

Legal update - Financial Markets Conduct Regulations update

6 October 2014

What's happening?

On 26 September 2014 the Ministry of Business, Innovation and Employment (MBIE) released a near final version of the Financial Markets Conduct Regulations (Regulations). These Regulations are the result of:

- A MBIE discussion paper released in December 2012
- Cabinet decisions made in June 2013 and August 2014
- Three exposure drafts released by MBIE in October 2013, December 2013 and April 2014 (with a supplement to the April 2014 exposure draft released in July 2014).

These Regulations will allow for phase 2 implementation of the Financial Markets Conduct Act 2013 (FMC Act) on 1 December 2014 (and will replace the Financial Markets Conduct (Phase 1) Regulations 2014 that were made to allow phase 1 of the FMC Act to come into force on 1 April 2014).

The Regulations have been released as an unofficial draft to give market participants time to prepare for the new regime, with the final Regulations to be made before phase 2 of the FMC Act comes into force in December 2014.

What's in the regulations?

Everything required to bring the FMC Act fully into force on 1 December except:

- Specific offer document rules for convertible financial products
- Short form disclosure for offers of shares or other products that rank equally or in priority to existing quoted financial products (other than the "same class" disclosure requirements)
- A fund update version for non-fund investment options
- An alternate form of product disclosure statement for managed funds that allows the use of fund updates.

The Regulations are very large – more than 600 pages – and when combined with the FMC Act itself and associated amendments to other legislation there's almost 1,300 pages to work through. In order to help our clients focus on what's most relevant to them, we will be providing separate updates on aspects of the Regulations – on disclosure, governance, licensing, and financial product markets.

In advance of our more detailed updates, we set out below the changes that have been made in relation to policy movements since the last exposure draft:

- **Disclosure:** More flexible disclosure for DIMS, further detail on limited disclosure for offering debt securities in reliance on clause 19 of Schedule 1, and ongoing disclosure requirements for convertible financial products with an investor option to convert.
- **Governance:** Required quarterly reporting on related party certificates to supervisors, permitting the frequency and content of supervisor reporting to be set outside the governing document, and providing a related party exemption for registered schemes that invest in government bonds.
- **Financial product markets:** Applying unsolicited offer protections to crowd funding and peer-to-peer lending offers.
- **Transition:** A prescribed period to allow "wholesale offers" exemptions to be relied on for a further six months, and transitional relief for new derivatives issuers (who are currently not "authorised futures dealers" under the Securities Markets Act) for six months.

Can I comment on the regulations?

MBIE is not accepting feedback on the policy contained in the Regulations, but it will accept comments of a technical nature now and through the two year transition period. You can log any technical issues you experience using an "Ask a Question" form on the Financial Markets Authority website. We will be logging technical issues on behalf of some of our clients, and welcome queries from others.

What's next?

We recommend that clients should:

- Keep an eye out for our updates on the different sections of the FMC Act regime
- Reach a view on how the full implementation will affect your business, and in particular:
 - will your business be making regulated offers of financial products, and thus need to provide disclosure to investors?
 - have you previously offered debt securities or managed investment products that will need to be transitioned to the new governance requirements?
 - will you need a market services licence from the Financial Markets Authority?
- Once you've mapped out how the changes will affect your business, plan the timetable for the transition process – while the transition provisions in the FMC Act give businesses up to two years to make the necessary changes, this time will pass quickly.

As we have discussed previously the new disclosure regime is scheduled to come into force on 1 December this year, but the FMC Act provides for a transitional regime where issuers can continue to use "old" Securities Act documents or make an offer under the Securities Act regime after 1 December for a transitional period of up to 24 months. Accordingly market participants will have a transitional period when they can consider whether to use the new product disclosure statement and register entry regime or the old registered prospectus and investment statement regime. Schedule 1 of the Regulations includes relevant transitional provisions, but we note that these provisions are still being worked out and are subject to change.

We also note that KiwiSaver has a more complex transition. MBIE has provided a KiwiSaver Transition Provisions Guide to help people navigate these provisions. This can be found on the MBIE website under "Progress Update on Financial Markets Conduct Regulation".

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