

Legal alert - Financial Markets Conduct regulations

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What's happening?

On 20 May 2014 the Ministry of Business, Innovation and Employment (MBIE) released its third tranche of draft regulations under the Financial Markets Conduct Act (FMC Act).

These set out the proposed disclosure requirements for financial products offered under the new Act – the long awaited contents of the product disclosure statement (PDS) and register entries for the different categories of financial product.

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 PDS and register entry regime or the old registered prospectus and investment statement regime.

What's in the proposals?

We will be providing separate updates on the different disclosure requirements for different categories of financial product – equity securities; debt securities; managed funds; other managed investment products; and derivatives – but at this stage we make the following general comments about what we can expect to see:

- **Shorter offering documents** – late last year officials set out a range of options for length limits, and they have now opted for "hard" length limits for the PDS – between 12 pages (for a managed funds PDS) and 60 pages (for an equity PDS), depending on the type of financial product.
- **More information on the register** – the shorter PDS is made possible by the use of the register to provide much more information. The latest proposals set out draft requirements for both the information to be included at the time of making an offer, and subsequent obligations to provide additional information over time. The shorter offer document becomes a more viable option with the "mother lode" of information available on the register.
- **Investment style Q and A format for the PDS** – as expected, the PDS follows a general format that is similar to the current investment statement regime, which should assist issuers in transferring to the new regime.
- **No financials in the PDS** – financial statements will not be required in the PDS, but will instead form part of the register entry. The PDS will contain summary financial information, drawn from GAAP derived information, focusing on what officials consider to be the key criteria for potential investors.

Our overall initial assessment is favourable, and we consider that the proposals reflect the large number of submissions from interested persons and the willingness of officials and the Financial Markets Authority (FMA) to engage with the business community. While the general shape of the regime is now looking more settled, there may still be areas where individual market participants might wish to "fine tune" the proposals.

What further information can I get?

As discussed, we will provide more detailed breakdowns of the different categories of financial product, dealing with the specific PDS and register entry requirements for each. These will follow shortly.

I'm concerned about aspects of the proposals - can I make a submission to officials?

MBIE is welcoming public comment and interested persons have until 20 June 2014 to make submissions. We will be working with a range of clients to prepare submissions on their behalf, and welcome queries from others.

What's next?

MBIE has stated that it intends to finalise the regulations in mid-2014, which will give an opportunity for market participants to prepare for the implementation of the new regime from 1 December 2014.

We are also waiting on the FMA to publish its proposals for class exemptions and methodologies, which will give further detail on how the new regime will apply.

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