

# CREATION OF NEW UNIT TRUSTS DURING TRANSITION PERIOD

August 2014

This information sheet responds to queries by market participants about the ability to create new unit trust schemes under the Unit Trusts Act 1960 between 1 December 2014 and 30 November 2015. FMA's opinion is that persons creating unit trusts between 1 December 2014 and 1 December 2015 can choose between regimes.

## Unit trusts created prior to 1 December 2014

Units offered prior to 1 December 2014 are subject to the requirements of the Securities Act 1978 (Securities Act) and the Unit Trusts Act 1960 (Unit Trusts Act). The issuer can then select an effective date between 1 December 2014 and 30 November 2016 to migrate the scheme across to the Financial Markets Conduct Act 2013 (the FMC Act).

## Unit trusts created between 1 December 2014 and 30 November 2015

FMA's view is that Fund Managers can create new unit trusts under the Unit Trusts Act between 1 December 2014 and 30 November 2015 and can then elect whether to issue units under the FMC Act or under the Securities Act.

In practice this will mean the status quo processes remain in place until 30 November 2015 for those wishing to use them i.e. the Companies Office will continue to accept registration of unit trusts<sup>1</sup>, and bonds must continue to be paid to FMA<sup>2</sup>.

Unit trust issuers electing to issue under the Securities Act during the transition period need to be aware they must migrate to the FMC Act regime by 1 December 2016. More information about [choosing an effective date](#) for migration is available on FMA's website.

## No transition period for Superannuation and KiwiSaver schemes created from 1 December 2014

In contrast, FMA is of the view that new Superannuation and KiwiSaver schemes would have to register and issue under the FMC Act from 1 December 2014.

## Discussion

In reaching this view FMA considered the following points.

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<sup>1</sup> See sections 8 and 9 of the Unit Trusts Act

<sup>2</sup> See section 4(2) of the Unit Trusts Act

Clause 6(1)(b) of Schedule 4 of the FMC Act enables an issuer to register a prospectus for securities under the Securities Act between 1 December 2014 and 30 November 2015, despite its repeal (and despite the FMC Act regime coming into force). Therefore FMA is of the view that any interest which can be issued under the Securities Act (and that does not require some other enactment to create in the first instance) can be issued under the Securities Act between 1 December 2014 and 30 November 2015 as an alternative option to the FMC Act regime, if the issuer chooses.

In the case of unit trusts, FMA's view is that a unit trust can be created under the general law of trusts. Units can then be issued under the Securities Act between 1 December 2014 and 30 November 2015 (under the right to elect). Having issued under the Securities Act, clause 17 of Schedule 4 of the FMC Act would apply to keep the provisions of the Unit Trusts Act live and applying to that unit trust security, despite the general repeal of the Unit Trust Act.

The situation that makes it possible to create a unit trust and then issue under the Securities Act between 1 December 2014 and 30 November 2015 can be contrasted with superannuation schemes.

To issue a superannuation scheme under the Securities Act, the scheme would have to first be registered under the Superannuation Act 1989 (because of the Securities Act definition of superannuation scheme). However, by 1 December 2014 the Superannuation Act 1989 would have already been repealed. Therefore it would not be possible to create a superannuation scheme, which could then be offered under the Securities Act between 1 December 2014 and 30 November 2015.

The situation for KiwiSaver schemes is similar to the situation for superannuation schemes.