29 August 2013

# epic financial markets conduct bill passed

The [Financial Markets Conduct Bill](http://www.legislation.govt.nz/bill/government/2011/0342/latest/versions.aspx) has now been passedand represents a significant achievement for all involved – MinisterCraig Foss, former Minister Simon Power, Select Committee members, officials, and those from the private sector who have committed significant time and resource to get legislation which is both workable and durable.

The new Act will be brought into force progressively from April next year.Much of the detailwill be established through regulations, with consultation on drafts to begin in October.

We urge you to continue to engage through the remaining stages to get the best result possible.

## Indicative timeline from here

## Next week

The Act will receive royal assent.

Regulation making powers, and powers for FMA to develop frameworks, to designate particular financial products into the core categories (equity, debt, managed investment products, derivatives, or outside the Act) and to make exemptions will come into effect.

Minor technical corrections to the existing law will commence. The recently established [Register of Securities Offers](https://www.business.govt.nz/companies/learn-about/updating-company-details/registering-prospectus-documents/register-securities-documents) will be discontinued.

## October 2013

MBIE will release exposure drafts of the regulations for consultation and FMA will begin consulting on new licensing frameworks and other key operational changes.

MBIE also plan to workshop the new disclosure requirements and seek industry feedback on template offer documents.

## From 1 April, 2014

The Part 2 “fair dealing” provisions of the Act are likely to come into effect–prohibitions on misleading or deceptive conduct, false or unsubstantiated representations in advertising and product promotions, and unsolicited selling of financial products.

FMA will start to receive licence applications (although licences will not be required to be in place until later).

Under a mechanism contained in the transitional provisions, some of the new exclusions in Schedule 1 of the Act may be recognised as exclusions from offers to the public under the Securities Act 1978.

## Later in 2014

The rest of the Act will commence:

* the new disclosure rules, online *register of offers of financial products* and online *register of managed investment schemes* will become operative
* expanded exclusions from application of the Act will become available
* new managed investment schemes will be able to seek registration, and
* the full liability regime will commence, particularly for defective financial product disclosure.

Some market participants will no longer need authorisations to conduct their business, and some ‘participatory securities’ without an investment element will fall outside the scope of the Act – for example, rights to use common facilities in some property developments.

## Transitional provisions

Issuers will have a further 12 months after the Act is fully in force during which they may continue to prepare and use the old form prospectus and investment statement, rather than applying to the FMA to use the new form PDS and online register of offers of financial products. For continuously offered financial products, the transitional period will extend to 24 months.

Existing managed funds providers will have up to two years in which to register managed investment schemes under the new Act.

Generally speaking, existing authorisations and approvals will be recognised for up to two years, pending issue of a licence.

## Much detail still to be settled

The table below shows the gaps in the new framework which are yet to be filled by detailed regulations, and FMA prescribed frameworks or methodologies.

|  |  |
| --- | --- |
| **Delivered through the legislation** | **Left for regulation/frameworks** |
| A new exemption regime with more scope for exclusions to facilitate private offers and small company capital raising | Detailed certificate and limited disclosure requirements for offers made under an exemption |
| A new PDS based disclosure regime | The specific PDS content for different kinds of financial product and for on-going disclosure |
| Core conduct obligations across all financial products and services, new governance rules for managed funds, provisions to enable equity and debt raising on new internet formats  | Detailed governance requirements, entry criteria and conditions for disclosure exemptions for crowd funding and peer to peer lending  |
| A new licensing regime, with provision for stepping stone and low cost markets | Criteria applying to exemptions from the requirement to hold a licence, the alternative rules for low cost markets |
| A new liability regime with more emphasis on civil liabilities and criminal sanctions reserved for serious misconduct | Penalty levels for infringement offences. |

## Chapman Tripp comments

The Bill has been described as a “once in a generation” rewrite of capital markets law and fully justifies that description. The Act will replace the Securities Act 1978, the Securities Markets Act 1988, the Securities Transfer Act 1991, the Superannuation Schemes Act 1989, the Unit Trusts Act 1960 and parts of the KiwiSaver Act 2006.

One of the drivers of the reforms was to bring the legislation up to date with modern technologies. It does this through the new electronic securities register and through the ability to receive and disseminate information on line.

Another important driver, acknowledged in the “additional purposes” section appended to the Purpose Statement, is “to promote innovation and flexibility in financial markets”. The success with which the Bill achieves this objective will go a long way to determining how well it will withstand the tests of time.

We think that, on balance, it has ticked both boxes. Innovations specifically provided for in the Bill include the stepping stone stock market and the proposed expansion of the role of [crowd funding and peer to peer lending](http://www.chapmantripp.com/publications/Pages/Crowd-funding-and-peer-to-peer-lending.aspx) –which should assist small companies to raise capital more cost effectively.

And the wider suite of powers and instruments for the FMA should enable it to deliver a more proportionate, flexible and consistent response to issues and market developments. Examples are the power to rule securities in or out of the Act and the ability to re-designate financial products from one category to another.

We welcome the main reform directions in the Bill, in particular:

* the greater reliance on civil remedies including compensation, and the significant narrowing of criminal liability (although the movement is the other way in the Commerce (Cartels and Other Matters) Amendment Bill and in the poorly conceived Companies and Limited Partnerships Amendment Bill)
* the shift in emphasis away from point of sale disclosure to on-going disclosure for continuously offered products such as KiwiSaver and managed funds
* the more accessible and coherent exclusions regime, and the formalising of the exemptions built up over the last 30 years.

## Good process

The Bill owes much of its quality to the excellent process which went into its formation and development – beginning with the appointment of the Cameron Capital Markets Taskforce in 2008 and the presentation of its [recommendations](http://www.med.govt.nz/business/economic-development/pdf-docs-library/cmd-capital-markets-matter-full-report.pdf) in December 2009.

Since then we have had many opportunities for input – on the original June 2010 discussion document, on the exposure draft, to the select committee and, soon, on the regulations. Indeed the FMA already has a “[talk to us](http://www.talktous.fma.govt.nz/projects/the-future-of-financial-markets)” website running, and twitter account, to invite participation on the regulation-making phases.

Typically, each consultation phase has attracted more than 100 submissions – most of them, because of the nature of the legislation – highly detailed and requiring a significant commitment of time from the private sector submitters.

But this willingness to engage has been met by a willingness from officials and from committee members and Ministers to listen – most recently in the decision to defer the commencement of the new disclosure and registration requirements to allow more time to get these critical elements of the new regime right.

Some of Chapman Tripp’s previous commentaries on the Bill:

<http://www.chapmantripp.com/publications/Pages/Crowd-funding-and-peer-to-peer-lending.aspx>

<http://www.chapmantripp.com/publications/Pages/DIMS-and-other-devices---licence-details-becoming-clearer.aspx>

<http://www.chapmantripp.com/publications/Pages/Financial-market-reforms-locked-and-loaded.aspx>

<http://www.chapmantripp.com/publications/Pages/Financial-Markets-Conduct-Bill-the-fine-print.aspx>

<http://www.chapmantripp.com/publications/Pages/The-financial-markets-conduct-bill.aspx>

<http://www.chapmantripp.com/publications/Pages/A-navigational-guide-to-the-FMC-Bill.aspx>

<http://www.chapmantripp.com/publications/Pages/Climbing-Mount-Improbable.aspx>

<http://www.chapmantripp.com/publications/Pages/Listed-issuers-and-the-draft-Financial-Markets-Conduct-Bill.aspx>

<http://www.chapmantripp.com/publications/Pages/Crime-and-punishment-in-the-draft-Financial-Markets-Conduct-Bill.aspx>

<http://www.chapmantripp.com/publications/Pages/Some-things-old-some-new-some-borrowed.aspx>

<http://www.chapmantripp.com/publications/Pages/FAA-DIMS-and-the-financial-markets-conduct-bill.aspx>

<http://www.chapmantripp.com/publications/Pages/New-regime-for-managed-investment-schemes-in-draft-Financial-Markets-Conduct-Bill.aspx>

<http://www.chapmantripp.com/publications/Pages/Not-for-the-faint-hearted-400-page-draft-financial-markets-conduct-bill.aspx>

<http://www.chapmantripp.com/publications/Pages/Further-decisions-in-Securities-Law-Review.aspx>

<http://www.chapmantripp.com/publications/Pages/Reforming-collective-investment-schemes---principle-and-pragmatism.aspx>

<http://www.chapmantripp.com/publications/Pages/Good-first-half-for-Securities-Law-Review.aspx>

<http://www.chapmantripp.com/publications/Pages/Shakeup-for-collective-investment-schemes-in-Securities-Law-Review.aspx>

<http://www.chapmantripp.com/publications/Pages/Thunk-MED-releases-200-page-review-of-securities-law.aspx>