



# Consultation Paper: Requirement for managers of multiple participant schemes to register participation agreements

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## About this consultation paper

The Financial Markets Authority (FMA) is considering a possible class exemption from the Financial Markets Conduct Act 2013 (FMC Act) for managers of multiple participant schemes. The proposal is to exempt these managers from the requirement to register participation agreements entered into with the various employers they service which form part of the scheme's governing document.

We would like your feedback on the exemption proposal discussed in this paper.

**Submissions close on 17 March 2017.** Please use the feedback form at the back of this paper.

## Next steps

After considering submissions, we will finalise our policy proposals and aim to have any exemption in force by mid-2017.

About this consultation paper:

This consultation is for: multiple participant scheme managers, supervisors, employers, employee members, and interested parties.

It aims to: seek feedback on the exemption proposal explained.



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## Document history

This version was issued in January 2017 and is based on legislation and regulations as at the date of issue.

FMA document reference code 3189536





## Summary of issues

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### Background

- 1.1 A multiple participant scheme ('MPS') is an umbrella superannuation scheme for multiple employers to provide superannuation plans under the same 'umbrella' scheme, managed by a scheme manager, while still permitting tailoring of rules for each employer and its employees ('members'). An MPS is an alternative to an employer establishing its own stand-alone superannuation scheme. Participation in an MPS may offer cost efficiencies, reduced compliance burden and a range of investment options.
- 1.2 MPSs are structured as master trusts established by a master trust deed. The master trust deed (including any amendments) sets out the core rules governing the MPS. These standard rules may be supplemented or varied by the document(s) used to admit a new employer to the MPS. This document(s) may take different forms but is referred to in this paper as a 'participation agreement'. A participation agreement typically contains rules for the features of the particular plan offered by the employer. For example the types of retirement benefits available, the investment fund options open for members, and employer/member contribution rates.
- 1.3 MPSs must comply with FMC Act requirements for managed investment schemes ('MIS'). This includes MPSs (other than restricted schemes) having a licensed manager and licensed supervisor. MPSs must also comply with MIS governance requirements, including requirements intended to ensure the governing document is effective and fit for purpose. For MPSs, participation agreements structured as amendments to the trust deed are part of the governing document.
- 1.4 Under the FMC Act, MIS managers are also required to register certain information about the MIS on the Schemes Register. The Schemes Register provides a centralised online source of key documents and information relating to a MIS. These include details of its manager, supervisor and custodian, and copies of the governing document(s), financial statements and other material documents. The Schemes Register forms one part of the Disclose Register, a public register providing online access to all material information about an offer and/or a scheme not included in the product disclosure statement (PDS). Placing this information online makes offer documents and other information about financial products and schemes more accessible to investors, their advisers, market analysts and other users. The Disclose Register is divided into a register of offers of financial products (Offers Register) and a register of MIS (Schemes Register).

### Requirement to register participation agreements

- 1.5 Under the FMC Act, MPS managers are required to register (on the Schemes Register) each participation agreement (including amendments) entered into with an employer that forms part of the scheme's governing document.



## Impact on Schemes Register

- 1.6 Some MPS managers have told us that the registration requirement may create practical issues where MPSs have large numbers of participation agreements. This is due to the impact of registration of these documents on usability of the Schemes Register.
- The Schemes Register does not have a documents search function. Governing documents, including participation agreements, are registered in the ‘governing documents’ section of the Schemes Register entry. Documents are recorded in the order they are uploaded, using the file name as the title. Archived documents are listed separately.
  - If an MPS has large numbers of participation agreements, the governing documents section of the register entry will contain a long list of documents. It may become difficult for users to navigate and locate the primary governing document (the master trust deed), the relevant participation agreement and any amendments.
- 1.7 The files could be uploaded in alphabetical order with useful file names. However, any subsequent amendments may be hard to locate as they would be added to the bottom of the list, not alongside the original participation agreement or subsequent amendments. Amendments to the master trust deed may also become difficult to locate.
- 1.8 MPS managers have also questioned whether the Schemes Register has the technical capability and capacity for large numbers of documents to be uploaded to the governing documents section. We have consulted with the Companies Office and understand that this is possible and there should not be any impact in terms of system performance.

## Administrative burden

- 1.9 We have been told that, depending on the number of participation agreements, it may be time consuming for managers to complete the initial exercise of collating, scanning and uploading the documents to the Schemes Register. It may also be difficult to upload searchable pdf documents.
- 1.10 MPS managers would also need to have appropriate compliance systems in place to ensure that any amendments to participation agreements are duly registered.

## Confidentiality and access to information

- 1.11 We have been told that the participation agreements may contain commercially sensitive and/or confidential information. For example information about employer contribution rates or negotiated variations to various fees (eg. administration or management fees). Some MPS managers have indicated that they consider making this information publicly available may be commercially detrimental.
- 1.12 However protection of commercial interests and privacy needs to be balanced against the requirement for effective disclosure to investors. Effective disclosure is a cornerstone principle of the FMC Act regime. The requirement to register the governing document (and participation agreements that are amendments to it) on an online register supports this principle by ensuring members and their advisers have easy access to core information about the rules of the MPS and the particular plan offered by their employer. Having this information readily available online also facilitates effective monitoring of MPSs by supervisors and the FMA.
- 1.13 The Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011 provided the ability to not register participation agreements, provided references to their availability were made in the



investment statement. Prior to this, participation agreements were registered with the Companies Office and publically available, although not all of the agreements were held in electronic form.

- 1.14 Standalone superannuation schemes are required to register their governing documents on the Schemes Register. The governing document may contain the same types of confidential information included in some MPS participation agreements.
- 1.15 The Financial Markets Conduct Regulations 2014 were recently amended to remove the requirement for MPS managers to register employer-specific PDS supplements on the Offers Register. The supplements must still be provided to members. This change was made on the basis that supplements are not useful to the wider public who cannot join the scheme and may include confidential information. The policy intention was to reduce disclosure obligations where there would be limited benefit to investors. We have been told that the same types of confidential information may also be included in some participation agreements. To the extent that is the case, the same policy rationale supporting removal of the registration requirement could apply to these documents.



## Proposed solution

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- 2.1 We are considering granting an exemption from the requirement for managers of MPSs to register participation agreements that form part of the scheme's governing document on the Schemes Register. Our initial view is that the information in participation agreements is only relevant to the members of each plan. We think the exemption may be appropriate to reduce unnecessary compliance costs from uploading the agreements to the Schemes Register. Members may find it difficult to access the agreements on the Schemes Register, and the agreements could be provided through other means. It may also promote fair and efficient financial markets by preventing commercial detriment from making commercially sensitive or confidential information available on a public register.
- 2.2 However if granted, we think the exemption should be subject to appropriate conditions to ensure members have easy access to the information they need to make decisions about their investment, and to support effective monitoring by supervisors and the FMA.
- 2.3 We are considering the following conditions:
- The manager must ensure that participation agreements (including amendments) are provided to members and prospective members of the relevant plan free of charge on request to the manager (and/or possibly the relevant employer), and/or are otherwise readily accessible by members free of charge (for example via a 'member's only' section of the manager's website).
  - The manager must draw members' attention to the availability of the participation agreements. We invite input on the best way to do this. For example, through a statement in the PDS or employer-specific PDS supplement, and/or on the Disclose register, and/or on the manager's or employer's website.
  - The manager must notify members if a material change is made to a participation agreement. We invite input on the form and timing of this notification. For example, this could be by including a summary of the amendments in the form of an addendum to the next annual report for the MPS.
  - The manager must register a document containing a list of MPS participating employers on the Disclose register and keep this updated. This is intended to assist supervisors and the FMA in their monitoring of the MPS, and may also be useful for members wanting to confirm their employer's MPS. We invite input on whether it would be useful for this document to contain any other information. For example, date of participation deed and amendments to this for each employer.
- 2.4 The practical issues raised by some MPS managers about usability of the Schemes Register and the administrative burden (and therefore cost) of uploading the documents don't seem to apply to MPSs with small numbers of participation agreements. Therefore we could consider setting a size threshold so that relief is only provided to MPSs with large numbers of participating employers and/or participation agreements. However we note that issues about sensitive information may be of general application to MPSs. Given this, we invite input generally on whether a size threshold for the exemption would be appropriate.



# Questions

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## General

- Q1. Do you support the proposed exemption from the requirement to register participation agreements, provided this is subject to the proposed conditions to ensure these remain accessible to members (employees) and prospective members, and allow for effective monitoring? Please give reasons for your view.
- Q2. What impact would this exemption have if granted on participating employers and/or members (employees)? We are particularly interested in any risks, costs, or practical difficulties members may face if the exemption is granted (for example difficulties for members and their advisers wanting to access the participation agreements).
- Q3. What do you estimate are the likely initial and ongoing compliance costs that a scheme will incur to comply with the registration requirement if no exemption is granted, or the manager otherwise decides to comply? Would these costs be passed on to employers and/or members? How would these costs be affected if the exemption (with the proposed conditions) was granted?
- Q4. Do you agree that the registration requirement may create practical issues for the usability of the schemes register, for example by making it difficult for users to locate relevant participation agreements (with amendments) and the current version of the master trust deed? Please give reasons for your view.
- Q5. Do you agree that it is time consuming and burdensome from an administrative perspective (and therefore costly) for MPS managers to complete the exercise of collating, scanning, and uploading the documents to the schemes register? Please give reasons for your view.
- Q6. Do the participation agreements contain commercially sensitive and/or confidential information? Would it be commercially detrimental or breach an individual's privacy for the participation agreements to be publicly available on the schemes register? Please give reasons for your view and (if applicable) provide examples of the types of information that are considered sensitive/confidential.
- Q7. Do you consider that the registration requirement only raises issues for MPS managers with large numbers of participation agreements, or would managers with small numbers of participation agreements also benefit from the exemption?
- Q8. If a size threshold is applied so that the exemption is only provided to certain types of 'large' MPS, what criteria would you suggest for this? For example, should this apply to MPS that have 'large' numbers of participating employers, and/or 'large' numbers of participation agreements? What would you consider 'large' for this purpose?

## Conditions

- Q9. Do you agree with our proposed condition that the manager must ensure that the participation agreements are made available to members and prospective members free of charge on request, or are otherwise readily accessible by members free of charge? Is it appropriate for the request to be made to the manager, the employer, or both? Please give reasons for your view. We are particularly interested in whether



requiring members to actively ask for participation agreements would act as a deterrent and create an inappropriate barrier to access.

- Q10. What method(s) would you consider sufficient to satisfy the proposed condition that the participation agreements be ‘readily accessible’? Should this be in electronic form on demand?
- Q11. Should we impose a condition that the manager ensure that the participation agreements be ‘readily accessible’ to members in addition to the manager making the agreements available on request?
- Q12. Do you have any suggestions for the methods managers should use to make members (employees) aware of how they can access participation agreements? Would a statement in the PDS or relevant employer-specific PDS supplement be appropriate? Or would a statement that is alternatively (or also) made on the Disclose register, or on the manager’s or relevant employer’s website be appropriate?
- Q13. Do you have any suggestions for an appropriate mechanism (including form and timing) for the manager to notify members if a material change is made to a participation agreement and give members information about the changes?
- Q14. Do you agree with our proposed condition that the manager must register a list of the employers which participate in the MPS and keep this updated? Do you foresee any difficulties with this?
- Q15. Would it be useful for the document with the list of employers to contain any other information (for example, date of participation deed and amendments to this for each employer)?
- Q16. Are there any other conditions you think should apply?

## Other

- Q17. Do you have any additional information or issues not already covered in this consultation paper that you believe are relevant to us in considering this exemption? Do you have any other comments on our proposals?

## Feedback form: Requirement for managers of multiple participant schemes to register participation agreements

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with ‘Requirement for managers of MPS to register participation agreements: [your organisation’s name]’ in the subject line. Thank you.

**Submissions close on 17 March 2017.**