



Financial Markets Conduct Amendment Regulations 2015

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 16th day of November 2015

Present:

His Excellency the Governor-General in Council

Pursuant to subpart 1 of Part 9 and sections 448 and 576 of the Financial Markets Conduct Act 2013, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with sections 448(2), 549, 550, and 576(2) of that Act, makes the following regulations.

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Regulations

1 Title

These regulations are the Financial Markets Conduct Amendment Regulations 2015.

2 Commencement

- (1) Regulations 4(6), 15, 18 to 21, 25, 41(1) to (13) and (18) to (33), 44(3) and (4), and 46 come into force on 17 December 2015.
- (2) Regulations 4(4), (5), and (7), 14, 39(17) to (19), 40(10), (20), and (21), and 41(14) to (17) come into force on 1 June 2016.
- (3) The rest of these regulations come into force on 1 December 2015.

3 Principal regulations

These regulations amend the Financial Markets Conduct Regulations 2014 (the **principal regulations**).

4 Regulation 5 amended (Interpretation)

- (1) In regulation 5(1), insert in their appropriate alphabetical order:

closed for applications status, in relation to a PDS, means that the PDS has, or should have, a closed for applications status under regulation 280

convertible means a financial product that will be converted, or is or may become convertible, into another financial product

new product, in relation to a convertible, means the financial product into which the convertible is or may be converted

retail investor, in relation to an offer of financial products, financial products that have previously been offered, or the supply of a DIMS, means a person who is not a wholesale investor (as defined in subclause (5A)) in relation to the offer, financial products, or service

simplified disclosure offer has the meaning set out in regulation 49G(2)

simplified disclosure PDS means a PDS of a class that is declared to be a class of simplified disclosure PDSs under regulation 22(4) or 23(3)

(2) In regulation 5(1), definition of **disclosure year**, replace paragraph (a) with:

(a) in the case of a managed investment product (other than a product referred to in paragraph (ab)), a period starting on 1 April in a year and ending on 31 March in the following year:

(ab) in the case of a managed investment product in a KiwiSaver scheme, a superannuation scheme, or a workplace savings scheme under which benefits payable from the scheme are based on the investment return of scheme property at the end of the scheme's accounting period (but excluding a scheme that is operated on a unitised basis), a 12-month period ending on the scheme's balance date:

(3) In regulation 5(1), replace the definition of **quarter** with:

quarter,—

(a) in the case of regulations 56, 57, and 220 and Schedule 4, means each of the 4 quarters of a year ending on 30 June, 30 September, 31 December, and 31 March:

(b) in any other case, means each 3-month period of a 12-month period (where each quarter ends on the date that the manager or provider determines)

(4) In regulation 5(1), definition of **unique identifying information**, after paragraph (b), insert:

(ba) in the case of a trust or a partnership (other than a limited partnership), the names of the trustees or partners; and

(5) In regulation 5(1), definition of **unique identifying information**, replace paragraph (d) with:

(d) the jurisdiction in which it is incorporated, formed, established, or resident, and the number (if any) under which it is so incorporated, formed, or established; and

(6) In regulation 5(1), insert in their appropriate alphabetical order:

existence,—

(a) in relation to a fund or scheme, has the meaning set out in subclause (4)(b):

(b) in relation to a multi-fund investment option or life cycle stage, has the meaning set out in clause 8C(a) of Schedule 4

specified life cycle stage means a life cycle stage (as defined in clause 1(1) of Schedule 4) for a life cycle investment option that may be, or previously has been, selected as an investment option by holders of a managed investment product

specified multi-fund investment option means a multi-fund investment option (as defined in clause 1(1) of Schedule 4) that may be, or previously has been, selected as an investment option by holders of a managed investment product

(7) In regulation 5(1), insert in their appropriate alphabetical order:

closed to all investment status, in relation to a specified fund, means the fund has, or should have, a closed to all investment status under clause 51(1)(ea) and (2) of Schedule 4

closed to new investors status, in relation to a specified fund, means the fund has, or should have, a closed to new investors status under clause 51(1)(ea) and (2) of Schedule 4

open status, in relation to a specified fund, means the fund has, or should have, an open status under clause 51(1)(ea) and (2) of Schedule 4

(8) After regulation 5(5), insert:

(5A) For the purposes of the definition of **retail investor** in subclause (1) and regulation 65, **wholesale investor**,—

(a) in relation to an offer of financial products, has the same meaning as in clause 36(a) of Schedule 1 of the Act and includes an entity that is controlled (within the meaning of clause 48 of Schedule 1 of the Act) by—

(i) a wholesale investor in relation to the offer; or

(ii) a close business associate of the offeror (within the meaning of clause 4 of Schedule 1 of the Act); or

(iii) a relative of the offeror or of a director of the offeror (within the meaning of clause 5 of Schedule 1 of the Act):

(b) in relation to financial products that have previously been offered, means a person who, if the previous offer had been made to the person, would have been a wholesale investor in relation to the offer under paragraph (a):

(c) in relation to the supply of a DIMS, has the same meaning as in clause 36(b) of Schedule 1 of the Act and includes an entity that is controlled (within the meaning of clause 48 of Schedule 1 of the Act) by a wholesale investor in relation to the DIMS.

5 Regulation 9 amended (General provision relating to statements in particular form, warning statements, etc)

After regulation 9(2), insert:

(3) Nothing in this regulation limits any other provision of these regulations that requires or permits a statement referred to in subclause (1) to be modified.

6 Regulation 12 amended (PDS, other disclosure document, or register entry not required to refer to matter that is not applicable)

In regulation 12, insert as subclause (2):

- (2) If the name or contact details of an offeror are required by—
 - (a) these regulations to be contained in a disclosure document but that information is not known by the issuer at the date of the disclosure document, the disclosure document is not required to contain that information;
 - (b) any of regulations 37 to 41 and 43 to be contained in a register entry but that information is not known by the issuer at the date on which the information is required to be lodged on the register entry, the register entry is not required to contain that information under those regulations.

7 Regulation 22 amended (Content of PDS for offer of debt securities)

(1) Replace regulation 22(2) with:

- (2) However,—
 - (a) in the case of an offer of NBDT category 2 debt securities, the PDS must—
 - (i) contain all of the information specified in Schedule 7 that is applicable (in which case subclause (1) does not apply); or
 - (ii) comply with subclause (1);
 - (b) in the case of a simplified disclosure offer of debt securities, the PDS must—
 - (i) contain all of the information specified in Part 1 of Schedule 2 that is applicable (as modified in accordance with Part 1A of Schedule 2); or
 - (ii) comply with subclause (1).

(2) After regulation 22(3), insert:

- (4) PDSs that comply with subclause (2)(b)(i) are declared to be a class of simplified disclosure PDSs for the purposes of section 470 of the Act.

8 Regulation 23 amended (Content of PDS for offer of equity securities)

(1) After regulation 23(1), insert:

- (1A) However, in the case of a simplified disclosure offer of equity securities, the PDS must—
 - (a) contain all of the information specified in Part 1 of Schedule 3 that is applicable (as modified in accordance with Part 1A of Schedule 3); or
 - (b) comply with subclause (1).

(2) In regulation 23(2), after “The PDS”, insert “under subclause (1) or (1A)”.

(3) After regulation 23(2), insert:

- (3) PDSs that comply with subclause (1A)(a) are declared to be a class of simplified disclosure PDSs for the purposes of section 470 of the Act.

9 Regulation 32 amended (PDS may relate to more than 1 class of products, etc)

After regulation 32(2), insert:

- (3) In the case of an offer referred to in section 44 of the Act (convertible financial products), the PDS may, in accordance with regulations 49A to 49F, relate to the convertibles and the new products.

10 Regulation 34 amended (Additional information)

- (1) In regulation 34(3), replace “regulation 29(3) and (4)” with “any other permission to include additional information in the PDS”.
- (2) In regulation 34(4), definition of **relevant section**, paragraph (a), after “paragraph (f)”, insert “or (g)”.
- (3) In regulation 34(4), definition of **relevant section**, after paragraph (f), insert:
(g) convertibles to which regulation 49D applies, section 7 of the PDS

11 New regulation 42A inserted (Requirement to include all material information does not apply to simplified disclosure offers)

After regulation 42, insert:

42A Requirement to include all material information does not apply to simplified disclosure offers

Section 57(1)(b)(ii) of the Act does not apply to a simplified disclosure offer.

12 New regulations 49A to 49I and cross-headings inserted

After regulation 49, insert:

Provisions relating to convertibles

49A Offers of convertible financial products

Regulations 49B to 49F apply to an offer referred to in section 44 of the Act (convertible financial products) if—

- (a) the convertible is—
- (i) a debt security; or
 - (ii) an equity security; or
 - (iii) a managed investment product in a managed investment scheme other than a managed fund; and
- (b) the issuer of the convertible is—
- (i) the issuer of the new product; or

- (ii) a related body corporate of the issuer of the new product.

49B Requirements that apply to convertibles

The requirements in regulations 49C to 49E apply instead of the requirements that would otherwise apply to the offer.

Example

XYZ Limited makes an offer of debt securities that will convert into ordinary shares.

The convertibles are debt securities, while the new products are equity securities.

The PDS must comply with the requirements for a PDS for debt securities (in Schedule 2 or, in the case of a registered bank, Schedule 9) rather than those that apply to equity securities (in Schedule 3). The PDS must include the additional information about the new products that is required by the relevant debt security schedule.

The register entry must comply with the requirements for debt securities (in Part 2 of Schedule 2) rather than those that apply to equity securities (in Part 2 of Schedule 3).

49C PDS and register entry requirements

- (1) The PDS must comply with—
 - (a) regulation 22 if the convertibles are debt securities;
 - (b) regulation 23 if the convertibles are equity securities;
 - (c) regulation 24(3) and (4) if the convertibles are managed investment products.
- (2) The KIS must comply with—
 - (a) regulation 29(2)(a) if the convertibles are debt securities;
 - (b) regulation 29(2)(b) if the convertibles are equity securities;
 - (c) regulation 29(2)(d) if the convertibles are managed investment products.
- (3) Despite subclauses (1)(a) and (2)(a), if the convertibles are debt securities and the new products are equity securities or managed investment products,—
 - (a) regulations 22(3) and 29(2)(a) do not apply; and
 - (b) the PDS must instead comply with—
 - (i) regulation 23(2) if the new products are equity securities;
 - (ii) regulation 24(4) if the new products are managed investment products; and
 - (c) the KIS must instead comply with—
 - (i) regulation 29(2)(b) if the new products are equity securities;
 - (ii) regulation 29(2)(d) if the new products are managed investment products.
- (4) The register entry must comply with—

- (a) regulation 38 if the convertibles are debt securities;
 - (b) regulation 39 if the convertibles are equity securities;
 - (c) regulation 40(2) if the convertibles are managed investment products.
- (5) For the purposes of this regulation, unless the context otherwise requires, each reference to the debt securities in Schedule 2, the equity securities in Schedule 3, or the managed investment products in Schedule 5 (as the case may be) is a reference to the convertibles (rather than to the new products).
- (6) This regulation does not apply if regulation 49D applies.

49D Convertible debt securities issued by registered banks

- (1) This regulation applies if—
- (a) the convertible is a debt security issued by a registered bank; and
 - (b) the new product is an equity security.
- (2) The PDS must—
- (a) contain all of the information specified in Schedule 9 that is applicable (applied with all necessary modifications as if the PDS were a limited disclosure document); and
 - (b) comply with regulation 23(2).
- (3) The KIS must comply with regulation 29(2)(b).
- (4) The register entry must comply with regulation 38.
- (5) Despite subclause (4), clause 64 of Schedule 2 (which requires the register entry to contain certain financial information) does not apply if the issuer lodges with the Registrar a notice referring to the availability of its disclosure statements (including a link to the page on its Internet site where its disclosure statements are published).
- (6) In subclause (5), **disclosure statements** has the same meaning as in the Reserve Bank of New Zealand Act 1989.
- (7) For the purposes of this regulation, unless the context otherwise requires, each reference to the debt securities in Schedule 2 or 9 is a reference to the convertibles (rather than to the new products).

49E Modification of statement at start of PDS

If the convertibles will be converted into new products in connection with an event or a circumstance relating to the insolvency or a financial difficulty of the issuer, the statement under regulation 20(1)(e) must be in the following form:

“This document gives you important information about this investment to help you decide whether you want to invest. There is other useful information about this offer on [*specify Internet site address of offer register*].

This investment is riskier than a bank deposit.* These [*name of convertibles*] are complex financial products that are not suitable for many investors. If you

do not fully understand how they work or the risks associated with them, you should not invest in them. You can seek advice from a financial adviser to help you make an investment decision.

[*Name of issuer*] has prepared this document in accordance with the Financial Markets Conduct Act 2013.”

*Include this sentence if the issuer is a registered bank.

49F Additional information

- (1) The PDS may include additional information if that information is of a kind that would be required or permitted to be disclosed in a PDS if the offer related only to the new products (for example, information about the issuing group of the new products).
- (2) The additional information under this regulation may be included in any section of the PDS where the issuer reasonably considers the information is useful to investors.
- (3) However, the additional information may be included in the KIS only if it is of a kind that would be required or permitted to be disclosed in a KIS if the offer related only to the new products.

Simplified disclosure offers for listed issuers

49G Simplified disclosure offers for listed issuers

- (1) The purpose of this regulation is to define the offers for which—
 - (a) a simplified disclosure PDS may be used (*see* regulations 22(4) and 23(3)); and
 - (b) all material information in the register entry is not required (*see* regulation 42A).
- (2) An offer of financial products is a **simplified disclosure offer** if—
 - (a) the offer is an offer—
 - (i) of debt securities or equity securities that rank equally with, or in priority to, existing quoted products of the issuer; or
 - (ii) of options referred to in section 43 of the Act where the underlying financial products are equity securities that rank equally with, or in priority to, existing quoted products of the issuer; or
 - (iii) referred to in section 44 of the Act where—
 - (A) the convertibles are debt securities or equity securities that rank equally with, or in priority to, existing quoted products of the issuer; and
 - (B) the new products are debt securities, equity securities, or managed investment products that rank equally with, or in priority to, existing quoted products of the issuer; and

- (b) the existing quoted products have been quoted on a licensed market (the **licensed market**) at all times during the 3-month period before the time of the offer; and
 - (c) trading in the existing quoted products on the licensed market was not suspended for more than a total of 5 trading days during the 3-month period referred to in paragraph (b); and
 - (d) the market rules of the licensed market contain continuous disclosure provisions; and
 - (e) the issuer has, at a relevant time, provided a notice that complies with regulation 49H to the licensed market operator that operates the licensed market for the purpose of that notice being notified to the market.
- (3) In this regulation,—
- existing quoted products** means the financial products that are quoted at the time of the offer
- relevant time**, in relation to an offer of financial products, means—
- (a) a time within the 24-hour period before the offer is made; or
 - (b) an earlier time required by the licensed market operator; or
 - (c) if a similar notice is also being given for the purposes of an offer of the financial products in Australia, an earlier time required by ASX Limited (a company incorporated in Australia) for giving the similar notice.
- (4) In this regulation, a financial product ranks equally with, or in priority to, another financial product if—
- (a) it has that ranking on a liquidation of the issuer; and
 - (b) in the case of equity securities in relation to other equity securities, it has that ranking on a liquidation of the issuer and on the payment of dividends.

49H Cleansing notice

- (1) This regulation applies to a notice under regulation 49G(2)(e).
- (2) The notice must—
 - (a) state that an offer for issue or sale is being made using short-form disclosure; and
 - (b) state that the notice is provided under regulation 49G(2)(e); and
 - (c) state that, as at the date of the notice, the issuer is in compliance with the continuous disclosure obligations that apply to it in relation to the existing quoted products; and
 - (d) state that, as at the date of the notice, the issuer is in compliance with its financial reporting obligations; and

- (e) set out the information (if any) that is excluded information as at the date of the notice; and
- (f) in the case of an offer involving equity securities, describe—
 - (i) the potential effect that the offer will have on the control of the issuer; and
 - (ii) the consequences of that effect.
- (3) If the offer is an offer referred to in section 44 of the Act and the convertibles are equity securities, subclause (2)(f) applies to the convertibles and, if the new products are equity securities, subclause (2)(f) also applies to those securities.
- (4) The notice must contain information under subclause (2)(e) and (f) only to the extent to which it is material information.
- (5) If the licensed market on which the existing quoted products are quoted is the NXT market,—
 - (a) subclause (2)(c) and (e) does not apply; but
 - (b) the notice must—
 - (i) state that, as at the date of the notice, the issuer is in compliance with the continuous disclosure obligations and all other alternative disclosure obligations under the listing rules of the NXT market that apply to it in relation to the existing quoted products; and
 - (ii) set out the material information that is not generally available to the market and that has not been disclosed to the market under a continuous disclosure obligation or an alternative disclosure obligation.
- (6) *See* regulation 54A (which provides for the correction of a defect in a notice under this regulation).
- (7) In this regulation,—
 - control** has the same meaning as in clause 48 of Schedule 1 of the Act
 - excluded information** means information to which a continuous disclosure obligation would apply but which has not been disclosed under such an obligation as a result of an exclusion in, or a waiver given under, the listing rules for the licensed market upon which the existing quoted products are quoted
 - existing quoted products** means the quoted financial products referred to in regulation 49G(2)
 - financial reporting obligations**, in relation to an issuer, means requirements imposed under—
 - (a) the Act or another enactment to prepare financial statements or group financial statements in relation to the issuer, its group, or (if it is a manager) a scheme of which it is a manager for the most recently completed accounting period, to have those statements audited, and to lodge or register those statements; and

- (b) any listing rules of the licensed market that provide for financial statements to be released to the market for a more recent interim accounting period than the period referred to in paragraph (a)

NXT market means the licensed market operated by NZX Limited under that name.

49I Cleansing notice may not be provided in certain circumstances

- (1) A notice under regulation 49H may not be provided under regulation 49G(2)(e) (and, accordingly, the requirements of regulation 49G(2) are not satisfied) if—
 - (a) the offer is made within 3 months after a change to the essential nature of the issuer’s business; or
 - (b) the offer is made within 3 months after a transaction for which the issuer has provided disclosure to the licensed market as if it were listing on that market; or
 - (c) the offer is made in connection with enabling—
 - (i) a change to the essential nature of the issuer’s business; or
 - (ii) a transaction for which the issuer will be required to provide disclosure to the licensed market as if it were listing on that market; or
 - (d) the FMA has, in the 12-month period before the offer is made, made an order under section 474 of the Act in respect of the issuer.
- (2) Regulation 49G is subject to this regulation.

13 Regulation 50 amended (Duty to notify changes to Registrar)

In regulation 50(1)(a)(ii), revoke the example.

14 Regulation 52 replaced (Annual confirmation notice for open PDS)

Replace regulation 52 with:

52 Confirmation notice

- (1) For the purposes of section 97 of the Act, an issuer of regulated products must, at the times referred to in regulations 52A and 52B, lodge with the Registrar—
 - (a) a confirmation notice; and
 - (b) evidence of the board’s consent to the lodgement of the confirmation notice (being consent that is given no more than 5 working days before that lodgement).
- (2) The confirmation notice must confirm that, as at the date of the board’s consent to the lodgement of the notice, an offeror is not prohibited under section 82(1) of the Act from offering, or continuing to offer, financial products under the regulated offer.

- (3) Evidence of the board's consent under this regulation may include a statement of the board's consent to the lodgement that is signed on behalf of the board—
 - (a) by 2 directors of the issuer; or
 - (b) if the issuer has only 1 director, by that director.
- (4) Subclause (3) does not limit the form that the evidence may take.

52A Annual confirmation notice

- (1) A confirmation notice and evidence under regulation 52 must be lodged with the Registrar in each year not later than 1 month after the confirmation date.
- (2) However, this regulation applies only if, at the confirmation date, at least 1 PDS on the register entry has an open for applications status.
- (3) In this regulation and regulation 52B, **confirmation date**, in relation to an issuer and a register entry, means—
 - (a) the anniversary in each year of the date of lodgement of the PDS on the register entry (or, if more than 1 PDS has been lodged, the anniversary in each year of the date of lodgement of the first PDS); or
 - (b) any other date that the issuer adopts as the confirmation date (*see* subclause (4)).
- (4) A date that is adopted under subclause (3)(b) is effective only if—
 - (a) the date is notified to the Registrar; and
 - (b) in the case of a date that is adopted as the first confirmation date for the register entry, the period between the date of lodgement of the PDS referred to in subclause (3)(a) and the date that is adopted does not exceed 13 months; and
 - (c) the period between any 2 confirmation dates does not exceed 13 months.

52B Supplementary confirmation notice if PDS or fund opens after being closed

- (1) This regulation applies if—
 - (a) a PDS has a closed for applications status or a specified fund in a managed fund that is covered by a PDS has a closed to all investment status; and
 - (b) at the time of the most recent confirmation date, the PDS had a closed for applications status or the specified fund had a closed to all investment status.
- (2) A confirmation notice and evidence under regulation 52 must be lodged with the Registrar before—
 - (a) the status of the PDS changes to an open for applications status; or
 - (b) the status of the specified fund changes to an open status or a closed to new investors status.

15 New regulation 53A inserted (Certain members of defined benefit schemes may request information)

After regulation 53, insert:

53A Certain members of defined benefit schemes may request information

- (1) This regulation applies if a member of a defined benefit scheme to whom contributions are not allocated on a defined basis (A) requests from the issuer 1 or more of the following:
 - (a) an estimate of A's benefits:
 - (b) a copy of a report of an actuary required under section 169 of the Act:
 - (c) a statement of the specific interest, mortality, and other assumptions and bases of calculation applied in determining the value of the assets and liabilities of the scheme for the purposes of the actuarial report:
 - (d) if A is considering a proposed change to A's benefits,—
 - (i) a statement of the specific interest, mortality, and other assumptions and bases of calculation applied in determining the benefits under consideration; and
 - (ii) if different assumptions and bases of calculation have been applied in the last 12 months in determining similar benefits to those under consideration, a statement of the reason why different bases and assumptions applied.
- (2) For the purposes of section 96 of the Act, the issuer must, after receiving a request from A, provide the document or other information to A as soon as practicable but, in any event, within 5 working days after the issuer receives the request.
- (3) The document or other information must be provided by giving it to A or delivering or sending it to A's address.
- (4) The document or other information must be provided free of charge.
- (5) In this regulation, **proposed change** includes (without limitation)—
 - (a) an election to convert any benefit into a lump sum:
 - (b) an election to defer receipt of a benefit:
 - (c) a change to a benefit regardless of whether or not the benefit is specified in the governing document of the scheme of which A is a member:
 - (d) an election to convert all or part of a benefit into a benefit to be provided to some other person:
 - (e) an election to transfer a benefit to another scheme or from one section of a scheme to another section of the same scheme.

16 Regulation 54 amended (Disclosure for unquoted convertible financial products where holder has option to convert)

- (1) In regulation 54(1), replace “convertible financial product” with “specified convertible”.
- (2) In regulation 54(2), replace “convertible financial product” with “specified convertible”.
- (3) Replace regulation 54(5) with:

(5) In this regulation,—

correcting document, in relation to a deficiency referred to in subclause (1)(b), means a document that—

- (a) corrects the deficiency; and
- (b) states the reason why this regulation applies

option to convert means the option of the product holder referred to in the definition of specified convertible

PDS means the PDS for the offer of the specified convertible

register entry means the register entry for the offer of the specified convertible

specified convertible means a convertible that will be converted, or is or may become convertible, into another financial product at the option of the product holder (whether or not the financial product will be converted, or is or may become convertible, in any other circumstances).

17 New regulation 54A and cross-heading inserted

After regulation 54, insert:

Correcting defective cleansing notice

54A Correcting defective cleansing notice

- (1) This regulation applies if—
 - (a) a notice to which regulation 49H applies is defective; and
 - (b) the issuer becomes aware of the defect in the notice before the close of the offer to which the notice relates.
- (2) For the purposes of section 97 of the Act, the issuer must, within a reasonable time after becoming aware of the defect, provide a notice to the licensed market operator that sets out the information necessary to correct the defect (for the purpose of the licensed market operator notifying that information to the market).
- (3) For the purposes of section 98(2)(b) of the Act, section 98(1) of the Act does not apply to information provided under this regulation.
- (4) In this regulation, a notice is **defective** if—
 - (a) there is—

- (i) a statement in the notice that is false or misleading or that is likely to mislead; or
 - (ii) an omission from the notice of information that is required to be contained in the notice by regulation 49H; or
 - (iii) a circumstance that has arisen since the notice was provided to the licensed market operator that would have been required by regulation 49H to be contained in the notice if it had arisen before the notice was provided, and the circumstance is not so contained in the notice; and
- (b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

18 Regulation 56 amended (Duty to make fund update publicly available)

- (1) Replace regulation 56(1) with:
- (1) Every manager of a registered scheme that is a managed fund must make publicly available, within 20 working days after the last day of each quarter of each disclosure year,—
- (a) a fund update for each specified fund in the registered scheme; and
 - (b) a fund update for each specified multi-fund investment option in the registered scheme; and
 - (c) a fund update for each specified life cycle stage in a life cycle investment option in the registered scheme.
- (2) In regulation 56(2)(b), replace “each fund” with “each specified fund, specified multi-fund investment option, and specified life cycle stage”.
- (3) After regulation 56(2), insert:
- (2A) If a managed fund is a defined benefit scheme, subclause (1) or (2) applies if, and only if, contributions are allocated on a defined basis to any member.

19 Regulation 57 amended (Information at start of fund update)

- (1) In regulation 57(a), before “; and”, insert “(or, in the case of a specified multi-fund investment option or life cycle stage, the words “Investment update”)”.
- (2) In regulation 57(b), after “identify the fund”, insert “, investment option, or stage”.
- (3) In regulation 57(c), after “that fund”, insert “, investment option, or stage”.

20 Regulation 58 replaced (Content of fund update)

Replace regulation 58 with:

58 Content of fund update for funds

Every fund update for a fund must contain all of the information specified in Part 4 of Schedule 4 that is applicable.

58A Content of fund update for specified multi-fund investment option or specified life cycle stage

- (1) Every fund update for a specified multi-fund investment option or specified life cycle stage must contain all of the information specified in Part 4 of Schedule 4 that is applicable (applied with all necessary modifications as if the investment option or stage were a fund).
- (2) However, if the manager reasonably considers that it is likely to be useful to investors, the information in clauses 67 to 72 of Schedule 4 may (instead of being provided as would otherwise be required by subclause (1)) be—
 - (a) set out on a per-fund basis (that is, on a basis relating to the funds to which the specified multi-fund investment option or specified life cycle stage relates); or
 - (b) incorporated by reference to a relevant fund update for each fund to which the specified multi-fund investment option or specified life cycle stage relates.
- (3) In this regulation, **relevant fund update** means a fund update that is publicly available and is prepared as at the same date as the fund update for the specified multi-fund investment option or specified life cycle stage.

21 New regulation 61A inserted (Fund update must be given if PDS incorporates it by reference)

After regulation 61, insert:

61A Fund update must be given if PDS incorporates it by reference

- (1) This regulation applies if a PDS for an offer of managed investment products in a managed fund incorporates by reference a relevant fund update for a fund or other investment option (the **fund or option**) as referred to in clause 8A of Schedule 4.
- (2) For the purposes of section 96 of the Act, the manager of the managed fund must, before accepting contributions to, or investments in, the fund or option in respect of a retail investor, give the relevant fund update to the retail investor.
- (3) In this regulation, a **relevant fund update** means a fund update for the fund or option that—
 - (a) is one of the 4 fund updates most recently made publicly available or (if regulation 56(2) applies) the fund update most recently made publicly available; and
 - (b) includes the information required in the PDS by clauses 28, 33, and 37 of Schedule 4 for the fund or option (to the extent that the information is not contained in the PDS).

22 Regulation 65 amended (When confirmation information is provided)

Replace regulation 65(2) with:

(2) See the definition of wholesale investor in regulation 5(5A).

23 Regulation 68 amended (How confirmation information is provided)

(1) In regulation 68(1)(a), before “through”, insert “by making it available”.

(2) Replace regulation 68(4)(d) with:

(d) the requirement in that paragraph for the product holder to agree to the method does not apply if, before 1 December 2014 or during the transition period, the issuer provided similar information to the product holder on a periodic basis in accordance with the former enactments (for example, under the Securities Act (Unit Trust Certificates) Exemption Notice 2012).

(3) After regulation 68(4), insert:

(4A) In subclause (4)(d), **former enactments** and **transition period** have the same meanings as in clause 16(1) of Schedule 4 of the Act.

24 Regulation 71 amended (How confirmation information for KiwiSaver schemes, superannuation schemes, and workplace savings schemes is provided)

In regulation 71(a), before “through”, insert “by making it available”.

25 New regulations 71A to 71C and cross-heading inserted

After regulation 71, insert:

Ongoing confirmation for derivatives investor money or property

71A Ongoing confirmation for derivatives

(1) This regulation and regulations 71B and 71C—

(a) apply to regulated products that are derivatives; and

(b) do not limit the application of regulations 65 to 68 to derivatives.

(2) For the purposes of section 100(1) of the Act, a prescribed circumstance is the expiry of a reporting period.

(3) Regulations 71B and 71C apply for the purposes of confirmation in the circumstance specified in subclause (2).

(4) If there is no information that is required to be provided under regulation 71B in relation to a reporting period, confirmation information does not need to be provided under this regulation for that period.

(5) In this regulation and regulations 71B and 71C,—

derivatives investor money has the same meaning as in regulation 238

derivatives investor property has the same meaning as in regulation 238

reporting period means—

- (a) each 6-month period of a year (where each period ends on the date that the derivatives issuer determines); or
- (b) each shorter period agreed with the investor.

Example

The derivatives issuer and an investor agree on a daily reporting period (with the confirmation information being made available through an electronic facility).

71B Ongoing confirmation information for derivatives

- (1) The confirmation information that must be provided is, in relation to an investor, the following (as at the end of the reporting period to which the information relates):
 - (a) a list of the investor's derivatives issued by the derivatives issuer;
 - (b) in the case of a derivative that can be terminated or closed out by the investor at any time, the value of the derivative;
 - (c) the total amount of derivatives investor money held by the derivatives issuer on behalf of the investor;
 - (d) the total amount that is allocated to margins (if any).
- (2) In this regulation, **investor** means—
 - (a) a retail investor on behalf of whom derivatives investor money is held at the end of the reporting period; or
 - (b) a retail investor who, at the end of the reporting period, holds a derivative with the derivatives issuer that can, under the terms of the derivative, be terminated or closed out by the investor at any time.
- (3) For the purposes of subclause (1)(b), the **value** is the amount the investor will receive if the investor chooses to terminate or close out the derivative.

71C How ongoing confirmation information for derivatives is provided

The confirmation information must, not later than 10 working days after the expiry of the reporting period, be provided to the investor (A)—

- (a) by making it available through an electronic facility (but only if A has agreed to this method); or
- (b) by giving it to A or delivering or sending it to A's address.

26 Regulation 87 amended (Custodian must obtain assurance engagement)

- (1) Replace regulation 87(1) and (2) with:
 - (1) A custodian must obtain, within 4 months after the relevant date, an assurance engagement with a qualified auditor done in accordance with applicable auditing and assurance standards.

- (2) The custodian must, within 20 working days after obtaining an assurance report, provide a copy of the assurance report to each of the relevant persons.
- (2) After regulation 87(3), insert:
- (4) In this regulation and regulation 88,—
- relevant date**, in relation to a custodian, means—
- (a) the custodian’s balance date; or
 - (b) a date in each calendar year that is—
 - (i) determined by the custodian; and
 - (ii) notified in writing, within 10 working days after the determination is made, to each of the relevant persons
- relevant persons** means,—
- (a) in the case of a restricted scheme, the FMA and (unless the manager is the custodian) the manager of the scheme;
 - (b) in the case of any other scheme, the manager of the scheme and (unless the supervisor is the custodian) the supervisor of the scheme.
- (5) The following apply for the purposes of the date under paragraph (b) of the definition of **relevant date** in subclause (4):
- (a) in the case of a date that is adopted as the first relevant date, the date must be within the first 12 months of this regulation applying to the custodian in respect of the scheme; and
 - (b) the custodian may change the date if—
 - (i) the period between any 2 dates does not exceed 15 months; and
 - (ii) the change is notified in writing, within 10 working days after the custodian decides to make the change, to each of the relevant persons; and
 - (c) if the custodian adopts a date in accordance with paragraph (a) or changes the date in accordance with paragraph (b), it need not have a date in a particular calendar year.

27 Regulation 88 amended (Requirements of assurance engagement)

- (1) In regulation 88(1)(a), replace “accounting period” with “relevant period”.
- (2) In regulation 88(1)(b), replace “accounting period” with “relevant period”.
- (3) After regulation 88(3), insert:
- (4) In this regulation, **relevant period**, in relation to a custodian, means a 12-month period ending on the relevant date of the custodian, and if, as a result of the date on which it became a custodian or a change of the relevant date of the custodian, the period ending on that date is longer or shorter than 12 months, that longer or shorter period is a relevant period.

28 Regulation 109 amended (Audit of particular register)

Replace regulation 109(1) with:

- (1) An audit of a register of regulated products must,—
 - (a) in the case of managed investment products, be carried out every year within 4 months after the balance date of the registered scheme:
 - (b) in any other case, be carried out every year within 4 months after the issuer's balance date.

29 New regulation 237A and cross-heading inserted

After regulation 237, insert:

Circumstance in which custodian requirements do not apply

237A Requirements do not apply if money or property held solely for completing transaction or securing obligation

Section 445 of the Act does not apply to investor money or investor property if it is held solely for completing a transaction, securing an obligation, or both.

30 Regulation 242 amended (When derivatives investor money ceases to be held on trust)

- (1) After regulation 242(1)(b), insert:
 - (ba) is used to acquire a derivative with the issuer in accordance with the investor's express instructions:
- (2) After regulation 242(1), insert:
 - (1A) Money referred to in subclause (1) ceases to be derivatives investor money when it ceases to be held on trust under that subclause.
 - (1B) Subclause (1)(ba) does not include using money to meet any current or future margin or collateral requirement.

31 Regulation 243 amended (When derivatives investor property ceases to be held on trust)

After regulation 243(1), insert:

- (1A) Property referred to in subclause (1) ceases to be derivatives investor property when it ceases to be held on trust under that subclause.

32 Regulation 244 amended (Responsibilities of derivatives issuer in event of shortfall)

- (1) Replace regulation 244(1) with:
 - (1) The derivatives issuer must,—
 - (a) if it carries out authorised hedging activities, carry out an equity-based reconciliation in accordance with regulation 244A; or

- (b) in any other case, carry out an equity-based reconciliation in accordance with regulation 244A or a cash-based reconciliation in accordance with regulation 244B.
- (2) In regulation 244(2), (4), and (5) replace “the amount of money in the trust account” with “the specified aggregate”.
- (3) In regulation 244(3), delete “(and each amount deposited is for the purposes of these regulations deemed to be derivatives investor money)”.
- (4) After regulation 244(3), insert:
 - (3A) If the derivatives issuer has deposited money in the trust account under subclause (3), that money—
 - (a) does not become derivatives investor money for the purposes of calculating the required amount; but
 - (b) is deemed to be derivatives investor money for all other purposes (subject to regulation 242(1A)).
- (5) Replace regulation 244(6) with:
- (6) In this regulation,—
 - required amount**,—
 - (a) in relation to a reconciliation under regulation 244A, means the required amount calculated under regulation 244A(2);
 - (b) in relation to a reconciliation under regulation 244B, has the same meaning as in regulation 244B
 - shortfall** is the amount by which the required amount exceeds the specified aggregate
 - specified aggregate**,—
 - (a) in relation to a reconciliation under regulation 244A, means the specified aggregate under regulation 244A(3);
 - (b) in relation to a reconciliation under regulation 244B, has the same meaning as in regulation 244B.

33 New regulations 244A and 244B inserted

After regulation 244, insert:

244A Equity-based reconciliation

- (1) A derivatives issuer that carries out an equity-based reconciliation must, at least daily, reconcile the derivatives issuer’s records of the required amount with the specified aggregate.
- (2) In this regulation, to calculate the required amount the derivatives issuer must take the following steps:
 - (a) first, for each investor, the issuer must calculate the sum of the following from its records:

- (i) the amount of derivatives investor money in respect of the investor:
 - (ii) the net realisable value to the investor of derivatives issued by the derivatives issuer to the investor:
 - (b) second, the issuer must disregard the total amounts under paragraph (a) that are negative:
 - (c) third, the issuer must calculate the sum of all of the total amounts under paragraph (a) that are positive (the result being the **required amount**).
- (3) In this regulation, the **specified aggregate** is the sum of the following:
- (a) the amount of money in the trust account:
 - (b) the net realisable value to the derivatives issuer of the derivatives held by the derivatives issuer with any hedging counterparty:
 - (c) the net realisable value of the following types of derivatives investor property:
 - (i) the assets referred to in regulation 239(5)(a):
 - (ii) the property referred to in regulation 239(5)(c):
 - (d) the money held by a hedging counterparty on behalf of the derivatives issuer as a result of the use of derivatives investor money or property in authorised hedging activities under regulation 242(1)(d) or 243(1)(d).
- (4) In this regulation, the **net realisable value** on a particular day is,—
- (a) in the case of a derivative, the fair value of the derivative on that day determined in accordance with GAAP; and
 - (b) in any other case, the net amount that the issuer could reasonably expect to realise on that day for the relevant property.

244B Cash-based reconciliation

- (1) A derivatives issuer that carries out a cash-based reconciliation must, at least daily, reconcile the derivatives issuer's records of the required amount with the specified aggregate.
- (2) In this regulation,—
required amount is the total amount of derivatives investor money in respect of all investors
specified aggregate is the amount of money in the trust account.

34 Regulation 246 amended (Insolvency)

In regulation 246(1)(c), after “243(1)(d)”, insert “(less any obligations owed by the derivatives issuer to the hedging counterparty that have arisen from this use)”.

35 Regulation 264 amended (Precondition concerning pre-offer advertising)

Replace regulation 264(2) with:

- (2) A person may distribute an advertisement of the offer or intended offer if the person complies with either of the following (subject to any Australian exemption or declaration):
- (a) section 734 or 1018A of the Corporations Act 2001 (Aust) and any regulations made under that Act that relate to those provisions; or
 - (b) any legislation enacted or made in substitution for those sections or regulations (whether with or without modification).

36 Subpart 4 heading in Part 9 amended

In Part 9, in the subpart 4 heading, replace “Prescribed rate of interest, status of PDS, and other miscellaneous” with “Miscellaneous”.

37 New regulations 280A and 280B inserted

After regulation 280, insert:

280A Notices or other documents given, provided, or served by FMA

- (1) Any notice or other document that the FMA may or must give to, provide to, or serve on any person under the Act is sufficiently given, provided, or served if it is—
- (a) in writing; and
 - (b) signed by 1 or more of the members of the FMA or by any person purporting to act with the authority of the FMA; and
 - (c) sent, provided, or served in accordance with regulation 280B.
- (2) This regulation and regulation 280B do not apply—
- (a) to a requirement to give, provide, or serve any notice or other document in any proceeding in a court; or
 - (b) if the Act or these regulations provide for the notice or other document to be given, provided, or served in a particular manner.

280B How FMA notices or other documents are given, provided, or served

- (1) Any notice or other document required or authorised under the Act to be given to, provided to, or served on any person by the FMA may—
- (a) be given, provided, or served on an individual—
 - (i) by delivering it personally or by an agent (such as a courier) to the person; or
 - (ii) by sending it by post addressed to the person at the person’s usual or last known place of residence or business; or

- (iii) by sending it by fax or email to the person's fax number or email address provided by the person for the purpose; or
 - (iv) in any other manner that a District Court Judge directs:
 - (b) be given to, provided to, or served on a company, within the meaning of the Companies Act 1993, in a manner provided for in section 388 of that Act:
 - (c) be given to, provided to, or served on an overseas company in a manner provided for in section 390 of the Companies Act 1993:
 - (d) be given to, provided to, or served on any other body corporate in a manner in which it could be served if the body corporate were a company within the meaning of the Companies Act 1993.
- (2) In the absence of proof to the contrary, a notice, document, or notification sent to a person in accordance with—
- (a) subclause (1)(a)(ii) must be treated as having been given to, provided to, or served on the person when it would have been delivered in the ordinary course of post; and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted:
 - (b) subclause (1)(a)(iii) must be treated as having been given to, provided to, or served on the person on the second working day after the day on which it is sent.
- (3) Section 392 of the Companies Act 1993 applies for the purposes of subclause (1)(b) to (d).
- (4) If a person is absent from New Zealand, a notice given to, provided to, or served on the person's agent in New Zealand in accordance with subclause (1) must be treated as having been given to, provided to, or served on the person.
- (5) If a person has died, the notice may be given, provided, or served, in accordance with subclause (1), on his or her personal representative.

38 Schedule 1 amended

- (1) In Schedule 1, replace clause 1 with:

1 Overview

This schedule provides for transitional, savings, and related provisions relating to—

- (a) the enactment of the Act; and
 - (b) amendments made to these regulations.
- (2) In Schedule 1, after clause 30, insert:

Part 2**Transitional provisions relating to Financial Markets Conduct
Amendment Regulations 2015****31 Certain requirements need not be complied with before 1 December 2016***Fund updates for multi-fund investment options and life cycle stages*

- (1) A manager may, during the transition period, comply with these regulations as if the following were not in force:
- (a) regulations 18(1) and (2), 19, 20, and 41(1), (4), (7) to (10), (12), and (13) of the 2015 regulations:
 - (b) regulation 41(11) of the 2015 regulations (to the extent that it relates to clause 24(3) of Schedule 4).

Certain other fund update requirements

- (2) A manager may, during the transition period, comply with these regulations as if regulation 41(24), (26), (28), and (31) to (33) of the 2015 regulations were not in force.

Ongoing confirmation information for derivatives

- (3) A derivatives issuer may, during the transition period, comply with these regulations as if regulation 25 of the 2015 regulations were not in force.

Investment proposal for DIMS

- (4) A provider may, during the transition period, comply with these regulations as if regulation 46(1) and (2) of the 2015 regulations were not in force.

Responsibilities of derivatives issuers in event of shortfall

- (5) During the period from the beginning of 1 December 2015 until the close of 30 November 2016, regulations 244 to 244B do not apply to a derivatives issuer if the derivatives issuer complies with the conditions in clause 6 of the Financial Markets Conduct (Derivatives Issuers—Responsibilities in Event of Shortfall) Exemption Notice 2015 (applied with all necessary modifications as if that clause were still in force).

Interpretation

- (6) In this regulation,—
- 2015 regulations** means the Financial Markets Conduct Amendment Regulations 2015
- transition period** means the period from the beginning of 17 December 2015 until the close of 30 November 2016.

39 Schedule 2 amended

- (1) In Schedule 2, after clause 1(3), insert:

- (4) If the debt securities are offered for the purposes of a managed investment scheme, the following apply (unless the context otherwise requires) with all necessary modifications:
- (a) a reference in this schedule to the issuing group must be treated as a reference to the scheme and all subsidiaries of the scheme at the date of the PDS (and the scheme and those subsidiaries must be treated as members of the issuing group); and
 - (b) a reference in this schedule to the liquidation of the issuer must be treated as a reference to the winding up of the scheme; and
 - (c) a reference in this schedule to the issuer's liabilities, assets, equity, financial position, performance, or balance date must be treated as a reference to the scheme's liabilities, assets, equity, financial position, performance, or balance date; and
 - (d) a reference in this schedule to the issuer's credit rating must be treated as a reference to the scheme's credit rating; and
 - (e) a reference to the issuer in clause 37(4), 38, 39(6), or 48(2)(a) must be treated as a reference to the scheme; and
 - (f) a reference to the issuer in clause 58 must be treated as a reference to both the issuer and the scheme.
- (2) In Schedule 2, clause 6, insert as subclause (2):
- (2) In the case of convertibles, the statement in subclause (1) must be modified with the effect that the statement—
- (a) identifies the debt securities as being convertible; and
 - (b) includes the name of the new products and the name of the issuer of the new products; and
 - (c) briefly specifies how or when the conversion may or will occur (for example, at the investor's option, at the issuer's option, on a specified date, or on the occurrence of a particular event); and
 - (d) briefly specifies how the conversion will affect the form of returns.
- (3) In Schedule 2, clause 9, insert as subclause (2):
- (2) In the case of convertibles, the table must also include a brief description of—
- (a) the new products; and
 - (b) the circumstances in which the conversion may or will occur; and
 - (c) the terms of the conversion.
- (4) In Schedule 2, after clause 11(4), insert:
- (5) In the case of convertibles, the statement in subclause (2) must be modified with the effect that the statement also—
- (a) states whether or not the new products are quoted or approved for trading, or the issuer intends that those products will be quoted or approved

for trading, on a market licensed in New Zealand or on another established market; and

- (b) if the issuer does not intend that the new products will be quoted or approved for trading on an established market, includes a statement that the investor may not be able to sell those new products; and
- (c) if the new products cannot be sold or transferred, includes a statement to that effect.

(5) In Schedule 2, after clause 15(3), insert:

(4) In the case of convertibles where the new products are equity securities, the KIS must include a statement in the following form after the statement in subclause (1) and before the statement in subclause (3):

“If/When* these [*name of financial products*] convert into shares, these risks will change significantly. You should consider whether the degree of uncertainty about [*name of issuing group*]’s future performance and returns is suitable for you.”

*Select one.

(6) In Schedule 2, replace clause 23(1) with:

(1) The purpose of this clause is to enable information to be provided to assist investors to assess whether the returns offered under the debt securities adequately compensate for the risks of investing (by comparing the risk premium offered with market pricing information).

(7) In Schedule 2, after clause 30(5), insert:

(6) In the case of convertibles, the following apply:

- (a) if the new products are of the same class as financial products that are quoted at the time of the offer, the PDS must include a statement that those products are already quoted:
- (b) if the new products are equity securities that are not quoted at the time of the offer, the PDS must include a description of the key features of the equity securities (to the extent that those features are not already disclosed in section 3 of the PDS (terms of the offer) and are not features that apply to ordinary shares in a company generally).

(7) The description under subclause (6)(b) must be sufficient to make it clear why a feature is of significance to investors.

(8) In Schedule 2, replace clause 37(5)(a) with:

- (a) the PDS must, in the table under subclause (1) or in 1 or more separate tables, separately specify the information referred to in subclause (1)(a) to (i) and (k) for the business, subsidiary, or body corporate for each period referred to in subclause (6) if it was not part of the issuing group for the whole of that period (but this paragraph does not require information for such a period after it ceased to be a part of the issuing group):

- (9) In Schedule 2, after clause 37(5), insert:
- (6) For the purposes of subclause (5)(a), the periods are, in respect of a business, subsidiary, or body corporate (A),—
- (a) A's most recently completed accounting period before the date of the PDS:
 - (b) A's accounting period that immediately precedes the period referred to in paragraph (a):
 - (c) A's accounting period that immediately precedes the period referred to in paragraph (b):
 - (d) if the period referred to in paragraph (a) ended more than 9 months before the date of the PDS and A became or will become part of the issuing group during or after the issuing group's most recent period, an interim accounting period from the balance date of the period referred to in paragraph (a) and ending on a stated date (being an interim accounting period that is not less than 6 months).
- (7) Despite subclauses (5)(a) and (6), information is not required under subclause (5)(a) for an accounting period of A if it ends before the start of the first relevant period for which information is included under subclause (1).
- (10) In Schedule 2, after clause 39(1)(i), insert:
- (j) if clause 37(5) applies in respect of a business, subsidiary, or body corporate (A) and information is provided under clause 37(5)(b), A must be treated as being a member of the issuing group for the purposes of paragraph (a) of the definition of relevant period in clause 1(1).
- (11) In Schedule 2, after clause 48(2), insert:
- (3) In the case of convertibles, the PDS must—
- (a) include a statement to the effect that if or when the debt securities convert into other financial products, the risks will change significantly; and
 - (b) identify the following general risks if the new products are equity securities:
 - (i) that an investor may receive a return only if dividends are paid or the issuer increases in value and the investor is able to sell his or her equity securities at a higher price than the investor paid for the convertibles:
 - (ii) that the price of the equity securities may go up or down:
 - (iii) that if the issuer of the equity securities runs into financial difficulties and is wound up, an investor will be paid only after all creditors and, if applicable, holders of preference shares have been paid:
 - (iv) that an investor may lose some or all of his or her investment.
- (12) In Schedule 2, after clause 62, insert:

Part 1A
Modifications for simplified disclosure PDS

62A Application

- (1) This Part applies to a simplified disclosure PDS for a simplified disclosure offer of debt securities.
- (2) *See* regulation 22(2)(b)(i), which refers to the information requirements in Part 1 of this schedule being modified by this Part in the case of a simplified disclosure PDS.
- (3) Part 1 of this schedule as modified by this Part applies with all other modifications that are necessary to ensure that the PDS is consistent with the modifications made by this Part.
- (4) If, under this Part, a PDS is not required to contain certain information, the issuer may nevertheless elect to include that information in the PDS (in whole or in part).

62B PDS sections

- (1) This clause modifies clauses 4, 24 to 26, and 35 to 46.
- (2) The PDS is not required to have—
 - (a) a section headed “[*Name of issuing group*] and what it does” (and, accordingly, clauses 24 to 26 do not apply):
 - (b) a section headed “[*Name of issuing group*]’s financial information” (and, accordingly, clauses 35 to 46 do not apply).

62C Key information summary

- (1) This clause modifies clauses 5 and 14.
- (2) The KIS is not required to have a section headed “Where you can find [*name of issuing group*]’s financial information” (and, accordingly, clause 14 does not apply).
- (3) The KIS must have, as the last section of the KIS, a section headed “Where you can find other market information about [*name of issuer*]”.
- (4) The section referred to in subclause (3) must include—
 - (a) a statement that short-form disclosure is being used for the offer; and
 - (b) a statement of the reasons why short-form disclosure may be made (for example, because the debt securities being offered rank equally with, or in priority to, quoted financial products of the issuer); and
 - (c) a brief description of the existing quoted financial products referred to in regulation 49G(2); and
 - (d) a statement to the effect that the issuer is subject to a disclosure obligation that requires it to notify certain material information to a licensed

market operator for the purpose of that information being made available to participants in the market; and

- (e) if the existing quoted financial products referred to in regulation 49G(2) are debt securities, a statement to the effect that investors should look at the market price of the quoted debt securities of the issuer in order to find out how the market assesses the returns and risk premium for those debt securities; and
- (f) the URL of the issuer's page on the licensed market operator's Internet site.

62D Diagram showing ranking of debt securities

- (1) This clause modifies clauses 30(2)(b) and 31.
- (2) If the existing quoted financial products referred to in regulation 49G(2) are—
 - (a) debt securities, the diagram under clause 30(2)(b) must also indicate which class referred to in clause 31(1)(a) those products fall within:
 - (b) equity securities, the reference to the total amount of the issuer's equity in the diagram under clause 30(2)(b) must also include a statement to the effect that the amount includes an amount in relation to those quoted equity securities.

- (13) In Schedule 2, after clause 63(1)(k), insert:

(ka) if the offer is a simplified disclosure offer, confirmation (if applicable) that short-form disclosure is being used for the offer:

- (14) In Schedule 2, clause 63(1)(p), after “fact”, insert “and a brief description of the new product”.

- (15) In Schedule 2, after clause 64(6), insert:

(7) This clause does not apply if the offer is a simplified disclosure offer.

- (16) In Schedule 2, after clause 65(3), insert:

(3A) Subclause (1)(c) does not apply if the offer is a simplified disclosure offer.

- (17) In Schedule 2, after clause 67(1)(a), insert:

(ab) if the interest rate or rates are fixed after the date of the PDS, a statement of those rates:

(ac) if the basis on which or the method by which the interest rate or rates will be ascertained involves a variable and that variable is fixed after the date of the PDS, a statement of the amount at which the variable has been fixed:

Example

The debt securities issued by ABC Limited have an interest rate that floats by reference to Libor (the London interbank offered rate). The interest rate is Libor plus a variable that will be fixed after the date of the PDS.

After the date of the PDS, the variable is fixed at 2%. Therefore, the interest rate is a floating rate of Libor plus 2%.

As a floating rate, the rate is not fixed as referred to in paragraph (ab). However, when the variable is fixed at 2%, ABC Limited must lodge with the Registrar a statement of the amount at which the variable has been fixed.

- (18) In Schedule 2, after clause 67(2)(a), insert:
- (ab) in the case of subclause (1)(ab), within 5 working days after the interest rate or rates are fixed:
 - (ac) in the case of subclause (1)(ac), within 5 working days after the variable is fixed:
- (19) In Schedule 2, after clause 67(2), insert:
- (3) In this clause, **interest rate or rates** means the interest rate or rates that may be earned by holding the debt securities.

40 Schedule 3 amended

- (1) In Schedule 3, after clause 5(2), insert:
- (3) In the case of convertibles, the statement in subclause (1) must be modified with the effect that the statement—
- (a) identifies the equity securities as being convertible; and
 - (b) includes the name of the new products and the name of the issuer of the new products; and
 - (c) briefly specifies how or when the conversion may or will occur (for example, at the investor's option, at the issuer's option, on a specified date, or on the occurrence of a particular event); and
 - (d) briefly specifies how the conversion will affect the form of returns.
- (2) In Schedule 3, after clause 8(5), insert:
- (6) In the case of convertibles, the table in subclause (1) must also include a brief description of—
- (a) the new products; and
 - (b) the circumstances in which the conversion may or will occur; and
 - (c) the terms of the conversion.
- (3) In Schedule 3, after clause 10(3), insert:
- (4) In the case of convertibles, the statement in subclause (1) must be modified with the effect that the statement also—
- (a) states whether or not the new products are quoted or approved for trading, or the issuer intends that those products will be quoted or approved for trading, on a market licensed in New Zealand or on another established market; and

- (b) if the issuer does not intend that the new products will be quoted or approved for trading on an established market, includes a statement that the investor may not be able to sell those new products; and
 - (c) if the new products cannot be sold or transferred, includes a statement to that effect.
- (4) In Schedule 3, after clause 32(5), insert:
- (6) In the case of convertibles, the following apply:
 - (a) if the new products are of the same class as financial products that are quoted at the time of the offer, the PDS must include a statement that those products are already quoted:
 - (b) if the new products are equity securities that are not quoted at the time of the offer, the PDS must include a description of the key features of the new products (to the extent that those features are not already disclosed in section 5 of the PDS (terms of the offer) and are not features that apply to ordinary shares in a company generally).
- (7) The description under subclause (6)(b) must be sufficient to make it clear why a feature is of significance to investors.
- (5) In Schedule 3, replace clause 35(3)(a) with:
 - (a) the PDS must, in the table under subclause (1) or in 1 or more separate tables, separately specify the information referred to in subclause (1)(a) to (c) and (e) to (i) for the business, subsidiary, or body corporate for each period referred to in subclause (5) if it was not part of the issuing group for the whole of that period (but this paragraph does not require information for such a period after it ceased to be a part of the issuing group):
- (6) In Schedule 3, after clause 35(4), insert:
- (5) For the purposes of subclause (3)(a), the periods are, in respect of a business, subsidiary, or body corporate (A),—
 - (a) A's most recently completed accounting period before the date of the PDS:
 - (b) A's accounting period that immediately precedes the period referred to in paragraph (a):
 - (c) A's accounting period that immediately precedes the period referred to in paragraph (b):
 - (d) if the period referred to in paragraph (a) ended more than 9 months before the date of the PDS and A became or will become part of the issuing group during or after the issuing group's most recent period, an interim accounting period from the balance date of the period referred to in paragraph (a) and ending on a stated date (being an interim accounting period that is not less than 6 months).

- (6) Despite subclauses (3)(a) and (5), information is not required under subclause (3)(a) for an accounting period of A if it ends before the start of the first relevant period for which information is included under subclause (1).
- (7) In Schedule 3, clause 38(2)(f), replace “yield-net” with “yield-gross”.
- (8) In Schedule 3, after clause 39(m), insert:
 - (n) if clause 35(3) applies in respect of a business, subsidiary, or body corporate (A) and information is provided under clause 35(3)(b), A must be treated as being a member of the issuing group for the purposes of paragraph (a) of the definition of relevant period in clause 1(1).
- (9) In Schedule 3, after clause 51, insert:

Part 1A

Modifications for simplified disclosure PDS

51A Application

- (1) This Part applies to a simplified disclosure PDS for a simplified disclosure offer of equity securities.
- (2) See regulation 23(1A)(a), which refers to the information requirements in Part 1 of this schedule being modified by this Part in the case of a simplified disclosure PDS.
- (3) Part 1 of this schedule as modified by this Part applies with all other modifications that are necessary to ensure that the PDS is consistent with the modifications made by this Part.
- (4) If, under this Part, a PDS is not required to contain certain information, the issuer may nevertheless elect to include that information in the PDS (in whole or in part).

51B PDS sections

- (1) This clause modifies clauses 3, 16 to 24, and 33 to 43.
- (2) The PDS is not required to have—
 - (a) a section headed “[*Name of issuing group*] and what it does” (and, accordingly, clauses 16 to 24 do not apply):
 - (b) a section headed “[*Name of issuing group*]’s financial information” (and, accordingly, clauses 33 to 40 do not apply):
 - (c) a section headed “Risks to [*name of issuing group*]’s business and plans” (and, accordingly, clauses 41 to 43 do not apply).

51C Key information summary

- (1) This clause modifies clauses 4 and 11 to 13.
- (2) The KIS is not required to have—

- (a) a section headed “Key drivers of returns” (and, accordingly, clause 11 does not apply);
 - (b) a section headed “Key risks affecting this investment” (and, accordingly, clause 12 does not apply);
 - (c) a section headed “Where you can find [*name of issuing group*]’s financial information” (and, accordingly, clause 13 does not apply).
- (3) The KIS must have, as the last section of the KIS, a section headed “Where you can find other market information about [*name of issuer*]”.
- (4) The section referred to in subclause (3) must include—
- (a) a statement that short-form disclosure is being used for the offer; and
 - (b) a statement of the reasons why short-form disclosure may be made (for example, because the equity securities being offered rank equally with, or in priority to, quoted financial products of the issuer); and
 - (c) a brief description of the existing quoted financial products referred to in regulation 49G(2); and
 - (d) a statement to the effect that the issuer is subject to a disclosure obligation that requires it to notify certain material information to a licensed market operator for the purpose of that information being made available to participants in the market; and
 - (e) a statement to the effect that investors should look at the market price of the issuer’s quoted financial products in order to find out how the market assesses the value of those financial products; and
 - (f) the URL of the issuer’s page on the licensed market operator’s Internet site.

51D Key features of [*name of financial products*]

In the section headed “Key features of [*name of financial products*]” (see clause 32), the PDS must include a description of the ranking of the equity securities as compared with each of the issuer’s quoted equity securities in respect of—

- (a) a liquidation of the issuer; and
 - (b) the payment of dividends.
- (10) In Schedule 3, after clause 52(1)(d), insert:
- (da) the fixed price of, or other fixed consideration for, the equity securities (if any), the (fixed or indicative) range within which that price or consideration may be fixed (if any), or a brief description of how the price of, or other consideration for, the equity securities will be fixed:
- (11) In Schedule 3, after clause 52(1)(h), insert:
- (ha) if the offer is a simplified disclosure offer, confirmation (if applicable) that short-form disclosure is being used for the offer:

- (12) In Schedule 3, clause 52(1)(m), after “fact”, insert “and a brief description of the new product”.
- (13) In Schedule 3, replace clause 53(1)(b) with:
- (b) if a table prepared under clause 35 includes financial information under clause 35(2) and (3) for a business, subsidiary, or body corporate, the financial statements from which that information is taken or derived, together with any auditor’s report on those statements:
- (14) In Schedule 3, revoke clause 53(4).
- (15) In Schedule 3, clause 53(5), replace “to (4)” with “and (3)”.
- (16) In Schedule 3, clause 53(6), replace “If group financial statements or interim financial statements referred to in subclause (1)” with “If financial statements referred to in subclause (1)(a), (b), or (d)”.
- (17) In Schedule 3, after clause 53(8), insert:
- (9) This clause does not apply if the offer is a simplified disclosure offer.
- (18) In Schedule 3, after clause 54(2), insert:
- (2A) Subclause (1)(b) does not apply if the offer is a simplified disclosure offer.
- (19) In Schedule 3, clause 55(1), replace “This clause” with “Subclause (2)”.
- (20) In Schedule 3, after clause 55(2), insert:
- (2A) If the price of, or other consideration for, the equity securities is fixed after the date of the PDS, a statement of that price or consideration must be lodged with the Registrar under regulation 51.
- (21) In Schedule 3, after clause 55(3)(b), insert:
- (c) in the case of subclause (2A), within 5 working days after the price or other consideration is fixed.

41 Schedule 4 amended

- (1) In Schedule 4, clause 1(1), definition of **investment option**, replace “non-fund investment option” with “multi-fund investment option”.
- (2) In Schedule 4, clause 1(1), definition of **life cycle stage**, paragraph (a), after “particular fund”, insert “or funds”.
- (3) In Schedule 4, clause 1(1), definition of **life cycle stage**, replace paragraph (b) with:
- (b) if clause 24(4) applies, a representative life cycle stage described in the PDS
- (4) In Schedule 4, clause 1(1), replace the definition of **non-fund investment option** with:
- multi-fund investment option—**

- (a) means an investment option that may be selected by an investor that involves investment in 2 or more funds in allocations set by the manager for that option; but
- (b) does not include a life cycle investment option

(5) In Schedule 4, after clause 8, insert:

PDS supplemented by fund updates

8A PDS supplemented by fund updates

- (1) A PDS is not required to contain the information specified in subclause (2) for a fund or other investment option (the **fund or option**) if—
 - (a) the PDS states that the fund or option is offered under the PDS; and
 - (b) the PDS contains a statement referred to in clause 12(1)(b)(ii) and incorporates by reference the relevant fund update.
- (2) The information is the following information to the extent that it relates to the fund or option:
 - (a) the table required by clause 12(2);
 - (b) the table required by clause 23;
 - (c) the information required by clause 28;
 - (d) the information required by clauses 31 to 39.
- (3) In this clause, a **relevant fund update** means a fund update for the fund or option that—
 - (a) is one of the 4 fund updates most recently made publicly available or (if regulation 56(2) applies) the fund update most recently made publicly available; and
 - (b) includes the information required in the PDS by clauses 28, 33, and 37 for the fund or option (to the extent that the information is not contained in the PDS).
- (4) This clause does not apply in relation to information on a specified life cycle stage.

Multiple-participant schemes

8B Multiple-participant schemes

- (1) This clause applies to a PDS for an offer of interests in a multiple-participant scheme.
- (2) The PDS is not required to contain the information specified in subclause (3) if—
 - (a) each PDS that is given to an investor under section 50 of the Act is accompanied by a relevant supplement; and

- (b) the PDS incorporates that information by reference to the relevant supplements that are given to investors; and
 - (c) the relevant supplements are included in the offer register.
- (3) The information is—
- (a) the information required by the following, to the extent that the information is applicable only to a particular participant or class of participants:
 - (i) clause 21(2)(g) to (i) (information relating to joining the scheme, making investments, and withdrawing investments):
 - (ii) clauses 32 to 34 (information relating to annual fund charges, performance-based fees, and other charges):
 - (b) information relating only to a particular participant, or class of participants, that would otherwise be required to be contained in the PDS.
- (4) If information specified in subclass (3) is not contained in the PDS, the manager may modify the information in the KIS to the extent that is necessary to make the KIS consistent with the rest of the PDS by omitting information from the KIS and incorporating that information by reference to the relevant supplements that are given to investors.
- (5) In this clause,—

multiple-participant scheme means a retirement scheme in which there are at least 2 participants that are not related bodies corporate

participant means a person that, by virtue of the person's participation in the scheme, entitles investors to be admitted as members of the scheme

relevant supplement, in relation to an investor to whom it is given along with the PDS, means a document that contains the information referred to in subclass (3) that applies in connection with the particular participant that has participated in the scheme in respect of the investor.

Example

ABC Limited is a participant of a retirement scheme. The company's participation in the scheme allows its employees to join the scheme on a particular basis that applies only to ABC Limited and its employees.

A PDS is normally required to include information about how investors may join a scheme.

Under this clause, this information is instead included in a supplement that is given to ABC Limited's employees with the PDS.

Multi-fund investment option and life cycle stage

8C Multi-fund investment option and life cycle stage

For the purposes of this schedule,—

- (a) a multi-fund investment option or life cycle stage is in **existence** if every fund to which the option or stage relates is in existence under regulation 5(4)(b):
 - (b) a calculation of the assets or liabilities of a multi-fund investment option or life cycle stage must be carried out by reference to the assets or liabilities of every fund to which the option or stage relates.
- (6) In Schedule 4, replace clause 12(1)(b) with:
- (b) either—
 - (i) contain a statement in the following form:

“These investment options are summarised below. More information about the investment target and strategy for each investment option is provided at [*specify PDS cross-reference*].”; or
 - (ii) contain a statement in the following form:

“Some of these investment options are summarised below. More information about the investment target and strategy for each of these investment options is provided at [*specify PDS cross-reference*].

The other investment options offered under this product disclosure statement are listed below. A summary of the investment target and strategy, and other information about performance and fees, for each of these investment options is contained in a separate fund update. These fund updates should be read together with this product disclosure statement. [*Specify the information required by regulation 33(2)(c).*]”
- (7) In Schedule 4, replace the heading to clause 13 with “**Multi-fund and life cycle investment options**”.
- (8) In Schedule 4, clause 13(1), replace “non-fund investment option” with “multi-fund investment option”.
- (9) In Schedule 4, replace the heading to clause 24 with “**Multi-fund and life cycle investment options**”.
- (10) In Schedule 4, clause 24(1), replace “non-fund investment option” with “multi-fund investment option”.
- (11) In Schedule 4, replace clause 24(3) and (4) with:
- (3) If a multi-fund investment option or a life cycle investment option is covered by the PDS, the table under clause 23 must include a brief description of the multi-fund investment option or life cycle investment option.
 - (4) The description of a life cycle investment option under subclause (3) only needs to relate to enough life cycle stages to give a reasonable representation of the entire life cycle to which the option relates.

- (12) In Schedule 4, in the heading to clause 35, replace “**non-fund investment options**” with “**multi-fund and life cycle investment options**”.
- (13) In Schedule 4, clause 35(1), replace “non-fund investment option” with “multi-fund investment option”.
- (14) In Schedule 4, after clause 51(e), insert:
- (ea) the status of each fund that is, or will be, a specified fund (*see* subclause (2)):
- (15) In Schedule 4, after clause 51(g), insert:
- (ga) if the offer includes a multi-fund investment option,—
 - (i) confirmation of that fact; and
 - (ii) the name of the option; and
 - (iii) a brief description of the option, including a list of the funds to which the option relates:
- (16) In Schedule 4, clause 51, insert as subclause (2):
- (2) For the purposes of subclause (1)(ea), the status of a fund must be described as—
- (a) registered if the name of the fund has been entered on the register entry under clause 53(1)(a) and the offeror intends to make a regulated offer in respect of the fund but is not yet accepting contributions to, or investments in, the fund; or
 - (b) open if—
 - (i) the offeror is accepting contributions to, or investments in, the fund; and
 - (ii) the fund does not have a status under paragraph (c); or
 - (c) closed to new investors if the offeror is still accepting contributions to, or investments in, the fund, but only from or on behalf of existing scheme participants; or
 - (d) closed to all investment if the offeror has previously accepted contributions to, or investments in, the fund, but has ceased to accept further contributions or investments; or
 - (e) disestablished if the fund has previously had a status under any of paragraphs (a) to (d) but is no longer established as a separate fund under the scheme (for example, because the fund has been wound up).
- (17) In Schedule 4, after clause 53, insert:
- 53A Information for specified multi-fund investment option or specified life cycle stage**
- (1) The register entry must, in respect of each specified multi-fund investment option or specified life cycle stage, contain the information specified in clause 53

- (applied with all necessary modifications as if the investment option or stage were a fund).
- (2) However, the information specified in clause 53(1)(c)(vi) to (xi) need not be provided if it is provided on a per-fund basis on the register entry (that is, on a basis relating to the funds to which the investment option or stage relates).
- (18) In Schedule 4, clause 54(3)(b), replace “or 30” with “and 30”.
- (19) In Schedule 4, clause 55(1), delete “Target investment mix”.
- (20) In Schedule 4, clause 55(1), delete “Top 10 investments”.
- (21) In Schedule 4, after clause 55(2), insert:
- (3) The fund update may, after the section headed “Description of this fund”, also have a section headed “Market update” that provides a brief update on market conditions relevant to the specified fund’s performance and risks.
- (22) In Schedule 4, clause 58(3), replace “briefly describe” with “include a description of”.
- (23) In Schedule 4, clause 59(1)(a)(i) and (ii), replace “and tax” with “and accrued tax”.
- (24) In Schedule 4, clause 62(1)(b), after “relevant date”, insert “(or, if the fund has been in existence for 10 or more complete disclosure years, the return for the 10-year period ending on the relevant date)”.
- (25) In Schedule 4, clause 62(2)(a) and (b), replace “and tax” with “and accrued tax”.
- (26) In Schedule 4, clause 62(4), after “return since the fund started”, insert “/for the last 10 years*”.
- (27) In Schedule 4, clause 63(2)(b), replace “portion” with “amount”.
- (28) In Schedule 4, after clause 63(7), insert:
- (7A) The fund update must—
- (a) include a statement in the following form:
“See the product disclosure statement for more information about the basis on which performance fees are charged.”; or
- (b) set out the information required by clause 33 for the specified fund.
- (29) In Schedule 4, revoke the cross-heading above clause 69.
- (30) In Schedule 4, revoke the cross-heading above clause 70.
- (31) In Schedule 4, clause 70(1)(a)(iii), delete “an interest in a fund of a particular asset type or”.
- (32) In Schedule 4, replace clause 70(5) with:
- (5) For the purposes of subclause (1)(a)(iii), if an individual asset is an interest in a fund that is not a related underlying fund and there is no one asset type that is

judged to be the most appropriate, the asset must be classified as an interest in a diversified fund.

(33) In Schedule 4, clause 71, after the example, insert:

(3) The fund update must include a statement of the extent of currency hedging if that information is material information for the specified fund.

42 Schedule 5 amended

(1) In Schedule 5, clause 4, insert as subclause (2):

(2) In the case of convertibles, the statement in subclause (1) must be modified with the effect that the statement—

- (a) identifies the managed investment products as being convertible; and
- (b) includes the name of the new products and the name of the issuer of the new products; and
- (c) briefly specifies how or when the conversion may or will occur (for example, at the investor's option, at the manager's option, on a specified date, or on the occurrence of a particular event); and
- (d) briefly specifies how the conversion will affect the form of returns.

(2) In Schedule 5, after clause 7(3), insert:

(4) In the case of convertibles, the table in subclause (1) must also include a brief description of—

- (a) the new products; and
- (b) the circumstances in which the conversion may or will occur; and
- (c) the terms of the conversion.

(3) In Schedule 5, after clause 8(3), insert:

(4) In the case of convertibles, the statement in subclause (2) must be modified with the effect that the statement also—

- (a) states whether or not the new products are quoted or approved for trading, or the manager intends that those products will be quoted or approved for trading, on a market licensed in New Zealand or on another established market; and
- (b) if the manager does not intend that the new products will be quoted or approved for trading on an established market, includes a statement that the investor may not be able to sell those new products; and
- (c) if the new products cannot be sold or transferred, includes a statement to that effect.

(4) In Schedule 5, after clause 22(5), insert:

(6) In the case of convertibles, if the new products are of the same class as financial products that are quoted at the time of the offer, the PDS must include a statement that those products are already quoted.

- (5) In Schedule 5, clause 47(1)(j), after “fact”, insert “and a brief description of the new product”.
- (6) In Schedule 5, in the Part 3 heading, delete “**and updating register entry**”.

43 Schedule 6 amended

- (1) In Schedule 6, clause 29(a), delete “a link to”.
- (2) In Schedule 6, replace clause 29(b) with:
 - (b) if the issuer is a registered bank, a link to the page on its Internet site where its disclosure statements are published (and in this paragraph **disclosure statements** has the same meaning as in the Reserve Bank of New Zealand Act 1989).

44 Schedule 8 amended

- (1) In Schedule 8, clause 20(1)(a), replace “within the 24-hour period before the offer is made” with “at a relevant time”.
- (2) In Schedule 8, clause 20(5), insert in its appropriate alphabetical order:

relevant time, in relation to an offer of financial products, means—

 - (a) a time within the 24-hour period before the offer is made; or
 - (b) an earlier time required by the licensed market operator; or
 - (c) if a similar notice is also being given for the purposes of an offer of the financial products in Australia, an earlier time required by ASX Limited (a company incorporated in Australia) for giving the similar notice
- (3) In Schedule 8, replace clause 21(1) with:
 - (1) This clause applies if—
 - (a) the notice given under clause 20(1)(a) is defective; and
 - (b) A becomes aware of the defect in the notice,—
 - (i) in the case of subclause (3)(a)(i) or (ii), within 12 months after the relevant financial products are issued or transferred; or
 - (ii) in the case of subclause (3)(a)(iii), before the offer closes.
- (4) In Schedule 8, replace clause 21(3)(a)(ii) with:
 - (ii) an omission from the notice of information that is required to be contained in the notice by clause 20; or
 - (iii) a circumstance that has arisen since the notice was given but before the offer closes that would have been required by clause 20 to be disclosed or otherwise contained in the notice if it had arisen before the notice was given, and the circumstance is not so disclosed or contained in the notice; and
- (5) In Schedule 8, replace clause 23(2) with:
 - (2) However, those clauses do not apply if—

- (a) the debt securities are category 2 products; or
 - (b) the debt securities have previously been offered for issue or sale under an offer for which a disclosure document was required to be provided under clause 26 of Schedule 1 of the Act (or would have been required but for an exemption granted under subpart 2 of Part 9 of the Act).
- (6) In Schedule 8, after clause 26(1), insert:
- (1A) Clause 65(1)(c) of Schedule 2 (which requires the register entry to contain information about material contracts) does not apply for the purposes of clause 38(1)(c) and (2)(b) of this schedule.
 - (1B) Despite clause 38(1)(c) and (2)(b) of this schedule, information contained in a disclosure statement is not required to be supplied to the Registrar or contained in the register entry under those provisions if that information would otherwise be required to be supplied or contained only as a result of the application of section 57(1)(b)(ii) of the Act (which relates to material information).
- (7) In Schedule 8, replace clause 29(2) with:
- (2) However, those clauses do not apply—
 - (a) to an offer of financial products by the Board of Trustees of the National Provident Fund continued under the National Provident Fund Restructuring Act 1990; or
 - (b) to an offer of category 2 products by Public Trust in reliance on clause 22(1)(f) of Schedule 1 of the Act; or
 - (c) if the financial products have previously been offered for issue or sale under an offer for which a disclosure document was required to be provided under clause 26 of Schedule 1 of the Act (or would have been required but for an exemption granted under subpart 2 of Part 9 of the Act).
- (8) In Schedule 8, after clause 31(4), insert:
- (5) Despite clause 38(1)(c) and (2)(b) of this schedule, in the case of an offer of debt securities issued by the Crown (whether those securities are offered by way of issue or sale), information is not required to be supplied to the Registrar or contained in the register entry under those provisions if that information would otherwise be required to be supplied or contained only as a result of the application of section 57(1)(b)(ii) of the Act (which relates to material information).
- (9) In Schedule 8, clause 32, insert as subclause (2):
- (2) However, those clauses do not apply if the financial products (as varied) have previously been offered for issue or sale under an offer for which a disclosure document was required to be provided under clause 26 of Schedule 1 of the Act (or would have been required but for an exemption granted under subpart 2 of Part 9 of the Act).

- (10) In Schedule 8, clause 38(4), replace “31(4)” with “31(4) and (5)”.
- (11) In Schedule 8, after clause 40, insert:

40A Supplementary document or replacement limited disclosure document

Sections 71 to 73 of the Act apply to a limited disclosure document with all necessary modifications as if it were a PDS and the offer to which it relates were a regulated offer.

- (12) In Schedule 8, clause 44(2), after “12 months”, insert “and 3 working days”.
- (13) In Schedule 8, after clause 44(3)(b), insert:

- (c) **working day**, in relation to a currency forward,—
 - (i) has the same meaning as in section 29 of the Interpretation Act 1999; but
 - (ii) if a payment or delivery under the currency forward is made or received in an overseas jurisdiction, does not include a day that, under the law of that jurisdiction, is a public holiday or a bank holiday in that jurisdiction.

45 Schedule 9 amended

- (1) In Schedule 9, clause 1(1), insert in its appropriate alphabetical order:
 - bank hybrid products** means debt securities issued by a registered bank if either or both of the following may occur in connection with an event or a circumstance relating to the insolvency or a financial difficulty of the registered bank:
 - (a) the debt securities are converted into another financial product;
 - (b) the principal or interest under the debt securities is reduced or cancelled
- (2) In Schedule 9, clause 5, insert as subclauses (2) and (3):
- (2) In the case of convertibles, the statement in subclause (1) must be modified with the effect that the statement—
 - (a) identifies the debt securities as being convertible; and
 - (b) includes the name of the new products and the name of the issuer of the new products; and
 - (c) briefly specifies how or when the conversion may or will occur (for example, at the investor’s option, at the issuer’s option, on a specified date, or on the occurrence of a particular event); and
 - (d) briefly specifies how the conversion will affect the form of returns.
- (3) In the case of bank hybrid products, the KIS must include a statement in the following form after the statement in subclause (1):

“Warning

These [*name of debt securities*] carry similar risks to shares but do not have the same opportunity for growth as shares. If [*name of issuer*] experiences financial difficulty, [*name of debt securities*] can be converted into [*name of new products*] (which may be worth less than your investment) or even written off completely. This means you could lose all of your investment.”

- (3) In Schedule 9, clause 8, insert as subclause (2):
- (2) In the case of convertibles, the table must also include a brief description of—
 - (a) the new products; and
 - (b) the circumstances in which the conversion may or will occur; and
 - (c) the terms of the conversion.
- (4) In Schedule 9, after clause 10(4), insert:
- (5) In the case of convertibles, the statement in subclause (2) must be modified with the effect that the statement—
 - (a) states whether or not the new products are quoted or approved for trading, or the issuer intends that those products will be quoted or approved for trading, on a market licensed in New Zealand or on another established market; and
 - (b) if the issuer does not intend that the new products will be quoted or approved for trading on an established market, includes a statement that the investor may not be able to sell those new products; and
 - (c) if the new products cannot be sold or transferred, includes a statement to that effect.
- (5) In Schedule 9, after clause 13(4), insert:
- (5) In the case of convertibles (other than bank hybrid products) where the new products are equity securities, the KIS must include a statement in the following form after the statement in subclause (1) and before the statement in subclause (3) (or after the statement in subclause (4)):

“If/When* these [*name of financial products*] convert into shares, these risks will change significantly. You should consider whether the degree of uncertainty about [*name of issuing group*]’s future performance and returns is suitable for you.”

*Select one.
- (6) In the case of bank hybrid products, the KIS must include a statement in the following form before the statement in subclause (1):

“If [*name of issuer*] experiences financial difficulty, the [*name of debt securities*] may be converted into [*name of new products*] or written off. You will not have any choice as to whether a conversion or write-off occurs, and you may not have a chance to sell your [*name of debt securities*] before the conversion or write-off. The value of the [*new products*] that you receive if this occurs is

likely to be less than the amount you invest in the [*name of debt securities*]. If conversion is required but is not possible, the [*name of debt securities*] will be immediately written off in part or in whole and you will lose some or all of your investment.

Interest may not always be paid on [*name of debt securities*] and missed payments will not accumulate.”

- (6) In Schedule 9, revoke clause 17(4).
- (7) In Schedule 9, replace clause 20(1) with:
 - (1) The purpose of this clause is to enable information to be provided to assist investors to assess whether the returns offered under the debt securities adequately compensate for the risks of investing (by comparing the risk premium offered with market pricing information).
- (8) In Schedule 9, clause 22(1)(b), delete “(see section 77(1)(b) of the Act)”.
- (9) In Schedule 9, after clause 24(5), insert:
 - (6) In the case of convertibles, the following apply:
 - (a) if the new products are of the same class as financial products that are quoted at the time of the offer, the LDD must include a statement that those products are already quoted:
 - (b) if the new products are equity securities that are not quoted at the time of the offer, the LDD must include a description of the key features of the equity securities (to the extent that those features are not already disclosed in section 3 of the LDD (terms of the offer) and are not features that apply to ordinary shares in a company generally).
 - (7) The description under subclause (6)(b) must be sufficient to make it clear why a feature is of significance to investors.
- (10) In Schedule 9, after clause 30(3), insert:
 - (4) In the case of convertibles (other than bank hybrid products), the LDD must—
 - (a) include a statement to the effect that if or when the debt securities convert into other financial products, the risks will change significantly; and
 - (b) identify the following general risks if the new products are equity securities:
 - (i) that an investor may receive a return only if dividends are paid or the issuer increases in value and the investor is able to sell his or her equity securities at a higher price than the investor paid for the convertibles:
 - (ii) that the price of the equity securities may go up or down:
 - (iii) that if the issuer of the equity securities runs into financial difficulties and is wound up, an investor will be paid only after all creditors and, if applicable, holders of preference shares have been paid:

- (iv) that an investor may lose some or all of his or her investment.
- (5) In the case of bank hybrid products, the LDD must—
- (a) include a statement to the effect that if or when the debt securities convert into other financial products, the risks will change significantly; and
- (b) identify the following general risks if the new products are equity securities:
- (i) that if the issuer of the equity securities is wound up, an investor will be paid only after all creditors and, if applicable, holders of preference shares have been paid:
- (ii) that an investor may lose some or all of his or her investment:
- (iii) an investor may not have a chance to sell his or her equity securities.

46 Schedule 21 amended

- (1) In Schedule 21, clause 27(3)(b)(iii), delete “an interest in a fund of a particular asset type or”.
- (2) In Schedule 21, replace clause 27(4) with:
- (4) For the purposes of subclause (3)(b)(iii), if the model portfolio of assets includes an interest in a fund and there is no one asset type that is judged to be the most appropriate, the asset must be classified as an interest in a diversified fund.
- (3) In Schedule 21, clause 37(2), definition of **percentage-based charges**, paragraph (c), after “trading expenses”, insert “or individual action fees”.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations amend the Financial Markets Conduct Regulations 2014 (the **principal regulations**). Most of the amendments come into force on 1 December 2015. Some amendments relating to fund updates and ongoing confirmation for derivatives come into force on 17 December 2015. Some amendments relating to register entries come into force on 1 June 2016.

Transitional provisions in Part 2 of Schedule 1 of the principal regulations (inserted by *regulation 38*) have the effect that compliance with some new requirements is not required until 1 December 2016. These include new requirements for—

- fund updates for multi-fund investment options or life cycle stages:

- ongoing confirmation for derivatives:
- the reconciliation of derivative issuers' trust accounts.

These regulations—

- provide for the use of simplified disclosure PDSs for certain offers of debt securities or equity securities. The offers concerned are (in general terms) offers where the financial products on offer rank equally with, or in priority to, existing quoted financial products of a listed issuer and the market rules of the licensed market on which the products are quoted contain continuous disclosure provisions. The simplified disclosure requirements take into account this continuous disclosure by reducing the disclosures that would otherwise be required to be contained in the PDS and the register entry (for example, reducing the amount of financial information that must be included in the PDS). Before a simplified disclosure offer is made, a notice (a **cleansing notice**) must be provided to the licensed market operator. The cleansing notice confirms that the issuer is in compliance with its continuous disclosure and financial reporting obligations. The cleansing notice may also include other information to ensure that all material information is generally available to the market:
- provide for the offer of financial products (**convertibles**) that will or may convert into other financial products (**new products**). In general, the PDS and register entry requirements that would otherwise apply to the convertibles apply to the offer rather than the requirements that would otherwise apply to the new products. Amendments have been made to the various schedules to ensure that appropriate disclosures are made relating to the new products:
- clarify references to retail investors:
- clarify when a confirmation notice must be lodged:
- require certain information relating to defined benefit schemes to be made available on request:
- provide for fund updates to be prepared for multi-fund investment options or investment options involving life cycle stages:
- provide 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. If a fund update is incorporated by reference, certain information may be omitted from the PDS:
- provide for ongoing confirmation information to be provided to investors relating to derivatives:
- clarify the provisions relating to the reconciliation of derivatives investor money held in trust. The amendments allow for either an equity-based reconciliation or a cash-based reconciliation:
- provide for how documents are given, provided, or served by the Financial Markets Authority:

- provide for modifications of a PDS for an offer of debt securities where the securities are offered for the purposes of a managed investment scheme:
- clarify the financial information that must be provided in a PDS when a member of the issuing group has acquired or will acquire a business or subsidiary:
- provide, in the case of multiple-participant schemes, for information relating to a particular participant to be included in a supplement rather than in the PDS:
- require the status of a fund in a managed fund to be specified in the register entry (for example, whether the fund is open to new investments):
- amend the limited disclosure document requirements in Schedule 9 of the principal regulations to provide for bank hybrid products. These are debt securities issued by a bank that may be converted into another product or written off if the bank is in financial difficulties (regulatory capital). The additional disclosures include warnings relating to the risks of these products:
- make various other technical amendments to the principal regulations.

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These regulations are administered by the Ministry of Business, Innovation, and Employment.