

October 2018

Regulatory Impact Statement:

Exemption to enable dual-language product disclosure statements

This document is for issuers of financial products and other interested parties. It discusses an exemption to enable dual-language product disclosure statements.

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Executive summary

This Regulatory Impact Statement (**RIS**) discusses an exemption to enable the provision of dual-language product disclosure statements (**PDSs**) in te reo Māori and English.

We think allowing dual-language PDSs to be provided in te reo Māori and English has the potential to improve engagement for investors who are more comfortable receiving information in te reo Māori, and therefore enables more effective decision-making.

The exemption is necessary because a PDS provided in full in two languages could not comply with the length restrictions and ordering requirements in the Financial Markets Conduct Regulations (the **FMC Regulations**).

This RIS provides an analysis of options that were considered when reaching the final policy decision. Our analysis of whether to grant an exemption was based on the statutory test that applies to the use of the FMA's exemption power. We must be satisfied that the exemption would be consistent with, and promote, one or more of the purposes of the FMC Act. In determining the final policy decision, we also considered the unique status of te reo Māori in New Zealand, the Māori Language Act 2016, and that te reo Māori and English are official languages of New Zealand.

After careful consideration of both regulatory and non-regulatory impacts, and of feedback provided through consultation, we have decided to grant a class exemption to enable dual-language PDSs in te reo Māori and English. The exemption will be subject to conditions outlined in this paper.

Background

PDS requirements include length restrictions and order requirements

A product disclosure statement (**PDS**) provides investors with information to assist a prudent but non-expert person with deciding whether or not to acquire a financial product. A PDS includes information on how the product works, the potential risks and returns, any fees and charges, and the issuer's details. The issuer is the person who creates the financial product and provides it to investors. The PDS must be provided to the investor before the financial product is acquired.

The Financial Markets Conduct Act 2013 (the **FMC Act**) requires the PDS to be worded and presented in a clear, concise and effective manner. The Financial Markets Conduct Regulations 2014 (the **FMC Regulations**) prescribe the form and presentation of the PDS, including restrictions on its length. For example, regulation 24(2) requires a PDS for managed investment products in a managed fund to not exceed 12 A4 printed pages or 6,000 words. The FMC Regulations also prescribe the order in which information is presented in a PDS. For example, Part 1 of Schedule 4 prescribes the headings and order of sections of a PDS for managed funds.

PDS requirements were introduced to assist investor decision-making

Well-functioning capital markets rely on good information about financial products being available to investors to assist effective and efficient decision-making. PDS length restrictions and other form requirements were included in the FMC Act and FMC Regulations to assist effective disclosure to investors. It is important that investors have all relevant information available to them, and that this information is provided clearly, concisely and effectively.

Length restrictions were imposed to address issues with financial product disclosure documents prepared under the previous Securities Act regime. Those documents were typically lengthy and compliance-focused, making them difficult for investors to comprehend. Length restrictions were set to allow all of the most important information for investors to be included in the PDS, while preventing it from becoming too long and unwieldy.

The Treaty of Waitangi and the Māori Language Act 2016

Te Ture mō Te Reo Māori 2016/The Māori Language Act 2016 (**Māori Language Act**) affirms the status of te reo Māori as the indigenous language of New Zealand, an official language of New Zealand and "a language valued by the nation". Its purposes include to provide means to support and revitalise te reo Māori. The Māori Language Act also empowers the Māori Language Commission/Te Taura Whiri i te reo Māori (**Te Taura Whiri**) to certify te reo Māori translators and interpreters.

The Courts will generally presume that Parliament intends to legislate in accordance with Treaty of Waitangi principles¹. One of those principles has been described by the Courts and the Waitangi Tribunal as active protection of Māori interests, including the maintenance and development of te reo Māori².

¹ *Attorney-General v New Zealand Maori Council* [1991] 2 NZLR.

² *He Tirohanga o Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal*, Te Puni Kōkiri, Wellington (2001), p. 93-100.

Issue

It is likely that a PDS provided in full in two languages would not be able to comply with the length restrictions and ordering requirements in the FMC Regulations. We considered this exemption following interest from a market participant to provide a PDS in full in both te reo Māori and English.

Objectives

In some instances where market participants encounter difficulties offering financial products under the standard FMC Act regime, exemption relief from a regulatory or disclosure requirement may be appropriate. Any exemptions we grant must promote one or more of the purposes of the FMC Act. Additionally, the extent of the exemption must not be broader than reasonably necessary to address the matters that gave rise to the exemption.

In considering the use of the FMA's exemption power we assessed options against the following objectives, which we consider are the most relevant purposes of the FMC Act for this matter:

- a. to promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- b. to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services.

In considering this proposal we also considered the unique status of te reo Māori in New Zealand, the Māori Language Act 2016, and that both te reo Māori and English are official languages of New Zealand.

Options and impact analysis

Options

We sought feedback through consultation and considered the following options:

- Option 1: Exemption to enable dual language te reo Māori and English PDSs (preferred option)
- Option 2: No exemption – length restrictions and order requirements apply (status quo)

We also sought feedback on an additional proposal to allow dual-language PDSs in languages other than te reo Māori and English. This additional proposal is discussed in the consultation section at the end of this paper.

Option 1: Exemption to enable dual-language te reo Māori and English PDSs (preferred option)

Description

An exemption was considered to enable issuers to provide a dual-language PDS in both te reo Māori and English. Under this option, the issuer would be exempted from length restrictions and order requirements. The English portion within the PDS would still need to comply with the same word limits that are provided in the FMC Regulations. The exemption would include conditions relating to:

- Translation – in particular, that both languages are full and accurate translations of each other in all material respects (not a word-for-word translation). Both languages would comprise the PDS. A statement would be required at the start of the PDS to let investors know that all information in the PDS is available in both languages but further information may not be available in both languages.
- Certified translators – a certified te reo Māori translator would need to attest to the accuracy of the Māori language portion of the PDS.
- Format – the Māori language portion would need to be included in the place and manner the issuer reasonably considers most appropriate for the PDS to be presented in a clear, concise, and effective manner.

Impact analysis

We think the option to allow dual-language PDSs to be provided in te reo Māori and English has the potential to improve engagement and therefore effective decision-making for investors who are more comfortable when engaging with content provided in te reo Māori. A number of submitters identified that this option could assist speakers of te reo Māori with active and informed participation in New Zealand's capital markets. We also understand that issuers seeking to rely on this exemption would have a target market of investors who are more confident and engaged when information is provided to them in both te reo Māori and English.

Under this option, the exemption from length restrictions and order requirements would only be effective to the extent required to include content in both languages. Both languages would need to fully and accurately reflect each other in all material respects. Issuers would still be required to comply with other effective disclosure and fair-dealing provisions when providing a dual-language PDS. This would give investors confidence that all of the most important information about the financial product is provided in the PDS in both languages.

This option also recognises that te reo Māori has a unique status in New Zealand, and that both te reo Māori and English are official languages of New Zealand.

The Māori language portion would need to be certified by a certified te reo Māori translator. In determining the appropriate type of certification, we considered the cost for issuers to engage a translator, and the importance that each language accurately reflects the other language. Some submitters were of the view that the Māori language content would need to be produced by someone suitably qualified in te reo Māori translation. However, some noted that independent certification could be costly. The certified translator would not necessarily need to be independent, but would need to be certified under the Māori Language Act.

Under this option, all information in a dual-language PDS would be available in both te reo Māori and English. However, the exemption notice does not require any further correspondence about the financial product or information incorporated by reference to be in both languages. We note the risk that investors could make an investment decision based on information provided in te reo Māori, and only have other information available in English. Some submitters noted this risk could be mitigated with a statement in the PDS that other information may not be provided in te reo Māori. While other submitters noted the benefits to investors if further correspondence was

available in te reo Māori, concerns were raised that requiring all further information in te reo Māori could impose additional costs that could deter issuers from providing a dual-language PDS.

We also considered whether having two languages within a PDS could be confusing for investors who are not familiar with both languages. Following feedback from consultation, we see this risk as low, and it is mitigated by the proposed condition requiring a statement in the PDS explaining that all information in the PDS is provided in both te reo Māori and English.

Option 2: No exemption – length restrictions and order requirements apply (status quo)

Under the status quo, the length limits would need to be met for all information included in a PDS in all languages. If no exemption is granted, it is unlikely that dual-language PDSs would be produced, as they would breach the length limits. The length limits were set at a level that did not contemplate an issuer wanting to include information within the PDS in multiple languages.

If no exemption is granted, it is possible that issuers seeking to provide PDSs in te reo Māori would provide an informal translation of the PDS in te reo Māori as a separate document.

Impact analysis

If we continue with the status quo, investors will still have all of the most relevant information about the financial product in the PDS in English. The PDS would continue to be within the length limits, which were introduced to prevent the PDS from being too long or unwieldy.

There is a risk that investors may not be as engaged or have the same level of understanding if the information is only provided in English. This risk is likely great for products that target investors who are more confident reading other languages, and has the potential to result in less-effective disclosure to investors who are more comfortable when engaging with content provided in both te reo Māori and English.

Summary of options against objectives

	Option 1: Exemption to enable dual language te reo Māori and English PDSs (preferred option)	Option 2: No exemption – length restrictions and order requirements apply (status quo)
Provide information to assist investors making investment decisions	<p>Enabling dual-language PDSs in both te reo Māori and English allows information to be provided in a way that can better assist decision-making by investors who are more engaged when information is provided in both te reo Māori and English ✓✓</p> <p>Investors continue to have all of the most relevant information available to them in the PDS ✓✓</p>	<p>Investors who are more engaged when information is provided in te reo Māori and English will not be provided PDSs in both languages ✗</p> <p>Investors have all of the most relevant information available in the PDS in English ✓✓</p>
Promote confident and informed participation in financial markets	<p>Some investors are likely to be more confident and informed when making investment decisions based on a PDS provided in both te reo Māori and English ✓✓</p>	<p>All information in the PDS is provided in English ✓✓</p> <p>Some investors may not be as confident or informed when making investment decisions based on a PDS provided only in English ✗</p>
Removes barriers preventing dual-language PDSs in te reo Māori and English	<p>The exemption enables the provision of dual-language PDSs in te reo Māori and English by exempting from the length limits and order requirements, subject to conditions ✓✓</p>	<p>The length limits and order requirements do not contemplate an issuer wanting to include information within the PDS in multiple languages ✗</p>
Not broader than reasonably necessary to address issue	<p>Exemption relief only granted from length limits and order requirements for PDSs provided in te reo Māori and English in full ✓✓</p>	<p>N/A</p>

Key:

- ✓✓ Meets objectives
- ✓ Partially meets objectives
- ✗ Does not meet objectives

Consultation

Proposed exemption to enable dual-language PDSs – te reo Māori and English

Consultation approach

In April 2018 we publicly consulted on whether we should enable dual-language PDSs in te reo Māori and English (Option 1). We received 12 submissions from stakeholders including banks, industry groups, financial advisers, and professional services firms that engage with Māori. [Individual submissions are available on our website.](#)

We also consulted with Te Taura Whiri and certified te reo Māori translators to test the conditions around certification of the dual-language PDS by a translator. We also sought to understand the process for certification of translators, and how a translator would go about producing te reo Māori content for a dual-language PDS.

Broad support for an exemption to enable dual-language PDSs in te reo Māori and English

Some submitters saw this as increasingly important given the rapid growth of the Māori economy. They saw the exemption as a means for disclosure information to be provided in an engaging and accessible way for some investors. Some submitters noted that the proposed exemption was consistent with the Māori Language Act, and the principles and intent of the Treaty of Waitangi.

Flexible formatting

Submitters that commented on formatting and layout were all of the view that issuers should have the flexibility to determine the layout of a dual-language PDS. They did not think we should require a dual-language PDS to be in a particular format or layout (such as side-by-side or one after the other).

We will not be requiring a particular format for a dual-language PDS. However, issuers will be required to include the Māori language portion in the place and manner the issuer reasonably considers most appropriate for the PDS to be presented in a clear, concise and effective manner.

Dual-language PDSs should be prepared with qualified translators

Submitters agreed that the te reo Māori version of a dual-language PDS would need to be produced by someone suitably qualified in te reo Māori translation, and preferably with experience translating financial product information. This would help mitigate the risk of discrepancies between the two languages in the dual-language PDS. Submitters offered a number of views about the appropriate level of translation qualification and whether the translator would need to be independent.

We will be requiring that the translation is certified by a translator certified by the Māori Language Commission.

Glossary of te reo Māori financial terms and prescribed statements

A number of submitters identified that a glossary of approved financial terms in te reo Māori would ensure consistency and overcome difficulties translating some financial terms into te reo Māori. Some were also of the view that a glossary or the exemption could include translations into te reo Māori of the prescribed wording in the FMC Regulations that is provided in English. There were differing views as to who should produce the glossary and/or prescribed wording in te reo Māori. Suggestions included the FMA and other government agencies.

The FMA is currently being consulted about a vocabulary development project that will produce financial terms in te reo Māori. We understand this is being carried out by fluent speakers of te reo Māori, including a certified translator and those who have experience with translating financial terms. This glossary could help ensure consistency and overcome difficulties with translating some financial terms into te reo Māori. Prescribing all statements would involve

prescribing over 100 statements across different products, and could create difficulties for issuers if there were dialectal or other differences between the prescribed statement and the statement when translated. The exemption will also contain some flexibility to enable some departure from the prescribed statements, and include proper nouns in English.

Additional proposal to expand exemption to other languages

As an additional proposal, the consultation paper requested feedback on allowing dual-language PDSs in English and other languages. There was less support for a dual-language exemption to include other languages. Of those who supported inclusion of other languages, most thought this should be considered after an exemption for dual-language PDSs in te reo Māori and English had been implemented.

No submitters stated an intention to rely on a dual-language exemption for languages other than te reo Māori and English; however, we see potential future demand for other languages. We consider that an exemption for languages other than te reo Māori would be broader than necessary at this stage as there is no current demand.

An exemption for te reo Māori and English PDSs recognises te reo Māori's unique status as the indigenous language of New Zealand. Once implemented, this exemption could provide insights for any future exemption for dual-language PDSs in other languages. We would be happy to meet with any providers who are interested in providing a dual-language PDSs in other languages.

Conclusion and selected option

Following careful consideration of regulatory and non-regulatory impacts, and of feedback provided through consultation, we have decided to grant a class exemption to enable dual-language PDSs to be provided in both te reo Māori and English.

Option 1 will achieve the objectives of:

- providing timely, accurate, and understandable information to persons to assist those persons to make decisions relating to financial products; and
- promoting the confident and informed participation of businesses, investors, and consumers in the financial markets.

In selecting this option we also considered the unique status of te reo Māori in New Zealand, the purposes of the Māori Language Act 2016, and that both te reo Māori and English are official languages of New Zealand.

On this basis we have decided to grant a class exemption to implement this policy proposal. The exemption will enable PDSs to be provided in both te reo Māori and English in full. The exemption will be subject to conditions outlined in this paper.

We consider that Option 2 – to not grant an exemption – would not best meet our objectives. Continuing with the status quo would mean that issuers could not provide dual-language PDSs in both te reo Māori and English, and would prevent an option that has the potential to be beneficial for investors who relate better to content provided in both languages.