

Guidance on substantial product holder disclosures

This guidance note aims to:

- Inform market participants about the findings from our review of disclosure notices submitted by people who have substantial holdings in listed issuers (“substantial product holders” or “SPHs”) and highlight areas of concern.
- Remind SPHs of their statutory disclosure obligations under the Financial Markets Conduct Act 2013 (FMC Act) and Financial Markets Conduct Regulations 2014 (Regulations).
- Clarify what we expect of market participants in relation to their substantial product holder disclosures.
- Provide guidance in those areas of possible confusion about how the FMC Act and Regulations are applied.

About this guidance note:

This guidance is for:

- Anyone who has, or may have, a substantial holding in a listed issuer
- Fund management firms and their employees
- Other interested parties

It aims to:

Assist substantial product holders in understanding their obligations and help to promote consistency in disclosures



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Guidance on substantial product holder disclosures (SPH disclosures)

Introduction

Directors, senior managers and people who have a substantial holding¹ in a listed company are required to disclose certain changes to their ownership in a company. These disclosure obligations promote an informed market and deter insider conduct, market manipulation, and secret dealings in potential takeover bids.

We reviewed all SPH² notices submitted to the NZX Limited Market Announcement Platform over a three month period³.

Our aim was to assess whether the disclosures assisted in the promotion of a fair, efficient and transparent market.

We found:

- A significant number of SPH notices did not comply with the disclosure requirements in the FMC Act.
- There was an inconsistency of approach with interpreting certain disclosure requirements.

¹ *Substantial holding* means a relevant interest in 5% or more of quoted voting products in a listed company, as set out in section 274(2) of the FMC Act.

² *Substantial product holder* means a person who has a substantial holding in a listed company, as set out in section 274(3) of the FMC Act.

³ 1 September 2015 – 30 November 2015.



Background

In 2013, we reviewed a sample of SPH notices against the requirements in the Securities Markets Act 1988 (SMA). We released our findings in the paper '[Financial Markets Review of Market Disclosures](https://fma.govt.nz/assets/Reports/141201-fma-review-of-market-disclosures.pdf)'⁴.

The disclosure requirements for SPH notices are now contained in Part 5 of the FMC Act and the Regulations, replacing those in the SMA. In 2016 we conducted a further review of SPH notices under the FMC Act.

The obligations under the FMC Act and SMA are broadly similar – a person with a substantial holding in a listed company has statutory disclosure obligations for certain events concerning holding or transacting in the relevant financial product.

SPH notices are provided to:

- Promote an informed market, and
- Deter insider conduct, market manipulation, and secret dealings in potential takeover bids.

This is to ensure participants in financial product markets can access information about the identity and trading activities of anyone who is entitled to control or influence the exercise of significant voting rights in a listed company⁵.

Timely, accurate disclosure is important to promote these purposes.

The Regulations set out the information which must be disclosed to meet these purposes. They include [prescribed forms](#)⁶ with general and specific 'instructions' on how to correctly disclose the required information.

⁴ <https://fma.govt.nz/assets/Reports/141201-fma-review-of-market-disclosures.pdf>

⁵ These purposes are set out in section 276 of the FMC Act.

⁶ *Prescribed forms* are the default forms provided under Schedule 14 of the Regulations.



Compliance with FMC Act and Regulations

Our review identified a number of SPH notices that did not comply with the disclosure requirements in the FMC Act and Regulations. We follow up on non-compliant disclosures, where appropriate, and we may take further action if we continue to see non-compliance.

We saw insufficient or inaccurate disclosures concentrated in the areas outlined below.

Details of relevant transactions in initial disclosures

The FMC Act requires those with a relevant interest⁷ in financial products to disclose on what date their substantial holding began (Initial Disclosure).

The Initial Disclosure must contain details of all transactions⁸ or events which led to the acquisition of the substantial holding in the **four months before** its start date (or whichever is the shorter period if the company was listed less than four months ago).

We saw examples of Initial Disclosures that did not provide details of these relevant transactions or events in the four months before the substantial holding commenced. In some cases, the Initial Disclosures only provided information for the individual trade which tipped the holding over the 5% threshold.

We expect SPHs to ensure that details of all transactions and events in the four months prior to the start date of the substantial holding are included in the Initial Disclosure.

Example

If a person (A) makes on-market acquisitions of financial products in a listed company (B) in the months of March, April and May, and then makes a single, on-market trade in June which results in a substantial holding commencing, the Initial Disclosure must include details of all on-market trades in March, April, May and June, not just for the trade in June.

Aggregating on-market trades

SPHs may aggregate on-market trades when they disclose the 'details of transactions and events' which led to the relevant event. The Regulations require that an SPH notice for aggregated on-market trade information must contain the following minimum information:

- The date range of the aggregated on-market trades.
- How the relevant interest was acquired, disposed of, or changed in nature.
- The total consideration paid or received for the on-market aggregated trades.

⁷ The meaning of "relevant interest" is set out in sections 235-237 of the FMC Act.

⁸ Alternatively, for on-market trades which have been aggregated, include all on-market trades in the aggregated information.



- The total number of financial products to which the aggregated on-market trades related.

This must be provided separately for on-market acquisitions and on-market disposals.

During our review, we saw examples of SPH notices for aggregated on-market trades that didn't provide all of the information required by the Regulations.

For example, some SPH notices disclosed the total number of financial products acquired, but not the time period of their acquisition, or the total consideration paid or received.

While SPH notices which contain aggregated on-market trades are not required to detail each and every trade, we expect them to disclose the minimum information required under the Regulations.

Example

Aggregated on-market trades may be disclosed as follows: On-market purchases of 100,000 ordinary shares, for total consideration of \$200,000, made during the period 1 May 2016 – 1 April 2016.

Describing a 'relevant interest'

The Regulations require each SPH notice to:

- Describe the nature of the relevant interest in the substantial holding.
- Include prescribed information where that relevant interest is qualified or conditional.

During our review, we saw examples of SPH notices where either:

- The nature of the relevant interest was not described well or there was a lack of compliance with the requirements for prescribed information for a relevant agreement⁹. For example, some SPH notices described the nature of their relevant interest simply as “not applicable” or “normal market trading”. This is not enough to tell the market about how the SPH's relevant interest arises.
- The SPH notices did not provide details of a relevant agreement.
- The person failed to attach the relevant agreement to the SPH notice.
- The person failed to disclose why the relevant agreement document¹⁰ had not been attached, when required¹¹.

We expect to see the description of a relevant interest has sufficient information to enable the market to understand the nature of the relevant interest.

⁹ A “relevant agreement” is defined in regulation 139(1) of the Regulations.

¹⁰ A “relevant agreement document” is defined in regulation 139(3) of the Regulations.

¹¹ Refer to regulations 140-142 which sets out circumstances where relevant agreement documents are not required to be attached to the Notice.



Example

Person (A) holds 20% or more of the voting shares of a company (B) and B has a substantial holding in a listed company (C).

A could disclose that information as follows: A has the power to exercise the right to vote attached to 20% or more of the voting products of B. So A has a relevant interest in the financial products of C held by B as set out in section 237(b) of the FMC Act.

Where a relevant agreement exists for a relevant interest, we expect the SPH notice to include:

- Details of that agreement.
- The material terms of the relevant agreement (if not in writing), or attach the relevant agreement document (if in writing).

Joint disclosures

In certain cases, it is possible to complete one SPH notice for two or more SPHs under the Regulations. This is permitted as long as prescribed information for each SPH is disclosed.

During our review, we saw examples of SPH notices that were joint disclosures, but did not include this separate SPH information.

Example

Corporate (A) and (B) are related bodies each with a registered holding in the same class of financial products of a listed company.

A and B make a joint disclosure after on-market acquisitions. This leads to a combined movement of 1% of their holding. In this situation, separate information should generally be provided for A and B under the following headings: 'Summary of substantial holding', 'Details of transactions and events giving rise to relevant event', and 'Details after relevant event'.

The disclosure should clearly state how A and B are connected to each other under 'Additional information'.

We expect joint disclosure SPH notices to include the prescribed information for each SPH, as required by the prescribed forms.

We also expect that the disclosure is not confusing and makes clear which information relates to which person.



Timeliness

The FMC Act requires SPHs to disclose “as soon as the person knows, or ought reasonably to know” that a relevant event¹² has occurred. This means that the disclosure must be made promptly and without delay.

Most of the SPH notices we reviewed had been filed within an appropriate timeframe. However we saw a small number of SPH notices that were not filed within a prompt timeframe.

Where a transaction gives rise to an SPH disclosure requirement (whether on or off-market), the requirement to provide disclosure to the market arises when the transaction is **agreed**, not when the transaction is **settled**. For example, for ordinary on-market purchases, this means the person acquires a relevant interest in the financial products when the trade takes place.

Sometimes, an SPH knows in advance about relevant events, for example where a purchase or sale agreement is negotiated off-market. There is rarely any justification for a delayed filing of an SPH notice following such events, in particular when any of the parties involved is an existing SPH and should be aware of their obligations. This information may not be delayed in any way or held back.

If an SPH did not expect that they had to complete an SPH notice, we would expect the SPH notice to be filed, usually, within one business day of them becoming aware of the events which triggered the disclosure obligation.

We will continue to monitor the timely completion of SPH notices and we may take appropriate enforcement action where necessary.

Disclosure of price sensitive information during market hours

Sometimes an SPH notice will contain information which could materially affect the price of an issuer’s quoted financial products (for example, transactions by SPHs that relate to takeover offers), if information that relates to the takeover offer is not yet known to the market.

SPH notices do not follow the same application process of administrative trading halts by NZX. This means that when someone releases a SPH notice which contains information relating to takeovers or other price sensitive information, they should, where possible, release this information to NZX outside of market hours.

Further information about NZX’s use of administrative trading halts can be found [on NZX’s website](#).

¹² *Relevant event* means an event which results in a person having to make an SPH disclosure under sections 276-279 of the FMC Act, as set out in section 6 of the FMC Act.



Clarification of disclosure requirements

Our review revealed a lack of consistency in how certain disclosures are being made. This section aims to ensure a more uniform approach to SPH disclosures in future, and offers explanations of certain disclosure requirements.

Details of transactions for 1% movements

The FMC Act requires SPHs to disclose movements of 1% or more in their substantial holding. However, the prescribed form for 1% movements does not set out whether all transactions which led to the 1% movement must be disclosed, or only the final transaction which tipped the substantial holding by 1%.

We expect SPH notices, for 1% movements, to include details of all transactions (including on-market trades which have been aggregated) and events which led to the disclosure of the 1% movement, to comply with the Regulations. This aligns with the requirement for Initial Disclosures to include information for all transactions and events which led to the substantial holding commencing in the previous four months. This is set out in more detail on page 5.

Example

If a person makes six on-market trades on different days, with the sixth trade resulting in a 1% movement in the substantial holding, the SPH notice must include details of all six trades, not just details about the sixth trade.

Registered holders

In an SPH notice, it is required that an SPH discloses:

- Who is the current registered holder of the financial products, and
- Who the registered holder of the financial products will be when the transfers are registered.

There appears to be some confusion in the market between the two fields. To clarify, as set out in the instructions to the prescribed forms:

- The “current” registered holder is the person to whom the financial products are registered before the relevant trade, transaction, or event occurs.
- When the transfers are registered, the registered holder becomes the person to whom the financial products are registered after the relevant trade, transaction, or event occurs.

If the registered holder is unknown please state “unknown” in the relevant field. This is commonly the case for on-market trades.



Example

If a person (A) discloses a 1% decrease in their substantial holding after an on-market disposal of shares, A would be the “current” registered holder of the financial products. By contrast, if A disclosed a 1% movement after A acquired shares, A would be the “registered holder, after the transfers are registered”.

Disclosures by individuals who manage funds

We know there is currently a difference in opinion on whether individuals managing funds have a relevant interest in the financial products their fund management firms (or employers) hold. This has resulted in inconsistencies in what is being disclosed to the market.

Market opinion indicates the law is unclear about whether individuals who manage funds have a relevant interest in the financial products they manage, that are held by the firms they work for. Therefore, we will engage with MBIE to consider clarifying the law in this area.

In the meantime, we do not expect individuals who manage funds to make SPH disclosures for financial products they may control through the funds they manage solely because:

- that particular fund has a 5% holding in a listed company, or
- the 5% threshold is met when their personal holdings are combined with the holdings in the fund they manage.



Glossary of terms

Term	Definition
FMC Act	Financial Markets Conduct Act 2013
Prescribed forms	Are the default forms provided under Schedule 14 of the Regulations.
Regulations	Financial Markets Conduct Regulations 2014
Relevant interest	Has the meaning set out in sections 235-237 of the FMC Act
Relevant agreement	Has the meaning set out in regulation 139(1) of the Regulations
Relevant agreement document	Has the meaning set out in regulation 139(3) of the Regulations
Relevant event	Means an event which results in a person having to make an disclosure under sections 276-279 of the FMC Act, as set out in section 6 of the FMC Act
Substantial holding	Has the meaning set out in section 274(2) of the FMC Act
Substantial product holder or SPH	Has the meaning set out in section 274(1) of the FMC Act