<sup>5</sup>

### Unregulated marinas won't have financial reporting obligations

If a marina has opted in to the FMC Act and the securities are not a financial product under the FMC Act, they are not required to comply with the financial reporting obligations under the FMC Act from 1 December 2014.

## Managers of marinas will generally not need to be registered on the FSPR

Under current law, the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) requires marinas to register on the Financial Service Providers Register (FSPR) and belong to a dispute resolution scheme:

- as an Issuer if the marina offers securities to the public under the Securities Act 1978; and
- as a Manager of securities offered to the public.

In some cases registration as an issuer is not required. See our [information sheet](#) on when one-off, or occasional issuers are required to register on the FSPR.

### New marinas that aren't financial products won't need to register

From 1 December 2014, if interests in marinas are not financial products under the FMC Act, they will not fall into the category of financial products required to be registered on the FSPR.

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<sup>2</sup> See clause 19 of schedule 4 of the FMC Act.

<sup>3</sup> See clause 30 of schedule 4 of the FMC Act

<sup>4</sup> See clause 7 of schedule 4 of the FMC Act

<sup>5</sup> See clause 33 of schedule 4 of the FMC Act



### Existing marinas that become unregulated can de-register

Managers of existing marinas who have opted in to the FMC Act and are no longer regulated under the Securities Act 1978 or the FMC Act do not need to be registered on the FSPR as an issuer.

If a marina is registered, it can deregister from the FSPR after 1 December 2014.<sup>6</sup> Information about how to deregister can be found on the [FSPR website](#).

### We will not take enforcement action if marinas are not currently registered

Some marinas are not currently registered on the FSPR. Given that from 1 December 2014 the offering of new berth licenses by marinas will not be regulated under the FMC Act the FMA has decided that it will not take any enforcement action for non-registration in circumstances where a marina:

- has historically issued berth licences,
- does not currently issue new licences,
- is required to be registered on the Financial Service Providers Register as a manager of a marina only, and
- failure to register as a manager on the Financial Service Providers Register is the only instance of non-compliance with financial markets legislation.

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<sup>6</sup> See section 18 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.