

**FINANCIAL MARKETS CONDUCT ACT 2013
PERSONS IN CLOSE RELATIONSHIP EXCLUSION UNDER THE DISCLOSURE REGIME**

July 2017

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 an overview of the “persons in close relationship” exclusion that permits offers of financial products to persons closely connected to the issuer or its directors.

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.

Please click [here](#) to see further information about the FMCA disclosure requirements and other FMCA disclosure exclusions.

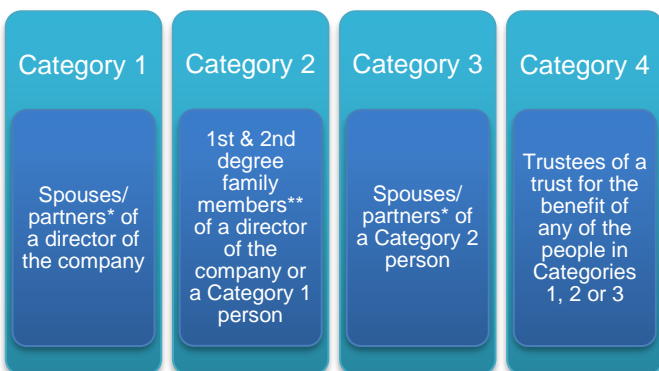
PERSONS IN CLOSE RELATIONSHIP EXCLUSION

Disclosure under the FMCA is not required if the offer of financial products is made to a person who has a ‘close relationship’ with the offeror. This exclusion also extends to any entity under that person’s control.

A person is in close relationship with the offeror if they are a relative or a close business associate.

RELATIVES

Relatives are defined broadly under the FMCA into the categories shown in the image below:



* ‘Spouses/partners’ includes civil union and de facto partners.

** ‘1st and 2nd degree family members’ includes grandparents, parents, children, grandchildren, siblings, nephews, nieces, uncles, aunts and first cousins.

CLOSE BUSINESS ASSOCIATES

A close business associate under the FMCA is defined as:

1.	directors or senior managers of the offeror or of a related company
2.	holders or controllers of 5% or more of the voting shares of the offeror, or 20% or more of the voting shares of a related company
3.	a related company
4.	a partner of the offeror or of a director of the offeror under the Partnership Act 1908;
5.	spouses, children, parents, or siblings of a close business associate of the offeror;
6.	investors with a close professional or business relationship with the offeror or a director or senior manager of the offeror that allows the investor to assess the merits of the offer or obtain information from the offeror that will enable them to assess the merits of the offer

We recommend relying on the first five categories, before relying on category 6 which requires a subjective assessment of whether the relationship is sufficiently close to avoid disclosure.

A *related company* primarily means an offeror’s holding company, subsidiary or other member of a group.

REMAINING OBLIGATIONS

Offerors who rely on this exclusion will still need to comply with the ‘fair dealing’ provisions of the FMCA that prohibit misleading or deceptive conduct and representations that are false, misleading, or unsubstantiated.

Jackson Russell

Disclaimer

This article is a general summary of complex laws and regulations that contain severe sanctions for breach. Specific advice should be obtained in relation to proposed marketing, offering or selling of financial products.