# FINANCIAL MARKETS CONDUCT ACT 2013
## OVERVIEW OF DISCLOSURE REGIME AND EXCLUSIONS

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## INTRODUCTION

The Financial Markets Conduct Act 2013 (**FMCA**) overhauled the rules relating to securities and financial markets and introduced a new regime for offers of financial products. Understanding the disclosure requirements is important for businesses offering investments and raising capital.

Set out below is a short overview of the disclosure requirements and key exclusions to the disclosure requirements.

## THE DISCLOSURE REQUIREMENTS

An offer of financial products for *issue* requires disclosure to an investor unless an exclusion is available under the FMCA. Disclosure under the FMCA requires:

- a product disclosure statement (**PDS**) to be prepared, registered and disclosed to the investors (other than those to whom an exclusion applies). The PDS is aimed at non-expert investors and required to contain specified information, and be concise and worded in plain English; and
- other material information that is not included in the PDS is required to be registered on an online public register.

An offer of existing financial products for *sale* will ordinarily not attract disclosure requirements. However where an issuer is involved in the sale process or attempting to avoid the disclosure requirements by using a sale process, the FMCA will require disclosure.

The term *financial products* in the FMCA is very broad and covers debt, equity, managed investment products and derivatives.

## EXCLUSIONS

The exclusions under the FMCA fall within two broad categories:

1. offers to investors that are capable of making an informed decision to invest; and
2. offers that are too small to justify compliance.

Over a series of articles, we have provided an overview of four of the exclusions that we consider will be most useful. You can view each article by clicking the link in the relevant box.

**Wholesale investors**

**Person in a close relationship**

**Small offers**

**Employee share purchase schemes**

## LIMITED DISCLOSURE MAY STILL APPLY

It is important to note that even if an offer is made in reliance on an exclusion, the FMCA may still impose short-form disclosure, warning statements or other requirements on the offeror.

Also, the "fair dealing" provisions of the FMCA that prohibit misleading or deceptive conduct, and representations that are false, misleading, or unsubstantiated, apply to all offers of financial products made to New Zealand investors.

## DETAILED RULES APPLY

A range of complex laws and regulations apply to those offering financial products to New Zealand investors. Those rules contain severe sanctions for breach. Our article series provides a general summary of some of those rules. Specific advice should be obtained in relation to proposed marketing, offering or selling of financial products.

**Jackson Russell**

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