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FMA, n.d.[a]

FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

Who needs to comply

The concept of a 'FMC reporting entity' is broader than the definition of an 'issuer'.

It **includes** most businesses who were 'issuers' previously, as well as most market service licence holders under the Financial Markets Supervisors Act and FMC Act.

It **does not include** - brokers, QFEs, financial advisers, licensed auditors and audit firms, licensed independent trustees, retirement village operators or certain closely-held equity issuers.

FMC reporting entity types	**Specifically:**
Issuers of financial products under regulated offers	Those who make regulated offers under the FMC Act - except closely-held companies that are only FMC reporting entities as equity issuers
Market services licensees (except independent trustees of restricted schemes)	MIS managers, DIMS providers, derivatives issuers, providers of peer-to-peer lending and crowdfunding service providers
Licensed supervisors	Under the Financial Markets Supervisors Act 2011
Listed issuers	Those listed on a market licensed under the FMC Act
Operators of licensed markets	Except overseas-regulated markets
Recipients of money from conduit issuers	Recipients of funds from regulated offers under the FMC Act

Registered banks	Under the Reserve Bank of New Zealand Act 1989
Licensed insurers	Under the Insurance (Prudential Supervision) Act 2010
Credit unions	Under the Friendly Societies and Credit Unions Act 1982
Building societies	Under the Building Societies Act 1965
People specified in regulations under clause 27A of Schedule 1 of the FMC Act	People that have gained more than 50 shareholders through small offers under Schedule 1 of the FMC Act

We cannot exempt businesses from being a FMC reporting entity, but we can vary their reporting obligations using our exemption and public accountability designation power. See our exemptions section for more details.

Closely-held equity issuers

If an issuer makes a regulated offer of equity securities that are voting products, they are not an FMC reporting entity if they have:

- 50 or fewer shareholders; or
- fewer than 50 parcels of shares.

Instead the obligations in the Companies Act 1993 apply.

Note: 'voting products' is a defined term and includes ordinary shares and certain products that are convertible to ordinary shares.

This means issuers of non-voting equity products won't be able to take advantage of the statutory exemption under the FMC Act, even if they were able to use it under the Financial Reporting Act 1993.

The 50-shareholder or parcels-of-shares rules are consistent with the Takeovers Code. The Takeovers Panel's Guidance Note on Small Code Companies is useful to help how to count shareholders for this purpose.

Small personal offers

There are exclusions under Schedule 1 of the FMC Act that allow some offers to be made without having to provide all the usual documentation required, ie product disclosure statements.

One of those exclusions is for small personal offers of debt and equity - see clause 12 of Schedule 1. It allows you to make small offers over a 12-month period that can, in total, involve up to 20 investors and raise up to $2 million without having to produce full documentation. Any offer that would result in you exceeding either or both those limits requires full documentation under part 3 of the FMC Act.

If, over several 12-month periods, you gain more than 50 shareholders from small offers, you'll become a FMC reporting entity.

Crowdfunded companies

Companies that raise capital through a licensed crowdfunding platform, relying on clause 6 of Schedule 1, are not considered FMC reporting entities. This is because the offer is not considered a 'regulated offer' under the FMC Act. Therefore, these companies will be subject to the financial reporting requirements under the Companies Act 1993.

One-person superannuation schemes

Under Schedule 3 of the FMC Act we are allowed to approve single-person self-managed superannuation schemes that meet certain criteria (Schedule 3 Schemes).

These schemes are not FMC reporting entities therefore Part 7 does not apply. However, regulation 113 of the FMC Regulations requires these schemes to prepare financial statements that comply with generally accepted accounting practice and send a copy of these to the FMA.

To comply with this, we believe that NZ IAS 26 still applies including paragraph 1.5. Accordingly, we accept special purpose financial statements. The exact content of these is not prescribed and therefore is at the discretion of the trustees. We suggest special purpose financial statements include a profit and loss, balance sheet and cash flow statement, as well as appropriate accounting policies and notes that reflect the investments of the scheme.

Retirement villages

Retirement village operators are not FMC reporting entities. The financial reporting obligations for retirement villages can be found in the Retirement Villages Act 2003.

Let us know what you think

Did you find what you were after?

Yes | No

Message

Submit feedback

Your role

- Auditors
- Authorised financial advisers
- Brokers & custodians

- Crowdfunding platforms
- Directors & officers
- Derivatives issuers
- Equity or debt issuers
- Financial market infrastructures
- Fund managers
- Independent trustees
- Market operators
- Peer-to-peer lending providers
- QFEs & QFE advisers
- Registered financial advisers
- Supervisors