

While the Financial Markets Conduct Regulations 2014 (FMC Regulations) covered the detail necessary for the Financial Markets Conduct Act 2013 (FMC Act) to come into force on 1 December 2014, the size and complexity of the reforms meant the Government needed to defer some non-urgent matters.

The recently released [Financial Markets Conduct Amendment Regulations 2015](#) (2015 Amendments) address some of these matters and some remedial issues that have emerged during implementation of the FMC regime.

The 2015 Amendments mostly relate to disclosure requirements and tailor the regime for non-standard situations that were deferred when the FMC Regulations were made.

The 2015 Amendments will [commence](#) on a staggered basis. Most provisions will come into force on 1 December 2015 but some will come into force on 17 December 2015 or 1 June 2016 - as highlighted below.

# Key changes in the 2015 Amendments

## **Provision for non-standard disclosure**

- allowing use of a simplified disclosure PDS for some offers of debt securities or equity securities - [1 Dec 2015](#)
- disclosure requirements for offers of convertible financial products - [1 Dec 2015](#)

- amending the limited disclosure document requirements in Schedule 9 of the FMC Regulations to provide for bank hybrid products (ie debt securities issued by a bank that will be converted into another product if the bank is in financial difficulties). The additional disclosures include warnings about the risks of these products - 1 Dec 2015
- provision for a PDS for an offer of managed investment products to incorporate a fund update by reference and for that fund update to be given to investors. In this case certain information may be omitted from the PDS - 17 Dec 2015
- for information on a particular participant to be included in a supplement, rather than in the PDS, for multiple-participant schemes. - 17 Dec 2015

### **Clarifying some disclosure requirements - 1 Dec 2015**

- clarification on the financial information that must be provided in a PDS when a member of the issuing group has or will acquire a business or subsidiary
- provision for modification of a PDS for an offer of debt securities, where the securities are issued by a MIS.

### **Register requirements - 1 Jun 2016**

- requiring the status of a managed fund to be specified in the register entry (eg whether the fund is open to new investments)
- clarification about when a confirmation notice must be lodged.

### **Ongoing disclosure - 17 Dec 2015**

- requiring certain information on defined benefit schemes to be made available to investors on request
- provision for fund updates to be prepared for multi-fund investment options or investment options involving life cycle stages - 1 Dec but transitional provision applies until 30 Nov 2016 (cl 31 of Sch 1 of FMC Regs)
- ongoing confirmation information to be provided to investors about derivatives. - 1 Dec but transitional provision applies until 30 Nov 2016 (cl 31 of Sch 1 of FMC Regs)

### **Clarifying derivatives investor money requirements - 1 Dec but transitional provision applies until 30 Nov 2016 (cl 31 of Sch 1 of FMC Regs)**

- clarification about reconciliation of derivatives investor money held in trust. The amendments allow for either an equity-based reconciliation or a cash-based reconciliation.

## Other amendments

- giving a scheme custodian more flexibility about when it must obtain an assurance engagement with a qualified auditor - **1 Dec 2015**
- specifying how documents are given, provided, or served by the FMA - **1 Dec 2015**
- making various other technical or minor amendments.

# Other regulations

Other regulations have also been made:

- [Financial Advisers \(Custodians of FMCA Financial Products\) Amendment Regulations 2015](#)
- [Financial Advisers \(Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions\) Amendment Regulations 2015](#)
- [Financial Markets Conduct \(Restricted Schemes\) Regulations Order 2015](#)
- [Financial Markets Conduct \(Fees\) Amendment Regulations 2015](#)
- [Financial Advisers \(Fees\) Amendment Regulations 2015](#)
- [Auditor Amendment Regulations \(No 2\) 2015](#)
- [Financial Markets Authority \(Fees\) Amendment Regulations 2015](#)

# Key changes in other regulations

## Changes to broker/custodian obligations - **17 Dec 2015**

- Giving a custodian more flexibility about when it must obtain an assurance engagement with a qualified auditor
- Amending a regulation which provides for broker obligations in sections 77P to 77T of the Financial Advisers Act 2008 to apply to FMCA custodial services provided to wholesale clients (as defined in that Act) unless all of the clients fall within certain categories of wholesale investor

under the FMC Act. The effect of the amendment is to extend the provision relating to wholesale investors to include entities controlled by wholesale investors

- Providing that the custodian requirements in section 44 of the Financial Advisers Act 2008 do not apply to client money or client property if it is held solely for completing a transaction or securing an obligation, or both
- Extending an exemption from brokers' obligations for the handling of derivatives investor money and property. This avoids an unnecessary overlap between the requirements of the Financial Advisers Act 2008 and the FMC Act.

### **Changes to fees - 17 Dec 2015**

- Allowing the FMA to recover costs for designations at the same rate as applies for exemptions, and also to recover costs for work done by secondees and contractors at the same hourly rate as its employees.

### **Designation of schemes for purposes of transition- 17 Dec 2015**

- Designating certain MIS as restricted schemes and legacy schemes under clause 23(2) of Schedule 4 of the FMC Act. These regulations are required to enable these schemes to transition into the FMC regime.