FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

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Complying with the prohibition on the notice of trusts on registers

This information sheet explains the FMA's expectations in regards to how issuers of regulated products can comply with the prohibition on the notice of trusts being entered on the register that is required to be kept by the issuer.

Introduction

Under section 215 of the Financial Markets Conduct Act 2013 (FMC Act), issuers must keep registers of regulated products (product register). The rest of Part 4 Subpart 4 of the FMC Act further details the obligations in relation to the product register (register requirements). The register requirements under the FMC Act replaced similar obligations under the Securities Act 1978 to keep a register of securities offers.

The register requirement under section 217(2) of the FMC Act states that no notice of any trust, expressed, implied, or constructive, may be entered on a product register (the prohibition).

The FMA's view is that product registers subject to section 215 of the FMC Act must comply with the prohibition. The commentary below expands on how issuers may comply with this requirement in light of industry practices and concerns.

We have become aware of non-compliance with the prohibition, and engaged with selected market participants to understand the challenges in complying. We received a range of responses relating to the difficulty and costs of complying.

Our commentary addresses some of the concerns raised, and in particular clarifies FMA's expectations in relation to operational registry systems built before the FMC Act register requirements came into force.

Commentary

In the responses we received, some market participants expressed uncertainty as to the extent that the prohibition applies to existing registers and systems. Some noted that there can be high costs involved in updating existing operational registry systems to comply with this requirement. We also understand that for some market participants, operational registry systems are linked to other client relationship management systems, and it would be very difficult (or costly) to comply with the prohibition.

These market participants submitted that such costs would be mitigated if they kept a separate product register for the purposes of Part 4 of the FMC Act, so that existing operational registers would not need to be altered to meet the register requirements (including the prohibition).

We consider this to be a valid approach to complying with the register requirements. Part 4 of the FMC Act imposes an obligation on issuers of regulated products to keep a product register in

the manner specified by the register requirements. The register requirements do not apply more widely to other registers held or used by a market participant (providing these alternate or additional registers are not subject to the audit under section 218 of the FMC Act).

We therefore do not consider an issuer to be in breach of the prohibition when existing operational registry systems continue to have trusts named, provided that the market participant keeps a separate product register that is subject to the annual register audit under section 218 of the FMC Act, and that meets all the register requirements under Part 4, including the prohibition.

Another proposed model of compliance could be, for example, where a single document is kept but certain parts are able to be filtered out, excluded or separated as required so that a compliant product register (for the purposes of the registry audit) can be made available (e.g. to comply with the prohibition).

We expect auditors to ensure that the product register is audited in respect of the prohibition, and all cases of non-compliance are reported as being material in the audit report.

For some issuers, it will be more straightforward to update an existing register to meet the register requirements and comply with the prohibition. However, as covered above, there are other valid methods for complying with the prohibition.

We expect all market participants to comply with the prohibition, and all auditors to report non-compliance in the audit report and report this to the market participant and the FMA.

We also received feedback regarding certain legacy products where compliance with the register requirements would create disproportionate compliance costs. If the solutions proposed above do not provide relief, we would need to consider on a case-by-case basis whether we could grant an exemption under the FMC Act. You can find more information about exemptions on our website.