Version
as at 19 September 2026

Financial Markets Conduct Act 2013

Public Act	2013 No 69
Date of assent	13 September 2013
Commencement	see section 2

Contents

		Page
1	Title	31
2	Commencement	31
	Part 1 **Preliminary provisions**	
	Purposes	
3	Main purposes	32
4	Additional purposes	32
	Overview	
5	Overview	32
	Interpretation	
6	Interpretation	35
7	Meaning of financial product	61
8	Definitions relating to kinds of financial products	61
9	Definitions of financial benefit and of managed investment scheme	63
10	Miscellaneous matters relating to definition of derivative	65

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Business, Innovation, and Employment.

11 Definitions of issued and issuer 65
12 Meaning of associated person and related body corporate 66
13 Miscellaneous interpretation provisions relating to statements and information 67
14 Status of examples 68

Transitional, savings, and related provisions

14A Transitional, savings, and related provisions 68

Act binds the Crown

15 Act binds the Crown 69

General application provision

16 Application of Act 69

Part 2
Fair dealing

17 Overview 69
18 Interpretation in this Part 69

Misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations

19 Misleading or deceptive conduct generally 70
20 Misleading conduct in relation to financial products 70
21 Misleading conduct in relation to financial services 70
22 False or misleading representations 71
23 Unsubstantiated representations 71
24 Court must have regard to certain matters 72
25 Limitation on commencement of proceedings in relation to unsubstantiated representations 72
26 Section 23 does not apply to representations in PDSs, register entries, or other disclosure documents 72
27 Section 23 subject to other enactments 72
28 Certain conduct does not contravene various provisions 73
29 Limited application of provisions in relation to newspapers, magazines, broadcasting, etc 73
30 Defence for publisher 74
31 Licensed market operator does not contravene by notifying disclosures 74
32 Other exceptions 74
33 Territorial scope of sections 19 to 23 75

Offers in course of unsolicited meetings

34 Prohibition of offers in course of unsolicited meetings with persons acting otherwise than in trade 75
35 Right to withdraw 76
36 Offeror obligations if notice of withdrawal given 77

37 Director not liable if no misconduct or negligence 77

Civil liability

38 Civil liability for certain contraventions of this Part 77

Part 3
Disclosure of offers of financial products

Subpart 1—Application

39 Issue offers that need disclosure 78
40 Sale offers that need disclosure 78
41 Meaning of regulated offer and of regulated product 78
42 Regulated offers that need to meet additional governance requirements 79
43 Options over financial products 79
44 Treatment of offers of convertible financial products 79
45 Treatment of offers of renewals and variations 79
46 Offers of financial products involving customised terms 80
47 Territorial scope of Part 80

Subpart 2—Procedure for making regulated offers

Product disclosure statement must be prepared and lodged

48 PDS must be prepared and lodged 81
49 Purpose of PDS 81

Disclosure to investors

50 PDS must be given if offer requires disclosure 81
51 Certain situations in which section 50 does not need to be complied with 82
52 PDS treated as having been given if application form used was included in, or accompanied by, PDS 82
53 Offence to knowingly or recklessly contravene section 50 82
54 Right to withdraw 83
55 Offeror obligations if notice of withdrawal given 83
56 Director not liable if no misconduct or negligence 84

Content and presentation of product disclosure statements and register entries

57 Disclosure of material information and content of PDS and register entry 84
58 Register entry not required in prescribed circumstances 85
59 Meaning of material information in this Part 85
60 Consent of experts and persons who make endorsements 85
61 PDS must be worded and presented in clear, concise, and effective manner 86
62 PDS must comply with prescribed requirements relating to form and presentation 86

Other provisions relating to lodging of PDS and other documents

63 Supply of prescribed information 86
64 Registrar must notify FMA of lodgement of PDS 87
65 Waiting period after lodgement before processing applications for financial products 87
66 FMA may extend period 87
67 Waiting period restriction does not prevent offeror from acting under another PDS 88
68 FMA may remove restrictions if its consideration complete or consideration or further consideration unnecessary 88
69 Waiting period does not usually apply to continuous issue PDSs 88
70 No guarantee or representation as to compliance 88
71 When supplementary document or replacement PDS may be lodged 89
72 Supplementary document 89
73 Replacement PDS 90
74 Registrar must notify FMA of lodgement of supplementary document or replacement PDS 90
75 Publication of lodgement 90

Amending register entry

76 When register entry may be amended 91

Conditions referred to in PDS

77 Minimum number or amount condition must be fulfilled before issue or transfer 91
78 Issue or transfer void if quotation condition not fulfilled 91

Dealing with applications where condition referred to in PDS not met or disclosure defective

79 Application of section 80 92
80 Choices open to offeror 93
81 Director not liable if no misconduct or negligence 94

Prohibition of offers where defective disclosure in PDS or register entry

82 False or misleading statements, omissions, and new matters requiring disclosure 94
83 Persons who must inform offeror about disclosure deficiencies 95

Expiry

84 Expiry 96
85 How offeror must deal with applications on expiry 96
86 Director not liable if no misconduct or negligence 97

Money for financial products must be held in trust

87 Money for financial products must be held in trust 97

Offering financial products in entity that does not exist

88 Offering financial products of entity that does not exist 97

Subpart 3—Advertising

89 Advertising for regulated offers 98
90 Distribution of PDS or registered documents 98
91 Advertising before PDS lodged 98
92 Advertising after PDS lodged 99
93 Documents to which subpart does not apply 99
94 Defence for publishers 100

Subpart 4—Ongoing disclosure and updating of registers

Duty to update register of offers of financial products and register of managed investment schemes

95 Duty to notify changes to Registrar 100

Disclosure to particular persons

96 Information to be made available to investors, FMA, Registrar, or other prescribed persons 101

Public disclosure

97 Information to be made publicly available 101
98 Issuer must provide information to Registrar 102

Defective ongoing disclosure

99 Defective ongoing disclosure 102

Confirmation

100 Issuer or offeror must provide confirmation 103

Subpart 5—Civil liability for certain contraventions of this Part

101 Part 3 offer provisions 103

Part 4
Governance of financial products

102 Overview 105

Subpart 1—Governance of debt securities

103 Need for governing document and supervisor for regulated offer of debt security 105

Governing document requirements

104 Contents of trust deed for debt securities 106
105 Limits on permitted exemptions and indemnities 106
106 Trust deed must be legally enforceable 107
107 Effect of trust deed 107
108 Changes to trust deed 107
109 Power to make FMA-approved changes to trust deeds 108

110 Lodging of changes to trust deed 108

Application of Trusts Act 2019

110A Application of Trusts Act 2019 108

Role of supervisor

111 Functions of supervisor 109
112 General duties applying in exercise of supervisor's functions 110
113 Duty of supervisor to comply with professional standard of care 110
114 Duty of issuer to provide reports to supervisor 110
115 Duty of issuer to provide requested information and reports to supervisor 111
116 Issuer must report contravention or possible contravention of issuer obligations 111
117 Restriction on use of reports on contraventions 111
118 Duty of issuer to report serious financial problems 111
119 Power of supervisor to engage expert 112

Meetings of product holders

120 Meetings of product holders 112
121 Supervisor's attendance at meetings of product holders and power to appoint chair 112

Change of supervisor

122 Change of supervisor 113
123 Lodging of notice of change of supervisor 113

Subpart 2—Governance of managed investment products

124 Overview 114

Need to register

125 Need to register managed investment scheme for regulated offer of managed investment product 114

Registration

126 Application for registration 114
127 Initial and ongoing registration requirements for all managed investment schemes 115
128 Additional initial and ongoing registration requirements for KiwiSaver schemes 116
129 Additional initial and ongoing registration requirements for superannuation schemes 117
130 Additional initial and ongoing registration requirements for workplace savings schemes 118
131 Additional ongoing registration requirements for restricted schemes 119

132 Additional prescribed registration requirements for other particular prescribed types of schemes 120
133 Manager must ensure that ongoing registration requirements are complied with 121
134 Changes to registration as particular type of registered scheme 121

Governing document requirements

135 Contents of governing document for registered scheme 122
136 Limits on permitted exemptions and indemnities 123
137 Governing document must be legally enforceable 124
138 Effect of governing document 124
139 Changes to governing document 124
140 Power to make FMA and court-approved changes to governing documents 125
141 Lodging of changes to governing document 126

Role of manager

142 Management and administration functions of manager 126
143 General duties applying in exercise of manager's functions 126
144 Duty of manager and investment manager to comply with relevant professional standard of care 127
145 Duties of directors and senior managers of manager 127
146 Contracting out of management functions 127
147 Duty of manager to provide reports to supervisor or FMA 128
148 Duty of manager to provide requested information and reports to supervisor 128
149 Duty of manager to report contravention or possible contravention of issuer obligations 128
150 Restriction on use of reports on contraventions 129
151 Duty of manager to report serious financial problems 129

Role of supervisor

152 Functions of supervisor 129
153 General duties applying in exercise of supervisor's functions 130
154 Duty of supervisor to comply with professional standard of care 131
155 Power of supervisor to engage expert 131

Application of Trusts Act 2019

155A Application of Trusts Act 2019 132

Custodianship of scheme property

156 Requirement to have supervisor or other independent person as custodian 133
157 Custodian holds scheme property on trust 134
158 Custodian must keep records of scheme property 134
159 Custodian must report on scheme property 135
160 Duty of supervisor to refuse to act on wrongful directions 135

Meetings of scheme participants

161 Meetings of scheme participants 135
162 Supervisor's attendance at meetings of scheme participants and power to appoint chair 136
163 Manager and associated persons cannot vote if interested in resolution 136

Management of scheme

164 Requirement for statement of investment policy and objectives 137
165 Changes to statement of investment policy and objectives 137
166 Lodging of statement of investment policy and objectives and changes to statement 137
167 Action that must be taken on limit breaks 138
168 Action that must be taken on pricing errors and failure to comply with pricing methodologies 138
169 Actuarial examination of defined benefit scheme or life benefit scheme 139
170 Power of manager to adjust financial benefits to comply with portfolio investment entity rules 139
171 Limits on reversion of scheme property in certain schemes to non-scheme participant contributor 139

Related party transactions

172 Definition of related party benefit 140
173 General prohibition on transactions giving related party benefits 140
174 Certain related party benefits permitted 141
175 Requirements for certificates as to related party benefits 142
176 Additional restrictions on acquisitions by restricted schemes of in-house assets 142
177 General duties not affected 143

Scheme participant transfer rules for KiwiSaver, superannuation, and workplace savings schemes

178 Application of scheme participant transfer rules 143
179 Methods of transfer of scheme participants to another scheme or another section of scheme 144
180 Transfer of substantial numbers of scheme participants with scheme participant consent 145
181 Transfer with FMA consent 145
182 Transfers from KiwiSaver scheme 146

Provisions as to deferred benefits for superannuation schemes and workplace savings schemes

183 Deferred benefits 147

Change of manager

184 Application of sections 185 to 192 147
185 Removal of manager of registered scheme 147
186 Supervisor or FMA may make temporary appointment 148
187 Term, powers, and duties of temporary manager 149
188 FMA's costs must be reimbursed from scheme 149
189 Supervisor or FMA must take reasonable steps to arrange for new appointment 149
190 Former manager must hand over records and give reasonable assistance 150
191 Statutory novation of rights, obligations, and liabilities of former manager 150
192 Lodging of notice of changes to manager 151

Change of supervisor

193 Change of supervisor 151
194 Lodging of notice of change of supervisor 151

Cancellation of registration

195 Cancellation of registration 152
196 Registrar must remove scheme from register on cancellation of registration 153

Subpart 3—Intervention in debt securities offered under regulated offer or registered schemes

Provisions assisting supervisor or FMA to intervene

197 Application 153
198 Duty of auditor to report to supervisor or FMA 153
199 Duty of auditor, investment manager, administration manager, custodian, or actuary to report serious problems 154
200 What person must do if duty to report serious problem applies 155
201 Protections extend to volunteers of supporting information for other protected disclosures 155
202 FMA may require supervisor to attest as to issuer's compliance with issuer obligations 156
203 Duty of supervisor to report contravention or possible contravention of issuer obligations to FMA 156
204 Duty of supervisor to report serious financial problems to FMA 157
205 FMA's powers of direction 157
206 FMA's directions to supervisor (or issuer) 157

Powers to obtain court orders to intervene

207 Power of supervisor or FMA to apply for order to remedy problems 158
208 Court orders to remedy problems 159

209 Power of court to appoint new manager, provide for manager powers, and deal with changes of managers 160
210 Power of court to direct supervisor 161
211 Court power to order winding up of scheme 161
212 Initial steps in winding up of registered scheme 161
213 Winding-up report 162

Miscellaneous

214 Protection for persons in respect of disclosure under this subpart or subpart 4 163

Subpart 4—Registers and keeping copies of documents

Registers

215 Issuers must keep registers of regulated products 163
216 Manner of keeping registers 164
217 Contents of registers 164
218 Audit or review of registers 165
219 Auditor must advise if auditor considers that subpart is not being complied with 165
220 Issuer must notify Registrar of registers 165
221 Public inspection of register 166
222 Manner of inspection 166
223 Copies of documents 167
224 Reasons for request must be given and FMA may authorise non-compliance 167
225 Restriction on use of information in registers 167
226 Certain provisions prevail over Companies Act 1993 168

Copies of documents to be retained

227 Copies of documents must be retained for 7 years 168

Subpart 5—Civil liability for certain contraventions of this Part

228 Part 4 governance provisions 169

Part 5
Dealing in financial products on markets

Subpart 1—Purposes, overview, and interpretation

229 Additional purposes of Part 170
230 Overview 171

Material information and generally available to the market

231 Meaning of material information 171
232 Meaning of generally available to the market 172

Certain derivatives treated as being quoted financial products of listed issuer

233 Certain derivatives treated as being quoted financial products of listed issuer 172

Insider conduct

234 Meaning of information insider, inside information, and adviser 173

Relevant interests

235 Relevant interests in financial products (basic rule) 174
236 Extension of basic rule to powers or controls exercisable through trust, agreement, etc 174
237 Extension of basic rule to interests held by other persons under control or acting jointly 174
238 Situations not giving rise to relevant interests 175

Territorial scope

239 Territorial scope 176

Subpart 2—Insider trading

Insider conduct prohibited

240 Prohibition on insider conduct 176
241 Information insider must not trade 176
242 Information insider must not disclose inside information 177
243 Information insider must not advise or encourage trading 177
244 Criminal liability for insider conduct 177

When prohibition on insider conduct does not apply

245 Exception for trading required by enactment or rule of law 178
246 Exception for disclosure required by enactment or rule of law or by FMA 178
247 Exception for disclosure in connection with preparing PDS or limited disclosure document 178
248 Exceptions in respect of underwriting agreements 178
249 Exceptions in case of knowledge of person's own intentions or activities 178
250 Exceptions in case of knowledge in relation to derivatives 179
251 Exception for agent executing trading instruction only 179
252 Exceptions from section 241 for takeovers 179
253 Exceptions from sections 242 and 243 for takeovers 180
254 Exceptions for schemes of arrangement approved under Companies Act 1993 181
255 Exception for redemption of managed investment products 181
256 Exception for Reserve Bank 181

Defences

257 Absence of knowledge of trading 181
258 Inside information obtained by independent research and analysis 181
259 Equal information 182
260 Options and trading plans 182
261 Chinese wall defence 183

Subpart 3—Market manipulation

262 False or misleading statement or information 183
263 Exception for takeovers 184
264 Criminal liability for false or misleading statement or information 184
265 False or misleading appearance of trading 184
266 Exception for short selling and crossings 184
267 Persons treated as contravening false or misleading appearance of trading prohibition 185
268 Defence 185
269 Criminal liability for false or misleading appearance of trading 186

Subpart 4—Continuous disclosure

270 Listed issuers must disclose in accordance with listing rules if continuous disclosure listing rules apply 186
271 What are continuous disclosure provisions 186
272 No contravention of continuous disclosure provisions by person who takes reasonable steps to ensure listed issuer complies 187

Subpart 5—Disclosure of interests of substantial product holders in listed issuers

Substantial holding disclosure obligations

273 Purposes of subpart 187
274 Meaning of substantial product holder, substantial holding, and percentage 187
275 Person may be treated as holding financial products where person has relevant interest in certain derivatives 188
276 Persons must disclose if begin to have substantial holding 188
277 Substantial product holders must disclose if subsequent movement of 1% or more in holdings 188
278 Substantial product holders must disclose if subsequent changes in nature of relevant interests 189
279 Persons must disclose if cease to have substantial holding 189
280 What disclosure required 189
281 Form and method of disclosure 189
282 Listed issuer must give acknowledgement of disclosure 190
283 How to ascertain total financial products in class for purposes of disclosure 190

Exemptions

284 Exemption for persons with interest in other substantial product holders who comply 190
285 Exemption for corporate trustees and nominee companies 190
286 Conditions of exemption for corporate trustees and nominee companies 191
287 Exemption for persons under control or acting jointly with corporate trustees and nominee companies 191
288 Extended time for disclosure for trustees, executors, and administrators 191

Tracing and disclosure of interests in listed issuers

289 FMA may require persons to disclose to market relevant interests and powers to acquire relevant interests 192
290 Listed issuer may require registered holder or relevant interest holder to disclose relevant interests to it 192
291 Listed issuer may require person who has relevant interest to disclose information to it 193
292 Form and method of notice requiring disclosure 193
293 Listed issuers must make available information on substantial holdings 193
294 No liability for publication of substantial holdings 194
295 Notice under this subpart not to affect incorporation of listed issuer or constitute notice of trust 194

Subpart 6—Disclosure of relevant interests in quoted financial products by directors and senior managers of listed issuers

296 Purposes of subpart 194
297 Directors and senior managers of listed issuers must disclose relevant interests and dealings in relevant interests 194
298 Disclosure of relevant interests and dealings in relevant interests in relation to specified derivatives 195
299 What disclosure required 196
300 Form and method of disclosure 196
301 Disclosure obligation applies for 6 months after ceasing to hold office 196
302 Exemption for directors or senior managers who disclose substantial holdings 196
303 Exemption for overseas listed issuers 197
303A Extended time for disclosure for trustees, executors, and administrators 198
304 Listed issuer must keep interests register 198
305 Public inspection of interests register 199
306 Copies of documents 199
307 Offences relating to interests register 199

Subpart 7—Licensing of markets for trading financial products

308 Principles guiding exercise of powers under this subpart 199

Need for financial product market licence

309 What is a financial product market 200
310 Need for financial product market licence 200
311 Prohibitions on holding out 201
312 Exemptions 201
313 When financial product market taken to be operated in New Zealand 201

General obligations of licensed market operator

314 General obligations in respect of licensed markets 202

Issue of licence

315 Application for licence 203
316 When licence may be issued 203
317 When licence may be issued for overseas-regulated market 203
318 Conditions of licence 204
319 Procedural requirements 205
320 Licence may cover more than 1 financial product market 205
321 FMA must maintain list of licensed markets on Internet site 205

Changes to licences

322 Variation of conditions 206
323 Minister may suspend or cancel licence 207
324 Procedure for varying of conditions or suspension or cancellation of licence 207
325 Effect of suspension 208
326 Variation or revocation of suspension 208

Approval of contractual market rules

327 Licensed markets must be operated under market rules that comply with this subpart 208
328 Required matters for market rules 208
329 When market rules have effect 209
330 Approval process for proposed market rules and rule changes 209
331 Approval of proposed market rules and changes 210
332 Notice of decision on rules 210
333 Power of FMA to request changes to market rules on certain matters 211
334 Overseas-regulated markets must give notice of market rules and rule changes to FMA 212
335 Market rules must be available for public inspection 212
336 Application of Acts relating to regulations to contractual market rules 212

Monitoring of market operator obligations

337 Licensed market operator must give report on compliance with market operator obligations to FMA 212
338 FMA to carry out market operator obligations reviews 213
339 FMA must make written report on market operator obligations review 213
340 FMA may require licensed market operator to submit action plan on failure to meet market operator obligations 214
341 Approval, amendment, or rejection of action plan 214
342 Minister may give market operator obligations direction to licensed market operator 215
343 Minister may vary, suspend, or cancel licence 215

Control limits on licensed market operators

344 Power to impose control limits on licensed market operators 216
345 Control limit not to be exceeded 217
346 Effect of exceeding control limit 217
347 Application for approval to exceed control limit 217
348 Revocation or amendment of approval 218

Other provisions relating to licensing of financial product markets

349 FMA may give advice to Minister 219
350 Delegation of Minister's licensing functions and powers to FMA 219
351 Regulations modifying this Part or Part 7 or 7A for licensed markets 220

Subpart 8—Operation of licensed markets

352 Licensed market operator must notify FMA of disciplinary actions and suspected contraventions 222
353 When notification required 222
354 Details and method of notification 222
355 Licensed market operator must ensure FMA has access to real-time trading and other information 223
356 Waiver of notification and disclosure obligations 223
357 Licensed market operator must give FMA or Takeovers Panel other information and assistance on request 223
358 Power to disclose further information 223
359 Licensed market operator must give notice and have regard to submissions on continuous disclosure determinations 223
360 Limited notice and submissions for urgent determinations 224
361 FMA may give directions to licensed market operators 224
362 Grounds for continuous disclosure direction 225
363 Grounds for other directions 225

364 Notice, opportunity for licensed market operator to act, and submissions before FMA gives directions 226
365 Limited notice and submissions for urgent continuous disclosure directions 226
366 Notice and opportunity to be heard and represented after FMA gives direction 226
367 Effect of directions to licensed market operator 227
368 Provisions as to directions 227
369 Contracting out of or modification of continuous disclosure process requirements 227
370 Offence for failing to comply with direction 228

Subpart 9—Transfer of transferable financial products

371 Financial products to which this subpart applies 228

Transfer of specified financial products using transfers in prescribed form or containing prescribed information

372 Transfer of specified financial products by products transfer 228
373 Transfer of specified financial products by products transfer and brokers transfer 229
374 Products transfer does not need to be witnessed 230
375 Transfers to be instruments of transfer for purposes of other enactments and instruments 230

Transfer of specified financial products by electronic means

376 Approval of electronic transfer system 230
377 Specified financial products may be transferred under approved system 231
378 Minor technical modifications to system 231

Registration may not be refused

379 Registration may not be refused on ground that financial products have been transferred under this subpart 231
380 Effect of this Act on other enactments 231

Subpart 10—Unsolicited offers to purchase financial products off-market

381 Definitions relating to unsolicited offer regulations and related provisions 232
382 Regulations concerning unsolicited offers 232
383 Specific provisions for regulations concerning unsolicited offers 233
384 Protection from liability in connection with unsolicited offer provisions 234

Subpart 11—Civil liability for certain contraventions of this Part

385 Part 5 market provisions 234

Part 6
Licensing and other regulation of market services

386	Overview	236
387	Territorial scope for licensing and other regulation of certain market services	237
387A	Other provisions relating to financial advice services and client money or property services	237
	Subpart 1—Key provisions	
388	When provider of market services needs to be licensed	237
389	Exemptions from need for market services licence	238
390	When providers of other market services may be licensed	240
391	Prohibitions on holding out	240
392	Meaning of discretionary investment management service and related terms *[Repealed]*	240
	Subpart 2—Issue of licences, conditions, and duration	
393	Principles guiding the exercise of FMA powers	240
	Issue of licences	
394	FMA may issue licence	241
395	Application for licence	241
396	When licence must be issued	242
397	Procedural requirements	242
398	Notice of decision	243
399	Licence must be issued for particular market services	244
400	Licence may cover authorised bodies	244
401	FMA must send licence details to Registrar	245
	Conditions of licence	
402	Conditions of licence	246
403	When FMA may impose permitted conditions	246
404	Licensee may apply for variation of conditions	248
405	Procedure for variation of conditions	248
406	Consequences of contravening conditions	248
406A	Effect of condition requiring giver of advice or interposed person to be authorised by licence or registered	248
	Expiry, suspension, or cancellation of licences	
407	Duration of licence	249
408	When FMA may suspend or cancel licence	249
409	Effect of expiry, suspension, or cancellation of licence on appointments	250
409A	Restriction on suspending or cancelling licence to act as financial institution	250

Subpart 3—Monitoring and enforcement of licences

410 Meaning of material change of circumstances 250

Reports

411 Licensee must deliver reports to FMA 251
412 Licensee must report certain matters 251
413 Restriction on use of report 251

FMA's powers in case of contravention of market services licensee obligation, material change, etc

414 FMA's powers in case of contravention of market services licensee obligation, material change, etc 252
415 Procedure for exercising powers 252
416 Notice requirements 253

Action plan

417 Action plan 253
418 Approval, amendment, or rejection of action plan 253
419 Consequences of failure to submit action plan, rejection of action plan, or failure to comply with action plan 254

Directions

420 Directions 254
421 Consequences of failure to comply with directions 255

Subpart 4—Disclosure obligations for certain services provided to retail investors

422 Application of subpart 255
423 Disclosure must be made to retail investor 255
424 Timing and method of disclosure 255
425 Purpose of disclosure statement 256
426 Disclosure statement 256
426A Further prescribed information to be made available 256
427 False or misleading statements and omissions 257
428 Miscellaneous provisions relating to false or misleading statements and omissions 258

Subpart 5—Requirement for certain services to be provided under client agreements

429 Application of subpart 258
430 Need for client agreement 258
431 Contents, form, and effect of client agreement 259

Subpart 5A—Additional regulation of financial advice and financial advice services

Preliminary matters

431A Overview of financial advice and financial advice services regime 259

431B Additional purpose of subpart 260

Interpretation

431C Meaning of financial advice and regulated financial advice 260
431D When financial advice service is provided 261
431E Meaning of engaged 261

Limitations on giving regulated financial advice and holding out

431F Limitation on who can give regulated financial advice to retail clients on behalf of financial advice provider 262
431G Prohibitions on holding out in relation to giving financial advice 262

Duties on persons giving regulated financial advice

431H Liability for duties 263
431I Duty to meet standards of competence, knowledge, and skill 265
431J Duty to ensure client understands nature and scope of advice 265
431K Duty to give priority to client's interests 265
431L Duty to exercise care, diligence, and skill 266
431M Duty to comply with code of conduct 266
431N Duty relating to offer that contravenes Act or regulations 266
431O Duty to make prescribed information available 266
431P False or misleading statements and omissions 267

Additional duties on financial advice providers and interposed persons that engage others to give advice

431Q Persons engaging others to give advice must ensure compliance with duties 268
431R Duties of persons who engage nominated representatives 268

Miscellaneous provisions

431S Protection of individual who reports breach 269
431T Nomination of nominated representatives 269
431U Limitation on pecuniary penalty orders against financial advice providers 270

Subpart 5B—Regulation of client money or property services

431V Overview of client money or property services regime 270

Interpretation

431W Meaning of client money or property service and certain other terms 271

Disclosure obligations for services for retail clients

431X Provider must make disclosure before receiving client money or client property from retail client 272
431Y False or misleading statements and omissions 272

Conduct obligations

431Z Application of conduct obligations 273
431ZA Provider must exercise care, diligence, and skill 273
431ZB Provider must not receive client money if offer contravenes Act or regulations 273

Obligations for handling client money and client property

431ZC Provider must pay client money into separate trust account and hold client property on trust 274
431ZD Provider must account for client money and client property 275
431ZE Provider must keep records of client money and client property 275
431ZF Provider must report on client money and client property 275
431ZG Restrictions on use of client money and client property 276
431ZH Protection of client money and client property held on trust 276

Persons acting in course of business of employers or principals

431ZI Who is responsible for obligations 276

Application of Trusts Act 2019

431ZJ Application of Trusts Act 2019 277

Subpart 6—Additional regulation of discretionary investment management services

432 Application of subpart 277
432A Meaning of discretionary investment management service and related terms 277

Duties of DIMS licensee

433 DIMS licensee's duties 278
434 Duties of directors and senior managers of DIMS licensee 279
435 Duty of DIMS licensee to comply with professional standard of care 279
436 Limits on permitted indemnities 279
437 Requirement for agreed investment authority 279
438 Action that must be taken on limit breaks 280

Related party transactions

439 Definition of related party benefits 280
440 General prohibition on transactions giving related party benefits 281
441 Certain related party benefits permitted 281
442 Requirements for certificates as to related party benefits 281
443 General duties still apply 282

Broking and custodial service performed as part of discretionary investment management service

444 Meaning of investor money and investor property 282
445 Requirements for custodian 282

446 Certain client money or property service obligations under subpart 5B apply 283

Subpart 6A—Regulating conduct of financial institutions

446A Overview 283
446B Territorial scope of subpart 283

Fair conduct principle

446C What is the fair conduct principle 284
446D When fair conduct principle applies 284

Key definitions

446E Meaning of financial institution 285
446F Meaning of relevant service and associated product 285

Fundamental duties to meet fair conduct principle

446G Duty to establish, implement, and maintain effective fair conduct programme 286
446H Duty to make information about fair conduct programme publicly available 286
446I Duty to comply with fair conduct programme 287
446J Minimum requirements for fair conduct programme 287

Duties relating to incentives regulations

446K Financial institution must comply with incentives regulations 290
446L Intermediary must comply with incentives regulations 290
446M Meaning of incentive 291

Miscellaneous provisions

446N FMA must obtain consent of Commerce Commission before commencing certain proceedings *[Repealed]* 292
446O Pecuniary penalty order may not be made if failure relates only to certain legal obligations 293
446P Other definitions used in subpart 293
446Q Meaning of intermediary 295
446R Protection of person who reports contravention or failure to comply 297
446S Presumption relating to consumer insurance contract *[Repealed]* 297
446T Effect of certificate from policyholder or client 298
446U Revocation of certification 298
446V Application of subpart to Lloyd's underwriters 298
446W Review of subpart and licensing requirement for financial institutions 299

Subpart 7—Holding and application of investor funds and property by derivatives issuers

447 Application of regulations made under this subpart 300

448 Regulations regulating holding and application of investor funds and property by derivatives issuers 300

Subpart 7A—Additional regulation of licences relating to financial benchmarks

448A Application of subpart 301
448B Additional purposes for licences relating to financial benchmarks 301
448C FMA's powers to direct contributor to provide information or data 302
448D FMA's powers to direct administration of financial benchmark 302
448E Duration of direction 303
448F FMA must follow steps for giving direction 303
448G FMA may give interim direction pending exercise of power 304
448H FMA must give notice after giving interim direction 304
448I General provisions on FMA's directions 305
448J Protection for persons in respect of provision of material, information, or data under this subpart 305

Subpart 8—Miscellaneous provisions

Civil liability

449 Part 6 services provisions 305

Requirements relating to exemption for Lloyd's underwriters

449A Lloyd's, Lloyd's underwriter, or Lloyd's managing agent must comply with term or condition of licensing exemption for Lloyd's underwriters 308

Part 7
Financial reporting

Subpart 1—Overview, application, and interpretation

450 Overview 308
451 Meaning of FMC reporting entity 309
452 Company that issues equity securities not FMC reporting entity if fewer than 50 shareholders 310
453 Recipients of money from conduit issuers 310
454 Miscellaneous provisions relating to application 311

Subpart 2—Accounting records

455 FMC reporting entities must keep proper accounting records 311
456 Place where accounting records to be kept 311
457 Accounting records to be in English 312
458 Period for which accounting records to be kept 312
459 Inspection of accounting records 312

Subpart 3—Preparation, audit, and lodgement of financial statements

Preparation of financial statements

460 Financial statements must be prepared 313
461 Group financial statements must be prepared 313
461A Financial statements for registered schemes and funds 314
461B Financial statements for overseas FMC reporting entity to include financial statements for New Zealand business 315
461C Failure to comply with authoritative notice does not give rise to pecuniary penalty 315

Audit of financial statements

461D Financial statements must be audited 316
461E Meaning of qualified FMC auditor 316
461F Audit must be carried out in accordance with auditing and assurance standards 317
461G Auditor's report 317

Lodgement of financial statements

461H Lodgement of financial statements 317

Offences

461I Offence to knowingly fail to comply with financial reporting standards 318

FMC reporting entities with higher level of public accountability

461J External Reporting Board must have regard to indication of level of public accountability 319
461K FMC reporting entities considered to have higher level of public accountability 319
461L FMA may issue notice relating to level of public accountability 320

Subpart 4—Civil liability for certain contraventions of this Part

461M Part 7 financial reporting provisions 320

Part 7A
Climate-related disclosures for certain FMC reporting entities with higher level of public accountability

Subpart 1—Overview, application, and interpretation

461N Overview 321
461O Meaning of climate reporting entity 321
461P Definitions relating to listed issuers 322
461Q Meaning of large (in relation to registered banks, licensed insurers, credit unions, and building societies) 323
461R Meaning of large after amalgamation 324
461S Meaning of large manager 324

461T Application if person's status changes during accounting period 326
461U Miscellaneous provision relating to application 327

Subpart 2—CRD records

461V Climate reporting entities must keep proper CRD records 327
461W Manner in which CRD records to be kept 328
461X Period for which CRD records to be kept 328
461Y Inspection of CRD records 328

Subpart 3—Preparation of climate statements

Climate statements of climate reporting entities

461Z Climate statements must be prepared 328
461ZA Group climate statements must be prepared 329
461ZB Climate statements for overseas climate reporting entities 329

Climate statements relating to registered schemes

461ZC Climate statements for separate funds of registered schemes, etc 330
461ZD Application if manager of registered scheme changes and new manager is not large manager 330

Miscellaneous

461ZE Climate statements may be combined in single document 331
461ZF Failure to comply with authoritative notice does not give rise to pecuniary penalty 331

Offences

461ZG Offence to knowingly fail to comply with climate standards 332

Subpart 4—Assurance engagements

461ZH Assurance engagement required for parts of climate statements relating to greenhouse gas emissions 332
461ZHA Assurance engagement must be carried out in accordance with auditing and assurance standards 333
461ZHB Assurance practitioner's report 333
461ZHC Assurance engagement may cover other parts of climate statements 333

Assurance practitioner access to information

461ZHD Climate reporting entity must give assurance practitioner access to information 334
461ZHE Assurance practitioner may require information and explanations from director or employee 335

Subpart 5—Lodgement of climate statements

461ZI Lodgement of climate statements 335
461ZJ Information about climate statements of climate reporting entities to be made available in annual report 336

Subpart 6—Civil liability for certain contraventions of this Part

461ZK Part 7A climate-related disclosure provisions 336

Part 8
Enforcement, liability, and appeals

Subpart 1—FMA's enforcement powers

Stop orders

462 When FMA may make stop orders 337
463 Terms of stop order 339
464 Meaning of restricted communication 339
465 FMA may make interim stop order pending exercise of powers 340
466 Persons to whom stop orders and interim stop orders may apply 341
467 Extended application of subpart 341

Direction orders

468 When FMA may make direction orders 341
469 Terms of direction orders 342

Order to prohibit use of simplified disclosure PDS

470 FMA may order that simplified disclosure PDS may not be used 344

Order to prohibit offer under recognition regime

471 FMA may order that offer may not be made under recognition regime 344

Unsolicited offer orders

472 When FMA may make unsolicited offer orders 345
473 Terms of unsolicited offer orders 345

Orders that exclusion does not apply

474 FMA may order that exclusion for offers of products of same class as quoted products does not apply 345

Process for FMA's orders

475 FMA must follow steps before making orders 346
476 FMA may shorten steps for specified orders 347
477 FMA must give notice after making orders 347

General provisions

478 General provisions on FMA's orders 347
479 Consequences of failing to comply with FMA's orders 348

Subpart 2—High Court's enforcement powers

Injunctions

480 Court may grant injunctions 348
481 When court may grant injunctions and interim injunctions 348
482 Undertaking as to damages not required by FMA 349

Court may make FMA orders under this Part

483 Court may make FMA orders under this Part 349

Subpart 3—Civil liability

Overview of civil liability

484 Overview of civil liability 349
485 What are civil liability provisions 349

Declarations of contravention and pecuniary penalty orders

486 When court may make declarations of contravention 350
487 Purpose and effect of declarations of contravention 350
488 What declarations of contravention must state 350
489 When court may make pecuniary penalty orders 351
490 Maximum amount of pecuniary penalty 351
491 Guidance for court on how to determine gains made or losses avoided for purposes of maximum amount 352
492 Considerations for court in determining pecuniary penalty 353
493 Court must order that recovery from pecuniary penalty be applied to FMA's actual costs 354

Compensatory orders

494 When court may make compensatory orders 354
495 Terms of compensatory orders 354
496 Person treated as suffering loss or damage in case of defective disclosure 354

Other civil liability orders

497 When court may make other civil liability orders 355
498 Terms of other civil liability orders 355

Defences for person in contravention of civil liability provisions

499 General defences for person in contravention 356
500 Disclosure defences for person in contravention 357
501 Additional disclosure or financial reporting or climate-related disclosure defence for directors who are treated as contravening 357
501A Additional defence for licensees who are treated as contravening 358
502 Conduct still contravenes even if defence is available 358

Defences for person involved in contravention of civil liability provisions

503 General defences for person involved in contravention 359

Miscellaneous provisions relating to defences

504 Defendant must identify other person 359

Interrelationship of civil liability orders

505 More than 1 civil liability order may be made for same conduct 360

506 Only 1 pecuniary penalty may be imposed for same conduct 360
507 No pecuniary penalty and fine for same conduct 360

Limitation defences

508 Limitation defences 361

General

509 Rules of civil procedure and civil standard of proof apply to civil liability 361

Subpart 4—Offences relating to defective disclosure and false statements

510 Offence of knowingly or recklessly contravening prohibition on offers where defective disclosure in PDS or register entry 361
511 Offence of knowingly or recklessly contravening other provisions relating to defective disclosure 362
512 General offence for false or misleading statements 363

Subpart 5—Infringement offences

513 Infringement offences 364
514 Infringement notices 364
515 Procedural requirements for infringement notices 364
516 Payment of infringement fee 365

Subpart 6—Banning orders

517 When court may make banning orders 365
518 Terms of banning orders 367
519 Offence of contravening banning order 367
520 Only 1 banning order may be made for same conduct 367
521 General provisions for banning orders 367

Subpart 7—Orders to protect interests of aggrieved persons in case of financial markets investigations or proceedings

522 When court may make order to protect interests of aggrieved persons 368
523 What orders may be made 369
524 Interim orders 371
525 Relationship with other law 371

Subpart 8—Indemnities or insurance for directors, employees, and auditors of issuers, offerors, and licensees

526 Prohibition on indemnities or insurance for directors or employees of issuers, offerors, or licensees that are not New Zealand companies 371
527 Permitted indemnities for certain liabilities or costs 372
528 Permitted insurance for certain liability or costs 372

529 Prohibition on indemnity or insurance for auditors of issuers, offerors, or licensees 373
530 Interpretation for this subpart 373

Subpart 9—Appeals

531 Appeals against market services licence decisions 374
532 Appeals against other decisions of FMA on questions of law only 374
532A Appeals against decisions of disciplinary committee 374
532B Orders as to publication of names 375
532C Appeal on question of law 375

Subpart 10—Miscellaneous

Accessories and attribution of liability

533 Involvement in contraventions 375
534 Directors treated as having contravened in case of defective disclosure, financial reporting contravention, or climate-related disclosure contravention 376
535 State of mind of directors, employees, or agents attributed to body corporate or other principal 377
536 Conduct of directors, employees, or agents attributed to body corporate or other principal 377

Miscellaneous

537 Time for filing charging document for certain offences 378
538 Jurisdiction of courts in New Zealand 378
539 Orders to secure compliance 378
540 General provisions as to court's orders 378
541 Persons entitled to appear before court 379
542 Saving of liability under Crimes Act 1961 and general law 379

Part 9
Regulations, transitional provisions, and miscellaneous provisions

Subpart 1—Regulations

543 Regulations for purposes of Part 3 (Disclosure of offers of financial products) 379
544 Regulations for purposes of Part 4 (governance of financial products) 383
545 Regulations for purposes of Part 5 (dealing in financial products on markets) 386
546 Regulations for purposes of Part 6 (market services) 389
547 Transitionals, savings, and orderly implementation of Act and related enactments *[Repealed]* 397
548 Other regulations 397
549 Minister must consult FMA about regulations 401

550	Procedural requirements for regulations relating to exemptions, exclusions, and definitions	401
551	Miscellaneous provisions relating to exemptions	403
552	Miscellaneous provisions relating to fees and charges	403
552A	Validation of fees used to recover costs of other Companies Office registers, etc	403
553	Miscellaneous provisions relating to implied provisions	405
554	Regulations or exemptions may require compliance with generally accepted accounting practice, standards, frameworks, or FMA methodologies	406
555	Different matters may be prescribed in respect of different circumstances	407
	Subpart 2—Exemptions	
556	FMA may grant exemptions	407
557	Restriction on FMA's exemption power	408
558	Exemption in force for not more than 5 years	408
559	Breach of exemption conditions	408
560	Exemptions in respect of specified overseas jurisdictions	408
561	Effect of exemptions on regulated offers	408
561A	Financial reporting and climate-related disclosure exemptions	409
	Subpart 3—FMA's designation power	
562	FMA's designation power	409
563	Procedural requirements	412
564	Transitional matters	412
565	FMA may make interim orders pending exercise of powers	412
566	Period in which interim order is in force	413
	Subpart 4—Frameworks or methodologies	
567	Purpose	414
568	FMA may specify frameworks or methodologies	414
569	Consultation	415
	Subpart 5—General provisions relating to certain FMA instruments	
570	Application of subpart	415
571	Status and publication of instruments	415
571A	Deferral of obligations to publish, notify, and make available non-class exemptions *[Repealed]*	417
572	Variation and revocation	417
	Subpart 6—Recognition and application regimes	
573	Purpose of this subpart	417
574	Definition of country in this subpart	418

Exemption from Act and regulations for New Zealand offers under recognition regime

575 Exemption from Act and regulations for New Zealand offers under recognition regime 418
576 Power to exempt from Act and regulations under recognition regime 418
577 Matters that must be stated in regulations implementing recognition regime 419
578 FMA may declare failure to meet preconditions of recognition regime to be non-material 420
579 Offence for breach of regulations implementing recognition regime 420

Extension of Act and regulations to overseas offers under application regime

580 Extension of Act and regulations to overseas offers under application regime 420
581 Power to extend Act and regulations under application regime 421
582 Matters that must be stated in regulations implementing application regime 421

Subpart 7—Enforcement of overseas pecuniary penalties under application regime

583 Purpose of this subpart 422
584 Enforcement of overseas pecuniary penalties under application regime 422
585 Power to enforce overseas penalties under application regime 422
586 Interpretation 423
587 Registration of judgment 423
588 Effect of registration 423
589 Enforceability of registered judgment 423
590 Stay may be granted 424
591 Costs 424
592 Interest 424
593 Rules of private international law not to apply 425
594 Other regulations for registration of judgments under application regime 425

Subpart 8—Miscellaneous provisions

595 Registers 425
596 Schedule 3 schemes 426
597 Transitional provisions *[Repealed]* 426

Schedule 1 427
Provisions relating to when disclosure is required and exclusions for offers and services

Schedule 2 459
Registers

Schedule 3 466
Schedule 3 schemes

Schedule 4 469
Transitional, savings, and related provisions

Schedule 5 526
Other provisions relating to financial advice services and client money or property services

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Markets Conduct Act 2013.

2 Commencement

(1) Section 351, subpart 10 of Part 5, subpart 7 of Part 6, and subparts 1 to 7 of Part 9 come into force on the day after the date on which this Act receives the Royal assent.

(2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made appointing different dates for different provisions and for different purposes.

(3) To the extent that it is not previously brought into force under subsection (1) or (2), the rest of this Act comes into force on 1 April 2017.

(4) In this section, **provision** includes any item, or any part of an item, in any of the schedules.

(5) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 2(2): Part 1, Part 2 (other than sections 23–27 and 34–37), those provisions of Part 6 not already in force (other than sections 388, 389, 422(a), 429(a) and (b), and subpart 6), Part 7, Part 8 (other than sections 470–473, 510 and 511), section 597 (but only for the purpose of the provisions of Schedule 4 that are coming into force under paragraph (h)), clauses 1, 2, 6, 8, 9, 10, 12–14, 15, 19, 21 (other than paragraph (b)), 25–29, 48 and 49 of Schedule 1, clauses 1–3, 13(2) and (3), 14, 51,

58, and 59 of Schedule 4 brought into force, on 1 April 2014, by clause 2(1) of the Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51).

Section 2(2): sections 23 to 27 brought into force, on 17 June 2014, by clause 2(2) of the Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51).

Section 2(2): the remaining provisions that have not earlier been brought into force, except section 310, section 597 in so far as it relates to clause 42(7) and (8) of Schedule 4, and clause 42(7) and (8) of Schedule 4, brought into force, on 1 December 2014, by clause 2 of the Financial Markets Legislation (Phase 2) Commencement Order 2014 (LI 2014/325).

Section 2(2): section 310, section 597 in so far as it relates to clause 42(7) and (8) of Schedule 4, and clause 42(7) and (8) of Schedule 4 brought into force, on 1 December 2015, by section 2 of the Financial Markets Legislation (Phase 3) Commencement Order 2015 (LI 2015/252).

Section 2(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 1
Preliminary provisions

Purposes

3 Main purposes

The main purposes of this Act are to—

(a) promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and

(b) promote and facilitate the development of fair, efficient, and transparent financial markets.

4 Additional purposes

This Act has the following additional purposes:

(a) to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services:

(b) to ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks:

(c) to avoid unnecessary compliance costs:

(d) to promote innovation and flexibility in the financial markets.

Overview

5 Overview

(1) In this Act,—

(a) this Part deals with preliminary matters, including specifying the purposes of this Act and interpretation:

(b) Part 2 provides for fair dealing matters, including—

(i) prohibiting misleading or deceptive conduct, false or misleading representations, and the making of unsubstantiated representations in connection with financial products and financial services:

(ii) prohibiting offers of financial products in the course of unsolicited meetings:

(c) Part 3 provides for—

(i) disclosure to investors in relation to certain offers of financial products (Schedule 1 contains provisions relating to when disclosure is required, including exclusions):

(ii) advertisements for those offers:

(iii) ongoing disclosure to investors:

(d) Part 4 provides for the governance of regulated products, including—

(i) the governance of debt securities (including the need for a trust deed and a supervisor):

(ii) the governance of managed investment products (including the need for registration of the managed investment scheme, a governing document, and a supervisor):

(iii) the duties of persons associated with debt securities or registered schemes to make protected disclosures:

(iv) the powers of intervention to enable the supervision of debt securities and registered schemes by a supervisor or the FMA:

(v) ongoing duties of issuers of all regulated products (for example, to maintain registers of regulated products):

(e) Part 5 provides for matters relating to dealing in financial products on markets, including—

(i) prohibiting insider trading and market manipulation:

(ii) providing for continuous disclosure by listed issuers:

(iii) providing for the disclosure of interests of substantial product holders in listed issuers and the disclosure of relevant interests by directors and senior managers of listed issuers:

(iv) providing for the licensing of markets for trading financial products:

(v) providing for the transfer of financial products:

(vi) the making of regulations setting rules for unsolicited offers to purchase financial products:

(f) Part 6 regulates certain financial market services, including—

(i) the licensing of certain financial market service providers (for example, providers of financial advice services, managers of

registered schemes, certain issuers of derivatives, and providers of intermediary services):

(ii) providing for disclosure obligations and the need for client agreements in connection with some of those financial market services:

(iia) imposing other obligations on providers of financial advice services and persons who give financial advice:

(iib) providing for disclosure and conduct obligations for providers of client money or property services:

(iii) imposing other conduct obligations on providers of discretionary investment management services and on their custodians:

(iiia) providing for financial institutions to treat consumers fairly, including by requiring those institutions to establish, implement, maintain, and comply with effective fair conduct programmes:

(iv) providing for the making of regulations regulating the holding and application of investor funds and property by issuers of derivatives:

(g) Part 7 provides for financial reporting obligations:

(ga) Part 7A provides for climate-related disclosure obligations:

(h) Part 8 provides for enforcement and liability matters and for appeals, including—

(i) providing the FMA and the High Court with certain powers to avoid, remedy, or mitigate any actual or likely adverse effects of contraventions of this Act or the regulations:

(ii) the imposition of civil liability (including pecuniary penalty orders and compensation orders):

(iii) offences:

(iv) providing for appeals against the FMA's decisions or (in the case of financial advisers) the disciplinary committee's decisions:

(i) Part 9 provides for—

(i) regulations and exemptions, including powers to prescribe matters relating to the form and content of product disclosure statements, and powers for the FMA to designate financial products and offers, and to grant exemptions, where this is necessary or desirable in order to promote the main purposes of this Act specified in section 3 or any of the additional purposes of this Act specified in section 4:

(ii) transitional provisions (*see* Schedule 4) and miscellaneous matters.

(2) This section is only a guide to the general scheme and effect of this Act.

(3) In addition, the Financial Markets (Repeals and Amendments) Act 2013 repeals and revokes the legislation replaced by this Act and makes amendments to other enactments.

Section 5(1)(f)(i): amended, on 15 March 2021, by section 4(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 5(1)(f)(iia): inserted, on 15 March 2021, by section 4(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 5(1)(f)(iib): inserted, on 15 March 2021, by section 4(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 5(1)(f)(iiia): inserted, on 31 March 2025, by section 4 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 5(1)(ga): inserted, on 27 October 2022, by section 4 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 5(1)(h)(iv): amended, on 15 March 2021, by section 4(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Interpretation

6 Interpretation

(1) In this Act, unless the context otherwise requires,—

accounting period has the same meaning as in section 5(1) of the Financial Reporting Act 2013

acquire—

(a) includes obtain by buying, subscribing, or taking an assignment or transfer of; and

(b) includes, in Part 5, agreeing to acquire; and

(c) in relation to a derivative, a contract of insurance, a consumer credit contract, or a DIMS facility, includes entering into the legal relationship that constitutes the derivative, contract, or facility; and

(d) in relation to a renewal or variation of the terms or conditions of an existing financial advice product, includes entering into the legal relationship that provides for the renewal or variation

administration manager, in relation to a managed investment scheme, means a person to whom a manager of the scheme has contracted some or all of the administration of the scheme

administrator of a financial benchmark means a person that controls the generation and operation of a financial benchmark, including administering and applying the rules or procedures by which a financial benchmark is generated

advertisement,—

(a) in relation to an offer, or intended offer, of financial products, means any form of communication made to the public or a section of the public for the purpose of promoting the offer or intended offer:

(b) in relation to the supply of financial services, means any form of communication made to the public or a section of the public for the purpose of promoting the supply of the services

agreement includes any contract, arrangement, or understanding

alternative disclosure obligation means any provision of regulations made under section 351 that is stated by those regulations to be an alternative disclosure obligation

applicable auditing and assurance standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

applicable financial reporting standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

applicable climate standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

application, in relation to financial products, includes an offer to acquire the financial products whether in writing or otherwise

associated person or **associated** has the meaning set out in section 12(1)

assurance practitioner, in Part 7A, means a person who is appointed to carry out an assurance engagement under that Part

audio or visual service means an audio or visual service provided to users of the service by means of telecommunications

authorised body, in relation to a market services licence, means an entity that is authorised under section 400 to provide a market service under the licence

authoritative notice has the same meaning as in section 5(1) of the Financial Reporting Act 2013

balance date has the same meaning as in section 41 of the Financial Reporting Act 2013

broadcaster has the same meaning as in section 2(1) of the Broadcasting Act 1989

broadcasting has the same meaning as in section 2(1) of the Broadcasting Act 1989

building society has the same meaning as in section 2(1) of the Building Societies Act 1965

business includes any profession, trade, or undertaking, whether or not carried on with the intention of making a pecuniary profit

business rules means the rules for a financial product market that deal with the matters set out in section 328(4)(a) to (d)

civil liability order has the meaning set out in section 484

civil liability provision has the meaning set out in section 485

class, in relation to financial products, has the meaning set out in subsection (3)

client, in relation to—

(a) a financial advice service or client money or property service, has the meaning set out in clause 2 of Schedule 5:

(b) a service of acting as a creditor under a consumer credit contract, means a debtor under a consumer credit contract

client money or property service has the meaning set out in section 431W(1)

climate-related disclosure framework has the same meaning as in section 9AA of the Financial Reporting Act 2013

climate reporting entity has the meaning set out in section 461O

climate statements has the same meaning as in section 5(1) of the Financial Reporting Act 2013

code of conduct or **code** means the code of professional conduct in force under clause 39 of Schedule 5

company—

(a) means a company, or an overseas company, within the meaning of section 2(1) of the Companies Act 1993; but

(b) does not include an overseas limited partnership (within the meaning of section 4 of the Limited Partnerships Act 2008)

complying superannuation fund means a superannuation scheme or workplace savings scheme that is identified as a complying superannuation fund on the register of managed investment schemes (or, if the scheme is identified as a complying superannuation fund in respect of only a section of the scheme, means the scheme in respect of that section)

conduct in relation to a takeover offer—

(a) means conduct following the public announcement by a person of an intention to make an offer (being an offer that is regulated by the Takeovers Code), whether or not the offer has already begun and whether or not the offer proceeds; and

(b) includes conduct incidental or preliminary to a takeover that is regulated by the Takeovers Code

constitution means,—

(a) in the case of a company within the meaning of section 2(1) of the Companies Act 1993, the constitution of the company; and

(b) in the case of any other entity, the documents or instruments constituting or defining the constitution of the entity

consumer credit contract—

(a) has the same meaning as in section 11 of the Credit Contracts and Consumer Finance Act 2003 (and for that purpose sections 12 to 15 and 16 and 16A of that Act apply); but

(b) in subpart 6A of Part 6, has the meaning set out in section 446P

consumer insurance contract has the meaning set out in section 446P(1)

continuous disclosure exemption means an exemption or a waiver of a continuous disclosure provision or provisions of the listing rules of the licensed market

continuous disclosure obligation means an obligation under section 270 and any listing rules with which that section requires compliance

continuous disclosure provisions has the meaning set out in section 271

continuous issue PDS means a PDS that—

(a) relates to financial products that the issuer, in the ordinary course of its business, continuously offers; and

(b) is not the first PDS to be lodged with the Registrar in respect of that class of financial products

continuous issuer means an issuer that in the ordinary course of its business continuously offers financial products

contract of insurance—

(a) has the same meaning as in section 7 of the Insurance (Prudential Supervision) Act 2010; but

(b) in subparts 6A and 6B of Part 6, does not include a contract of reinsurance within the meaning of that Act

contributor, in relation to a financial benchmark, has the meaning set out in section 448C(4)

controlling owner, in relation to any person, has the meaning set out in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (applied to that person as if it were a financial service provider even if it is not)

convertible note has the same meaning as in section YA 1 of the Income Tax Act 2007

co-operative company means a company registered as a co-operative company under the Co-operative Companies Act 1996

court means, in relation to any matter, the court before which the matter is to be determined (*see* section 538, which confers exclusive jurisdiction on the High Court in proceedings other than proceedings for offences)

CRD records means the records that a climate reporting entity is required to keep by subpart 2 of Part 7A

credit union has the same meaning as in section 2 of the Friendly Societies and Credit Unions Act 1982

creditor has the same meaning as in section 5 of the Credit Contracts and Consumer Finance Act 2003 (and for that purpose sections 16 and 16A of that Act apply)

custodial service has the meaning set out in section 431W(2)

custodian means,—

(a) in relation to a managed investment scheme, each person who is designated or appointed to perform, or to whom is contracted, the function of holding some or all of the scheme property under the scheme:

(b) in relation to a discretionary investment management service, each person holding investor money or investor property under that service (whether or not appointed by that investor)

dealing, in relation to financial products,—

(a) means any of the following:

(i) acquiring or disposing of financial products; or

(ii) offering financial products for issue or sale and issuing and transferring financial products; or

(iii) underwriting financial products; or

(iv) promoting by any means the acquisition or disposal of financial products; or

(v) in relation to a derivative, discharging obligations under the derivative; or

(vi) anything that is preparatory to, or related to, any dealing in financial products (for example, giving financial advice), unless an exception applies to the dealing under this Act; but

(b) does not include a dealing excluded by the regulations

debt security has the meaning set out in section 8(1)

defined benefit scheme means a scheme that operates on the principle of unallocated funding, and includes a scheme under which contributions are not allocated on a defined basis to individual members

derivative has the meaning set out in section 8(4)

derivatives issuer means a person that is in the business of entering into derivatives

DIMS facility means an agreement for the provision of a discretionary investment management service

DIMS licensee has the meaning set out in section 432A(3)

direction order means an order under section 468

director means,—

(a) in relation to a company, any person occupying the position of a director of the company by whatever name called:

(b) in relation to a partnership (other than a limited partnership), any partner:

(c) in relation to a limited partnership, any general partner:

(d) in relation to a body corporate or unincorporate, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company:

(e) in relation to any other person, that person

disciplinary committee means the disciplinary committee established under clause 49 of Schedule 5

disclosure document means any of the following:

(a) a PDS:

(b) a limited disclosure document under clause 26 of Schedule 1:

(c) information made available under subpart 4 of Part 3:

(d) a disclosure statement or other information made available under subpart 4, 5A, or 5B of Part 6

discretionary investment management service or **DIMS** has the meaning set out in section 432A(1)

dispose of—

(a) includes dispose of by issuing, selling, assigning, or transferring; and

(b) includes withdrawing from, terminating, or closing out the legal relationship that constitutes the financial product or other financial advice product; and

(ba) in relation to a renewal or variation of the terms or conditions of an existing financial advice product, includes withdrawing from or terminating the product or refusing to agree to the renewal or variation; and

(c) includes agreeing to dispose of

distribute includes—

(a) make available, publish, and circulate; and

(b) communicate by letter, newspaper, an Internet site, broadcasting, an audio or visual service, sound recording, television, film, video, or any form of electronic or other means of communication

document has the same meaning as in section 4(1) of the Evidence Act 2006

employee share purchase scheme means a scheme established by an entity under which employees or directors of the entity or of any of its subsidiaries (or other eligible persons referred to in clause 8 of Schedule 1) may acquire

specified financial products (as defined in that clause) that are issued by the entity

encourage, in subpart 2 of Part 5, includes incite, counsel, or procure

engaged, in relation to a person who gives financial advice, has the meaning set out in section 431E

engaging in conduct means doing or refusing to do an act, and includes—

(a) omitting to do an act; or

(b) making it known that an act will or will not be done

entity means any of the following:

(a) a company or other body corporate:

(b) a corporation sole:

(c) in the case of a trust that has—

(i) only 1 trustee, the trustee acting in his, her, or its capacity as trustee:

(ii) more than 1 trustee, the trustees acting jointly in their capacity as trustees:

(d) an unincorporated body (including a partnership)

equity security has the meaning set out in section 8(2)

exhibiting films to the public means to exhibit to the public films within the meaning of section 2 of the Films, Videos, and Publications Classification Act 1993

fair conduct principle has the meaning set out in section 446C

fair conduct programme means a fair conduct programme under subpart 6A of Part 6

financial advice has the meaning set out in section 431C(1)

financial advice product means—

(a) a financial product (as defined in section 7); or

(b) a DIMS facility; or

(c) a contract of insurance; or

(d) a consumer credit contract; or

(da) a buy-back transaction or consumer lease (within the meaning of section 5 of the Credit Contracts and Consumer Finance Act 2003); or

(e) any other product declared by the regulations to be a financial advice product; or

(f) a renewal or variation of the terms or conditions of an existing financial advice product

financial advice provider means a person that provides a financial advice service (*see* section 431D)

financial advice service means the service of giving regulated financial advice as referred to in section 431D

financial adviser—

(a) means an individual who is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 in relation to a financial advice service; but

(b) does not include a financial advice provider

financial benchmark has the meaning set out subsections (6) and (7)

financial institution has the meaning set out in section 446E

financial markets—

(a) means the financial markets in New Zealand; and

(b) includes—

(i) markets in New Zealand for the provision of financial services; and

(ii) the capital markets in New Zealand

financial markets legislation means the Acts listed in Schedule 1 of the Financial Markets Authority Act 2011 and the enactments made under those Acts

financial markets participant has the same meaning as in section 4 of the Financial Markets Authority Act 2011

financial product has the meaning set out in section 7 (but in Part 2 has the meaning set out in section 18)

financial product market has the meaning set out in section 309

financial product market licence means a licence issued under subpart 7 of Part 5

financial service—

(a) has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and

(b) includes—

(i) a market service; and

(ii) a relevant CCCFA service (as defined in section 92A of the Credit Contracts and Consumer Finance Act 2003); but

(c) does not include, for the purposes of any provision of this Act, any class or classes of services declared by the regulations not to be financial services for the purposes of that provision

financial statements has the same meaning as in section 6 of the Financial Reporting Act 2013

FMA means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011

FMC reporting entity has the meaning set out in section 451

generally accepted accounting practice has the same meaning as in section 8 of the Financial Reporting Act 2013

generally available to the market has the meaning set out in section 232

give, in relation to information or any other matter, includes give by electronic or other means that enable the recipient to readily store the matter in a permanent and legible form

governing document—

(a) means (in the case of a debt security) a trust deed:

(b) means (in the case of a managed investment scheme constituted as a trust) the 1 or more trust deeds that constitutes the scheme or (in the case of any other managed investment scheme) the 1 or more deeds, agreements, or instruments that constitute or govern the scheme (for example, a partnership agreement):

(c) includes (in each case) any amendments to a document referred to in paragraph (a) or (b)

group,—

(a) in Part 7 and subpart 1 of Part 7A, means a group comprising an FMC reporting entity and its subsidiaries:

(b) in Part 7A (other than subpart 1), means a group comprising a climate reporting entity and its subsidiaries

group climate statements has the same meaning as in section 5(1) of the Financial Reporting Act 2013

group financial statements has the same meaning as in section 7 of the Financial Reporting Act 2013

health insurance means insurance against a liability to pay fees or charges relating to the provision of a health service (within the meaning of section 5(1) of the Health Practitioners Competence Assurance Act 2003)

in the business of, in relation to any service or other activity, means carrying on a business of that type (whether or not the business is the person's only business or the person's principal business)

indemnify includes relieve, exempt, or excuse from liability, whether before or after the liability arises

independent trustee, in relation to a restricted scheme, means the trustee, or director of a sole corporate trustee, who is the licensed independent trustee for the purposes of the restricted scheme

industrial and provident society means a society registered under the Industrial and Provident Societies Act 1908

information includes documents

information insider has the meaning set out in section 234

infringement fee, in relation to an infringement offence, means the amount prescribed by the regulations as the infringement fee for the offence

infringement notice means a notice issued under section 514

infringement offence means an offence identified in this Act as being an infringement offence

Inland Revenue Acts means the Acts listed in the Schedule of the Tax Administration Act 1994

inside information has the meaning set out in section 234

insolvency event has the meaning set out in subsection (4)

insolvent means that,—

(a) in relation to an issuer of a debt security or a managed investment product,—

  (i) the issuer is unable to pay the issuer's debts as they become due in the normal course of business; or

  (ii) the value of the issuer's assets is less than the value of the issuer's liabilities, including contingent liabilities (and for this purpose section 4(4) of the Companies Act 1993 applies in respect of the issuer as if it were a company even if it is not):

(b) in relation to a registered scheme that is a defined benefit scheme, the value of the assets in the scheme is less than the value of the vested benefits that may in due course flow from, or are attributable to, membership of the scheme:

(c) in relation to any other registered scheme,—

  (i) the funds in the scheme are not sufficient to enable debts in respect of the scheme to be paid as they become due in the normal course of business; or

  (ii) the value of the assets in the scheme is less than the value of the liabilities in respect of the scheme, including contingent liabilities (and for this purpose section 4(4) of the Companies Act 1993 applies in respect of the scheme as if it were a company)

inspection period means the period commencing on the third working day after the day on which notice of intention to inspect is served on the issuer by

the person concerned and ending with the eighth working day after the day of service

interim stop order has the meaning set out in section 465

intermediary, in subpart 6A of Part 6, has the meaning set out in section 446Q

investment authority has the meaning set out in section 432A(3)

investment manager means, in relation to a managed investment scheme, a person to whom a manager of the scheme has contracted the investment of some or all of the scheme property

investor includes—

(a) a person to whom an offer of financial products is made; and

(b) a person who acquires, or may acquire, a financial product; and

(c) a person who receives, or may receive, a financial service

investor money has the meaning set out in section 444

investor property has the meaning set out in section 444

involved in a contravention has the meaning set out in section 533

issued and **issuer** have the meanings set out in section 11

issuer obligation means an obligation imposed on the issuer of a financial product by or under any of the following:

(a) a governing document that relates to the financial product:

(b) the terms of any regulated offer of the financial product:

(c) a court order relating to the financial product:

(d) this Act (including, in relation to a managed investment product, all obligations as manager):

(e) the KiwiSaver Act 2006:

(f) the Non-bank Deposit Takers Act 2013

KiwiSaver scheme means a scheme that is registered on the register of managed investment schemes as a KiwiSaver scheme

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

licence means a licence under this Act or, in relation to a supervisor, the Financial Markets Supervisors Act 2011, and **licensed** means having a licence, or being authorised under a licence, under this Act or, in relation to a supervisor, having a licence under the Financial Markets Supervisors Act 2011

licensed insurer—

(a) has the same meaning as in section 6 of the Insurance (Prudential Supervision) Act 2010; but

(b) in Part 7, does not include a Lloyd's underwriter (within the meaning of that Act) or an insurer that is included in a class of insurers that is the subject of an exemption under section 238(1)(b)(i)(A) or (ii) of that Act; and

(c) in Part 7A, does not include a Lloyd's underwriter (within the meaning of that Act) or an insurer that is included in a class of insurers that is the subject of an exemption under section 238(1)(b) of that Act

licensed market means a financial product market that is licensed under Part 5 (subject to any regulations made under section 351(1)(d))

licensed market operator means a person that is authorised to operate a licensed market under a financial product market licence

licensed market services means those market services—

(a) that are required to be licensed under Part 6; or

(b) for which a person holds a licence under Part 6 (whether or not required to do so)

licensed NBDT has the same meaning as in section 4(1) of the Non-bank Deposit Takers Act 2013

life insurance—

(a) means insurance of the kind described in section 84(1)(a) to (f) of the Insurance (Prudential Supervision) Act 2010; but

(b) does not include insurance under a contract referred to in section 84(3) or (4) of that Act

limited disclosure document or **LDD**, in relation to an offer referred to in clause 26(1) of Schedule 1, means a limited disclosure document for the offer required by regulations made for the purposes of that clause

listed issuer means—

(a) a person that is a party to a listing agreement with a licensed market operator in relation to a licensed market (and includes a licensed market operator that has financial products quoted on its own licensed market):

(b) a person to which paragraph (a) previously applied, in respect of any action or event or circumstance to which this Act applied at that time

listing rules means the rules for a financial product market that deal with the matters set out in section 328(3)(a) to (e)

Lloyd's means the society of that name incorporated by the Imperial Act known as the Lloyd's Act 1871

Lloyd's managing agent means a person who has the permission of Lloyd's to manage 1 or more syndicates and carry on underwriting and other functions on behalf of 1 or more Lloyd's underwriters

Lloyd's underwriter means an underwriting member of Lloyd's that is treated as being a licensed insurer under section 204 of the Insurance (Prudential Supervision) Act 2010

local authority has the meaning set out in section 5(1) of the Local Government Act 2002 (and *see also* section 8 of the Local Government Borrowing Act 2011 and section 122A of the Local Government Act 2002)

managed investment product has the meaning set out in section 8(3)

managed investment scheme has the meaning set out in section 9

manager means,—

(a) in relation to a registered scheme (other than a restricted scheme), the person designated or appointed as the manager of the scheme:

(b) in relation to a restricted scheme, the persons designated or appointed as trustees of the scheme or, if only 1 person is designated or appointed as a trustee of the scheme, that person:

(c) in relation to a managed investment scheme if there is no person to whom paragraph (a) or (b) applies or if it is not a registered scheme, a person occupying the position of, and carrying out any of the functions of, the manager set out in section 142

market operator obligation means an obligation imposed on a licensed market operator in respect of a licensed market by or under any of the following:

(a) a condition of the licence:

(b) section 314 (general obligations in respect of licensed markets):

(c) section 333 (power to request changes to market rules):

(d) sections 337, 340, 341, and 342 (monitoring obligations)

market rules means—

(a) the rules for a financial product market that deal with the matters required for that market by section 328; or

(b) in the case of a financial product market licensed, or applying to be licensed, under section 317, the rules for the market specified by the FMA under section 334

market service means any of the following:

(a) acting as a manager of a registered scheme:

(b) acting as an independent trustee of a restricted scheme:

(c) acting as a provider of a discretionary investment management service:

(ca) acting as a financial institution:

(d) acting as a derivatives issuer:

(da) acting as a creditor under a consumer credit contract:

(e) acting as a custodian in respect of a registered scheme or a discretionary investment management service:

(ea) acting as a provider of a financial advice service:

(eb) providing a client money or property service:

(f) acting as a provider of prescribed intermediary services:

(g) acting as an administrator of a financial benchmark

market services licence means a licence issued under Part 6

market services licensee obligation means an obligation imposed on a licensee or an authorised body by or under any of the following:

(a) a condition of the licence:

(b) this Act:

(c) the terms of the offer of a financial product or the provision of a market service:

(d) a court order made in connection with the offer of a financial product or the provision of a market service:

(e) in the case of a manager or an independent trustee of a registered scheme,—

(i) a governing document:

(ii) the KiwiSaver Act 2006:

(f) in the case of a creditor under a consumer credit contract, the Credit Contracts and Consumer Finance Act 2003

material information,—

(a) in Part 3, has the meaning set out in section 59:

(b) in Part 5, has the meaning set out in section 231

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

money includes money's worth (except in the definitions of debt security, investor money, and investor property)

NBDT has the same meaning as in section 5 of the Non-bank Deposit Takers Act 2013

New Zealand resident for tax purposes means a person that is a New Zealand resident, as determined under sections YD 1 and YD 2 of the Income Tax Act 2007

nominated representative means an individual who is nominated by a financial advice provider under section 431T

non-quoted financial products means financial products that are not quoted

offer includes—

(a) inviting applications for the issue of financial products:

(b) inviting applications to purchase financial products

offeror means,—

(a) in relation to an offer of financial products for issue, the issuer; or

(b) in any other case of an offer of financial products, the person who has the capacity, or who agrees, to transfer the financial products if the offer is accepted

overseas climate reporting entity, in Part 7A, means a body corporate that—

(a) is incorporated outside New Zealand; and

(b) is a climate reporting entity under section 461O(1)(b) to (e) (*see* section 461Q(3) and (4))

Part 2 fair dealing provision means any of the provisions specified in section 38(1)

Part 3 offer provision means any of the provisions specified in section 101(3) or (4)

Part 4 governance provision means any of the provisions specified in section 228(3) or (4)

Part 5 market provision means any of the provisions specified in section 385(3) or (4)

Part 6 services provision means any of the provisions specified in section 449(3) or (4)

Part 7 financial reporting provision means any of the provisions specified in section 461M(3) or (4)

Part 7A climate-related disclosure provision means any of the provisions specified in section 461ZK(3) or (4)

participant means, in relation to a licensed market, a person authorised by the licensed market operator to participate in that market

person includes any entity

prescribed intermediary services means services of a kind that are prescribed for the purposes of this definition and involve a person acting as an intermediary in relation to a financial product or financial service

product disclosure statement or **PDS**, in relation to a regulated offer, means a product disclosure statement for the offer

product holder, in relation to a financial product, means,—

(a) in the case of a financial product to which section 215(1) does not apply, the holder of the financial product (subject to paragraph (c)); or

(b) in the case of any other financial product, the person who is registered as the holder of the product in a register kept under subpart 4 of Part 4 (subject to paragraph (c)); or

(c) in the case of a derivative, any party to the derivative that did not make a regulated offer of the derivative

product provider, in relation to a financial advice product, means,—

(a) for a financial product, the issuer:

(b) for a DIMS facility, the person to whom the investment authority is granted:

(c) for a contract of insurance, the insurer:

(d) for a consumer credit contract, the creditor:

(e) for any other financial advice product, the person specified in the regulations

protected disclosure has the meaning set out in section 214(4)

provider of a discretionary investment management service has the meaning set out in section 432A(3)

qualified FMC auditor has the meaning set out in section 461E

qualified statutory accountant has the same meaning as in section 5(1) of the Financial Reporting Act 2013

quoted, in relation to—

(a) financial products of a listed issuer, means financial products of the issuer that are approved for trading on a licensed market (and, to avoid doubt, financial products do not cease to be quoted merely because trading in those products is suspended):

(b) derivatives, means derivatives that are approved for trading on a licensed market (and, to avoid doubt, derivatives do not cease to be quoted merely because trading in those products is suspended)

redeemable has the meaning set out in subsection (5)

register entry,—

(a) in relation to a regulated offer, means the entry for the offer in the register of offers of financial products:

(b) in relation to an offer referred to in clause 26(1) of Schedule 1, means the entry for the offer in the register of offers of financial products that is required by regulations made for the purposes of that clause

register of managed investment schemes means the register of managed investment schemes kept under Schedule 2

register of offers of financial products means the register of offers of financial products kept under Schedule 2

registered bank has the same meaning as in section 2(1) of the Banking (Prudential Supervision) Act 1989

registered scheme means a managed investment scheme that is registered on the register of managed investment schemes

Registrar means the Registrar of Financial Service Providers appointed under section 35 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

regulated client money or property service has the meaning set out in section 431W(4)

regulated financial advice has the meaning set out in section 431C(3)

regulated offer has the meaning set out in section 41

regulated product has the meaning set out in section 41

regulations means regulations made under this Act

related, in relation to a body corporate, has the meaning set out in section 12(2)

related party,—

(a) in relation to a registered scheme, has the meaning set out in section 172:

(b) in relation to a DIMS licensee, has the meaning set out in section 439

related party benefit,—

(a) in relation to a registered scheme, has the meaning set out in section 172:

(b) in relation to a DIMS licensee, has the meaning set out in section 439

relative has the meaning set out in clause 5(2) of Schedule 1

relevant event means an event that results in a person having to disclose matters under sections 276 to 279

relevant interest has the meaning set out in sections 235 to 238

relevant money, in relation to financial products, means the money paid—

(a) to acquire the financial products or an increased interest in the financial products; or

(b) as a further contribution or investment or a further deposit as referred to in section 11(2)(c)

reporting period has the meaning set out in section 337

representation, in sections 23 to 27, has the meaning set out in section 23(4)

Reserve Bank means the Reserve Bank of New Zealand

restricted communication has the meaning set out in section 464

restricted scheme means a scheme that is registered on the register of managed investment schemes as a KiwiSaver scheme, a superannuation scheme, or

a workplace savings scheme and that is identified as a restricted scheme on that register

retail client,—

(a) in relation to a financial advice service or a client money or property service, has the meaning set out in clause 3 of Schedule 5:

(b) in subpart 6A of Part 6, has the meaning set out in section 446P

retail investor has the meaning set out in clause 35 of Schedule 1

retail service has the meaning set out in clause 35 of Schedule 1

retirement scheme means any of the following schemes for the purposes of any enactment:

(a) a registered scheme that is a KiwiSaver scheme or a superannuation scheme:

(b) a workplace savings scheme (subject to the enactment and the regulations):

(c) a Schedule 3 scheme (subject to the enactment and the regulations)

Schedule 3 scheme means a scheme that, under Schedule 3, is approved as a Schedule 3 scheme

scheme participant, in relation to a managed investment scheme, means a product holder of a managed investment product in the scheme

scheme property or **property of the scheme**, in relation to a managed investment scheme, means the property to which the scheme relates, including—

(a) contributions of money to the scheme; and

(b) money borrowed or raised for the purposes of the scheme; and

(c) financial products or other property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b), or (d); and

(d) income and property derived, directly or indirectly, from contributions, money, or property referred to in paragraphs (a) to (c) or this paragraph

security—

(a) means an arrangement or a facility that has, or is intended to have, the effect of a person making an investment or managing a financial risk; and

(b) includes—

(i) a financial product; and

(ii) any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and

(iii) any interest in, or right to be paid, money that is, or is to be, deposited with, lent to, or otherwise owing by, any person

(whether or not the interest or right is secured by a charge over any property); and

(iv) any renewal or variation of the terms or conditions of any existing security; but

(c) does not include any interest or right that is declared by regulations not to be a security for the purposes of this Act

senior manager, in relation to a person (**A**), means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of A (for example, a chief executive or a chief financial officer)

separate fund, in Parts 7 and 7A, has the meaning set out in section 461A(2)

service provider or **provider**, in relation to a financial service, means a person who supplies a financial service

special resolution, in relation to—

(a) holders of a financial product issued by a credit union, means a resolution approved by no less than 75% of the number of members of the credit union who are entitled to vote and who vote on the question:

(b) holders of managed investment products in a superannuation scheme, a KiwiSaver scheme, a workplace savings scheme, or any other prescribed scheme, means a resolution approved by no less than 75% of the number of scheme participants who are entitled to vote and who vote on the question:

(c) holders of debt securities in any other case, means a resolution approved by product holders holding debt securities with a combined nominal value of no less than 75% of the nominal value of the debt securities held by those persons who are entitled to vote and who vote on the question:

(d) holders of managed investment products in any other case, means a resolution approved by product holders holding managed investment products with a combined value of no less than 75% of the value of the managed investment products held by those persons who are entitled to vote and who vote on the question

stop order means an order under section 462

subsidiary—

(a) has the meaning set out in section 5 of the Companies Act 1993; and

(b) in Parts 7 and 7A, includes any entity that is classified as a subsidiary in any applicable financial reporting standard

substantial holding has the meaning set out in section 274

substantial product holder has the meaning set out in section 274(1)

superannuation scheme means a scheme that is registered on the register of managed investment schemes as a superannuation scheme (or, if the scheme is registered as a superannuation scheme in respect of only a section of the scheme, means the scheme in respect of that section)

supervisor means a person designated or appointed as a supervisor in relation to a debt security or managed investment scheme for the purposes of any financial markets legislation

supply, in relation to a service, includes provide, grant, or confer

Takeovers Code means the Takeovers Code in force under the Takeovers Act 1993

trade, in Part 2, has the meaning set out in section 18

trading day means, in relation to a licensed market, a day on which the market is open for the trading of financial products

transacting shareholder, in relation to a co-operative company,—

(a) has the same meaning as in section 4 of the Co-operative Companies Act 1996; and

(b) includes a supplying shareholder within the meaning of section 34 of that Act

underlying, in relation to a derivative, means the underlying asset, rate, index, commodity, or other thing referred to in section 8(4)(a)(iii)

unsolicited offer has the meaning set out in section 381(1)

unsolicited offer order means an order under section 472

unsolicited offer provision means any provision of any regulations made under section 382 that is stated by those regulations to be an unsolicited offer provision

unsubstantiated, in sections 23 to 27, has the meaning set out in section 23(2)

voting product, in relation to an entity,—

(a) means a financial product of the entity that confers a right to vote at meetings of members or shareholders (whether or not there is any restriction or limitation on the number of votes that may be cast by or on behalf of the holder of the product); and

(b) includes a financial product that is convertible into a financial product of the kind referred to in paragraph (a); but

(c) does not include a financial product that confers only a right to vote that, under the conditions attached to the product, is exercisable only in 1 or more of the following circumstances:

(i) during a period in which a dividend (or part of a dividend) in respect of the product is in arrears:

(ii) on a proposal to reduce the capital of the entity:

(iii) on a proposal that affects rights attached to the product:

(iv) on a proposal to put the entity into liquidation:

(v) on a proposal for the disposal of the whole or a material part of the property, business, and undertaking of the entity:

(vi) during the liquidation of the entity

wholesale client, in relation to a financial advice service or a client money or property service, has the meaning set out in clause 4 of Schedule 5

wholesale investor—

(a) has the meaning set out in clause 3(2) and (3) of Schedule 1, in relation to an offer of financial products; and

(b) has the meaning set out in clause 36(b) of Schedule 1, in relation to the supply of a discretionary investment management service or any other relevant transaction (as defined in clause 49 of that schedule)

workplace savings scheme means a scheme that is registered on the register of managed investment schemes as a workplace savings scheme (or, if the scheme is registered as a workplace savings scheme in respect of only a section of the scheme, means the scheme in respect of that section).

(2) Terms defined in other provisions of this Act have the meanings given unless the context otherwise requires.

(3) In this Act, financial products are of the same **class** if those financial products have attached to them identical rights, privileges, limitations, and conditions (but, in the case of debt securities, the securities may, except in the prescribed circumstances, have a different redemption date or interest rate or both).

(4) In this Act, an **insolvency event** is any of the following events, and a person **becomes subject to an insolvency event** on the date on which, and (if specified) the time at which, that event occurs:

(a) a liquidator is appointed in respect of a liquidation under Part 16 of the Companies Act 1993 or under any other Act; or

(b) an administrator is appointed in respect of a voluntary administration under Part 15A of the Companies Act 1993; or

(c) a receiver is appointed in relation to the whole, or substantially the whole, of the assets and undertaking of the person; or

(d) a liquidator is appointed in respect of a liquidation of an overseas company under section 342 of the Companies Act 1993; or

(e) a statutory manager is appointed in respect of a statutory management under Part 3 of the Corporations (Investigation and Management) Act 1989 or any other enactment; or

(f) a person is appointed in respect of, or another event occurs that indicates the start of, a process in New Zealand or in any other country in which

the company or other body corporate was incorporated, created, or established that is similar to any of those set out in paragraphs (a) to (e).

(5) In this Act, a share in an entity or a managed investment product in a scheme is **redeemable** if—

(a) the constitution of the entity, the governing documents of the scheme, or the terms of issue of the share or product make provision for the redemption of the share or product by the entity or the manager of the scheme in 1 or more of the following circumstances:

(i) at the option of the entity or manager:

(ii) at the option of the holder of the share or product:

(iii) on a date specified in those documents or in those terms; and

(b) that redemption is for a consideration that is 1 or more of the following:

(i) specified:

(ii) to be calculated by reference to a formula:

(iii) required to be fixed by a suitably qualified person who is not associated with or interested in the entity or manager of the scheme.

(6) In this Act, a **financial benchmark** is a price, estimate, rate, index, or value that is—

(a) referenced or otherwise used for purposes that include 1 or more of the following:

(i) calculating the interest, or other amounts, payable under financial products or other securities:

(ii) calculating the price at which a financial product or other security may be traded, redeemed, or dealt in:

(iii) calculating the value of a financial product or other security:

(iv) measuring the performance of a financial product or other security; and

(b) made available to users (whether or not for a fee); and

(c) generated periodically from 1 or more—

(i) transactions, instruments, currencies, prices, estimates, rates (including an interest rate or exchange rate), indices, values, financial products or other securities; or

(ii) other interests or property (whether tangible or intangible).

(7) A **financial benchmark** does not include any price, estimate, rate, index, or value that is excluded (whether by class or in a particular case) by the regulations.

Section 6(1) **accounting period**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **acquire** paragraph (c): replaced, on 15 March 2021, by section 5(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **acquire** paragraph (d): inserted, on 15 March 2021, by section 5(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **administrator of a financial benchmark**: inserted, on 14 March 2021, by section 33(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 6(1) **applicable auditing and assurance standard**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **applicable climate standard**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **applicable financial reporting standard**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **assurance practitioner**: inserted, on 27 October 2024, by section 22 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **authorised body**: replaced, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **authorised financial adviser**: repealed, on 15 March 2021, by section 5(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **authoritative notice**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **balance date**: replaced, on 1 April 2014, by section 46(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **category 2 product**: repealed, on 15 March 2021, by section 5(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **chartered accountant**: repealed, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 6(1) **client**: replaced, on 1 July 2026, by section 57(1) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 6(1) **client money or property service**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **climate-related disclosure framework**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **climate reporting entity**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **climate statements**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **code of conduct** or **code**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **consumer credit contract**: replaced, on 1 July 2026, by section 57(2) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 6(1) **consumer insurance contract**: inserted, on 7 April 2025, by section 14(2) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Section 6(1) **contract of insurance**: replaced, on 7 April 2025, by section 14(1) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Section 6(1) **contributor**: replaced, on 14 March 2021, by section 33(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 6(1) **CRD records**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **creditor**: inserted, on 1 July 2026, by section 57(3) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 6(1) **custodial service**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **DIMS facility**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **DIMS licensee**: amended, on 15 March 2021, by section 5(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **disciplinary committee**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **disclosure document** paragraph (b): amended, on 9 August 2017, by section 47(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 6(1) **disclosure document** paragraph (d): amended, on 15 March 2021, by section 5(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **discretionary investment management service**: repealed, on 15 March 2021, by section 5(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **discretionary investment management service** or **DIMS**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **dispose of** paragraph (b): amended, on 15 March 2021, by section 5(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **dispose of** paragraph (ba): inserted, on 15 March 2021, by section 5(7) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **engaged**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **fair conduct principle**: inserted, on 31 March 2025, by section 5(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 6(1) **fair conduct programme**: inserted, on 31 March 2025, by section 5(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 6(1) **financial advice**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial advice product**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial advice product** paragraph (da): inserted, on 1 July 2026, by section 57(4) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 6(1) **financial advice provider**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial advice service**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial adviser**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **financial benchmark**: inserted, on 14 March 2021, by section 33(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 6(1) **financial institution**: inserted, on 31 March 2025, by section 5(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 6(1) **financial service** paragraph (b): replaced, on 1 July 2026, by section 57(5) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 6(1) **financial statements**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **FMC reporting entity**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **generally accepted accounting practice**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **group**: replaced, on 27 October 2022, by section 5(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **group climate statements**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **group financial statements**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **health insurance**: inserted, on 7 April 2025, by section 14(2) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Section 6(1) **intermediary**: inserted, on 31 March 2025, by section 5(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 6(1) **investment authority**: amended, on 15 March 2021, by section 5(8) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **issuer obligation** paragraph (f): replaced, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Section 6(1) **licensed insurer**: inserted, on 1 April 2014, by section 46(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **licensed insurer** paragraph (b): amended, on 27 October 2022, by section 5(3) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **licensed insurer** paragraph (c): inserted, on 27 October 2022, by section 5(4) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **licensed NBDT**: inserted, on 31 March 2025, by section 5(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 6(1) **life insurance**: inserted, on 7 April 2025, by section 14(2) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Section 6(1) **limited disclosure document**: inserted, on 9 August 2017, by section 47(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 6(1) **Lloyd's**: inserted, on 31 March 2025, by section 5(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 6(1) **Lloyd's managing agent**: inserted, on 31 March 2025, by section 5(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 6(1) **Lloyd's underwriter**: inserted, on 31 March 2025, by section 5(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 6(1) **local authority**: amended, on 19 September 2026, by section 47 of the Local Government (System Improvements) Amendment Act 2026 (2026 No 64).

Section 6(1) **local authority**: amended, on 17 February 2024, by section 12(1) of the Water Services Acts Repeal Act 2024 (2024 No 2).

Section 6(1) **market service** paragraph (ca): inserted, on 31 March 2025, by section 5(1) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 6(1) **market service** paragraph (da): inserted, on 1 July 2026, by section 57(6) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 6(1) **market service** paragraph (ea): inserted, on 15 March 2021, by section 5(9) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **market service** paragraph (eb): inserted, on 15 March 2021, by section 5(9) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **market service** paragraph (g): inserted, on 14 March 2021, by section 33(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 6(1) **market services licensee obligation** paragraph (f): inserted, on 1 July 2026, by section 57(7) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 6(1) **NBDT**: inserted, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Section 6(1) **nominated representative**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **overseas climate reporting entity**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **Part 7 financial reporting provision**: replaced, on 1 April 2014, by section 46(3) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **Part 7A climate-related disclosure provision**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **product provider**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **provider of a discretionary investment management service**: amended, on 15 March 2021, by section 5(10) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **QFE** or **qualifying financial entity**: repealed, on 15 March 2021, by section 5(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **QFE adviser**: repealed, on 15 March 2021, by section 5(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **qualified FMC auditor** (previously **qualified auditor**): replaced, on 30 March 2025, by section 88 of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Section 6(1) **qualified statutory accountant**: inserted, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 6(1) **register entry**: replaced, on 9 August 2017, by section 47(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 6(1) **registered bank**: amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 6(1) **regulated client money or property service**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **regulated financial advice**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(1) **retail client**: replaced, on 31 March 2025, by section 5(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 6(1) **separate fund**: inserted, on 27 October 2022, by section 5(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **subsidiary**: replaced, on 1 April 2014, by section 46(5) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 6(1) **subsidiary**: amended, on 27 October 2022, by section 5(5) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 6(1) **wholesale client**: inserted, on 15 March 2021, by section 5(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 6(6): inserted, on 14 March 2021, by section 33(3) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 6(7): inserted, on 14 March 2021, by section 33(3) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

7 Meaning of financial product

(1) In this Act, **financial product** means—

(a) a debt security; or

(b) an equity security; or

(c) a managed investment product; or

(d) a derivative.

(2) If an interest or a right is declared by regulations not to be a security for the purposes of this Act, the interest or right is not a financial product for the purposes of this Act.

8 Definitions relating to kinds of financial products

(1) In this Act, subject to subsection (5)(a) and (b), **debt security**—

(a) means a right to be repaid money or paid interest on money that is, or is to be, deposited with, lent to, or otherwise owing by, any person; and

(b) includes—

(i) a security commonly referred to in the financial markets as a debenture, bond, or note; and

(ii) a convertible note; and

(iii) a redeemable share in an entity that would otherwise be an equity security (except a share redeemable only at the option of the entity or a redeemable share in an industrial and provident society); but

(c) does not include—

(i) a share in a co-operative company that is issued or transferred to a transacting shareholder and that is, or may become, subject to the right of a transacting shareholder to surrender the share under section 20 of the Co-operative Companies Act 1996; or

(ii) a derivative of the kind referred to in subsection (4)(b); or

(iii) a unit, proportionate interest, or membership interest in a registered scheme.

(2) In this Act, subject to subsection (5)(a) and (b), **equity security**—

(a) means—

(i) a share in a company; and

(ii) a share in an industrial and provident society; and

(iii) a share in a building society; but

(b) does not include a debt security.

(3) In this Act, subject to subsection (5)(a) and (b), **managed investment product**—

(a) means the interest in a managed investment scheme referred to in paragraph (b) of the definition of that term in section 9(1); but

(b) does not include—

(i) an equity security; or

(ii) a debt security.

(4) In this Act, subject to subsection (5)(a) and (b) and section 10, **derivative**—

(a) means an agreement in relation to which the following conditions are satisfied:

(i) under the agreement, a party to the agreement must, or may be required to, provide at some future time consideration of a particular kind or kinds to another person; and

(ii) that future time is not less than the time, prescribed for the purposes of this subparagraph, after the time at which the agreement is entered into; and

(iii) the amount of the consideration, or the value of the agreement, is ultimately determined, is derived from, or varies by reference to (wholly or in part) the value or amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, 1 or more of the following:

(A) an asset:

(B) a rate (including an interest rate or exchange rate):

(C) an index:

(D) a commodity; and

(b) includes a transaction that is recurrently entered into in the financial markets in New Zealand or overseas and is commonly referred to in those markets as—

(i) a futures contract or forward; or

(ii) an option (other than an option to acquire by way of issue an equity security, a debt security, or a managed investment product); or

(iii) a swap agreement; or

(iv) a contract for difference, margin contract, or rolling spot contract; or

(v) a cap, collar, floor, or spread; but

(c) does not include—

(i) an agreement for the future provision of services; or

(ii) a debt security, an equity security, or a managed investment product; and

(d) does not include an agreement in relation to which all of the following subparagraphs are satisfied:

(i) a party has, or may have, an obligation to buy, and another party has, or may have, an obligation to sell, property (other than financial products or New Zealand or foreign currency) at a price and on a date in the future; and

(ii) the agreement does not permit the seller's obligations to be wholly settled by cash, or by set-off between the parties, rather than by delivery of the property; and

(iii) neither usual market practice nor the rules of a market permit the seller's obligations to be closed out by the matching up of the agreement with another agreement of the same kind under which the seller has offsetting obligations to buy.

(5) A financial product of a particular kind defined in subsection (1), (2), (3), or (4)—

(a) includes—

(i) a security declared to be a financial product of that kind under subpart 3 of Part 9; or

(ii) a right attaching to, or a legal or an equitable interest in, a financial product of that kind; or

(iii) an option to acquire, by way of issue, a financial product of that kind; but

(b) does not include—

(i) a security that is declared under subpart 3 of Part 9 to be a financial product of a different kind:

(ii) a security that is declared under subpart 3 of Part 9 not to be a financial product.

Section 8(1)(b)(iii): amended, on 9 April 2019, by section 6 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

9 Definitions of financial benefit and of managed investment scheme

(1) In this Act,—

financial benefit means capital, earnings, or other financial returns

managed investment scheme means a scheme to which each of the following applies:

(a) the purpose or effect of the scheme is to enable persons taking part in the scheme to contribute money, or to have money contributed on their behalf, to the scheme as consideration to acquire interests in the scheme; and

(b) those interests are rights to participate in, or receive, financial benefits produced principally by the efforts of another person under the scheme (whether those rights are actual, prospective, or contingent, and whether they are enforceable or not); and

(c) the holders of those interests do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions).

(2) However, a **managed investment scheme** does not include—

Scheme only involves management of separate and direct interests in underlying property

(a) a scheme under which each participant takes part in the scheme only by holding 1 or more interests in property if, in respect of each interest,—

(i) it is an interest in separately identifiable underlying property; and

(ii) either the participant holds both the legal and beneficial interest in the property or the legal interest in the property is held on a bare trust for the participant; and

(iii) the value of the interest is not substantially dependent on contributions being made by other participants or the use of other participants' contributions:

Discretionary investment management services

(b) a discretionary investment management service supplied by a DIMS licensee:

Insurance contracts

(c) a scheme that would be a managed investment scheme only because it involves pure risk contracts of insurance:

(d) a scheme that would be a managed investment scheme only because it involves life insurance policies (within the meaning of section 2(1) of the Securities Act 1978) that were issued before this section comes into force.

(3) In subsection (2), **pure risk contract of insurance** means a contract of insurance that does not, and never will, have a value on its cancellation or surrender that is greater than the sum of premiums paid to the insurer.

(4) A managed investment scheme as defined in subsection (1) also includes a scheme declared to be a managed investment scheme under subpart 3 of Part 9.

Section 9(2)(b): replaced, on 15 March 2021, by section 7 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

10 Miscellaneous matters relating to definition of derivative

(1) Section 8(4)(d) applies only to the extent that the agreement deals with the purchase and sale referred to in that paragraph.

(2) An agreement under which one party has an obligation to buy, and the other has an obligation to sell, property is not a derivative merely because the agreement provides for the consideration to be varied by reference to a general inflation index (for example, the Consumers Price Index (All Groups) published by Statistics New Zealand).

(3) Subsection (2) is subject to section 8(5)(a).

11 Definitions of issued and issuer

(1) In this Act,—

(a) a financial product is **issued** to a person when it is first issued, granted, or otherwise made available to a person (subject to subsection (2)):

(b) **issuer** means, in relation to—

(i) a debt security, the person that is liable to repay money or pay interest or other returns under the security (other than as a guarantor):

(ii) an equity security, the company, industrial and provident society, building society, or other entity to which the security relates:

(iii) a managed investment product, the manager of the managed investment scheme to which the product relates:

(iv) a derivative, the derivatives issuer that entered into the derivative.

(2) Despite subsection (1)(a),—

(a) a managed investment product that is an interest in a superannuation scheme, KiwiSaver scheme, workplace savings scheme, or other prescribed scheme is issued to a person when the person becomes a member of the scheme:

(b) a derivative is issued to a person when the person enters into the legal relationship that constitutes the derivative:

(c) none of the following are taken to give rise to the issue of a financial product to a person (**A**):

(i) A making a further contribution to, or investment in, a superannuation scheme, a KiwiSaver scheme, a workplace savings scheme, or any other prescribed scheme of which A is already a scheme participant:

(ii) an employer of A or any other person making, for the benefit of A, a further contribution to, or investment in, a superannuation

scheme, a KiwiSaver scheme, a workplace savings scheme, or any other prescribed scheme of which A is already a scheme participant:

(iii) A making a further deposit into a prescribed deposit product:

(iv) A engaging in conduct specified in regulations made for the purposes of this subparagraph in relation to a financial product already held by A.

(3) Despite subsection (1)(b), if a debt security is offered for the purposes of a managed investment scheme, the manager of the scheme is the issuer for the purposes of this Act.

(4) If each person that enters into a derivative is a derivatives issuer, each of those persons is the issuer.

Example

A and B enter into a futures contract.

Both A and B are derivatives issuers. Accordingly, both A and B are issuers of the futures contract.

Although both parties are issuers, whether any particular party has disclosure or other obligations will depend on the circumstances.

If both A and B hold a market services licence, both A and B will be wholesale investors under clause 37(1)(f) of Schedule 1. Accordingly, neither party will be required to make disclosure under Part 3 to the other party.

(5) In this Act, a reference to an issuer in relation to events, circumstances, or other matters before the financial products are issued is a reference to the person that will be, or is intended to be, the issuer when those products are issued.

(6) In this Act, a person ceases to be an issuer in relation to financial products when those products are cancelled, redeemed, or forfeited, or all of the obligations owing under those products have been discharged.

(7) Subsections (1) to (6) are subject to a declaration under section 562(1)(g).

(8) For the purposes of this Act, the issue of a financial product is not a sale of the financial product.

(9) If the terms of a financial product require or allow the person acquiring the product to pay separate amounts of money at different times, each of those payments must, for the purposes of this Act, be treated as payment for the same financial product as each of those other payments.

12 Meaning of associated person and related body corporate

(1) In this Act, a person (**A**) is **associated** with, or an **associated person** of, another person (**B**) if—

(a) A is a body corporate and B has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attaching to 25% or more of the voting products of the body corporate (or vice versa):

(b) A and B are relatives or related bodies corporate:

(c) A and B are partners to whom the Partnership Law Act 2019 applies:

(d) A is a director or senior manager of B (or vice versa):

(e) A and B are acting jointly or in concert:

(f) A acts, or is accustomed to act, in accordance with the wishes of B (or vice versa):

(g) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa):

(h) A and B are bodies corporate that consist substantially of the same members or shareholders or that are under the control of the same persons:

(i) there is another person with which A and B are both associated.

(2) In this Act, a body corporate (**A**) is **related** to another body corporate (**B**) if—

(a) B is A's holding company or subsidiary within the meaning of section 5 of the Companies Act 1993; or

(b) more than half of A's voting products (other than voting products that carry no right to participate beyond a specified amount in a distribution of either profits or capital) are held by B and bodies corporate that are related to B (whether directly or indirectly, but other than in a fiduciary capacity), or vice versa; or

(c) more than half of the voting products (other than voting products that carry no right to participate beyond a specified amount in a distribution of either profits or capital) of each of A and B are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

(d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; or

(e) there is another body corporate to which A and B are both related.

Section 12(1)(c): amended, on 21 April 2020, by section 86 of the Partnership Law Act 2019 (2019 No 53).

13 Miscellaneous interpretation provisions relating to statements and information

(1) In this Act and the regulations, a reference to a statement or other information that is false, misleading, deceptive, or confusing includes a reference to a statement or information that is false, misleading, deceptive, or confusing (as the case may be) by reason of—

(a) the form or context in which the statement or information is made, published, or provided; or

(b) the omission of any other information that is material in the form and context in which it is made, published, or provided.

(2) For the purpose of considering whether a PDS, a register entry, or any other document or communication provided under this Act is false, misleading, deceptive, or confusing, a statement or other information must be treated as being included in the PDS, register entry, or other document or communication if it—

(a) is contained in the PDS, register entry, or document or communication (as the case may be); or

(b) appears on the face of the PDS, register entry, or document or communication (as the case may be); or

(c) is contained in any financial statements, report, or other document that accompanies, or is incorporated by reference or referred to in, or distributed with, the PDS, register entry, or document or communication (as the case may be).

(3) For the purposes of this section, if a PDS, a register entry, or any other document or communication specifically identifies a particular page or section of an Internet site or of another document, only that page or section is incorporated by reference or referred to in the PDS, register entry, or other document or communication (except in the prescribed circumstances).

(4) If this Act or the regulations require information or any other matter to be contained or included in a PDS, register entry, or document or communication, the information or other matter may be incorporated by reference only if this is authorised by the regulations.

Section 13(1): amended, on 9 August 2017, by section 48 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

14 Status of examples

(1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.

(2) If an example and a provision to which it relates are inconsistent, the provision prevails.

Transitional, savings, and related provisions

Heading: inserted, on 9 April 2019, by section 8 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

14A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 4 have effect according to their terms.

Section 14A: inserted, on 9 April 2019, by section 8 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Act binds the Crown

15 Act binds the Crown

This Act binds the Crown.

General application provision

16 Application of Act

(1) The provisions of this Act have effect despite anything to the contrary in any other enactment or in any agreement, deed, application, disclosure document, or advertisement.

(2) A provision of an agreement or a deed is void if it provides that a party to the agreement or deed is—

(a) required or bound to waive compliance with any requirement of this Act or the regulations; or

(b) taken to have notice of any agreement, document, or matter not specifically referred to in the relevant disclosure document (if any).

(3) Nothing in this section or in any other provision of this Act or the regulations limits subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 (which relates to illegal contracts).

Section 16(3): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Part 2
Fair dealing

17 Overview

(1) This Part provides for fair dealing in relation to financial products and financial services as follows:

(a) sections 19 to 33 prohibit misleading or deceptive conduct, the making of false or misleading representations, and the making of unsubstantiated representations:

(b) sections 34 to 37 prohibit offers of financial products in the course of unsolicited meetings.

(2) Subsection (1) is only a guide to the general scheme and effect of this Part.

18 Interpretation in this Part

In this Part,—

financial product—

(a) has the meaning set out in section 7; and

(b) includes, for the purposes of any provision of this Part or section 464,—

(i) any class or classes of financial advice product declared by the regulations to be a financial product for the purposes of that provision; and

(ii) any security of a kind referred to in section 6(6)(c) (being a security that is used to generate a financial benchmark)

trade means any trade, business, industry, profession, occupation, activity of commerce, or undertaking.

Section 18 **financial product** paragraph (b): replaced, on 14 March 2021, by section 34 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 18 **financial product** paragraph (b)(i): amended, on 15 March 2021, by section 9 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations

19 Misleading or deceptive conduct generally

(1) A person must not, in trade, engage in conduct that is misleading or deceptive or likely to mislead or deceive in relation to—

(a) any dealing in financial products; or

(b) the supply or possible supply of a financial service or the promotion by any means of the supply or use of financial services.

(2) A person must not engage in conduct that is misleading or deceptive or likely to mislead or deceive in relation to any dealing in quoted financial products.

(3) Subsection (2) applies regardless of whether or not the dealing is in trade.

Compare: 1986 No 121 s 9; 1988 No 234 s 13

20 Misleading conduct in relation to financial products

A person must not, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of financial products.

Compare: 1986 No 121 s 10

21 Misleading conduct in relation to financial services

A person must not, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of financial services.

Compare: 1986 No 121 s 11

22 False or misleading representations

A person must not, in trade, in connection with any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services, make a false or misleading representation—

(a) that the products or services are of a particular kind, standard, quality, grade, quantity, composition, or value, or have had a particular history; or

(b) that the products or services are offered, issued, transferred, or supplied by a particular person, by a person of a particular trade, qualification, or skill, or by a person who has other particular characteristics; or

(c) that a particular person has agreed to acquire the products or services; or

(d) that the products or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or

(e) that a person has any sponsorship, approval, endorsement, or affiliation; or

(f) with respect to the price of the products or services; or

(g) concerning the need for the products or services; or

(h) concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993 or Part 6 of the Deposit Takers Act 2023; or

(i) concerning the place of origin of the products or services.

Compare: 1986 No 121 s 13

Section 22(h): amended, on 1 July 2025, by section 487 of the Deposit Takers Act 2023 (2023 No 35).

23 Unsubstantiated representations

(1) A person must not, in trade, make an unsubstantiated representation.

(2) A representation is **unsubstantiated** if the person making the representation does not, when the representation is made, have reasonable grounds for the representation, irrespective of whether the representation is false or misleading.

(3) This section does not apply to a representation that a reasonable person would not expect to be substantiated.

(4) In this section and sections 24 to 27, **representation** means a representation that is made—

(a) in respect of financial products or financial services; and

(b) in connection with—

(i) any dealing in financial products; or

(ii) the supply or possible supply of financial services or the promotion by any means of the supply or use of financial services.

24 Court must have regard to certain matters

(1) In a proceeding concerning a contravention of section 23, and in assessing whether a person had reasonable grounds for a representation, a court must have regard to all of the circumstances, including—

(a) the nature of the financial products or financial services in respect of which the representation was made:

(b) the nature of the representation (for example, whether it was a representation about quality or quantity):

(c) any research or other steps taken by or on behalf of the person before the person made the representation:

(d) the nature and source of any information that the person relied on to make the representation:

(e) the extent to which the person making the representation complied with the requirements of any standards, codes, or practices relating to the grounds on which such a representation may be made, and the nature of those requirements:

(f) the actual or potential effects of the representation on any person.

(2) Subsection (1) does not limit sections 499 to 504.

25 Limitation on commencement of proceedings in relation to unsubstantiated representations

Despite anything to the contrary in Part 8, only the FMA may commence a proceeding or make an application under that Part in relation to a contravention of section 23.

26 Section 23 does not apply to representations in PDSs, register entries, or other disclosure documents

Section 23 does not apply to a representation made in a disclosure document or a register entry.

27 Section 23 subject to other enactments

Section 23 does not apply to a representation made by a person in a particular trade, business, industry, profession, occupation, activity of commerce, or undertaking if, when the representation is made,—

(a) another enactment sets out requirements relating to the grounds on which representations may be made by a person in that trade, business, industry, profession, occupation, activity of commerce, or undertaking (whether more or less onerous than section 23); and

(b) the person complies with those requirements.

28 Certain conduct does not contravene various provisions

(1) Conduct that contravenes section 82, 99, 262, 265, 427, 431P, or 431Y or clause 27 of Schedule 1 does not contravene sections 19 to 23.

(2) For the purpose of this section, conduct must be treated as contravening section 82, 99, 262, 265, 427, 431P, or 431Y or clause 27 of Schedule 1 even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

Compare: Australian Securities and Investments Commission Act 2001 ss 12DA(1A), 12DB(2) (Aust)

Section 28(1): amended, on 15 March 2021, by section 10 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 28(2): amended, on 15 March 2021, by section 10 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

29 Limited application of provisions in relation to newspapers, magazines, broadcasting, etc

(1) Nothing in sections 19 to 23 applies to the publication of any information or matter in a newspaper or magazine, or on a news media or financial market commentary Internet site, by the relevant person, not being—

(a) the publication of an advertisement; or

(b) the publication of any information or matter relating to any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services by—

(i) the relevant person or, if the relevant person is a body corporate, by a related body corporate; or

(ii) a person who is a party to any agreement with the relevant person relating to the content, nature, or tenor of the information or matter.

(2) Nothing in sections 19 to 23 applies to the broadcasting or exhibiting of any information or matter by the relevant person, not being—

(a) the broadcasting or exhibiting of an advertisement; or

(b) the broadcasting or exhibiting of any information or matter relating to any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services by—

(i) the relevant person or, if the relevant person is a body corporate, by a related body corporate; or

(ii) a person who is a party to any agreement with the relevant person relating to the content, nature, or tenor of the information or matter.

(3) In this section,—

exhibiting means—

(a) exhibiting by means of an audio or visual service; or

(b) exhibiting films to the public

newspaper has the same meaning as in section 2 of the Films, Videos, and Publications Classification Act 1993

relevant person means, in relation to—

(a) a newspaper or magazine, the proprietor of the newspaper or magazine:

(b) a news media or financial market commentary Internet site, the person that controls the content of the Internet site:

(c) broadcasting, the broadcaster:

(d) an audio or visual service, the person that controls the content of the audio or visual service:

(e) exhibiting films to the public, the person that exhibits the films.

Compare: 1986 No 121 s 15

30 Defence for publisher

In any proceeding against a person (**A**) for contravention of any of sections 19 to 23 committed by the publication of an advertisement, it is a defence if A proves that—

(a) A's business is publishing or arranging for the publication of advertisements; and

(b) A received the advertisement, or the information contained in the advertisement, as the case may be, in the ordinary course of that business and did not know and had no reason to suspect that the publication of the advertisement or the publication of the advertisement containing that information, as the case may be, would constitute a contravention of the provision.

Compare: 1986 No 121 s 44(4)

31 Licensed market operator does not contravene by notifying disclosures

A licensed market operator does not contravene any of sections 19 to 23 by the notification of any disclosure made to it under subpart 4, 5, or 6 of Part 5 or under an alternative disclosure obligation.

32 Other exceptions

(1) Sections 19 to 23 do not apply to conduct in relation to a takeover offer for financial products under the Takeovers Code or to conduct under that offer to the extent that the conduct is regulated by the Takeovers Code, the Takeovers Act 1993, or an exemption granted under that Act.

(2) Sections 19 to 23 do not apply to conduct in relation to the acquisition or redemption by a company of its shares under the Companies Act 1993 to the extent that the conduct is regulated by that Act.

Compare: 1988 No 234 ss 14, 15

33 Territorial scope of sections 19 to 23

(1) Sections 19 to 23 apply to—

(a) conduct in New Zealand; and

(b) conduct outside New Zealand by any person resident, incorporated, registered, or carrying on business in New Zealand to the extent that that conduct relates to dealing in financial products, or the supply of a financial service, that occurs (in part or otherwise) within New Zealand.

(2) Sections 19 to 23 also apply to a restricted communication that is distributed or to be distributed to a person outside New Zealand by any person resident, incorporated, registered, or having a principal place of business in New Zealand.

(3) Despite anything to the contrary in Part 8, only the FMA may commence a proceeding or make an application under that Part in relation to conduct to which this Part applies by virtue of subsection (2).

(4) In this section, **registered** means registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Compare: 1988 No 234 s 18; 1978 No 103 s 7(3)

Offers in course of unsolicited meetings

34 Prohibition of offers in course of unsolicited meetings with persons acting otherwise than in trade

(1) A person must not offer financial products for issue or sale to a person who is acting otherwise than in trade (**A**) in the course of, or because of, an unsolicited meeting with A.

(2) Subsection (1) does not prohibit an offer of financial products if—

(a) the offer does not require disclosure under Part 3 because of an exclusion under Part 1 of Schedule 1 (other than an exclusion under clause 12 or 16 of that schedule); or

(b) the offer is through a financial advice provider that is acting in the ordinary course of business as a financial advice provider; or

(c) *[Repealed]*

(d) the offer is an offer of the financial products of a co-operative where becoming a holder of those products is—

(i) a necessary incident of doing business with the co-operative; or

(ii) the means by which a person can access the benefits of membership of the co-operative; or

(e) the offer is made in the prescribed circumstances.

(3) This section applies to offers of financial products received by persons in New Zealand, regardless of—

(a) where any resulting issue or transfer occurs:

(b) where the issuer or offeror is resident, incorporated, or carries on business.

(4) In this section,—

meeting includes—

(a) a telephone call; or

(b) a meeting held by means of audio, audio and visual, or electronic communication where the participants can simultaneously communicate with each other throughout the meeting

co-operative means—

(a) a co-operative company; or

(b) an industrial and provident society; or

(c) an entity of a prescribed kind.

Compare: Corporations Act 2001 s 736 (Aust)

Section 34(2)(b): replaced, on 15 March 2021, by section 11 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 34(2)(c): repealed, on 15 March 2021, by section 11 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

35 Right to withdraw

(1) If financial products are issued or transferred to a person (**A**) as a result of an offer that contravenes section 34, A has the right to—

(a) withdraw from holding the financial products and to have the relevant money repaid (in any case other than a derivative); or

(b) in the case of a derivative, withdraw from the derivative.

(2) The right referred to in subsection (1) is exercisable by A giving to the offeror notice of the exercise of the right within 1 month after the date of the issue or transfer.

(3) Notice under this section may be expressed in any way (including oral or written) that shows the intention of A to withdraw from holding the financial product or from the derivative.

(4) This section and sections 36 and 37 do not limit any other liability that a person may have for a contravention of section 34.

Compare: Corporations Act 2001 s 738 (Aust)

36 Offeror obligations if notice of withdrawal given

(1) If a notice is given under section 35 in relation to a financial product other than a derivative,—

(a) the offeror must ensure that the relevant money is repaid as soon as practicable; and

(b) if the relevant money is not repaid within 1 month after the notice is given, the offeror and the directors of the offeror are jointly and severally liable to repay the relevant money together with interest at a prescribed rate from the date on which the notice was given.

(2) If a notice is given under section 35 in relation to a derivative,—

(a) no party to the derivative is obliged or entitled to perform it further; and

(b) each party to the derivative must, as soon as practicable, repay any money, or return any other property, received by the party under the derivative to the party from whom it was received; and

(c) if money owed by the offeror is not repaid within 1 month after the notice is given, the offeror and the directors of the offeror are jointly and severally liable to repay the money together with interest at a prescribed rate from the date on which the notice was given.

(3) For the purposes of subsection (2)(b), an amount of money due from one party must be set off against an amount due from the other party.

37 Director not liable if no misconduct or negligence

A director is not liable under section 36(1)(b) or (2)(c) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

Civil liability

38 Civil liability for certain contraventions of this Part

(1) Sections 19 to 23, 34, and 36 are Part 2 fair dealing provisions.

(2) A contravention of any of sections 19 to 23 may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) A contravention of section 34 or 36 may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case.

Part 3
Disclosure of offers of financial products

Subpart 1—Application

39 Issue offers that need disclosure

An offer of financial products for issue requires disclosure to an investor under this Part unless an exclusion under Part 1 of Schedule 1 applies.

Compare: Corporations Act 2001 s 706 (Aust)

40 Sale offers that need disclosure

An offer of financial products for sale requires disclosure to an investor under this Part only if disclosure is required under Part 2 of Schedule 1.

Compare: Corporations Act 2001 s 707(1) (Aust)

41 Meaning of regulated offer and of regulated product

(1) In this Act, **regulated offer**—

(a) means an offer of financial products to 1 or more investors where the offer to at least 1 of those investors requires disclosure under this Part (regardless of whether or not an exclusion under Schedule 1 applies to an offer to 1 or more other investors); but

(b) does not include an offer of financial products to 1 or more investors if—

(i) the only investors who are able, under the terms of the offer, to acquire the products are investors to whom disclosure under this Part is not required; and

(ii) all of the investors who acquire the products under the offer are investors to whom disclosure under this Part is not required.

Example

ABC Limited makes an offer of its ordinary shares to 100 investors.

Of those investors, 5 are wholesale investors, 15 are relatives of directors of ABC Limited, and 20 are close business associates of ABC Limited. Exclusions under Schedule 1 apply and accordingly the offers to these investors do not require disclosure under this Part.

However, none of the exclusions in Schedule 1 apply to the remaining 60 investors. The offer to each of these investors requires disclosure. This means that a product disclosure statement must be given to each of the 60 investors under section 50 (subject to section 51).

The offer of ABC Limited's ordinary shares, as a whole, is a regulated offer because at least some of the offers to investors require disclosure.

Some obligations under this Act apply to the regulated offer as a whole. These obligations apply to all of the investors even if the offers to some of those investors do not require disclosure. For example, all money paid for the shares must be held

in trust under section 87 (even if the money is paid by a wholesale investor, a relative, or a close business associate), ongoing disclosure under subpart 4 may be required to be made to a wholesale investor, a relative, or a close business associate, and registers of financial products kept under subpart 4 of Part 4 relate to products held by all product holders.

(2) In this Act, **regulated product** means—

(a) a financial product offered under a regulated offer; or

(b) a managed investment product in a registered scheme (whether or not there has been a regulated offer).

42 Regulated offers that need to meet additional governance requirements

(1) A regulated offer of debt securities must meet requirements under subpart 1 of Part 4.

(2) A regulated offer of managed investment products must meet requirements under subpart 2 of Part 4.

43 Options over financial products

(1) For the purposes of this Part and Schedule 1,—

(a) an offer of an option to acquire, by way of issue, a financial product is an offer both of the option and of the underlying financial product; and

(b) the grant of an option without an offer of the option is an offer of the option; and

(c) an offer to grant an option is an offer to issue the option.

(2) *See* clause 11 of Schedule 1 for an exclusion in relation to options.

Compare: Corporations Act 2001 s 702 (Aust)

44 Treatment of offers of convertible financial products

For the purposes of this Part and Schedule 1, an offer of a financial product that will be converted, or is or may become convertible, into another financial product is an offer both of the financial product that is issued and of the financial product into which it converts.

45 Treatment of offers of renewals and variations

(1) For the purposes of this Part and Schedule 1, an offer of a renewal or variation of the terms or conditions of a financial product made by the issuer is an offer of the financial product as renewed or varied.

(2) A change to the terms or conditions of a financial product is not a variation for the purposes of this section if the change is made in accordance with the existing terms or conditions of the financial product (for example, if the issuer exercises a power under the terms or conditions to change an interest rate).

(3) *See* clause 24 of Schedule 1 for an exclusion in relation to renewals and variations (but limited disclosure may be required under clause 26 of that schedule).

46 Offers of financial products involving customised terms

(1) Offers of a type of financial product to 2 or more investors are not prevented from being part of the same regulated offer merely because the product involves terms that are customised for each investor.

(2) The PDS and register entry for a regulated offer are not required to include specific information about any customised terms that apply to a particular investor.

(3) Subsection (2) does not prevent the regulations from requiring a PDS or register entry to contain information about the kinds of terms that may be customised for each investor.

Example

A derivatives issuer makes an offer of a particular type of swap agreement to retail investors (where the offer to at least 1 of those investors requires disclosure under this Part).

These derivatives involve some standard or generic terms. They also involve customised terms that are negotiated with each retail investor (for example, terms relating to particular dates or amounts).

The offer of those derivatives to those investors is a regulated offer.

The PDS or register entry relates to the regulated offer as a whole. The PDS and register entry do not include specific information about the customised terms that apply to a particular investor. This does not prevent the regulations requiring the PDS or register entry to contain a description of the kinds of customised terms that may be negotiated (such as a range of dates or amounts).

47 Territorial scope of Part

(1) This Part applies to offers of financial products in New Zealand, regardless of—

(a) where any resulting issue or transfer occurs:

(b) where the issuer or offeror is resident, incorporated, or carries on business.

(2) For the purposes of subsection (1), financial products are offered in New Zealand if an offer of the financial products is received by a person in New Zealand, unless the offeror demonstrates that it has taken all reasonable steps to ensure that persons in New Zealand (other than persons referred to in subsection (3)) may not accept the offer.

(3) The persons referred to in this subsection are persons to whom disclosure under this Part is not required because of an exclusion under any of clauses 3 to 5 of Schedule 1.

Compare: 1978 No 103 s 7

Subpart 2—Procedure for making regulated offers

Product disclosure statement must be prepared and lodged

48 PDS must be prepared and lodged

(1) A person must not make a regulated offer, or distribute an application form for a regulated offer, unless the issuer of the financial products has—

(a) prepared a product disclosure statement (**PDS**) for the offer; and

(b) lodged the PDS with the Registrar; and

(c) supplied to the Registrar all of the information that the register entry (if any) is required to contain by this Act or the regulations.

(2) A person who contravenes subsection (1) commits an offence if the person knows that, or is reckless as to whether, the offer is a regulated offer.

(3) A person who commits an offence under subsection (2) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Compare: Corporations Act 2001 ss 709(1), 718, 727(1) (Aust)

49 Purpose of PDS

The purpose of a PDS is to provide certain information that is likely to assist a prudent but non-expert person to decide whether or not to acquire the financial products.

Disclosure to investors

50 PDS must be given if offer requires disclosure

(1) This section applies if an offer of financial products is made to a person (**A**) to whom disclosure under this Part is required.

(2) A person must not accept an application, or issue or transfer the financial products to A, if a PDS for the regulated offer was not given to A before the application was made.

(3) In this section, **application** means an application for the financial products that is made by A.

(4) *See* sections 39 and 40 and Schedule 1, which contain provisions relating to when an offer of financial products to a person requires disclosure under this Part.

51 Certain situations in which section 50 does not need to be complied with

(1) An offeror does not have to comply with section 50 in respect of an offer of financial products to a person (**A**)—

(a) if A has already been given a PDS (for the same or a different offer) that contains all of the information that the PDS referred to in section 50 would be required to contain; or

(b) if the offeror believes on reasonable grounds that paragraph (a) applies; or

(c) in any other prescribed circumstances.

(2) For the purposes of subsection (1)(a), immaterial differences in the information that is contained in the PDS that has been given to A and the PDS referred to in section 50 may be disregarded.

Compare: Corporations Act 2001 s 1012D(1) (Aust)

52 PDS treated as having been given if application form used was included in, or accompanied by, PDS

(1) An offeror must be treated as having complied with section 50 in respect of an offer of financial products to a person (**A**) if—

(a) the offeror issues or transfers the financial products to A in response to an application form; and

(b) the application form identifies the PDS to which it relates; and

(c) A confirms in the application form that A has received the PDS; and

(d) the offeror has reasonable grounds to believe that—

(i) the application form was included in, or accompanied by, the PDS when the form was distributed by or on behalf of the offeror; or

(ii) the form was copied, or directly derived, by the person making the application from a form referred to in subparagraph (i).

(2) The identification of the PDS under subsection (1)(b) must be reasonably prominent.

53 Offence to knowingly or recklessly contravene section 50

(1) A person who contravenes section 50 commits an offence if the person knows that, or is reckless as to whether, the offer of financial products to A requires disclosure under this Part.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

54 Right to withdraw

(1) If a person contravenes section 50 in respect of an offer of financial products to a person (**A**), A has the right to—

(a) withdraw from holding the financial products and to have the relevant money repaid (in any case other than a derivative); or

(b) in the case of a derivative, withdraw from the derivative.

(2) The right referred to in subsection (1) is exercisable by A giving to the offeror notice of the exercise of the right within the earlier of—

(a) 6 months after A knows, or ought reasonably to know, that section 50 has been contravened; and

(b) 12 months after the financial products are issued or transferred to A.

(3) Notice under this section may be expressed in any way (including oral or written) that shows the intention of A to withdraw from holding the financial product or from the derivative.

(4) This section and sections 55 and 56 do not limit any other liability that a person may have for a contravention of section 50.

55 Offeror obligations if notice of withdrawal given

(1) If a notice is given under section 54 in relation to a financial product other than a derivative,—

(a) the offeror must ensure that the relevant money is repaid as soon as practicable; and

(b) if the relevant money is not repaid within 1 month after the notice is given, the offeror and the directors of the offeror are jointly and severally liable to repay the relevant money together with interest at a prescribed rate from the date on which the notice was given.

(2) If a notice is given under section 54 in relation to a derivative,—

(a) no party to the derivative is obliged or entitled to perform it further; and

(b) each party to the derivative must, as soon as practicable, repay any money, or return any other property, received by the party under the derivative to the party from whom it was received; and

(c) if money owed by the offeror is not repaid within 1 month after the notice is given, the offeror and the directors of the offeror are jointly and severally liable to repay the money together with interest at a prescribed rate from the date on which the notice was given.

(3) For the purposes of subsection (2)(b), an amount of money due from one party must be set off against an amount due from the other party.

56 Director not liable if no misconduct or negligence

A director is not liable under section 55(1)(b) or (2)(c) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

Content and presentation of product disclosure statements and register entries

57 Disclosure of material information and content of PDS and register entry

(1) An issuer that prepares, or is required to prepare, a PDS must ensure that, as at the date on which the PDS is lodged with the Registrar,—

(a) the PDS—

(i) contains all of the information that it is required to contain by the regulations; and

(ii) is accompanied by all of the documents that the regulations require it to be accompanied by; and

(iii) complies with all other requirements of the regulations relating to the content of the PDS; and

(iv) is dated not later than the date on which it is lodged with the Registrar; and

(v) if applicable, specifies its expiry date (*see* section 84) and states that no financial products will be issued or sold on the basis of the PDS in relation to applications received after the expiry date; and

(vi) complies with section 60 (consent for expert statements or endorsements); and

(b) the register entry (if any)—

(i) contains all of the information that it is required to contain by the regulations; and

(ii) contains all material information relating to the regulated offer that is not contained in the PDS; and

(iii) complies with all other requirements of the regulations relating to the content of the register entry; and

(iv) complies with section 60 (consent for expert statements or endorsements).

(2) Subsection (1)(b)(ii) does not limit subsection (1)(a).

(3) Subsection (1)(b)(ii) does not apply in the prescribed circumstances (which may include, for example, certain offers to existing product holders or certain situations in which information about an offer is available by means of a continuous disclosure obligation).

58 Register entry not required in prescribed circumstances

A register entry for a regulated offer is not required in the prescribed circumstances.

59 Meaning of material information in this Part

(1) In this Part, **material information**, in relation to a regulated offer, means information that—

(a) a reasonable person would expect to, or to be likely to, influence persons who commonly invest in financial products in deciding whether to acquire the financial products on offer; and

(b) relates to the particular financial products on offer or the particular issuer, rather than to financial products generally or issuers generally.

(2) However, **material information** does not include—

(a) information about the specific terms of a financial product that have been customised for a particular investor; or

(b) information about an identifiable investor.

Example

A derivatives issuer makes an offer of a particular type of swap agreement to retail investors.

These derivatives involve some standard or generic terms. They also involve customised terms that are negotiated with the particular retail investor (for example, terms relating to particular dates or amounts).

The material information for the regulated offer as a whole does not include specific information about the customised terms that apply to a particular investor. This does not prevent the regulations requiring the PDS or register entry to contain a description of the kinds of customised terms that may be negotiated.

Compare: Corporations Act 2001 ss 674, 677, 710, 1013E (Aust)

60 Consent of experts and persons who make endorsements

(1) An issuer that prepares, or is required to prepare, a PDS must ensure that the PDS and the register entry only include an expert statement or endorsement made by a person (**A**), or a statement said in the PDS or register entry to be based on an expert statement or endorsement made by a person (**A**), if—

(a) A has consented in writing to the statement being included in the PDS or register entry in the form and context in which it is included; and

(b) the PDS or register entry states that A has given the consent; and

(c) A has not withdrawn the consent before the PDS is lodged with the Registrar.

(2) Nothing in subsection (1) applies in relation to any statement given by an approved rating agency in connection with a rating given, or to be given, by it.

(3) In this section and section 83(3),—

approved rating agency means a rating agency nominated or approved under section 80 of the Banking (Prudential Supervision) Act 1989, section 86 of the Non-bank Deposit Takers Act 2013, or section 62 of the Insurance (Prudential Supervision) Act 2010

endorsement means a statement that—

(a) may reasonably be regarded as encouraging or persuading persons to acquire the financial products on offer; and

(b) relates to the particular financial products on offer or the particular issuer, rather than to financial products generally or issuers generally

expert—

(a) means a person who holds himself or herself out to be of a profession or calling that gives authority to a statement made by him or her; but

(b) does not include a person acting in his or her capacity as a director or senior manager of an entity

expert statement means a statement purporting to be made by an expert.

Compare: Corporations Act 2001 ss 716, 735(1) (Aust)

Section 60(3) **approved rating agency**: amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 60(3) **approved rating agency**: amended, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

61 PDS must be worded and presented in clear, concise, and effective manner

(1) An issuer that prepares, or is required to prepare, a PDS must ensure that the information in the PDS is worded and presented in a clear, concise, and effective manner.

(2) This section is not a civil liability provision for the purposes of subpart 3 of Part 8 (but *see* subpart 1 of Part 8, which allows the FMA to make a stop order if a PDS does not comply with this section).

Compare: Corporations Act 2001 s 715A (Aust)

62 PDS must comply with prescribed requirements relating to form and presentation

An issuer that prepares, or is required to prepare, a PDS must ensure that the PDS complies with all requirements of the regulations relating to the form and presentation of the PDS.

Other provisions relating to lodging of PDS and other documents

63 Supply of prescribed information

(1) An issuer that lodges a PDS or other document under this Part must supply the prescribed information to the Registrar when the PDS or document is lodged.

(2) Information referred to in subsection (1) may include, for example, a copy of the consent of a prescribed person to the lodgement.

(3) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

64 Registrar must notify FMA of lodgement of PDS

(1) The Registrar must, immediately after a PDS is lodged, notify the FMA of the lodgement for the purpose of allowing the FMA an opportunity to consider the PDS, any governing document, and whether the offer, or intended offer, of financial products will be made in compliance with this Act.

(2) The nature and extent of the consideration under subsection (1) (if any) is at the FMA's discretion.

(3) Nothing in this section or any other provision of this Act limits the FMA's power to consider or reconsider at any time any of the matters referred to in subsection (1).

Compare: 1978 No 103 s 43C(1), (3), (4)

65 Waiting period after lodgement before processing applications for financial products

(1) An offeror must not accept an application for, or issue or transfer, financial products offered under a regulated offer until—

(a) the period of 5 working days after lodgement of the PDS has ended; or

(b) if the period is extended under section 66, the period as extended has ended.

(2) An offeror that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

(4) This section does not prevent an offeror from receiving applications for financial products or money during the period that applies under this section.

Compare: 1978 No 103 s 43D; Corporations Act 2001 s 727(3) (Aust)

66 FMA may extend period

(1) The FMA may extend the period under section 65(1)(a) by notice in writing to the offeror.

(2) The period, as extended, must end no later than 10 working days after lodgement of the PDS with the Registrar.

(3) The FMA must give a copy of the notice under subsection (1) to the Registrar.

67 Waiting period restriction does not prevent offeror from acting under another PDS

If section 65 applies to a PDS that relates to a particular offer of financial products but another lodged PDS that is not or is no longer subject to section 65 also relates to the offer of those products, that section does not prevent an offeror, in accordance with this Act, from accepting applications for, or issuing or transferring, financial products in reliance upon the other PDS.

68 FMA may remove restrictions if its consideration complete or consideration or further consideration unnecessary

(1) This section applies if the FMA is satisfied that—

(a) its consideration as referred to in section 64 is complete; or

(b) consideration as referred to in section 64 is, in the circumstances, unnecessary.

(2) The FMA may give notice to the offeror that—

(a) the period that applies under section 65 ends at a particular time specified by the FMA (being an earlier time than that provided for under that section); or

(b) section 65 does not apply in respect of the PDS.

(3) Nothing in this section limits subpart 2 of Part 9 (which allows the FMA to grant exemptions in respect of compliance with section 65).

Compare: 1978 No 103 s 43E

69 Waiting period does not usually apply to continuous issue PDSs

(1) Section 65 applies to a continuous issue PDS only if it is of a class that is prescribed by the FMA in a notice issued under this section.

(2) The FMA may issue a notice that prescribes the class or classes of continuous issue PDSs to which section 65 applies.

(3) The FMA must, before issuing a notice in respect of a class of continuous issue PDSs, be satisfied that it is in the public interest for the FMA to have an opportunity to consider those PDSs before any person accepts applications for, or issues or transfers, financial products offered under those PDSs (for example, where in the circumstances, a particular risk relates to a particular class of offerors or financial products).

(4) Subpart 5 of Part 9 (general provisions relating to certain FMA instruments) applies to a notice under this section.

Compare: 1978 No 103 s 43EA

70 No guarantee or representation as to compliance

(1) Nothing done or omitted to be done under this Act or the regulations by the Registrar or the FMA guarantees or represents that—

(a) a PDS, register entry, or governing document—

(i) complies with this Act and the regulations:

(ii) does not contain any material misdescription or material error or any material matter that is not clearly legible:

(iii) is not false or misleading:

(b) the FMA has considered a PDS, register entry, or governing document with a view to determining whether it—

(i) complies with this Act and the regulations:

(ii) contains any material misdescription or material error or any material matter that is not clearly legible:

(iii) is false or misleading.

(2) This section does not limit section 22 of the Financial Markets Authority Act 2011 (which provides protection from liability for the FMA and its members and employees).

Compare: 1978 No 103 s 43M

71 When supplementary document or replacement PDS may be lodged

(1) An issuer that lodges a PDS with the Registrar may lodge a supplementary document or replacement PDS with the Registrar to—

(a) correct a false or misleading statement in the PDS; or

(b) correct an omission from the PDS of information that it is required to contain by this Act or the regulations; or

(c) correct the PDS because it is not worded and presented in a clear, concise, and effective manner; or

(d) update, or add to, the information contained in the PDS.

(2) However, a supplementary document must not be lodged with the Registrar in the prescribed circumstances.

Compare: Corporations Act 2001 s 1014A (Aust)

72 Supplementary document

(1) If a supplementary document is lodged with the Registrar, the PDS together with the supplementary document is taken to be the PDS for the purposes of the application of this Act or the regulations to events that occur after the lodgement.

(2) The issuer must ensure that, at the beginning of a supplementary document, there is—

(a) a statement that it is a supplementary document; and

(b) an identification of the PDS that it supplements; and

(c) an identification of all previous supplementary documents lodged with the Registrar in relation to the regulated offer; and

(d) a statement that it is to be read together with the PDS that it supplements and the previous supplementary documents.

(3) The supplementary document must be dated with the date on which it is lodged with the Registrar.

Compare: Corporations Act 2001 s 719(2), (4) (Aust)

73 Replacement PDS

(1) If a replacement PDS is lodged with the Registrar, the PDS is taken to be the replacement PDS for the purposes of the application of this Act or the regulations to events that occur after the lodgement.

(2) The issuer must ensure that, at the beginning of a replacement PDS, there is—

(a) a statement that it is a replacement PDS; and

(b) an identification of the PDS that it replaces.

(3) The replacement PDS must be dated not later than the date on which it is lodged with the Registrar.

Compare: Corporations Act 2001 s 719(3), (5) (Aust)

Section 73(3): replaced, on 30 March 2025, by section 95 of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

74 Registrar must notify FMA of lodgement of supplementary document or replacement PDS

(1) The Registrar must, immediately after a supplementary document or replacement PDS is lodged, notify the FMA of the lodgement for the purpose of allowing the FMA an opportunity to consider the supplementary document or replacement PDS.

(2) The nature and extent of the consideration (if any) that the FMA gives to a supplementary document or replacement PDS are at the FMA's discretion.

(3) Section 65 does not apply to the lodgement of a supplementary document or replacement PDS.

Compare: 1978 No 103 s 43C(1), (3)

75 Publication of lodgement

(1) If a PDS, supplementary document, or replacement PDS is lodged by an issuer under this Part, the issuer must, as soon as practicable after it receives the certificate of lodgement from the Registrar, ensure that an Internet site maintained by or on behalf of the issuer—

(a) contains a reasonably prominent statement—

(i) to the effect that the PDS, supplementary document, or replacement PDS has been lodged; and

(ii) describing where and how a copy of the PDS, supplementary document, or replacement PDS can be obtained; or

(b) contains a reasonably prominent link to such a statement.

(2) The statement or link referred to in subsection (1) may be removed from the Internet site maintained by or on behalf of the issuer on or after the date that the offeror ceases to offer financial products in reliance upon the PDS.

Amending register entry

76 When register entry may be amended

An issuer of financial products offered under a regulated offer may give notice to the Registrar to amend the register entry in order to—

(a) correct a false or misleading statement in the register entry; or

(b) correct an omission from the register entry of information it is required to contain by this Act or the regulations; or

(c) update, or add to, the information contained in the register entry.

Conditions referred to in PDS

77 Minimum number or amount condition must be fulfilled before issue or transfer

(1) This section applies if a PDS states that the financial products will not be issued or transferred unless—

(a) applications for a minimum number of the financial products are received; or

(b) a minimum amount is raised.

(2) The offeror must not issue or transfer any of the financial products under the regulated offer until the condition referred to in subsection (1) is satisfied.

(3) For the purpose of working out whether a condition referred to in this section or section 79(2)(a) has been satisfied, a person who has agreed to acquire financial products as an underwriter is taken to have applied for those products.

Compare: Corporations Act 2001 s 723(2) (Aust)

78 Issue or transfer void if quotation condition not fulfilled

(1) This section applies if—

(a) a PDS states or implies that the financial products are to be quoted on a financial market (whether in New Zealand or elsewhere); and

(b) the financial products are not admitted to quotation within—

(i) the period specified in, or determined in accordance with, the PDS; or

(ii) if there is no such period, 3 months after the date of the PDS.

(2) An issue or a transfer of financial products under the regulated offer is void.

(3) The offeror must deal under section 80 with the application for financial products that relates to the issue or transfer referred to in subsection (2).

Compare: Corporations Act 2001 s 723(3) (Aust)

Dealing with applications where condition referred to in PDS not met or disclosure defective

79 Application of section 80

(1) An offeror must, if any of subsections (2) to (5) apply, deal under section 80 with any applications for the financial products offered under the regulated offer that have not resulted in an issue or a transfer of the products.

(2) This subsection applies if—

(a) a PDS states that the financial products will not be issued or transferred unless—

(i) applications for a minimum number of the financial products are received; or

(ii) a minimum amount is raised; and

(b) a condition referred to in paragraph (a) is not satisfied within 4 months after the date of the PDS.

(3) This subsection applies if—

(a) a PDS states or implies that the financial products are to be quoted on a financial market (whether in New Zealand or elsewhere); and

(b) the financial products are not admitted to quotation within—

(i) the period specified in, or determined in accordance with, the PDS; or

(ii) if there is no such period, 3 months after the date of the PDS.

(4) This subsection applies if—

(a) the offeror becomes aware—

(i) that a statement in the PDS is false or misleading or is likely to mislead; or

(ii) that there is an omission from the PDS of information that is required to be contained in the PDS by this Act or the regulations; or

(iii) of a circumstance that has arisen since the PDS was lodged with the Registrar that would have been required by this Act or the regulations to be disclosed or otherwise contained in the PDS if it had arisen before the PDS was lodged, and the circumstance is not so disclosed or otherwise contained in the PDS; and

(b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

(5) This subsection applies if—

(a) the offeror becomes aware—

(i) that a statement in the register entry is false or misleading or is likely to mislead; or

(ii) that there is an omission from the register entry of information that is required to be contained in the register entry by this Act or the regulations; or

(iii) of a circumstance that has arisen since the PDS was lodged with the Registrar that would have been required by this Act or the regulations to be disclosed or otherwise contained in the register entry if it had arisen before the PDS was lodged, and the circumstance is not so disclosed or otherwise contained in the register entry; and

(b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

Compare: Corporations Act 2001 s 724(1) (Aust)

80 Choices open to offeror

(1) If this section applies, the offeror must do 1 of the following in respect of each applicant:

(a) ensure that the money received from the applicant in respect of the application for financial products is repaid; or

(b) in the case of section 78 or 79(2), (3), or (4), give the applicant—

(i) a supplementary document or replacement PDS that corrects the deficiency or changes the terms of the offer; and

(ii) 1 month to confirm whether or not the applicant still wants to acquire the financial products; or

(c) in the case of section 79(5),—

(i) amend the register entry to correct the deficiency; and

(ii) give notice in the prescribed manner to the applicant that the register entry has been amended; and

(iii) give the applicant 1 month to confirm whether or not the applicant still wants to acquire the financial products; or

(d) if permitted by the regulations, in the case of section 79(4) or (5),—

(i) give the applicant the document or PDS referred to in paragraph (b)(i) or comply with paragraph (c)(i) and (ii) (as the case may be); and

(ii) give the applicant a prescribed period to withdraw their application and be repaid.

(2) If an applicant does not confirm that the applicant still wants to acquire the financial products within 1 month after being given the opportunity to do so under subsection (1)(b)(ii) or (c)(iii) or an applicant withdraws an application under subsection (1)(d), the offeror must ensure that the money received from the applicant in respect of the application for financial products is repaid as soon as practicable.

(3) If the money referred to in subsection (2) is not repaid within 1 month after the offeror is required to ensure that it is repaid under that subsection, the offeror and the directors of the offeror are jointly and severally liable to repay the money together with interest at a prescribed rate from the expiry of the 1-month period referred to in subsection (2) or from the date on which the application is withdrawn (as the case may be).

(4) An offeror must, when acting under this section (including in respect of a withdrawal under subsection (1)(d)), comply with the prescribed requirements (if any).

Compare: Corporations Act 2001 s 724(2) (Aust)

81 Director not liable if no misconduct or negligence

A director is not liable under section 80(3) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

Prohibition of offers where defective disclosure in PDS or register entry

82 False or misleading statements, omissions, and new matters requiring disclosure

(1) An offeror must not offer, or continue to offer, financial products under a regulated offer if—

(a) there is—

(i) a statement in the PDS, any application form that accompanies the PDS, or the register entry that is false or misleading or is likely to mislead; or

(ii) an omission from the PDS, or the register entry, of information that is required to be contained in the PDS, or the register entry, by this Act or the regulations; or

(iii) a circumstance that has arisen since the PDS was lodged with the Registrar that would have been required by this Act or the regulations to be disclosed or otherwise contained in the PDS, or the register entry, if it had arisen before the PDS was lodged, and the circumstance is not so disclosed or otherwise contained in the PDS or the register entry; and

(b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

(2) For the purposes of this section, a statement about a future matter (including the doing of, or refusing to do, an act) must be taken to be misleading if the person making the statement does not have reasonable grounds for making it.

(3) Subsection (2) does not limit the meaning of a reference to a misleading statement.

(4) *See* section 510 (offence to knowingly or recklessly contravene this section) and section 496 (which provides that a person may be treated as suffering loss or damage in the case of a contravention of this section).

Compare: Corporations Act 2001 s 728 (Aust)

83 Persons who must inform offeror about disclosure deficiencies

(1) A person referred to in subsection (2) must, in relation to a regulated offer, notify the offeror in writing as soon as practicable if the person becomes aware at any time before the end of the application period that—

(a) a material statement in the PDS, or the register entry, is false or misleading or is likely to mislead; or

(b) there is a material omission from the PDS, or the register entry, of information that is required to be contained in the PDS, or the register entry, by this Act or the regulations; or

(c) there is a material circumstance that has arisen since the PDS was lodged with the Registrar that would have been required by this Act or the regulations to be disclosed or otherwise contained in the PDS, or the register entry, if it had arisen before the PDS was lodged, and the circumstance is not so disclosed or otherwise contained in the PDS or register entry.

(2) The persons are—

(a) each director of the offeror:

(b) each person named in the PDS or register entry with the person's consent as a proposed director of the offeror:

(c) the issuer (if the offeror is not the issuer) and each director of the issuer:

(d) a person referred to in section 60 who has consented as referred to in that section.

(3) A person referred to in subsection (2)(d) is required to notify the offeror of matters under this section only if the matters relate to the expert statement or endorsement to which the person's consent relates.

(4) In subsection (1), **application period** means the period in which applications for financial products under the PDS may be made.

Compare: Corporations Act 2001 s 730(1) (Aust)

Expiry

84 Expiry

(1) A PDS must, if required by the regulations, specify its expiry date.

(2) The expiry date must not be later than the end of the prescribed period (if any).

(3) The expiry date of a replacement PDS must be the same as that of the original PDS it replaces.

Compare: Corporations Act 2001 s 711(6) (Aust)

85 How offeror must deal with applications on expiry

(1) If a PDS expires, the offeror must deal with applications for the financial products offered under the regulated offer in accordance with subsections (2) and (3).

(2) If an application is received on or before the expiry date, the offeror may issue or transfer financial products to the applicant.

(3) If an application is received after the expiry date, the offeror must do 1 of the following:

(a) ensure that the money received from the applicant in respect of the application is repaid; or

(b) give the applicant—

(i) a new PDS (unless the applicant is not a person to whom disclosure under this Part is required or, under section 51, the offeror does not have to comply with section 50 in respect of the offer to the applicant); and

(ii) 1 month to confirm whether or not the applicant still wants to acquire the financial products.

(4) If an applicant does not confirm that the applicant still wants to acquire the financial products within 1 month after being given the opportunity to do so under subsection (3), the offeror must ensure that the money received from the applicant in respect of the application for financial products is repaid as soon as practicable.

(5) If the money referred to in subsection (4) is not repaid within 1 month after the offeror is required to ensure that it is repaid under that subsection, the offeror and the directors of the offeror are jointly and severally liable to repay the money together with interest at a prescribed rate from the expiry of the 1-month period referred to in subsection (4).

(6) An offeror must, when acting under this section, comply with the prescribed requirements (if any).

Compare: Corporations Act 2001 s 725 (Aust)

86 Director not liable if no misconduct or negligence

A director is not liable under section 85(5) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

Money for financial products must be held in trust

87 Money for financial products must be held in trust

(1) This section applies to money paid to an issuer or offeror of regulated products if the money is paid by a person (**A**)—

(a) to acquire the financial products or an increased interest in the financial products; or

(b) as a further contribution or investment or a further deposit as referred to in section 11(2)(c).

(2) The issuer or offeror must hold the money in trust for A until—

(a) the financial products are issued or transferred; or

(b) the money is otherwise applied for the purpose for which it was paid (for example, to increase the extent of A's interest in a scheme or A's deposit or to pay a fee); or

(c) the money is repaid to A; or

(d) the money is applied in accordance with A's express instructions given after the application for financial products was made and the money was paid.

(3) The issuer or offeror must—

(a) deal with the money, while it is held in trust, in the prescribed manner (including ensuring that any prescribed requirements relating to the investment of the money are complied with); and

(b) if the money needs to be repaid, ensure the money is repaid as soon as practicable and, in any event, no later than 1 month after the obligation to repay arises.

(4) This section does not apply to derivatives (but *see* section 448, which provides for regulations relating to the holding and application of investor funds and property by derivatives issuers).

Compare: Corporations Act 2001 ss 722, 1017E (Aust)

Offering financial products in entity that does not exist

88 Offering financial products of entity that does not exist

(1) A person must not offer financial products of an entity that has not been formed or does not exist if the offer would be a regulated offer if the entity did exist.

(2) Subsection (1) applies even if it is proposed to form or incorporate the entity.

(3) A person who contravenes this section commits an offence if the person knows that the offer would be a regulated offer if the entity did exist.

(4) A person who commits an offence under this section is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 3 years, a fine not exceeding $200,000, or both; and

(b) in any other case, to a fine not exceeding $600,000.

Compare: Corporations Act 2001 s 726 (Aust)

Subpart 3—Advertising

89 Advertising for regulated offers

(1) If an offer, or intended offer, of financial products is or will be a regulated offer, a person must not, except in accordance with any of sections 90 to 92, distribute an advertisement of the offer or intended offer.

(2) Subsection (1) applies only if the advertisement is authorised or instigated by, or on behalf of, the issuer, the offeror, or an associated person of the issuer or offeror.

Compare: Corporations Act 2001 s 734(2), (2A) (Aust)

90 Distribution of PDS or registered documents

A person may distribute either of the following without contravening section 89:

(a) a PDS that has been lodged with the Registrar:

(b) a copy of any part of the register entry or of any document that is contained in the register entry.

Compare: Corporations Act 2001 s 734(4) (Aust)

91 Advertising before PDS lodged

(1) Before the PDS is lodged with the Registrar, an advertisement does not contravene section 89 if it includes, in relation to the offer or intended offer, a statement—

(a) that no money is currently being sought; and

(b) that financial products cannot currently be applied for or acquired under the offer or intended offer; and

(c) that, if the offer is made, the offer will be made in accordance with this Act; and

(d) if the offeror wishes, that specifies that the offeror is seeking preliminary indications of interest and, in that case, also specifies—

(i) how indications of interest may be made; and

(ii) that no indication of interest will involve an obligation or a commitment to acquire the financial products.

(2) A statement required under subsection (1)(a) to (c) and (d)(ii) must be reasonably prominent.

Compare: 1978 No 103 s 5(2CA); Corporations Act 2001 s 734(5) (Aust)

92 Advertising after PDS lodged

(1) After the PDS is lodged with the Registrar, an advertisement does not contravene section 89 if it—

(a) includes a statement that identifies,—

(i) if the financial products are offered by way of issue, the issuer of the products; and

(ii) if the financial products are offered pursuant to sale offers to which section 40 applies, the issuer of the products and the offeror of the products; and

(b) includes a statement that indicates that the PDS for the offer is available and where and how it can be obtained; and

(c) does not contain any information, sound, image, or other matter that is materially inconsistent with the PDS, or register entry, for the offer to which it relates.

(2) A statement required under this section must be reasonably prominent.

Compare: Corporations Act 2001 s 734(6) (Aust)

93 Documents to which subpart does not apply

Nothing in this subpart applies to the distribution of any of the following:

(a) a document that relates to the financial products of a listed issuer and consists solely of—

(i) a statement or report relating to the affairs of the issuer made to the relevant licensed market operator, by or on behalf of the issuer, for the purposes of compliance with any market rules; or

(ii) a report of a statement or report referred to in subparagraph (i):

(b) a document that consists solely of—

(i) a statement or report made to or for the purposes of a meeting of the issuer's product holders or any class of those product holders; or

(ii) a report of the proceedings of such a meeting:

(c) information that consists solely of information that is required by law to be provided or made available (for example, an annual report of a company) whether directly or as a condition of carrying out any activity or as a condition of an exemption from any enactment.

94 Defence for publishers

In any proceeding against a person (**A**) for a contravention of section 89 in relation to an advertisement, it is a defence if A proves that—

(a) A's business is publishing or arranging for the publication of advertisements; and

(b) A received the advertisement, or the information contained in the advertisement, as the case may be, in the ordinary course of that business and did not know and had no reason to suspect that the publication of the advertisement or the publication of the advertisement containing that information, as the case may be, would constitute a contravention of section 89.

Compare: 1986 No 121 s 44(4)

Subpart 4—Ongoing disclosure and updating of registers

Duty to update register of offers of financial products and register of managed investment schemes

95 Duty to notify changes to Registrar

(1) An issuer of regulated products must notify the Registrar of a prescribed change within the prescribed period.

(2) In this section,—

prescribed change, in respect of regulated products,—

(a) means a prescribed change that relates to the issuer, any offeror of those products, the regulated products, or any registered scheme to which those products relate; but

(b) does not include a change in respect of which the FMA is required to notify the Registrar (for example, an order made under subpart 1 of Part 8)

prescribed period, in respect of a prescribed change, means—

(a) the period (if any) that is prescribed in respect of the change; or

(b) 5 working days after the issuer becomes aware of the change (if paragraph (a) does not apply).

(3) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 43Q

Section 95(1): replaced, on 9 August 2017, by section 49 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 95(2): replaced, on 9 August 2017, by section 49 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Disclosure to particular persons

96 Information to be made available to investors, FMA, Registrar, or other prescribed persons

(1) Every issuer of regulated products must, at the request of a prescribed person or at the prescribed times or on the occurrence of the prescribed events, make available to a prescribed person the information that is required to be made available under this section by the regulations.

(2) The information must be made available in the prescribed manner.

(3) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

(5) To avoid doubt, information may be required to be made available to a person under this section even though Schedule 1 specifies that an offer to the person would not require disclosure under this Part (for example, a wholesale investor who acquires financial products under a regulated offer is not required to be given a PDS for the offer but ongoing disclosure to the investor may be required under the regulations).

Section 96 heading: amended, on 9 August 2017, by section 50 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Public disclosure

97 Information to be made publicly available

(1) Every issuer of regulated products must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, make publicly available the information that is required to be made publicly available by the regulations.

(2) An issuer commits an offence and is liable on conviction to a fine not exceeding $50,000 if—

(a) the regulations made for the purposes of this section require the issuer to make information publicly available by lodging that information with the Registrar; and

(b) the issuer contravenes this section by failing to lodge that information with the Registrar in accordance with subsection (1).

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 54C

Section 97(2): inserted, on 9 August 2017, by section 51 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 97(3): inserted, on 9 August 2017, by section 51 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

98 Issuer must provide information to Registrar

(1) An issuer of regulated products must lodge with the Registrar a copy of any information made, or to be made, publicly available under section 97 before the date that is 5 working days after that information is made available under that section.

(2) Subsection (1) does not apply—

(a) if the regulations made for the purposes of section 97 require the information to be made publicly available by lodging that information with the Registrar; or

(b) otherwise in the prescribed circumstances.

(3) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Defective ongoing disclosure

99 Defective ongoing disclosure

(1) An issuer must not provide to the Registrar, or make available to any person or the public, any information under any of sections 95 to 98 (the **ongoing disclosure**) if—

(a) there is—

(i) a statement in the ongoing disclosure that is false or misleading or is likely to mislead; or

(ii) an omission from the ongoing disclosure of information that is required to be contained in the ongoing disclosure by this Act or the regulations; and

(b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

(2) For the purposes of this section, a statement about a future matter (including the doing of, or refusing to do, an act) must be taken to be misleading if the person making the statement does not have reasonable grounds for making it.

(3) Subsection (2) does not limit the meaning of a reference to a misleading statement.

(4) This section does not limit sections 95 to 98.

(5) *See* section 511 (offence to knowingly or recklessly contravene this section) and section 496 (which provides that a person may be treated as suffering loss or damage in the case of a contravention of this section).

Confirmation

100 Issuer or offeror must provide confirmation

(1) An issuer or offeror of a regulated product must, in the prescribed circumstances, provide to a product holder either the financial product or confirmation information.

(2) The financial product or confirmation information must be provided in the prescribed manner.

(3) Confirmation information provided to a product holder under this section is, in the prescribed circumstances, prima facie evidence of the matters to which it relates.

(4) In this section, **confirmation information** means the information relating to the financial product or product holder that is prescribed (which may include, for example, information describing the nature, terms, and conditions of the financial product and the name of the product holder).

(5) An issuer or offeror that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(6) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 54(1), (4)

Subpart 5—Civil liability for certain contraventions of this Part

101 Part 3 offer provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 3 offer provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) The provisions are the following:

- (a) section 48 (PDS must be prepared and lodged):
- (b) section 50 (PDS must be given to person to whom disclosure is required):
- (c) section 57 (disclosure of material information and content of PDS and register entry):
- (d) section 60 (consent of experts and persons who make endorsements):
- (e) section 77 (minimum number or amount condition must be fulfilled before issue or transfer):
- (f) section 80 (choices open to offeror if condition in PDS not met or defective disclosure):

(g) section 82 (false or misleading statements, omissions, and new matters requiring disclosure):

(h) section 87(2) (money for financial products must be held in trust):

(i) section 89 (advertising for regulated offers):

(j) sections 97 and 99 (ongoing disclosure):

(k) clauses 13 and 17 of Schedule 1 (restrictions on advertising for small offers and small schemes):

(l) any provision of regulations made for the purposes of clause 26 of Schedule 1 that is prescribed by the regulations to be a Part 3 offer provision and stated to give rise to civil liability under this subsection:

(m) clause 27 of Schedule 1 (false or misleading statements and omissions).

(4) A contravention of any of the following may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case:

(a) section 55 (offeror obligations if notice of withdrawal is given):

(b) section 62 (PDS must comply with prescribed requirements relating to form and presentation):

(c) section 75 (publication of lodgement):

(d) section 83 (certain persons must inform offeror about disclosure deficiencies):

(e) section 85 (dealing with applications on expiry):

(f) section 87(3) (money for financial products must be dealt with in prescribed manner and repaid as soon as practicable if required):

(g) section 88 (offering financial products in entity that does not exist):

(ga) any provision of regulations made for the purposes of clause 26 of Schedule 1 that is prescribed by the regulations to be a Part 3 offer provision and stated to give rise to civil liability under this subsection:

(h) clause 28 of Schedule 1 (certain persons must inform offeror about disclosure deficiencies).

Section 101(3)(l): replaced, on 9 August 2017, by section 52(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 101(4)(ga): inserted, on 9 August 2017, by section 52(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 101(4)(h): amended, on 9 August 2017, by section 52(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Part 4
Governance of financial products

102 Overview

(1) This Part provides for the governance of regulated products as follows:

(a) subpart 1 sets out the need for a trust deed and a supervisor, and other issuer and supervisor obligations, for regulated offers of debt securities:

(b) subpart 2 sets out the need for a managed investment scheme to be registered for regulated offers of managed investment products, and the need for a governing document and a supervisor, and other issuer, supervisor, and custodian obligations, for registered schemes:

(c) subpart 3—

(i) requires persons associated with those debt securities or registered schemes to make protected disclosures; and

(ii) provides powers of intervention to enable the supervision of those debt securities or registered schemes by the supervisor or the FMA (in addition to the powers in Part 8):

(d) subpart 4 contains ongoing duties of issuers of all regulated products to maintain registers and keep copies of documents.

(2) Subsection (1) is only a guide to the general scheme and effect of this Part.

Subpart 1—Governance of debt securities

103 Need for governing document and supervisor for regulated offer of debt security

(1) A person must not make a regulated offer of a debt security unless—

(a) there is a trust deed for the debt security that—

(i) complies with sections 104 to 106; and

(ii) is lodged with the Registrar with a certificate from the issuer and supervisor to the effect that the trust deed complies with those sections on the basis set out in the certificate; and

(b) there is a licensed supervisor—

(i) who is designated or appointed as the trustee under the trust deed for the debt security (or under the Financial Markets Supervisors Act 2011); and

(ii) whose licence covers supervision of the debt security.

(2) A reference in this subpart to—

(a) a trust deed is a reference to the trust deed required by subsection (1); and

(b) a debt security is a reference to a debt security offered under a regulated offer.

(3) The issuer of the debt security must ensure that there continues to be a trust deed and licensed supervisor as required by subsection (1) until the debt security is cancelled, redeemed, or forfeited, or all of the obligations owing under the debt security have been discharged.

Compare: 1978 No 103 s 33(2)

Governing document requirements

104 Contents of trust deed for debt securities

(1) A trust deed for a debt security must provide that the following are held in trust by the supervisor for the benefit of the holders of the debt security:

(a) the right to enforce the issuer's duty to repay, or to pay interest, under the terms of the debt security; and

(b) any charge or security for repayment; and

(c) the right to enforce any other duties that the issuer, any guarantor, and any other person have under—

(i) the terms of the debt security; or

(ii) the provisions of the trust deed or this Act in relation to the debt security.

(2) Subsection (1) does not prevent a holder of a debt security from enforcing the issuer's duty to repay, or to pay interest, or any other duties that the issuer, any guarantor, or any other person owes to the holder.

(3) The trust deed is treated as containing any provision that is implied into it by or under this Act.

(4) The trust deed must also provide adequately for all of the matters required to be contained in it by section 105 and the regulations.

(5) The trust deed must provide for the contents required by this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

Compare: Corporations Act 2001 s 283AB (Aust)

105 Limits on permitted exemptions and indemnities

(1) If a supervisor of a debt security has any rights to be indemnified in relation to the performance of the supervisor's licensee obligations (as defined in section 4 of the Financial Markets Supervisors Act 2011), those rights—

(a) must be set out in the trust deed for the debt security; and

(b) are available only in relation to the proper performance of the duties under sections 112(1) and 113.

(2) No other agreement has any effect to the extent that it purports to confer a right of a kind set out in subsection (1).

Compare: Corporations Act 2001 s 283DB (Aust); 1978 No 103 s 62

106 Trust deed must be legally enforceable

A trust deed for a debt security must be contained in 1 or more documents that are legally enforceable as between the supervisor, the issuer of the debt security, and the product holders.

107 Effect of trust deed

A trust deed for a debt security has no effect to the extent that it contravenes, or is inconsistent with, this Act, the regulations, or any term implied into it by this Act or the regulations.

108 Changes to trust deed

(1) An amendment to or a replacement of a trust deed for a debt security has no effect unless made—

(a) with the consent of the supervisor of the debt security under this section; or

(b) under section 109; or

(c) under section 22(7) or 37(6) of the Financial Markets Supervisors Act 2011 or any other power to amend or replace the trust deed under an enactment.

(2) The supervisor must not consent to an amendment to, or a replacement of, the trust deed under this section unless—

(a) either—

(i) the amendment or replacement is approved by, or is contingent on approval by, the holders of the debt security; or

(ii) the supervisor is satisfied that the amendment or replacement does not have a material adverse effect on the holders of the debt security; and

(b) the supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that the trust deed, as amended or replaced, will comply with sections 104 to 106 on the basis set out in the certificate.

(3) The approval of the holders of the debt security for the purposes of subsection (2)(a) must be the approval of a special resolution of—

(a) the holders of the debt security; or

(b) each class of holders of the debt security that is or may be adversely affected by the amendment or replacement.

(4) Subsection (2) is subject to section 112(2)(b).

109 Power to make FMA-approved changes to trust deeds

(1) An issuer may amend or replace a trust deed for a debt security with the FMA's consent if the FMA is satisfied that it is necessary to enable the trust deed to comply with this subpart or any enactment or rule of law.

(2) Subsection (1) applies despite anything to the contrary in the trust deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the trust deed.

(3) The FMA's discretion to set preconditions for requests to it includes (without limitation) a discretion to set preconditions that satisfy the FMA that it is appropriate for the amendment or replacement to be made under this section rather than by means of another power or process.

(4) An amendment or a replacement made under this section must be treated for all purposes as if it were authorised by, and made in accordance with, the trust deed.

110 Lodging of changes to trust deed

(1) Within 5 working days after an amendment to or a replacement of a trust deed for a debt security, the issuer must ensure that notice of the amendment or replacement, and a copy of the certificate for the amendment or replacement (if any), is lodged with the Registrar.

(2) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Application of Trusts Act 2019

Heading: inserted, on 30 January 2021, by section 166 of the Trusts Act 2019 (2019 No 38).

110A Application of Trusts Act 2019

(1) This section applies to a trust constituted (or to be constituted) under a trust deed for a debt security if the trust deed—

(a) has been lodged under section 103; or

(b) has been or will be entered into with the intention that the deed will be lodged under section 103.

(2) The following provisions of the Trusts Act 2019 do not apply to a trust referred to in subsection (1):

(a) section 25 (duty to act honestly and in good faith):

(b) section 29 (general duty of care):

(c) section 39 (adviser must alert settlor to modification or exclusion of default duty):

(d) sections 40 to 42 (exemption and indemnity clauses):

(e) section 43 (adviser must alert settlor to liability exclusion or indemnity clause):

(f) section 44 (court consideration of gross negligence):

(g) sections 45 to 48 (documents to be kept by trustees):

(h) sections 49 to 55 (giving information to beneficiaries):

(i) section 56 (general powers of trustee):

(j) sections 67 to 73 (exercise or performance of trustee powers and functions by others):

(k) sections 74 to 76 (special trust advisers):

(l) sections 81(2) and (3) and 82 to 85 (trustees' indemnities):

(m) sections 92 to 115 (appointment and discharge of trustees):

(n) sections 121 to 123 (termination and variation of trusts):

(o) sections 142 to 148 (alternative dispute resolution):

(p) sections 153 to 158 (investigation of condition and accounts of certain trust property).

Section 110A: inserted, on 30 January 2021, by section 166 of the Trusts Act 2019 (2019 No 38).

Role of supervisor

111 Functions of supervisor

(1) The supervisor of a debt security is responsible for the following functions:

(a) acting on behalf of the holders of the debt security in relation to—

(i) the issuer of the debt security; and

(ii) any matter connected with the trust deed for the debt security or the terms of the regulated offer; and

(iii) any contravention or alleged contravention of the issuer obligations; and

(b) supervising the issuer's performance—

(i) of its issuer obligations; and

(ii) in order to ascertain whether the assets of the issuer and of each guarantor that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the debt securities as they become due; and

(c) performing or exercising any other functions, duties, and powers conferred or imposed on the supervisor by or under this Act, the Financial Markets Supervisors Act 2011, or the governing document.

(2) The supervisor must not delegate any of its functions under subsection (1) (except as expressly permitted by this Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011).

112 General duties applying in exercise of supervisor's functions

(1) The supervisor of a debt security must—

(a) act honestly and in good faith in acting as a supervisor; and

(b) in exercising its powers and performing its duties as a supervisor, act in the best interests of the holders of the debt security; and

(c) exercise reasonable diligence in carrying out its functions as a supervisor.

(2) The supervisor of a debt security must also—

(a) do all the things it has the power to do to cause any contravention referred to in section 111(1)(a)(iii) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on holders of the debt security); and

(b) act in accordance with any direction given by a special resolution of the holders of the debt security that is not inconsistent with any enactment, rule of law, or the trust deed in relation to—

(i) seeking a remedy to a contravention referred to in section 111(1)(a)(iii); and

(ii) any other matter connected with the supervisor's functions.

(3) The supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by holders of the debt security.

(4) The duty in subsection (2)(b) is subject to any order of the court made under section 210.

Compare: SR 2009/230 Schedule 15 cl 1

Section 112(1)(a): amended, on 30 January 2021, by section 167 of the Trusts Act 2019 (2019 No 38).

113 Duty of supervisor to comply with professional standard of care

The supervisor of a debt security must, in exercising its powers and performing its duties as a supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.

114 Duty of issuer to provide reports to supervisor

The issuer of a debt security must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, prepare and provide to the supervisor reports that contain the information that is required to be provided by the regulations.

Compare: SR 2009/230 Schedule 15 cl 4

115 Duty of issuer to provide requested information and reports to supervisor

(1) If requested by the supervisor of a debt security (or a person authorised by the supervisor to exercise its powers under this section), the issuer must—

(a) make available to the supervisor (or other authorised person) all documents and records relating to the issuer; and

(b) provide the supervisor (or other authorised person) with any other reports or information required by the supervisor (or other authorised person).

(2) Reports or information required under subsection (1) may—

(a) be about any matter relevant to the performance of the supervisor's functions; and

(b) include forward-looking reports.

(3) The reports or information must be provided within the time and in the manner (which must be reasonable in the circumstances) specified by the supervisor.

Compare: SR 2009/230 Schedule 15 cls 2(3), 3A

116 Issuer must report contravention or possible contravention of issuer obligations

If an issuer of a debt security has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene any of its issuer obligations in a material respect, the issuer must, as soon as practicable,—

(a) report the contravention or possible contravention to the supervisor; and

(b) advise the supervisor of the steps (if any) that the issuer has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken.

117 Restriction on use of reports on contraventions

A report provided by an issuer under section 116 is not admissible as evidence in a criminal proceeding against the issuer, except in a criminal proceeding that concerns the falsity of the report.

118 Duty of issuer to report serious financial problems

(1) This section applies if an issuer of a debt security becomes aware of information on the basis of which it could reasonably form the opinion that the issuer is, or is likely to become, insolvent.

(2) The issuer must, as soon as practicable,—

(a) disclose to the supervisor all information relevant to that matter that is in the possession or under the control of the issuer and that was obtained in the course of, or in connection with, the performance of its functions as issuer; and

(b) advise the supervisor of the steps (if any) that the issuer intends to take in respect of that matter and the date by which the steps are to be taken.

Compare: 2011 No 10 s 47

119 Power of supervisor to engage expert

(1) The supervisor of a debt security is entitled, in the performance of the supervisor's functions, to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the supervisor considers, on reasonable grounds, that it requires the assistance of the expert to—

(a) determine the financial position of the issuer; or

(b) review the business, operation, or management systems, or the governance, of the issuer.

(2) If the supervisor engages an expert under this section,—

(a) the issuer must provide reasonable assistance to the expert to allow the expert to provide the assistance under subsection (1); and

(b) the fees and expenses of the expert, which must be reasonable in the circumstances, must be paid by the issuer.

Compare: SR 2009/230 Schedule 15 cl 3C

Meetings of product holders

120 Meetings of product holders

(1) A meeting of a class of holders of a debt security must be called by the issuer on the written request of—

(a) the supervisor; or

(b) holders of the debt securities that have a combined nominal value of no less than 5% of the nominal value of the debt securities on issue in that class; or

(c) in the case of an issuer that is a credit union, no less than 5% of the number of members of the credit union who hold debt securities on issue in that class; or

(d) a person who is authorised by the trust deed or by the regulations to call the meeting.

(2) Other requirements for meetings, proceedings at meetings, and provision for resolutions in lieu of meetings are governed by the regulations (if any) and the trust deed (if there are no regulations or to the extent that the trust deed is not inconsistent with the regulations).

Compare: SR 2009/230 Schedule 15 cl 3(1)

121 Supervisor's attendance at meetings of product holders and power to appoint chair

The issuer of a debt security must ensure that the supervisor—

(a) is permitted to attend any meeting of holders of the debt security; and

(b) receives the notices and communications that any holder of the debt security is entitled to receive in relation to a meeting of those holders; and

(c) may be heard at any meeting of holders of the debt security on any part of the business of the meeting that concerns the supervisor's functions or the holders for whom the supervisor is acting; and

(d) may appoint the chairperson of any meeting of holders of the debt security.

Compare: SR 2009/230 Schedule 15 cl 3(3)

Change of supervisor

122 Change of supervisor

(1) The supervisor of a debt security ceases to hold that appointment (subject to subsection (2)) if the supervisor—

(a) is removed by the FMA or the issuer under Part 2 of the Financial Markets Supervisors Act 2011; or

(b) is removed by a special resolution of the holders of the debt security; or

(c) is removed or resigns in accordance with the trust deed.

(2) However, a supervisor may not—

(a) be removed or resign under subsection (1)(b) or (c) unless—

(i) all functions and duties of the position have been performed; or

(ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or

(iii) the court consents:

(b) (despite anything in the trust deed) be removed by an issuer of the debt security under subsection (1)(c) without the FMA's consent.

Compare: 1978 No 103 s 48

123 Lodging of notice of change of supervisor

(1) Within 5 working days after a change to the supervisor of a debt security under section 122, the issuer must ensure that notice of the change is lodged with the Registrar.

(2) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Subpart 2—Governance of managed investment products

124 Overview

(1) This subpart—

(a) sets out when managed investment schemes need to be registered; and

(b) requires registered schemes, irrespective of legal form, to meet key common governance and reporting requirements; and

(c) provides for the manager and independent supervisor of a registered scheme to owe statutory duties of care to investors; and

(d) provides for the custodianship of scheme property of a registered scheme to be independent from the manager.

(2) This section is only a guide to the general scheme and effect of this subpart.

Need to register

125 Need to register managed investment scheme for regulated offer of managed investment product

(1) A person must not make a regulated offer of a managed investment product, or accept further contributions if there has been a regulated offer of a managed investment product, unless the managed investment scheme is registered.

(2) However, a managed investment scheme may be registered even if there is no regulated offer of a managed investment product in the scheme but, in this case,—

(a) the managed investment products in the scheme are regulated products under section 41; and

(b) this Act applies accordingly (for example, in addition to this subpart, *see* section 87 (money for financial products must be held in trust) and subpart 4 of Part 3 (ongoing disclosure)).

(3) A scheme that is approved as a Schedule 3 scheme under Schedule 3 may not be registered under this subpart.

Compare: 1960 No 99 s 8; 1978 No 103 s 33(3)

Registration

126 Application for registration

(1) A person may apply to the Registrar for registration of a managed investment scheme.

(2) The application must—

(a) be made in the prescribed manner; and

(b) be accompanied by the written consent to the registration of the manager and supervisor of the scheme; and

(c) contain a copy of the governing document for the scheme; and

(d) contain a certificate from the manager and supervisor of the scheme to the effect that the scheme complies with the registration requirements for schemes that apply to it under section 127(1)(b) to (f) on the basis set out in the certificate; and

(e) if the application is for registration as a particular type of scheme under sections 128 to 132,—

(i) state that fact; and

(ii) comply with any additional prescribed requirements for applications for that type of registration; and

(iii) contain a certificate from the FMA that it is satisfied that the scheme complies with any additional registration requirements for that type of scheme that apply to it under those sections.

(3) The Registrar must register a managed investment scheme if satisfied that the application meets the requirements of this section and section 127(1)(a) (subject to clause 7 of Schedule 2).

127 Initial and ongoing registration requirements for all managed investment schemes

(1) Every registered scheme must meet the following registration requirements:

(a) it must not have a name that, in the opinion of the Registrar, is misleading or offensive or the use of which would contravene an enactment; and

(b) its governing document must comply with sections 135 to 137; and

(c) it must have a licensed manager designated or appointed under the governing document (or this Act) whose licence covers management of the scheme; and

(d) it must have a licensed supervisor designated or appointed under the governing document (or the Financial Markets Supervisors Act 2011) whose licence covers supervision of the scheme; and

(e) the manager and the supervisor of the scheme must not be the same or associated persons; and

(f) the scheme property must be held by the supervisor or another person who meets the custodianship requirements in section 156 (to the extent that it is not held directly by scheme participants).

(2) However, subsection (1)(c) to (e) do not apply to a restricted scheme (and any reference in this Act to a supervisor in relation to a registered scheme does not apply in relation to a restricted scheme (unless the context otherwise requires)).

Compare: 1960 No 99 s 3(1), (4); 2006 No 40 ss 116F, 116G

128 Additional initial and ongoing registration requirements for KiwiSaver schemes

(1) Every KiwiSaver scheme must meet the following registration requirements in addition to those in section 127:

(a) it must be a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; and

(b) its purpose must be to provide retirement benefits directly to individuals; and

(c) it must, accordingly, restrict redemptions, withdrawals, and the provision of benefits in respect of a member's accumulation (including in the way the trust deed is applied) to those permitted under the KiwiSaver scheme rules under the KiwiSaver Act 2006; and

(d) it must admit as members (both in its conditions of entry of scheme participants and in the way those conditions are applied on entry) only persons who meet the New Zealand criteria set out in subsection (2) or (3); and

(e) it must be a scheme under which contributions are allocated to scheme participants on an individual basis; and

(f) the benefits provided by the scheme must be fully funded as they accrue; and

(g) its manager must have at least 1 director who is a New Zealand resident for tax purposes; and

(h) its manager must be a party to a scheme provider agreement with the Commissioner of Inland Revenue (if required by regulations made under the KiwiSaver Act 2006); and

(i) the FMA must be satisfied that the fees charged in accordance with any information provided in the application will comply with clause 2 of the KiwiSaver scheme rules under the KiwiSaver Act 2006.

(2) The New Zealand criteria are that the person, at the time of becoming a scheme participant,—

(a) is, or normally is, living in New Zealand, or is an employee of the State services (within the meaning of the Public Service Act 2020) who is—

(i) serving outside New Zealand; and

(ii) employed on New Zealand terms and conditions; and

(iii) serving in a jurisdiction where offers of superannuation scheme membership are lawful; and

(b) is a New Zealand citizen or is entitled, in terms of the Immigration Act 2009, to be in New Zealand indefinitely.

(3) A person also meets the New Zealand criteria if the person—

(a) is, immediately before becoming a participant of the KiwiSaver scheme (**scheme A**), a member of another KiwiSaver scheme (**scheme B**); and

(b) is transferring the member's entitlements from scheme B to scheme A.

(4) If the KiwiSaver scheme is a restricted scheme,—

(a) subsection (1)(g) does not apply; but

(b) at least 1 of the trustees or 1 of the directors of the corporate trustee of the scheme must be a New Zealand resident for tax purposes.

Compare: 2006 No 40 s 116

Section 128(2)(a): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

129 Additional initial and ongoing registration requirements for superannuation schemes

(1) Every superannuation scheme must meet the following registration requirements in addition to those in section 127:

(a) it must be a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; and

(b) its purpose must be to provide retirement benefits directly or indirectly to individuals; and

(c) it must, accordingly, restrict redemptions, withdrawals, and the provision of benefits (including in the way that the trust deed is applied) to those permitted under the superannuation scheme rules set out in the regulations; and

(d) it must admit as members (both in its conditions of entry of scheme participants and in the way those conditions are applied on entry) only either or both of the following:

(i) individuals:

(ii) persons who are the trustees or managers of a retirement scheme; and

(e) it must be—

(i) a defined benefit scheme; or

(ii) a scheme under which contributions are allocated to scheme participants on an individual basis and the benefits provided by the scheme must be fully funded as they accrue; and

(f) it must meet any additional requirements of the superannuation scheme rules that apply to it under the regulations; and

(g) it must not be registered as a KiwiSaver scheme.

(2) However, a superannuation scheme may meet the requirements in subsection (1)(b) to (f) in respect of a section of the scheme only, and, in that case, the scheme is a superannuation scheme in respect of that section of the scheme.

(3) Subsection (1)(b), (c), and (f) do not apply to a scheme, or a section of a scheme, that is closed to new members at the time of its registration (a **legacy scheme**), and instead it must meet the following registration requirements:

(a) its principal purpose must be to provide retirement benefits directly or indirectly to individuals; and

(b) the scheme or section must continue to be closed to new members.

Compare: 1989 No 10 ss 2A, 3(1)

130 Additional initial and ongoing registration requirements for workplace savings schemes

(1) Every workplace savings scheme must meet the following registration requirements in addition to those in section 127:

(a) it must be a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; and

(b) its purposes must be to provide—

(i) retirement benefits directly or indirectly to individuals; and

(ii) benefits to eligible individuals on ceasing employment or engagement with 1 or more persons specified in the trust deed or in an industry specified in the trust deed (whether immediately on ceasing that employment or engagement, or subsequently); and

(c) it may allow redemptions, withdrawals, and benefits for other purposes (including in the way the trust deed is applied) only if—

(i) they are in accordance with other limited circumstances defined in the trust deed (for example, financial hardship or early partial withdrawal criteria, or insurance benefits to members (including in the event of a death or disability of a member)); and

(ii) they are incidental or secondary to the purposes of the scheme; and

(d) it must admit as members (both in its conditions of entry of scheme participants and in the way those conditions are applied on entry) only either or both of the following:

(i) eligible individuals:

(ii) persons who are the trustees or managers of a retirement scheme; and

(e) it must be—

(i) a defined benefit scheme; or

(ii) a scheme under which contributions are allocated to scheme participants on an individual basis and the benefits provided by the scheme must be fully funded as they accrue; and

(f) it must meet any additional prescribed registration requirements for workplace savings schemes that apply to it; and

(g) it must not be registered as a KiwiSaver scheme.

(2) In this section, **eligible individual**, in relation to a person or industry specified in the trust deed, means—

(a) an employee or director of that person; and

(b) an individual who provides personal services (other than as an employee) principally to that person; and

(c) an individual who is employed or engaged in that industry.

(3) However, a workplace savings scheme may meet the requirements in subsection (1)(b) to (f) in respect of a section of the scheme only, and, in that case, the scheme is a workplace savings scheme in respect of that section of the scheme.

131 Additional ongoing registration requirements for restricted schemes

(1) Every restricted scheme registered under clause 22 of Schedule 4 must meet the following registration requirements in addition to those in section 127:

(a) it must be—

(i) a KiwiSaver scheme; or

(ii) a superannuation scheme or workplace savings scheme or both (in respect of all sections of the scheme); and

(b) it must—

(i) admit as members (both in its conditions of entry of scheme participants and in the way in which those conditions are applied on entry) only 1 or more of the classes of persons referred to in subsection (2); or

(ii) be closed to new members; and

(c) the conditions of entry of scheme participants, or the way in which those conditions have been applied on entry, must not have been changed without the FMA's consent since the date of the scheme's registration under clause 22 of Schedule 4 in a way that expands, or is likely to expand, the classes of people who may become scheme participants; and

(d) its trustees must—

(i) include at least 1 licensed independent trustee whose licence covers the scheme and who is independent under subsection (3); or

(ii) consist only of a sole corporate trustee that has at least 1 director who is a licensed independent trustee whose licence covers the scheme and who is independent under subsection (3); and

(e) the trustees of the scheme must be designated or appointed to manage the scheme under the governing document (or this Act).

(2) The classes of persons for the purpose of subsection (1)(b)(i) are—

(a) persons who are employed by a particular employer:

(b) persons who are employed by a related body corporate of a particular employer:

(c) persons who belong to a particular profession, calling, trade, occupation, or industry:

(d) persons who belong to a particular association, society, or other entity with a definable community of interest:

(e) persons who are immediate family members of, or wholly or partially financially dependent on, a person in 1 or more of the classes of persons described in paragraphs (a) to (d).

(3) In this section,—

immediate family member, in relation to a person, means the person's spouse, civil union partner, de facto partner, parent, child, step-parent, or stepchild

independent means a person that—

(a) is not a related body corporate of any other trustee of the restricted scheme; and

(b) is not an employer that provides access to the scheme for its employees, or an administration manager or an investment manager of the restricted scheme (or a related body corporate of any of them); and

(c) is not a director of, shareholder in, or an employee of any person referred to in paragraph (a) or (b); and

(d) is not a current scheme participant; and

(e) is not a representative in any capacity of an organisation (such as a trade union) that represents the interests of 1 or more scheme participants; and

(f) is not a representative in any capacity of an organisation that represents the interests of 1 or more employer contributors to the scheme; and

(g) is not a corporate trustee if none of its directors are independent under this definition.

Compare: 2006 No 40 s 116A

Section 131(1)(a)(ii): amended, on 9 August 2017, by section 53 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

132 Additional prescribed registration requirements for other particular prescribed types of schemes

A scheme of a particular type of registered scheme specified in the regulations must meet the prescribed registration requirements for that type of scheme (if any) that apply to it in addition to those in section 127.

133 Manager must ensure that ongoing registration requirements are complied with

The manager of a registered scheme must ensure that, until all of the managed investment products in the scheme are cancelled, redeemed, or forfeited, or all of the obligations owing under those products have been discharged, the scheme—

(a) continues to comply with the registration requirements that apply to the scheme under section 127; and

(b) if it is registered as a particular type of scheme under sections 128 to 132, continues to comply with the additional registration requirements for that type of scheme that apply to it under those sections.

134 Changes to registration as particular type of registered scheme

(1) The FMA may direct the removal of the registration of a registered scheme as a particular type of scheme—

(a) if the FMA is satisfied that the scheme does not meet the registration requirements for that type of scheme that apply to it under sections 128 to 132; or

(b) on the written request of the manager of the scheme, if the supervisor certifies or, if there is no supervisor, the manager certifies that—

(i) the removal has been approved by a special resolution of the scheme participants (subject to any restrictions in the governing document); or

(ii) there is no material adverse effect on scheme participants from the removal.

(2) The FMA must not direct removal under subsection (1)(a) unless—

(a) the FMA gives the manager of the scheme no less than 10 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may direct removal; and

(ii) the reasons why it may exercise that power; and

(b) the FMA gives the manager or the manager's representative an opportunity to make written submissions on the matter within that notice period.

(2A) In addition, the FMA must not direct removal under subsection (1) in the prescribed circumstances.

(2B) Before making a recommendation for regulations for the purposes of subsection (2A), the Minister must be satisfied that the regulations are necessary or desirable for the purpose of enabling a recognition regime or an application regime (or both) to be implemented under subpart 6 of Part 9.

(3) The FMA may direct that a registered scheme be registered as a particular type of scheme on the written request of the manager of the scheme if the FMA is satisfied that the scheme meets the registration requirements for that type of scheme that apply to it under sections 128 to 132.

(4) A direction under subsection (1)(a) in relation to the removal of a registration as a restricted scheme must not take effect before the expiry of 6 months after the direction is made (unless the manager consents to an earlier date).

(5) If the FMA makes a direction under this section,—

(a) the FMA must notify the manager and the supervisor of the registered scheme of the direction; and

(b) as soon as practicable after being notified of the direction, the manager must notify the scheme participants of the direction.

Compare: 2006 No 40 s 168A

Section 134(1)(b): amended, on 9 August 2017, by section 54 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 134(2A): inserted, on 30 March 2025, by section 96 of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Section 134(2B): inserted, on 30 March 2025, by section 96 of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Governing document requirements

135 Contents of governing document for registered scheme

(1) The governing document for a registered scheme must provide adequately for all of the following matters under the scheme:

(a) whether or not managed investment products are transferable or redeemable and the rules applying to acquiring or disposing of the managed investment products and, if they are redeemable,—

(i) the manner in which, and the conditions on which, interests are to be redeemed; and

(ii) the method of calculating the price at which interests are to be redeemed; and

(b) the rules applying to becoming a scheme participant or withdrawing from participation in the scheme (if there are any rules); and

(c) the contributions payable, or the manner of calculating the contributions payable, and the rules applying to changing the contributions payable or the manner of their calculation; and

(d) the methodology, or the rules applying to determining the methodology, and other rules applying to valuations of assets of the scheme and pricing of interests in the scheme; and

(e) the rules applying to the determination and payment of benefits to scheme participants; and

(f) the fees and expenses that can be paid out of scheme property to any manager, investment manager, administration manager, supervisor, or custodian, or the basis on which those fees and expenses are to be determined, and any rights of any of those persons to be indemnified out of scheme property (and any other matters required by section 136); and

(g) the appointment and removal of the supervisor (unless none is required under this Part); and

(h) the appointment and removal of the manager; and

(i) the winding up of the scheme; and

(j) any matters required to be contained in it by the regulations; and

(k) any other matters (other than the matters contained in the statement of investment policy and objectives) that materially affect—

(i) the management and operation of the scheme by the manager:

(ii) the rights and duties of scheme participants in the scheme:

(iii) the powers, rights, and duties of the manager and the supervisor of the scheme.

(2) The governing document is treated as containing any provision that is implied into it by or under this Act or the KiwiSaver Act 2006.

(3) The governing document must provide for the contents of the document that are required by this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

Compare: 1989 No 10 s 7; 2006 No 40 s 119

136 Limits on permitted exemptions and indemnities

(1) If a manager or supervisor of a registered scheme has any rights to be indemnified for liabilities or expenses incurred in relation to the performance of the manager's issuer obligations or the supervisor's licensee obligations (as defined in section 4 of the Financial Markets Supervisors Act 2011), those rights—

(a) must be set out in the scheme's governing document; and

(b) must be available only in relation to the proper performance of the duties under sections 143(1) and 144 or sections 153(1) and 154.

(2) If an investment manager of a registered scheme has any rights to be indemnified for liabilities or expenses incurred in relation to the performance of the investment manager's contracted functions, those rights—

(a) must be set out—

(i) in the scheme's governing document; or

(ii) in the contract between the investment manager and the manager, provided that the scheme's governing document contains a power that permits such an indemnity; and

(b) must be available only in relation to the proper performance of the duty under section 144.

(3) No other agreement has any effect to the extent that it purports to confer a right of a kind referred to in subsection (1) or (2).

Compare: 1960 No 99 s 24(2); 1978 No 103 s 62; 2006 No 40 s 116J(1); Corporations Act 2001 s 601GA(2) (Aust)

137 Governing document must be legally enforceable

A governing document for a registered scheme must be contained in 1 or more documents that are legally enforceable as between the supervisor, the manager, and the scheme participants.

Compare: Corporations Act 2001 s 601GB (Aust)

138 Effect of governing document

A governing document for a registered scheme has no effect to the extent that it contravenes, or is inconsistent with, this Act, the regulations, or any term implied into it by this Act or the regulations.

139 Changes to governing document

(1) An amendment to or a replacement of a governing document has no effect unless made—

(a) under this section with the consent of the supervisor or, if there is no supervisor, the FMA; or

(b) under section 140 or 187(3); or

(c) under section 22(7) or 37(6) of the Financial Markets Supervisors Act 2011 or any other power to amend or replace the governing document under an enactment.

(2) The supervisor or the FMA must not consent to an amendment to, or a replacement of, the governing document under this section unless—

(a) either—

(i) the amendment or replacement is approved by, or contingent on approval by, the scheme participants; or

(ii) the supervisor or the FMA is satisfied that the amendment or replacement does not have a material adverse effect on the scheme participants; and

(b) in the case of the supervisor, the supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that the governing document, as amended or replaced, will comply with sections 135 to 137 on the basis set out in the certificate.

(3) The approval of scheme participants for the purposes of subsection (2)(a) must consist of,—

(a) in the case of an amendment to or a replacement of a governing document of a defined benefit scheme or a superannuation scheme or workplace savings scheme that is registered under clause 22 of Schedule 4 that reduces, postpones, or otherwise adversely affects the benefits, whether vested, contingent, or discretionary, that may in due course flow from, or are attributable to, membership of the scheme up to the date the amendment or replacement is made, the written consent of all scheme participants who would be adversely affected by the amendment or replacement; or

(b) in any other case, a special resolution of the scheme participants or each class of scheme participants that is or may be adversely affected by the amendment or replacement.

(4) Subsection (2) is subject to section 153(2)(b).

Compare: 1989 No 10 ss 9, 12; 2006 No 40 ss 119A, 129, 129A

140 Power to make FMA and court-approved changes to governing documents

(1) A manager of a registered scheme may amend or replace the governing document—

(a) with the FMA's consent if the FMA is satisfied that the amendment or replacement is necessary to enable the governing document to comply with sections 135 to 137 or any enactment or rule of law; or

(b) with the court's consent, in the case of a defined benefit scheme or a superannuation scheme or workplace savings scheme that is registered under clause 22 of Schedule 4, if—

(i) the amendment or replacement would otherwise require the consent of all the scheme participants who would be adversely affected by it; and

(ii) the court considers that it is in the interests of the scheme participants.

(2) Subsection (1) applies despite anything to the contrary in the governing document or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the governing document.

(3) The FMA's discretion to set preconditions for requests to it includes (without limitation) a discretion to set preconditions that satisfy the FMA that it is appropriate for the amendment or replacement to be made under this section rather than by means of another power or process.

(4) An amendment or a replacement made under this section must be treated for all purposes as if it were authorised by, and made in accordance with, the governing document.

141 Lodging of changes to governing document

(1) Within 5 working days after an amendment to or a replacement of a governing document, the manager of a registered scheme must ensure that notice of the amendment or replacement, and a copy of the certificate for the amendment or replacement (if any), is lodged with the Registrar.

(2) A manager that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Role of manager

142 Management and administration functions of manager

(1) The manager of a registered scheme is responsible for performing the following functions:

(a) offering the managed investment products; and

(b) issuing the managed investment products; and

(c) managing the scheme property and investments; and

(d) administering the scheme.

(2) In the case of a restricted scheme, the trustees of the scheme acting together as the manager of the scheme have responsibility for those functions and the duties of the manager under this Act (and each trustee is jointly and severally liable with the other trustees for the performance of those functions and duties) unless this Act or the regulations otherwise provide.

Compare: 1960 No 99 s 3(2)(a) and (b); 2006 No 40 s 116B(1)

143 General duties applying in exercise of manager's functions

(1) A manager of a registered scheme must—

(a) act honestly and in good faith in acting as a manager; and

(b) in exercising any powers or performing any duties as a manager,—

(i) act in the best interests of the scheme participants; and

(ii) treat the scheme participants equitably; and

(c) not make use of information acquired through being the manager in order to—

(i) gain an improper advantage for itself or any other person; or

(ii) cause detriment to the scheme participants.

(2) The manager must also carry out the functions of a manager in accordance with the governing document, the statement of investment policy and objectives, and all other issuer obligations.

(3) If the registered scheme is established under a trust deed, the manager has the same duties and liability in the performance of its functions as manager as it

would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with this Act).

Compare: 1960 No 99 ss 3(2)(c), 12(1)(c), 24(1); SR 2009/230 Schedule 17 cl 3(1); Corporations Act 2001 s 601FC (Aust)

Section 143(1)(a): amended, on 30 January 2021, by section 168 of the Trusts Act 2019 (2019 No 38).

144 Duty of manager and investment manager to comply with relevant professional standard of care

(1) A professional manager of a registered scheme must, in exercising any powers, or performing any duties, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

(2) In this section, a **professional manager** is—

(a) a manager of a registered scheme (other than a restricted scheme):

(b) an investment manager of a registered scheme:

(c) a licensed independent trustee of a restricted scheme:

(d) any other trustee of a restricted scheme whose profession or business is or includes acting as a trustee or investing money on behalf of others.

(3) A trustee of a restricted scheme who is not a professional manager must, in exercising any powers or performing any duties, exercise the care, diligence, and skill that a prudent person of business would exercise in the same circumstances.

Compare: 1960 No 99 ss 3(2)(c), 24(1); 2006 No 40 s 117; SR 2009/230 Schedule 17 cl 3(3)

145 Duties of directors and senior managers of manager

A director or senior manager of a manager of a registered scheme—

(a) must not make use of information acquired through being the director or senior manager of the manager in order to—

(i) gain an improper advantage for himself or herself or any other person; or

(ii) cause detriment to the scheme participants; and

(b) must not make improper use of the position as a director or senior manager of the manager to gain, directly or indirectly, an advantage for himself or herself or any other person or to cause detriment to the scheme participants.

Compare: Corporations Act 2001 s 601FE (Aust); 1960 No 99 s 26

146 Contracting out of management functions

(1) A manager may, unless prohibited by the governing document, contract out to 1 or more persons (whether or not the person or persons hold a market services licence under this Act covering management of the scheme) some or all of its functions as a manager.

(2) However,—

(a) the manager must take all reasonable steps to—

(i) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the manager were performing them directly; and

(ii) monitor the performance of those functions; and

(b) the contracting out does not affect the liability of the manager for the performance of those functions.

147 Duty of manager to provide reports to supervisor or FMA

The manager of a registered scheme must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, prepare and provide to the supervisor (or, if there is no supervisor, the FMA) reports that contain the information that is required to be provided by the regulations.

Section 147: amended, on 9 August 2017, by section 55 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

148 Duty of manager to provide requested information and reports to supervisor

(1) If requested by the supervisor of a registered scheme (or a person authorised by the supervisor to exercise its powers under this section), the manager must—

(a) make available to the supervisor (or other authorised person) all documents and records relating to the manager and the scheme (including those held by an investment manager or administration manager); and

(b) provide the supervisor (or other authorised person) with any other reports or information required by the supervisor (or other authorised person).

(2) Reports or information required under subsection (1) may—

(a) be about any matter relevant to the performance of the supervisor's functions; and

(b) include forward-looking reports.

(3) The reports or information must be provided within the time and in the manner (which must be reasonable in the circumstances) specified by the supervisor.

Compare: 1960 No 99 s 12(1)(b); SR 2009/230 Schedule 17 cl 2

149 Duty of manager to report contravention or possible contravention of issuer obligations

If a manager of a registered scheme has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene any of its issuer obligations in a material respect, the manager must, as soon as practicable,—

(a) report the contravention or possible contravention to the supervisor (or, if there is no supervisor, the FMA); and

(b) advise the supervisor (or, if there is no supervisor, the FMA) of the steps (if any) that the manager has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken.

Section 149(a): amended, on 9 August 2017, by section 56 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 149(b): amended, on 9 August 2017, by section 56 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

150 Restriction on use of reports on contraventions

A report provided by a manager under section 149 is not admissible as evidence in a criminal proceeding against the manager, except in a criminal proceeding that concerns the falsity of the report.

151 Duty of manager to report serious financial problems

(1) This section applies if a manager of a registered scheme becomes aware of information on the basis of which it could reasonably form the opinion that—

(a) the manager is, or is likely to become, insolvent; or

(b) the registered scheme is, or is likely to become, insolvent.

(2) The manager must, as soon as practicable,—

(a) disclose to the supervisor (or, if there is no supervisor, to the FMA) all information relevant to that matter that is in the possession or under the control of the manager (including information held by an investment manager or administration manager) and that was obtained in the course of, or in connection with, the performance of its functions as manager; and

(b) advise the supervisor (or the FMA, as the case may be) of the steps (if any) that the manager intends to take in respect of that matter and the date by which the steps are to be taken.

Compare: 2011 No 10 s 47

Role of supervisor

152 Functions of supervisor

(1) The supervisor of a registered scheme is responsible for the following functions:

(a) acting on behalf of the scheme participants in relation to—

(i) the manager; and

(ii) any matter connected to the governing document or the terms of any regulated offer; and

(iii) any contravention or alleged contravention of the issuer obligations; and

(iv) any contravention or alleged contravention of this Act by any other person in connection with the registered scheme; and

(b) supervising—

(i) the performance by the manager of its functions and its issuer obligations; and

(ii) the financial position of the manager and the scheme in respect of the managed investment product to ascertain that it is adequate; and

(c) holding the scheme property, or ensuring that the scheme property is held, in accordance with sections 156 to 158; and

(d) performing or exercising any other functions, powers, and duties conferred or imposed on the supervisor by or under this Act, the Financial Markets Supervisors Act 2011, and the governing document.

(2) The supervisor must not delegate its functions under subsection (1) (except as expressly permitted by section 156 in relation to its function under subsection (1)(c) and otherwise by this Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011).

Compare: 2006 No 40 s 116D(3), (4)

153 General duties applying in exercise of supervisor's functions

(1) The supervisor of a registered scheme must—

(a) act honestly and in good faith in acting as a supervisor; and

(b) in exercising its powers and performing its duties as a supervisor, act in the best interests of the scheme participants; and

(c) exercise reasonable diligence in carrying out its functions as a supervisor.

(2) The supervisor of a registered scheme must also—

(a) do all the things it has the power to do to cause any contravention referred to in section 152(1)(a) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on scheme participants); and

(b) act in accordance with any direction given by a special resolution of the scheme participants that is not inconsistent with any enactment, rule of law, or the governing document in relation to—

(i) seeking a remedy to a contravention referred to in section 152(1)(a); and

(ii) any other matter connected with the supervisor's functions.

(3) The supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by scheme participants.

(4) If the registered scheme is established under a trust deed,—

(a) the supervisor is the trustee of the trust; and

(b) the supervisor has the same duties and liability in the performance of its functions as supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with this Act).

(5) The duty in subsection (2)(b) is subject to any order of the court made under section 210.

Compare: 1960 No 99 s 18(2)–(4); SR 2009/230 Schedule 17 cl 1

Section 153(1)(a): amended, on 30 January 2021, by section 169 of the Trusts Act 2019 (2019 No 38).

154 Duty of supervisor to comply with professional standard of care

The supervisor of a registered scheme must, in exercising its powers and performing its duties as a supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.

155 Power of supervisor to engage expert

(1) The supervisor of a registered scheme is entitled, in the performance of the supervisor's functions, to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the supervisor considers, on reasonable grounds, that it requires the assistance of the expert to—

(a) determine the financial position of the manager or the scheme; or

(b) review the business, operation, or management systems, or the governance, of the manager or the scheme.

(2) If the supervisor engages an expert under this section,—

(a) the manager must provide reasonable assistance to the expert to allow the expert to provide the assistance under subsection (1); and

(b) the manager must pay the fees and expenses of the expert, which must be reasonable in the circumstances; and

(c) the manager is entitled to be indemnified for those fees and expenses out of scheme property, subject to any limits referred to in section 136.

Compare: SR 2009/230 Schedule 15 cl 11

Application of Trusts Act 2019

Heading: inserted, on 30 January 2021, by section 170 of the Trusts Act 2019 (2019 No 38).

155A Application of Trusts Act 2019

(1) This section applies to a managed investment scheme constituted (or to be constituted) as 1 or more trusts or as including 1 or more trusts (or both) if the scheme—

(a) has been registered under this subpart; or

(b) has been or will be constituted as 1 or more trusts or as including 1 or more trusts (or both) with the intention that the scheme will be registered under this subpart.

(2) The following provisions of the Trusts Act 2019 do not apply to any relevant trust:

(a) section 25 (duty to act honestly and in good faith):

(b) section 29 (general duty of care):

(c) section 30 (duty to invest prudently):

(d) section 35 (duty of impartiality):

(e) section 38 (duty to act unanimously):

(f) section 39 (adviser must alert settlor to modification or exclusion of default duty):

(g) sections 40 to 42 (exemption and indemnity clauses):

(h) section 43 (adviser must alert settlor to liability exclusion or indemnity clause):

(i) section 44 (court consideration of gross negligence):

(j) sections 45 to 48 (documents to be kept by trustees):

(k) sections 49 to 55 (giving information to beneficiaries):

(l) section 56 (general powers of trustee):

(m) sections 60 and 61 (power to determine treatment of returns and accounts):

(n) sections 67 to 73 (exercise or performance of trustee powers and functions by others):

(o) sections 74 to 76 (special trust advisers):

(p) sections 81(2) and (3) and 82 to 85 (trustees' indemnities):

(q) sections 92 to 115 (appointment and discharge of trustees):

(r) sections 121 to 123 (termination and variation of trusts):

(s) sections 142 to 148 (alternative dispute resolution):

(t) sections 153 to 158 (investigation of condition and accounts of certain trust property).

(3) In this section, **relevant trust** means a trust referred to in subsection (1) if a trust deed for the trust has been or will be lodged with the Registrar by the manager of the scheme.

(4) Despite section 16(1) of the Trusts Act 2019, the trusts of a managed investment scheme may continue indefinitely.

Section 155A: inserted, on 30 January 2021, by section 170 of the Trusts Act 2019 (2019 No 38).

Custodianship of scheme property

156 Requirement to have supervisor or other independent person as custodian

(1) The supervisor of a registered scheme (**A**) must hold the scheme property or, if authorised by the governing document, contract the holding of the scheme property to another person (**B**) who meets the external custodianship requirements.

(2) If there is no supervisor for the scheme (for example, in the case of a restricted scheme), the scheme property must be held in 1 of the following ways:

(a) in the case of a restricted scheme, by a body corporate that is either a corporate trustee of the restricted scheme or has, as its directors, only persons who are trustees of the restricted scheme; or

(b) by a person (**B**) who meets the external custodianship requirements and to whom the manager of the scheme (**A**), if authorised by the governing document, has contracted the holding of the scheme property.

(3) B may, if authorised in writing by A, in turn contract the holding of the scheme property to another person who meets the external custodianship requirements.

(4) To meet the external custodianship requirements, a person must—

(a) be a body corporate that A or (if B contracted the custodian) B believes, on reasonable grounds, to be appropriate to hold, and safeguard, the scheme property; and

(b) not be the same person as, or be associated with, the manager or, in the case of a restricted scheme, any of the trustees (other than by virtue of the custodianship).

(5) If a person contracts the holding of the scheme property to another person (**the nominee**) under this section, the person contracting out that function—

(a) must take all reasonable steps to—

(i) ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person were performing it directly; and

(ii) monitor the performance of that function; and

(b) is jointly and severally liable with the nominee (and any other person who has contracted out the function) for the performance of that function in accordance with paragraph (a).

(6) This section does not apply to the extent that scheme property is held directly by the scheme participants.

Compare: 1960 No 99 ss 3(3), 6–6C; 2006 No 40 ss 116G, 116H, 116I

157 Custodian holds scheme property on trust

(1) The custodian for a registered scheme holds the scheme property on trust for the scheme.

(2) The custodian for a registered scheme must ensure that the scheme property is held separate from property held by any of the following persons on their own account:

(a) the custodian:

(b) any related party of the scheme.

(3) The custodian must also comply with any other prescribed duties and other requirements in relation to the scheme property.

(4) Scheme property—

(a) is not available for the payment of the debts of the custodian or any other creditor of the custodian; and

(b) is not liable to be attached or taken in execution under the order or process of any court at the instance of the custodian or any other creditor of the custodian.

(5) Nothing in this section takes away or affects any lawful lien or claim that a custodian who holds scheme property has against the scheme property.

158 Custodian must keep records of scheme property

(1) The custodian for a registered scheme must keep, or ensure that there are kept, records that—

(a) identify the scheme property; and

(b) show when the scheme property was received; and

(c) if the scheme property has been disposed of, show when the scheme property was disposed of and to whom.

(2) The custodian for a registered scheme must also keep all other prescribed records.

(3) The custodian for a registered scheme must—

(a) keep the records required by this section, or ensure that they are kept, in a manner that enables those records to be conveniently inspected by the manager and the supervisor and conveniently and properly audited or reviewed; and

(b) comply with the prescribed requirements (if any) relating to those records and their audit, review, or inspection.

159 Custodian must report on scheme property

(1) A custodian for a registered scheme must, in the prescribed circumstances, provide confirmation information to the manager or other prescribed persons in respect of the scheme property held by the custodian.

(2) The confirmation information must be provided in the prescribed manner.

(3) In this section, **confirmation information** means the information relating to the scheme property, or transactions relating to it, that is prescribed.

160 Duty of supervisor to refuse to act on wrongful directions

(1) The supervisor of a registered scheme must refuse, and must direct any other custodian to refuse, to act on a direction of the manager that relates to the acquisition or disposal of scheme property if the supervisor considers that the proposed acquisition or disposal would be—

(a) in breach of the scheme's governing document, any rule of law, or any enactment; or

(b) manifestly not in the interests of the scheme participants.

(2) A custodian of a registered scheme must comply with any direction given to it by a supervisor under this section.

(3) If the supervisor refuses, or directs any other custodian to refuse, to act on a direction of the manager, the supervisor must notify the manager and the FMA in writing of that fact and the supervisor's reasons for the refusal or direction.

(4) A supervisor of a registered scheme, and any other custodian of the scheme, is not liable to the scheme participants or the manager for refusing, or directing any other custodian to refuse, to act on a direction of the manager in accordance with this section.

Compare: 1960 No 99 s 12(1)(c)

Meetings of scheme participants

161 Meetings of scheme participants

(1) A meeting of a class of scheme participants must be called by the manager of the registered scheme on the written request of—

(a) the supervisor; or

(b) scheme participants holding managed investment products that have a combined value of no less than 5% of the value of the managed investment products on issue in that class; or

(c) in the case of a superannuation scheme, a KiwiSaver scheme, a workplace savings scheme, or any other prescribed scheme, no less than 5% of the number of scheme participants who hold managed investment products in that class; or

(d) a person who is authorised by the governing document or by the regulations to call the meeting.

(2) Other requirements for meetings, proceedings at meetings, and provision for resolutions in lieu of meetings are governed by the regulations (if any) and the governing document (if there are no regulations or to the extent that the governing document is not inconsistent with any regulations).

Compare: 1960 No 99 ss 12(1)(d), 18(1)

162 Supervisor's attendance at meetings of scheme participants and power to appoint chair

The manager of a registered scheme must ensure that the supervisor—

(a) is permitted to attend any meeting of scheme participants; and

(b) receives the notices and communications that any scheme participant is entitled to receive in relation to a meeting of those participants; and

(c) may be heard at any meeting of scheme participants on any part of the business of the meeting that concerns the supervisor's functions or the scheme participants for whom the supervisor is acting; and

(d) may appoint the chairperson of any meeting of scheme participants.

Compare: 1960 No 99 s 18(1); SR 2009/230 Schedule 17 cl 2(1), (2)

163 Manager and associated persons cannot vote if interested in resolution

(1) The manager of a registered scheme and its associated persons are not entitled to, and must not, vote their interest on a resolution of scheme participants if they have an interest in the resolution or matter other than as a scheme participant.

(2) However,—

(a) if the managed investment products in the registered scheme are quoted, subsection (1) does not prevent the manager and its associated persons from voting their interest on resolutions to remove the manager and appoint a new manager:

(b) the manager or its associated persons may vote as proxies if the proxy appointment specifies the way they are to vote on the resolution and they vote that way:

(c) subsection (1) does not apply in the prescribed circumstances.

(3) An exercise of a voting right in contravention of subsection (1) is of no effect and must be disregarded in counting the votes concerned.

(4) However, subsections (1) and (3) do not invalidate a resolution if the votes concerned were counted in good faith and without knowledge that the voting rights were exercised in contravention of subsection (1).

Compare: Corporations Act 2001 ss 253A(2), 253E (Aust)

Management of scheme

164 Requirement for statement of investment policy and objectives

(1) A manager of a registered scheme must ensure that there is a statement of investment policy and objectives that provides adequately for the investment policy and objectives of the scheme and for the following matters:

(a) the nature or type of investments that may be made, and any limits on those; and

(b) any limits on the proportion of each type of asset invested in; and

(c) the methodology used for developing and amending the investment strategy and for measuring performance against the investment objectives of the scheme.

(2) However, if there are no limits on a matter referred to in subsection (1)(a) or (b), the statement of investment policy and objectives must clearly disclose that fact.

(3) The statement must provide for the matters set out in this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 that apply to it (if any).

165 Changes to statement of investment policy and objectives

(1) The manager of a registered scheme may amend or replace a statement of investment policy and objectives only after giving prior written notice to the supervisor.

(2) This section does not apply if the scheme does not have a supervisor.

Section 165(2): amended, on 9 August 2017, by section 57 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

166 Lodging of statement of investment policy and objectives and changes to statement

(1) The manager of a registered scheme must, except in the prescribed circumstances,—

(a) lodge the statement of investment policy and objectives with the Registrar before a regulated offer of managed investment products is made or, if no regulated offer is made, before any managed investment product is issued; and

(b) lodge any change to the statement of investment policy and objectives with the Registrar within 5 working days after the change takes effect.

(2) A manager that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

167 Action that must be taken on limit breaks

(1) This section applies to a registered scheme if, under the scheme's statement of investment policy and objectives, there is a material breach of any limits on either of the following (a **limit break**):

(a) the nature or type of investments that may be made; or

(b) the proportion of each type of assets that may be invested in.

(2) If this section applies, the manager of the registered scheme must report the limit break to the supervisor or to the FMA (if there is no supervisor) in the prescribed circumstances and in the prescribed manner.

(3) Whether or not a limit break is material must be determined in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

168 Action that must be taken on pricing errors and failure to comply with pricing methodologies

(1) This section applies to a registered scheme if—

(a) the managed investment products under the scheme are transferable or redeemable; and

(b) the manager (or any person to whom the manager has contracted some or all of its functions as a manager)—

(i) makes or includes an error in the calculation of the price at which the managed investment products are issued or redeemed; or

(ii) fails to comply with the methodology for pricing the managed investment products as set out in the governing document or notices issued by the FMA under subpart 4 of Part 9; and

(c) the pricing error or non-compliance is material.

(2) If this section applies, the manager must ensure that—

(a) the pricing error or non-compliance is corrected; and

(b) the pricing error or non-compliance is reported to the supervisor (or to the FMA if there is no supervisor) in the prescribed manner; and

(c) the prescribed steps are taken (which may include steps to remedy the pricing error or non-compliance and to inform current or former scheme participants).

(3) Whether or not a pricing error or non-compliance is material must be determined in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

Section 168(1)(b)(i): amended, on 9 August 2017, by section 58 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

169 Actuarial examination of defined benefit scheme or life benefit scheme

(1) This section applies to a registered scheme that—

(a) is a defined benefit scheme; or

(b) provides benefits that provide for the payment of money on the happening of a contingency dependent on the termination or continuance of human life, and the risks associated with those benefits are not fully insured with a life insurer within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010 (a **life benefit scheme)**.

(2) The manager of a defined benefit scheme or a life benefit scheme must ensure that a suitably qualified actuary examines the financial position of the scheme as at dates that are no more than 3 years apart.

(3) The manager must ensure that—

(a) the report of the actuary is received no later than 7 months after the date as at which the financial position of the scheme was examined; and

(b) the manager gives a copy of the report, as soon as practicable, to the supervisor (or, if there is no supervisor, to the FMA); and

(c) if there is a supervisor, the manager also gives a copy of the report to the FMA within 20 working days after its receipt by the supervisor.

(4) A manager that contravenes subsection (3)(b) or (c) commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in subsection (4) is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1989 No 10 s 15

170 Power of manager to adjust financial benefits to comply with portfolio investment entity rules

The manager of a registered scheme to which section HM 48 of the Income Tax Act 2007 applies may adjust the financial benefits of scheme participants in the way required by that section.

Compare: 1960 No 99 ss 12A, 22

171 Limits on reversion of scheme property in certain schemes to non-scheme participant contributor

(1) Neither the manager nor the supervisor of a registered scheme may permit any part of the scheme property of a KiwiSaver scheme, superannuation scheme, or workplace savings scheme to revert to a contributor who is not a scheme participant under the governing document without the prior written consent of the FMA.

(2) The FMA must not give consent to the reversion of any assets of the scheme to a person under this section unless satisfied that—

(a) sufficient assets will remain to support the interests of all of the scheme participants; and

(b) the reversion is fair and equitable to the scheme participants, taking into account the manner in which the scheme acquired those assets.

Compare: 1989 No 10 s 10; 2006 No 40 ss 129B, 130

Related party transactions

172 Definition of related party benefit

(1) A **related party benefit**, in relation to a registered scheme, is a benefit—

(a) that either is given out of scheme property or creates an exposure to loss for scheme property; and

(b) that is given to, or received by, a related party of the scheme; but

(c) does not include fees or expenses that are paid or reimbursed to the manager in accordance with this Act or the governing document of the scheme.

(2) A **related party** of the scheme is—

(a) any of the following persons (a **scheme-connected person**):

(i) the manager of the scheme or any trustee of a restricted scheme; and

(ii) any investment manager, administration manager, or other person to whom the manager has contracted out some or all of its functions as a manager; and

(iii) for a restricted scheme that is identified on the register of managed investment schemes as an employer-related scheme, any contributor to the scheme who is not a scheme participant (other than the Crown); or

(b) an associated person of a scheme-connected person.

(3) A person is also a related party of the scheme at a particular time if—

(a) the person was a related party of the scheme under subsection (2) at any time within the previous 6 months; or

(b) the person believes or has reasonable grounds to believe that the person is likely to become a related party of the scheme under subsection (2) at any time within the next 12 months.

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

173 General prohibition on transactions giving related party benefits

(1) A manager of a registered scheme (and any investment manager, administration manager, or other person to whom the manager has contracted out some or all of its functions as a manager) must not enter into a transaction that provides for a related party benefit to be given.

(2) However, subsection (1) does not apply to a transaction or series of transactions if the manager notifies the supervisor of the transaction or transactions, including the related party benefits given under the transaction or transactions, and the key terms of the transaction or transactions and either—

(a) the manager obtains the supervisor's consent to the transaction or transactions; or

(b) section 174 applies to the transaction or transactions or all related party benefits to be given and the manager certifies to that effect.

(3) The supervisor must not consent to a transaction or transactions under this section unless 1 of the following applies and the supervisor certifies to that effect:

(a) the supervisor considers that the transaction or transactions are in the best interests of the scheme participants; or

(b) the transaction or transactions are approved by, or contingent on approval by, a special resolution of the class of scheme participants affected, or potentially affected, by the transaction or transactions.

(4) However, if the registered scheme does not have a supervisor, subsection (1) does not apply to a transaction or series of transactions if 1 of the following applies and the manager certifies to that effect:

(a) the transaction or transactions are in the best interests of the scheme participants; or

(b) section 174 applies to the transaction or transactions or all related party benefits to be given; or

(c) the transaction or transactions are approved by, or contingent on approval by, a special resolution of the class of scheme participants affected, or potentially affected, by the transaction or transactions.

(5) The manager may not certify under subsection (4) unless the licensed independent trustee has consented to the certification.

(6) However, a failure to comply with this section does not affect the validity of any transaction (subject to any court order under Part 8).

(7) *See* also section 126 of the KiwiSaver Act 2006 for an additional prohibition on loans and financial assistance to members of KiwiSaver schemes that have fewer than 20 members.

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

Section 173(4): amended, on 9 August 2017, by section 59 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

174 Certain related party benefits permitted

This section applies to—

Arm's-length terms

(a) a benefit that is given on terms that—

(i) would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or

(ii) are less favourable to the related party than the terms referred to in subparagraph (i):

Investments in other registered schemes

(b) an acquisition or a disposal of a managed investment product in another registered scheme or of a prescribed interest in a prescribed overseas scheme:

Certain registered bank investments

(c) investments made in the ordinary course of business in products referred to in clause 21(a) to (c) of Schedule 1:

Other prescribed benefits or transactions

(d) a prescribed benefit or transaction.

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

175 Requirements for certificates as to related party benefits

(1) A certificate under section 173 is effective only if the certificate—

(a) states the specific grounds on which it is given under section 173 and (if relevant) section 174, and the basis for relying on those grounds; and

(b) complies with the prescribed requirements (if any) as to its form, content, or the manner in which it is given.

(2) Nothing in section 173 requires a new certificate if there is an existing certificate that applies (whether specifically or in general terms) to the transaction or transactions.

176 Additional restrictions on acquisitions by restricted schemes of in-house assets

(1) A manager of a restricted scheme (or any person to whom the manager has contracted some or all of its functions as a manager) must not acquire any new in-house asset if, as a result of the acquisition, the restricted scheme would have, or increase, an in-house assets ratio of 5% or more in relation to any related party or scheme participant (**A**).

(2) The in-house assets ratio of a scheme, in relation to A, must be calculated as the ratio, expressed as a percentage, of paragraph (a) to paragraph (b):

(a) the sum of the net asset values of—

(i) the in-house assets of A; and

(ii) the in-house assets of any other related parties of the scheme, or scheme participants, that are associated with A; and

(b) the net asset value of the scheme property.

(3) In this section,—

acquire includes to make a loan or an investment, or enter into a lease or lease arrangement, if the resulting loan, investment, or asset subject to the lease or lease arrangement would be an in-house asset

in-house asset—

(a) means, in relation to a related party or scheme participant (**A**), an asset of the scheme that is a loan to, or an investment in, A (or an associate of A) or an asset of the scheme that is subject to a lease or lease arrangement with A (or an associate of A); but

(b) excludes investments referred to in section 174(b) or (c)

investment means the application of assets in any way, or a contract entered into, for the purpose of gaining interest, income, profit, or gain

lease arrangement means, in relation to an asset, an agreement in the nature of a lease under which a person is to use, or control the use of, the asset (whether or not the agreement is enforceable)

loan includes the provision of credit or any other form of financial accommodation (whether or not enforceable).

(4) The in-house assets ratio of a scheme must be calculated under this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

(5) This section does not apply in the prescribed circumstances.

Compare: Superannuation Industry (Supervision) Act 1993 s 83 (Aust)

177 General duties not affected

The fact that a transaction is consented to, approved by scheme participants, or otherwise permitted under sections 172 to 176 does not affect the manager's or supervisor's obligations to comply with its duties under this Act and otherwise in connection with the transaction.

Compare: Corporations Act 2001 s 230 (Aust)

Scheme participant transfer rules for KiwiSaver, superannuation, and workplace savings schemes

178 Application of scheme participant transfer rules

(1) Sections 179 to 182 apply to both of the following types of transfer (a **transfer**):

(a) the transfer of a scheme participant from one KiwiSaver scheme or superannuation scheme or workplace savings scheme to another KiwiSaver scheme or superannuation scheme or workplace savings scheme:

(b) the transfer of a scheme participant from one section of a KiwiSaver scheme to another section of the same scheme:

(c) the transfer of a scheme participant from one section of a superannuation scheme or workplace savings scheme to another section of the same scheme (but only if the scheme is registered as a superannuation scheme or workplace savings scheme in respect of both sections).

(2) In sections 179 to 182,—

(a) a person proposed to be transferred is a **proposed transferee**:

(b) the scheme, or section of the scheme, from which the person is proposed to be transferred is the **old scheme**:

(c) the scheme, or section of the scheme, into which the person is proposed to be transferred is the **new scheme**.

(3) Sections 179 to 182 do not apply to transfers to which subpart 3 of Part 2 of the KiwiSaver Act 2006, or any other power to transfer scheme participants under an enactment, applies.

Compare: 1989 No 10 s 9B; 2006 No 40 ss 119B, 119D(6)

Section 178(1)(c): amended, on 9 August 2017, by section 60 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

179 Methods of transfer of scheme participants to another scheme or another section of scheme

(1) No scheme participant may be transferred from one registered scheme to another registered scheme, or to another section of the same scheme, except in accordance with this section.

(2) A scheme participant may be transferred—

(a) with the scheme participant's written consent (which must be obtained in accordance with section 180, if that section applies), if authorised by a governing document; or

(b) in accordance with the FMA's consent under section 181 (despite anything to the contrary in the governing document); or

(c) in accordance with regulations made under section 230 of the KiwiSaver Act 2006 (despite anything to the contrary in the governing document), if the old scheme is a default KiwiSaver scheme that is subject to a terminating event under section 138 of the KiwiSaver Act 2006.

(3) However, the FMA may permit a transfer to occur under subsection (2)(a) without the scheme participant's consent if the FMA is satisfied that—

(a) the manager of the old scheme has taken all reasonable steps to contact all of the relevant scheme participants, but has not been able to do so; and

(b) the proposed action is not unreasonable in relation to the best interests of any of those scheme participants who have not been contacted.

(4) No scheme participant may be transferred from a KiwiSaver scheme into another scheme that is not a KiwiSaver scheme under this section.

Compare: 1989 No 10 ss 9B, 9BAA(1), 9BA; 2006 No 40 ss 119C, 119G(1), 119I

180 Transfer of substantial numbers of scheme participants with scheme participant consent

(1) This section applies to a transfer (whether at the same time or over an extended period) of all, or a substantial number, of the scheme participants from an old scheme to a new scheme.

(2) The manager of the old scheme and the manager of the new scheme must each consult their own scheme's supervisor about the proposed transfer and give notice of the proposed transfer in accordance with this section.

(3) The notice must—

(a) be given to the FMA and every scheme participant of the old scheme and the new scheme, other than scheme participants who, in the opinion of the FMA, are not likely to be affected by the proposed transfer; and

(b) set out—

(i) the proposal and its implications for the proposed transferees; and

(ii) the date of the proposed transfer; and

(iii) the date on which the proposed transferees' written consent must be received by the manager or the trustees; and

(iv) the fact that the notice has also been sent to the FMA; and

(c) be given at least 1 month before the date on which, under the notice, the proposed transferees' written consent must be received by the manager or the trustees.

(4) Giving notice under this section does not derogate from the need to comply with any other requirement of the KiwiSaver Act 2006 (in relation to a KiwiSaver scheme).

Compare: 1989 No 10 s 9B; 2006 No 40 s 119D

181 Transfer with FMA consent

(1) The FMA may consent to a transfer if the FMA is satisfied that—

(a) the terms and conditions of the new scheme are no less favourable to the proposed transferees than the terms and conditions of the old scheme; and

(b) the transfer is otherwise reasonable in all the circumstances (including having regard to the value of the assets transferred from the old scheme to the new scheme); and

(c) the person applying for the transfer is the manager of the old or new scheme, a relevant employer, or another person who the FMA considers has an appropriate interest in the transfer; and

(d) the applicant has given notice to every proposed transferee that—

(i) the applicant has applied for the FMA's consent to transfer the person without the person's written consent; and

(ii) the person may make submissions to the FMA about the transfer.

(2) The FMA must have regard to any submissions received by proposed transferees before deciding whether or not to give its consent.

(3) The FMA may give its consent subject to any terms and conditions that the FMA sets out in the written notice of consent.

(4) The transfer must be carried out in accordance with those terms and conditions.

Compare: 1989 No 10 s 9BAA; 2006 No 40 ss 119G, 119H

182 Transfers from KiwiSaver scheme

(1) This section applies to an old scheme if it was a KiwiSaver scheme.

(2) The provider of the old scheme must give the following information to the provider of the new scheme in respect of a scheme participant (**A**) who transfers under sections 179 to 181:

(a) A's name, address, and date of birth; and

(b) A's tax file number; and

(c) the date on which A first became a member of a KiwiSaver scheme and (if known and different) the date on which A first contributed to a KiwiSaver scheme; and

(d) (if known) the aggregate amounts of each of—

(i) A's contributions to the old scheme; and

(ii) the Crown contribution to the old scheme in respect of A; and

(iii) any employer contributions to the old scheme in respect of A; and

(e) the name, address, and tax file number of both the provider and the old scheme; and

(f) any other information that the Commissioner of Inland Revenue requires the provider of the old scheme to give to the provider of the new scheme.

(3) In this section, **provider** has the meaning set out in section 5 of the KiwiSaver Act 2006.

Compare: 2006 No 40 s 119F

Provisions as to deferred benefits for superannuation schemes and workplace savings schemes

183 Deferred benefits

(1) A scheme participant in respect of a superannuation scheme or workplace savings scheme who continues to be employed by an employer after the participant's expected age or date of retirement (as defined in the governing document of the scheme) may elect to defer the receipt of any benefit that the participant is eligible to receive under the scheme until the date on which the participant ceases to be employed by that employer.

(2) Subsection (1) applies despite anything to the contrary contained in the governing document of the scheme.

(3) Nothing in subsection (1) or in the Human Rights Act 1993 has the effect of requiring either an employer or a scheme participant to continue to contribute, or to cease to contribute, to the scheme after the participant's expected age or date of retirement, as defined in the governing document of the scheme.

(4) If a scheme participant has the right, under subsection (1), to elect to defer receipt of any benefit that the participant is eligible to receive under the scheme, the manager must inform the participant in writing of that right.

Compare: 1989 No 10 s 9C

Change of manager

184 Application of sections 185 to 192

Sections 185 to 192 apply to—

(a) the manager of a registered scheme (other than a restricted scheme); or

(b) each of the trustees of a restricted scheme (including, to avoid doubt, the independent trustee).

185 Removal of manager of registered scheme

(1) A manager of a registered scheme ceases to hold that office if—

(a) the manager is removed by written direction of the supervisor after the supervisor certifies that it is in the best interests of scheme participants that the manager be removed; or

(b) the manager is removed by a special resolution of the scheme participants; or

(c) in the case of an independent trustee of a restricted scheme,—

(i) the trustee's licence expires or is cancelled under Part 6; or

(ii) the trustee is removed by the FMA if it is satisfied that the trustee no longer meets the requirements in section 131(1)(d); or

(d) the manager is substituted by the court under section 209; or

(e) the manager is otherwise removed or resigns in accordance with the governing document.

(2) Subsection (1)(a) and (b) do not apply to a restricted scheme.

(3) However, a licensed independent trustee may not—

(a) be removed or resign under subsection (1)(e) unless—

(i) all functions and duties of the position have been performed; or

(ii) another licensed independent trustee has been appointed, and accepted the appointment, in its place; or

(iii) the court consents:

(b) (despite anything in the governing document) be removed under subsection (1)(e) without the FMA's consent.

(4) If a manager ceases to hold office under subsection (1), the manager and any delegate of the manager must immediately desist from all activities relating to the registered scheme unless the supervisor agrees to the contrary.

Compare: 1960 No 99 s 19

186 Supervisor or FMA may make temporary appointment

(1) This section applies if a registered scheme does not, for any reason, have a manager or (in the case of a restricted scheme) a licensed independent trustee.

(2) The supervisor or the FMA must appoint a person (the **temporary manager**) to fill the vacancy in the office until a substitute appointment may be made under the governing document.

(3) That person must be,—

(a) if the appointment is by the supervisor, a person who meets the requirements in section 127(1)(c) and (e):

(b) if the appointment is by the FMA, a person whom the FMA considers appropriate (but who need not be a person who meets the requirements in section 127(1)(c) and (e) or (in the case of an independent trustee) section 131(1)(d)).

(4) However, the FMA may act under this section only if—

(a) it is satisfied that the supervisor has had a reasonable opportunity to act under this section but has not done so; or

(b) it is satisfied that it is necessary as a matter of urgency for the FMA to do so and it is not reasonably practicable to wait for the supervisor to do so; or

(c) the supervisor requests the FMA to act; or

(d) there is no supervisor.

(5) If the FMA appoints a person who does not meet the requirements of section 127(1)(c) and (e) or 131(1)(d), that person does not contravene section 388,

and the scheme does not fail to meet those registration requirements, as a result of that appointment.

Compare: 1960 No 99 s 23

187 Term, powers, and duties of temporary manager

(1) A temporary manager may hold the appointment until a substitute manager is appointed—

(a) under the governing document; or

(b) otherwise under this Act.

(2) The temporary manager has all of the powers and duties of the manager of the registered scheme and (if applicable) of the independent trustee that are conferred or imposed by the governing document or by law.

(3) However, the FMA may, in the prescribed manner (if any), amend a governing document, in so far as it applies to a temporary manager appointed by the FMA, if—

(a) the supervisor consents; and

(b) the FMA is satisfied that the change will have no material adverse effect on the interests of scheme participants.

(4) An amendment made under this section must be treated for all purposes as if it were made in accordance with the governing document.

(5) Section 141 (lodging of changes to governing document) applies to an amendment to the governing document under this section.

188 FMA's costs must be reimbursed from scheme

(1) The FMA's costs and expenses incurred in connection with the holding of the appointment by a temporary manager appointed by the FMA must be reimbursed out of scheme property of the registered scheme.

(2) An amount payable under subsection (1) is recoverable by the FMA in any court of competent jurisdiction as a debt due to the FMA.

189 Supervisor or FMA must take reasonable steps to arrange for new appointment

(1) The supervisor of a registered scheme or the FMA (if there is no supervisor) must take all reasonable steps to secure, in accordance with the governing document, the appointment of a person as a permanent manager in place of the temporary manager (other than a temporary independent trustee).

(2) The trustees of a restricted scheme must take all reasonable steps to secure, in accordance with the governing document, the appointment of a person as a permanent licensed independent trustee in place of the temporary independent trustee.

(3) The temporary manager may be appointed to hold the office as a permanent manager, but in this case—

(a) if the person was appointed by the FMA, the person ceases to be appointed by the FMA for the purposes of sections 186 to 188; and

(b) must meet the requirements in section 127(1)(c) and (e) or 131(1)(d) (if applicable).

(4) The supervisor or trustees must, when acting under this section, comply with the prescribed requirements (if any).

190 Former manager must hand over records and give reasonable assistance

(1) If the person who holds an appointment as a manager of a registered scheme changes, the person who previously held the appointment (the **former manager**) must,—

(a) as soon as practicable, give the person that currently holds the appointment (the **current manager**) all of the information held or controlled by the former manager that is reasonably necessary to allow the current manager to hold the office; and

(b) give the current manager all reasonable assistance to facilitate the change.

(2) The former manager may withhold information, or retain a copy of information,—

(a) with the FMA's written consent; or

(b) otherwise in the prescribed circumstances.

(3) If a temporary manager has been appointed to an office, for the purposes of this section, **former manager** includes the person who held the office immediately before the temporary manager and **current manager** includes the person who held the office immediately after the temporary manager.

191 Statutory novation of rights, obligations, and liabilities of former manager

(1) If the manager of a registered scheme changes, the rights, obligations, and liabilities of the former manager in relation to the scheme become the rights, obligations, and liabilities of the new manager.

(2) Despite subsection (1), the following rights, obligations, and liabilities remain rights, obligations, and liabilities of the former manager:

(a) any right of the former manager to be paid fees for the performance of its functions, or to be indemnified for liabilities or expenses it incurred, before it ceased to be the manager of the scheme; and

(b) any right, obligation, or liability that the former manager had as a scheme participant; and

(c) any liability for which the former manager could not have been indemnified out of the scheme property if it had remained the scheme's manager.

(3) This section is subject to any order of the court under section 209.

192 Lodging of notice of changes to manager

(1) Within 5 working days after a change to the manager of a registered scheme, the new manager must ensure that notice of the change is lodged with the Registrar.

(2) A manager that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Change of supervisor

193 Change of supervisor

(1) The supervisor of a registered scheme ceases to hold that appointment (subject to subsection (2)) if the supervisor—

(a) is removed by the FMA if it is satisfied that the manager and the supervisor no longer meet the requirements in section 127(1)(e) (registration requirements); or

(b) is removed by the FMA or the issuer under Part 2 of the Financial Markets Supervisors Act 2011; or

(c) is removed by a special resolution of the scheme participants; or

(d) is removed or resigns in accordance with the governing document.

(2) However, a supervisor may not—

(a) be removed or resign under subsection (1)(c) or (d) unless—

(i) all functions and duties of the position have been performed; or

(ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or

(iii) the court consents:

(b) (despite anything in the governing document) be removed by the manager under subsection (1)(d) without the FMA's consent.

Compare: 1960 No 99 s 10; 1978 No 103 s 48; 2006 No 40 s 116E(2)

194 Lodging of notice of change of supervisor

(1) Within 5 working days after a change of supervisor of a registered scheme, the manager must ensure that notice of the change is lodged with the Registrar.

(2) A manager that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Cancellation of registration

195 Cancellation of registration

(1) The FMA may direct that the registration of a registered scheme be cancelled—

(a) if satisfied on reasonable grounds that the scheme does not meet the registration requirements under section 127; or

(b) if the FMA has reasonable cause to believe that the scheme has no scheme participants; or

(c) on the written request of the manager of the scheme (subject to subsection (4)), if the supervisor certifies or, if there is no supervisor, the manager certifies that—

(i) the cancellation has been approved by a special resolution of the scheme participants (subject to any restriction in the governing document); or

(ii) there is no material adverse effect on the scheme participants from the cancellation; or

(d) if the scheme has been wound up or dissolved or has otherwise ceased to exist.

(2) The FMA must not direct cancellation under subsection (1)(a) or (b) unless—

(a) the FMA gives the manager of the scheme no less than 20 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may direct cancellation; and

(ii) the reasons why it may exercise that power; and

(b) the FMA gives the manager or the manager's representative an opportunity to make written submissions on the matter within that notice period.

(2A) In addition, the FMA must not direct cancellation under subsection (1) in the prescribed circumstances.

(2B) Before making a recommendation for regulations for the purposes of subsection (2A), the Minister must be satisfied that the regulations are necessary or desirable for the purpose of enabling a recognition regime or an application regime (or both) to be implemented under subpart 6 of Part 9.

(3) If the FMA makes a direction under this section,—

(a) the FMA must notify the manager and the supervisor of the registered scheme of the direction; and

(b) as soon as practicable after being notified of the direction, the manager must notify the scheme participants of the direction.

(4) The FMA may, instead of cancelling a scheme's registration on the request of the manager under this section, exercise its rights to apply for an order winding up the scheme under section 211 (power to order winding up).

Compare: 1989 No 10 s 19; 2006 No 40 s 168

Section 195(1)(c): amended, on 9 August 2017, by section 61 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 195(2A): inserted, on 30 March 2025, by section 97 of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Section 195(2B): inserted, on 30 March 2025, by section 97 of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

196 Registrar must remove scheme from register on cancellation of registration

(1) On the cancellation of the registration of a scheme under section 195, the Registrar must remove it from the register of managed investment schemes.

(2) The cancellation must be treated as taking effect on the date on which the scheme is removed from the register.

(3) The Registrar must give notice of the cancellation of registration, as soon as practicable after the registration of the scheme is cancelled, to—

(a) the manager of the scheme; and

(b) the supervisor of the scheme; and

(c) the Commissioner of Inland Revenue (in the case of a KiwiSaver scheme).

Compare: 2006 No 40 s 170

Subpart 3—Intervention in debt securities offered under regulated offer or registered schemes

Provisions assisting supervisor or FMA to intervene

197 Application

This subpart applies in relation to debt securities offered under a regulated offer and registered schemes.

198 Duty of auditor to report to supervisor or FMA

(1) This section applies to the auditor of an issuer of a debt security or a registered scheme.

(2) If the auditor provides the issuer, any of the issuer's members or shareholders, or any of the holders of the debt security or managed investment product with any document required by an Act or a trust deed relating to the financial product or scheme, the auditor must, as soon as practicable, send a copy to the supervisor of the debt security or registered scheme or, if there is no supervisor, to the FMA.

(3) If, in the performance of the auditor's duties, the auditor becomes aware of a matter that, in the auditor's opinion, is relevant to the exercise or performance of the powers or duties of the supervisor of the debt security or registered scheme, the auditor must, within 7 working days of becoming aware of the matter, send—

(a) a written report on the matter to the issuer; and

(b) a copy of the report to the supervisor or, if there is no supervisor, to the FMA.

(4) The auditor must, from time to time, at the request of the supervisor, provide the supervisor with any information relating to the issuer or registered scheme—

(a) that the supervisor requests; and

(b) that is within the auditor's knowledge; and

(c) that is, in the auditor's opinion, relevant to the exercise or performance of the powers or duties of the supervisor.

(5) Section 214 (protected disclosure) applies to a disclosure in good faith under this section.

Compare: 1978 No 103 s 50

199 Duty of auditor, investment manager, administration manager, custodian, or actuary to report serious problems

(1) This section applies to an auditor of an issuer of a debt security and to an investment manager, an administration manager, a custodian, an auditor, or an actuary of a registered scheme.

(2) A person to whom this section applies must take the steps set out in section 200 if the person has reasonable grounds to believe that any of the following has arisen in relation to a relevant financial product (a **serious problem**):

(a) the issuer of the relevant financial product has contravened, may have contravened, or is likely to contravene an issuer obligation in a material respect; or

(b) the issuer or scheme is, or is likely to become, insolvent; or

(c) the financial position of the scheme or issuer or the security of benefits or the management of the scheme or issuer is otherwise inadequate; or

(d) the manager of the scheme has contravened, may have contravened, or is likely to contravene any of the manager's market services licensee obligations in a material respect; or

(e) the supervisor of the scheme has contravened, may have contravened, or is likely to contravene any of the supervisor's licensee obligations (as defined in section 4 of the Financial Markets Supervisors Act 2011) in a material respect; or

(f) the custodian of the scheme has contravened, may have contravened, or is likely to contravene any of the custodian's obligations in a material respect.

Compare: 2006 No 40 s 191

200 What person must do if duty to report serious problem applies

(1) If section 199 applies, the person to whom that section applies must, as soon as practicable,—

(a) report the serious problem to the supervisor or, if subsection (2) applies, to the FMA; and

(b) disclose to the supervisor or the FMA (as applicable under paragraph (a)) all information relevant to the serious problem that is in the possession or control of the relevant person and was obtained in the course of, or in connection with, the performance of functions of that relevant person.

(2) A serious problem must be reported to the FMA instead of the supervisor if—

(a) there is no supervisor; or

(b) the serious problem concerns a contravention or likely contravention of an obligation by the supervisor; or

(c) the contravention relates to the custodian and the custodian is a related body corporate of the supervisor.

(3) Section 214 (protected disclosure) applies to a disclosure in good faith under this section.

(4) To avoid doubt, section 199 and this section do not require a relevant person to carry out functions additional to those functions that the person would ordinarily carry out in the course of holding the person's office (other than as expressly required by subsection (1)).

Compare: 2006 No 40 s 191(2), (4)

201 Protections extend to volunteers of supporting information for other protected disclosures

(1) Section 214 (protected disclosure) applies to a disclosure that is supporting information volunteered by a person under this section.

(2) A person volunteers supporting information under this section if the person—

(a) is an employee of a person in respect of whom a protected disclosure is made by another person under this Act; and

(b) provides information, in support of that other protected disclosure, to—

(i) the supervisor or the FMA (whichever receives the other protected disclosure); or

(ii) the person who made the disclosure; and

(c) makes the disclosure in good faith; and

(d) wishes to provide the supporting information so that a serious problem can be investigated.

(3) However, an employee does not volunteer supporting information under this section if the employee provides the supporting information only after being—

(a) required to do so under any enactment, rule of law, or agreement for the purposes of the investigation; or

(b) approached during the course of the investigation by, or on behalf of, the FMA or any other person investigating the matter.

202 FMA may require supervisor to attest as to issuer's compliance with issuer obligations

(1) The FMA may require a supervisor of a debt security or registered scheme to attest to the FMA, at a time and in a manner specified by the FMA, as to whether the supervisor is satisfied that the issuer has not contravened an issuer obligation in a material respect.

(2) If the FMA requires a supervisor to attest to the FMA under this section, the supervisor must—

(a) provide that attestation; or

(b) if unable to attest to the FMA as required, report the reason, including the details of any contravention or possible contravention and, if applicable, the report under section 203.

(3) Section 214 (protected disclosure) applies to a report made in good faith under this section.

Compare: 2011 No 10 s 45

203 Duty of supervisor to report contravention or possible contravention of issuer obligations to FMA

(1) If a supervisor of a debt security or registered scheme has reasonable grounds to believe that the issuer has contravened, may have contravened, or is likely to contravene an issuer obligation in a material respect, the supervisor must, as soon as practicable,—

(a) report the contravention or possible contravention to the FMA; and

(b) advise the FMA of the steps (if any) that the supervisor intends to take in respect of the contravention or possible contravention and the date by which the steps are to be taken.

(2) Section 214 (protected disclosure) applies to a report made in good faith under this section.

Compare: 2011 No 10 s 46

204 Duty of supervisor to report serious financial problems to FMA

(1) This section applies if a supervisor of a debt security or registered scheme becomes aware, in the course of or in connection with the performance of its functions as supervisor, of information on the basis of which it could reasonably form the opinion that—

(a) the issuer is, or is likely to become, insolvent; or

(b) in the case of a registered scheme, the scheme is, or is likely to become, insolvent.

(2) The supervisor must, as soon as practicable,—

(a) disclose to the FMA all information relevant to that matter that is in the possession or under the control of the supervisor and that was obtained in the course of, or in connection with, the performance of its functions as supervisor; and

(b) advise the FMA of the steps (if any) that the supervisor intends to take in respect of that matter and the date by which the steps are to be taken.

(3) Section 214 (protected disclosure) applies to a report made in good faith under this section.

Compare: 2011 No 10 s 47

205 FMA's powers of direction

(1) The FMA may exercise a power under subsection (2) if it is satisfied that—

(a) there is a significant risk that the interests of holders of a debt security or scheme participants in a registered scheme will be materially prejudiced; and

(b) 1 of the following applies:

(i) the supervisor of the debt security or registered scheme is aware of that risk and has had a reasonable opportunity to take action to eliminate or reduce the risk but has not done so; or

(ii) action is urgently required to eliminate or reduce the risk and it is not reasonably practicable to wait for the supervisor to do so; or

(iii) there is no supervisor.

(2) The FMA may, by written notice to the supervisor and otherwise in the prescribed manner, give a direction to the supervisor.

(3) If there is no supervisor, the FMA may, by written notice to the issuer and otherwise in the prescribed manner, give a direction to the issuer.

Compare: 2011 No 10 s 49(1), (2)

206 FMA's directions to supervisor (or issuer)

(1) If the notice under section 205 gives a direction to the supervisor (or, if there is no supervisor, the issuer), the notice must specify—

(a) the step or steps that the supervisor (or issuer) must take in relation to the issuer, the registered scheme (if any), or the financial products; and

(b) the date by which each step will be taken.

(2) The supervisor or the issuer (as the case may be) must comply with the direction (*see* subpart 3 of Part 8, which provides for civil remedies for a contravention of this provision).

(3) A supervisor or issuer (as the case may be) that refuses or fails, without reasonable excuse, to comply with the direction commits an offence and is liable on conviction to a fine not exceeding $300,000.

Compare: 2011 No 10 s 49(3)–(5)

Powers to obtain court orders to intervene

207 Power of supervisor or FMA to apply for order to remedy problems

(1) A supervisor of a debt security or a registered scheme, or the FMA, may apply for an order under section 208 if it is satisfied that—

(a) the issuer and any guarantor of the financial products are unlikely to be able to pay all money owing in respect of the financial products when it becomes due; or

(b) the issuer is insolvent; or

(c) in the case of a registered scheme, the scheme is insolvent; or

(d) the financial position of the scheme or issuer or the security of benefits or the management of the scheme or issuer is otherwise inadequate; or

(e) in the case of a registered scheme, the scheme does not meet the registration requirements, or the requirements for registration as a particular type of scheme, that apply to it under sections 127 to 132; or

(f) there is a significant risk that the interests of product holders will be materially prejudiced for any other reason; or

(g) the provisions of a governing document are no longer adequate to give proper protection to product holders.

(2) However, the FMA may apply for the order only if it is satisfied that—

(a) the supervisor has had a reasonable opportunity to apply for the order but has not done so; or

(b) it is necessary as a matter of urgency for the FMA to do so and it is not reasonably practicable to wait for the supervisor to do so; or

(c) there is no supervisor.

Compare: 1960 No 99 s 19A; 1978 No 103 s 49; 2006 No 40 s 116K(1), (2); 2011 No 10 s 50(1)–(3)

208 Court orders to remedy problems

(1) The court may, on the application by a supervisor or the FMA under section 207 and after giving the issuer and any other person as the court thinks fit the opportunity to be heard, make 1 or more of the orders listed in subsection (2).

(2) The order or orders may—

(a) amend the provisions of the governing document:

(b) impose restrictions on the activities of the issuer (including restrictions on advertising) that the court thinks are necessary to protect the interests of product holders:

(c) direct that no offers, issues, sales, or transfers of debt securities or managed investment products specified in the order be made while the order is in force:

(d) direct that an issuer must not accept further contributions or deposits in respect of debt securities or managed investment products specified in the order while the order is in force:

(e) direct the issuer or the supervisor to convene a meeting of product holders for the purpose of—

(i) having placed before the product holders by the issuer or the supervisor the information or proposal that the court, the supervisor, or the FMA thinks necessary or appropriate relating to the product holders' interests; and

(ii) obtaining the opinions or directions of product holders:

(f) give directions in relation to the conduct of any meeting convened in accordance with paragraph (e):

(g) stay any civil actions or civil proceedings before the court by or against the supervisor, the issuer, or any guarantor of the financial products:

(h) restrain the payment of money by the custodian, the issuer, or any guarantor of the financial products to product holders or a class of product holders or restrain the transfer of scheme property by the custodian:

(i) appoint a receiver or manager of the property that constitutes the security (if any) for the financial products (with any powers that the court orders):

(j) remove a receiver or manager of the property that constitutes the security (if any) for the financial products:

(k) give any other directions that the court considers necessary to protect the interests of product holders, any guarantor of the financial products, or the public.

(3) The court may vary or cancel an order made under this section.

(4) In exercising its powers under this section, the court must have regard to the interests of all creditors of the issuer (in the case of a debt security) and

all creditors in respect of the registered scheme (in the case of a managed investment product).

Compare: 1960 No 99 s 19A; 1978 No 103 s 49; 2006 No 40 s 116K(3)–(6); 2011 No 10 s 50(4)–(7)

209 Power of court to appoint new manager, provide for manager powers, and deal with changes of managers

(1) The court may, on the application of the supervisor of a registered scheme, the FMA, a scheme participant in a registered scheme, or (in the case of an order under paragraph (b)) a manager of a registered scheme, make an order to—

(a) appoint a new manager of a registered scheme (with any powers that the court orders) if there is no manager or in substitution for an existing manager:

(b) confer an additional power on the manager of a registered scheme (either generally or specifically) to facilitate a transaction or type of transaction that the court considers to be in the interests of the scheme participants, and provide for the exercise of that additional power:

(c) direct that section 191 not apply in whole or in part and also, if an agreement has been entered into between a manager of a registered scheme that has been removed and any other person,—

(i) vary the agreement or any collateral agreement as specified in the order and, if the court thinks fit, declare the agreement to have had effect as so varied on and after a date before the order was made, as specified in the order; or

(ii) cancel the agreement and, if the court thinks fit, declare the cancellation to have had effect on and after a date before the order was made, as specified in the order:

(d) amend the governing document to provide for a new or temporary appointment of a manager of a registered scheme (whether the appointment is by a court order or under the governing document or this Act) or otherwise in connection with another order made under this section:

(e) cancel in whole or in part any liability of the scheme to make any payment or transfer any property to a manager of a registered scheme that has been removed.

(2) The court may under this section (without limiting subsection (1)) appoint a new manager in substitution for a manager who—

(a) has been held by the court to have contravened any issuer obligation; or

(b) is insolvent.

(3) A manager appointed by the court under this section has all of the powers and duties of the manager of the registered scheme that are conferred or imposed by the governing document or by law.

Compare: 1960 No 99 s 22

210 Power of court to direct supervisor

(1) The court may, on an application made under subsection (2), make an order directing a supervisor of a debt security under a regulated offer or of a registered scheme not to comply with a special resolution of product holders if the court is satisfied that compliance would be objectionable (for example, because it would be oppressive to the minority).

(2) The supervisor, the FMA, or a product holder may apply for an order under this section within 20 working days after the special resolution (or, with leave of the court, within any longer period).

211 Court power to order winding up of scheme

(1) The court may, on the application of the FMA or a supervisor of the registered scheme, direct that a registered scheme must be wound up if it is satisfied that—

(a) the manager or the scheme is insolvent; or

(b) the manager has persistently or seriously failed to comply with this Act or any other financial markets legislation; or

(c) no permanent manager is appointed under the governing document or this Act; or

(d) no supervisor is appointed under the governing document or the Financial Markets Supervisors Act 2011 (if required under this Part); or

(e) the scheme does not meet the registration requirements that apply to it under sections 127 to 132; or

(f) it is just and equitable that the scheme be wound up.

(2) However, the FMA may apply for an order to wind up a scheme only if it is satisfied that—

(a) the supervisor has had a reasonable opportunity to do so but has not done so; or

(b) it is necessary as a matter of urgency for the FMA to do so rather than wait for the supervisor to do so; or

(c) there is no supervisor.

(3) The court may give any other directions that it thinks fit for the purpose of facilitating the winding up (and, if there is any conflict between those directions and the provisions of the governing document, those directions prevail).

212 Initial steps in winding up of registered scheme

(1) If a registered scheme is to be wound up, the supervisor or (if there is no supervisor) the manager must, within 10 working days after a winding-up resolution or an order by the court that the scheme be wound up is made,—

(a) give a copy of any order or resolution to the FMA; and

(b) in the case of a KiwiSaver scheme or a complying superannuation fund,—

(i) give a copy of any order or resolution to the Commissioner of Inland Revenue; and

(ii) give notice to the Commissioner of Inland Revenue of the name, tax file number, and address of each member of the registered scheme.

(2) *See* sections 50 to 52 of the KiwiSaver Act 2006 (which set out the effect of notice to the Commissioner of Inland Revenue in relation to members of a KiwiSaver scheme) and subpart 3 of Part 2 of that Act (which relates to the transfer of members' interests to another KiwiSaver scheme).

(3) A supervisor or manager that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 2006 No 40 s 173

Section 212(1): amended, on 9 August 2017, by section 62(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 212(3): amended, on 9 August 2017, by section 62(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

213 Winding-up report

(1) The person who was the supervisor of the relevant registered scheme or, if there was no supervisor, the person who was the manager of the relevant registered scheme immediately before the scheme was wound up—

(a) must, within 4 months after the date on which the winding up takes effect, ensure that final financial statements of the scheme, showing the financial position of the scheme as at the date on which the winding up takes effect, are prepared in accordance with generally accepted accounting practice and audited; and

(b) must, within 20 working days after the final financial statements have been audited, ensure that—

(i) a copy of those financial statements is sent to the FMA and to every person who was a scheme participant immediately before it was wound up; and

(ii) the FMA and the scheme participants are advised in writing as to the manner in which the remaining assets (if any) of the scheme are to be distributed; and

(c) may make a partial distribution of assets of the scheme at any time before a copy of the final financial statements is sent to the FMA under paragraph (b) (unless prohibited by the governing document); and

(d) must inform the FMA of the date on which the distribution of the assets is completed.

(2) The FMA may, by giving notice to the relevant person, extend the time period within which a person must comply with any of the requirements set out in this section.

(3) A person that contravenes—

(a) subsection (1)(a) commits an offence:

(b) subsection (1)(b) commits an offence:

(c) subsection (1)(d) commits an offence.

(4) A person that commits an offence under subsection (3) is liable on conviction to a fine not exceeding $50,000.

(5) Each offence in subsection (3) is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1989 No 10 s 21(1), (1A); 2006 No 40 ss 174, 175

Section 213(1): amended, on 9 August 2017, by section 63 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Miscellaneous

214 Protection for persons in respect of disclosure under this subpart or subpart 4

(1) No civil, criminal, or disciplinary proceedings may be brought against a person by reason of the person having made a protected disclosure.

(2) No person may terminate the appointment of a person by reason of the person having made a protected disclosure.

(3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of a person may make an order against, or do any act in relation to, the person by reason of the person having made a protected disclosure.

(4) In this Act, **protected disclosure** means a disclosure of information to which this section applies under this subpart or subpart 4.

Compare: 1978 No 103 s 50C; 2006 No 40 s 192; 2011 No 10 s 48

Subpart 4—Registers and keeping copies of documents

Registers

215 Issuers must keep registers of regulated products

(1) Every issuer of regulated products must ensure that there is kept, in the manner specified in section 216,—

(a) a register of those regulated products and of all financial products that are of the same class as those regulated products of which it is the issuer; and

(b) a register of other financial products of which it is the issuer that is required to be kept by the regulations.

(2) However, subsection (1) does not apply—

(a) to derivatives (unless those derivatives are of a prescribed type); or

(b) to prescribed financial products; or

(c) otherwise in the prescribed circumstances.

(3) If subsection (1) does not apply to derivatives of a particular type, the issuer must comply with the requirements prescribed for the purposes of this subsection (if any).

(4) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 51(1)

216 Manner of keeping registers

(1) A register kept under this subpart must be kept in New Zealand.

(2) A register kept under this subpart may—

(a) be an electronic register; or

(b) be kept in any other reasonable manner that the issuer thinks fit.

217 Contents of registers

(1) Every issuer of regulated products must ensure that every register kept by, or on behalf of, the issuer under this subpart contains, in respect of every financial product entered in the register,—

(a) the name and address of the holder; and

(b) the date on which the product was issued or transferred to the holder, as the case may be; and

(c) the nature of the product; and

(d) the amount of the product (if any); and

(e) the due date of the product (if any); and

(f) all other prescribed particulars (if any).

(1A) However, a register is not required to contain the information specified in a paragraph in subsection (1) if the circumstances prescribed in respect of that paragraph apply.

(2) No notice of any trust, expressed, implied, or constructive, may be entered on a register kept under this subpart (except in the prescribed circumstances).

(3) Every register kept under this subpart is prima facie evidence of the matters required by this Act to be entered in it.

(4) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 51(2)–(5)

Section 217(1A): inserted, on 9 August 2017, by section 64 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

218 Audit or review of registers

(1) Every issuer of regulated products must ensure that registers kept by, or on behalf of, the issuer under this subpart are audited or reviewed in accordance with the prescribed requirements by a qualified FMC auditor.

(2) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 51(6)

Section 218(1): amended, on 30 March 2025, by section 98 of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

219 Auditor must advise if auditor considers that subpart is not being complied with

(1) If the auditor referred to in section 218 considers at any time that this subpart is not being complied with, the auditor must, as soon as practicable,—

(a) advise the issuer and the FMA; and

(b) advise,—

(i) in the case of equity securities, the security holders at their next meeting if the non-compliance is material:

(ii) in the case of debt securities or managed investment products, the supervisor.

(2) Section 214 (protected disclosure) applies to a disclosure made in good faith under this section.

Compare: 1978 No 103 s 51(8)

220 Issuer must notify Registrar of registers

(1) Every issuer of regulated products must send a notice to the Registrar of the place where its registers under this subpart are kept and of any change in that place.

(2) The notice must be sent within 10 working days after the register being established or after the change in place (as the case may be).

(3) This section does not apply to an issuer that is a company if the registers of the company are kept at its registered office.

(4) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 51(9), (10)

221 Public inspection of register

(1) Every issuer of regulated products must ensure that every register kept by, or on behalf of, the issuer under this subpart is available for inspection in the manner referred to in section 222.

(2) Subsection (1) does not apply—

(a) to a register of managed investment products in respect of a superannuation scheme, workplace savings scheme, or KiwiSaver scheme:

(b) to a register of derivatives:

(c) in the prescribed circumstances.

(3) However,—

(a) a register of managed investment products in respect of a superannuation scheme, workplace savings scheme, or KiwiSaver scheme must be available for inspection by the supervisor in the manner referred to in section 222 if the supervisor serves written notice on the issuer of intention to inspect:

(b) the part of a register of managed investment products in respect of a superannuation scheme, workplace savings scheme, or KiwiSaver scheme that concerns financial products of a particular scheme participant must be available for inspection by the scheme participant in the manner referred to in section 222 if the scheme participant serves written notice on the issuer of intention to inspect:

(c) the part of a register of derivatives that concerns derivatives entered into by a particular person must be available for inspection by the person in the manner referred to in section 222 if the person serves written notice on the issuer of intention to inspect.

(4) An issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 52

222 Manner of inspection

For the purposes of section 221, a register kept under this subpart must—

(a) be available for inspection, by a person who serves on the issuer written notice of intention to inspect, at the place at which the register is kept between the hours of 9 am and 5 pm on each working day during the inspection period; and

(b) otherwise be available for inspection in the prescribed manner (if any).

Compare: 1993 No 105 s 217

223 Copies of documents

(1) A person may require a copy of, or an extract from, a register that is available for inspection by the person under section 221 to be sent to the person—

(a) within 5 working days after the person has made a written request for the copy or extract to the issuer; and

(b) if the person has paid the prescribed fee (if any).

(2) The issuer must comply with the request (subject to section 224).

(3) An issuer that contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1993 No 105 s 218

224 Reasons for request must be given and FMA may authorise non-compliance

(1) A person who makes a request under section 223(1) (other than a request for information about that person) must include in the request a statement of the person's reasons for the request (including the purpose for which the person intends to use the copy of, or extract from, the register), and the issuer may, if it thinks fit, provide a copy of that statement to the FMA.

(2) If the issuer provides a copy of the statement to the FMA before the expiry of the 5-working-day period referred to in section 223(1)(a),—

(a) the period within which the request may be complied with is 10 working days after the person made the request (rather than 5 working days); and

(b) the issuer does not have to comply with the request at all if the FMA, within that 10-working-day period, gives written notice to the issuer that it is not required to comply.

225 Restriction on use of information in registers

(1) A person must not—

(a) use information about a person obtained from a register kept under this subpart to contact or send material to that person; or

(b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person.

Example

An example of using information to send material to a person is putting a person's name and address on a mailing list for advertising material.

(2) Subsection (1) does not apply if the use or disclosure of the information is—

(a) relevant to the holding of the interests recorded in the register or the exercise of the rights attaching to those interests; or

(b) approved by the issuer that keeps the register.

(3) A person must not—

(a) use information obtained from a register kept under this subpart—

(i) for any prescribed purpose; or

(ii) in the case of a request under section 223(1), for any purpose other than the purpose disclosed in the statement under section 224(1); or

(b) disclose information of that kind knowing that the information is likely to be used for any such purpose.

(4) Subsection (3)(a)(ii) does not apply to a person who makes a request under section 223(1) for information about that person.

Compare: Corporations Act 2001 s 177 (Aust)

226 Certain provisions prevail over Companies Act 1993

If a provision of sections 221 to 225 is inconsistent with a provision in the Companies Act 1993, the provision of sections 221 to 225 prevails.

Copies of documents to be retained

227 Copies of documents must be retained for 7 years

(1) The issuer of a regulated product, the offeror under a regulated offer, or the manager of a registered scheme must, in respect of each document required by or for the purposes of this Act in respect of the regulated product, regulated offer, or registered scheme,—

(a) keep a copy of the document for a period of at least 7 years after the date on which the document comes into the possession of the issuer, offeror, or manager; and

(b) comply with the prescribed requirements relating to where the copy is kept, inspection of the copy, and making copies of the document available on payment of a reasonable printing and administration fee set by the issuer, offeror, or manager.

(2) Subsection (1) applies only if the document is given, made, or provided by or to the issuer, offeror, or manager.

(3) A person that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Subpart 5—Civil liability for certain contraventions of this Part

228 Part 4 governance provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 4 governance provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) The provisions are the following:

(a) section 103 (need for governing document and supervisor for regulated offer of debt security):

(b) section 125 (need to register managed investment scheme for regulated offer of managed investment product):

(c) sections 156 to 158 (requirements relating to custodianship of scheme property):

(d) section 185(4) (manager and delegate must desist from all activities relating to scheme on removal).

(4) A contravention of any of the following may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case:

(a) section 108(2) (changes to trust deed):

(b) sections 112 and 113 (duties applying to supervisor of debt security):

(c) sections 114 to 118 and 119(2) (duties on issuer to provide various reports, information, and assistance):

(d) sections 120, 121, 161, and 162 (meetings of product holders):

(e) section 133 (manager must ensure that ongoing registration requirements are complied with):

(f) section 134(5)(b) (manager must notify scheme participants of direction):

(g) section 139(2) (changes to governing document):

(h) sections 143 to 146 (duties applying to manager, investment manager, and directors and senior managers of manager):

(i) sections 147 to 151 and 155(2) (duties on issuer to provide various reports, information, and assistance):

(j) sections 153 and 154 (duties applying to supervisor of registered scheme):

(k) section 159 (custodian must report on scheme property):

(l) section 160 (duty of supervisor to refuse to act on wrongful directions):

(m) section 163(1) (manager and associated persons cannot vote if interested in resolution):

(n) sections 164 and 165 (requirements relating to statement of investment policy and objectives):

(o) sections 167 to 169 (actions that must be taken on limit breaks, pricing errors, and other non-compliances, and requirements for actuarial examinations):

(p) section 171 (limits on reversion of scheme property in certain schemes to non-scheme participant contributor):

(q) section 173 (general prohibition on related party transactions):

(r) section 176 (additional restrictions on acquisitions by restricted schemes of in-house assets):

(s) sections 179, 180, 181(4), and 182 (scheme participant transfer rules):

(t) section 190 (former manager must hand over records and give reasonable assistance):

(u) section 195(3)(b) (manager must notify scheme participants of direction):

(v) sections 198 to 200, and 202 to 204 (duties to report problems):

(w) section 206(2) (FMA's directions to supervisor):

(wa) section 219 (auditor must advise if auditor considers that subpart is not being complied with):

(x) section 225 (restriction on use of information in registers).

Section 228(4)(wa): inserted, on 9 August 2017, by section 65 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Part 5
Dealing in financial products on markets

Subpart 1—Purposes, overview, and interpretation

229 Additional purposes of Part

(1) This Part has the following purposes for financial product markets (in addition to those set out in sections 3 and 4):

(a) to promote fair, orderly, and transparent financial product markets:

(b) to encourage a diversity of financial product markets to take account of the differing needs and objectives of issuers and investors.

(2) This section does not limit section 3 or 4.

230 Overview

(1) In this Part,—

(a) this subpart contains the additional purposes of this Part and interpretation provisions:

(b) subpart 2 prohibits insider trading on licensed markets:

(c) subpart 3 prohibits market manipulation on licensed markets:

(d) subpart 4 requires listed issuers to comply with the continuous disclosure provisions of listing rules of a licensed market:

(e) subpart 5 requires substantial product holders in listed issuers to disclose their interests:

(f) subpart 6 requires directors and senior managers of a listed issuer to disclose their interests and dealings in quoted financial products of, or connected to, the listed issuer:

(g) subpart 7 provides for the licensing of financial product markets, the approval of market rules of licensed markets, the ability to impose a control limit on licensed market operators, and the ability to make regulations modifying this subpart for particular markets:

(h) subpart 8 contains requirements applying in the operation of a licensed market:

(i) subpart 9 provides for the transfer of transferable financial products:

(j) subpart 10 regulates the making of unsolicited offers to purchase financial products off-market.

(2) Provisions of this Part may be disapplied or modified in relation to a licensed market (and any issuers listed on that licensed market) under regulations made under section 351.

(3) This section is a guide only to the general scheme and effect of this Part.

Material information and generally available to the market

231 Meaning of material information

(1) In this Part, **material information**, in relation to a listed issuer, is information that—

(a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of quoted financial products of the listed issuer; and

(b) relates to particular financial products, a particular listed issuer, or particular listed issuers, rather than to financial products generally or listed issuers generally.

(2) In this Part, **material information**, in relation to quoted derivatives, the underlying of quoted derivatives, or the issuer of a financial product underlying quoted derivatives, is information that—

(a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of the derivatives; and

(b) relates to particular derivatives, a particular underlying, or a particular issuer of a financial product underlying quoted derivatives, rather than to derivatives generally or underlyings generally or issuers generally.

Compare: 1988 No 234 ss 3, 3A

232 Meaning of generally available to the market

(1) In this Part, information is **generally available to the market**—

(a) if—

(i) it is information that has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in relevant financial products; and

(ii) since it was made known, a reasonable period for it to be disseminated among those persons has expired; or

(b) if it is likely that persons who commonly invest in relevant financial products can readily obtain the information (whether by observation, use of expertise, purchase from other persons, or any other means); or

(c) if it is information that consists of deductions, conclusions, or inferences made or drawn from either or both of the kinds of information referred to in paragraphs (a) and (b).

(2) In this section, **relevant financial products** means financial products of a kind the price of which might reasonably be expected to be affected by the information.

(3) Information that is notified in accordance with a continuous disclosure obligation is generally available to the market under subsection (1)(a) immediately on it being made available to participants in a licensed market (without limiting how quickly the reasonable period of dissemination in subsection (1)(a)(ii) may be satisfied in other cases).

Compare: 1988 No 234 s 4

Certain derivatives treated as being quoted financial products of listed issuer

233 Certain derivatives treated as being quoted financial products of listed issuer

(1) If the underlying of a derivative is a quoted financial product of a listed issuer, the derivative must, for the purposes of this subpart and subpart 2, be treated as being a quoted financial product of the listed issuer (whether the derivative is quoted or not).

(2) Subsection (1) does not apply in relation to subpart 5.

(3) *See also* section 275 (which treats a person as holding financial products where the person has a relevant interest in certain derivatives) and section 298 (which relates to the disclosure of relevant interests and dealings in relevant interests by directors and senior managers).

Insider conduct

234 Meaning of information insider, inside information, and adviser

(1) In this Part, a person is an **information insider** of a listed issuer if that person—

(a) has material information relating to the listed issuer that is not generally available to the market; and

(b) knows or ought reasonably to know that the information is material information; and

(c) knows or ought reasonably to know that the information is not generally available to the market.

(2) A listed issuer may be an information insider of itself.

(3) In this Part, a person is an **information insider** in relation to quoted derivatives if that person—

(a) has material information relating to any of the following that is not generally available to the market:

(i) the derivatives:

(ii) the underlying:

(iii) the issuer of a financial product underlying the derivatives; and

(b) knows or ought reasonably to know that the information is material information; and

(c) knows or ought reasonably to know that the information is not generally available to the market.

(4) In this Part, **inside information** means—

(a) the information in respect of which a person is an information insider of the listed issuer in question; or

(b) in the case of quoted derivatives, the information in respect of which a person is an information insider in relation to the derivatives in question.

(5) In this Part, **adviser** means an adviser acting in a professional capacity (for example, a lawyer, an accountant, or a financial adviser).

Compare: 1988 No 234 ss 8A, 8B, 11E

Relevant interests

235 Relevant interests in financial products (basic rule)

(1) In this Act, a person has a **relevant interest** in a financial product if the person—

(a) is a registered holder of the product; or

(b) is a beneficial owner of the product; or

(c) has the power to exercise, or to control the exercise of, a right to vote attached to the product; or

(d) has the power to acquire or dispose of, or to control the acquisition or disposal of, the product.

(2) Subsection (1) applies regardless of whether the power or control is express or implied, direct or indirect, legally enforceable or not, related to a particular financial product or not, exercisable presently or in the future, or exercisable alone or jointly with another person or persons (but a power to cast merely 1 of many votes is not, in itself, a joint power of this kind).

(3) Subsection (1) applies regardless of whether or not the power or control is or can be made subject to restraint or restriction or is exercisable only on the fulfilment of a condition.

(4) If 2 or more persons can jointly exercise a power, each of those persons is taken to have the power.

Compare: 1988 No 234 s 5

236 Extension of basic rule to powers or controls exercisable through trust, agreement, etc

(1) A person has a power or control referred to in section 235 if the power or control is, or may at any time be, exercised under, by virtue of, by means of, or as a result of a revocation or breach of, a trust or an agreement (or any combination of them).

(2) Subsection (1) applies regardless of whether or not the trust or agreement is legally enforceable or whether or not the person is a party to it.

Compare: 1988 No 234 s 5A

237 Extension of basic rule to interests held by other persons under control or acting jointly

A person (**A**) has a relevant interest in a financial product that another person (**B**) has if—

(a) B or B's directors are accustomed or under an obligation (whether legally enforceable or not) to act in accordance with A's directions, instructions, or wishes in relation to a power or control referred to in section 235; or

(b) A has the power to exercise, or control the exercise of, the right to vote attached to 20% or more of the voting products of B; or

(c) A has the power to acquire or dispose of, or to control the acquisition or disposal of, 20% or more of the voting products of B; or

(d) A and B are related bodies corporate; or

(e) A and B have an agreement to act in concert in relation to a power or control referred to in section 235.

Compare: 1988 No 234 s 5B(1)

238 Situations not giving rise to relevant interests

(1) A person (**A**) does not have a relevant interest in a financial product under sections 235 to 237 merely because—

(a) the ordinary business of A consists of, or includes, the lending of money or the provision of financial services, or both, and A has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of A; or

(b) A is authorised to undertake trading activities on a licensed market and A acts for another person to acquire or dispose of the product on behalf of that person in the ordinary course of A's business of carrying out those trading activities; or

(c) A has been authorised by resolution of the directors of a body corporate to act as its representative at a particular meeting of product holders, or a class of product holders, of a listed issuer, and a copy of the resolution is deposited with the listed issuer before the meeting; or

(d) A is appointed as a proxy to vote at a particular meeting of product holders, or of a class of product holders, of the listed issuer and the instrument of A's appointment is deposited with the listed issuer before the meeting; or

(e) A is a bare trustee of a trust to which the product is subject; or

(f) A is a director of a body corporate and the body corporate has a relevant interest in the product; or

(g) A is a product holder of a body corporate and the body corporate's constitution gives the product holder pre-emptive rights on the transfer of the product, if all product holders of the products have pre-emptive rights on the same terms; or

(h) A is an operator of a designated FMI and is acting in the ordinary course of that business.

(2) Subsection (1)(a) to (h) do not apply to a person if the person is currently declared by the FMA, by notice under section 562(1)(i), to be a person that is not exempt under any of those paragraphs.

(3) For the purposes of subsection (1)(e), a trustee may be a bare trustee even if he or she is entitled as a trustee to be remunerated out of the income or property of the trust.

(4) In subsection (1)(h), **designated FMI** and **operator** have the meanings given in section 5 of the Financial Market Infrastructures Act 2021.

Compare: 1988 No 234 s 6

Section 238(1)(h): replaced, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Section 238(4): inserted, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Territorial scope

239 Territorial scope

(1) Subparts 2 to 6 apply to conduct in relation to quoted financial products or listed issuers regardless of whether the conduct is in New Zealand or outside New Zealand.

(2) *See* sections 310 and 313 (which require a licence to operate a financial product market in New Zealand).

Subpart 2—Insider trading

Insider conduct prohibited

240 Prohibition on insider conduct

(1) A person must not do any of the things set out in any of sections 241(1), 242(1), and 243(1) if the person is an information insider of the listed issuer.

(2) A person must not do any of the things set out in any of sections 241(2), 242(2), and 243(2) if the person is an information insider in relation to quoted derivatives.

Compare: 1988 No 234 s 8

241 Information insider must not trade

(1) An information insider of a listed issuer must not trade quoted financial products of the listed issuer.

(2) An information insider in relation to quoted derivatives must not trade the derivatives.

(3) In this subpart and subpart 3, **trade**—

(a) means acquire or dispose of; but

(b) does not include acquire, or dispose of, by inheritance or gift.

Compare: 1988 No 234 s 8C

242 Information insider must not disclose inside information

(1) An information insider (**A**) of a listed issuer must not directly or indirectly disclose inside information to another person (**B**) if A knows or ought reasonably to know or believes that B will, or is likely to,—

(a) trade quoted financial products of the listed issuer; or

(b) advise or encourage another person (**C**) to trade or hold those products.

(2) An information insider (**A**) in relation to quoted derivatives must not directly or indirectly disclose inside information to another person (**B**) if A knows or ought reasonably to know or believes that B will, or is likely to,—

(a) trade the derivatives; or

(b) advise or encourage another person (**C**) to trade or hold those derivatives.

Compare: 1988 No 234 s 8D

243 Information insider must not advise or encourage trading

(1) An information insider (**A**) of a listed issuer must not—

(a) advise or encourage another person (**B**) to trade or hold quoted financial products of the listed issuer:

(b) advise or encourage B to advise or encourage another person (**C**) to trade or hold those financial products.

(2) An information insider (**A**) in relation to quoted derivatives must not—

(a) advise or encourage another person (**B**) to trade or hold the derivatives:

(b) advise or encourage B to advise or encourage another person (**C**) to trade or hold those derivatives.

Compare: 1988 No 234 s 8E

244 Criminal liability for insider conduct

(1) A person who contravenes any of sections 241 to 243 commits an offence if the person knows—

(a) that the information is material information; and

(b) that the information is not generally available to the market; and

(c) in the case of a contravention of section 242, of any of the matters set out in section 242(1)(a) or (b) or (2)(a) or (b).

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Compare: 1988 No 234 s 8F

When prohibition on insider conduct does not apply

245 Exception for trading required by enactment or rule of law

Section 241 does not apply to trading in financial products that is required by an enactment or any rule of law.

Compare: 1988 No 234 s 9

246 Exception for disclosure required by enactment or rule of law or by FMA

Section 242 does not apply to disclosure that is required by—

(a) an enactment or any rule of law; or

(b) the FMA when exercising a power under this Act or any other enactment.

Compare: 1988 No 234 s 9A

247 Exception for disclosure in connection with preparing PDS or limited disclosure document

Section 242 does not apply to disclosure that is necessary, in connection with an offer of financial products for sale, in order to assist in the preparation of a PDS, a register entry, or a limited disclosure document for that offer.

Section 247 heading: amended, on 9 August 2017, by section 66(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 247: amended, on 9 August 2017, by section 66(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

248 Exceptions in respect of underwriting agreements

(1) Section 241 does not apply to the acquisition of the financial products of a listed issuer under an underwriting or a sub-underwriting agreement.

(2) Section 242 does not apply if the inside information is disclosed to a person for the sole purpose of negotiating an underwriting or a sub-underwriting agreement with that person in respect of the financial products in question.

(3) Section 243 does not apply if the advice or encouragement is given for the sole purpose of persuading the person to whom it is given to enter into an underwriting or a sub-underwriting agreement in respect of the financial products in question.

Compare: 1988 No 234 s 9B

249 Exceptions in case of knowledge of person's own intentions or activities

(1) A person (**A**) does not contravene section 241(1) merely because A trades the financial products with the knowledge that A proposes to enter into, or has previously entered into, 1 or more transactions or agreements in relation to the financial products or the listed issuer or the listed issuer's business activities.

(2) A person (**B**) does not contravene section 243(1) merely because B advises or encourages another person (**A**) to trade or hold financial products when B has

knowledge, acquired in the course of acting as A's adviser, that A proposes to enter into, or has previously entered into, 1 or more transactions or agreements in relation to the financial products or the listed issuer or the listed issuer's business activities.

Compare: 1988 No 234 s 9C

250 Exceptions in case of knowledge in relation to derivatives

(1) A person (**A**) does not contravene section 241(2) merely because A trades in derivatives with knowledge of A's own past, current, or proposed—

(a) transactions or agreements concerning those or any other derivatives; or

(b) business activities, transactions, or agreements concerning the underlying.

(2) If a person (**B**) advises or encourages another person (**A**) to trade or hold derivatives, B does not contravene section 243(2) merely because B has knowledge, acquired in the course of acting as A's adviser, of A's past, current, or proposed—

(a) transactions or agreements concerning derivatives; or

(b) business activities, transactions, or agreements concerning the underlying.

Compare: SR 2010/354 r 3

251 Exception for agent executing trading instruction only

Section 241 does not apply in the case of a person (**A**) if,—

(a) in trading the financial products, A was acting on behalf of another person (**B**); and

(b) A traded the financial products on B's specific instruction; and

(c) before trading, A did not disclose inside information to B; and

(d) A did not advise or encourage B to instruct A to trade.

Compare: 1988 No 234 s 9D

252 Exceptions from section 241 for takeovers

(1) Section 241 does not apply to—

(a) trading that results from a takeover offer under the Takeovers Code; or

(b) entering into an agreement to acquire or dispose of financial products at a fixed price under a future takeover offer that complies with the Takeovers Code; or

(c) the acquisition or disposal of financial products in performance of an agreement to acquire or dispose of those financial products at a fixed price under a future takeover offer that complies with the Takeovers Code.

(2) For the purposes of this section and section 253, if an exemption has been granted under section 45 of the Takeovers Act 1993 in relation to a takeover offer and the offer is made in accordance with the terms and conditions of the exemption and the applicable provisions of the Takeovers Code from which there is no exemption, the offer must be taken to—

(a) be a takeover offer under the Takeovers Code; and

(b) comply with the Takeovers Code.

Compare: 1988 No 234 s 9E(1)

253 Exceptions from sections 242 and 243 for takeovers

(1) Section 242 does not apply to the following conduct:

(a) disclosure of inside information to a prospective offeror or its advisers under a prospective takeover offer under the Takeovers Code:

(b) disclosure of inside information to encourage competing bona fide offers to be made in competition with a takeover offer under the Takeovers Code:

(c) disclosure of inside information by a prospective offeror or its advisers under a prospective takeover offer under the Takeovers Code for the purpose of forming a consortium to make a takeover offer:

(d) disclosure of inside information to an independent adviser to enable that adviser to make a report required by the Takeovers Code.

(2) A person's reliance on subsection (1)(a) to (c) is subject to the conditions that—

(a) the recipient of the information is bound by an obligation of confidentiality in respect of the information; and

(b) the purpose of the conduct is to enable or encourage the recipient to make a takeover offer or to participate in a takeover offer.

(3) Section 243 does not apply to advice or encouragement given—

(a) by the directors of a company that is the target company under a takeover offer under the Takeovers Code, to the extent that the advice or encouragement is given to the company's shareholders and relates to those shareholders trading or holding their financial products; or

(b) by a prospective offeror under a prospective takeover offer under the Takeovers Code for the purpose of forming a consortium to make a takeover offer.

(4) A person (**A**) does not contravene section 242 or 243 merely because A, in relation to a takeover offer or prospective takeover offer under the Takeovers Code, discloses inside information to another person (**B**) or advises B to trade or hold financial products of the listed issuer when A has that inside informa-

tion, or is an information insider, only through acting as B's adviser in relation to the takeover offer or prospective takeover offer.

Compare: 1988 No 234 s 9E(2)–(5)

254 Exceptions for schemes of arrangement approved under Companies Act 1993

(1) Section 241 does not apply to trading that results from an arrangement approved under Part 15 of the Companies Act 1993.

(2) Section 243 does not apply to advice or encouragement by the directors of a company that is the subject of an arrangement approved, or a proposed arrangement to be approved, under Part 15 of the Companies Act 1993, to the extent that the advice or encouragement is given to the company's shareholders and relates to those shareholders trading or holding their shares.

255 Exception for redemption of managed investment products

Section 241 does not apply to the redemption of managed investment products in a managed investment scheme if the redemption price is calculated by reference to the underlying value of the assets of the scheme.

Compare: 1988 No 234 s 9F

256 Exception for Reserve Bank

Section 241 does not apply to trading by the Reserve Bank in financial products issued by the Reserve Bank or by the Crown.

Compare: 1988 No 234 s 9G

Defences

257 Absence of knowledge of trading

In any proceeding against a person (**A**) for contravention of section 241, it is a defence if A did not know, and could not reasonably be expected to know, that A traded the financial products.

Compare: 1988 No 234 s 10

258 Inside information obtained by independent research and analysis

(1) In any proceeding against a person (**A**) for contravention of section 241 or 242, it is a defence if the inside information was obtained by research and analysis and was not obtained directly or indirectly from the listed issuer concerned.

(2) In any proceeding against a person (**A**) for contravention of section 243, it is a defence if A encouraged or advised on the basis of inside information that was obtained by research and analysis and that was not obtained directly or indirectly from the listed issuer concerned.

(3) In subsections (1) and (2), **research** means planned investigation undertaken to gain new knowledge and understanding.

Compare: 1988 No 234 s 10A

259 Equal information

(1) In any proceeding against a person (**A**) for contravention of section 241, it is a defence if the opposite party to the transaction knew, or ought reasonably to have known, the same inside information as A before the transaction took place.

(2) In any proceeding against a person (**A**) for contravention of section 242, it is a defence if the person to whom the information is disclosed knew, or ought reasonably to have known, the same inside information as A before it was disclosed.

(3) In any proceeding against a person (**A**) for contravening section 242 or 243 by disclosing inside information to another person (**B**) or by advising or encouraging B to trade or hold quoted financial products, it is a defence if A has that inside information, or is an information insider, only through acting as B's adviser in relation to trading or holding those financial products.

Compare: 1988 No 234 s 10B

260 Options and trading plans

(1) In any proceeding against a person (**A**) for contravention of section 241, it is a defence if—

(a) A traded the financial products under a fixed trading plan or under options with a fixed exercise price; and

(b) A entered into the trading plan, or acquired the options, as the case may be,—

(i) before A obtained the inside information; and

(ii) without any intent to evade section 241.

(2) A **fixed trading plan** is a trading plan—

(a) that—

(i) is fixed for a period of time; and

(ii) gives the investor no right to withdraw before the end of that period; and

(iii) is not subject to any influence by the investor as to trading decisions after the plan has begun; or

(b) that is an employee share purchase scheme that comes within paragraph (a) except that the plan may be earlier terminated, and the investor may withdraw, on the termination of the investor's employment or appointment.

Compare: 1988 No 234 s 10C

261 Chinese wall defence

(1) In any proceeding against a person (**A**) for contravention of section 241 or 243, it is a defence if—

(a) A had in place arrangements that could reasonably be expected to ensure that no individual who took part in the decision to trade the financial products or to advise or encourage (as the case may be) received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and

(b) no individual who took part in that decision received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and

(c) every individual who had the information and every individual who took part in that decision acted in accordance with the arrangements referred to in paragraph (a).

(2) In any proceeding against a person (**A**) for disclosing information to another person (**B**) in contravention of section 242, it is a defence if A believed on reasonable grounds that B had in place arrangements that could reasonably be expected to ensure that no individual who would take part in the decision to trade the financial products or to advise or encourage (as the case may be) would receive, or have access to, the inside information or would be influenced, in relation to that decision, by an individual who had the information.

Subpart 3—Market manipulation

262 False or misleading statement or information

A person must not make a statement or disseminate information if—

(a) a material aspect of the statement or information is false or the statement or information is materially misleading; and

(b) the person knows or ought reasonably to know that a material aspect of the statement or information is false or that the statement or information is materially misleading; and

(c) the statement or information is likely to—

(i) induce a person to trade in quoted financial products; or

(ii) have the effect of increasing, reducing, maintaining, or stabilising the price for trading in those financial products; or

(iii) induce a person to exercise a voting right attached to a quoted financial product in a particular way, or to abstain from exercising such a right.

Compare: 1988 No 234 s 11

263 Exception for takeovers

Section 262 does not apply to conduct in relation to a takeover offer for financial products under the Takeovers Code or to conduct under that offer to the extent that the conduct is regulated by the Takeovers Code or the Takeovers Act 1993.

Compare: 1988 No 234 s 14

264 Criminal liability for false or misleading statement or information

(1) A person who contravenes section 262 commits an offence if the person knows that the statement or information is false in a material aspect or is materially misleading.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Compare: 1988 No 234 s 11A

265 False or misleading appearance of trading

A person must not do, or omit to do, anything if—

(a) the act or omission will have, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance—

(i) with respect to the extent of active trading in quoted financial products; or

(ii) with respect to the supply of, demand for, price for trading in, or value of those financial products; and

(b) the person knows or ought reasonably to know that the person's act or omission will, or is likely to have, that effect.

Compare: 1988 No 234 s 11B

266 Exception for short selling and crossings

(1) Short selling and crossings under the business rules of a licensed market do not contravene section 262 or 265 merely by reason of being short selling or crossings.

(2) In this section,—

crossing, in relation to a transaction in financial products, means a transaction where a person acts as—

(a) buyer and seller for that transaction in an agency capacity; or

(b) buyer or seller on one side of that transaction in an agency capacity and as a principal on the other side

short selling means a sale of any financial product where, at the time of the sale,—

(a) the seller does not have a presently exercisable and unconditional right to vest the financial product in the buyer except where the seller has an unconditional agreement to acquire that right before the date required to settle the sale; or

(b) the financial product being sold has been borrowed and the seller has a presently exercisable and unconditional right to vest the product in the buyer.

Compare: SR 2007/373 rr 19, 20

267 Persons treated as contravening false or misleading appearance of trading prohibition

(1) A person (**A**) must be treated as contravening section 265 if A is directly or indirectly a party to trading in the quoted financial products of a listed issuer from which no change in beneficial ownership results.

(2) Subsection (1) does not apply if,—

(a) in trading the financial products, A was acting on behalf of another person; and

(b) A did not know, and ought not reasonably to have known, when trading the financial products that no change in beneficial ownership would result.

(3) A person (**A**) must be treated as contravening section 265 if—

(a) A has made an offer to trade the financial products of a listed issuer; and

(b) either A or, to A's knowledge, an associated person of A has made or proposes to make an opposite offer (the **opposite offer**) to trade financial products of the listed issuer; and

(c) the opposite offer substantially matches A's offer as to the number and price of the financial products.

(4) This section is subject to section 268.

Compare: 1988 No 234 s 11C(1), (2), (4)

268 Defence

In any proceeding against a person (**A**) for contravention of section 265, it is a defence if the trading in the financial products occurred, or the offer to trade was made, in conformity with accepted market practices and for a proper purpose.

Example

The trustees of the ABC Family Trust hold financial products on trust.

New trustees have been appointed to replace the original trustees. The financial products are transferred to the new trustees in connection with the appointment.

No change in the beneficial ownership results (*see* section 267(1)). However, there is no contravention of section 265 because the transfer was in conformity with accepted market practices and for a proper purpose.

Compare: 1988 No 234 s 11C(3), (4)

269 Criminal liability for false or misleading appearance of trading

(1) A person who contravenes section 265 commits an offence if the person knows that the act or omission will have, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance—

(a) with respect to the extent of active trading in quoted financial products; or

(b) with respect to the supply of, demand for, price for trading in, or value of those products.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Compare: 1988 No 234 s 11D

Subpart 4—Continuous disclosure

270 Listed issuers must disclose in accordance with listing rules if continuous disclosure listing rules apply

(1) A listed issuer must notify information in accordance with the continuous disclosure provisions of the listing rules for the licensed market if—

(a) the listed issuer is a party to a listing agreement with the licensed market operator; and

(b) the listed issuer has information that those continuous disclosure provisions require it to notify; and

(c) the information is material information that is not generally available to the market.

(2) Subsection (1) does not affect or limit the situations in which action can be taken (other than under this Act) for a failure to comply with provisions of the listing rules for a licensed market.

Compare: 1988 No 234 s 19B

271 What are continuous disclosure provisions

In this Act, **continuous disclosure provisions** means provisions that require a listed issuer that is a party to a listing agreement with a licensed market operator to notify information about events or matters as they arise for the

purpose of that information being made available to participants in the licensed market.

Compare: 1988 No 234 s 19D

272 No contravention of continuous disclosure provisions by person who takes reasonable steps to ensure listed issuer complies

A person (**A**) does not, in relation to the contravention by a listed issuer of a continuous disclosure obligation or a term or condition of a continuous disclosure exemption, contravene, or become involved in the contravention of, that obligation or term or condition if—

(a) A took all steps (if any) that were reasonable in the circumstances to ensure that the listed issuer complied with the obligation or term or condition; and

(b) after doing so, A believed on reasonable grounds that the listed issuer was complying with the obligation or term or condition.

Compare: 1988 No 234 s 19PA

Subpart 5—Disclosure of interests of substantial product holders in listed issuers

Substantial holding disclosure obligations

273 Purposes of subpart

(1) The purposes of this subpart are to promote an informed market, and to deter insider conduct, market manipulation, and secret dealings in potential takeover bids, by ensuring that participants in financial product markets have access to information concerning the identity and trading activities of persons who are, or may at any time be, entitled to control or influence the exercise of significant voting rights in a listed issuer.

(2) This section does not limit—

(a) any of section 3, 4, or 229; or

(b) the purpose of section 290.

274 Meaning of substantial product holder, substantial holding, and percentage

(1) A person is a **substantial product holder** in a listed issuer for the purposes of this Act if that person has a substantial holding in that listed issuer.

(2) A person has a **substantial holding** in a listed issuer for the purposes of this Act if the person has a relevant interest in quoted voting products that comprise 5% or more of a class of quoted voting products of the listed issuer.

(3) A person has a separate substantial holding for the purposes of this Act for each class in respect of which the person has a substantial holding under subsection (2).

(4) The percentage of financial products that a person has in a class, for the purposes of this subpart, is calculated as follows:

$$\left(\frac{\text{number held}}{\text{total}}\right) \times 100$$

where—

number held is the number of financial products, in that class, in which the person has a relevant interest

total is the total number of financial products in that class.

Compare: 1988 No 234 s 21

275 Person may be treated as holding financial products where person has relevant interest in certain derivatives

(1) This section applies in relation to a derivative if the underlying of the derivative is a quoted voting product of a listed issuer.

(2) For the purposes of this subpart, if a person has a relevant interest in the derivative, the person must be treated as having a relevant interest in a number of the underlying quoted voting products that is determined in the prescribed manner.

(3) The number of quoted voting products in which a person is treated as having a relevant interest under subsection (2) is in addition to any other relevant interest that the person has in products of that class.

276 Persons must disclose if begin to have substantial holding

(1) A person who begins to have a substantial holding (or another substantial holding for another class) in a listed issuer must disclose that fact in accordance with sections 280 and 281.

(2) The disclosure must be given as soon as the person knows, or ought reasonably to know, that the person has the substantial holding.

Compare: 1988 No 234 s 22

277 Substantial product holders must disclose if subsequent movement of 1% or more in holdings

(1) A substantial product holder in a listed issuer must disclose, in accordance with sections 280 and 281, any movement of 1% or more in the substantial holding.

(2) There is a movement of 1% or more in a substantial holding if—

(a) there is a change in the number of financial products held by the substantial product holder (where **number held** has the same meaning as in section 274(4)); and

(b) the percentage worked out using the formula in section 274(4) increases or decreases by 1 or more percentage points from the percentage last disclosed under this subpart in relation to the substantial holding.

(3) The disclosure must be given as soon as the person knows, or ought reasonably to know, that that movement has occurred.

Compare: 1988 No 234 s 23

278 Substantial product holders must disclose if subsequent changes in nature of relevant interests

(1) A substantial product holder in a listed issuer must disclose, in accordance with sections 280 and 281, any change in the nature of any relevant interest in the substantial holding.

(2) The disclosure must be given as soon as the person knows, or ought reasonably to know, of the change.

Compare: 1988 No 234 s 24

279 Persons must disclose if cease to have substantial holding

(1) A person who ceases to have a substantial holding (or any of the person's substantial holdings) in a listed issuer must disclose that fact in accordance with sections 280 and 281.

(2) The disclosure must be given as soon as the person knows, or ought reasonably to know, that the person has ceased to have a substantial holding.

Compare: 1988 No 234 s 25

280 What disclosure required

(1) A person must disclose the matters required to be disclosed under any of sections 276 to 279 or section 289 to—

(a) the listed issuer; and

(b) every operator of a licensed market by which the financial products of the listed issuer are quoted.

(2) The person must also disclose, in the prescribed manner, any further matters relating to those matters, the relevant event, or the substantial holding that are required by the regulations.

(3) The disclosure must also be accompanied by, or have annexed, any prescribed information.

Compare: 1988 No 234 s 26

281 Form and method of disclosure

A person must give the disclosure in the prescribed manner.

Compare: 1988 No 234 s 27

282 Listed issuer must give acknowledgement of disclosure

Every listed issuer must, at the request of a person by whom disclosure is given to it under this subpart, give to the person an acknowledgement of the disclosure in the prescribed manner.

Compare: 1988 No 234 s 28

283 How to ascertain total financial products in class for purposes of disclosure

(1) For the purposes of this subpart, a person may assume that the total number of financial products of a listed issuer in a class most recently published by the following methods is correct:

(a) in a document published by a listed issuer and distributed to the holders of that class of products; or

(b) on an Internet site maintained by the relevant licensed market operator.

(2) Subsection (1) does not apply if that person knows that number is not correct.

Compare: 1988 No 234 s 29

Exemptions

284 Exemption for persons with interest in other substantial product holders who comply

A person (**A**) need not comply with any of sections 276 to 279 in relation to a substantial holding in a listed issuer if—

(a) another person (**B**) is required to comply, and does comply, with that section in relation to the same listed issuer; and

(b) A has that substantial holding merely for 1 or more of the following reasons:

(i) A has a power to exercise, or control the exercise of, the right to vote attached to 20% or more of the voting products of B (*see* section 237(b)):

(ii) A has a power to acquire or dispose of, or control the acquisition or disposition of, 20% or more of the voting products of B (*see* section 237(c)):

(iii) A and B are related bodies corporate (*see* section 237(d)).

Compare: 1988 No 234 s 30

285 Exemption for corporate trustees and nominee companies

(1) A person (**A**) need not comply with any of sections 276 to 279 in relation to 1 or more substantial holdings in 1 or more listed issuers if—

(a) A has that substantial holding merely because A acts for another person in the ordinary course of business as a corporate trustee or a nominee company; and

(b) A has opted in to this exemption by written notice to the FMA (and not withdrawn the notice by further written notice to the FMA).

(2) Subsection (1) does not apply if A is currently declared by the FMA, by notice under section 562(1)(i), to be a person that is not exempt under this section.

Compare: 1988 No 234 s 31

286 Conditions of exemption for corporate trustees and nominee companies

A person (**A**) to whom section 285(1) applies must—

(a) keep under continuing review the transactions of all persons for whom A holds, in A's name, quoted voting products; and

(b) inform the listed issuer of the financial products and the operator of the licensed market by which those products are quoted if section 276 or 279 applies to any of those persons; and

(c) inform that operator if A exercises, or proposes to exercise, in A's own right any voting rights in respect of 5% or more of a class of quoted voting products of a listed issuer.

Compare: 1988 No 234 s 32

287 Exemption for persons under control or acting jointly with corporate trustees and nominee companies

(1) A person (**A**) need not comply with any of sections 276 to 279 in relation to 1 or more substantial holdings in 1 or more listed issuers if A has the substantial holding merely because A has, under section 237, the relevant interests in financial products that a corporate trustee or a nominee company that is exempt in relation to that substantial holding under section 285 has.

(2) Subsection (1) does not apply if A is currently declared by the FMA, by notice under section 562(1)(i), to be a person that is not exempt under this section.

Compare: 1988 No 234 s 32A

288 Extended time for disclosure for trustees, executors, and administrators

If a person is required to comply with section 276, 277, or 279 merely because the person is the trustee of a testamentary trust or the executor or administrator of the estate of a deceased person,—

(a) the time limit for disclosure in that section does not apply; and

(b) the disclosure must instead be given before the expiry of 14 days after the grant of administration under the Administration Act 1969.

Compare: 1988 No 234 s 33

Tracing and disclosure of interests in listed issuers

289 FMA may require persons to disclose to market relevant interests and powers to acquire relevant interests

(1) The FMA may, by written notice given after having regard to the purpose of this subpart in section 273(1), require a person to disclose all (or any class of)—

(a) relevant interests that the person has in financial products of a listed issuer; or

(b) powers that the person has or may at any time have to acquire a relevant interest in financial products of a listed issuer.

(2) Subsection (1) applies regardless of whether the financial products referred to in subsection (1)(a) and (b) are voting products or not, are quoted or non-quoted, or are issued or yet to be issued.

(3) The person must disclose the information required under subsection (1) in accordance with sections 280 and 281 as soon as practicable after the person receives the notice.

(4) Sections 235 to 238 apply in determining whether or not a person has a power referred to in subsection (1)(b) (and for this purpose every reference in those sections to a relevant interest must be read as including a reference to a power to acquire a relevant interest).

Compare: 1988 No 234 s 34

290 Listed issuer may require registered holder or relevant interest holder to disclose relevant interests to it

(1) The purpose of this section is to enable a listed issuer to ascertain who has a relevant interest in quoted voting products of the listed issuer and the nature of that interest (regardless of whether those persons are substantial product holders).

(2) A listed issuer may, by written notice, require a relevant person to disclose—

(a) the name and address of every person who has a relevant interest in quoted voting products of the listed issuer and the nature of that interest; and

(b) to the extent that that relevant person is unable to supply any of that information in relation to a person having a relevant interest in those financial products, other particulars that will, or are likely to, assist in identifying that person and the nature of the interest.

(3) The relevant person must disclose the information required under subsection (2) in writing to the listed issuer as soon as practicable after the person receives the notice.

(4) In this section, **relevant person**, in relation to a listed issuer, means a person who—

(a) is registered as the holder of quoted voting products of the listed issuer; or

(b) was named in a previous disclosure under this section as having a relevant interest in quoted voting products of the listed issuer.

Compare: 1988 No 234 s 35; Corporations Act 2001 ss 672A, 672B (Aust)

291 Listed issuer may require person who has relevant interest to disclose information to it

(1) A listed issuer may, by written notice, require a person who the listed issuer believes has, or may have, a relevant interest in quoted voting products of the listed issuer to disclose the information the listed issuer specifies for the purpose of assisting the listed issuer to ascertain who is, or may be, a substantial product holder in the listed issuer.

(2) The relevant interest holder must disclose the information required under subsection (1) in writing to the listed issuer as soon as practicable after the holder receives the notice.

Compare: 1988 No 234 s 35A

292 Form and method of notice requiring disclosure

The notice requiring disclosure under section 289, 290, or 291 must be given in the prescribed manner (if any).

Compare: 1988 No 234 s 35B

293 Listed issuers must make available information on substantial holdings

(1) Every listed issuer must, in accordance with this section, make available the following information:

(a) the names of all persons who, according to the issuer's records and disclosures made under section 280(1)(b), are substantial product holders in the listed issuer as at each balance date; and

(b) the number and class of quoted voting products of the listed issuer that, according to the issuer's records and disclosures made under section 280(1)(b), form part of each substantial holding in the listed issuer as at each balance date; and

(c) the total number of voting products in each of those classes as at each balance date.

(2) The information must be made available,—

(a) for listed issuers that are required to prepare an annual report under the Companies Act 1993 or any other enactment, in the annual report for the period ending on the balance date; and

(b) for every other listed issuer, in a notice sent to every holder of its quoted voting products not later than 3 months after the balance date.

(3) A listed issuer that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1988 No 234 ss 35F, 35H

294 No liability for publication of substantial holdings

No listed issuer is liable for any false or misleading information made available under section 293 if the information was derived by the issuer under this subpart and the issuer did not know that the information was false or misleading.

Compare: 1988 No 234 s 35I

295 Notice under this subpart not to affect incorporation of listed issuer or constitute notice of trust

(1) Nothing in, or done under, this subpart—

(a) affects the incorporation of a listed issuer; or

(b) limits section 92, 93, or 94 of the Companies Act 1993.

(2) A listed issuer is not, because of anything done for the purposes of this subpart, affected with notice of, or put on inquiry as to, the rights of any person in relation to any financial products.

Compare: 1988 No 234 s 35J

Subpart 6—Disclosure of relevant interests in quoted financial products by directors and senior managers of listed issuers

296 Purposes of subpart

(1) The purposes of this subpart are to promote good corporate governance, and to deter, and to assist in the monitoring of, insider conduct and market manipulation, by—

(a) ensuring that information about directors' and senior managers' trading activities in listed issuers is available to participants in financial product markets; and

(b) enabling the dates of trades to be checked against the dates at which material information became generally available to the market.

(2) This section does not limit any of section 3, 4, or 229.

297 Directors and senior managers of listed issuers must disclose relevant interests and dealings in relevant interests

(1) A director or senior manager of a listed issuer who has a relevant interest in a quoted financial product of the listed issuer or a related body corporate must

disclose that fact, in accordance with sections 299 and 300, within 5 trading days of this section becoming applicable as a result of—

(a) the listing of the listed issuer; or

(b) the person's appointment as a director or senior manager.

(2) A director or senior manager of a listed issuer who acquires or disposes of a relevant interest in a quoted financial product of the listed issuer or a related body corporate must disclose that fact, in accordance with sections 299 and 300, within,—

(a) in the case of any of the following acquisitions or disposals, 20 working days after the acquisition or disposal:

(i) an acquisition under an employee share purchase scheme:

(ii) an acquisition under a dividend reinvestment plan:

(iii) an acquisition under a share top-up plan:

(iv) an acquisition or a disposal that results from an amalgamation under Part 13 of the Companies Act 1993:

(v) an acquisition or a disposal that results from an arrangement approved under Part 15 of the Companies Act 1993:

(vi) a prescribed acquisition or disposal; or

(b) in any other case, 5 trading days after the acquisition or disposal.

(3) This section does not apply to specified derivatives.

(4) This section is subject to sections 299 to 303A.

(5) In this section,—

dividend reinvestment plan means a plan of the kind referred to in clause 10 of Schedule 1

share top-up plan means a plan established by an issuer under which previously issued shares of the issuer are offered, whether by the issuer or another person, only to some or all existing holders of the same class of shares, and those shares are sold in consideration for a direction made to the issuer to apply amounts that are payable to each existing holder from dividends declared by the issuer to the purchase of the shares.

Compare: 1988 No 234 s 19T

Section 297(4): amended, on 9 August 2017, by section 67 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

298 Disclosure of relevant interests and dealings in relevant interests in relation to specified derivatives

(1) A director or senior manager of a listed issuer who has a relevant interest in a specified derivative must disclose that fact, in accordance with sections 299 and 300, within 5 trading days of this section becoming applicable as a result of—

(a) the listing of the listed issuer; or

(b) the person's appointment as a director or senior manager.

(2) A director or senior manager of a listed issuer who acquires or disposes of a relevant interest in a specified derivative must disclose that fact, in accordance with sections 299 and 300, within 5 trading days of the acquisition or disposal.

(3) In this subpart, **specified derivative**, in relation to a director or senior manager of a listed issuer, means—

(a) a quoted derivative where the underlying is a financial product of the listed issuer or a related body corporate; or

(b) a derivative that is treated as being a quoted financial product of the listed issuer under section 233.

(4) This section is subject to sections 299 to 303A.

Section 298(4): amended, on 9 August 2017, by section 68 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

299 What disclosure required

(1) The director or senior manager must disclose the relevant interest, acquisition, or disposal—

(a) to the licensed market operator with which the listed issuer is a party to a listing agreement; and

(b) in the interests register of the listed issuer kept under this subpart.

(2) The director or senior manager must also disclose, in the prescribed manner, any further matters relating to the relevant interest, acquisition, or disposal that are required by the regulations.

Compare: 1988 No 234 s 19U

300 Form and method of disclosure

The director or senior manager must disclose the relevant interest, acquisition, or disposal in the prescribed manner.

Compare: 1988 No 234 s 19V

301 Disclosure obligation applies for 6 months after ceasing to hold office

A person is treated as being a director or senior manager for the purposes of this subpart for 6 months after that person ceases to be a director or senior manager, and must continue to comply with this subpart for that period.

Compare: 1988 No 234 s 19W

302 Exemption for directors or senior managers who disclose substantial holdings

A director or senior manager who has, or who acquires or disposes of, a relevant interest in a quoted financial product does not have to disclose that fact under section 297 if—

(a) the director or senior manager must make a disclosure under section 276, 277, or 279 in relation to a substantial holding in the listed issuer of the financial product to which the relevant interest relates or related; and

(b) the disclosure under that section concerns the same relevant interest; and

(c) the director or senior manager discloses in accordance with that section; and

(d) it is stated in the disclosure made in accordance with that section that the director or senior manager is a director or senior manager of the listed issuer.

Compare: SR 2003/382 r 21

303 Exemption for overseas listed issuers

(1) A director or senior manager of an overseas listed issuer who has, or who acquires or disposes of, a relevant interest in a quoted financial product of that overseas listed issuer does not have to disclose that fact under section 297.

(2) A director or senior manager of an overseas listed issuer who has, or who acquires or disposes of, a relevant interest in a specified derivative does not have to disclose that fact under section 298 if the underlying is a financial product of the overseas listed issuer.

(3) A director or senior manager of an overseas listed issuer who has, or who acquires or disposes of, a relevant interest in a quoted financial product of a related body corporate of that overseas listed issuer does not have to disclose that fact under section 297 unless—

(a) the director or senior manager is also a director or senior manager of the related body corporate; and

(b) the related body corporate is a listed issuer, but not an overseas listed issuer.

(4) A director or senior manager of an overseas listed issuer who has, or who acquires or disposes of, a relevant interest in a specified derivative does not have to disclose that fact under section 298 if the underlying is a financial product of a related body corporate of the overseas listed issuer unless—

(a) the director or senior manager is also a director or senior manager of the related body corporate; and

(b) the related body corporate is a listed issuer, but not an overseas listed issuer.

(5) In this section, **overseas listed issuer** means a listed issuer—

(a) whose financial products are also approved for trading on a securities exchange that—

(i) is not a licensed market; and

(ii) has primary jurisdiction for the listing requirements for the listed issuer and the quotation of its financial products; and

(b) in relation to which no licensed market has primary jurisdiction for the listing requirements for the listed issuer and the quotation of its financial products.

Compare: SR 2004/105 cl 12

303A Extended time for disclosure for trustees, executors, and administrators

(1) This section applies if—

(a) a person (**A**) is a director or senior manager of a listed issuer; and

(b) A acquires a relevant interest in—

(i) a quoted financial product of the listed issuer or a related body corporate; or

(ii) a specified derivative; and

(c) the relevant interest is acquired merely because A is the trustee of a testamentary trust or the executor or administrator of the estate of a deceased person.

(2) The time limit for disclosure in section 297 or 298 in respect of the acquisition of the relevant interest does not apply and the disclosure must instead be given before the expiry of 14 days after the grant of administration under the Administration Act 1969.

Section 303A: inserted, on 9 August 2017, by section 69 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

304 Listed issuer must keep interests register

(1) A listed issuer must keep an interests register for disclosures made to it under this subpart.

(2) The interests register must be kept at—

(a) the registered office of the listed issuer; or

(b) any other place in New Zealand of which notice is given in accordance with subsection (3).

(3) If the interests register is not kept at the listed issuer's registered office, or the place at which it is kept is changed, the listed issuer must give written notice to the FMA of the place at which it is kept within 10 working days after it is first kept elsewhere or is moved.

(4) The interests register may be the same interests register as that kept under section 189(1)(c) of the Companies Act 1993.

(5) This section and sections 305 and 306 do not limit the Companies Act 1993.

Compare: 1988 No 234 s 19Z

305 Public inspection of interests register

An interests register must—

(a) be available for inspection, by a person who serves on the listed issuer a written notice of an intention to inspect, at the place at which the register is kept between the hours of 9 am and 5 pm on each working day during the inspection period; and

(b) otherwise be available for inspection in the prescribed manner (if any).

306 Copies of documents

A person may require a copy of, or an extract from, an interests register to be sent to the person—

(a) within 5 working days after the person has made a request in writing for the copy or extract; and

(b) if the person has paid a prescribed fee.

307 Offences relating to interests register

(1) A listed issuer that contravenes section 304(1) to (3) or 305 commits an offence and is liable on conviction to a fine not exceeding $50,000.

(2) If a listed issuer fails to provide a copy of, or an extract from, an interests register in accordance with a request under section 306, the issuer commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offences in this section are infringement offences (*see* subpart 5 of Part 8).

Compare: 1988 No 234 s 19ZF

Subpart 7—Licensing of markets for trading financial products

308 Principles guiding exercise of powers under this subpart

The Minister and the FMA must (without limitation) have regard to the following matters in the exercise of powers under this subpart:

(a) the purposes of this Part (in addition to the main and additional purposes of this Act set out in sections 3 and 4):

(b) the following matters (if relevant):

(i) the nature of the activities conducted, or proposed to be conducted, on the market; and

(ii) the size, or proposed size, of the market; and

(iii) the nature of the financial products dealt with, or proposed to be dealt with, on the market; and

(iv) the persons who participate in, or are likely to participate in, the market (either directly or by using the services of participants); and

(v) the technology used, or proposed to be used, in the operation of the market:

(c) in relation to an application for a licence issued under section 317, or another power under this subpart relating to a market licensed under that section, the matters set out in that section.

Need for financial product market licence

309 What is a financial product market

(1) For the purposes of this Act, a **financial product market** is a facility by means of which—

(a) offers to acquire or dispose of financial products are made or accepted; or

(b) offers or invitations are made to acquire or dispose of financial products that are intended to result or may reasonably be expected to result, directly or indirectly, in—

(i) the making of offers to acquire or dispose of financial products; or

(ii) the acceptance of offers of that kind.

(2) However, subsection (1) does not apply to the extent that the facility constitutes—

(a) a person making or accepting offers or invitations to acquire or dispose of financial products on the person's own behalf or on behalf of 1 party to the transaction only (for example, a continuous issuer of financial products):

(b) an issuer or a related body corporate of an issuer matching persons who wish to acquire financial products of that issuer with persons who wish to dispose of financial products of that issuer (whether at a specified price or otherwise):

(c) a service that is covered by a market services licence:

(d) any other conduct of a kind prescribed by the regulations.

(3) Subsection (2)(a) does not apply if the conduct of a person is declared by the FMA, by notice under section 562(1)(i), to be conduct that is not exempt under that paragraph.

Compare: Corporations Act 2001 s 767A (Aust)

310 Need for financial product market licence

A person must not operate, or hold out that the person operates, a financial product market in New Zealand, unless—

(a) the person has a licence to operate that market under this Part; or

(b) the market is exempt from the licensing requirement under this subpart under section 312.

Compare: Corporations Act 2001 s 791A (Aust)

311 Prohibitions on holding out

A person must not, if it is not the case, hold out that—

(a) the person has a financial product market licence; or

(b) the operation of a financial product market in New Zealand is authorised by a financial product market licence; or

(c) a financial product market is exempt from this Part; or

(d) the person is a participant in a licensed market.

Compare: Corporations Act 2001 s 791B (Aust)

312 Exemptions

(1) A financial product market is exempt from the licensing requirement under this subpart if—

(a) the market satisfies either of the following criteria (assessed in accordance with the frameworks or methodologies specified in notices issued by the FMA under subpart 4 of Part 9):

(i) the number of relevant transactions on the market does not exceed 100 transactions; or

(ii) the aggregate value of the financial products acquired under the relevant transactions on the market is less than $2 million; or

(b) it is a prescribed wholesale market; or

(c) it is a prescribed exempt market.

(2) The **relevant transactions on the market** for the purpose of subsection (1)(a) are—

(a) if the market has been in operation for a full financial year of the market operator, the transactions entered into on the market during that financial year:

(b) if paragraph (a) does not apply, all of the transactions entered into on the market in the previous 12 months.

313 When financial product market taken to be operated in New Zealand

(1) For the purposes of this subpart, a financial product market is taken to be operated in New Zealand if—

(a) it is operated by an entity that is incorporated or registered in New Zealand or by an individual who is ordinarily resident in New Zealand; or

(b) all, or a significant part of, the facility for the financial product market is located in New Zealand; or

(c) the financial product market is promoted to investors in New Zealand by or on behalf of the operator of that market or by or on behalf of an associated person of that operator.

(2) For the purposes of subsection (1)(c), a financial product market is not promoted to investors in New Zealand merely because it is accessible by those investors.

(3) Subsection (1) does not limit the circumstances in which a financial product market is operated in New Zealand for the purposes of this subpart.

Compare: Corporations Act 2001 s 791D (Aust)

General obligations of licensed market operator

314 General obligations in respect of licensed markets

(1) A licensed market operator must,—

(a) to the extent that is reasonably practicable, do all things necessary to ensure that each of its licensed markets is a fair, orderly, and transparent market; and

(b) have adequate arrangements for operating its licensed markets, including arrangements—

(i) for notifying disclosures made to it under a disclosure obligation and for continuing to make those disclosures available; and

(ii) for handling conflicts between the commercial interests of the licensed market operator and the need for the licensed market operator to ensure that the markets operate in the way referred to in paragraph (a); and

(iii) for monitoring the conduct of participants on or in relation to the markets; and

(iv) for enforcing compliance with the relevant market rules (for example, by having a sufficiently independent adjudicative body to adjudicate on contraventions of market rules that are referred to it); and

(c) have sufficient resources (including financial, technological, and human resources) to operate its licensed markets properly; and

(d) have adequate arrangements for ensuring that the criteria specified in section 316(c) or 317(1)(d), as the case may be, continue to be met.

(2) In subsection (1)(b)(i), **disclosure obligation** means—

(a) any provision of subpart 4, 5, or 6 that requires information to be notified or disclosed to a licensed market operator:

(b) an alternative disclosure obligation:

(c) a provision of this Act, the regulations, or another enactment that requires information to be notified or disclosed to a licensed market operator for the purpose of the information being made available to participants in a licensed market.

Compare: 1988 No 234 s 36Y; Corporations Act 2001 s 792A (Aust)

Section 314(1)(b)(i): replaced, on 9 August 2017, by section 70(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 314(2): inserted, on 9 August 2017, by section 70(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Issue of licence

315 Application for licence

(1) A person may apply for a licence to operate a financial product market in the manner that is specified by the FMA.

(2) The applicant must provide to the FMA or the Minister the information that is required by the FMA or the Minister to assist in determining the application (for example, the draft market rules).

(3) The FMA must, within a reasonable time, give the application to the Minister with advice about the application.

316 When licence may be issued

The Minister, after receiving an application under section 315, may issue a financial product market licence, by written notice to the applicant, if the Minister is satisfied that—

(a) the applicant is capable of operating a financial product market in accordance with the general obligations under section 314 (having regard to the proposed conditions of the licence); and

(b) there is no reason to believe that the applicant will not comply with the market operator obligations that will apply if the licence is granted; and

(c) the applicant is a body corporate and is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to operate the financial product market.

Compare: Corporations Act 2001 s 795B(1) (Aust)

317 When licence may be issued for overseas-regulated market

(1) If an applicant is authorised to operate a financial product market in an overseas jurisdiction in which its principal place of business is located, the Minister, after receiving an application under section 315, may issue a licence authorising the applicant to operate the same market in New Zealand, by written notice to the applicant, if the Minister is satisfied that—

(a) there is no reason to believe that the applicant will not comply with the market operator obligations that will apply if the licence is granted; and

(b) the operation of the market in that jurisdiction is subject to requirements and supervision that are sufficiently equivalent, in relation to the degree of investor protection and market integrity they achieve, to the requirements and supervision to which financial product markets are subject under this Act in relation to those matters; and

(c) the applicant undertakes to co-operate with the FMA by sharing information and in other appropriate ways; and

(d) no director, senior manager, or controlling owner of the applicant—

(i) would be disqualified under section 14(2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (if the applicant were a provider to which that Act applied); or

(ii) has been disqualified from managing a body corporate under the laws of any other jurisdiction.

(2) In considering an application for a licence under this section or exercising another power under this subpart in relation to a market licensed under this section, the Minister must have regard to the following matters (in addition to the matters in section 308):

(a) the criteria that the licensed market operator or applicant satisfied to obtain an authorisation to operate the same market in the overseas jurisdiction in which its principal place of business is located; and

(b) the obligations the licensed market operator or applicant must continue to satisfy to keep the authorisation; and

(c) the level of supervision to which the operation of the market in that jurisdiction is subject; and

(d) whether adequate arrangements exist for co-operation between the FMA and the authority that is responsible for that supervision.

(3) Nothing in this section prevents the Minister from issuing a licence under section 316 to an applicant that is authorised to operate a financial product market in an overseas jurisdiction.

Compare: Corporations Act 2001 s 795B(2) (Aust)

318 Conditions of licence

(1) A financial product market licence is subject to the following conditions:

(a) a condition that the licensed market operator may, under the licence, operate only the financial product market covered by the licence (as described in the licence); and

(b) a condition that specifies the clearing and settlement arrangements that must be followed or the type of settlement arrangements that may be used for the financial product markets covered by the licence; and

(c) a condition that specifies the arrangements for enforcing breaches of the market rules; and

(d) any other conditions imposed by the Minister that the Minister thinks fit.

(2) The Minister may only impose those conditions on issue of the licence or by varying the conditions under section 322.

(3) The licensed market operator must comply with the conditions of the licence.

Compare: Corporations Act 2001 s 796A (Aust)

319 Procedural requirements

(1) The Minister must not refuse to issue a licence, or include conditions that are materially more restrictive than those requested in the application, unless—

(a) the Minister gives the applicant no less than 10 working days' written notice of the following matters before he or she exercises the power:

(i) that the Minister may refuse to issue the licence or may include conditions that are materially more restrictive than those requested in the application; and

(ii) the reasons why he or she may do so; and

(b) the Minister gives the applicant or the applicant's representative an opportunity to make written submissions on the matter within that notice period.

(2) The FMA must give written notice of the Minister's decision under section 316 or 317 to the applicant.

320 Licence may cover more than 1 financial product market

(1) The same financial product market licence may cover 2 or more financial product markets.

(2) In that case,—

(a) a reference in this Act to the financial product market to which a licence covers is taken instead to be a reference to each of those financial product markets severally; and

(b) the decision to add another financial product market to a licence must be made on the same basis as a decision to issue a licence; and

(c) a financial product market licence may be varied, suspended, or cancelled in respect of 1 of those markets only, as if each of those markets were separately licensed.

321 FMA must maintain list of licensed markets on Internet site

(1) The FMA must maintain a list of licensed markets on its Internet site.

(2) The list must include, for each licensed market,—

(a) the financial product market that the licence covers; and

(b) the name of the licensed market operator; and

(c) when the licence was issued; and

(d) the conditions of the licence; and

(e) a reference to the market rules for the financial product market that have been approved under this subpart (but the list need not incorporate them); and

(f) if it is a market to which regulations apply under section 351, which regulations apply to it; and

(g) if the licence is issued under section 317, that it is an overseas-regulated market for the purposes of this Act; and

(h) if the licence has been suspended or cancelled, that fact and the date on which that action took effect.

(3) The FMA must update the list if it becomes aware that there is a change, or error, in the information on the list (for example, the approval of the market rules or a change in the name of the licensed market operator).

Changes to licences

322 Variation of conditions

(1) The Minister may, on his or her own initiative under subsection (2) or on the application of a licensed market operator, vary the conditions of the licence at any time after the licence is issued by written notice to the licensed market operator.

(2) The Minister may vary the conditions of the licence on his or her own initiative only—

(a) in 1 of the following circumstances:

(i) if there is a significant change in market circumstances that the Minister is satisfied makes it necessary to vary the conditions, having regard to the market operator obligations and the matters referred to in section 308; or

(ii) in accordance with section 343; and

(b) after following the procedure set out in section 324(1).

(3) A licensed market operator may apply, in the manner that is specified by the FMA, for the Minister to vary the conditions of the licence.

(4) A licensed market operator must provide to the FMA or the Minister the information that is required by the FMA or the Minister to assist it in determining the application.

(5) For the purposes of this subpart, **vary**, in relation to the conditions of a licence, includes to vary, revoke, add to, or substitute any of those conditions.

323 Minister may suspend or cancel licence

The Minister may, by written notice to the licensed market operator, suspend (for a specified period or until a specified requirement is met) or cancel a licence—

(a) if the licensed market operator, by written notice, requests the Minister to do so; or

(b) if the Minister is satisfied that the licensed market operator has ceased to carry on the business of operating the financial product market; or

(c) if—

(i) the licensed market operator has ceased to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (in the case of a licence issued under section 316); or

(ii) the Minister is satisfied that the licensed market operator has ceased to meet the requirement in section 317(1)(d) (in the case of a licence issued under section 317 (overseas-regulated markets)); or

(d) if the licensed market operator has become subject to an insolvency event; or

(e) in accordance with section 343; or

(f) in the case of a licence issued under section 317 (overseas-regulated markets), if—

(i) the licensed market operator ceases to be authorised to operate a financial product market in the overseas jurisdiction in which the licensed market operator's principal place of business is located; or

(ii) there is a change to the regulatory regime applying in relation to the market to which the licence relates in the jurisdiction in which the licensed market operator's principal place of business is located and, because of that change, the Minister is not satisfied as to the matters in section 317(1)(b).

Compare: Corporations Act 2001 s 797B (Aust)

324 Procedure for varying of conditions or suspension or cancellation of licence

(1) The Minister must not vary the conditions of a licence on his or her own initiative under section 322(1), refuse an application for a variation under section 322, or suspend or cancel a licence under section 323 unless—

(a) the Minister gives the licensed market operator no less than 10 working days' written notice of the following matters before he or she exercises the power:

(i) that the Minister may exercise the power; and

(ii) the reasons why he or she may exercise the power; and

(b) the Minister gives the licensed market operator or the licensed market operator's representative an opportunity to make written submissions on the matter within that notice period.

(2) The FMA must give written notice of the Minister's decision under section 322 or 323 to the licensed market operator.

325 Effect of suspension

(1) A person whose financial product market licence is suspended is taken not to hold that licence while it is suspended.

(2) However, the Minister may specify in the written notice to the licensed market operator that subsection (1) does not apply for specified purposes.

Compare: Corporations Act 2001 s 797D (Aust)

326 Variation or revocation of suspension

The Minister may at any time vary or revoke a suspension of a financial product market licence by giving written notice to the licensed market operator.

Compare: Corporations Act 2001 s 797E (Aust)

Approval of contractual market rules

327 Licensed markets must be operated under market rules that comply with this subpart

(1) A licensed market operator must not operate a licensed market except in accordance with market rules for that market that—

(a) include the required matters set out in section 328; and

(b) have effect under section 329.

(2) This section and sections 328 to 332 do not apply to a licensed market that is licensed under section 317 (overseas-regulated markets).

Compare: 1988 No 234 s 36G

328 Required matters for market rules

(1) Market rules for a financial product market for trading equity securities, debt securities, or managed investment products must include listing rules and business rules (by whatever name called and however they are imposed).

(2) Market rules for a financial product market for trading derivatives must include business rules (by whatever name called and however they are imposed).

(3) Listing rules must include rules that—

(a) relate to the approval of persons for the purpose of enabling financial products issued by those persons to be traded on the market; and

(b) require those persons to be party to a listing agreement with the licensed market operator and that relate to the entry into, and revocation of, listing agreements; and

(c) relate to the governance of those persons; and

(d) relate to the conduct or activities of those persons in relation to that market or to financial products traded on that market; and

(e) relate to the monitoring and enforcement of those rules.

(4) Business rules must include rules that—

(a) relate to the authorisation of persons to undertake trading activities on, or otherwise participate in, the market; and

(b) relate to the conduct or activities of those persons in relation to the market; and

(c) govern the conduct of business on the market; and

(d) relate to the monitoring and enforcement of those rules.

Compare: 1988 No 234 s 36H

329 When market rules have effect

A market rule, or change to a market rule, for a licensed market has no effect, either in contract or for the purposes of section 327, until it has been approved under section 331.

330 Approval process for proposed market rules and rule changes

(1) If a person applies for the approval of any proposed market rules or proposed rule change by the FMA, the FMA must, within the approval period,—

(a) approve the market rules or rule change; or

(b) extend the approval period; or

(c) decline to approve the market rules or rule change.

(2) An application under this section must be made in the manner specified by the FMA.

(3) The approval period is 40 working days, or (if extended under subsection (1)(b)) 60 working days, after the FMA receives the application.

(4) If, during the approval period, the applicant revises and resubmits the proposed market rules or rule change, then this does not result in the commencement of a new approval period under this section if the revision—

(a) is made in response to comments by the FMA; or

(b) consists of immaterial changes (for example, typographical changes).

Compare: 1988 No 234 s 36K

331 Approval of proposed market rules and changes

(1) The FMA must approve the proposed market rules or rule change provided to it under section 330 unless the FMA is satisfied that—

(a) it is not in the public interest to do so after having had regard to—

(i) the purposes of this Part (and the main and additional purposes of the Act stated in sections 3 and 4); and

(ii) the consistency of the rules or the rule change with the obligations under section 314; or

(b) (if subpart 4 would apply to the rules once approved) the rules, or the rules as changed, for the financial product market will not provide appropriate continuous disclosure by listed issuers of material information that is not generally available to the market, after having regard to—

(i) the purposes of this Part (and the main and additional purposes of the Act stated in sections 3 and 4); and

(ii) any other matters that the FMA considers relevant.

(2) The FMA must, in considering whether to approve proposed market rules for a new market, take into account any previously approved market rules that the applicant proposes to also apply to the relevant market.

(3) An approval under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(4) However, the approval does not need to incorporate the market rules or rule change that have been approved.

Compare: 1988 No 234 s 36L

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must comply with section 332(3)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 331(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 331(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

332 Notice of decision on rules

(1) The FMA must give written notice of its decision under section 331 to—

(a) the applicant for approval; and

(b) every other prescribed person.

(2) If the FMA extends the approval period under section 330 or declines to approve the rules, the written notice under subsection (1) must include a statement of the FMA's reasons for exercising the power.

(3) If the FMA approves the proposed market rules or rule change, the FMA must also publish a notice on an Internet site maintained by or on behalf of the FMA, identifying the market rules approved under section 331 (but need not incorporate them).

(4) *[Repealed]*

Section 332(3): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 332(4): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

333 Power of FMA to request changes to market rules on certain matters

(1) The FMA may, if it considers it necessary or desirable to promote any of the purposes of this Part or the meeting of any of the market operator obligations, request a licensed market operator to prepare a draft change to the market rules for any of its licensed markets on a specified matter.

(2) The FMA may make a request under subsection (1) by written notice to the licensed market operator only—

(a) after carrying out a review under section 338(1) or (2); or

(b) if it believes on reasonable grounds that it is urgent to do so at any other time.

(3) The licensed market operator must, as soon as practicable but, in any case, before the expiry of 60 working days after receiving the written notice (or any further time allowed by the FMA), do either or both of the following things:

(a) provide a proposed rule change to the FMA under section 330 that addresses the requested matter:

(b) provide the FMA with a written report that—

(i) identifies any requested matter or matters that have not been addressed by a proposed rule change; and

(ii) explains why the licensed market operator has not done so; and

(iii) suggests alternative ways (if any) by which the matter or matters are being or may be dealt with; and

(iv) sets out if, when, and how the licensed market operator proposes to provide for the matter or matters (if at all).

(4) This section does not allow the FMA to request a draft market rule or change on a matter that is not within the matters set out in section 328.

Compare: 1988 No 234 s 36M

334 Overseas-regulated markets must give notice of market rules and rule changes to FMA

(1) A licensed market operator of a market licensed under section 317, or an applicant for a licence under that section, must—

(a) provide the market rules of the licensed market to the FMA at the time of the application under section 315; and

(b) as soon as practicable after any changes are made to those rules, provide the rule change to the FMA together with the date of the change and an explanation of its purpose.

(2) The FMA may, by written notice to the licensed market operator (or applicant for a licence under section 317), specify the rules for the financial product market (which must be rules dealing with some or all of the matters referred to in section 328) that are the market rules of the licensed market for the purpose of this subpart.

Compare: Corporations Act 2001 s 793D (Aust)

335 Market rules must be available for public inspection

(1) A licensed market operator must ensure that a copy of the market rules for each of its licensed markets—

(a) is available for public inspection, free of charge and during normal office hours, at the head office of that licensed market operator; and

(b) is published on an Internet site maintained by, or on behalf of, the licensed market operator at all reasonable times.

(2) A licensed market operator that fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1988 No 234 s 36Q

336 Application of Acts relating to regulations to contractual market rules

To avoid doubt, market rules are not—

(a) regulations for any purpose; or

(b) secondary legislation.

Compare: 1988 No 234 s 36R

Section 336(b): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Monitoring of market operator obligations

337 Licensed market operator must give report on compliance with market operator obligations to FMA

(1) A licensed market operator must, within 3 months after the end of its reporting period, give a report to the FMA and the Minister on the extent to which it

has complied with its market operator obligations in the preceding reporting period.

(2) The report must contain, or be accompanied by, the information (if any) in relation to the licensed market operator's performance against its market operator obligations specified by the FMA before the commencement of the relevant reporting period.

(3) The **reporting period** for the purposes of this subpart is the financial year of the licensed market operator or any longer reporting period set in the conditions of the licence.

Compare: 1988 No 234 s 36YA

338 FMA to carry out market operator obligations reviews

(1) The FMA may, at any time, carry out a review of how well a licensed market operator is meeting any or all of its market operator obligations.

(2) The FMA must carry out a review of how well a licensed market operator is meeting all of its market operator obligations at least once in respect of each reporting period of the licensed market operator.

(3) The FMA—

(a) may, in carrying out the review, take into account the most recent report and other information provided under section 337 and any other information it considers appropriate; and

(b) must, after carrying out the review, provide a draft written report on its review to the licensed market operator and take into account any submissions made by the licensed market operator within the reasonable period for submissions specified by the FMA.

(4) The FMA must not carry out a review of a designated FMI (as defined in section 5 of the Financial Market Infrastructures Act 2021) of a licensed market operator under this section (but nothing in this subsection prevents a review under that Act being carried out in conjunction with a review under this section).

Compare: 1988 No 234 s 36YB

Section 338(4): amended, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

339 FMA must make written report on market operator obligations review

(1) The FMA must give a written report on a review under section 338 to the Minister and the licensed market operator—

(a) as soon as practicable after carrying out the review; and

(b) in any case, within 3 months after the licensed market operator has provided its report to the FMA under section 337.

(2) The FMA must also publish the written report on the review on an Internet site maintained by or on behalf of the FMA.

(3) However, the FMA may, in publishing the written report of its review, omit from the published report any information for which it considers there would be a good reason for withholding under the Official Information Act 1982 if a request for that information were made under that Act.

Compare: 1988 No 234 s 36YC

340 FMA may require licensed market operator to submit action plan on failure to meet market operator obligations

(1) If the FMA considers, after carrying out a review under section 338(1) or (2), that a licensed market operator has failed or is failing to meet any 1 or more of its market operator obligations, it may, by written notice, require the licensed market operator to submit an action plan to the FMA.

(2) The notice must—

(a) set out the details of the failure; and

(b) specify the date by which the action plan must be submitted to the FMA.

(3) The licensed market operator must, as soon as practicable but in any case before the date specified by the FMA, do either or both of the following things:

(a) provide an action plan that addresses the failure and specifies—

(i) the actions that the licensed market operator proposes to take to remedy the failure or to avoid any further failure; and

(ii) the timetable for taking those actions:

(b) provide the FMA with a written report that—

(i) identifies any matter that has not been addressed by an action plan; and

(ii) explains why the licensed market operator does not consider that matter to be a failure or gives any other reasons why the licensed market operator has not provided an action plan on the matter.

Compare: 1988 No 234 s 36YD

341 Approval, amendment, or rejection of action plan

(1) If a licensed market operator submits an action plan, the FMA may—

(a) approve the action plan; or

(b) require the licensed market operator to amend the action plan and resubmit it to the FMA by a specified date for approval or rejection; or

(c) reject the action plan.

(2) If the FMA requires the licensed market operator to amend an action plan provided to the FMA, the licensed market operator must do either or both of the following things:

(a) provide an amended action plan that addresses the matter required to be amended:

(b) provide the FMA with a written report that—

(i) identifies any matter that has not been addressed by an amendment to the action plan first provided; and

(ii) explains why the licensed market operator does not consider that the matter needs amending or gives any other reasons why the licensed market operator has not provided an amendment addressing the matter.

(3) If the FMA approves the action plan (whether as first provided or after amendment), the licensed market operator must comply with the action plan.

(4) An action plan that has been approved by the FMA may be varied at any time by agreement between the licensed market operator and the FMA.

Compare: 1988 No 234 s 36YE

342 Minister may give market operator obligations direction to licensed market operator

(1) The Minister may, after having regard to any advice of the FMA, give a written direction to a licensed market operator if—

(a) the Minister considers that the licensed market operator has failed or is failing to meet any 1 or more of its market operator obligations; and

(b) any of the following has occurred:

(i) the licensed market operator has not provided an action plan when required under section 340; or

(ii) the licensed market operator has not provided an amended action plan when required under section 341; or

(iii) the FMA has rejected a licensed market operator's action plan; or

(iv) the licensed market operator has not complied with an approved action plan.

(2) The direction may specify—

(a) the actions that the licensed market operator must take to remedy any failure or to avoid any further failure to meet any 1 or more of its market operator obligations; and

(b) the timetable for taking those actions.

(3) The licensed market operator must comply with the direction.

Compare: 1988 No 234 s 36YF

343 Minister may vary, suspend, or cancel licence

(1) If the Minister could give a direction under section 342, the Minister may also, by written notice to the licensed market operator, vary the conditions of the licence (following the procedure set out in section 324).

(2) If the Minister could give a direction under section 342 and the Minister is satisfied that the licensed market operator does not meet the requirements referred to in section 316 or 317, the Minister may also, by written notice to the licensed market operator, suspend or cancel the licence (following the procedure set out in section 324).

Control limits on licensed market operators

344 Power to impose control limits on licensed market operators

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing, altering, or revoking a control limit (which is the highest percentage of voting rights in the body corporate that may be held or controlled by any person) for a body corporate that—

(a) is, or may be, a licensed market operator; or

(b) is a holding company of a body corporate referred to in paragraph (a).

(2) A control limit does not apply to a body corporate before its licence as a licensed market operator takes effect.

(3) The Minister must not make a recommendation for the purposes of subsection (1) unless he or she has consulted the body corporate and is satisfied that it is in the public interest to make the recommendation.

(4) For the purposes of this section and the rest of this subpart,—

control, in relation to a voting right, means having, directly or indirectly, effective control of the voting right

voting right means a currently exercisable right to cast a vote at meetings of members or shareholders of a body corporate, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

(a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the financial product that confers the voting right is in arrears or some other default exists:

(b) on a proposal that affects rights attached to the financial product that confers the voting right:

(c) during the liquidation of the body corporate:

(d) in respect of a special, immaterial, or remote matter that is inconsequential to control of the body corporate.

(5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1988 No 234 s 36S

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 344(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

345 Control limit not to be exceeded

(1) No person may hold or control voting rights in a body corporate that exceed any control limit for that body corporate that applies under regulations made under section 344, except in accordance with an approval under section 347.

(2) For the purposes of this section, voting rights held or controlled by an associated person of a person must be treated as voting rights held or controlled by that person.

(3) Subsection (1) does not apply to any voting rights in a body corporate held or controlled by a person to the extent that those rights were held or controlled by that person before the control limit was imposed or decreased, as the case may be.

Compare: 1988 No 234 s 36T

346 Effect of exceeding control limit

(1) Every person who contravenes section 345—

(a) must take the steps that are necessary to ensure that the person is no longer in contravention of that section at the end of 60 working days after the date of first contravention; and

(b) must not exercise or control the exercise of any voting rights that exceed the control limit while the person contravenes that section.

(2) An exercise of voting rights in a body corporate by or under the control of a person in contravention of subsection (1)(b) is of no effect, and must be disregarded in counting the votes concerned.

(3) However, subsections (1)(b) and (2) do not invalidate a resolution if the votes concerned were counted by the body corporate in good faith and without knowledge that the voting rights were exercised in contravention of subsection (1)(b).

Compare: 1988 No 234 s 36U

347 Application for approval to exceed control limit

(1) A person may apply to the FMA for approval for any person or class of persons to exceed a control limit for a body corporate that applies under regulations made under section 344.

(2) The FMA must, within a reasonable time, give the application to the Minister with advice about the application.

(3) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve an application under subsection (1) and specify the terms and conditions (if any) applying to the approval.

(4) The Minister may not make a recommendation for the purposes of subsection (3) unless,—

(a) if the body corporate is not the applicant or 1 of the applicants for the approval, he or she has consulted the body corporate on the application; and

(b) he or she is satisfied that it is in the public interest to make the recommendation.

(5) An approval granted under subsection (3)—

(a) may have retrospective effect; but

(b) is of no effect if any term or condition of the approval has not been complied with.

(6) An approval granted under subsection (3) is for the purposes of the control limit only, and not for the purposes of any other enactment.

(7) An order under this section—

(a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); but

(b) may commence in accordance with subsection (5)(a), even if it is not yet published.

Compare: 1988 No 234 s 36V

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives, unless it relates exclusively to an individual (in which case a transitional exemption applies under Schedule 1 of the Legislation Act 2019)	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 347(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

348 Revocation or amendment of approval

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—

(a) revoke an approval granted under section 347; or

(b) vary, revoke, or suspend any term or condition of such an approval.

(2) The Minister may not make a recommendation for the purposes of subsection (1) unless—

(a) he or she has consulted the person to whom the approval was granted and the body corporate concerned; and

(b) he or she is satisfied that it is in the public interest to make the recommendation.

(3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1988 No 234 s 36W

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives, unless it relates exclusively to an individual (in which case a transitional exemption applies under Schedule 1 of the Legislation Act 2019)	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 348(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Other provisions relating to licensing of financial product markets

349 FMA may give advice to Minister

(1) The FMA may give advice to the Minister in relation to any matter in respect of which the Minister has a discretion under this subpart or any other matter concerning financial product markets.

(2) If the Minister has delegated a function or power to the FMA under this subpart, any obligation under this subpart for the FMA to give advice to the Minister, or for the Minister to have regard to the advice of the FMA, in connection with that matter does not apply.

350 Delegation of Minister's licensing functions and powers to FMA

(1) The Minister may, either generally or particularly, delegate to the FMA all or any of the Minister's functions or powers under this subpart in connection with the licensing of financial product markets.

(2) A delegation under this section must be in writing.

(3) The FMA must not delegate any functions or powers delegated to it under this section except in accordance with the terms of the delegation.

(4) The power of the Minister to delegate under this section—

(a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but

(b) does not limit any power of delegation conferred on the Minister by any other Act.

(5) The FMA may perform or exercise any functions or powers delegated to it under this section in the same manner and with the same effect as if they had been conferred on the FMA directly (subject to any restrictions or conditions imposed under the delegation).

(6) If the FMA purports to act under a delegation under this section, the FMA must, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(7) No delegation affects or prevents the performance or exercise of any function or power by the Minister or affects the responsibility of the Minister for the actions of a person acting under the delegation.

351 Regulations modifying this Part or Part 7 or 7A for licensed markets

(1) The Governor-General may, on the recommendation of the Minister in accordance with subsection (3), make regulations for any 1 or more of the following purposes:

(a) providing that any 1 or more of the provisions in subparts 2 to 8 of this Part (including any definitions in this Act as they apply in the relevant provisions, but excluding the obligations in section 314) do not apply in respect of a licensed market or class of licensed markets (and accordingly do not apply in relation to any issuers listed or financial products quoted on those markets):

(ab) providing that section 451(1)(d) does not apply in respect of persons that are listed issuers only in respect of a licensed market or class of licensed markets, and providing for replacement or modified requirements to apply relating to—

(i) accounting records and financial reporting:

(ii) CRD records and climate-related disclosures (for those listed issuers that would otherwise be climate reporting entities under section 461O(1)(a)):

(b) providing for replacement or modified provisions to apply in respect of the licensed market or class of licensed markets (for example, instead of having continuous disclosure provisions in the listing rules and requiring listed issuers to comply with those provisions, having periodic or event-based disclosure or some other way of dealing with any information asymmetries in the market):

(c) stating which provisions of the regulations (if any) are Part 5 market provisions for the purposes of this Act and, if so, whether the provisions give rise to civil liability under section 385(3) or (4) (*see* Part 8, in which Part 5 market provisions are specified to be civil liability provisions), including which provisions are alternative disclosure obligations for the purposes of section 314:

(d) providing that a financial product market must not be treated as a licensed market for the purposes of any provision or provisions of this Act or any other specified enactment:

(e) providing that issuers of a specified class must not be treated as listed issuers for the purposes of any provision or provisions of this Act or any other specified enactment:

(f) providing that, in specified circumstances, financial products must not be treated as quoted financial products for the purposes of any provision or provisions of this Act or any other specified enactment.

(2) Any regulations made under subsection (1) must specify the licensed market or class of licensed market to which they apply.

(3) The Minister must, in relation to a recommendation under this section,—

(a) have regard to the matters set out in section 308; and

(b) be satisfied, in relation to any recommendation relating to subsection (1)(a) or (d), that the extent to which the regulations disapply any enactment to a licensed market is not broader than is reasonably necessary to address the matters that gave rise to the regulations; and

(c) be satisfied, in relation to any recommendation relating to subsection (1)(e) or (f), that the extent to which the regulations disapply any enactment to issuers or financial products is not broader than is reasonably necessary to address the matters that gave rise to the regulations.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 351 heading: amended, on 27 October 2022, by section 6(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 351 heading: amended, on 1 April 2014, by section 47(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 351(1)(ab): replaced, on 27 October 2022, by section 6(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 351(1)(e): inserted, on 9 August 2017, by section 71(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 351(1)(f): inserted, on 9 August 2017, by section 71(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 351(3)(b): amended, on 9 August 2017, by section 71(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 351(3)(c): inserted, on 9 August 2017, by section 71(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 351(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 8—Operation of licensed markets

352 Licensed market operator must notify FMA of disciplinary actions and suspected contraventions

(1) A licensed market operator must notify the FMA, in accordance with sections 353 and 354, if—

(a) the operator takes any disciplinary action against a participant in the licensed market:

(b) the operator knows or suspects that a person has committed, is committing, or is likely to commit a significant contravention of—

(i) the market rules; or

(ii) this Act, the Takeovers Act 1993, or any enactment made under either of those Acts.

(2) The FMA must notify the licensed market operator of its decision to take, or not to take, any action in relation to a notification under subsection (1)(b)(ii).

Compare: 1988 No 234 s 36ZD

353 When notification required

The licensed market operator must give the notice under section 352 immediately after taking the disciplinary action or knowing or suspecting the person has committed, is committing, or is likely to commit a significant contravention.

Compare: 1988 No 234 s 36ZE

354 Details and method of notification

(1) The notice under section 352 must include—

(a) the person's name and contact details; and

(b) if it relates to a disciplinary action, the grounds for, nature of, and reasons for the action taken; and

(c) if it relates to a known or suspected contravention, the facts supporting the licensed market operator's view and the obligation to which the known or suspected contravention relates; and

(d) any other information required by the regulations or by the FMA under section 357.

(2) The licensed market operator must give the notice in the form and by the method required by the regulations (if any).

Compare: 1988 No 234 s 36ZF

355 Licensed market operator must ensure FMA has access to real-time trading and other information

(1) A licensed market operator must, if requested by the FMA, give to the FMA the information that is necessary to enable the FMA to carry out real-time surveillance of the operation of the licensed market.

(2) The FMA must pay all reasonable costs of the licensed market operator in providing the information under this section.

Compare: 1988 No 234 s 36ZFA

356 Waiver of notification and disclosure obligations

(1) Sections 352 to 355 do not apply to the extent that the FMA—

(a) waives its entitlement to any notice or information or class or classes of notices or information; or

(b) agrees with the licensed market operator a different time, form, or method of notification or disclosure.

(2) A waiver or an agreement under this section must be in writing.

Compare: 1988 No 234 s 36ZJ

357 Licensed market operator must give FMA or Takeovers Panel other information and assistance on request

(1) A licensed market operator must give to the FMA or the Takeovers Panel (or any person authorised by the FMA or the Takeovers Panel) information, assistance, and access to the licensed market operator's facilities if the FMA or the Takeovers Panel reasonably requests it in order to carry out its functions.

(2) The FMA or the Takeovers Panel must require that information, assistance, or access by notice in writing to the licensed market operator.

Compare: 1988 No 234 s 36ZK

358 Power to disclose further information

(1) A licensed market operator may provide to the FMA any information that the licensed market operator considers may assist the FMA in the performance of the FMA's functions.

(2) A licensed market operator may provide to the Takeovers Panel any information that the licensed market operator considers may assist the Takeovers Panel in the performance of its functions.

Compare: 1988 No 234 s 36ZL

359 Licensed market operator must give notice and have regard to submissions on continuous disclosure determinations

(1) This section and section 360 apply to a determination by a licensed market operator if—

(a) the determination exempts from, waives, or determines the meaning of a continuous disclosure provision of its listing rules for a licensed market (or varies or revokes a determination of that kind); and

(b) that continuous disclosure provision relates to material information that is not generally available to the market.

(2) The licensed market operator must—

(a) give the FMA no less than 2 trading days' written notice, before making the determination, of—

(i) the proposed terms of the determination; and

(ii) the reasons for the proposed determination; and

(b) have regard to any written submissions made to it by the FMA within that notice period; and

(c) must, as soon as is reasonably practicable after making the determination, give written notice to the FMA of—

(i) the terms of the determination; and

(ii) the reasons for the determination.

(3) A failure to comply with this section or section 360 does not affect the validity of a determination.

Compare: 1988 No 234 s 36ZM

360 Limited notice and submissions for urgent determinations

If a licensed market operator thinks it is necessary or desirable in the public interest for a determination to be made more urgently than section 359(2) permits,—

(a) it may give less than 2 trading days' notice before it makes the determination, and the notice and submissions may be oral rather than written; but

(b) it must include in that notice the reasons for acting urgently and must otherwise comply with that subsection.

Compare: 1988 No 234 s 36ZN

361 FMA may give directions to licensed market operators

(1) The FMA may give a direction under subsection (2) in accordance with sections 362 to 366 in relation to a licensed market.

(2) The FMA may, for up to 15 trading days,—

(a) direct a licensed market operator to suspend trading of quoted financial products or a class of quoted financial products; or

(b) give the licensed market operator any other direction in relation to that trading; or

(c) direct a licensed market operator to suspend participation by a participant or class of participants in the licensed market.

(3) To avoid doubt, the FMA may not use its power to direct the licensed market operator to amend the market rules or to direct the licensed market operator on the making of a determination on the market rules.

(4) The direction is subject to appeal only in accordance with section 532.

Compare: 1988 No 234 s 36ZO

362 Grounds for continuous disclosure direction

(1) A direction on the grounds in this section is a continuous disclosure direction.

(2) A direction may be given under section 361 in accordance with sections 364 to 366 if the FMA—

(a) has regard to the purpose of this Part (and the main and additional purposes of the Act stated in sections 3 and 4) and any other matters it considers relevant; and

(b) is satisfied that 1 of the following grounds applies:

(i) a listed issuer has contravened a continuous disclosure obligation or a term or condition of a continuous disclosure exemption; or

(ii) a determination by a licensed market operator to which section 359 applies does not achieve appropriate continuous disclosure by a listed issuer of material information that is not generally available to the market; or

(iii) the licensed market operator's administration of the continuous disclosure provisions of its listing rules does not achieve appropriate continuous disclosure by a listed issuer of material information that is not generally available to the market; and

(c) is also satisfied that the direction is necessary or desirable to protect people who are trading the quoted financial products or the class of quoted financial products and that there is no more appropriate course of action to address the situation.

Compare: 1988 No 234 s 36ZP

363 Grounds for other directions

A direction may also be given under section 361 in accordance with sections 364 to 366 if the FMA is satisfied that—

(a) the direction is necessary or desirable to protect people who are trading the quoted financial products, or the class of quoted financial products, of 1 or more listed issuers; but

(b) it is not a matter relating to continuous disclosure.

Compare: 1988 No 234 s 36ZQ

364 Notice, opportunity for licensed market operator to act, and submissions before FMA gives directions

(1) A direction may be given under section 361 only if—

(a) the FMA has given written notice to the licensed market operator and listed issuer or issuers concerned of—

(i) its opinion that the requirements of section 362 or 363 are satisfied; and

(ii) the proposed terms of the direction; and

(iii) the reasons for its opinion; and

(b) after receiving the FMA's notice, the licensed market operator does not take, within the reasonable period stated in the notice,—

(i) in the case of a proposed direction to suspend trading of the quoted financial products, action to prevent that trading; or

(ii) in any other case, any other action that, in the FMA's view, is adequate to address the situation raised in the notice; and

(c) the FMA has had regard to any written submissions made to it by the licensed market operator and the listed issuer or issuers concerned within that notice period; and

(d) the FMA still considers that it is appropriate to give the direction to the licensed market operator.

(2) A reasonable period in subsection (1)(b) is, in the case of a continuous disclosure direction, 2 trading days (or any longer time the FMA wishes to allow) and, in the case of any other direction, any longer time that is reasonable in the circumstances.

Compare: 1988 No 234 s 36ZR

365 Limited notice and submissions for urgent continuous disclosure directions

If the FMA thinks it is necessary or desirable in the public interest for a continuous disclosure direction to be made more urgently than section 364 permits,—

(a) it may give less than 2 trading days' notice before it gives the direction, and the notice and submissions may be oral rather than written; but

(b) it must include in that notice the reasons for acting urgently and must otherwise comply with that section.

Compare: 1988 No 234 s 36ZS

366 Notice and opportunity to be heard and represented after FMA gives direction

If a direction is given under section 361, the FMA—

(a) must, as soon as is reasonably practicable, give written notice to the licensed market operator and listed issuer or issuers (if any) concerned of—

(i) its opinion that the requirements of section 362 or 363 are satisfied; and

(ii) the terms of the direction; and

(iii) the reasons for its opinion; and

(b) must, after the direction is given, give each of those persons or the person's representative an opportunity to make written submissions and to be heard on the matter; and

(c) may also give notice to any other person of the matters in paragraph (a).

Compare: 1988 No 234 s 36ZT

367 Effect of directions to licensed market operator

(1) A direction under section 361 has effect for the period specified in it (which may be a period of up to 15 working days) and, during that period, the licensed market operator must comply with the direction and must not allow any trading that is contrary to the direction to take place.

(2) If the FMA considers that the direction should have effect for a period longer than 15 working days, it may apply to the court for, and the court may make, an order that the licensed market operator comply with the direction for the period that the court thinks fit.

Compare: 1988 No 234 s 36ZU

368 Provisions as to directions

(1) The FMA may vary a direction under section 361 in the same way as it may make that direction.

(2) The FMA may revoke a direction under section 361 by giving written notice to the licensed market operator.

Compare: 1988 No 234 s 36ZV

369 Contracting out of or modification of continuous disclosure process requirements

(1) The FMA and a licensed market operator may, by agreement in writing, contract out of, or modify, any of the requirements of sections 359, 360, and 364 to 366.

(2) For that purpose, the licensed market operator may agree to waive or modify obligations under those sections that are owed to listed issuers listed on the relevant licensed market.

Compare: 1988 No 234 s 36ZW

370 Offence for failing to comply with direction

A licensed market operator that refuses or fails, without reasonable excuse, to comply with a direction under section 361 commits an offence and is liable on conviction to a fine not exceeding $300,000.

Compare: 1988 No 234 s 36ZX

Subpart 9—Transfer of transferable financial products

371 Financial products to which this subpart applies

(1) This subpart applies to financial products if—

(a) the financial products are transferable; and

(b) the names of the holders of the products are entered in a register kept under this Act or otherwise kept in New Zealand.

(2) However, this subpart does not apply to—

(a) interests in a superannuation scheme or KiwiSaver scheme:

(b) derivatives:

(c) financial products of a prescribed kind.

(3) In this subpart, **specified financial product** means a financial product to which this subpart applies.

Transfer of specified financial products using transfers in prescribed form or containing prescribed information

372 Transfer of specified financial products by products transfer

(1) Specified financial products disposed of in an authorised transaction may be transferred by means of a products transfer that—

(a) either—

(i) is in the form prescribed for the purposes of this section; or

(ii) contains the prescribed information; and

(b) is duly completed; and

(c) is executed, in New Zealand, by the transferor (whether or not it is also executed by the transferee).

(2) However, subsection (1) does not apply if the specified financial products impose a liability to the issuer on the transferee.

(2A) An indemnity given by the product holder of a financial product to the issuer in respect of any liability of the issuer for the acts, omissions, or obligations of the holder is not a liability for the purpose of subsection (2).

(3) In this subpart, **authorised transaction** means an acquisition or disposal of financial products in which each of the parties is, or is acting through the

agency of, any of the following persons (who are acting in the ordinary course of business):

(a) a person authorised to undertake trading activities on a licensed market:

(b) a lawyer in practice on his or her own account:

(c) a qualified statutory accountant:

(d) a trustee corporation (as defined in section 2 of the Protection of Personal and Property Rights Act 1988):

(e) a registered bank:

(f) a person prescribed for the purposes of this definition.

Compare: 1991 No 119 s 3

Section 372(2A): inserted, on 9 August 2017, by section 72 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 372(3)(c): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 372(3)(d): amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

373 Transfer of specified financial products by products transfer and brokers transfer

(1) Specified financial products sold in a licensed market transaction may be transferred by means of—

(a) a products transfer that—

(i) either is in the form prescribed for the purposes of this paragraph or contains the prescribed information; and

(ii) is duly completed; and

(iii) is executed, in New Zealand, by the transferor (whether or not it is also executed by the transferee); and

(iv) specifies financial products that include the financial products sold; and

(b) a brokers transfer that—

(i) either is in the form prescribed for the purposes of this paragraph or contains the prescribed information; and

(ii) is duly completed; and

(iii) specifies the financial products sold.

(2) Subsection (1) applies whether or not the specified financial products impose a liability to the issuer on the transferee.

(3) In this subpart, **licensed market transaction** means a sale and purchase of financial products in which each of the parties is, or is acting through the

agency of, a person authorised to undertake trading activities on a licensed market who is acting in the ordinary course of that business.

Compare: 1991 No 119 s 4

374 Products transfer does not need to be witnessed

(1) The execution of a products transfer for the purposes of section 372 or 373(1)(a) does not need to be witnessed.

(2) Subsection (1) does not affect any enactment, rule of law, constitution, deed, or agreement regulating the execution of documents by companies or other bodies corporate or by any particular company or body corporate.

Compare: 1991 No 119 s 5

375 Transfers to be instruments of transfer for purposes of other enactments and instruments

For the purposes of any enactment, rule of law, constitution, deed, or agreement that relates to the transfer of financial products or to instruments of transfer of financial products,—

(a) a products transfer to which section 372 applies must be treated as being an instrument of transfer of the financial products specified in the products transfer:

(b) a products transfer to which section 373 applies and a brokers transfer together must be treated as being an instrument of transfer of the financial products specified in both transfers.

Compare: 1991 No 119 s 6(1)

Transfer of specified financial products by electronic means

376 Approval of electronic transfer system

(1) The Governor-General may, on the advice of the Minister given in accordance with a recommendation of the FMA, by Order in Council, approve a system or systems that is or that are wholly or partly electronic for the transfer of specified financial products.

(2) A system of transfer may be approved under this section by reference to the name of the system or any name by which it is commonly known.

(3) A system of transfer may be approved under this section whether or not it also involves the use of a procedure or part of a procedure for the transfer of financial products that is authorised under this Act or otherwise.

(4) The FMA must not make a recommendation under subsection (1) unless the FMA has consulted the persons or representatives of the persons that the FMA considers will be substantially affected by the Order in Council.

(5) A failure to comply with subsection (4) does not affect the validity of an Order in Council made under this section.

(6) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1991 No 119 s 7(1)–(3), (6)–(8)

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 376(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

377 Specified financial products may be transferred under approved system

(1) Specified financial products disposed of, whether in an authorised transaction or licensed market transaction or otherwise, may be transferred in accordance with a system of transfer that is approved under section 376.

(2) Subsection (1) applies whether or not the specified financial products impose a liability to the issuer on the transferee.

Compare: 1991 No 119 s 7(5)

378 Minor technical modifications to system

Modifications of a minor technical nature may, from time to time, be made to a system of transfer approved by an Order in Council made under section 376 and, in any such case, the system incorporating those modifications must be treated as having been approved by the order.

Compare: 1991 No 119 s 7(4)

Registration may not be refused

379 Registration may not be refused on ground that financial products have been transferred under this subpart

(1) If financial products have been transferred in accordance with section 372, 373, or 377, no person may refuse to register the transfer on the ground that the financial products have been so transferred or that the financial products have not been transferred by other means.

(2) Nothing in this section affects any right a person has to refuse to register a transfer of securities on any other ground.

Compare: 1991 No 119 s 8

380 Effect of this Act on other enactments

(1) This subpart has effect despite anything to the contrary in any enactment, rule of law, constitution, deed, or agreement (but subject to any order made under this Act).

(2) Nothing in this subpart affects the validity of any means of transferring financial products other than under this subpart.

(3) Sections 35, 39(1), and 84 of the Companies Act 1993 must be read subject to the provisions of this subpart.

Compare: 1991 No 119 s 9

Subpart 10—Unsolicited offers to purchase financial products off-market

381 Definitions relating to unsolicited offer regulations and related provisions

(1) For the purposes of this Act, an **unsolicited offer** means an offer to which all of the following apply:

(a) the offer is to acquire a financial product, to acquire a power to dispose of a financial product, or to acquire another interest in or right attaching to a financial product, made by a person (**A**) to another person (**B**) (whether the acquisition is by A or an associated person of A):

(b) the offer is unsolicited by B:

(c) the offer is not made on a licensed market:

(d) the offer is within the class or classes of unsolicited offers to which the regulations apply:

(e) the offer is not a takeover offer for a financial product under the Takeovers Code nor an acquisition or a redemption by a company of its shares under the Companies Act 1993.

(2) For the purposes of this subpart, and any regulations made under this subpart, an **offer** made by A includes an invitation or a proposal for A (or an associated person of A) to make an offer.

Compare: 1988 No 234 s 48DA

382 Regulations concerning unsolicited offers

(1) The Governor-General may, on the recommendation of the Minister in accordance with subsection (3), make regulations setting out the rules applying to unsolicited offers for any or all of the purposes set out in subsection (2).

(2) The purposes are—

(a) ensuring offerees are fully informed of—

(i) the current market price of a quoted financial product or, for a non-quoted financial product, a fair estimate of the value of the non-quoted financial product and the basis for making that estimate; and

(ii) the material terms of the offer and their effect; and

(iii) any warnings issued by the FMA (if ordered by the FMA to be contained in or to accompany offer documents); and

(iv) their rights and remedies under the regulations:

(b) ensuring that notice of an unsolicited offer to product holders is given to the relevant listed issuer or issuer and the FMA:

(c) ensuring that no agreement to transfer may bind offerees for a minimum period for the purpose of enabling offerees to consider, and reconsider, any decision to accept an offer:

(d) requiring a minimum or maximum offer period, or both:

(e) setting out any other rules applying to unsolicited offers.

(3) In formulating recommendations to make regulations under this section, the Minister must—

(a) have regard to the objective of preventing unfair practices in the making of unsolicited offers; and

(b) consult the FMA.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1988 No 234 s 48DB

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 382(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

383 Specific provisions for regulations concerning unsolicited offers

The regulations made under section 382 may, without limiting that section,—

(a) define the class or classes of unsolicited offers and financial products to which the regulations apply:

(b) define or clarify the meaning of unsolicited for the purposes of this subpart:

(c) prescribe requirements in relation to unsolicited offers and the making of those offers, including requirements as to the form and content of those offers, variations of those offers, the updating and resending of offer documents or other corrective statements, and the implication of terms into the offer or any resulting agreement:

(d) prescribe the information, statements, certificates, or other documents that must be supplied to offerees, the relevant listed issuer or issuer, and the FMA:

(e) provide for any duties or functions of the FMA in connection with the rules applying to unsolicited offers:

(f) state which provisions are unsolicited offer provisions for the purposes of this Act:

(g) provide for the exercise of a right to withdraw a notification of a decision to accept an unsolicited offer, a right to refuse to complete a transfer, or any other right or remedy of offerees, and any consequences and obligations that apply in those cases:

(h) provide for any powers of, and requirements on, listed issuers, issuers, or their agents in connection with transfers under an unsolicited offer and provide for protections from liability for those persons, persons administering a register of financial products, and other persons for the purposes of section 384:

(i) provide for the regulations to—

(i) extend to or apply in respect of any conduct of an associated person of an offeror and any conduct that, in substance or effect, constitutes an unsolicited offer:

(ii) prohibit contracting out of the regulations and include any other provision or provisions designed to prevent avoidance of the regulations (for example, prohibiting persons from inviting others to make an offer to sell a financial product in circumstances in which, if the invitation were an offer to acquire the financial product, it would be an unsolicited offer to which the regulations applied):

(j) provide for transitional matters.

Compare: 1988 No 234 s 48DC

384 Protection from liability in connection with unsolicited offer provisions

(1) This section applies to any person who—

(a) is stated by regulations made under section 382 to be a protected person for the purposes of this section; and

(b) is not in contravention of an unsolicited offer provision or exemption.

(2) A person to whom this section applies is not liable for any act done or omitted to be done by that person in good faith if the act or omission is stated by regulations made under section 382 to be a protected act or omission for the purposes of this section.

Compare: 1988 No 234 s 47AA

Subpart 11—Civil liability for certain contraventions of this Part

385 Part 5 market provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 5 market provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) The provisions are the following:

(a) sections 241 to 243 (insider conduct prohibited):

(b) sections 262 and 265 (market manipulation):

(c) section 270 (continuous disclosure):

(d) section 310 (need for financial product market licence):

(e) section 311 (prohibition on holding out):

(f) any provision of regulations made under section 351 that is stated by those regulations to be a Part 5 market provision and to give rise to civil liability under this subsection.

(4) A contravention of any of the following may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case:

(a) sections 276 to 279 and sections 289 to 291 (substantial holding disclosure obligations):

(b) section 286 (conditions of exemption for corporate trustees and nominee companies):

(c) sections 297 and 298 (directors' and senior managers' disclosure obligations):

(d) section 327 (licensed markets must be operated under market rules that comply with subpart):

(e) section 334 (overseas-regulated markets must give notice of market rules and rule changes to FMA):

(f) section 342 (Minister may give market operator obligations direction to licensed market operator):

(g) section 346(1)(a) (effect of exceeding control limit):

(h) any provision of regulations made under section 351 that is stated by those regulations to be a Part 5 market provision and to give rise to civil liability under this subsection:

(i) sections 352, 355, 357, 359, and 367 (requirements applying in operation of licensed market):

(j) unsolicited offer provisions imposed under section 382.

Part 6
Licensing and other regulation of market services

386 Overview

(1) This Part provides for the licensing of market services and regulates the provision of market services by licensees and other persons as follows:

(a) subpart 1 determines which market service providers must be licensed, and which other providers of market services may be licensed:

(b) the issue of those licences, their conditions, and their expiry or cancellation are dealt with in subpart 2:

(c) subpart 3 provides for the monitoring and enforcement of those licences:

(d) subpart 4 provides for disclosure to investors about certain services:

(e) subpart 5 requires there to be client agreements for certain services:

(ea) subpart 5A regulates the giving of financial advice and the provision of financial advice services:

(eb) subpart 5B provides disclosure and conduct obligations for providers of client money or property services:

(f) subpart 6 regulates the provision of retail discretionary investment management services under a licence and the provision of related custodial services by a custodian:

(fa) subpart 6A regulates the conduct of financial institutions:

(g) subpart 7 provides for the making of regulations on the holding and application of investors' funds and property by derivatives issuers (whether or not they are licensed or are making regulated offers of derivatives):

(ga) subpart 7A provides for additional purposes relating to licences to act as an administrator of a financial benchmark, and additional powers in respect of licensees, authorised bodies, or contributors to financial benchmarks:

(h) subpart 8 identifies the civil liability provisions under this Part.

(2) This section is a guide only to the general scheme and effect of this Part.

Section 386(1)(ea): inserted, on 15 March 2021, by section 13 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 386(1)(eb): inserted, on 15 March 2021, by section 13 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 386(1)(fa): inserted, on 31 March 2025, by section 6 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 386(1)(ga): inserted, on 14 March 2021, by section 36 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

387 Territorial scope for licensing and other regulation of certain market services

(1) This Part applies to the following services received by a client or an investor in New Zealand, regardless of where the person providing the service is resident, is incorporated, or carries on business:

(a) a financial advice service:

(b) a discretionary investment management service:

(c) a prescribed intermediary service:

(d) a client money or property service.

(1A) For the service of acting as a financial institution, *see*—

(a) section 446B (which provides for subpart 6A to apply to certain financial services and associated products that are provided to consumers in New Zealand); and

(b) section 446E (which provides for registered banks, licensed insurers, and licensed NBDTs to be financial institutions).

(1B) For the service of acting as a creditor under a consumer credit contract, this Part applies if the Credit Contracts and Consumer Finance Act 2003 applies to the contract under section 137 of that Act.

(2) For other licensed market services that relate to regulated offers, *see* section 47 as to the territorial scope of Part 3.

Section 387 heading: amended, on 15 March 2021, by section 14(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 387(1): replaced, on 15 March 2021, by section 14(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 387(1A): inserted, on 31 March 2025, by section 7 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 387(1B): inserted, on 1 July 2026, by section 58 of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

387A Other provisions relating to financial advice services and client money or property services

The provisions set out in Schedule 5 have effect according to their terms.

Section 387A: inserted, on 15 March 2021, by section 15 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 1—Key provisions

388 When provider of market services needs to be licensed

A person must not provide any of the following market services without holding, or being authorised to provide the service under, a market services licence that covers that service (unless an exemption applies under section 389):

(a) acting as a manager of a registered scheme (other than a restricted scheme):

(b) acting as an independent trustee of a restricted scheme:

(ba) acting as a provider of a financial advice service (*see* section 431D):

(c) acting as a provider of a discretionary investment management service (*see* subparts 4 to 6):

(ca) acting as a financial institution (*see* subpart 6A):

(d) acting as a derivatives issuer in respect of a regulated offer of derivatives that is made by the derivatives issuer (*see* subpart 5):

(e) acting as a creditor under a consumer credit contract.

Section 388(ba): inserted, on 15 March 2021, by section 16 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 388(ca): inserted, on 31 March 2025, by section 8 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 388(e): inserted, on 1 July 2026, by section 59 of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

389 Exemptions from need for market services licence

General exemptions

(1) A person is exempt from the licensing requirement under section 388 to the extent that the person—

(a) carries out activities that are covered by a financial product market licence:

(b) acts as an operator of a designated FMI:

(c) carries out activities as a participant in a licensed market, or in another prescribed overseas market, in the prescribed circumstances.

(1A) In subsection (1)(b), **designated FMI** and **operator** have the meanings given in section 5 of the Financial Market Infrastructures Act 2021.

Exemptions for financial advice service

(2) A person is exempt from the licensing requirement under section 388(ba) in respect of a service (unless a declaration applies under subpart 3 of Part 9) to the extent that—

(a) the service is not provided to any retail clients; or

Example

A service provider may provide a financial advice service to a number of clients. As long as the service provider has no retail clients for that service, the provider need not be licensed as a financial advice provider.

(b) the service is a prescribed exempt service.

Exemptions for DIMS

(3) A person is exempt from the licensing requirement under section 388(c) in respect of a service (unless a declaration applies under subpart 3 of Part 9) to the extent that—

(a) the service is not a retail service (*see* clause 35 of Schedule 1); or

Example

A service provider may provide a discretionary investment management service to a number of investors using a model portfolio. As long as no retail investor is within the relevant class of investors, the provider need not be a DIMS licensee.

(b) the service is a prescribed exempt service.

Exemptions for service of acting as financial institution

(4) A person is exempt from the licensing requirement under section 388(ca) in respect of a service to the extent that—

(a) the person acts as a Lloyd's underwriter; or

(b) the service is a prescribed exempt service.

Exemptions for creditor under consumer credit contract

(4A) A person is exempt from the licensing requirement under section 388(e) in respect of a service (unless a declaration applies under subpart 3 of Part 9) to the extent that the service is a prescribed exempt service.

Regulations may prescribe terms and conditions of exemption

(5) The exemptions in subsections (2)(b), (3)(b), (4)(a) and (b), and (4A) are subject to the prescribed terms and conditions (if any).

(6) *See* section 449A, which relates to prescribed terms and conditions in connection with the exemption for Lloyd's underwriters under subsection (4)(a).

Section 389(1) heading: inserted, on 15 March 2021, by section 17(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 389(1)(b): replaced, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Section 389(1A): inserted, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Section 389(2) heading: inserted, on 15 March 2021, by section 17(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 389(2): replaced, on 15 March 2021, by section 17(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 389(3) heading: inserted, on 15 March 2021, by section 17(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 389(3): inserted, on 15 March 2021, by section 17(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 389(4) heading: inserted, on 31 March 2025, by section 9 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 389(4): inserted, on 31 March 2025, by section 9 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 389(4A) heading: inserted, on 1 July 2026, by section 60(1) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 389(4A): inserted, on 1 July 2026, by section 60(1) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 389(5) heading: inserted, on 31 March 2025, by section 9 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 389(5): inserted, on 31 March 2025, by section 9 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 389(5): amended, on 1 July 2026, by section 60(2) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 389(6): inserted, on 31 March 2025, by section 9 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

390 When providers of other market services may be licensed

(1) In addition, a person may hold a market services licence—

(a) to act as a provider of prescribed intermediary services (for example, a person-to-person lending intermediary or a crowd funding intermediary if prescribed by regulations); or

(b) to act as an administrator of a financial benchmark.

(2) *See* clause 6 of Schedule 1 for exclusions for offers through licensed intermediaries and subparts 4 and 5 of this Part for other provisions that may govern these services.

Section 390(1): replaced, on 14 March 2021, by section 37 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

391 Prohibitions on holding out

(1) A person must not hold out that the person holds a market services licence if that is not the case.

(2) A person must not hold out that the person holds a market services licence that covers a service if that is not the case.

392 Meaning of discretionary investment management service and related terms

[Repealed]

Section 392: repealed, on 15 March 2021, by section 18 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 2—Issue of licences, conditions, and duration

393 Principles guiding the exercise of FMA powers

In exercising a power under this subpart, the FMA must be guided by the following principles:

(a) exercising the power must be necessary or desirable in order to promote 1 or more of the following:

(i) either or both of the main purposes specified in section 3:

(ii) any of the additional purposes specified in section 4:

(iii) in the case of a market services licence to act as an administrator of a financial benchmark, either or both of the additional purposes specified in section 448B:

(iv) in the case of financial advice services, the additional purpose in section 431B; and

(b) in exercising the power, the FMA should not unnecessarily restrict the licensing of persons.

Section 393(a): replaced, on 14 March 2021, by section 38 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 393(a)(iv): inserted, on 15 March 2021, by section 19 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Issue of licences

394 FMA may issue licence

The FMA may issue a licence in accordance with this subpart.

395 Application for licence

(1) A person may apply for a licence in the manner that is specified by the FMA.

(1A) The FMA may—

(a) specify any of the matters referred to in section 548(1)(p)(i) to (iv); and

(b) specify different matters for different classes of applicant or other circumstances (including specifying time frames within which different classes of applicant must make an application for a licence); and

(c) refuse to consider the application if the person does not apply for the licence in the specified manner.

Example

In order to facilitate the orderly and efficient processing of applications, the FMA specifies that if a particular type of provider wants a licence by a particular date or for a particular purpose, the provider must apply by some other date. A different date may apply to different classes of provider.

(2) The application may be for a licence to cover 1 or more market services (or 1 or more classes of services, if the FMA specifies, on its Internet site, classes into which a market service is divided).

(3) An applicant must provide to the FMA the information that is required by the FMA to assist it in determining the application.

Section 395(1A): inserted, on 9 April 2019, by section 20 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

396 When licence must be issued

The FMA must, after receiving an application under section 395, issue a licence that covers a market service or the class of market service to which the application relates if the FMA is satisfied that—

(a) the eligibility criteria (if any) that are prescribed by the regulations for licences for that service are satisfied; and

(b) the applicant's directors, senior managers, and proposed directors and senior managers are fit and proper persons to hold their respective positions and otherwise satisfy the requirements that are prescribed by the regulations for licences for that service (if any); and

(c) the applicant is capable of effectively performing that service (having regard to the proposed conditions of licence); and

(d) there is no reason to believe that the applicant is likely to contravene the market services licensee obligations; and

(e) the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide that service; and

(f) in the case of an applicant for a licence to act as a manager of a registered scheme or to be a DIMS licensee, the applicant or any authorised body under section 400 does not have in its constitution any provision under which directors of the applicant or authorised body (as the case may be) may, when exercising powers or performing duties as a director, act otherwise than in the best interests of the applicant or authorised body; and

(g) in the case of an application for a licence to act as an administrator of a financial benchmark, the issue of a licence is necessary or desirable in order to promote either or both of the additional purposes set out in section 448B.

Section 396(g): inserted, on 14 March 2021, by section 39 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

397 Procedural requirements

(1) The FMA must, before making a decision under section 396,—

(a) have regard to the prescribed matters; and

(b) have regard to whether the applicant, or 1 or more of the applicant's directors or senior managers, is a licensed provider (within the meaning of section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008); and

(c) have regard to whether the provision of the market service to which the application relates is merely incidental to the provision of another market service that is or will be covered by a licence; and

(d) consult all prescribed persons or classes of prescribed persons (if any).

(1A) The FMA must make a decision under section 396 in the prescribed manner (if any).

(2) The FMA must not refuse to issue a licence, or include limits, restrictions, or other conditions under section 403(3)(a) or (4) that are materially more restrictive than those requested in the application, unless—

(a) the FMA gives the applicant no less than 10 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may refuse to issue the licence or impose the limits, restrictions, or other conditions; and

(ii) the reasons why it may exercise that power; and

(b) the FMA gives the applicant or the applicant's representative an opportunity to make written submissions on the matter within that notice period.

(3) *[Repealed]*

Section 397(1)(b): amended, on 15 March 2021, by section 21(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 397(1A): inserted, on 9 August 2017, by section 73 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 397(2): amended, on 15 March 2021, by section 21(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 397(2)(a)(i): amended, on 15 March 2021, by section 21(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 397(3): repealed, on 15 March 2021, by section 21(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

398 Notice of decision

(1) The FMA must give written notice of its decision under section 396 to—

(a) the applicant; and

(b) every other prescribed person.

(2) If the FMA refuses to issue a licence or includes limits, restrictions, or other conditions under section 403(3)(a) or (4) that are materially more restrictive than those requested in the application, the written notice under subsection (1) must include a statement of the FMA's reasons for exercising the power.

Section 398(2): amended, on 15 March 2021, by section 22 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

399 Licence must be issued for particular market services

(1) If the FMA decides to issue a licence, it must ensure that it specifies the particular market services, or class of market services, that it covers.

(2) The same licence may cover more than 1 type of market services.

(3) In that case,—

(a) a reference in this Act to the market services that a licence covers is taken instead to be a reference to each of those market services severally; and

(b) the decision to add another market service or class of market services to a licence must be made on the same basis as a decision to issue a licence; and

(c) a licence may be varied, suspended, or cancelled in respect of 1 of those market services or classes only, as if each were separately licensed.

400 Licence may cover authorised bodies

(1) A licence may, in its conditions, authorise 1 or more named related bodies corporate of the licensee to provide a market service covered by the licence if the FMA is satisfied that—

(a) arrangements are or will be in place to ensure that the licensee will maintain appropriate control or supervision over the provision of that service by the related body corporate under the licence; and

(b) the related body corporate is capable of effectively performing that service (having regard to the proposed conditions of licence); and

(c) there is no reason to believe that the related body corporate is likely to contravene the market services licensee obligations; and

(d) the related body corporate is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide that service; and

(e) the related body corporate meets the eligibility criteria and other requirements prescribed by the regulations for the purposes of this section (if any).

(1A) A licence may also, in its conditions, authorise 1 or more named entities to provide a financial advice service covered by the licence if the FMA is satisfied that—

(a) arrangements are or will be in place to ensure that the licensee will maintain appropriate control or supervision over the provision of that service by the entity under the licence; and

(b) the entity is capable of effectively providing that service (having regard to the proposed conditions of the licence); and

(c) there is no reason to believe that the entity is likely to contravene the market services licensee obligations; and

(d) the entity is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide that service; and

(e) the entity meets the eligibility criteria and other requirements prescribed by the regulations for the purposes of this section (if any).

(1B) However, subsections (1) and (1A) do not apply if the licensee is an individual.

(2) The licence may also, in its conditions, determine that, for the purposes of 1 or more provisions of this Part, notices or reports need to be given to or by, or powers or duties may be exercised or performed by, only—

(a) the licensee (and in this case the relevant action must be treated, for that purpose, as being given to or by, or exercised or performed by, the 1 or more bodies authorised under subsection (1) or (1A)); or

(b) 1 or more bodies authorised under subsection (1) or (1A) (and in this case the relevant action must be treated, for that purpose, as being given to or by, or exercised or performed by, the licensee).

(3) If an authorised body contravenes any market services licensee obligation, the licensee must be treated as also having contravened that market services licensee obligation.

Section 400 heading: amended, on 15 March 2021, by section 23(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 400(1)(c): replaced, on 9 August 2017, by section 74 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 400(1A): inserted, on 15 March 2021, by section 23(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 400(1B): inserted, on 15 March 2021, by section 23(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 400(2)(a): amended, on 15 March 2021, by section 23(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 400(2)(b): amended, on 15 March 2021, by section 23(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

401 FMA must send licence details to Registrar

(1) The FMA must send the details specified in subsection (2) to the Registrar.

(2) The details, for each licence, are—

(a) the name of the licensee; and

(b) the market services or class of market services covered by the licence; and

(c) the conditions of the licence imposed by the FMA (including whether an associated custodian is permitted for the purposes of a discretionary investment management service); and

(d) the authorised bodies (if any); and

(e) any other prescribed information.

(3) The FMA may publicly notify any details about a licence as it thinks fit.

Conditions of licence

402 Conditions of licence

(1) The licence is subject to—

(a) a condition that the licensee or authorised body may, under the licence, provide only the market services or class of market services to which the licence relates and for which each person is authorised under the licence; and

(b) the conditions imposed by the FMA under section 403; and

(c) the conditions imposed by regulations (if any).

(2) The condition in subsection (1)(a) is subject to the limits and restrictions imposed under section 403(3)(a).

(3) The licensee and every authorised body must comply with the conditions imposed on the licensee's licence.

403 When FMA may impose permitted conditions

(1) The FMA may, by written notice to the applicant or licensee,—

(a) impose conditions on a licence when the licence is issued; and

(b) vary, revoke, add to, or substitute any conditions of licence imposed under this section at any time after the licence is issued.

(2) A condition referred to in subsection (1) may only be of a prescribed kind or relate to a prescribed matter (except as set out in subsections (3) to (5)).

(3) A condition referred to in subsection (1) may—

(a) impose limits or restrictions on the services that are covered by the licence (for example, by reference to particular financial products or other financial advice products, issuers, investors, or clients, or classes of financial products or other financial advice products, issuers, investors, or clients, or by reference to any other matters):

(b) impose conditions relating to the requirements referred to in section 396 or 400 (for example, to ensure that those requirements continue to be satisfied and to require verification that those requirements continue to be satisfied):

(c) specify the date of expiry of the licence (the **expiry date**).

(4) In the case of a licence relating to a financial advice service, a condition referred to in subsection (1) may also—

(a) state which types of financial advice may, or may not, be given by the following on behalf of the licensee or an authorised body:

(i) financial advisers in general, a class or classes of financial advisers, or 1 or more particular financial advisers:

(ii) nominated representatives in general, a class or classes of nominated representatives, or 1 or more particular nominated representatives:

(b) authorise the licensee or an authorised body (**P**) to do either or both of the following:

(i) engage an entity to give regulated financial advice to P's retail clients on P's behalf:

(ii) engage an individual through 1 or more interposed persons (as described in section 431E(b)) to give advice to P's retail clients on P's behalf:

(c) if the licence includes an authorisation under paragraph (b), impose limits or restrictions on that authorisation (including, for example, by requiring the entity or an interposed person to be authorised by a licence (whether as licensee or an authorised body) to provide a financial advice service, or to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, or both):

(d) prohibit (whether absolutely, in specified circumstances, or unless specified requirements are met) P from engaging a financial adviser to give regulated financial advice on P's behalf if P knows or ought to know that the financial adviser is also engaged by another financial advice provider to give regulated financial advice on that other provider's behalf:

(e) if P may be an intermediary in relation to the provision of any relevant service or associated product to consumers (as those terms are defined in subpart 6A), impose requirements to ensure that those consumers are treated fairly (and those requirements may relate to any aspect of P's involvement in the provision of those services or products regardless of whether it involves P giving financial advice).

(5) In the case of a licence to act as an administrator of a financial benchmark, a condition referred to in subsection (1) may also impose conditions to achieve the purposes set out in section 448B (for example, to ensure that the benchmark complies with applicable international requirements).

Section 403(2): amended, on 14 March 2021, by section 40(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 403(3)(a): amended, on 15 March 2021, by section 24(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 403(4): inserted, on 15 March 2021, by section 24(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 403(4)(e): inserted, on 31 March 2025, by section 10 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 403(5): inserted, on 14 March 2021, by section 40(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

404 Licensee may apply for variation of conditions

(1) A licensee may apply, in the manner that is specified by the FMA, for the FMA to exercise a power under section 403(1)(b) (for example, to vary a condition that imposes restrictions on the services that can be provided under the licence or to vary the authorised bodies or the market services or class of services that those bodies may provide).

(2) A licensee must provide to the FMA the information that is required by the FMA to assist it in determining the application.

405 Procedure for variation of conditions

The FMA must not exercise a power under section 403(1)(b) (except on an application under section 404), or refuse an application for a variation under section 404, unless—

(a) the FMA gives the licensee no less than 10 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may exercise the power; and

(ii) the reasons why it may exercise the power; and

(b) the FMA gives the licensee or the licensee's representative an opportunity to make written submissions on the matter within that notice period.

406 Consequences of contravening conditions

(1) If a licensee or an authorised body contravenes a condition of a licence, the FMA may exercise a power under subpart 3 (for example, it may require the licensee or authorised body to submit an action plan).

(2) Subsection (1) does not limit subpart 3 of Part 8 (which provides for civil liability that may be imposed in relation to a contravention of a condition imposed by regulations).

406A Effect of condition requiring giver of advice or interposed person to be authorised by licence or registered

(1) This section applies if, under section 403(4)(b) and (c), a licence relating to a financial advice service—

(a) authorises the licensee or an authorised body (**P**) to do either or both of the following:

(i) engage an entity (**E**) to give regulated financial advice to P's retail clients on P's behalf:

(ii) engage an individual through 1 or more interposed persons (**F**) to give advice to P's retail clients on P's behalf; and

(b) includes either or both of the following conditions:

(i) a condition requiring E or F to be authorised by a licence to provide a financial advice service (a **licensing condition**):

(ii) a condition requiring E or F to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) (a **registration condition**).

(2) If the licence includes a licensing condition, for the purpose of enabling compliance with that condition, this Part applies,—

(a) in relation to E, as if E, in giving regulated financial advice on behalf of P, were providing a financial advice service; and

(b) in relation to F, as if F, in engaging individuals to give regulated financial advice on behalf of P, were providing a financial advice service.

(3) If the licence includes a registration condition, for the purpose of enabling compliance with that condition, the FSP Act applies,—

(a) in relation to E, as if E, in giving regulated financial advice on behalf of P, were providing a financial advice service; and

(b) in relation to F, as if F, in engaging individuals to give regulated financial advice on behalf of P, were providing a financial advice service.

(4) This section does not affect the application of this Part or the FSP Act to P.

Section 406A: inserted, on 15 March 2021, by section 25 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Expiry, suspension, or cancellation of licences

407 Duration of licence

(1) A licence continues in force until the close of its expiry date unless sooner cancelled.

(2) If a licensee applies for a new licence no later than 2 months before the expiry date of an existing licence that the new licence is intended to supersede, and the application is not disposed of before the expiry date, the existing licence continues in force until the application is disposed of.

408 When FMA may suspend or cancel licence

The FMA may suspend (for a specified period or until a specified requirement is met and in relation to the licensee, any authorised body or bodies, or all of them) or cancel a licence—

(a) if the licensee, by written notice, requests the FMA to do so; or

(b) if the FMA is satisfied that the licensee or an authorised body has died, is incapacitated, has ceased to exist, or has become subject to an insolvency event; or

(c) in accordance with subpart 3.

409 Effect of expiry, suspension, or cancellation of licence on appointments

(1) The expiry or cancellation of a licence does not, of itself, terminate an appointment held by the licensee or any authorised body (but, if the person continues to hold the appointment and does not obtain a licence, or authorisation under a licence, that covers the appointment, the person may contravene section 388).

(2) If a licence is suspended, the person or persons to whom the suspension relates are taken not to hold, or be authorised by, that licence while the suspension is in effect.

409A Restriction on suspending or cancelling licence to act as financial institution

(1) The FMA must not suspend or cancel a licence that covers the service of acting as a financial institution unless the Reserve Bank has given its consent.

(2) The Reserve Bank may withhold its consent only if the Reserve Bank is satisfied,—

(a) in a case where the licensee is a registered bank or a licensed NBDT, that withholding the consent is necessary for maintaining a sound and efficient financial system:

(b) in a case where the licensee is a licensed insurer, that withholding the consent is necessary for maintaining a sound and efficient insurance sector.

(3) This section does not prevent the FMA from exercising a power under section 403 or 414(2).

Section 409A: inserted, on 31 March 2025, by section 11 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Subpart 3—Monitoring and enforcement of licences

410 Meaning of material change of circumstances

In this subpart, **material change of circumstances**, in relation to a licence, means—

(a) a change that adversely affects the licensee's or an authorised body's capacity to perform the market services covered by the licence in an effective manner; or

(b) a change that means that the requirements referred to in section 396(a) to (g) or 400(1)(a) to (e) or (1A)(a) to (e) are not, or are no longer, satisfied (where those provisions are applied with all necessary modifications as

if references to the applicant or body corporate (or entity) were references to the licensee or authorised body respectively).

Section 410(b): replaced, on 15 March 2021, by section 26 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Reports

411 Licensee must deliver reports to FMA

Every licensee must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, send to the FMA reports that contain the prescribed information.

412 Licensee must report certain matters

(1) Every licensee must ensure that there are in place effective methods for—

(a) monitoring the licensee's and every authorised body's compliance with the market services licensee obligations; and

(b) identifying material changes in circumstances.

(2) Subsection (3) applies if a licensee believes that—

(a) the licensee or an authorised body has contravened, may have contravened, or is likely to contravene a market services licensee obligation in a material respect; or

(b) a material change of circumstances has occurred, may have occurred, or is likely to occur in relation to the licence; or

(c) the information provided under section 395 or 404 is false or misleading in a material particular.

(3) The licensee must, as soon as practicable after the licensee forms the belief referred to in subsection (2), send a report containing details of the belief, the licensee's grounds for the belief, and all other prescribed information—

(a) to the FMA; or

(b) if the licensee is a manager of a registered scheme (other than a restricted scheme),—

(i) to the FMA and the supervisor, if the report is of a contravention or possible contravention of a market services licensee obligation imposed by a condition of the licence; or

(ii) to the supervisor, if the report is of a contravention or possible contravention of any other market services licensee obligation.

413 Restriction on use of report

A report provided by a licensee under section 412 is not admissible as evidence in a criminal proceeding against the licensee, except in a criminal proceeding that concerns the falsity of the report.

FMA's powers in case of contravention of market services licensee obligation, material change, etc

414 FMA's powers in case of contravention of market services licensee obligation, material change, etc

(1) The FMA may exercise a power under subsection (2) if it is satisfied that—

(a) a licensee or an authorised body has materially contravened a market services licensee obligation; or

(b) a material change of circumstances has occurred in relation to a licence; or

(c) the information provided under section 395 or 404 by a licensee is false or misleading in a material particular; or

(d) a licensee or an authorised body is likely to materially contravene a market services licensee obligation or a material change of circumstances is likely to occur in relation to a licence.

(2) The FMA may, by written notice to the licensee or an authorised body and otherwise in the prescribed manner, do 1 or more of the following:

(a) censure the licensee or authorised body (or both):

(b) require the licensee or authorised body (or both) to submit an action plan to the FMA within the time and in the manner specified by the FMA:

(c) give a direction to the licensee or authorised body (or both).

(3) The FMA may also, by written notice to the licensee and otherwise in the prescribed manner, suspend (for a specified period or until a specified requirement is met and in relation to the licensee, any authorised body or bodies, or all of them) or cancel the licence of the licensee if it is satisfied that—

(a) subsection (1)(a), (b), or (c) applies; and

(b) the licensee or an authorised body does not meet, or no longer meets, the requirements referred to in section 396(a) to (g) or 400(1)(a) to (e) or (1A)(a) to (e) (where those provisions are applied with all necessary modifications as if references to the applicant or body corporate (or entity) were references to the licensee or authorised body respectively).

(4) Section 403 also provides for the FMA to vary, revoke, add to, or substitute any conditions of a licence (for example, by removing an authorisation for an authorised body).

Section 414(3)(b): replaced, on 15 March 2021, by section 27 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

415 Procedure for exercising powers

(1) The FMA must not exercise a power under section 414 unless—

(a) the FMA gives the licensee or an authorised body no less than 10 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may exercise the power; and

(ii) the reasons why it may exercise the power; and

(b) the FMA gives the licensee or authorised body or the licensee's or authorised body's representative an opportunity to make written submissions on the matter within that notice period.

(2) The FMA must, before exercising a power under section 414(3), consider whether, in the circumstances, it would be more appropriate to exercise a power under section 414(2).

416 Notice requirements

(1) A notice under section 414(2) or (3) must—

(a) state the FMA's reasons for giving the notice; and

(b) in the case of section 414(3), specify the date on which the suspension or cancellation takes effect.

(2) The FMA must give a copy of the notice to every prescribed person (if any).

Action plan

417 Action plan

If a notice under section 414 requires a person to submit an action plan to the FMA, the person must, as soon as practicable but in any case within the time specified by the FMA and otherwise in the manner specified by the FMA, submit to the FMA an action plan that specifies—

(a) the actions, as the case may be, that the person proposes to take to—

(i) remedy or avoid the contravention or likely contravention of the market services licensee obligation; or

(ii) avoid any further contravention of the market services licensee obligation; or

(iii) mitigate or avoid any adverse effects or changes arising, or likely to arise, from the material change of circumstances; or

(iv) correct the false or misleading information or mitigate the adverse consequences of providing the false or misleading information (or both); and

(b) the date by which each step will be taken.

418 Approval, amendment, or rejection of action plan

(1) If a person submits an action plan, the FMA may—

(a) approve the action plan; or

(b) require the person to amend the action plan and resubmit it to the FMA by a specified date for approval or rejection; or

(c) reject the action plan.

(2) If the FMA requires the person to amend an action plan provided to the FMA, the person must, within the time specified by the FMA, provide an amended action plan that addresses the matter required to be amended.

(3) If the FMA approves the action plan (whether as first provided or after amendment), the person must comply with the action plan.

(4) An action plan that has been approved by the FMA may be varied at any time by agreement between the person and the FMA.

419 Consequences of failure to submit action plan, rejection of action plan, or failure to comply with action plan

(1) The FMA may exercise a power under section 414(2)(a) or (c) or (3) if—

(a) a person fails to submit an action plan or amended action plan within the time and in the manner specified by the FMA; or

(b) the FMA rejects an action plan; or

(c) the FMA is satisfied that an action plan has not been complied with.

(2) A contravention of section 417 or 418 may also give rise to civil liability (*see* subpart 3 of Part 8).

Directions

420 Directions

(1) If a notice under section 414 gives a direction to a person, the notice must specify—

(a) the actions, as the case may be, that the person must take to—

(i) remedy or avoid the contravention or likely contravention of the market services licensee obligation; or

(ii) avoid any further contravention of the market services licensee obligation; or

(iii) mitigate or avoid any adverse effects or changes arising, or likely to arise, from the material change of circumstances; or

(iv) correct the false or misleading information or mitigate the adverse consequences of providing the false or misleading information (or both); and

(b) the date by which each step must be taken.

(2) The person to whom the direction is given must comply with the direction.

421 Consequences of failure to comply with directions

(1) A person that refuses or fails, without reasonable excuse, to comply with a direction under section 414(2)(c) commits an offence and is liable on conviction to a fine not exceeding $300,000.

(2) If the FMA is satisfied that a direction under section 414(2)(c) has not been complied with, the FMA may (without limitation) exercise a power under section 414(2)(a) or (3).

(3) A contravention of section 420 may also give rise to civil liability (*see* subpart 3 of Part 8).

Subpart 4—Disclosure obligations for certain services provided to retail investors

422 Application of subpart

This subpart applies to a licensee or an authorised body in respect of any of the following services provided under a licence:

(a) the provision of a discretionary investment management service that is a retail service:

(b) the provision of a prescribed intermediary service (but only if the regulations state that this subpart applies).

423 Disclosure must be made to retail investor

A licensee or an authorised body that provides a service to which this subpart applies must ensure that a disclosure statement relating to the service is provided to each retail investor who receives the service, in accordance with this Act and the regulations.

424 Timing and method of disclosure

(1) The disclosure statement required by section 423 must be provided in accordance with subsection (2) (unless subsection (3) applies),—

(a) in the case of a discretionary investment management service, before the investment authority is granted by the retail investor; or

(b) in the case of a prescribed intermediary service, at the prescribed time.

(2) The disclosure statement must be given to the retail investor or delivered or sent to the retail investor's last known address or an address (including an electronic address) specified by the investor for that purpose.

(3) If it is not practicable to comply with subsection (1) or (2) by reason of any prescribed circumstance, the licensee or authorised body must, under section 423,—

(a) give the minimum prescribed disclosure statement in accordance with the regulations; and

(b) provide the disclosure statement that would otherwise be required under that section to the retail investor as soon as practicable afterwards.

425 Purpose of disclosure statement

The purpose of a disclosure statement under section 423 is to provide certain information that is likely to assist a retail investor to decide—

(a) whether or not to proceed, or continue to proceed, with the service by the licensee or authorised body in question; or

(b) to change any instruction in relation to the provision of that service by the licensee or authorised body.

426 Disclosure statement

(1) A disclosure statement may be combined with other disclosure statements under section 423 (and may be combined with other disclosure statements under this Act or the Banking (Prudential Supervision) Act 1989) except in the prescribed circumstances.

(2) A disclosure statement must—

(a) be in writing; and

(b) state the date as at which the disclosure statement is prepared; and

(c) state the name and contact details of the licensee or authorised body providing the service; and

(d) contain all of the information that it is required to contain by the regulations; and

(e) be accompanied by all the documents that the regulations require it to be accompanied by; and

(f) comply with all other requirements of the regulations relating to the content of the disclosure statement.

(3) The disclosure statement must comply with all requirements of the regulations relating to the form and presentation of the statement.

(4) Subsection (2) does not apply to the minimum prescribed disclosure statement referred to in section 424(3)(a).

Section 426(1): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 426(1): amended, on 15 March 2021, by section 28 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

426A Further prescribed information to be made available

(1) A licensee or an authorised body that provides the service must,—

(a) at the request of a prescribed person or at the prescribed times or on the occurrence of the prescribed events, make available to the prescribed

person the information that is required to be made available under this section by the regulations; and

(b) at the prescribed times or on the occurrence of the prescribed events, make publicly available the information that is required to be made publicly available by the regulations.

(2) The information must be made available in the prescribed manner.

Section 426A: inserted, on 30 March 2018, by section 75 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

427 False or misleading statements and omissions

(1) Subsections (2) to (5) apply if—

(a) there is—

(i) a statement in a disclosure statement that is false or misleading or is likely to mislead; or

(ii) an omission from a disclosure statement of information that is required to be contained in the disclosure statement by the regulations; and

(b) the statement or omission is materially adverse from the point of view of a retail investor.

(2) The licensee or authorised body must not provide the disclosure statement to a person under section 423.

(3) If the disclosure statement has already been provided to a person (**A**), the licensee or authorised body must not continue to provide the service to A—

(a) in the prescribed circumstances (if any); or

(b) if the licensee or authorised body fails to comply with any prescribed conditions.

(4) If the licensee or authorised body continues to provide the service to A, the licensee or authorised body must provide to A a new disclosure statement that is not defective in terms of subsection (1)(a) and (b).

(5) The new disclosure statement under subsection (4) must be provided in the prescribed manner (if any).

(6) A person must not make available to any person or the public any information under section 426A (the **further disclosure**) if—

(a) there is—

(i) a statement in the further disclosure that is false or misleading or is likely to mislead; or

(ii) an omission from the further disclosure of information that is required to be contained in the further disclosure by this Act or the regulations; and

(b) the statement or omission is materially adverse from the point of view of a retail investor.

(7) *See* section 511 (offence to knowingly or recklessly contravene subsection (2) or (6)).

Section 427: replaced, on 30 March 2018, by section 76 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

428 Miscellaneous provisions relating to false or misleading statements and omissions

(1) For the purposes of section 427, a statement about a future matter (including the doing of, or refusing to do, an act) must be taken to be misleading if the person making the statement does not have reasonable grounds for making it.

(2) Subsection (1) does not limit the meaning of a reference to a misleading statement.

(3) Section 427 does not limit sections 423 to 426A.

Section 428: replaced, on 30 March 2018, by section 77 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Subpart 5—Requirement for certain services to be provided under client agreements

429 Application of subpart

This subpart applies to a licensee or an authorised body in respect of any of the following services provided under the licence:

(a) the provision of a discretionary investment management service that is a retail service:

(b) acting as a derivatives issuer in respect of a derivative offered under a regulated offer:

(c) the provision of a prescribed intermediary service (but only if the regulations state that this subpart applies).

430 Need for client agreement

(1) The licensee or authorised body that provides the service to an investor must ensure that there is a client agreement governing that service.

(2) The client agreement must be entered into,—

(a) in the case of a discretionary investment management service, at the same time as or before the investment authority is granted by the investor; and

(b) in the case of a derivative offered under a regulated offer, before the derivative is issued to the investor; and

(c) in the case of a prescribed intermediary service, at the prescribed time.

431 Contents, form, and effect of client agreement

(1) A client agreement required by this subpart must provide adequately for the matters prescribed by the regulations.

(2) The client agreement is treated as containing any provision that is implied into it by or under this Act.

(3) The client agreement must be in writing and be contained in 1 or more documents that are legally enforceable as between the retail investor and the licensee or authorised body.

(4) The client agreement has no effect to the extent that it contravenes, or is inconsistent with, this Act or any term implied into it by or under this Act.

Subpart 5A—Additional regulation of financial advice and financial advice services

Subpart 5A: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Preliminary matters

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431A Overview of financial advice and financial advice services regime

(1) This subpart and other parts of this Act regulate financial advice and financial advice services as follows:

(a) a person gives financial advice if the person makes a recommendation, gives an opinion, or provides financial planning of a kind described in section 431C(1). The advice is regulated financial advice if it is given in the ordinary course of a business and is not excluded under clauses 8 to 18 of Schedule 5 (*see* section 431C(3)):

(b) a person must not carry on a business of giving regulated financial advice unless the person is authorised by a market services licence or exempt from the licensing requirement (*see* sections 388(ba), 389(2), and 431D). A person may be authorised as a licensee or as an authorised body (*see* section 400):

(c) there are limitations on who can give regulated financial advice on behalf of a financial advice provider to a retail client (*see* section 431F). This section is a Part 6 services provision, contravention of which may give rise to civil liability (*see* section 449):

(d) conditions of the provider's licence may also limit the types of advice that may be given by financial advisers or nominated representatives (*see* sections 403(4)(a) and 546(1)(d)(iv)):

(e) people who give financial advice, financial advice providers, and any interposed persons are subject to the duties set out in sections 431I to 431R:

(f) section 431H sets out who is responsible if those duties are contravened and the nature of the person's liability. Sections 431I to 431R are also Part 6 services provisions under section 449.

(2) This section is a guide only to the general scheme and effect of this Act in relation to financial advice and financial advice services.

Section 431A: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431B Additional purpose of subpart

(1) This subpart has the additional purpose (in addition to those set out in sections 3 and 4) of regulating the giving of financial advice and provision of financial advice services with a view to ensuring—

(a) the availability of financial advice for persons seeking that advice; and

(b) the quality of financial advice and financial advice services.

(2) This section does not limit section 3 or 4.

Section 431B: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Interpretation

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431C Meaning of financial advice and regulated financial advice

(1) A person gives **financial advice** if the person—

(a) makes a recommendation or gives an opinion about acquiring or disposing of (or not acquiring or disposing of) a financial advice product; or

(b) makes a recommendation or gives an opinion about switching funds within a managed investment scheme; or

(c) designs an investment plan for a person that—

(i) purports to be based on—

(A) an analysis of the person's current and future overall financial situation (including investment needs); and

(B) the identification of the person's investment goals; and

(ii) includes 1 or more recommendations or opinions on how to realise 1 or more of those goals; or

(d) provides financial planning of a kind prescribed by the regulations.

(2) However, a person does not give financial advice merely by doing 1 or more of the things set out in clause 7 of Schedule 5.

(3) Financial advice is **regulated financial advice** if—

(a) it is given in the ordinary course of a business; and

(b) it is not excluded under any of clauses 8 to 18 of Schedule 5.

(4) Subsections (1) and (3) are subject to a declaration under section 562(1)(gb).

Section 431C: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431D When financial advice service is provided

(1) A person (**P**) provides a **financial advice service** if, in the ordinary course of P's business,—

(a) P engages 1 or more other persons to give regulated financial advice to P's clients on P's behalf; or

(b) P gives regulated financial advice to P's clients on P's own account.

(2) Subsection (1) is subject to a declaration under section 562(1)(gc).

Example

ABC Limited (**ABC**) is a firm that gives a range of investment advice to its clients. Some of this advice is given through its employees. Some of this advice is given through its Internet site. ABC provides a financial advice service (and must be licensed or be an authorised body under a licence (*see* section 388(ba))). ABC is also required to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**).

As part of ABC's business, Susan is employed by ABC to give financial advice to ABC's clients on its behalf. Although Susan is giving advice, she is not giving it on her own account, so she is not providing a financial advice service (and does not need to hold a licence).

Under the conditions of ABC's licence, the type of service that Susan gives may not be given by a nominated representative. The type of service can be given only by a financial adviser (that is, a person who is registered under the FSP Act in relation to a financial advice service). *See* section 22C of the FSP Act, which allows Susan to register even though, as an employee, she is not in the business of providing financial advice services.

If Susan were to leave ABC and set up business giving financial advice on her own account, she would be providing a financial advice service and would therefore be a financial advice provider (who must, therefore, hold a licence).

Section 431D: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431E Meaning of engaged

A person (**A**) is **engaged** by another person (**P**) if—

(a) A is engaged directly by P (for example, if A is an employee or a contractor of P); or

(b) A is engaged indirectly through 1 or more interposed persons (for example, if A is an employee of another person who is a contractor of P).

Section 431E: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Limitations on giving regulated financial advice and holding out

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431F Limitation on who can give regulated financial advice to retail clients on behalf of financial advice provider

(1) A person (**A**) must not give regulated financial advice on behalf of a financial advice provider (**P**) to a retail client unless—

(a) both of the following apply:

(i) A is a financial adviser or a nominated representative nominated under section 431T by P:

(ii) A is engaged directly by P (as described in section 431E(a)); or

(b) all of the following apply:

(i) A is a financial adviser or a nominated representative nominated under section 431T by P:

(ii) A is engaged by P indirectly through 1 or more interposed persons (as described in section 431E(b)):

(iii) the conditions on P's licence authorise P to engage A through those interposed persons to give the advice; or

(c) both of the following apply:

(i) A is an entity:

(ii) the conditions on P's licence authorise P to engage A to give the advice.

(2) A financial advice provider or an interposed person must not allow a person engaged by the provider or person to give advice in contravention of subsection (1).

(3) In this section, **P's licence** means the licence under which P is authorised (as licensee or an authorised body) to provide the financial advice service.

Section 431F: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431G Prohibitions on holding out in relation to giving financial advice

A person must not hold out that the person, or another person,—

(a) is a financial advice provider, a financial adviser, or a nominated representative if that is not the case; or

(b) is lawfully able to do any of the following if that is not the case:

(i) provide a financial advice service:

(ii) provide a particular kind of financial advice service:

(iii) give regulated financial advice:

(iv) give a particular kind of regulated financial advice:

(v) give regulated financial advice about a particular financial advice product or a particular kind of financial advice product:

(vi) give regulated financial advice to retail clients, to wholesale clients, or to retail and wholesale clients:

(vii) provide a financial advice service, or give regulated financial advice, in particular circumstances.

Section 431G: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Duties on persons giving regulated financial advice

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431H Liability for duties

(1) Sections 431I to 431P (the **duty provisions**) impose duties on persons who give regulated financial advice to clients.

(2) Sections 431Q and 431R impose additional duties on financial advice providers and interposed persons that engage others to give regulated financial advice.

(3) If a financial advice provider contravenes a duty provision or section 431Q or 431R, the provider—

(a) may be civilly liable for the contravention:

(b) is not liable to disciplinary action or a deregistration or suspension order:

(c) may face consequences under subpart 3 (which relates to enforcement of licences).

(4) If a person (**A**) who gives advice on behalf of a financial advice provider (**P**) contravenes a duty provision, liability is as follows:

(a) if A is a financial adviser, A—

(i) is not civilly liable for the contravention; but

(ii) may be subject to either or both of the following:

(A) disciplinary action:

(B) a deregistration or suspension order:

(b) if A is an individual but not a financial adviser, A is not civilly liable for the contravention:

(c) if A is an entity, A may be civilly liable for the contravention:

(d) P—

(i) may be civilly liable for contravening the duty provision as a result of the operation of sections 535 and 536 (which relate to the attribution of state of mind and conduct) (but *see also* section 431U, which limits when pecuniary penalty orders may be made); and

(ii) may be liable for contravening section 431Q:

(e) if A was engaged by P indirectly through 1 or more interposed persons (as described in section 431E(b)), each interposed person—

(i) may be civilly liable for contravening the duty provision as a result of the operation of sections 535 and 536 (which relate to the attribution of state of mind and conduct); and

(ii) may be liable for contravening section 431Q.

(5) If an interposed person (as described in section 431E(b)), contravenes section 431Q or 431R, that person—

(a) may be civilly liable for the contravention:

(b) is not liable to disciplinary action or a deregistration or suspension order:

(c) if they are a licensee or an authorised body, may face consequences under subpart 3 (which relates to enforcement of licences).

(6) The fact that an interposed person may be liable under subsection (4)(e) or (5) does not affect the liability of any other interposed person or of the provider.

(7) This section—

(a) does not affect any liability that a person may have for a contravention as a person who is involved in the contravention (*see* section 533); and

(b) does not affect any criminal liability that a person may have for a contravention (for example, under section 511 for contravening section 431P); and

(c) does not limit the exercise by the FMA or a court of any of its powers under Part 8 other than subpart 3.

(8) In this section,—

civil liability, in relation to the contravention of a provision that is a Part 6 services provision (*see* section 449), means civil liability under subpart 3 of Part 8 for that contravention

deregistration or suspension order means an order under section 469(2) in relation to a person's registration under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

disciplinary action, in relation to a contravention of a provision, means disciplinary action under Part 5 of Schedule 5 for the conduct constituting the contravention.

Section 431H: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431I Duty to meet standards of competence, knowledge, and skill

A person must not give regulated financial advice to a retail client unless the person meets—

(a) the standards of competence, knowledge, and skill (including any continuing professional development requirements) provided in the code of conduct for giving the advice; and

(b) any prescribed eligibility criteria in relation to the giving of the advice.

Section 431I: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431J Duty to ensure client understands nature and scope of advice

A person must not give regulated financial advice to a retail client unless the person has taken reasonable steps to ensure that the client understands the nature and scope of the advice being given, including any limitations on the nature and scope of the advice.

Section 431J: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431K Duty to give priority to client's interests

(1) This section applies if—

(a) a person (**A**) gives regulated financial advice to a client (**C**); and

(b) A knows, or ought reasonably to know, that there is a conflict between—

(i) C's interests; and

(ii) A's own interests or the interests of a person connected with the giving of the advice.

(2) In giving the advice, A must give priority to C's interests by taking all reasonable steps to ensure that the advice is not materially influenced by any of the following:

(a) A's own interests:

(b) the interests of a person connected with the giving of the advice.

(3) In this section, each of the following is a person **connected with the giving of the advice**:

(a) a person associated with A:

(b) if A gives the advice on behalf of a financial advice provider,—

(i) the financial advice provider:

(ii) a person associated with the financial advice provider:

(iii) if A is engaged by the provider through 1 or more interposed persons,—

(A) an interposed person:

(B) a person associated with an interposed person.

Section 431K: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431L Duty to exercise care, diligence, and skill

A person who gives regulated financial advice to a client must exercise the care, diligence, and skill that a prudent person engaged in the occupation of giving regulated financial advice would exercise in the same circumstances.

Compare: 2008 No 91 s 33

Section 431L: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431M Duty to comply with code of conduct

A person who gives regulated financial advice to a retail client must comply with the standards of ethical behaviour, conduct, and client care required by the code of conduct.

Compare: 2008 No 91 s 37

Section 431M: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431N Duty relating to offer that contravenes Act or regulations

(1) A person (**A**) who gives regulated financial advice to a client (**C**) must not recommend that C acquire a financial product if—

(a) the product is a contravening product; and

(b) A knows, or ought reasonably to know, that the product is a contravening product.

(2) A financial product is a **contravening product**—

(a) if the product is being offered under a regulated offer and that offer contravenes this Act or the regulations; or

(b) if,—

(i) when the product was offered, the offer was a regulated offer and contravened this Act or the regulations; and

(ii) the contravention has not been remedied.

Section 431N: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431O Duty to make prescribed information available

(1) A person who gives regulated financial advice to a client must make the prescribed information available in the prescribed manner when required to do so by the regulations.

(2) The regulations may (without limitation) require information to be made available—

(a) at the request of a prescribed person, at prescribed times, or when a prescribed event occurs:

(b) to a particular person or persons or to the public.

Examples

ABC Limited (**ABC**) provides investment advice to a client (**C**).

ABC must (if required by the regulations) provide information to C when the service is first provided (for example, about fees, material interests, relationships and associations, the type of advice, dispute resolution arrangements, and other matters relevant to the performance of the service).

ABC must also (if required by the regulations) provide ongoing information to C.

Compare: 2008 No 91 ss 21–31

Section 431O: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431P False or misleading statements and omissions

(1) A person must not make information available under section 431O if—

(a) there is—

(i) a statement in the information that is false or misleading or is likely to mislead; or

(ii) an omission from the information that is required by the regulations; and

(b) the statement or omission is materially adverse from the point of view of the client.

(2) For the purposes of this section, information about a future matter (including the doing, or not doing, of an act) is misleading if the person making the statement does not have reasonable grounds for making it.

(3) Subsection (2) does not limit the meaning of a reference to a misleading statement.

(4) This section does not limit section 431O.

(5) *See* section 511 (offence to knowingly or recklessly contravene this section).

Compare: 2008 No 91 s 34

Section 431P: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Additional duties on financial advice providers and interposed persons that engage others to give advice

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431Q Persons engaging others to give advice must ensure compliance with duties

(1) A financial advice provider that engages another person (**A**) to give regulated financial advice must take all reasonable steps to ensure that A complies with sections 431I to 431P.

(2) If A is engaged by the provider indirectly through 1 or more interposed persons (as described in section 431E(b)), each of those interposed persons must also take all reasonable steps to ensure that A complies with sections 431I to 431P.

Section 431Q: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431R Duties of persons who engage nominated representatives

(1) A financial advice provider (**P**) that engages 1 or more nominated representatives to give regulated financial advice on P's behalf must have in place processes and controls that—

(a) limit the nature and scope of the advice that the nominated representatives give; and

(b) allow P to regulate what advice is given and the circumstances in which it is given.

(2) The processes and controls must ensure that the advice given by a nominated representative is commensurate with their competence, knowledge, and skill.

(3) P and any interposed person through whom any of the nominated representatives are engaged must—

(a) ensure that the nominated representatives comply with P's processes and controls; and

(b) monitor the nominated representatives and the advice they give to ensure that—

(i) those processes and controls are effective and are complied with; and

(ii) the nominated representatives comply with their duties under this subpart.

(4) Neither the provider nor any interposed person may give, or offer to give, to any of its nominated representatives any kind of payment or other incentive that is intended to encourage, or is likely to have the effect of encouraging, a nominated representative to engage in conduct that contravenes any duty under sections 431I to 431P.

Section 431R: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Miscellaneous provisions

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431S Protection of individual who reports breach

(1) This section applies if an individual who gives regulated financial advice (**A**)—

(a) reasonably believes that a person has contravened a provision of this Act that relates to the giving of financial advice or the provision of a financial advice service; and

(b) reports that belief to the FMA.

(2) If A makes the report in good faith,—

(a) no civil, criminal, or disciplinary proceedings may be brought against A as a result of A having made the report; and

(b) no person may terminate A's employment or appointment as a result of A having made the report; and

(c) no tribunal, body, or authority that has jurisdiction in respect of A's professional conduct may make an order against, or do any act in relation to, A as a result of A having made the report.

Section 431S: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431T Nomination of nominated representatives

(1) A financial advice provider (**P**) may nominate an individual (**A**) as a nominated representative of P if—

(a) P holds, or is authorised to provide a service under, a licence that covers financial advice services; and

(b) A—

(i) is engaged by P to give financial advice on P's behalf; and

(ii) is not a financial adviser or a financial advice provider; and

(iii) is not a nominated representative of any other financial advice provider.

(2) However, subsection (1)(b)(iii) does not prevent an individual being nominated as a nominated representative of 2 or more financial advice providers if—

(a) the providers are authorised to provide a financial advice service under the same licence; or

(b) the nomination of the same individual as a nominated representative of 2 or more providers is authorised by conditions on the providers' licences

and those conditions are related to an arrangement referred to in section 403(4)(b)(ii).

(3) A nomination must be made in the manner (if any) specified by the FMA.

(4) A nomination—

(a) takes effect on the date it is made or any later date specified in it; and

(b) remains in force until the first to occur of the following:

(i) P revokes the nomination by giving written notice to A:

(ii) P ceases to comply with subsection (1)(a):

(iii) A ceases to comply with subsection (1)(b).

(5) A financial advice provider must keep an up-to-date record of its nominated representatives in the prescribed manner.

Section 431T: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431U Limitation on pecuniary penalty orders against financial advice providers

(1) This section applies if—

(a) a financial adviser contravenes a duty provision (as defined in section 431H(1)); and

(b) the financial advice provider on whose behalf the financial adviser was acting is civilly liable for the contravention of a duty provision (as described in section 431H(4)(d)(i)); and

(c) the financial advice provider took all reasonable steps to ensure that the financial adviser did not contravene the duty provision.

(2) A pecuniary penalty order may not be made under section 489 against the financial advice provider in relation to the contravention of the duty provision.

Section 431U: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 5B—Regulation of client money or property services

Subpart 5B: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431V Overview of client money or property services regime

(1) This subpart and other legislation regulate client money or property services as follows:

(a) the Financial Service Providers (Registration and Dispute Resolution) Act 2008 provides for when a person in the business of providing the service must be registered under that Act and when that provider must be a member of an approved dispute resolution scheme. The provider is not required to hold a market services licence:

(b) a person who provides the service must—

(i) disclose information to retail clients under section 431X; and

(ii) exercise care, diligence, and skill under section 431ZA; and

(iii) handle client money and property in accordance with sections 431ZC to 431ZH, including holding the money or property on trust (if those duties apply under section 431Z(2)):

(c) section 431ZI sets out who is responsible if those duties are contravened.

(2) This section is a guide only to the general scheme and effect of this subpart and other legislation in relation to client money or property services.

Section 431V: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Interpretation

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431W Meaning of client money or property service and certain other terms

(1) A **client money or property service**—

(a) is the receipt of client money or client property by a person and the holding, payment, or transfer of that client money or client property; and

(b) includes a custodial service.

(2) A **custodial service** is the holding of client money or client property by a person (**A**) in trust for, or on behalf of, a client (**C**), or another person nominated by C, under an agreement between A and C or between A and another person with whom C has an agreement (whether or not there are also other parties to the agreement).

(3) The mere transmission of a non-transferable instrument payable to another person is not a client money or property service.

(4) A client money or property service is a **regulated client money or property service** if it is not excluded under any of clauses 19 to 23 of Schedule 5.

(5) In this subpart,—

client money means money—

(a) received in connection with acquiring, holding, or disposing of a financial advice product or otherwise in connection with a financial advice product; and

(b) received from, or on account of, a client by a person (**A**) (and not on A's own account)

client property means property (other than money) to which the following apply:

(a) the property is a financial advice product, is a beneficial interest in a financial advice product, or is received in connection with a financial advice product; and

(b) the property is received from, or on account of, the client by a person (**A**) (and not on A's own account)

provider means a provider of client money or property services.

Compare: 2008 No 91 s 77B

Section 431W: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Disclosure obligations for services for retail clients

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431X Provider must make disclosure before receiving client money or client property from retail client

A person who provides a regulated client money or property service to a retail client must, in the prescribed manner, disclose the prescribed information to the retail client—

(a) before receiving client money or client property from or on behalf of the client; or

(b) if not practicable before, as soon as practicable after receiving client money or client property from or on behalf of the client.

Compare: 2008 No 91 s 77E

Section 431X: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431Y False or misleading statements and omissions

(1) A person must not provide information under section 431X if—

(a) there is—

(i) a statement in the information that is false or misleading or is likely to mislead; or

(ii) an omission from the information that is required by the regulations; and

(b) the statement or omission is materially adverse from the point of view of a client.

(2) For the purposes of this section, information about a future matter (including the doing, or not doing, of an act) is misleading if the person making the statement does not have reasonable grounds for making it.

(3) Subsection (2) does not limit the meaning of a reference to a misleading statement.

(4) This section does not limit section 431X.

(5) *See* section 511 (offence to knowingly or recklessly contravene this section).

Section 431Y: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Conduct obligations

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431Z Application of conduct obligations

(1) Sections 431ZA and 431ZB apply to all regulated client money or property services.

(2) Sections 431ZC to 431ZH—

(a) apply to regulated client money or property services provided to a retail client; and

(b) apply to custodial and other regulated client money or property services provided to every investor under a retail service of a DIMS licensee (as provided by section 446); and

(c) otherwise apply to client money or property services provided to a wholesale client only if provided by the regulations; and

(d) do not apply to a broker within the meaning of the Insurance Intermediaries Act 1994 in relation to any money to which section 14 or 15 of that Act applies.

Compare: 2008 No 91 s 77J

Section 431Z: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZA Provider must exercise care, diligence, and skill

A provider must, when providing a regulated client money or property service, exercise the care, diligence, and skill that a prudent person engaged in the business of providing the service would exercise in the same circumstances.

Compare: 2008 No 91 s 77K

Section 431ZA: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZB Provider must not receive client money if offer contravenes Act or regulations

(1) A provider must not receive client money or client property from a person for the acquisition of a financial product if—

(a) the product is a contravening product; and

(b) the provider knows, or ought reasonably to know, that the product is a contravening product.

(2) A financial product is a **contravening product**—

(a) if the product is being offered under a regulated offer and that offer contravenes this Act or the regulations; or

(b) if,—

(i) when the product was offered, the offer was a regulated offer and contravened this Act or the regulations; and

(ii) the contravention has not been remedied.

Compare: 2008 No 91 s 77O

Section 431ZB: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Obligations for handling client money and client property

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZC Provider must pay client money into separate trust account and hold client property on trust

(1) A provider who receives client money or client property, as part of a client money or property service,—

(a) must hold the client money or client property, or ensure the client money or client property is held, on trust for the client; and

(b) must ensure that the client money is paid promptly into a bank in New Zealand (or into any other prescribed entity) to—

(i) a trust account of the provider or of a related body corporate specified in the regulations; or

(ii) if section 445 applies, a trust account of a person permitted to hold the money under that section.

(2) A provider must ensure that the client money and client property are held separate from money or property held by or for the provider, or other person referred to in subsection (1)(b)(i) or (ii), on its own account.

(3) However,—

(a) subsection (2) does not apply in the prescribed circumstances; and

(b) money or property that is not held separate from client money or client property—

(i) must be treated as client money or client property for all or any purposes if the regulations so provide:

(ii) must be separated from client money or client property if required by the regulations or may be so separated if permitted by the regulations.

(4) A provider must comply with any prescribed duties and other requirements in relation to the client money and client property held on trust under this section.

Compare: 2008 No 91 s 77P

Section 431ZC: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZD Provider must account for client money and client property

A provider who receives or holds client money or client property on trust for a client must account properly, or ensure that account is properly made, to the client for that client money or client property.

Compare: 2008 No 91 s 77Q

Section 431ZD: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZE Provider must keep records of client money and client property

(1) A provider who receives or holds client money on trust for a client must keep, or ensure that there are kept, trust account records that disclose clearly the position of the client money in the trust account.

(2) A provider who receives or holds client property on trust for a client must keep, or ensure that there are kept, records that—

(a) identify the client property; and

(b) show the date when the client property was received; and

(c) if the client property has been disposed of, show when the client property was disposed of and to whom.

(3) A provider must also keep all other prescribed records.

(4) A provider must—

(a) keep the records required by this section, or ensure that they are kept, in a manner that enables those records to be conveniently and properly audited, reviewed, or inspected; and

(b) comply with the prescribed requirements (if any) relating to those records and their audit, review, or inspection.

Compare: 2008 No 91 s 77R

Section 431ZE: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZF Provider must report on client money and client property

(1) A provider must, in the prescribed circumstances, provide confirmation information to a client or other prescribed persons in respect of client money or client property received or held on behalf of the client.

(2) The confirmation information must be provided in the prescribed manner.

(3) In this section, **confirmation information** means the information relating to the client money or client property, or transactions relating to it, that is prescribed.

Compare: 2008 No 91 s 77RA

Section 431ZF: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZG Restrictions on use of client money and client property

A person must not use or apply client money or client property received or held on trust for a client by a provider in any way except—

(a) as expressly directed by the client (either generally or specifically); or

(b) in accordance with section 431ZC (which relates to payment of client money into a trust account).

Compare: 2008 No 91 s 77S

Section 431ZG: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZH Protection of client money and client property held on trust

(1) The client money or client property that is received or held by a provider on trust for a client—

(a) is not available for the payment of the debts owing to any other creditor of the provider; and

(b) is not liable to be attached or taken in execution under the order or process of any court at the instance of another creditor of the provider.

(2) Nothing in section 431ZG or this section takes away or affects any lawful lien or claim that a provider who holds client money or client property has against the client money or client property.

Compare: 2008 No 91 s 77T

Section 431ZH: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Persons acting in course of business of employers or principals

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZI Who is responsible for obligations

(1) If a client money or property service is provided by a person (**A**) on behalf of the business of another person (**B**), B (and not A) is treated as the provider of the service having the obligations under this subpart.

(2) This section does not affect the liability of A or B under any other Act or rule of law for A's actions.

Compare: 2008 No 91 s 77U

Section 431ZI: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Application of Trusts Act 2019

Heading: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

431ZJ Application of Trusts Act 2019

(1) This section applies to a trust constituted (or to be constituted) for the purposes of section 431ZC.

(2) The following provisions of the Trusts Act 2019 do not apply to a trust referred to in subsection (1):

- (a) section 29 (general duty of care):
- (b) section 39 (adviser must alert settlor to modification or exclusion of default duty):
- (c) sections 45 to 48 (documents to be kept by trustees):
- (d) sections 49 to 55 (giving information to beneficiaries):
- (e) section 56 (general powers of trustee):
- (f) section 72 (trustee's liability for acts of delegate limited):
- (g) sections 81 to 85 (trustees' indemnities):
- (h) sections 142 to 148 (alternative dispute resolution):
- (i) sections 153 to 158 (investigation of condition and accounts of certain trust property).

(3) If this section commences before the commencement of the Trusts Act 2019 under section 2(1) of that Act, this section applies only on or after the commencement of that Act.

Section 431ZJ: inserted, on 15 March 2021, by section 29 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 6—Additional regulation of discretionary investment management services

432 Application of subpart

This subpart applies to—

- (a) a DIMS licensee in respect of the provision of a discretionary investment management service that is a retail service under a licence:
- (b) a person who acts as a custodian of investor money or investor property under a discretionary investment management service of that kind.

432A Meaning of discretionary investment management service and related terms

(1) In this Act, a person (**A**) provides a **discretionary investment management service** (a **DIMS**) if—

- (a) A—

(i) decides which financial products to acquire or dispose of on behalf of an investor (**B**); and

(ii) in doing so, is acting under an authority granted to A to manage some or all of B's holdings of financial products; or

(b) A gives financial advice in the ordinary course of, and incidentally to, providing a discretionary investment management service under paragraph (a) (for example, as to the appropriate scope of an investment authority).

(2) In determining whether A has an authority under subsection (1)(a)(ii), it does not matter if B has the right to be consulted on, or to countermand, A's decisions.

(3) In this Act,—

DIMS licensee means a person that acts as a provider of a discretionary investment management service under a licence under this Part

investment authority means, in relation to a discretionary investment management service, the authority granted by an investor to manage some or all of an investor's holdings of financial products under the service

provider of a discretionary investment management service means a person who is in the business of providing a discretionary investment management service.

Section 432A: inserted, on 15 March 2021, by section 30 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Duties of DIMS licensee

433 DIMS licensee's duties

(1) A DIMS licensee must—

(a) act honestly in providing the service; and

(b) in exercising any powers or performing any duties as a DIMS licensee under the client agreement or investment authority for the service,—

(i) act in the best interests of the investors using the service and treat those investors equitably (if the service is provided to a class of investors); and

(ii) act in the best interests of the particular investor using the service (if the service is provided to only that investor); and

(c) not make use of information acquired through being the DIMS licensee in order to—

(i) gain an improper advantage for itself or any other person; or

(ii) cause detriment to the investors using the service.

(2) A DIMS licensee must provide the service in accordance with a client agreement that complies with subpart 5 and an investment authority that complies with section 437.

434 Duties of directors and senior managers of DIMS licensee

A director or senior manager of a DIMS licensee—

(a) must not make use of information acquired through being the director or senior manager of the DIMS licensee in order to—

(i) gain an improper advantage for itself or any other person; or

(ii) cause detriment to the investors using the service; and

(b) must not make improper use of the position as a director or senior manager of the DIMS licensee to gain, directly or indirectly, an advantage for himself or herself or any other person or to cause detriment to the investors using the service.

Compare: Corporations Act 2001 s 601FE (Aust)

435 Duty of DIMS licensee to comply with professional standard of care

A DIMS licensee must, in exercising any power of investment or performing any duties in that capacity in relation to the service, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

436 Limits on permitted indemnities

(1) If a DIMS licensee has any rights to be indemnified by an investor for liabilities incurred in relation to the performance of the service, those rights—

(a) must be set out in the client agreement; and

(b) must be available only in relation to the proper performance of the duties under sections 433(1) and 435.

(2) No other agreement has any effect to the extent that it purports to confer a right of a kind set out in subsection (1).

Compare: Corporations Act 2001 s 601GA(2) (Aust)

437 Requirement for agreed investment authority

(1) A DIMS licensee must ensure that there is a written investment authority granted by the investor for the service.

(2) The DIMS licensee must ensure that the investment authority provides adequately for the investment objectives and the scope of the investment authority, including the following matters:

(a) the nature or type of investments that may be made, and any limits on those; and

(b) any limits on the proportion of each type of asset invested in; and

(c) the methodology used for developing and amending the investment strategy and for measuring performance against the investment objectives.

(3) However, if there are no limits on the investment authority on a matter referred to in subsection (2)(a) or (b) or if the matter is capable of change without the prior written consent of the investor, the investment authority must clearly disclose that fact.

(4) The investment authority must provide for the matters set out in this section in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

438 Action that must be taken on limit breaks

(1) This section applies to a DIMS licensee if there is a material breach of any limits under an investment authority referred to in section 437 on either of the following (a **limit break**):

(a) the nature or type of investments that may be made:

(b) the proportion of each type of assets that may be invested in.

(2) If this section applies, the DIMS licensee must report the limit break to the FMA in the prescribed circumstances and in the prescribed manner.

(3) Whether or not a limit break is material must be determined in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 (if any).

Related party transactions

439 Definition of related party benefits

(1) In sections 440 and 441, a **related party benefit**, in relation to a DIMS licensee providing the service, is a benefit that—

(a) is either given out of investor property or creates an exposure to loss for investor property; and

(b) is given to, or received by, a related party of the service; but

(c) does not include fees or expenses that are paid or reimbursed to the DIMS licensee in accordance with the client agreement for that service.

(2) A **related party** of the service is the DIMS licensee or an associated person of the DIMS licensee.

(3) A person is also a related party of the service at a particular time if—

(a) the person was a related party of the service under subsection (2) at any time within the previous 6 months:

(b) the person believes or has reasonable grounds to believe that the person is likely to become a related party of the service under subsection (2) within the next 12 months.

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

440 General prohibition on transactions giving related party benefits

(1) A DIMS licensee (or any person acting on behalf of the DIMS licensee) must not enter into a transaction that provides for a related party benefit to be given.

(2) However, subsection (1) does not apply to a transaction or series of transactions if one of the following applies and the DIMS licensee certifies to that effect:

(a) the transaction or transactions are,—

(i) if the service is provided to a class of investors, in the best interests of the investors using the service; or

(ii) if the service is provided to only 1 investor, in the best interests of the particular investor affected; or

(b) section 441 applies to the transaction or transactions or all related party benefits to be given.

(3) A failure to comply with this section does not affect the validity of any transaction (subject to any court order under Part 8).

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

441 Certain related party benefits permitted

This section applies to—

Arm's-length terms

(a) a benefit that is given on terms that—

(i) would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or

(ii) are less favourable to the DIMS licensee or the associated person of the DIMS licensee than the terms referred to in subparagraph (i):

Transactions in registered schemes

(b) an acquisition or a disposal of a managed investment product in a registered scheme or of a prescribed interest in a prescribed overseas scheme:

Certain registered bank investments

(c) investments made in the ordinary course of business in products referred to in clause 21(a) to (c) of Schedule 1:

Other prescribed benefits or transactions

(d) a prescribed benefit or transaction.

Compare: Corporations Act 2001 ss 601LA–601LE (Aust)

442 Requirements for certificates as to related party benefits

(1) A certificate under section 440 is effective only if the certificate—

(a) states the specific grounds on which it is given under section 440 and (if relevant) section 441 and the basis for relying on those grounds; and

(b) complies with the prescribed requirements (if any) as to its form, content, or the manner in which it is given.

(2) Nothing in that section requires a new certificate if there is an existing certificate that applies (whether specifically or in general terms) to the transaction or transactions.

443 General duties still apply

The fact that a transaction is permitted under section 440 or 441 does not affect the DIMS licensee's obligations to comply with its duties under this Act and otherwise in connection with the transaction.

Compare: Corporations Act 2001 s 230 (Aust)

Broking and custodial service performed as part of discretionary investment management service

444 Meaning of investor money and investor property

In this Act,—

investor money, in relation to a discretionary investment management service, means money to which the following applies:

(a) the money is received under that service; and

(b) the money is received from, or on account of, the investor by a person (**A**) (and not on A's own account)

investor property, in relation to a discretionary investment management service, means property (other than money) to which the following applies:

(a) the property is a financial product, is a beneficial interest in a financial product, or is received under that service; and

(b) the property is received from, or on account of, the investor by a person (**A**) (and not on A's own account).

445 Requirements for custodian

(1) A DIMS licensee must ensure that the investor money and investor property that is held under the service is held on behalf of the investor by 1 or more persons that meet the custodianship requirements set out in subsection (2).

(2) A custodian of the investor money and investor property—

(a) must be a body corporate (other than the DIMS licensee) that the DIMS licensee believes, on reasonable grounds, to be appropriate to hold, and safeguard, the money or property; and

(b) may be an associated person of the DIMS licensee (other than by virtue of the custodianship) only if—

(i) that is permitted by conditions imposed under section 402; and

(ii) those conditions are observed.

(3) The DIMS licensee is jointly and severally liable with any custodian for ensuring that investor money and investor property is held in accordance with this subpart.

(4) This section does not apply—

(a) to the extent that money or property is held directly by the investor; or

(b) in the prescribed circumstances.

446 Certain client money or property service obligations under subpart 5B apply

(1) A DIMS licensee, and a custodian of investor money or investor property under the service, must provide the custodial and other client money or property services under the service to every investor in accordance with sections 431ZC to 431ZH.

(2) Those sections apply as if every reference to a client were to the investor and every reference to client money or client property were to investor money or investor property.

(3) This section does not limit the application of those sections to a DIMS licensee or a custodian as a provider of a client money or property service.

Section 446: replaced, on 15 March 2021, by section 31 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 6A—Regulating conduct of financial institutions

Subpart 6A: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446A Overview

(1) This subpart provides for financial institutions to treat consumers fairly by—

(a) requiring financial institutions to establish, implement, and maintain an effective fair conduct programme; and

(b) requiring financial institutions to comply with the programme; and

(c) requiring financial institutions and intermediaries to comply with regulations that regulate incentives.

(2) Subsection (1) is only a guide to the general scheme and effect of this subpart.

Section 446A: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446B Territorial scope of subpart

(1) This subpart applies to the provision of a financial institution's relevant services or associated products to consumers in New Zealand.

(2) For the purposes of subsection (1), a relevant service or an associated product is provided to consumers in New Zealand if a consumer in New Zealand receives the service or product, unless the financial institution demonstrates that it has taken all reasonable steps to ensure that consumers in New Zealand may not receive the service or product.

Section 446B: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Fair conduct principle

Heading: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446C What is the fair conduct principle

(1) The **fair conduct principle** is that a financial institution must treat consumers fairly.

(2) The requirement to treat consumers fairly includes—

(a) paying due regard to consumers' interests; and

(b) acting ethically, transparently, and in good faith; and

(c) assisting consumers to make informed decisions; and

(d) ensuring that the relevant services and associated products that the financial institution provides are likely to meet the requirements and objectives of likely consumers (when viewed as a group); and

(e) not subjecting consumers to unfair pressure or tactics or undue influence.

(3) Subsection (2) does not limit subsection (1).

Section 446C: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446D When fair conduct principle applies

(1) The fair conduct principle applies when a financial institution—

(a) is designing any relevant service or any associated product; or

(b) offers to provide any relevant service or any associated product to a consumer; or

(c) provides any relevant service or any associated product to a consumer; or

(d) has any dealings or interactions with a consumer in connection with any relevant service or any associated product (for example, responding to a complaint or handling a claim under an insurance contract).

(2) The fair conduct principle also applies to a financial institution when an intermediary is involved in the provision of any of the financial institution's relevant services or associated products to a consumer.

(3) Subsection (1)(a) applies only to the extent that the relevant service or associated product will be provided to consumers.

Section 446D: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Key definitions

Heading: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446E Meaning of financial institution

In this Act, a person is a **financial institution** if it—

(a) is a registered bank, a licensed insurer, or a licensed NBDT; and

(b) is in the business of providing 1 or more relevant services.

Section 446E: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446F Meaning of relevant service and associated product

(1) In this subpart, **relevant service**—

(a) means any of the following:

(i) acting as an insurer:

(ii) being a creditor under a consumer credit contract:

(iii) any financial service referred to in section 5(1)(a), (ab), (d), (f) to (ia), (ib)(i) to (v), or (ic) to (l) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 where that service is a retail service (as defined in subsection (3)):

(iv) acting as an intermediary for any services referred to in subparagraphs (i) to (iii); but

(b) does not include a service of a class excluded by the regulations (but those regulations may not exclude the services referred to in paragraph (a)(i) and (ii)).

(2) A product is an **associated product** in relation to a relevant service if it is a financial advice product that a consumer acquires under the service.

Example

A company (**A**) provides the financial service of acting as an insurer. A contract of insurance entered into by A under the service is an associated product.

(3) In this section, a service is a **retail service** if that service is or will be received by—

(a) a retail client; or

(b) a class of persons where there is at least 1 retail client in that class.

Section 446F: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Fundamental duties to meet fair conduct principle

Heading: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446G Duty to establish, implement, and maintain effective fair conduct programme

(1) Every financial institution must establish, implement, and maintain an effective fair conduct programme.

(2) The financial institution must—

(a) ensure that the programme complies with section 446J; and

(b) otherwise comply with the duty in subsection (1) in the prescribed manner.

(3) A **fair conduct programme** means policies, processes, systems, and controls that are designed to ensure the financial institution's compliance with the fair conduct principle.

Section 446G: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446H Duty to make information about fair conduct programme publicly available

(1) Every financial institution must ensure that the information about its fair conduct programme that is set out in subsection (2) is—

(a) published on an Internet site maintained by, or on behalf of, the financial institution at all reasonable times; and

(b) provided to any person who requests the information.

(2) The information is—

(a) a summary of key matters about the fair conduct programme that is in sufficient detail to assist consumers to—

(i) be reasonably aware of how the financial institution will comply with the fair conduct principle; and

(ii) make informed decisions about dealings and interactions with the financial institution in relation to the relevant services and associated products that the financial institution provides; and

(iii) understand how to make a complaint about those relevant services and associated products; and

(b) all other prescribed information about the fair conduct programme.

(3) The information must be provided under subsection (1)(b)—

(a) as soon as practicable but, in any event, within 5 working days after the financial institution receives the request; and

(b) free of charge.

(4) The financial institution must otherwise comply with this section in the prescribed manner.

Section 446H: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446I Duty to comply with fair conduct programme

(1) Every financial institution must take all reasonable steps to comply with its fair conduct programme.

(2) The financial institution must comply with that duty in the prescribed manner (if any).

Section 446I: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446J Minimum requirements for fair conduct programme

(1) The fair conduct programme must be in writing and include effective policies, processes, systems, and controls for—

(a) enabling the financial institution to meet all of its legal obligations to consumers, including under this Act, the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, the Consumer Guarantees Act 1993, and the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and

(b) designing, and managing the provision of, the financial institution's relevant services and associated products to consumers, including by—

(i) providing for the methods by which the relevant services and associated products are provided to consumers (**distribution methods**) to operate in a manner that is consistent with the fair conduct principle; and

Example

A life insurer provides a life insurance product directly through its Internet site (**method 1**). It also provides the product indirectly through insurance brokers (**method 2**). The life insurer's fair conduct programme needs to provide for both method 1 and method 2 to operate consistently with the fair conduct principle.

(ii) regularly reviewing whether the distribution methods are operating in a manner that is consistent with the fair conduct principle; and

(iii) ensuring that any deficiencies identified under subparagraph (ii) are remedied within a reasonable time; and

(iv) regularly reviewing the relevant services or associated products that are provided to consumers on an ongoing basis to determine whether they are likely to continue to meet the requirements and objectives of those consumers (when viewed as a group); and

(v) regularly reviewing whether enhancements or improvements in the financial institution's relevant services or associated products should be made available to those consumers (when viewed as a group); and

(vi) ensuring that any enhancements or improvements identified under subparagraph (v) are made available within a reasonable time; and

(c) identifying, monitoring, and managing risks associated with conduct that fails to comply with the fair conduct principle, including—

(i) having clearly defined roles, responsibilities, and accountability arrangements in relation to identifying, monitoring, and managing those risks; and

(ii) requiring records to be maintained that are sufficient to allow an assessment to be made of the financial institution's performance in complying with the fair conduct principle; and

(iii) requiring regular and comprehensive reporting about those risks, and about failures to comply with the fair conduct principle, to the board or other governing body of the financial institution; and

(d) identifying conduct that fails to comply with the fair conduct principle and taking reasonable steps to mitigate any actual or potential adverse effects of the failure; and

(e) requiring the financial institution's employees and agents to follow the procedures or processes that are necessary or desirable to support the financial institution's compliance with the fair conduct principle; and

(f) requiring initial and regular ongoing training for each of those employees on the following matters to the extent that the training is relevant to their work in providing the financial institution's relevant services or associated products to consumers:

(i) the relevant services or associated products in respect of which the employee carries out work; and

(ii) the fair conduct programme and the procedures or processes referred to in paragraph (e) that the employee must follow; and

(g) checking that each of those employees has completed that training and has a reasonable understanding of the matters that have been covered by that training; and

(h) managing or supervising each of those employees to ensure that they are supporting the financial institution's compliance with the fair conduct principle, and monitoring whether those persons are giving that support, including by—

(i) obtaining reasonable assurance that each employee is competent to carry out the range of work for which they will be, or are,

employed (in relation to the financial institution's relevant services or associated products); and

(ii) setting conduct expectations for those persons; and

(iii) establishing robust and transparent procedures or processes for dealing with misconduct by those persons; and

(iv) monitoring whether consumers have been treated by those persons in a manner that is consistent with the fair conduct principle; and

(i) designing and managing incentives to mitigate or avoid the actual or potential adverse effects of incentives on the interests of consumers, so far as is reasonably practicable; and

(j) communicating with consumers about the financial institution's relevant services or associated products in a timely, clear, concise, and effective manner; and

(k) ensuring that there are in place methods for regularly reviewing, and systematically identifying deficiencies in, the effectiveness of the programme; and

(l) ensuring that any deficiencies identified are promptly remedied; and

(m) complying with all requirements prescribed for the purposes of this section.

(2) In considering what policies, processes, systems, and controls are effective for the purposes of subsection (1), the financial institution must have regard to the following:

(a) the nature, size, and complexity of its business; and

(b) the relevant services and associated products it offers; and

(c) the methods by which it provides relevant services and associated products to consumers; and

(d) the types of consumers it deals with, including consumers in vulnerable circumstances; and

(e) the types of intermediaries that are involved in the provision of its relevant services and associated products, including the nature and extent of the following:

(i) their involvement; and

(ii) their legal obligations in connection with that involvement (for example, under subpart 5A in the case of financial advice providers); and

(f) the types of agents that are engaged to carry out work in relation to the financial institution's relevant services or associated products, including the nature and extent of that work and of the authority of those agents; and

(g) any other factors that may be provided for in regulations.

(3) Subsection (1)(a) to (l) does not limit what may be prescribed by regulations under section 546(1)(oa) (in particular, those regulations may prescribe additional, or more detailed, requirements relating to the matters set out in subsection (1)(a) to (l)).

(4) Despite subsection (1), a fair conduct programme—

(a) must not impose in relation to an intermediary or agent a requirement of a kind prescribed for the purposes of this paragraph:

(b) is not required to impose in relation to an intermediary or agent a requirement of a kind prescribed for the purposes of this paragraph.

(5) Section 546(1)(oa) (which allows regulations to prescribe requirements for the programme) is subject to subsection (4).

Section 446J: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Duties relating to incentives regulations

Heading: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446K Financial institution must comply with incentives regulations

Every financial institution must comply with the regulations made under section 546(1)(og) (which relate to incentives).

Example

A company (**A**) acts as an insurer. A offers motor vehicle insurance to consumers.

A car dealer (**B**) offers A's insurance to its customers when they buy cars. A gives B a commission when A's insurance products are sold.

A must comply with the regulations relating to incentives.

Section 446K: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446L Intermediary must comply with incentives regulations

Every intermediary that offers or gives an incentive to any of its employees or agents or to another intermediary in connection with the provision of a financial institution's relevant services or associated products must also comply with the regulations made under section 546(1)(og) (which relate to incentives).

Example

From the example in section 446K, the car dealer (**B**), in turn, offers incentives to its sales staff to encourage them to sell more of A's insurance.

B must comply with the regulations relating to incentives.

Section 446L: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446M Meaning of incentive

(1) In this subpart and section 546, **incentive**, in relation to a relevant service or any associated product, means a commission, benefit, or other incentive (whether monetary or non-monetary and whether direct or indirect) that is offered or given to a person (**A**) if—

(a) the commission, benefit, or other incentive is offered or given to A in connection with A (directly or indirectly) being involved in the provision of the service or the products; and

(b) A's entitlement to the commission, benefit, or other incentive, or the nature or value of the commission, benefit, or other incentive, is determined or calculated in any way by reference (directly or indirectly) to the volume or value of the services or products.

Examples

Example 1

A person (**A**) is given a bonus based on A's individual performance in selling life policies. A's performance is measured by reference to the value of the premiums payable. The bonus is an incentive.

Example 2

A person (**A**) is a manager of a team of people who sell life policies. A will be entitled to a paid holiday if the team sells a certain number of life policies. The paid holiday is an incentive.

(2) Subsection (1) applies—

(a) regardless of whether A's entitlement, or the nature or value, is also determined or calculated by reference to 1 or more matters unrelated to the volume or value of the services or products involved:

Example

In example 1 in subsection (1), A is only entitled to the bonus if a performance indicator relating to customer satisfaction is also satisfied. This factor does not prevent the bonus from being an incentive.

(b) regardless of whether A's entitlement, or the nature or value, is determined or calculated by reference to a target or other threshold:

Example

A financial adviser is paid a commission based on a fixed percentage of premiums paid under insurance contracts arranged by the adviser. The commission is an incentive regardless of the fact that no target is involved.

(c) whether A is an intermediary or is an employee or agent of a financial institution or an intermediary.

(3) Determining or calculating a matter by reference to the volume or value of the services or products involved includes (without limitation) determining or calculating the matter—

(a) by reference to the number of consumers to whom the services or products are provided or the number of contracts entered into (for example, the number of bank accounts opened, the number of credit cards issued, or the number of policies underwritten); or

(b) by reference to any amount paid or payable in connection with the services or products (for example, fees, charges, commissions, interest, or premiums); or

(c) by reference to any amount related to the services or products (for example, the amount of credit advanced under a consumer credit contract); or

(d) by reference to a person's performance compared to others in relation to the volume or value of the services or products involved; or

Example

In example 1 in subsection (1), A's bonus is $5,000 if A is in the top 20% of sellers (based on the value of the premiums payable).

(e) by reference to a person's performance in a period in relation to the volume or value of the services or products involved compared with their own performance in another period; or

(f) by reference to avoiding or preventing something in connection with the volume or value of the services or products involved; or

Example

A deals with requests from consumers to cancel insurance contracts. A is paid a bonus for every consumer they convince to not cancel a contract.

(g) on a linear basis (that is, on a per service or per product basis).

Example

A is paid a 5% commission for each life policy that A arranges.

Section 446M: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Miscellaneous provisions

Heading: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446N FMA must obtain consent of Commerce Commission before commencing certain proceedings

[Repealed]

Section 446N: repealed, on 1 July 2026, by section 61 of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

446O Pecuniary penalty order may not be made if failure relates only to certain legal obligations

A pecuniary penalty order may not be made for a contravention, or involvement in a contravention, of section 446I if the contravention arises only in relation to a failure to meet a legal obligation referred to in section 446J(1)(a).

Section 446O: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446P Other definitions used in subpart

(1) In this subpart,—

arrange, in relation to a contract for a service or for the acquisition of a product, includes to negotiate, solicit, or procure the contract

associated product has the meaning set out in section 446F(2)

consumer, in relation to—

(a) the relevant service of acting as an insurer or an associated product, means any of the following:

(i) a policyholder under a consumer insurance contract or a contract of insurance that provides for life insurance or health insurance (or both):

(ii) any other person who is specified or referred to in a contract of a kind referred to in subparagraph (i), whether by name or otherwise, as a person to whom the benefit of the insurance cover provided by the contract extends:

(iii) a person who is offered insurance under a contract of a kind referred to in subparagraph (i):

(b) the relevant service of acting as a creditor under a consumer credit contract or an associated product, means either of the following:

(i) a debtor under a consumer credit contract:

(ii) a person who is offered credit under a consumer credit contract:

(c) a relevant service referred to in section 446F(1)(a)(iii) or an associated product, means either of the following:

(i) a person who receives the service as a retail client:

(ii) a person who is offered the service and who would be a retail client if they received the service:

(d) a relevant service of acting as an intermediary for a service referred to in paragraph (a), (b), or (c), means a person who is a consumer under that paragraph

consumer credit contract—

(a) has the same meaning as in section 11 of the Credit Contracts and Consumer Finance Act 2003 (and for that purpose sections 12 to 14 and

15(1)(a), (c), and (ca) of that Act apply and section 15(1)(b) of that Act must be disregarded); but

(b) does not include—

(i) a contract referred to in section 15(1)(d) of that Act unless the contract is of a class prescribed by regulations made under this Act to be a class of consumer credit contract for the purposes of this definition; or

(ii) a lease referred to in section 16 of that Act

consumer insurance contract—

(a) means a contract of insurance ordinarily entered into by a New Zealand policyholder wholly or predominantly for personal, domestic, or household purposes; and

(b) also includes a contract referred to in subsection (2); but

(c) does not include—

(i) a contract to the extent that it provides for life insurance or health insurance; or

(ii) a contract that is subject to a certificate under section 446T(1)

incentive has the meaning set out in section 446M

insurer means a person who—

(a) carries on insurance business in New Zealand (within the meaning of section 8 of the Insurance (Prudential Supervision) Act 2010); and

(b) enters into any 1 or more of the following with 1 or more New Zealand policyholders:

(i) a consumer insurance contract:

(ii) a contract of insurance that provides for life insurance or health insurance (or both)

involved has the meaning set out in section 446Q(3) and (4)

New Zealand policyholder has the same meaning as in section 6 of the Insurance (Prudential Supervision) Act 2010

relevant service has the meaning set out in section 446F

retail client—

(a) has the same meaning as in section 49 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; but

(b) does not include a person who has given a certificate for the service under section 446T(3).

(2) For the purposes of paragraph (b) of the definition of **consumer insurance contract** in subsection (1), a contract of the kind referred to in this subsection is a contract of insurance to the extent that—

(a) it is entered into by the policyholder in order to provide insurance cover for 1 or more other persons, or it is varied or extended in order to provide cover for 1 or more other persons; and

(b) those other persons are not parties to the contract; and

(c) those other persons would ordinarily have the benefit of that insurance cover wholly or predominantly for personal, domestic, or household purposes.

Example

A bank enters into a contract of insurance with an insurer.

The bank then offers credit cards to its customers that provide them the benefit of travel insurance cover under that contract.

The bank enters into the contract of insurance for commercial purposes. However, the contract is a consumer insurance contract to the extent that its customers have the benefit of the travel insurance cover for their personal purposes.

(3) Subsection (2) does not apply to a contract if the insurance cover referred to in that subsection is only a minor or an incidental part of the insurance cover provided by the contract as a whole.

Section 446P: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 446P(1): amended, on 1 July 2026, by section 62(1) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 446P(1) **consumer insurance contract** paragraph (a): replaced, on 7 April 2025, by section 17(2) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Section 446P(1) **contract of insurance**: repealed, on 7 April 2025, by section 17(1) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Section 446P(1) **creditor**: repealed, on 1 July 2026, by section 62(2) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 446P(1) **health insurance**: repealed, on 7 April 2025, by section 17(1) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Section 446P(1) **life insurance**: repealed, on 7 April 2025, by section 17(1) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Section 446P(2)(c): amended, on 7 April 2025, by section 17(3) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Section 446P(3): inserted, on 7 April 2025, by section 17(4) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

446Q Meaning of intermediary

(1) In this Act, a person is an **intermediary** if—

(a) the person is involved in the provision of a relevant service or an associated product to a consumer (*see* subsections (3) and (4)); and

(b) the person is paid or provided with a commission or other consideration in connection with that involvement; and

(c) the commission or consideration is paid or provided, directly or indirectly, by or on behalf of any of the following:

(i) the financial institution that provides the service or product:

(ii) if the person referred to in paragraphs (a) and (b) is itself a financial institution, any other financial institution or person that provides the service or product:

Example

A bank (**A**) is involved in the provision of interests in a KiwiSaver scheme issued by an entity. The entity pays A a commission for that involvement. A is acting as an intermediary in relation to the KiwiSaver scheme.

(iii) another person who is an intermediary in relation to the service or products.

Examples

Example 1

A bank enters into a master agreement with a company (**A**). The agreement provides for A to arrange home loans for the bank. It provides for a commission to be paid to A for arranging the home loans and for the processes to be followed by A.

A is an intermediary.

Independently of the bank, A arranges with mortgage brokers, including a person (**B**), for home loans to be arranged through A's master agreement. The mortgage brokers and A agree on the commission, and the support services, that A will give to the mortgage brokers for arranging the loans.

B arranges a loan for a consumer and submits the application through A's processes and the master agreement. The bank pays A a commission for the loan. A deducts a portion of the commission for A's involvement in arranging the loan and pays the balance of the commission to B.

B is also an intermediary.

Example 2

A broker arranges contracts of insurance for policyholders. The broker is paid only by the policyholders (and has no arrangement with insurers that directly or indirectly provides for the payments). The broker is not an intermediary.

(2) However, a person is not an **intermediary** if the person is involved only as—

(a) an employee of a financial institution; or

(b) an employee of an intermediary.

(3) In this subpart, a person is **involved** in the provision of a relevant service or an associated product to a consumer if the person does either or both of the following:

(a) arranges a contract for the service or for the acquisition of the product:

(b) gives regulated financial advice in relation to the product.

Example

A person (**W**) maintains an Internet site that gives consumers information about 1 or more insurance contracts. Consumers are able to take steps towards entering into those contracts using the Internet site. W receives a fee from the insurer when a consumer enters into a contract using the Internet site.

W is involved because W procured the contract. W is an intermediary.

(4) However, a person is not **involved** in the provision of a relevant service or an associated product to a consumer merely because the person carries out 1 or more of the following activities:

(a) distributing an advertisement or other promotional material:

(b) carrying on a prescribed occupation and acting in relation to the service or product in the ordinary course of carrying on that occupation:

(c) carrying out a prescribed activity.

Section 446Q: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446R Protection of person who reports contravention or failure to comply

(1) This section applies if an employee or an agent (**A**) of a financial institution or of an intermediary—

(a) reasonably believes that a person has, in relation to a relevant service or an associated product,—

(i) contravened a provision of this Act; or

(ii) otherwise failed to comply with the fair conduct principle; and

(b) reports that belief to the FMA.

(2) If A makes the report in good faith,—

(a) no civil, criminal, or disciplinary proceedings may be brought against A as a result of A having made the report; and

(b) no person may terminate A's employment or appointment as a result of A having made the report; and

(c) no tribunal, body, or authority that has jurisdiction in respect of A's professional conduct may make an order against, or do any act in relation to, A as a result of A having made the report.

Section 446R: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446S Presumption relating to consumer insurance contract

[Repealed]

Section 446S: repealed, on 7 April 2025, by section 18 of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

446T Effect of certificate from policyholder or client

(1) A contract of insurance is not a consumer insurance contract if the policyholder (**P**) certifies in writing before entering into the contract that P is entering into it wholly or predominantly for business purposes.

(2) Subsection (1) does not apply to a contract referred to in section 446P(2).

(3) A person (**P**) is not a retail client in relation to a relevant service referred to in section 446F(1)(a)(iii) if P certifies in writing before receiving the service that P is receiving the service as a wholesale client (within the meaning of section 49(2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008).

(4) Subsection (1) or (3) does not apply if the financial institution, or the person who obtains the certificate, knew, or had reason to believe, at the time the certificate was given, that the certificate was false or misleading in a material particular.

(5) A certificate is effective only if—

(a) the certificate is in a written document that is separate from the contract of insurance or the contract for the relevant service; and

(b) P confirms that P has read and understood the consequences of giving the certificate (including that P will have fewer protections from unfair conduct).

Section 446T: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 446T(1): amended, on 7 April 2025, by section 19(1) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Section 446T(5)(a): amended, on 7 April 2025, by section 19(2) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

446U Revocation of certification

(1) A person may revoke a certificate given under section 446T(3) in relation to a relevant service by giving to the financial institution that provides the service a signed notification to that effect.

(2) A revocation is effective only in relation to a service provided after it is given.

Section 446U: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446V Application of subpart to Lloyd's underwriters

(1) Sections 446G, 446H, 446I, 446J, and 446K do not apply to a Lloyd's underwriter.

(2) However, sections 446G(1), (2)(b), and (3), 446I, and 446K apply to a Lloyd's managing agent to the extent that they act as a managing agent in connection with any 1 or more of the following that are entered into with 1 or more New Zealand policyholders:

(a) consumer insurance contracts:

(b) contracts of insurance that provide for life insurance or health insurance (or both).

(3) The following apply for the purposes of subsection (2):

(a) the provisions referred to in that subsection (and sections 446C, 446D, and 449(3)(h), (i), and (k)) apply to the Lloyd's managing agent with all necessary modifications as if it were the financial institution that is acting as the insurer:

(b) the Lloyd's managing agent must ensure that—

(i) its fair conduct programme is in writing and complies with all requirements prescribed for the purposes of this subparagraph; and

(ii) information about its fair conduct programme is made publicly available in the prescribed manner:

(c) if the Lloyd's managing agent contravenes any of sections 446G(1), (2)(b), or (3), 446I, or 446K or paragraph (b), the managing agent has civil liability under subpart 3 of Part 8 for the contravention:

Guidance note

See section 449, which specifies the provisions referred to in paragraph (c) as Part 6 services provisions and, accordingly, civil liability provisions under section 485.

(d) if the Lloyd's managing agent contravenes or is likely to contravene any of sections 446G(1), (2)(b), or (3), 446I, or 446K or paragraph (b), the FMA may exercise any 1 or more of its enforcement powers in respect of the matter (*see*, for example, the FMA's powers to make direction orders under section 468).

(4) Subsections (2) and (3) apply regardless of where the Lloyd's managing agent is resident, is incorporated, or carries on business.

Section 446V: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

446W Review of subpart and licensing requirement for financial institutions

(1) The Minister must—

(a) commence a review of the operation and effectiveness of—

(i) the licensing requirement under section 388 for the service of acting as a financial institution; and

(ii) this subpart; and

(b) prepare a report on that review.

(2) The review must be commenced before the fifth anniversary of the day on which this subpart comes into force.

(3) The Minister must, in carrying out the review,—

(a) consider how effectively the licensing requirement and this subpart operate with other legislation and regulatory requirements that apply to financial institutions; and

(b) ensure that the people and organisations that the Minister thinks appropriate are consulted.

(4) The Minister must present a copy of the report to the House of Representatives as soon as practicable after the report has been completed (but, in any event, before the seventh anniversary of the day on which this subpart comes into force).

Section 446W: inserted, on 31 March 2025, by section 12 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Subpart 7—Holding and application of investor funds and property by derivatives issuers

447 Application of regulations made under this subpart

Regulations made under this subpart may apply to a derivatives issuer (whether or not it is licensed and whether or not it makes any regulated offer).

448 Regulations regulating holding and application of investor funds and property by derivatives issuers

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (2), make regulations for the purposes of—

(a) regulating the receipt of money and property from, or on account of, investors by derivatives issuers and the application of that money and property:

(b) prescribing requirements relating to the deposit of that money and property in separate investors' funds accounts or safe custody:

(c) specifying the duties and obligations of derivatives issuers in relation to investors' funds accounts, including obligations to make payments into those accounts:

(d) providing for the protection of money deposited into investors' funds accounts and property deposited in safe custody from claims against derivatives issuers:

(e) providing for the investment of money referred to in paragraph (d):

(f) providing for the FMA to carry out functions under the regulations, and its powers and procedures in doing so:

(g) stating which provisions are Part 6 services provisions for the purposes of this Act.

(2) The Minister must consult the FMA before making a recommendation under this section.

(3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 448(1)(a): amended, on 9 August 2017, by section 78 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 448(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 7A—Additional regulation of licences relating to financial benchmarks

Subpart 7A: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448A Application of subpart

This subpart applies to market services licences to act as an administrator of a financial benchmark.

Section 448A: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448B Additional purposes for licences relating to financial benchmarks

(1) In relation to market services licences to act as an administrator of a financial benchmark, this Part has the purposes (in addition to those set out in sections 3 and 4) of—

(a) ensuring the accuracy, integrity, and reliability of financial benchmarks, and providing for their continued availability, to support the purposes set out in sections 3 and 4; and

(b) promoting the recognition of New Zealand financial benchmarks in overseas jurisdictions by ensuring that—

(i) those benchmarks comply with applicable international requirements; and

(ii) an administrator of a financial benchmark is subject to effective regulation when generating and operating those benchmarks; and

(iii) those benchmarks may be referenced or otherwise used in international instruments.

(2) This section does not limit section 3 or 4.

Section 448B: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448C FMA's powers to direct contributor to provide information or data

(1) The FMA may exercise a power under subsection (2) if it is satisfied that—

(a) a contributor has ceased or is likely to cease providing or making available information or data relevant to the generation or operation of the financial benchmark specified in a licence; and

(b) it is necessary or desirable in order to promote any of the purposes set out in section 448B.

(2) The FMA may, by written notice and otherwise in the prescribed manner, give a direction to a contributor requiring the contributor to provide information or data to a licensee, an authorised body, or another entity, where the provision of that information or data is necessary or desirable for the generation or operation of the financial benchmark specified in a licence.

(3) A direction may (without limitation) specify either or both of the following:

(a) requirements relating to the manner and form in which the information or data must be provided:

(b) the entity to which the information or data must be provided.

(4) In this subpart, **contributor** means a person whose activities have previously resulted in information or data being provided or made available to a licensee or an authorised body for the generation or operation of the financial benchmark specified in a licence (regardless of whether the information or data is provided or made available directly or indirectly to the licensee or authorised body).

(5) Subsection (4) applies regardless of where a contributor is resident, is incorporated, or carries on business.

(6) The contributor must comply with the direction (*see* subpart 3 of Part 8, which provides for civil liability for a contravention of this section).

Section 448C: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448D FMA's powers to direct administration of financial benchmark

(1) The FMA may exercise a power under subsection (2) if it is satisfied that—

(a) a licensee or an authorised body has ceased or is likely to cease generating or operating a financial benchmark specified in a licence; and

(b) it is necessary or desirable in order to promote any of the purposes set out in section 448B.

(2) The FMA may, by written notice and otherwise in the prescribed manner, give a direction to a licensee or an authorised body—

(a) to continue to generate or operate the financial benchmark in a particular way; or

(b) to transfer or cease the generation or operation of the financial benchmark in a particular way.

(3) A direction may (without limitation) specify 1 or more requirements relating to the following:

(a) changes to the rules or procedures by which the financial benchmark is generated:

(b) changes to the documents under which the financial benchmark is generated or operated (for example, any compliance documents required by a condition of the licence):

(c) the orderly transfer of the generation or operation of the financial benchmark to another person:

(d) the orderly cessation of the generation or operation of the financial benchmark:

(e) the provision of material (including information, data, computer software, instructions, methodologies, formulas, or algorithms) to another person, where the provision of that material is necessary or desirable for the generation, operation, or transfer of that financial benchmark.

(4) The licensee or authorised body must—

(a) give the FMA all reasonable assistance to facilitate the continued generation and operation of the financial benchmark (or the orderly cessation of the financial benchmark); and

(b) comply with the direction.

(5) *See* subpart 3 of Part 8, which provides for civil liability for a contravention of this section.

Section 448D: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448E Duration of direction

(1) A direction under section 448C or 448D must specify the period (not exceeding 12 months) during which the contributor, licensee, or authorised body must comply with the direction.

(2) The FMA may, by written notice, extend the period referred to in subsection (1) by a further period of not more than 12 months.

Section 448E: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448F FMA must follow steps for giving direction

Sections 475 to 477 apply to a direction under section 448C or 448D as if the direction were an order under Part 8.

Section 448F: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448G FMA may give interim direction pending exercise of power

(1) The FMA may give an interim direction (an **interim direction**) of the kind referred to in section 448C or 448D that is in force for the period referred to in subsection (2) if—

(a) the FMA is considering, at any time, whether it may exercise a power under section 448C or 448D; and

(b) the FMA considers that making an interim direction is necessary or desirable in the public interest.

(2) An interim direction is in force from the time at which it is given until the close of—

(a) the date that is 15 working days after the day on which it is given; or

(b) a later date specified by the FMA by notice to the person to whom the interim direction relates.

(3) For the purposes of subsection (2)(b),—

(a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to complete its consideration as referred to in subsection (1)(a) within the 15-working-day period referred to in subsection (2)(a); and

(b) the later date must be a date that is no more than 30 working days after the day on which the interim direction is given.

(4) The FMA—

(a) may act under subsection (1) or (2)(b) without giving the person to whom the interim direction relates an opportunity to make submissions to, or be heard before, the FMA in respect of the matter; but

(b) must, after acting under subsection (1) or (2)(b), give that person or that person's representative an opportunity to make written submissions and to be heard on the matter.

(5) The person to whom the interim direction relates must comply with the direction (*see* subpart 3 of Part 8, which provides for civil liability for a contravention of this section).

Section 448G: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448H FMA must give notice after giving interim direction

If the FMA gives an interim direction, the FMA—

(a) must, as soon as is reasonably practicable, give written notice to the person to whom the interim direction relates of—

(i) the terms and conditions of the interim direction; and

(ii) the reasons for the interim direction; and

(iii) any other information the FMA thinks relevant in the circumstances; and

(b) in the case of an interim direction to a contributor, must also give the written notice referred to in paragraph (a) to the relevant licensee in respect of the financial benchmark; and

(c) may also make the direction available on its Internet site; and

(d) may also give notice to any other person of those matters.

Section 448H: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448I General provisions on FMA's directions

(1) The FMA may give a direction under this subpart on the terms and conditions that the FMA thinks fit.

(2) The FMA may vary a direction in the same way as it may give the direction under this subpart.

(3) The FMA may revoke a direction or suspend a direction on the terms and conditions it thinks fit.

Section 448I: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

448J Protection for persons in respect of provision of material, information, or data under this subpart

No civil or criminal proceedings may be brought against a person by reason of the person having provided material, information, or data in good faith and in accordance with a direction under this subpart.

Section 448J: inserted, on 14 March 2021, by section 43 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Subpart 8—Miscellaneous provisions

Civil liability

449 Part 6 services provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 6 services provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) The provisions are the following:

(a) section 388 (when provider of market services needs to be licensed):

(b) section 391 (prohibitions on holding out):

(c) section 427(2), (3), and (6) (false or misleading statements and omissions):

(d) section 430 (need for client agreement):

(e) section 431 (contents, form, and effect of client agreement):

(ea) section 431P, to the extent that a person may be civilly liable for a contravention of the provision under section 431H (false or misleading statements and omissions):

(eb) section 431Y (false or misleading statements and omissions):

(f) section 445 (requirements for custodian):

(g) section 446 (certain client money or property service obligations under subpart 5B apply to DIMS licensees and custodians):

(h) sections 446G, 446H, and 446I (duties to have effective fair conduct programme, to make information about it publicly available, and to comply with it):

(i) section 446K (financial institution's duty to comply with incentives regulations):

(j) section 446L (intermediary's duty to comply with incentives regulations):

(k) section 446V(3)(b) (Lloyd's managing agent's duties relating to its fair conduct programme).

(4) A contravention of any of the following may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case:

(a) section 411 (licensee must deliver reports to FMA):

(b) section 412 (licensee must report certain matters):

(c) section 417 (action plan):

(d) section 418 (approval, amendment, or rejection of action plan):

(e) section 420 (directions):

(f) section 423 (disclosure must be made to retail investor):

(g) section 426A (further prescribed information to be made available):

(ga) section 427(4) or (5) (failure to provide a new disclosure statement):

(gb) section 431F (limitation on who can give regulated financial advice to retail clients on behalf of financial advice provider):

(gc) section 431G (prohibitions on holding out in relation to giving financial advice):

(gd) sections 431I to 431O, to the extent that a person may be civilly liable for a contravention of the provision under section 431H (duties on persons giving regulated financial advice):

(ge) sections 431Q, 431R, and 431T(5) (additional duties on financial advice providers and interposed persons that engage others to give advice):

(gf) section 431X (client money or property service disclosure obligations):

(gg) sections 431ZA and 431ZB (client money or property service conduct obligations):

(gh) sections 431ZC to 431ZH (obligations for handling client money and client property):

(h) sections 433 to 435 (duties of DIMS licensee and of directors and senior managers of DIMS licensee):

(i) section 437 (requirement for agreed investment authority):

(j) section 438 (action that must be taken on limit breaks):

(k) section 440 (general prohibition on transactions giving related party benefits):

(ka) section 448C, 448D, or 448G (directions to a contributor or an administrator of a financial benchmark):

(kb) section 449A (requirements relating to exemption for Lloyd's underwriters):

(l) those conditions imposed on a market services licence by the regulations that are stated by those regulations to be Part 6 services provisions:

(m) those provisions of the regulations made under subpart 7 that are stated by those regulations to be Part 6 services provisions.

Section 449(3)(c): amended, on 30 March 2018, by section 79(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 449(3)(ea): inserted, on 15 March 2021, by section 32(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(3)(eb): inserted, on 15 March 2021, by section 32(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(3)(g): replaced, on 15 March 2021, by section 32(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(3)(h): inserted, on 31 March 2025, by section 13(1) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 449(3)(i): inserted, on 31 March 2025, by section 13(1) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 449(3)(j): inserted, on 31 March 2025, by section 13(1) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 449(3)(k): inserted, on 31 March 2025, by section 13(1) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 449(4)(g): amended, on 30 March 2018, by section 79(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 449(4)(ga): inserted, on 30 March 2018, by section 79(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 449(4)(gb): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(gc): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(gd): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(ge): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(gf): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(gg): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(gh): inserted, on 15 March 2021, by section 32(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 449(4)(ka): inserted, on 14 March 2021, by section 44 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 449(4)(kb): inserted, on 31 March 2025, by section 13(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Requirements relating to exemption for Lloyd's underwriters

Heading: inserted, on 31 March 2025, by section 14 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

449A Lloyd's, Lloyd's underwriter, or Lloyd's managing agent must comply with term or condition of licensing exemption for Lloyd's underwriters

If a term or condition prescribed under section 546(1)(cb) imposes a requirement on Lloyd's, a Lloyd's underwriter, or a Lloyd's managing agent, Lloyd's, the Lloyd's underwriter, or the Lloyd's managing agent (as the case may be) must comply with the requirement.

Section 449A: inserted, on 31 March 2025, by section 14 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Part 7
Financial reporting

Part 7: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 1—Overview, application, and interpretation

Subpart 1 heading: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

450 Overview

(1) This Part provides for FMC reporting entities to—

(a) keep proper accounting records; and

(b) prepare financial statements, to have those financial statements audited, and to lodge those financial statements.

(2) This section is only a guide to the general scheme and effect of this Part.

Section 450: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

451 Meaning of FMC reporting entity

(1) In this Act, **FMC reporting entity** means—

(a) every person who is an issuer of a regulated product (but *see* section 452):

(b) every person who holds a licence under Part 6 (other than an independent trustee of a restricted scheme or a person referred to in subsection (2)):

(c) every licensed supervisor:

(d) every listed issuer (but *see* section 351(1)(ab)):

(e) every operator of a licensed market (other than a market licensed under section 317 (overseas-regulated markets)):

(f) every recipient of money from a conduit issuer (*see* section 453):

(g) every registered bank:

(h) every licensed insurer:

(i) every credit union:

(j) every building society:

(k) every person that is an FMC reporting entity under clause 27A of Schedule 1.

(2) Despite subsection (1)(b), a person who holds a licence under Part 6 is not an FMC reporting entity if—

(a) the licence only covers 1 or more of the following:

(i) acting as a provider of a financial advice service:

(ii) acting as a creditor under a consumer credit contract:

(iii) acting as an administrator of a financial benchmark; and

(b) the person is not a person referred to in subsection (1)(a) or (c) to (k).

Section 451: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 451(1)(b): amended, on 14 March 2021, by section 45(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 451(2): inserted, on 14 March 2021, by section 45(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 451(2)(a): replaced, on 1 July 2026, by section 63 of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

452 Company that issues equity securities not FMC reporting entity if fewer than 50 shareholders

(1) A company within the meaning of section 2(1) of the Companies Act 1993 is not an FMC reporting entity under section 451(1)(a) if it—

(a) has fewer than 50 shareholders or fewer than 50 parcels of shares that are voting products; and

(b) would, but for this section, be an FMC reporting entity by reason only of being an issuer of equity securities that are both voting products and regulated products.

(2) In this section, **shareholder** means a shareholder holding a voting product.

Compare: 1993 No 106 s 6(g); 1993 No 107 s 2A

Section 452: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 452(1): amended, on 14 March 2021, by section 46 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

453 Recipients of money from conduit issuers

In section 451, a person (**A**) is a **recipient of money from a conduit issuer** if—

(a) A is an associated person of another person (the **conduit issuer**); and

(b) the conduit issuer raises an amount of money by the issue of financial products under—

(i) a regulated offer; or

(ii) an offer made, in the prescribed circumstances, in reliance upon an exclusion in Schedule 1; and

(c) that money is raised as part of an agreement under which 75% or more of that money is provided, directly or indirectly and whether by 1 transaction or a series of transactions, for the use of—

(i) A; or

(ii) A and 1 or more third persons that are associated persons of A; and

(d) the money that is provided to A under paragraph (c) is 10% or more of the money that is raised under paragraph (b); and

(e) all or part of the money that is provided under paragraph (c) has not yet been repaid or returned to the conduit issuer.

Compare: 1993 No 106 s 4A

Section 453: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

454 Miscellaneous provisions relating to application

(1) If a person ceases to be an FMC reporting entity during an accounting period, that person must be treated as continuing to be an FMC reporting entity in relation to that accounting period for the purposes of this Act and every other enactment.

(2) Nothing in this Part or clause 20 of Schedule 4 requires an FMC reporting entity to ensure the completion of financial statements or group financial statements and the lodgement of those financial statements in relation to an accounting period that ended before the accounting period in which that person became an FMC reporting entity.

Compare: 1993 No 106 ss 5, 21

Section 454: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 2—Accounting records

Subpart 2 heading: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

455 FMC reporting entities must keep proper accounting records

(1) Every FMC reporting entity must ensure that there are kept at all times accounting records that—

(a) correctly record the transactions of the FMC reporting entity; and

(b) in the case of a manager of a registered scheme, correctly record the transactions of the scheme; and

(c) will enable the FMC reporting entity to ensure that the financial statements of the FMC reporting entity and of any such scheme comply with generally accepted accounting practice and any prescribed requirements; and

(d) will enable the financial statements of the FMC reporting entity and of any such scheme to be readily and properly audited.

(2) Every FMC reporting entity must establish and maintain a satisfactory system of control of its accounting records.

(3) In this subpart, **financial statements** means the financial statements or group financial statements that are required to be prepared for the purposes of this Act or the regulations.

Compare: 1978 No 103 s 53

Section 455: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

456 Place where accounting records to be kept

(1) Accounting records required to be kept by this subpart must be kept—

(a) at the registered office of the FMC reporting entity (if any); or

(b) at another place that the directors of the FMC reporting entity think fit.

(2) The accounting records may be kept at a place outside New Zealand only if there are sent to, and kept at a place in, New Zealand documents in respect of the business dealt with in those accounting records that will enable the preparation in accordance with this Act of—

(a) the financial statements of the FMC reporting entity and any registered scheme referred to in section 455; and

(b) any other document annexed to any of those statements that gives information that is required by any enactment.

Compare: 1978 No 103 s 53A

Section 456: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

457 Accounting records to be in English

(1) Accounting records required to be kept by this subpart and the documents referred to in section 456(2) must be kept—

(a) in written form and in English; or

(b) in a form or manner in which they are easily accessible and convertible into written form in English.

(2) An FMC reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 53B

Section 457: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

458 Period for which accounting records to be kept

Accounting records kept under this subpart, or copies of them, must be retained by the FMC reporting entity for a period of at least 7 years after the later of—

(a) the date the records are made; and

(b) the date of completion of the transaction to which the records relate.

Compare: 1978 No 103 s 53C

Section 458: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

459 Inspection of accounting records

(1) Every FMC reporting entity must make the accounting records required to be kept under this subpart and the documents referred to in section 456(2) available, in written form in English at all reasonable times for inspection without charge, to—

(a) the directors of the FMC reporting entity; and

(b) any supervisor (if the FMC reporting entity is an issuer of debt securities or the manager of a registered scheme); and

(c) the FMA; and

(d) any other persons authorised or permitted by an enactment to inspect the accounting records of the FMC reporting entity or scheme.

(2) An FMC reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1978 No 103 s 53D

Section 459: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 3—Preparation, audit, and lodgement of financial statements

Subpart 3 heading: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Preparation of financial statements

Heading: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

460 Financial statements must be prepared

(1) Every FMC reporting entity must ensure that, within 4 months after the balance date of the entity, financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to the entity and that balance date; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(2) Subsection (1) is subject to sections 461(2) and 461A(4).

Compare: 1993 No 106 ss 10(1), 11(1)

Section 460: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461 Group financial statements must be prepared

(1) Every FMC reporting entity that has, on the balance date of the entity, 1 or more subsidiaries must ensure that, within 4 months after that balance date, group financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to the group and that balance date; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(2) Section 460 does not apply to an FMC reporting entity in relation to a balance date if the entity has, on that date, 1 or more subsidiaries (and is, accordingly, required to prepare group financial statements under subsection (1)).

(3) The board of an FMC reporting entity must ensure that the balance date of the FMC reporting entity is the same as the balance date of its subsidiaries.

(4) This section is subject to section 461A(4).

Compare: 1993 No 106 ss 7(8), 13(1)

Section 461: replaced, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461A Financial statements for registered schemes and funds

(1) This section applies to every manager of a registered scheme.

(2) If the liabilities of the manager and the scheme are not limited to a particular group of assets (a **separate fund**), the manager must ensure that, within 4 months after the balance date of the scheme, financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to the scheme and that balance date; and

(b) dated and signed on behalf of the manager by 2 directors of the manager or, if the manager has only 1 director, by that director.

(3) If the liabilities of the manager or the scheme are limited to a separate fund, the manager must ensure that, within 4 months after the balance date of the scheme, financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to the scheme and that balance date; and

(b) completed in relation to the separate fund and that balance date; and

(c) dated and signed on behalf of the manager by 2 directors of the manager or, if the manager has only 1 director, by that director.

(4) If the manager is an FMC reporting entity by reason only of being a manager of a restricted scheme, the manager—

(a) is required to comply with this section; but

(b) is not required to comply with sections 460 and 461.

(5) This section does not apply in relation to a registered scheme and an accounting period if—

(a) the scheme was established during the accounting period; and

(b) no interests in the scheme were issued during the accounting period; and

(c) as at the balance date of the scheme, there are no liabilities in respect of the scheme.

Compare: 1993 No 106 s 9A(1), (2)

Section 461A: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461A(2): amended, on 9 August 2017, by section 80 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 461A(3): amended, on 9 August 2017, by section 80 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 461A(5): inserted, on 30 March 2025, by section 99 of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

461B Financial statements for overseas FMC reporting entity to include financial statements for New Zealand business

(1) If an FMC reporting entity that is an overseas company is required to prepare financial statements under section 460, the financial statements that are prepared must include, in addition to the financial statements of the entity, financial statements for its New Zealand business prepared as if that business were conducted by a company formed and registered in New Zealand.

(2) If an FMC reporting entity that is an overseas company is required to prepare group financial statements under section 461, the group financial statements that are prepared must include, in addition to the financial statements of the group, financial statements for the group's New Zealand business prepared as if the members of the group were companies formed and registered in New Zealand.

(3) In this section, **overseas company** means a body corporate that is incorporated outside New Zealand.

Compare: 1993 No 106 ss 8(2), 9(2)

Section 461B: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461C Failure to comply with authoritative notice does not give rise to pecuniary penalty

(1) This section applies if financial statements or group financial statements referred to in this subpart fail to comply with generally accepted accounting practice as a result of a failure to comply with an authoritative notice.

(2) A pecuniary penalty order may not be made under section 489 in relation to the failure to comply with the authoritative notice.

(3) *[Repealed]*

Section 461C: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461C(3): repealed, on 27 October 2022, by section 7 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Audit of financial statements

Heading: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461D Financial statements must be audited

Every FMC reporting entity must ensure that the financial statements or group financial statements that are required to be prepared under this subpart are audited by a qualified FMC auditor.

Compare: 1978 No 103 s 53E

Section 461D: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461D: amended, on 30 March 2025, by section 100 of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

461E Meaning of qualified FMC auditor

(1) For the purposes of this Act, **qualified FMC auditor** means—

(a) a licensed auditor; or

(b) a registered audit firm; or

(c) in the case of an FMC reporting entity that is a public entity under the Public Audit Act 2001, the Auditor-General or any other person who may act as the auditor under that Act.

(2) In this section, **licensed auditor** and **registered audit firm** have the same meanings as in section 6(1) of the Auditor Regulation Act 2011.

(3) The appointment of a registered audit firm that is a partnership by the firm name to be the qualified FMC auditor for the purposes of this Act is deemed to be the appointment of all the partners in the firm, from time to time, who are licensed auditors.

(4) None of the following persons is qualified for appointment as the qualified FMC auditor of an FMC reporting entity:

(a) the FMC reporting entity, or a director, an officer, or an employee of the FMC reporting entity:

(b) a person who is a partner, or in the employment, of a person specified in paragraph (a):

(c) a body corporate that is not a registered audit firm.

(5) A person is not qualified for appointment as the qualified FMC auditor of an FMC reporting entity if the person is, by virtue of subsection (4), disqualified for appointment as auditor of a related body corporate.

Compare: 1978 No 103 s 2C

Section 461E: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461E heading: amended, on 30 March 2025, by section 101(1) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Section 461E(1): amended, on 30 March 2025, by section 101(2) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Section 461E(3): amended, on 30 March 2025, by section 101(3) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Section 461E(3): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 461E(4): amended, on 30 March 2025, by section 101(3) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Section 461E(4)(c): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 461E(5): amended, on 30 March 2025, by section 101(3) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

461F Audit must be carried out in accordance with auditing and assurance standards

An auditor must, in carrying out an audit for the purposes of section 461D, comply with all applicable auditing and assurance standards.

Section 461F: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461G Auditor's report

(1) The auditor's report on the financial statements or group financial statements that are required to be audited under this subpart must comply with the requirements of all applicable auditing and assurance standards.

(2) If the auditor's report indicates that the requirements of this Part have not been complied with, the auditor must, within 7 working days after signing the report, send a copy of the report, and a copy of the financial statements or group financial statements to which it relates, to—

(a) the FMA; and

(b) the External Reporting Board; and

(c) in the case of an issuer of debt securities or a manager of a registered scheme, the supervisor.

Compare: 1993 No 106 s 16(1), (2)

Section 461G: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Lodgement of financial statements

Heading: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461H Lodgement of financial statements

(1) Every FMC reporting entity must ensure that, within 4 months after the balance date of the entity, copies of the financial statements or group financial statements that are required to be prepared under any of sections 460, 461,

and 461B, together with a copy of the auditor's report on those statements, are delivered to the Registrar for lodgement.

(1A) Every manager of a registered scheme must ensure that, within 4 months after the balance date of the scheme, copies of the financial statements that are required to be prepared under section 461A, together with a copy of the auditor's report on those statements, are delivered to the Registrar for lodgement.

(2) An FMC reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Compare: 1993 No 106 s 18(1)–(2)

Section 461H: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461H(1): amended, on 9 August 2017, by section 81(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 461H(1A): inserted, on 9 August 2017, by section 81(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Offences

Heading: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461I Offence to knowingly fail to comply with financial reporting standards

(1) An FMC reporting entity and every director of the entity commit an offence if—

(a) any of the following fail to comply with an applicable financial reporting standard:

(i) the financial statements of the entity prepared under section 460:

(ii) group financial statements in relation to a group comprising the entity and its subsidiaries prepared under section 461:

(iii) in the case of a manager of a registered scheme, financial statements for the scheme or a fund referred to in section 461A:

(iv) the financial statements prepared by the entity under section 461B; and

(b) the entity or the director (as the case may be) knows that the financial statements or group financial statements (as the case may be) fail to so comply when those statements are lodged.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Section 461I: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

FMC reporting entities with higher level of public accountability

Heading: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461J External Reporting Board must have regard to indication of level of public accountability

(1) Subsection (2) applies when the External Reporting Board is preparing a proposal to vary or replace the strategy for establishing different tiers of financial reporting (*see* sections 29 to 33 of the Financial Reporting Act 2013).

(2) The External Reporting Board must have regard to which FMC reporting entities are considered to have a higher level of public accountability under section 461K.

(3) Nothing in this section or section 461K requires any particular class of FMC reporting entity to be included within a particular tier of financial reporting (for example, some entities referred to in section 461K(1) could be included in one tier while other entities referred to in that subsection could be included in another tier).

Section 461J: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461K FMC reporting entities considered to have higher level of public accountability

(1) The following FMC reporting entities are considered to have a higher level of public accountability than other FMC reporting entities:

- (a) issuers of equity securities or debt securities under a regulated offer:
- (b) managers of registered schemes, but only in respect of financial statements of a scheme or fund prepared under section 461A:
- (c) listed issuers:
- (d) registered banks:
- (e) licensed insurers:
- (f) credit unions:
- (g) building societies:
- (h) an FMC reporting entity, or a class of FMC reporting entities, specified for the purposes of this paragraph by a notice issued under section 461L(1)(a).

(2) However, an FMC reporting entity, or a class of FMC reporting entities, is not considered to have a higher level of public accountability than other FMC reporting entities if the entity or class is specified for the purposes of this subsection by a notice issued under section 461L(1)(b).

(3) Subsection (1)(b) does not limit subsection (1)(h).

Section 461K: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 461K heading: amended, on 9 August 2017, by section 82 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

461L FMA may issue notice relating to level of public accountability

(1) The FMA may issue a notice that specifies an FMC reporting entity, or a class of FMC reporting entities, for the purposes of—

(a) section 461K(1)(h); or

(b) section 461K(2).

(2) The FMA must, before issuing a notice under subsection (1), be satisfied that the notice is necessary or desirable in order to promote the main purposes of this Act as specified in section 3 or any of the additional purposes specified in section 4.

(3) Subpart 5 of Part 9 (general provisions relating to certain FMA instruments) applies to a notice under this section.

Section 461L: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 4—Civil liability for certain contraventions of this Part

Subpart 4: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

461M Part 7 financial reporting provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 7 financial reporting provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and $1 million in the case of an individual or $5 million in any other case.

(3) The provisions are the following:

(a) section 455 (FMC reporting entities must keep proper accounting records):

(b) sections 460, 461, 461A, and 461B (financial statements and group financial statements must be prepared):

(c) section 461D (financial statements must be audited):

(d) section 461H (financial statements must be lodged).

(4) A contravention of section 456 or 458 (place where, and period for which, accounting records to be kept) may give rise to civil liability (*see* subpart 3 of

Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case.

Section 461M: inserted, on 1 April 2014, by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Part 7A
Climate-related disclosures for certain FMC reporting entities with higher level of public accountability

Part 7A: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 1—Overview, application, and interpretation

Subpart 1: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461N Overview

(1) This Part provides for climate reporting entities to—

(a) keep proper records relating to their obligations to make climate-related disclosures; and

(b) prepare climate statements; and

(ba) to the extent that those statements are required to disclose greenhouse gas emissions, obtain an assurance engagement in relation to those statements; and

(c) lodge those statements.

(2) This section is only a guide to the general scheme and effect of this Part.

Section 461N: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 461N(1)(ba): inserted, on 27 October 2024, by section 23 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461O Meaning of climate reporting entity

(1) In this Act, a person who is an FMC reporting entity that, under section 461K, is considered to have a higher level of public accountability than other FMC reporting entities is a **climate reporting entity** if that person is 1 or more of the following:

(a) a listed issuer that—

(i) is a large listed issuer; and

(ii) is not an excluded listed issuer:

(b) a registered bank that is large:

(c) a licensed insurer that is large:

(d) a credit union that is large:

(e) a building society that is large.

(2) In this Act, a manager of a registered scheme (other than a restricted scheme) is a **climate reporting entity** in respect of the scheme if—

(a) the manager is a large manager; and

(b) section 461K(1)(b) applies to the manager in respect of the scheme.

(3) In this section,—

excluded listed issuer has the meaning set out in section 461P

large, in relation to a registered bank, licensed insurer, credit union, or building society, has the meaning set out in section 461Q

large listed issuer has the meaning set out in section 461P

large manager has the meaning set out in section 461S.

Section 461O: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461P Definitions relating to listed issuers

(1) For the purposes of this Part, a listed issuer is a **large listed issuer** in respect of an accounting period if at least 1 of the following applies to the listed issuer:

(a) the listed issuer,—

(i) at any time in the accounting period, has quoted equity securities; and

(ii) as at the balance date of each of the 2 preceding accounting periods, has equity securities (whether quoted or unquoted) that have a total value, as implied by the market price or fair value of those equity securities, that exceeds $60 million:

(b) the listed issuer,—

(i) at any time in the accounting period, has quoted debt securities; and

(ii) at any time in the 2 preceding accounting periods, has quoted debt securities with a total face value that exceeds $60 million:

(c) the listed issuer is large after amalgamation (within the meaning of section 461R) in respect of the accounting period.

(2) For the purposes of this Part, a listed issuer is an **excluded listed issuer** in respect of an accounting period if, at all times during the accounting period,—

(a) any equity securities of the issuer and any debt securities of the issuer that are quoted are quoted only on a growth market; or

(b) the issuer has no quoted equity securities and no quoted debt securities.

(3) *And see* section 351(1)(ab) (which may allow for some listed issuers not to be FMC reporting entities and, consequentially, not climate reporting entities under section 461O(1)(a)).

(4) For the purposes of subsection (1)(a)(ii), fair value must be determined in accordance with generally accepted accounting practice.

(5) In this section, **growth market** means a financial product market if—

(a) the operator has a licence to operate the market issued under section 316; and

(b) either or both of the following apply:

(i) the licence is subject to a condition that limits the size of issuers that are eligible to become, or to remain, listed issuers on the financial product market (for example, a limit based on the issuer's market capitalisation):

(ii) the market is otherwise designed for, and clearly targeted at, small- and medium-sized entities.

Section 461P: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461Q Meaning of large (in relation to registered banks, licensed insurers, credit unions, and building societies)

(1) For the purposes of this Part, a registered bank, credit union, or building society (**A**) is **large** in respect of an accounting period if either or both of the following apply:

(a) as at the balance date of each of the 2 preceding accounting periods, the total assets of A and A's subsidiaries (if any) exceed $1 billion:

(b) A is large after amalgamation (within the meaning of section 461R) in respect of the accounting period.

(2) For the purposes of this Part, a licensed insurer is **large** in respect of an accounting period if at least 1 of the following paragraphs applies to the licensed insurer:

(a) as at the balance date of each of the 2 preceding accounting periods, the total assets of the licensed insurer and its subsidiaries (if any) exceed $1 billion:

(b) in each of the 2 preceding accounting periods, the annual gross premium revenue of the licensed insurer and its subsidiaries (if any) exceeds $250 million:

(c) the licensed insurer is large after amalgamation (within the meaning of section 461R) in respect of the accounting period.

(3) However, if a registered bank, credit union, building society, or licensed insurer is an overseas company,—

(a) subsections (1) and (2) do not apply; and

(b) the overseas company is large for the purposes of section 461O(1)(b) to (e) if its New Zealand business, or its group's New Zealand business, is large under subsection (4).

(4) The New Zealand business of an overseas company or its group is **large** in respect of an accounting period if at least 1 of the following paragraphs applies (calculated as if the New Zealand business were an entity):

(a) as at the balance date of each of the 2 preceding accounting periods, the total assets of the New Zealand business exceed $1 billion:

(b) the overseas company is a licensed insurer and, in each of the 2 preceding accounting periods, the annual gross premium revenue of the New Zealand business exceeds $250 million.

(5) A financial reporting standard (or a part of a standard) issued by the External Reporting Board that is expressed as applying for the purposes of subsection (4) must be applied in determining whether that provision applies.

(6) In this section, **overseas company** means a body corporate that is incorporated outside New Zealand.

Section 461Q: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461R Meaning of large after amalgamation

(1) For the purposes of this Part, a person (**A**) is **large after amalgamation** in respect of an accounting period if—

(a) A amalgamated with a large entity during the accounting period; or

(b) A is a new entity formed on the amalgamation of 2 or more entities during the accounting period, and at least 1 of those entities was a large entity.

(2) If A is large after amalgamation under subsection (1) in respect of an accounting period, A continues to be **large after amalgamation** in respect of the next accounting period.

(3) In this section, **large entity** means an entity that, in respect of the accounting period, was any of—

(a) a large listed issuer under section 461P(1) (other than an issuer described in section 461P(2)(a) or (b) for the accounting period up to the time of amalgamation):

(b) a registered bank, licensed insurer, credit union, or building society that is large under section 461Q.

Section 461R: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461S Meaning of large manager

(1) For the purposes of this Part, a manager (**A**) that holds a market services licence that covers the service referred to in section 388(a) is a **large manager** in respect of an accounting period of A if, as at the balance date of each of A's 2 preceding accounting periods, the total assets of the following schemes exceed $1 billion:

(a) all schemes for which A is manager; and

(b) all schemes for which the manager is an authorised body that provides the service of acting as a manager of a registered scheme under A's market services licence.

(2) If A is a large manager, every manager described in subsection (1)(b) is also a **large manager**.

Example

Company A holds a licence that covers acting as a manager of registered schemes. A's subsidiaries, B and C, also provide this service under A's licence (as authorised bodies).

The assets of the schemes for which A is manager total $700 million on the balance date of each of A's 2 preceding accounting periods (the **relevant balance dates**).

The assets of the schemes managed by B total a further $300 million, and the assets of the schemes managed by C total $200 million, on each of the relevant balance dates.

The total assets therefore exceed $1 billion. A is a large manager. B and C are also large managers.

(3) Subsections (4) and (5) apply if—

(a) a manager and a scheme managed by the manager have different balance dates; and

(b) the manager becomes, or ceases to be, a large manager.

(4) If the manager was not a large manager in respect of an accounting period (**AP1**) but becomes a large manager in respect of the next accounting period (**AP2**), the manager—

(a) is not treated as a large manager in respect of the scheme in relation to the accounting period of the scheme that starts in AP1 and ends in AP2 unless paragraph (b) applies:

(b) must be treated as a large manager in respect of the scheme in relation to the accounting period of the scheme that starts in AP1 and ends in AP2 if—

(i) the manager was not the manager of the scheme at the start of that accounting period of the scheme; and

(ii) the manager at the start of that accounting period of the scheme was a climate reporting entity in respect of the scheme.

(5) If the manager was a large manager in respect of an accounting period (**AP3**) but ceases to be a large manager in the next accounting period (**AP4**), the manager must be treated as a large manager in respect of the scheme in relation to the accounting period of the scheme that starts in AP3 and ends in AP4.

(6) In this section, the **total assets** of a scheme are—

(a) as reported in the most recent audited financial statements, prepared in accordance with generally accepted accounting practice, for the scheme; or

(b) if there are no such statements, as calculated—

(i) for a date as near as possible to the balance date of the manager; and

(ii) as if for the purpose of preparing financial statements for the scheme in accordance with generally accepted accounting practice.

(7) In this section, **scheme** means a registered scheme (other than a restricted scheme).

Section 461S: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461T Application if person's status changes during accounting period

(1) If a person ceases to be a climate reporting entity during an accounting period, that person is treated as continuing to be a climate reporting entity in relation to that accounting period for the purposes of this Act and every other enactment.

(2) However, subsection (3) applies if the person (**A**)—

(a) ceased to be a climate reporting entity under section 461O(1); and

(b) on the balance date, is not a climate reporting entity under section 461O(1) (disregarding the rule in subsection (1)).

(3) If this subsection applies,—

(a) A is not required to ensure the completion of climate statements or group climate statements under any of sections 461Z to 461ZB and the lodgement of those climate statements in relation to the accounting period:

(b) records required to be kept by A up to the date that A ceased to be a climate reporting entity under section 461O(1) are CRD records for the purposes of sections 461W to 461Y.

(4) In any case where a person is, or was, the manager of a registered scheme (and a climate reporting entity under section 461O(2) in respect of the scheme), subsection (1) does not limit—

(a) section 461S(5) (which applies if the manager and the scheme have different balance dates); or

(b) section 461ZD (which may apply if the manager of a scheme changes during an accounting period).

Section 461T: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461U Miscellaneous provision relating to application

Nothing in this Part requires a climate reporting entity to ensure the completion of climate statements or group climate statements and the lodgement of those climate statements in relation to an accounting period that ended before the accounting period in which that person became a climate reporting entity.

Section 461U: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 2—CRD records

Subpart 2: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461V Climate reporting entities must keep proper CRD records

(1) Every climate reporting entity under section 461O(1) must ensure that there are kept at all times records that will enable—

(a) the climate reporting entity to ensure that the climate statements of the climate reporting entity comply with the climate-related disclosure framework; and

(b) the assurance engagement required by section 461ZH to be readily and properly carried out.

(2) Every manager that is a climate reporting entity in respect of a registered scheme must ensure that there are kept at all times records that will enable—

(a) the manager to ensure that the climate statements relating to the registered scheme comply with the climate-related disclosure framework; and

(b) the assurance engagement required by section 461ZH to be readily and properly carried out.

(3) Every climate reporting entity must establish and maintain a satisfactory system of control of the records that it is required to keep under this section.

(4) In this section,—

climate statements of the climate reporting entity means the climate statements or group climate statements that are required to be prepared under any of sections 461Z to 461ZB

climate statements relating to the registered scheme means the climate statements of the separate funds of the scheme or the climate statements of the scheme that are required to be prepared under section 461ZC.

Section 461V: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 461V(1): replaced, on 27 October 2024, by section 24 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 461V(2): replaced, on 27 October 2024, by section 24 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461W Manner in which CRD records to be kept

(1) Every climate reporting entity must keep the CRD records in the prescribed manner (if any).

(2) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Section 461W: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461X Period for which CRD records to be kept

CRD records, or copies of them, must be retained by the climate reporting entity for a period of at least 7 years after the date the records are made.

Section 461X: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461Y Inspection of CRD records

(1) Every climate reporting entity must make the CRD records available, in the prescribed manner at all reasonable times for inspection without charge, to—

(a) the directors of the climate reporting entity; and

(b) any supervisor (if the climate reporting entity is an issuer of debt securities or the manager of a registered scheme); and

(c) the FMA; and

(d) any other persons authorised or permitted by an enactment to inspect the CRD records of the climate reporting entity or scheme.

(2) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Section 461Y: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 3—Preparation of climate statements

Subpart 3: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Climate statements of climate reporting entities

Heading: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461Z Climate statements must be prepared

(1) Every climate reporting entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with the climate-related disclosure framework are—

(a) completed in relation to the entity and that balance date; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(2) However, subsection (1) does not apply to—

(a) a climate reporting entity that, on the balance date referred to in subsection (1), has 1 or more subsidiaries; or

(b) an overseas climate reporting entity, unless it is a climate reporting entity under section 461O(1)(a); or

(c) a person that is a climate reporting entity only under section 461O(2).

Example

A company (incorporated in New Zealand and with no subsidiaries) is a large manager of 2 registered schemes.

The company is also a large registered bank, so subsection (2)(c) does not apply. Subsection (1) applies to the company (and *see* section 461ZC, which also applies to the company in respect of its registered schemes).

Section 461Z: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZA Group climate statements must be prepared

(1) Subsection (2) applies to every climate reporting entity in relation to a balance date of the entity if the entity has, on that balance date, 1 or more subsidiaries.

(2) The climate reporting entity must ensure that, within 4 months after that balance date, group climate statements that comply with the climate-related disclosure framework are—

(a) completed in relation to the group and that balance date; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(3) However, subsection (2) does not apply to—

(a) an overseas climate reporting entity, unless it is a climate reporting entity under section 461O(1)(a); or

(b) a person that is a climate reporting entity only under section 461O(2).

Section 461ZA: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZB Climate statements for overseas climate reporting entities

(1) This section applies to every overseas climate reporting entity, unless it is a climate reporting entity under section 461O(1)(a).

(2) The climate reporting entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with the climate-related disclosure framework are—

(a) prepared for its New Zealand business as if that business were conducted by a company formed and registered in New Zealand; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(3) However, if the climate reporting entity has, on that balance date, 1 or more subsidiaries, subsection (2) does not apply and instead the entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with the climate-related disclosure framework are—

(a) prepared for the group's New Zealand business as if the members of the group were companies formed and registered in New Zealand; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.

(4) Subsection (3) does not limit any obligation under this subpart of a subsidiary of the climate reporting entity.

Section 461ZB: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Climate statements relating to registered schemes

Heading: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZC Climate statements for separate funds of registered schemes, etc

(1) This section applies to every manager of a registered scheme that is a climate reporting entity in respect of the scheme.

(2) The manager must ensure that, within 4 months after the balance date of the scheme, climate statements that comply with the climate-related disclosure framework are—

(a) completed in relation to each separate fund of the scheme and that balance date; and

(b) if any liabilities of the manager and the scheme are not limited to a separate fund, completed in relation to the scheme and that balance date; and

(c) dated and signed on behalf of the manager by 2 directors of the manager or, if the manager has only 1 director, by that director.

(3) However, if the manager was not the manager of the scheme at the start of the scheme's accounting period, subsection (2) applies to the manager only if the manager of the scheme at the start of the scheme's accounting period was a climate reporting entity in respect of the scheme.

Section 461ZC: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZD Application if manager of registered scheme changes and new manager is not large manager

(1) This section applies if—

(a) the manager of a registered scheme changes during an accounting period of the scheme; and

(b) the person who was the manager of the scheme at the start of the accounting period (the **old manager**) was a climate reporting entity in respect of the scheme; and

(c) the person who is the manager of the scheme at the end of the accounting period (the **new manager**) is not a large manager (within the meaning of section 461S).

(2) If this section applies, the new manager is not required to ensure the completion of climate statements under section 461ZC(2) and the lodgement of those climate statements in relation to the accounting period.

(3) Records kept by the old manager up to the date that the old manager ceased to hold office as manager of the scheme are CRD records for the purposes of sections 461W to 461Y.

Section 461ZD: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Miscellaneous

Heading: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZE Climate statements may be combined in single document

Nothing in this Part prevents any of the following from being combined in a single document:

(a) climate statements and group climate statements that are required to be prepared under any of sections 461Z to 461ZB in relation to an accounting period and 1 or more members of a group:

(b) climate statements that are required to be prepared under section 461ZC in relation to an accounting period and a registered scheme.

Section 461ZE: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZF Failure to comply with authoritative notice does not give rise to pecuniary penalty

(1) This section applies if climate statements or group climate statements referred to in this subpart fail to comply with the climate-related disclosure framework as a result of a failure to comply with an authoritative notice.

(2) A pecuniary penalty order may not be made under section 489 in relation to the failure to comply with the authoritative notice.

Compare: s 461C

Section 461ZF: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Offences

Heading: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZG Offence to knowingly fail to comply with climate standards

(1) A climate reporting entity and every director of the entity commit an offence if—

(a) any of the following fail to comply with an applicable climate standard:

(i) the climate statements of the entity prepared under section 461Z:

(ii) group climate statements in relation to a group comprising the entity and its subsidiaries prepared under section 461ZA:

(iii) the climate statements or group climate statements prepared by the entity under section 461ZB:

(iv) in the case of a manager of a registered scheme, the climate statements for any separate fund or for the scheme prepared under section 461ZC; and

(b) the entity or the director (as the case may be) knows that the climate statements or group climate statements fail to so comply when those statements are lodged.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

Compare: s 461I

Section 461ZG: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 4—Assurance engagements

Subpart 4: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZH Assurance engagement required for parts of climate statements relating to greenhouse gas emissions

(1) Every climate reporting entity must ensure that the climate statements or group climate statements that are required to be prepared under any of sections 461Z to 461ZC are, to the extent that those statements are required to disclose greenhouse gas emissions, the subject of an assurance engagement.

(2) None of the following persons may carry out the assurance engagement:

(a) a director, an officer, or an employee of the climate reporting entity:

(b) a person who is in partnership with, or in the employment of, a person specified in paragraph (a):

(c) a liquidator or a person who is a receiver in respect of the property of the climate reporting entity:

(d) a person who, by virtue of paragraphs (a) to (c), may not carry out an assurance engagement under this Part for a related body corporate of the climate reporting entity.

(3) In the case of a climate reporting entity that is a public entity under the Public Audit Act 2001, the only person who may carry out the assurance engagement is the Auditor-General or any other person who may act as the CRD assurance practitioner under that Act in respect of the assurance engagement.

Section 461ZH: replaced, on 27 October 2024, by section 25 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZHA Assurance engagement must be carried out in accordance with auditing and assurance standards

An assurance practitioner must, in carrying out an assurance engagement under this Part, comply with all applicable auditing and assurance standards.

Section 461ZHA: inserted, on 27 October 2024, by section 25 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZHB Assurance practitioner's report

(1) The assurance practitioner's report on the climate statements or group climate statements prepared by an entity under any of sections 461Z to 461ZC must comply with the requirements of all applicable auditing and assurance standards.

(2) If the assurance practitioner's report indicates that the requirements of this Part have not been complied with, the assurance practitioner must, within 20 working days after signing the report, send a copy of the report, and a copy of the climate statements or group climate statements to which it relates, to—

(a) the FMA; and

(b) the External Reporting Board; and

(c) in the case of a climate reporting entity that is an issuer of debt securities or a manager of a registered scheme, the supervisor.

(3) An assurance practitioner who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding $50,000.

Section 461ZHB: inserted, on 27 October 2024, by section 25 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZHC Assurance engagement may cover other parts of climate statements

(1) Section 461ZH does not prevent the assurance engagement from covering the whole, or other parts, of the climate statements or group climate statements.

(2) If an assurance engagement does cover the whole, or other parts, of the statements,—

(a) the assurance practitioner's report must separately identify the matters that are required to be the subject of the assurance engagement under section 461ZH; and

(b) this subpart applies, with any necessary modifications, in relation to the whole of the assurance engagement.

(3) In this section, **other parts**, in relation to climate statements or group climate statements, means any part or parts of those statements that are not required by section 461ZH to be the subject of the assurance engagement.

Section 461ZHC: inserted, on 27 October 2024, by section 25 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Assurance practitioner access to information

Heading: inserted, on 27 October 2024, by section 25 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZHD Climate reporting entity must give assurance practitioner access to information

(1) Every climate reporting entity must ensure that an assurance practitioner appointed for an assurance engagement under this Part has access, at all times, to—

(a) the CRD records of the climate reporting entity or scheme; and

(b) any other documents of the climate reporting entity or scheme that are relevant to the assurance engagement.

(2) If a climate reporting entity contravenes subsection (1), every director of the entity commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) In any proceeding against a director for a contravention of subsection (1), it is a defence if the director proves that—

(a) the climate reporting entity took all reasonable steps to ensure that subsection would be complied with; or

(b) the director took all reasonable steps to ensure that the climate reporting entity complied with that subsection; or

(c) in the circumstances, the director could not reasonably have been expected to take steps to ensure that the climate reporting entity complied with that subsection.

Compare: 2013 No 101 s 38

Section 461ZHD: inserted, on 27 October 2024, by section 25 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZHE Assurance practitioner may require information and explanations from director or employee

(1) An assurance practitioner appointed for an assurance engagement under this Part is entitled to require from a director or an employee of the climate reporting entity the information and explanations that the assurance practitioner thinks necessary for the performance of their duties as assurance practitioner.

(2) A director or an employee who fails to comply with a requirement to provide information or an explanation under subsection (1) commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) In any proceeding against an employee for failing to comply with a requirement to provide information or an explanation under subsection (1), it is a defence if the employee proves that—

(a) the employee did not have the information required in their possession or under their control; or

(b) by reason of the position occupied by the employee or the duties assigned to them, they were unable to give the explanations required.

Compare: 2013 No 101 s 39

Section 461ZHE: inserted, on 27 October 2024, by section 25 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 5—Lodgement of climate statements

Subpart 5: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZI Lodgement of climate statements

(1) Every climate reporting entity that is required to prepare climate statements or group climate statements under any of sections 461Z to 461ZB must ensure that, within 4 months after the balance date of the entity, copies of the following are delivered to the Registrar for lodgement:

(a) the climate statements or group climate statements that are required to be prepared; and

(b) the assurance practitioner's report on those statements.

(2) Every manager that is a climate reporting entity in respect of a registered scheme must ensure that, within 4 months after the balance date of the scheme, copies of the following are delivered to the Registrar for lodgement:

(a) the climate statements that are required to be prepared under section 461ZC; and

(b) the assurance practitioner's report on those statements.

(3) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

Section 461ZI: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 461ZI(1): replaced, on 27 October 2024, by section 26 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 461ZI(2): replaced, on 27 October 2024, by section 26 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZJ Information about climate statements of climate reporting entities to be made available in annual report

(1) This section applies to every climate reporting entity that is required to prepare—

(a) climate statements or group climate statements under any of sections 461Z to 461ZB; and

(b) an annual report under the Companies Act 1993 or any other enactment.

(2) The climate reporting entity must include, in its annual report for the period ending on the balance date,—

(a) a statement that the entity is a climate reporting entity for the purposes of this Act; and

(b) either—

(i) a copy of the climate statements or group climate statements prepared by the entity under any of sections 461Z to 461ZB, together with a copy of the assurance practitioner's report on those statements; or

(ii) the address of (or a link to) the Internet site where a copy of those statements, together with the assurance practitioner's report on those statements, can be accessed.

(3) A climate reporting entity that contravenes this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

(4) The offence in this section is an infringement offence (*see* subpart 5 of Part 8).

(5) In this section, **annual report** includes a concise annual report.

Section 461ZJ: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 461ZJ(2)(b): replaced, on 27 October 2024, by section 27 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 6—Civil liability for certain contraventions of this Part

Subpart 6: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

461ZK Part 7A climate-related disclosure provisions

(1) All of the provisions specified in subsections (3) and (4) are Part 7A climate-related disclosure provisions.

(2) A contravention of any of the provisions listed in subsection (3) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $1 million in the case of an individual or $5 million in any other case.

(3) For the purposes of subsection (2), the provisions are the following:

(a) section 461V (climate reporting entities must keep proper CRD records):

(b) sections 461Z to 461ZC (climate statements and group climate statements must be prepared):

(ba) section 461ZH (parts of climate statements must be subject to assurance engagement):

(c) section 461ZI (climate statements must be lodged).

(4) A contravention of section 461X (CRD records to be kept for 7 years) may give rise to civil liability (*see* subpart 3 of Part 8), including a pecuniary penalty not exceeding $200,000 in the case of an individual or $600,000 in any other case.

Section 461ZK: inserted, on 27 October 2022, by section 8 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 461ZK(3)(ba): inserted, on 27 October 2024, by section 28 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Part 8
Enforcement, liability, and appeals

Subpart 1—FMA's enforcement powers

Stop orders

462 When FMA may make stop orders

(1) The FMA may make a stop order if it is satisfied that—

(a) a PDS, a register entry, or a limited disclosure document for an offer of financial products—

(i) is false or misleading, or is likely to mislead or confuse, in a material particular; or

(ii) contains any material misdescription or material error or any material matter that is not clearly legible; or

(iii) does not comply with this Act or the regulations; or

(b) any provision of Part 3, clause 13, 17, 26, 27, or 28 of Schedule 1, or clause 25 of Schedule 4 has been, or is likely to be, contravened in respect of an offer of financial products; or

(c) section 103 (need for governing document and supervisor) has been, or is likely to be, contravened in respect of debt securities; or

(d) section 125 (need to register) has been, or is likely to be, contravened in respect of managed investment products; or

(e) a registered scheme no longer meets the registration requirements in section 127 or the registration requirements for a particular type of scheme under sections 128 to 132; or

(f) a restricted communication relating to an offer, or intended offer, of financial products, or the supply, or possible supply, of financial services,—

(i) is false or misleading, or is likely to mislead or confuse, in a material particular; or

(ii) is materially inconsistent with any disclosure document referred to in it; or

(iii) contains any material misdescription or material error or any material matter that is not clearly legible; or

(iv) does not comply with this Act or the regulations; or

(g) disclosure relating to financial products under subpart 4 of Part 3, or a disclosure document relating to market services under subpart 4, 5A, or 5B of Part 6,—

(i) is false or misleading, or is likely to mislead or confuse, in a material particular; or

(ii) contains any material misdescription or material error or any material matter that is not clearly legible; or

(iii) does not comply with this Act or the regulations; or

(ga) an issuer of financial products, or a person that provides a licensed market service, has contravened any provision of Part 7 or 7A; or

(h) any provision of section 388, 391, 423, 431G, 431O, or 431X has been, or is likely to be, contravened in respect of the supply of market services; or

(i) 1 or more of the prescribed grounds apply.

(2) If the FMA is satisfied that a provision referred to in subsection (1)(b) to (d) or (h) is likely to be contravened by a person (**A**) in the future, the FMA may make a stop order—

(a) whether or not A has previously contravened the provision; and

(b) whether or not there is an imminent danger of substantial damage to any person if the provision is contravened.

(3) Before making a recommendation for regulations for the purposes of subsection (1)(i), the Minister must be satisfied that the regulations are necessary or desirable for the purpose of enabling a recognition regime or an application regime (or both) to be implemented under subpart 6 of Part 9.

Section 462(1)(a): amended, on 9 August 2017, by section 83 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 462(1)(g): replaced, on 15 March 2021, by section 35(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 462(1)(ga): inserted, on 1 April 2014, by section 49 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 462(1)(ga): amended, on 27 October 2022, by section 9 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 462(1)(h): amended, on 15 March 2021, by section 35(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 462(1)(i): inserted, on 30 March 2025, by section 102(1) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Section 462(3): inserted, on 30 March 2025, by section 102(2) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

463 Terms of stop order

A stop order may, in relation to the offer, financial products, registered scheme, or market or other financial services referred to in section 462(1), do 1 or more of the following:

(a) prohibit offers, issues, sales, or other acquisitions or disposals of financial products specified in the order from being made while the order is in force:

(b) prohibit an offeror from accepting applications for financial products specified in the order while the order is in force:

(c) prohibit the distribution of 1 or more of the following while the order is in force:

  (i) a PDS or any other disclosure document:

  (ii) a restricted communication referred to in section 462(1)(f):

  (iii) any restricted communication that relates to the offer of financial products, or supply of financial services, specified in the order:

(d) prohibit a person from accepting further contributions, investments, or deposits in respect of financial products specified in the order while the order is in force:

(e) prohibit the supply of financial services specified in the order from being made while the order is in force.

464 Meaning of restricted communication

(1) In this Act, **restricted communication** means a form of communication—

(a) that—

  (i) directly or indirectly refers to an offer, or intended offer, of financial products or the supply, or possible supply, of a financial service; or

(ii) is reasonably likely to induce persons to apply for financial products or request the supply of a financial service; or

(iii) is reasonably likely to induce persons to make further contributions, investments, or deposits referred to in section 11(2)(c); and

(b) that is authorised or instigated by, or on behalf of, the offeror, the issuer, the service provider, or an associated person of the offeror or issuer or service provider or that is prepared with the co-operation of, or by arrangement with, any of those persons; and

(c) that is to be, or has been, distributed to a person.

(2) In this Act, references to a financial product in relation to a restricted communication must be treated as a reference to a financial product as defined in section 18.

(3) In this Act, **restricted communication** includes any advertisement.

465 FMA may make interim stop order pending exercise of powers

(1) The FMA may make an interim order (an **interim stop order**) of the kind referred to in section 463 that is in force for the period referred to in subsection (2) if—

(a) the FMA is considering, at any time, whether it may exercise a power under section 462; and

(b) the FMA considers that making an interim stop order is desirable in the public interest.

(2) An interim stop order is in force from the time at which it is made until the close of—

(a) the date that is 15 working days after the day on which it is made; or

(b) a later date specified by the FMA by notice to the issuer, offeror, or service provider to which the order relates.

(3) For the purposes of subsection (2)(b),—

(a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to complete its consideration as referred to in subsection (1)(a) within the 15-working-day period referred to in subsection (2)(a); and

(b) the later date must be a date that is no more than 30 working days after the day on which the interim stop order is made.

(4) The FMA—

(a) may act under subsection (1) or (2)(b) without giving the issuer, offeror, or service provider to which the order relates an opportunity to make submissions to, or be heard before, the FMA in respect of the matter (and, accordingly, section 475 does not apply); but

(b) must, after acting under subsection (1) or (2)(b), give that issuer, offeror, or service provider or that person's representative an opportunity to make written submissions and to be heard on the matter.

Compare: 1978 No 103 s 43K

466 Persons to whom stop orders and interim stop orders may apply

(1) A stop order or an interim stop order of the kind referred to in—

(a) section 463(a), (b), (d), or (e) may apply to any person specified in the order (for example, an issuer, an offeror, or a service provider):

(b) section 463(c) may apply to 1 or more of an issuer, an offeror, a service provider, or any associated persons of an issuer, an offeror, or a service provider.

(2) If a stop order or an interim stop order of the kind referred to in section 463(c) extends to associated persons of the issuer, offeror, or service provider, the order may require—

(a) all, or any specified class or classes, of the associated persons to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and

(b) the issuer, offeror, or service provider to provide a copy of the order to all or any of those associated persons.

(3) For the purpose of subsection (2), the order is not required to refer to the associated persons by name.

467 Extended application of subpart

(1) The FMA may make a stop order or an interim stop order in respect of a restricted communication that is distributed or to be distributed to a person outside New Zealand by a person resident, incorporated, registered, or carrying on business in New Zealand.

(2) In this section, **registered** means registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Direction orders

468 When FMA may make direction orders

(1) The FMA may make a direction order if it is satisfied that, by engaging in any conduct, a person (**the relevant person**) has contravened, or is likely to contravene,—

(a) a Part 2 fair dealing provision:

(b) a Part 3 offer provision:

(c) a Part 4 governance provision:

(d) a Part 5 market provision:

(e) a Part 6 services provision:

(f) a Part 7 financial reporting provision:

(fa) a Part 7A climate-related disclosure provision:

(g) an infringement offence provision:

(h) an obligation under Schedule 3 or under a trust deed for a Schedule 3 scheme:

(i) clause 21, 22(1)(b) or (c), 25, or 39 of Schedule 4 (transitional requirements):

(j) a term or condition of an exemption granted under subpart 2 of Part 9 or an exemption from a licensing requirement under section 546(1)(c) to (cc).

(2) If the FMA is satisfied that, by engaging in any conduct, the relevant person is likely to contravene a provision referred to in subsection (1) in the future, the FMA may make a direction order—

(a) whether or not the relevant person has previously contravened the provision; and

(b) whether or not there is an imminent danger of substantial damage to any person if the provision is contravened.

(3) In this section, an **infringement offence provision** is a provision in respect of which a contravention is an infringement offence.

Section 468(1)(fa): inserted, on 27 October 2022, by section 10 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 468(1)(j): amended, on 31 March 2025, by section 15 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

469 Terms of direction orders

(1) A direction order may—

(a) direct the relevant person to comply with the relevant provision referred to in section 468 (the **provision**):

(b) stipulate any reasonable steps that the relevant person must take in order to comply with the provision or to avoid or mitigate any actual or potential adverse effects of a contravention, including (without limitation)—

(i) disclosing, in accordance with the order, information for the purpose of securing compliance with the provision:

(ii) publishing, at the relevant person's own expense and in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order:

(iii) complying in accordance with the order with a prohibition or restriction on the making of any statement or the distribution of

any document by, or on behalf of, the relevant person for the purpose of preventing a contravention or further contravention of the provision:

(c) in the case of section 468(1)(j), prohibit the relevant person from relying on the exemption:

(d) require the relevant person to report to the FMA within the time specified in the order stating how and when the order has been or will be implemented.

(2) If the FMA is satisfied that the relevant person (**A**) is a financial adviser who, by engaging in any conduct, has contravened, or is likely to contravene, any of sections 431I to 431P, a direction order may do 1 or more of the following (whether or not in addition to an order under subsection (1)):

(a) direct the Registrar to deregister A under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**):

(b) direct the Registrar to—

(i) deregister A under the FSP Act; and

(ii) prevent A for a specified period from being reregistered for a financial advice service under the FSP Act:

(c) direct the Registrar to suspend A's registration under the FSP Act for a period of no more than 12 months or until A meets specified conditions relating to the registration (but, in any case, not for a period of more than 12 months).

(3) Subsection (4) applies if the FMA is satisfied that—

(a) the relevant person is Lloyd's or a Lloyd's underwriter, and that, by engaging in any conduct, the relevant person has contravened, or is likely to contravene, section 449A; or

(b) the relevant person is a Lloyd's managing agent who, by engaging in any conduct, has contravened, or is likely to contravene,—

(i) section 449A; or

(ii) any provision of subpart 6A of Part 6 (as applied under section 446V).

(4) A direction order may do any of the following (whether or not in addition to an order under subsection (1)):

(a) in the case of a contravention, or likely contravention, by Lloyd's, prohibit all or any Lloyd's underwriters from relying on the exemption in section 389(4)(a):

(b) in the case of a contravention, or likely contravention, by a Lloyd's underwriter, prohibit the Lloyd's underwriter from relying on the exemption in section 389(4)(a):

(c) in the case of a contravention, or likely contravention, by a Lloyd's managing agent who acts for 1 or more Lloyd's underwriters, prohibit all or any of those Lloyd's underwriters from relying on the exemption in section 389(4)(a).

Section 469(2): inserted, on 15 March 2021, by section 36 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 469(3): amended, on 31 March 2025, by section 16 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 469(4): amended, on 31 March 2025, by section 16 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Order to prohibit use of simplified disclosure PDS

470 FMA may order that simplified disclosure PDS may not be used

(1) The FMA may make an order prohibiting an offeror from distributing a simplified disclosure PDS, or otherwise making an offer under a simplified disclosure PDS, if the FMA is satisfied that the offeror (or the issuer of the relevant financial products) has failed to comply with any of the following at any time during the previous 12 months before the order is made:

(a) a continuous disclosure obligation:

(b) any provision under Part 7:

(ba) any provision under Part 7A:

(c) any prescribed provision.

(2) In this section, **simplified disclosure PDS** means a PDS of a class that is declared by the regulations as being a class of simplified disclosure PDSs.

(3) Subsection (1) does not limit any other power of the FMA by or under this Act.

Section 470(1)(ba): inserted, on 27 October 2022, by section 11 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Order to prohibit offer under recognition regime

471 FMA may order that offer may not be made under recognition regime

(1) The FMA may make an order prohibiting a person (**A**) from making an offer under a recognition regime set out in regulations made under section 576 if the FMA is satisfied that—

(a) 1 or more of the requirements of those regulations have been contravened in relation to a previous offer by A or an associated person of A; and

(b) the contravention was not minor or technical only.

(2) The order must specify the period during which the prohibition applies (which must be no longer than 5 years from the day on which the order is made).

(3) Subsection (1) does not limit any other power of the FMA by or under this Act.

Compare: Corporations Act 2001 s 1200P(1) (Aust); SR 2008/153 r 13(4)

Unsolicited offer orders

472 When FMA may make unsolicited offer orders

(1) The FMA may make an unsolicited offer order if the FMA is satisfied that a person has acted, is acting, or is likely to act in contravention of an unsolicited offer provision.

(2) If the FMA is satisfied that an unsolicited offer provision is likely to be contravened by a person (**A**) in the future, the FMA may make an unsolicited offer order—

(a) whether or not A has previously contravened the provision; and

(b) whether or not there is an imminent danger of substantial damage to any person if the provision is contravened.

Compare: 1988 No 234 s 42EA

473 Terms of unsolicited offer orders

(1) An unsolicited offer order may—

(a) restrain a person from acquiring a financial product, a power to dispose of a financial product, or an interest in or a right attaching to a financial product, as a result of the unsolicited offer:

(b) restrain a person from taking any action that is, or that may reasonably be expected to constitute, a contravention of an unsolicited offer provision:

(c) restrain a person from taking specified steps to complete or perform a contract that has been, or may reasonably be expected to be, entered into in contravention of an unsolicited offer provision:

(d) direct a person not to register the transfer of a financial product:

(e) direct a person to disclose information, make corrective statements, or take any other specified steps, at the person's own expense and in the manner and at the times specified in the order, for the purpose of securing compliance with an unsolicited offer provision.

(2) An unsolicited offer order may be directed at any person.

Compare: 1988 No 234 s 42EB

Orders that exclusion does not apply

474 FMA may order that exclusion for offers of products of same class as quoted products does not apply

(1) The FMA may make an order that clause 19 of Schedule 1 does not apply in respect of an issuer if the FMA is satisfied that the issuer has failed to comply

with any of the following at any time during the previous 12 months before the order is made:

(a) a continuous disclosure obligation:

(b) any provision under Part 7:

(ba) any provision under Part 7A:

(c) any prescribed provision.

(2) Subsection (1) does not limit any other power of the FMA by or under this Act.

Section 474(1)(ba): inserted, on 27 October 2022, by section 12 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Process for FMA's orders

475 FMA must follow steps before making orders

(1) The FMA may make an order under this Part only if it first takes the following steps:

(a) gives the person to whom the order is proposed to be directed written notice—

(i) that the FMA may make an order under this Part; and

(ii) of the reasons why it is considering exercising that power; and

(b) also gives that written notice to the relevant licensed market operator, in the case of a direction order for a contravention of a continuous disclosure obligation or exemption or an order under section 470 or 474; and

(c) gives the notice referred to in paragraph (a) or (b) at least 5 working days before the FMA makes the order; and

(d) gives each person to whom notice of the order must be given or the person's representative an opportunity to make written submissions and to be heard on the matter within that notice period.

(2) However,—

(a) the FMA may shorten these steps in accordance with section 476; and

(b) in the case of a stop order under section 463(c), the FMA does not have to give the notice referred to in subsection (1)(a) to any associated persons of the issuer, offeror, or service provider.

(3) In the case of a direction order under section 469(2), the financial adviser that is the subject of the order is the person referred to in subsection (1)(a) and (d) and section 477(1)(a).

Compare: 1988 No 234 s 42F

Section 475(3): inserted, on 15 March 2021, by section 37 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

476 FMA may shorten steps for specified orders

If the FMA thinks it necessary or desirable in the public interest for any order to be made more urgently than section 475 permits,—

(a) it may give less than 5 working days' notice before it makes the order, and the submissions may be oral rather than written; but

(b) it must include in that notice the reasons for acting urgently and must otherwise comply with that section.

Compare: 1988 No 234 s 42G

477 FMA must give notice after making orders

(1) If the FMA makes an order under this Part, the FMA—

(a) must, as soon as is reasonably practicable, give written notice to the person to whom the order is directed of—

(i) the terms and conditions of the order; and

(ii) the reasons for the order; and

(iii) any other information the FMA thinks relevant in the circumstances; and

(b) must also give the written notice referred to in paragraph (a) to the Registrar and make the notice available on its Internet site, in the case of a stop order, an interim stop order, or an order under section 470; and

(c) in the case of an order other than a stop order or an interim stop order, may also give the written notice referred to in paragraph (a) to the Registrar and make the notice available on its Internet site; and

(d) must also give the written notice referred to in paragraph (a) to the relevant licensed market operator, in the case of a direction order for a contravention of a continuous disclosure obligation or exemption or an order under section 470 or 474; and

(e) may also give notice to any other person of those matters.

(2) In the case of a stop order of the kind referred to in section 463(c), the FMA does not have to give the notice referred to in subsection (1)(a) to any associated persons of the issuer, offeror, or service provider (but the issuer, offeror, or service provider may be required to do so).

Compare: 1988 No 234 s 42H

General provisions

478 General provisions on FMA's orders

(1) The FMA may make an order under this Act on the terms and conditions that the FMA thinks fit.

(2) The FMA may vary an order in the same way as it may make the order under this Act.

(3) The FMA may revoke an order or suspend an order on the terms and conditions it thinks fit.

Compare: 1988 No 234 s 42I

479 Consequences of failing to comply with FMA's orders

(1) If an order made by the FMA under this Act applies to a person, the person must comply with the order (*see* subpart 3, which provides for civil liability for a contravention of this duty).

(2) A person who refuses or fails, without reasonable excuse, to comply with an order made by the FMA under this Act commits an offence and is liable on conviction to a fine not exceeding $300,000.

Compare: 1988 No 234 s 42J

Subpart 2—High Court's enforcement powers

Injunctions

480 Court may grant injunctions

The court may, on application by the FMA or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention, or involvement in a contravention, of a provision of this Act or the regulations.

Compare: 1988 No 234 s 42K

481 When court may grant injunctions and interim injunctions

(1) The court may grant an injunction restraining a person from engaging in conduct of a particular kind if—

(a) it is satisfied that the person has engaged in conduct of that kind; or

(b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.

(2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.

(3) Subsections (1)(a) and (2) apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.

(4) Subsections (1)(b) and (2) apply whether or not the person has previously engaged in conduct of that kind or there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.

Compare: 1988 No 234 s 42L

482 Undertaking as to damages not required by FMA

(1) If the FMA applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the FMA to give an undertaking as to damages.

(2) In determining the FMA's application for the grant of an interim injunction, the court must not take into account that the FMA is not required to give an undertaking as to damages.

Compare: 1988 No 234 s 42M

Court may make FMA orders under this Part

483 Court may make FMA orders under this Part

The court may, on application by any person, make any order that the FMA may make under this Part if the court is satisfied of the same matters that the FMA would need to be satisfied of if the FMA were to exercise that power.

Subpart 3—Civil liability

Overview of civil liability

484 Overview of civil liability

(1) The following orders (**civil liability orders**) are available for a contravention, or involvement in a contravention, of a civil liability provision (except if otherwise provided) under this subpart:

(a) a declaration of contravention:

(b) a pecuniary penalty order (on application by the FMA only):

(c) a compensatory order:

(d) other civil liability orders under section 497.

(2) This section is a guide only to the general scheme and effect of this subpart.

Compare: 1988 No 234 s 42R

485 What are civil liability provisions

In this subpart, a **civil liability provision** is—

(a) a Part 2 fair dealing provision:

(b) a Part 3 offer provision:

(c) a Part 4 governance provision:

(d) a Part 5 market provision:

(e) an unsolicited offer provision:

(f) a Part 6 services provision:

(g) a Part 7 financial reporting provision:

(ga) a Part 7A climate-related disclosure provision:

(h) section 479(1) (failing to comply with FMA's orders):

(i) clause 21, 22(1)(b) or (c), 25, or 39 of Schedule 4 (transitional requirements).

Compare: 1988 No 234 s 42S

Section 485(ga): inserted, on 27 October 2022, by section 13 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Declarations of contravention and pecuniary penalty orders

486 When court may make declarations of contravention

(1) The court may, on the application of the FMA or any other person, make a declaration of contravention if it is satisfied that a person has—

(a) contravened a civil liability provision; or

(b) been involved in a contravention of a civil liability provision.

(2) The court may also make a declaration of contravention under section 489(2)(b).

487 Purpose and effect of declarations of contravention

(1) The purpose of a declaration of contravention is to enable an applicant for a compensatory order or other civil liability order under section 497 to rely on the declaration of contravention in the proceedings for that order, and not be required to prove the contravention or involvement in the contravention.

(2) Accordingly, a declaration of contravention is conclusive evidence of the matters that must be stated in it under section 488.

Compare: 1988 No 234 s 42U

488 What declarations of contravention must state

A declaration of contravention must state the following:

(a) the civil liability provision to which the contravention or involvement in the contravention relates; and

(b) the person who engaged in the contravention or was involved in the contravention; and

(c) the conduct that constituted the contravention or the involvement in the contravention and, if a transaction constituted the contravention, the transaction; and

(d) the issuer, offeror, or service provider to which the conduct relates (if relevant).

Compare: 1988 No 234 s 42V

489 When court may make pecuniary penalty orders

(1) The FMA may apply for a pecuniary penalty order against a person under this Act.

(2) If the FMA applies for a pecuniary penalty order against a person under this Act, the court—

(a) must determine whether the person has contravened, or been involved in a contravention of, a civil liability provision; and

(b) must make a declaration of contravention if it is satisfied that the person has contravened, or been involved in a contravention of, a civil liability provision; and

(c) may order the person to pay to the Crown a pecuniary penalty that the court considers appropriate if it is satisfied that the person has contravened, or been involved in a contravention of, a civil liability provision.

(3) However, a pecuniary penalty order may not be made—

(a) for a contravention, or involvement in a contravention, of section 19:

(ab) in the circumstances referred to in section 446O:

(b) in the circumstances referred to in section 431U, 461C, or 461ZF.

(4) The court may make a pecuniary penalty order against a director who is treated as contravening a civil liability provision under section 534 (but only if the FMA has applied for the order against the director).

Compare: 1988 No 234 s 42T

Section 489(3): replaced, on 1 April 2014, by section 50 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 489(3)(ab): inserted, on 31 March 2025, by section 17 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 489(3)(b): amended, on 27 October 2022, by section 14 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 489(3)(b): amended, on 15 March 2021, by section 38 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

490 Maximum amount of pecuniary penalty

(1) The maximum amount of a pecuniary penalty for a contravention, or involvement in a contravention, of a civil liability provision referred to in subsection (2) is the greatest of—

(a) the consideration for the transaction that constituted the contravention (if any); and

(b) if it can be readily ascertained, 3 times the amount of the gain made, or the loss avoided, by the person who contravened the civil liability provision; and

(c) $1 million in the case of a contravention, or involvement in a contravention, by an individual or $5 million in any other case.

(2) The civil liability provisions to which subsection (1) applies are—

(a) a Part 2 fair dealing provision (other than a provision specified in section 38(3)):

(b) a Part 3 offer provision (other than a provision specified in section 101(4)):

(c) a Part 4 governance provision (other than a provision specified in section 228(4)):

(d) a Part 5 market provision (other than a provision specified in section 385(4)):

(e) a Part 6 services provision (other than a provision specified in section 449(4)):

(f) a Part 7 financial reporting provision (other than a provision specified in section 461M(4)):

(fa) a Part 7A climate-related disclosure provision (other than section 461X):

(g) an unsolicited offer provision:

(h) clause 21, 22(1)(b) or (c), or 25 of Schedule 4 (transitional requirements).

(3) The maximum amount of a pecuniary penalty for a contravention, or involvement in a contravention, of any other civil liability provision is—

(a) $200,000 in the case of a contravention, or involvement in a contravention, by an individual; or

(b) $600,000 in any other case.

Compare: 1988 No 234 s 42W

Section 490(2)(f): amended, on 1 April 2014, by section 51 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 490(2)(fa): inserted, on 27 October 2022, by section 15 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

491 Guidance for court on how to determine gains made or losses avoided for purposes of maximum amount

(1) For the purposes of section 490(1)(b), a person must be treated as—

(a) making a gain if the person acquires a financial product for less than its value:

(b) avoiding a loss if the person disposes of a financial product for more than its value.

(2) In this case, the gain made or loss avoided is the difference between the consideration paid or received (as the case may be) and the value the financial product would have had at the time of the issue or sale if,—

(a) in the case of a contravention of any of sections 241 to 243, the material information had been generally available to the market; or

(b) in the case of a contravention of section 262 or 265, the conduct, statement, or information had not been misleading, deceptive, or false; or

(c) in any other case, the contravention had not occurred.

(3) This section does not—

(a) limit the circumstances in which the court may find that a person has made a gain or avoided a loss; or

(b) prevent the court from finding that the amount of the gain made, or the loss avoided, by a person exceeds an amount calculated under this section.

Compare: 1988 No 234 s 42X

492 Considerations for court in determining pecuniary penalty

In determining an appropriate pecuniary penalty, the court must have regard to all relevant matters, including—

(a) the purposes stated in sections 3 and 4 and any other purpose stated in this Act that applies to the civil liability provision; and

(b) the nature and extent of the contravention or involvement in the contravention; and

(c) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in contravention or who was involved in the contravention, because of the contravention or involvement in the contravention; and

(d) whether or not a person has paid an amount of compensation, reparation, or restitution, or taken other steps to avoid or mitigate any actual or potential adverse effects of the contravention; and

(e) the circumstances in which the contravention, or involvement in the contravention, took place; and

(f) whether or not the person in contravention, or who was involved in the contravention, has previously been found by the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct; and

(g) in the case of section 534 (directors treated as having contravened), the circumstances connected with the director's appointment (for example, whether the director is a non-executive or an independent director); and

(h) the relationship of the parties to the transaction constituting the contravention.

Compare: 1988 No 234 s 42Y

493 Court must order that recovery from pecuniary penalty be applied to FMA's actual costs

If the court orders that a person pay a pecuniary penalty, the court must also order that the penalty must be applied first to pay the FMA's actual costs in bringing the proceedings.

Compare: 1988 No 234 s 42Z

Compensatory orders

494 When court may make compensatory orders

(1) The court may make a compensatory order, on application by the FMA or any other person, if the court is satisfied that—

(a) there is a contravention of a civil liability provision; and

(b) a person (the **aggrieved person**) has suffered, or is likely to suffer, loss or damage because of the contravention.

(2) The court may make a compensatory order whether or not the aggrieved person is a party to the proceedings.

Compare: 1988 No 234 s 42ZA

495 Terms of compensatory orders

(1) If section 494 applies, the court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce the loss or damage, referred to in that section.

(2) An order under this section may include an order to direct a relevant person to pay to the aggrieved person the amount of the loss or damage (in whole or in part).

(3) Subsection (2) does not limit subsection (1).

(4) In this section, **relevant person** means—

(a) any person in contravention (including any director who is treated as contravening the civil liability provision under section 534); or

(b) any person involved in the contravention.

Compare: 1988 No 234 s 42ZB

496 Person treated as suffering loss or damage in case of defective disclosure

(1) The purpose of this section is to provide that certain contraventions must be treated as causing a person to suffer loss or damage unless the contrary is proved.

(2) This section applies if—

(a) a person (**A**)—

(i) acquires financial products under an offer that contravenes section 82; or

(ii) acquires financial products, or makes further contributions, investments, or deposits in respect of financial products, after the issuer of the financial products contravenes section 99; or

(iii) acquires financial products under an offer where a person contravenes clause 27 of Schedule 1 in relation to that offer; and

(b) the financial products, contributions, investments, or deposits referred to in paragraph (a) have declined in value after the contravention referred to in paragraph (a).

(3) A must be treated as having suffered loss or damage because of the contravention unless it is proved that the decline in value was caused by a matter other than the relevant statement, omission, or circumstance.

(4) In this section, the **relevant statement, omission, or circumstance** is, as the case may be,—

(a) the statement that is false or misleading or is likely to be misleading referred to in section 82(1)(a)(i) or 99(1)(a)(i) or clause 27(1)(a)(i) of Schedule 1; or

(b) the omission referred to in section 82(1)(a)(ii) or 99(1)(a)(ii) or clause 27(1)(a)(ii) of Schedule 1; or

(c) the circumstance referred to in section 82(1)(a)(iii).

(5) This section does not limit section 495 (which provides for the court to make any order it thinks just to compensate an aggrieved person for the loss or damage in whole or in part).

Other civil liability orders

497 When court may make other civil liability orders

The court may, on application by the FMA or any other person, make a civil liability order described in section 498 if the court is satisfied that a person has contravened, intends to contravene, or was involved in a contravention of a civil liability provision.

Compare: 1988 No 234 s 42ZE

498 Terms of other civil liability orders

A civil liability order under section 497 may—

(a) direct the person in contravention, or the person involved in the contravention, to refund money or return property to a person who has suffered, or is likely to suffer, loss or damage because of the contravention (the **aggrieved person**):

(b) if an agreement has been entered into between the person in contravention, a person involved in the contravention, or an associated person of either of those persons (**A**), and the aggrieved person,—

(i) vary the agreement or any collateral arrangement as specified in the order and, if the court thinks fit, declare the agreement or arrangement to have had effect as so varied on and after a date before the order was made, as specified in the order:

(ii) cancel the agreement and, if the court thinks fit, declare the cancellation to have had effect on and after a date before the order was made, as specified in the order:

(iii) require A to take any action the court thinks fit to reinstate the parties as near as may be possible to their former positions:

(c) restrain the exercise of rights attaching to financial advice products, or the exercise of relevant interests, or declare an exercise of those rights or relevant interests to be void and of no effect:

(d) restrain the issue or transfer of financial products or restrain any distribution due in relation to financial products:

(e) restrain the acquisition or disposal of financial advice products or of relevant interests, or restrain the registration of any transfer of that kind:

(f) direct the disposal of financial products or of relevant interests (including the person or class of persons to which the products or interests must, or must not, be disposed of) and direct the payment of the proceeds of any disposal:

(g) require financial products to be forfeited and require the issuer to cancel the forfeited financial products:

(h) cancel an agreement for the acquisition or disposal of financial products or relevant interests.

Compare: 1988 No 234 s 42ZF

Section 498(c): amended, on 31 March 2025, by section 18 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 498(e): amended, on 31 March 2025, by section 18 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Defences for person in contravention of civil liability provisions

499 General defences for person in contravention

(1) In any proceeding under this subpart against a person (**A**) for a contravention of a civil liability provision, it is a defence if A proves that—

(a) A's contravention was due to reasonable reliance on information supplied by another person; or

(b) both of the following apply:

(i) A's contravention was due to the act or default of another person, or to an accident or to some other cause beyond A's control; and

(ii) A took reasonable precautions and exercised due diligence to avoid the contravention.

(2) For the purposes of subsection (1)(a) and (b), **another person** does not include a director, an employee, or an agent of A.

(3) Subsection (1)(b) does not apply to a contravention of section 82, 99, 427(2) or (6), 431P, or 431Y or clause 27 of Schedule 1 (but *see* the defences in sections 500 and 501).

Compare: 1986 No 121 s 44(1) and (2)

Section 499(3): amended, on 15 March 2021, by section 39 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

500 Disclosure defences for person in contravention

(1) In any proceeding under this subpart against a person (**A**) for a contravention of section 82, 99, 427(2) or (6), 431P, or 431Y or clause 27 of Schedule 1 because of a statement that is false or misleading or that is likely to mislead, it is a defence if A proves that A—

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement was not false or misleading.

(2) In any proceeding under this subpart against a person (**A**) for a contravention of section 82, 99, 427(2) or (6), 431P, or 431Y or clause 27 of Schedule 1 because of an omission from a disclosure document or register entry in relation to a particular matter, it is a defence if A proves that A—

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that there was no omission from the disclosure document or register entry in relation to that matter.

(3) In any proceeding under this subpart against a person (**A**) for a contravention of section 82 because of a circumstance referred to in section 82(1)(a)(iii), it is a defence if A proves that A was not aware of the matter.

Compare: Corporations Act 2001 ss 731, 733(4) (Aust)

Section 500(1): amended, on 15 March 2021, by section 40 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 500(2): amended, on 15 March 2021, by section 40 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

501 Additional disclosure or financial reporting or climate-related disclosure defence for directors who are treated as contravening

(1) This section applies if—

(a) a person (**A**) contravenes any of sections 82, 99, 427, 460 to 461B, 461D, 461H, 461Z to 461ZC, 461ZH, and 461ZI or clause 27 of Schedule 1; and

(b) a person (**B**) is a director of A who is treated as being in contravention under section 534.

(2) In any proceeding under this subpart against B, it is a defence if B proves that B took all reasonable steps to ensure that A complied with the provision referred to in subsection (1)(a).

(3) Subsection (2) does not limit any defence that B may have under section 499 or 500 (as a person who is treated as contravening a provision referred to in subsection (1)(a)).

Section 501 heading: amended, on 27 October 2022, by section 16(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 501 heading: amended, on 1 April 2014, by section 52(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 501(1)(a): amended, on 27 October 2024, by section 29 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 501(1)(a): amended, on 27 October 2022, by section 16(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 501(1)(a): amended, on 1 April 2014, by section 52(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 501(2): amended, on 15 March 2021, by section 41 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 501(3): amended, on 9 August 2017, by section 86 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

501A Additional defence for licensees who are treated as contravening

(1) This section applies if—

(a) an authorised body (**A**) contravenes any market services licensee obligation; and

(b) a person (**B**) is the licensee who is treated as being in contravention under section 400(3).

(2) In any proceeding under this subpart against B, it is a defence if B proves that B took all reasonable and proper steps to ensure that A complied with the market services licensee obligation.

(3) Subsection (2) does not limit any defence that B may have under section 499 or 500 (as a person who is treated as contravening a market services licensee obligation).

Section 501A: inserted, on 9 August 2017, by section 87 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

502 Conduct still contravenes even if defence is available

In this Act, conduct must still be treated as contravening a civil liability provision even if the conduct does not lead to any liability under this subpart because of the availability of a defence.

Defences for person involved in contravention of civil liability provisions

503 General defences for person involved in contravention

(1) This section applies if—

(a) a person (**A**) contravenes a civil liability provision; and

(b) another person (**B**) is involved in the contravention.

(2) In any proceeding under this subpart against B for involvement in the contravention of a civil liability provision, it is a defence if B proves that—

(a) B's involvement in the contravention was due to reasonable reliance on information supplied by another person; or

(b) B took all reasonable steps to ensure that A complied with the provision.

(3) For the purposes of subsection (2)(a), **another person** does not include a director, an employee, or an agent of B.

(4) To avoid doubt, this section applies to an involvement in the contravention of any civil liability provision, including sections 82, 99, 427, 431P, and 431Y and clause 27 of Schedule 1.

Section 503(2)(b): amended, on 15 March 2021, by section 42(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 503(4): amended, on 15 March 2021, by section 42(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Miscellaneous provisions relating to defences

504 Defendant must identify other person

A person (**A**) is not, without the leave of the court, entitled to rely on the defence provided by section 499(1)(a) or 503(2)(a) that the contravention or involvement in the contravention was due to reasonable reliance on information supplied by another person, or provided by section 499(1)(b) that the contravention was due to the act or default of another person, unless A has, not later than 7 days before the date on which the hearing of the proceeding commences, served on the other party to the proceeding a written notice identifying that person.

Compare: 1986 No 121 s 44(3)

Interrelationship of civil liability orders

505 More than 1 civil liability order may be made for same conduct

The court may make a civil liability order of one kind against a person even though the court has made another civil liability order of a different kind against the person for the same conduct.

Examples

The court may make a compensatory order and a pecuniary penalty order for the same conduct.

The court may make a civil liability order requiring forfeiture of financial products and declaring a previous exercise of voting rights attaching to those products to be void.

Compare: 1988 No 234 s 42ZG

506 Only 1 pecuniary penalty may be imposed for same conduct

(1) This section applies if conduct by a person constitutes a contravention, or the involvement in the contravention, of—

(a) 2 or more civil liability provisions; or

(b) 1 or more civil liability provisions and 1 or more other pecuniary penalty provisions.

(2) Proceedings may be brought against that person for the contravention, or involvement in the contravention, of any 1 or more of the provisions, but no person is liable to more than 1 pecuniary penalty for the same conduct.

(3) In this section, a **pecuniary penalty provision** is a provision of another Act the contravention of which may give rise to civil liability to a pecuniary penalty.

(4) *[Repealed]*

Section 506: replaced, on 31 March 2025, by section 19 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 506(4): repealed, on 1 July 2026, by section 64 of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

507 No pecuniary penalty and fine for same conduct

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine under this Act, the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, or the Financial Service Providers (Registration and Dispute Resolution) Act 2008 for the same conduct.

Compare: 1978 No 103 s 65F; 1988 No 234 s 43ZC

Section 507: amended, on 31 March 2025, by section 20 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 507: amended, on 15 March 2021, by section 43 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Limitation defences

508 Limitation defences

(1) The Limitation Act 2010 prescribes a defence to a money claim that is a claim for monetary relief under this subpart (for example, a pecuniary penalty order or a compensatory order).

(2) Subsections (3) to (5) apply to a claim for relief (other than any form of monetary relief or declaratory relief) under this subpart.

(3) It is a defence to the claim if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based.

(4) The claim has both a late knowledge period and a longstop period, and sections 11(3)(a) and (b) and 14 of the Limitation Act 2010 apply to it—

(a) as if it were a money claim; and

(b) as if the period in subsection (3) were its primary period.

(5) Every defence prescribed by this section is subject to the exceptions and modifications set out in the Limitation Act 2010 as if prescribed by that Act.

(6) Any term or expression that is defined in the Limitation Act 2010 and used in this section has the same meaning as in the Limitation Act 2010.

Compare: 2010 No 110 s 37

General

509 Rules of civil procedure and civil standard of proof apply to civil liability

The proceedings under this subpart are civil proceedings and the usual rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

Compare: 1988 No 234 s 42ZI

Subpart 4—Offences relating to defective disclosure and false statements

510 Offence of knowingly or recklessly contravening prohibition on offers where defective disclosure in PDS or register entry

(1) An offeror that contravenes section 82 commits an offence if the offeror—

(a) knows that, or is reckless as to whether, the statement referred to in section 82(1)(a)(i) is false or misleading or is likely to mislead; or

(b) knows that, or is reckless as to whether, there is an omission as referred to in section 82(1)(a)(ii); or

(c) knows of, or is reckless as to whether there is, a circumstance of a kind referred to in section 82(1)(a)(iii).

(2) If an offeror contravenes section 82, a director of the offeror commits an offence if—

(a) the offer, or the continuing of the offer, of the financial products under the regulated offer takes place with the director's authority, permission, or consent; and

(b) the director—

(i) knows that, or is reckless as to whether, the statement referred to in section 82(1)(a)(i) is false or misleading or is likely to mislead; or

(ii) knows that, or is reckless as to whether, there is an omission as referred to in section 82(1)(a)(ii); or

(iii) knows of, or is reckless as to whether there is, a circumstance of a kind referred to in section 82(1)(a)(iii).

(3) A person who commits an offence under subsection (1) or (2) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 10 years, a fine not exceeding $1 million, or both; and

(b) in any other case, to a fine not exceeding $5 million.

511 Offence of knowingly or recklessly contravening other provisions relating to defective disclosure

(1) A person who contravenes a disclosure provision commits an offence if the person—

(a) knows that, or is reckless as to whether, the relevant statement is false or misleading or is likely to mislead; or

(b) knows that, or is reckless as to whether, there is a relevant omission.

(2) If an entity contravenes a disclosure provision, a director of the entity commits an offence if—

(a) the relevant act takes place with the director's authority, permission, or consent; and

(b) the director—

(i) knows that, or is reckless as to whether, the relevant statement is false or misleading or is likely to mislead; or

(ii) knows that, or is reckless as to whether, there is a relevant omission.

(3) A person who commits an offence under subsection (1) or (2) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding $500,000, or both; and

(b) in any other case, to a fine not exceeding $2.5 million.

(4) In this section,—

disclosure provision means section 99, 427(2) or (6), 431P, or 431Y or clause 27 of Schedule 1

relevant act means,—

(a) in relation to section 99, the act of providing or making available the ongoing disclosure:

(b) in relation to section 427(2), the act of providing the disclosure statement to a person:

(c) in relation to section 427(6), the act of providing or making available the further disclosure:

(d) in relation to section 431P or 431Y, the act of making the information available to a person:

(e) in relation to clause 27 of Schedule 1, the act of providing the limited disclosure document to a person

relevant omission means an omission as referred to in section 99(1)(a)(ii), 427(1)(a)(ii) or (6)(a)(ii), 431P(1)(a)(ii), or 431Y(1)(a)(ii) or clause 27(1)(a)(ii) of Schedule 1 (as the case may be)

relevant statement means the statement referred to in section 99(1)(a)(i), 427(1)(a)(i) or (6)(a)(i), 431P(1)(a)(i), or 431Y(1)(a)(i) or clause 27(1)(a)(i) of Schedule 1 (as the case may be).

Section 511(1): amended, on 15 March 2021, by section 44(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(1)(a): amended, on 15 March 2021, by section 44(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(1)(b): amended, on 15 March 2021, by section 44(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(2): amended, on 15 March 2021, by section 44(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(2)(b)(i): amended, on 15 March 2021, by section 44(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(2)(b)(ii): amended, on 15 March 2021, by section 44(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 511(4): replaced, on 15 March 2021, by section 44(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

512 General offence for false or misleading statements

(1) Every person commits an offence who, with respect to a document required by or for the purposes of this Act, makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading.

(2) A person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years, a fine not exceeding $200,000, or both.

Compare: 1993 No 105 s 377(1)

Subpart 5—Infringement offences

513 Infringement offences

(1) If a person is alleged to have committed an infringement offence, that person may—

(a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or

(b) be served with an infringement notice as provided in section 514.

(2) Proceedings commenced in the way described in subsection (1)(a) do not require leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.

514 Infringement notices

(1) The FMA may issue an infringement notice to a person if the FMA believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

(2) The FMA may revoke an infringement notice before the infringement fee is paid, or an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.

(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.

515 Procedural requirements for infringement notices

(1) An infringement notice may be served on a person—

(a) by delivering it, or a copy of it, personally to the person who the FMA believes has committed the infringement offence; or

(b) by sending it, or a copy of it, by post, addressed to the person at the person's last known place of residence or business.

(2) An infringement notice sent under subsection (1)(b) must be treated as having been served on the person on the date it was posted.

(3) An infringement notice must be in the prescribed form and must contain—

(a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged offence; and

(b) the amount of the infringement fee; and

(c) an address at which the infringement fee may be paid; and

(d) the time within which the infringement fee must be paid; and

(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and

(f) a statement that the person served with the notice has a right to request a hearing; and

(g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and

(h) any other prescribed matters.

(4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,—

(a) reminder notices may be prescribed; and

(b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.

(5) Reminder notices must contain the prescribed information.

516 Payment of infringement fee

The FMA must pay all infringement fees received into a Crown Bank Account.

Subpart 6—Banning orders

517 When court may make banning orders

(1) The court may, on application by an entitled person, make a banning order against a person (**A**) if—

(a) a pecuniary penalty order has been made against A under this Act; or

(b) A has been convicted of an offence under any Act referred to in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(c) A has been convicted of an offence under any Act referred to in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where A is, or has been, a financial markets participant); or

(d) A has, while a director of an entity,—

(i) persistently contravened, or been involved in the contravention of, any Act specified in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(ii) persistently contravened, or been involved in the contravention of, any Act specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where A is, or has been, a financial markets participant); or

(iii) if the entity has persistently contravened any of the Acts referred to in subparagraph (i) or (ii), persistently failed to take all reasonable steps to obtain compliance with those Acts; or

(e) A has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961 (where A is, or has been, a financial markets participant); or

(f) A has been prohibited in an overseas jurisdiction from carrying on activities that the court is satisfied are substantially similar to any of the activities referred to in section 518 in connection with a contravention of any law relating to the offering or trading of financial products or the supply of financial services.

(2) Subsection (1)(d)(iii) applies in respect of the Acts specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 only if the entity is, or has been, a financial markets participant.

(3) An **entitled person** is—

(a) the FMA:

(b) an entity that—

(i) A is a director of at the time of the application; or

(ii) A was a director of at the time of the ground that triggers the making of the order under subsection (1):

(c) the liquidator of an entity referred to in paragraph (b):

(d) a person who is, or has been, a product holder or creditor of an entity referred to in paragraph (b).

(4) An application under this section may be made in the course of any civil or criminal proceedings or at any other time.

(5) In this section, a reference to any Act referred to in Schedule 1 of the Financial Markets Authority Act 2011 includes a reference to any regulations made under any of those Acts.

(6) In this subpart, **director**—

(a) has the same meaning as in section 6(1); and

(b) includes, in relation to an entity,—

(i) a person in accordance with whose directions or instructions a person referred to in paragraph (a) may be required or is accustomed to act; and

(ii) a person in accordance with whose directions or instructions the board or other governing body of the entity may be required or is accustomed to act; and

(iii) a person who exercises or who is entitled to exercise or who controls or is entitled to control the exercise of powers that, apart

from the constitution of the entity, would fall to be exercised by the board or other governing body of the entity; and

(iv) a person to whom a power or duty of the board or governing body of the entity has been directly delegated by the board or governing body with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the board or governing body.

Compare: 1978 No 103 s 60A; 1988 No 234 s 43F

518 Terms of banning orders

(1) A banning order may, permanently or for a period specified in the order, prohibit or restrict the person, without the leave of the court, from doing either or both of the following things:

(a) being a director or promoter of, or in any way (whether directly or indirectly) being concerned or taking part in the management of, an entity (other than an overseas company, or other entity, that does not carry on business in New Zealand):

(b) providing financial advice services or client money or property services, or contributing, as employee or agent, to the provision of those services.

(2) The court may make a banning order permanent or for a period longer than 10 years only in the most serious of cases for which a banning order may be made.

Compare: 1978 No 103 s 60B; 1988 No 234 s 43G

Section 518(1)(b): replaced, on 15 March 2021, by section 45 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

519 Offence of contravening banning order

An individual who contravenes a banning order under this subpart commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years, a fine not exceeding $200,000, or both.

Compare: 1978 No 103 s 60C; 1988 No 234 s 43H

520 Only 1 banning order may be made for same conduct

If conduct by a person constitutes grounds for making an order under any 1 or more of this subpart, section 44F of the Takeovers Act 1993, and section 383 of the Companies Act 1993, proceedings may be brought against that person under any 1 or more of those provisions, but no person is liable to more than 1 order under those provisions for the same conduct.

Compare: 1978 No 103 s 60D; 1988 No 234 s 43J

521 General provisions for banning orders

(1) A Registrar of the court must, as soon as practicable after the making of a banning order by the court under this subpart,—

(a) give notice to the Registrar of Companies, the Registrar of Financial Service Providers, and the FMA that the order has been made; and

(b) give notice in the *Gazette* of the name of the person against whom the order is made and the period or dates for which the order applies (or that the order is permanent).

(2) A person intending to apply for the leave of the court as referred to in section 518 must give to the FMA not less than 10 working days' written notice of that person's intention to apply.

(3) The FMA, and any other persons that the court thinks fit, may attend and be heard at the hearing of the application.

Compare: 1978 No 103 s 60F; 1988 No 234 s 43O

Subpart 7—Orders to protect interests of aggrieved persons in case of financial markets investigations or proceedings

522 When court may make order to protect interests of aggrieved persons

(1) This section applies if—

(a) an investigation is being carried out under the Financial Markets Authority Act 2011 in relation to an act or omission by a person that—

(i) constitutes or may constitute a contravention, or involvement in a contravention, of any Act specified in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(ii) constitutes or may constitute a contravention, or involvement in a contravention, of any Act specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where the person is, or has been, a financial markets participant); or

(iii) may result in a prosecution or civil proceedings of the kind referred to in any of paragraphs (b) to (d) being begun against the person; or

(b) a prosecution has begun against a person for an offence under—

(i) any Act specified in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(ii) any Act specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where the person is, or has been, a financial markets participant); or

(c) civil proceedings have begun against a person under, or in respect of,—

(i) any Act specified in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(ii) any Act specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where the person is, or has been, a financial markets participant); or

(d) civil proceedings have begun against a person that, in connection with the offer, issue, transfer, supply, or use of financial products or financial services, seek damages or other relief for a contravention, involvement in a contravention, fraud, negligence, breach of duty, or other misconduct.

(2) The court may, on application by the FMA or by an aggrieved person, make 1 or more of the orders listed in section 523 if the court considers it necessary or desirable to do so for the purpose of protecting the interests of an aggrieved person.

(3) In this section, a reference to any Act referred to in Schedule 1 of the Financial Markets Authority Act 2011 includes a reference to any regulations made under any of those Acts.

(4) In this section and section 523,—

aggrieved person means any person to whom a relevant person is liable

associate means an associated person of the relevant person

civil proceedings means proceedings in a court (other than criminal proceedings)

liable means liable, or may be or become liable, to pay money (whether in respect of a debt, by way of damages or compensation, or otherwise) or to account for financial products or other property

relevant person means a person referred to in subsection (1).

Compare: 1978 No 103 s 60G; 1988 No 234 s 43P

523 What orders may be made

(1) The orders that may be made under this subpart are—

(a) an order prohibiting the relevant person from transferring, charging, or otherwise dealing with money, financial products, or other property held or controlled by the relevant person:

(b) an order prohibiting a person who is indebted to the relevant person, or to an associate, from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the relevant person or associate:

(c) an order prohibiting a person who holds money on behalf of the relevant person, or on behalf of an associate, from paying all or any of the money to the person, or to another person at the direction or request of that person, on whose behalf the money is held:

(d) an order prohibiting a person who holds financial products or other property on behalf of the relevant person, or on behalf of an associate, from transferring or otherwise parting with possession of the financial products or property to the person, or to another person at the direction

or request of that person, on whose behalf the financial products or other property is held:

(e) an order prohibiting the taking or sending out of New Zealand by a person of money of the relevant person or of an associate:

(f) an order prohibiting the taking, sending, or transfer by a person of financial products or other property of the relevant person or of an associate from a place in New Zealand to a place outside New Zealand (including the transfer of financial products from a register in New Zealand to a register outside New Zealand):

(g) an order requiring the relevant person, an associate, or any person holding money, financial products, or other property on behalf of the relevant person or an associate, to pay or transfer money, financial products, or other property to a specified person to be held on trust pending determination of the investigation, prosecution, or civil proceedings referred to in section 522(1):

(h) an order appointing,—

(i) if the relevant person is an individual, a receiver or trustee, having any powers that the court orders, of the property or of part of the property of that person; or

(ii) if the relevant person is a body corporate, a receiver or receiver and manager, having any powers that the court orders, of the property or of part of the property of that person:

(i) an order removing a person from being a manager of a managed investment scheme to which the investigation, prosecution, or civil proceedings referred to in section 522(1) relates or relate:

(j) an order appointing a person as the manager of a managed investment scheme to which the investigation, prosecution, or civil proceedings referred to in section 522(1) relates or relate (with any powers, rights, and obligations that the court orders):

(k) if the relevant person is an individual, an order requiring that person to deliver up to the court his or her passport and any other documents that the court thinks fit:

(l) if the relevant person is an individual, an order prohibiting that person from leaving New Zealand without the consent of the court.

(2) A reference in subsection (1)(f) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example,—

(a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or

(b) in a fiduciary capacity.

(3) An order may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

Compare: 1978 No 103 s 60H; 1988 No 234 s 43Q

524 Interim orders

(1) If an application is made to the court for an order under section 522, the court may, if in the opinion of the court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(2) The court must not require the FMA, as a condition of making an interim order, to give an undertaking as to damages.

(3) In determining the FMA's application for the grant of an interim order, the court must not take into account that the FMA is not required to give an undertaking as to damages.

Compare: 1978 No 103 s 60I; 1988 No 234 s 43R

525 Relationship with other law

Nothing in this subpart affects the powers that the court has apart from this subpart.

Compare: 1978 No 103 s 60J; 1988 No 234 s 43S

Subpart 8—Indemnities or insurance for directors, employees, and auditors of issuers, offerors, and licensees

526 Prohibition on indemnities or insurance for directors or employees of issuers, offerors, or licensees that are not New Zealand companies

(1) A specified person, or a related body corporate, must not indemnify, or directly or indirectly effect insurance for, a director or an employee of the specified person in respect of—

(a) liability, in connection with conduct regulated by the financial markets legislation, for any contravention, involvement in a contravention, negligence, breach of duty, or breach of trust in his or her capacity as a director or an employee; or

(b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to that liability.

(2) An indemnity given in breach of this section is void.

(3) This section does not apply to a specified person or related body corporate that is a company within the meaning of section 2(1) of the Companies Act 1993 (*see* section 162 of the Companies Act 1993, which provides for limitations on indemnities and insurance).

(4) This section is subject to sections 527 and 528.

Compare: 1978 No 103 s 61

527 Permitted indemnities for certain liabilities or costs

(1) A specified person, or a related body corporate, may, if expressly authorised by its constitution, indemnify a director or an employee of the specified person for any costs incurred by him or her in defending or settling a proceeding that relates to liability of a kind referred to in section 526(1)(a) if—

(a) judgment is given in his or her favour or if he or she is acquitted; or

(b) the proceeding is discontinued.

(2) A specified person or a related body corporate may, if expressly authorised by its constitution, indemnify a director or an employee of the specified person in respect of—

(a) liability to any person other than the specified person for any act or omission in his or her capacity as a director or an employee (not being a liability specified in subsection (3)); or

(b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.

(3) The liability specified in this subsection is—

(a) criminal liability; or

(b) a liability that arises out of a failure to act in good faith when acting in the capacity as a director or an employee.

Compare: 1978 No 103 s 61A

528 Permitted insurance for certain liability or costs

(1) A specified person, or a related body corporate, may, if expressly authorised by its constitution and with the prior approval of its board of directors, effect insurance for a director or an employee of the specified person in respect of—

(a) liability (other than criminal liability) of a kind referred to in section 526(1)(a); or

(b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to that liability; or

(c) costs incurred by that director or employee in defending any criminal proceedings—

(i) that have been brought against the director or employee in relation to any alleged act or omission in his or her capacity as a director or employee; and

(ii) in which he or she is acquitted.

(2) The directors of the specified person, or of the related body corporate, who vote in favour of authorising the insurance under subsection (1) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the specified person or related body corporate (as the case may be).

(3) The director or employee who is insured is personally liable to the specified person or related body corporate for the cost of effecting insurance if—

(a) subsection (2) has not been complied with in effecting the insurance; or

(b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (2).

(4) However, subsection (3) does not apply to the extent that the insurance was fair to the specified person or related body corporate at the time the insurance was effected.

Compare: 1978 No 103 s 61B

529 Prohibition on indemnity or insurance for auditors of issuers, offerors, or licensees

(1) A specified person, or a related body corporate, must not indemnify, or directly or indirectly effect insurance for, an auditor of the specified person, or an auditor engaged by the specified person, in respect of—

(a) liability, in connection with conduct regulated by the financial markets legislation, for any contravention, involvement in a contravention, negligence, breach of duty, or breach of trust in his or her capacity as an auditor; or

(b) costs incurred by that auditor in defending or settling any claim or proceeding relating to that liability.

(2) However, a specified person, or a related body corporate, may indemnify an auditor referred to in subsection (1) for any costs incurred by him or her in defending or settling a proceeding that relates to liability of a kind referred to in subsection (1)(a) if—

(a) judgment is given in his or her favour or if he or she is acquitted; or

(b) the proceeding is discontinued.

(3) An indemnity given in breach of this section is void.

530 Interpretation for this subpart

In this subpart,—

director includes a former director

effect insurance includes to pay, whether directly or indirectly, the costs of the insurance

employee includes a former employee

specified person means—

(a) an issuer of financial products offered under a regulated offer; or

(b) an offeror of financial products offered under a regulated offer; or

(c) a person that holds a market services licence or is an authorised body; or

(d) a licensed market operator; or

(e) a licensed supervisor.

Compare: 1978 No 103 s 61C

Subpart 9—Appeals

531 Appeals against market services licence decisions

A person may appeal to the court against a decision of the FMA under Part 6 to—

(a) decline to issue a licence to the person or to authorise the person to provide a service under the licence; or

(b) impose conditions on the person's licence or proposed licence or to vary, revoke, add to, or substitute any conditions on the person's licence; or

(c) decline an application to vary the conditions of the person's licence; or

(d) exercise a power in respect of the person under section 414 or 418 (which relates to the FMA's powers in the case of contraventions, etc).

532 Appeals against other decisions of FMA on questions of law only

An aggrieved person that considers that any of the following decisions of the FMA is wrong in law may appeal to the court against the decision on a question of law only:

(a) a refusal to give a certificate under section 126(2)(e)(iii) (certificate that the FMA is satisfied that a scheme complies with certain requirements):

(b) a decision under section 134 (direction to change a registration):

(c) a decision under section 193(1)(a) (removal of a supervisor of a registered scheme):

(d) a decision under section 195 (cancellation of the registration of a scheme):

(e) a decision under section 205 (direction to the supervisor or issuer):

(f) a decision under section 361 (direction to a licensed market operator):

(fa) a decision under section 448C, 448D, or 448G (directions to a contributor or an administrator of a financial benchmark):

(g) a decision under subpart 1 (FMA's enforcement powers).

Compare: 1988 No 234 s 47A

Section 532(fa): inserted, on 14 March 2021, by section 47 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

532A Appeals against decisions of disciplinary committee

(1) A person may appeal to the District Court against a decision of the disciplinary committee to take any action referred to in clause 46 of Schedule 5 against the person.

(2) The decision of the District Court on an appeal under this section is final, except as provided in section 532C.

Section 532A: inserted, on 15 March 2021, by section 46 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

532B Orders as to publication of names

(1) On an appeal under section 532A, the District Court may, if in its opinion it is proper to do so, prohibit the publication of the name or particulars of the affairs of a financial adviser or any other person.

(2) In deciding whether to make an order, the court must have regard to—

(a) the interests of any person (including, without limitation, the privacy of any complainant); and

(b) the public interest.

Compare: 2008 No 91 s 145

Section 532B: inserted, on 15 March 2021, by section 46 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

532C Appeal on question of law

A party to an appeal under section 532A may appeal to the High Court against a decision of the District Court on a question of law only.

Compare: 2008 No 91 s 146

Section 532C: inserted, on 15 March 2021, by section 46 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 10—Miscellaneous

Accessories and attribution of liability

533 Involvement in contraventions

(1) In this Act, a person is **involved in a contravention** if the person—

(a) has aided, abetted, counselled, or procured the contravention; or

(b) has induced, whether by threats or promises or otherwise, the contravention; or

(c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention.

(2) Subsection (1) does not apply to proceedings for offences (but *see* Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences).

Compare: Corporations Act 2001 s 79 (Aust)

534 Directors treated as having contravened in case of defective disclosure, financial reporting contravention, or climate-related disclosure contravention

(1) This section applies if, in a proceeding under subpart 3, the court is satisfied that—

(a) an offeror has contravened section 82 (defective disclosure in PDS or register entry); or

(b) an issuer has contravened section 99 (defective ongoing disclosure); or

(c) a licensee or an authorised body has contravened section 427 (defective disclosure statement); or

(ca) an FMC reporting entity has contravened any of sections 460 to 461B, 461D, and 461H (financial reporting obligations); or

(cb) a climate reporting entity has contravened any of sections 461Z to 461ZC, 461ZH, and 461ZI (climate-related disclosure obligations); or

(d) an entity that provided a limited disclosure document under clause 26 of Schedule 1 has contravened clause 27 of that schedule (defective disclosure).

(2) However, this section does not apply in the prescribed circumstances.

(3) For the purposes of subpart 3, every director of the offeror, issuer, licensee, authorised body, FMC reporting entity, climate reporting entity, or entity at the time of the contravention must be treated as also having contravened the provision referred to in subsection (1)(a), (b), (c), (ca), (cb), or (d) (as the case may be).

(4) Every director that is treated as contravening a provision under this section may, under subpart 3, be ordered to pay to the Crown a pecuniary penalty, ordered to pay compensation under section 495, or subject to any other order under subpart 3.

(5) Nothing in this section limits the liability of the offeror, issuer, licensee, authorised body, FMC reporting entity, climate reporting entity, or entity referred to in subsection (1).

(6) *See* sections 499(1)(a), 500, and 501, which provide defences to a director.

Section 534 heading: amended, on 27 October 2022, by section 17(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(1)(ca): inserted, on 1 April 2014, by section 53(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 534(1)(cb): inserted, on 27 October 2022, by section 17(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(1)(cb): amended, on 27 October 2024, by section 30 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(1)(d): replaced, on 9 August 2017, by section 89 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 534(3): amended, on 27 October 2022, by section 17(3)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(3): amended, on 27 October 2022, by section 17(3)(b) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(3): amended, on 1 April 2014, by section 53(3) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 534(3): amended, on 1 April 2014, by section 53(4) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 534(5): amended, on 27 October 2022, by section 17(4) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 534(5): amended, on 1 April 2014, by section 53(3) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

535 State of mind of directors, employees, or agents attributed to body corporate or other principal

(1) If, in a proceeding under this Act in respect of any conduct engaged in by a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee, or agent of the body corporate, acting within the scope of his or her actual or apparent authority, had that state of mind.

(2) If, in a proceeding (other than a proceeding for an offence) under this Act in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, acting within the scope of his or her actual or apparent authority, had that state of mind.

(3) In this Act, **state of mind**, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.

Compare: 1986 No 5 s 90(1), (3), (5)

536 Conduct of directors, employees, or agents attributed to body corporate or other principal

(1) Conduct engaged in on behalf of a body corporate by any of the following must be treated, for the purposes of this Act, as having been engaged in also by the body corporate:

(a) a director, employee, or agent of the body corporate, acting within the scope of his, her, or its actual or apparent authority:

(b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee, or agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee, or agent.

(2) Conduct engaged in on behalf of a person other than a body corporate (**A**) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by A:

(a) an employee or agent of A acting within the scope of his, her, or its actual or apparent authority:

(b) any other person at the direction or with the consent or agreement (whether express or implied) either of A or of an employee or agent of A, given within the scope of the actual or apparent authority of the employee or agent.

Compare: 1986 No 5 s 90(2), (4)

Miscellaneous

537 Time for filing charging document for certain offences

(1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of a category 1 offence or a category 2 offence under this Act ends on the date that is 3 years after the date on which the offence was committed.

(2) Nothing in subsection (1) affects the application of section 25 of the Criminal Procedure Act 2011 in relation to any offence not mentioned in that subsection.

(3) In this section, **category 1 offence** and **category 2 offence** have the same meanings as in section 6(1) of the Criminal Procedure Act 2011.

538 Jurisdiction of courts in New Zealand

The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than proceedings for offences.

Compare: 1978 No 103 s 65A

539 Orders to secure compliance

The court may, for the purpose of securing compliance with any other order it makes under this Act, direct a person to do or refrain from doing a specified act.

Compare: 1978 No 103 s 65C; 1988 No 234 s 43X

540 General provisions as to court's orders

(1) A court order under this Act may be made on the terms and conditions the court thinks fit.

(2) The court may revoke, vary, or suspend an order made under this Act on the terms and conditions the court thinks fit.

Compare: 1978 No 103 s 65E; 1988 No 234 s 43Z

541 Persons entitled to appear before court

The following persons are entitled to appear and be heard at the hearing of an application to the court taken under this Act:

(a) the applicant:

(b) a relevant issuer, offeror, or service provider:

(c) a person who is alleged to have suffered, or to be likely to suffer, loss or damage because of an alleged contravention (whether that person or another person makes the allegation):

(d) the FMA:

(e) any relevant licensed market operator:

(f) a person directed to be given notice of the application:

(g) with the leave of the court, any other person.

Compare: 1988 No 234 s 43ZA

542 Saving of liability under Crimes Act 1961 and general law

Nothing in this Act limits or diminishes any liability that any person may incur under any rule of law or the Crimes Act 1961 or any other enactment other than this Act (*see*, for example, sections 220 and 242 of the Crimes Act 1961, which relate to theft by a person in a special relationship and false statements by promoters).

Compare: 1978 No 103 s 65

Part 9
Regulations, transitional provisions, and miscellaneous provisions

Subpart 1—Regulations

543 Regulations for purposes of Part 3 (Disclosure of offers of financial products)

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for all or any of the following purposes:

Product disclosure statements, register entries, and other matters relating to disclosure

(a) regulating product disclosure statements and register entries, including—

(i) prescribing the information that must, or must not, be contained in product disclosure statements or register entries; and

(ii) prohibiting or restricting the use in product disclosure statements or register entries of prescribed words, information, sounds, images, graphics, or other matters; and

(iii) prescribing requirements as to the layout or method of presentation of product disclosure statements (including the length of a PDS and of parts of a PDS, the size of type used, and when information may be incorporated by reference); and

(iv) prescribing the documents that must, or must not, accompany a PDS; and

(v) prescribing circumstances for the purposes of sections 51(1)(c) and 57(3); and

(vi) prescribing information for the purposes of section 63; and

(vii) prescribing circumstances and requirements for the purposes of sections 71(2), 80(4), and 85(6); and

(viii) prescribing circumstances in which an offeror is permitted to act under section 80(1)(d) and a period for the purposes of that paragraph; and

(ix) prescribing matters for the purposes of section 84; and

(x) prescribing circumstances in which a register entry is not required for a regulated offer; and

(xi) declaring classes of PDSs to be simplified disclosure PDSs for the purposes of section 470 and prescribing provisions for the purposes of section 470(1)(c); and

(xii) prescribing provisions for the purposes of section 474(1)(c):

(b) amending any of the dollar amounts specified in Schedule 1 (other than the amounts in clause 12 of that schedule (small offers)) by increasing those amounts:

(c) providing for the matters referred to in clause 26 of Schedule 1, including prescribing—

(i) the circumstances in which a limited disclosure document is required:

(ii) the information to be contained in, or to accompany, a limited disclosure document, who must prepare the disclosure document, and requirements as to the layout or method of presentation of a disclosure document:

(iii) the period within which the limited disclosure document must be provided, the person or persons to whom it must be provided, and other matters relating to the manner in which it is provided:

(iiia) requirements relating to an entry for the offer in the register of offers of financial products:

(iiib) information that must be provided, the person or persons to whom it must be provided, and other matters relating to the manner in which it is provided:

(iiic) limits or restrictions that apply in connection with an offer, financial products, or investors:

(iv) requirements and other matters relating to certificates, acknowledgements, consents, approvals, and governance:

(v) other conditions that must be complied with:

(vi) the circumstances in which the requirements, conditions, and other matters referred to in subparagraphs (iiia) to (v) apply:

(vii) matters for the purposes of clause 26(6) of Schedule 1 (including requirements, conditions, or other matters that an issuer must comply with or ensure are met):

(viii) which provisions of the regulations made for the purposes of clause 26 of Schedule 1 (if any) are Part 3 offer provisions for the purposes of this Act and, if a provision is so prescribed, stating whether the provision gives rise to civil liability under section 101(3) or (4) (*see* Part 8, in which Part 3 offer provisions are specified to be civil liability provisions):

Ongoing disclosure and updating of registers

(d) prescribing changes that must be notified under section 95 and a period or periods within which those changes must be notified:

(e) prescribing the information that must be made available under section 96 or 97, the times or events referred to in either of those sections, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared):

(ea) prescribing the persons who may make a request under section 96 and the persons to whom information must be made available under section 96 (for example, investors, a supervisor, the FMA, or the Registrar):

(f) prescribing circumstances for the purposes of section 98(2)(b):

(g) prescribing matters for the purposes of section 100, including prescribing circumstances, prescribing the manner of providing the product or confirmation information, and prescribing information as confirmation information:

Miscellaneous

(h) prescribing matters in connection with money relating to financial products that is held in trust (including prescribing, for the purposes of section 87(3)(a), requirements relating to the investment of money that is held in trust and providing for how interest or other income from that investment is to be paid, retained, or otherwise dealt with):

(i) prescribing financial products for the purposes of the definition of specified financial products in clause 8(2) of Schedule 1:

(j) prescribing schemes for the purposes of clause 11(3)(a) of Schedule 1:

(k) prescribing markets and persons for the purposes of clause 20(4) of Schedule 1:

(l) prescribing kinds of financial products or currency forwards for the purposes of clause 21(a), (c), or (d) or 38(4)(a) of Schedule 1:

(la) prescribing circumstances for the purposes of section 453(b)(ii):

(lb) prescribing circumstances for the purposes of clause 27A of Schedule 1:

(m) prescribing circumstances for the purposes of clause 31(1)(c)(ii) or (2)(d)(ii) or 34(1)(d)(ii) of Schedule 1:

(n) prescribing matters for the purposes of the definitions of relevant person, relevant time, and prescribed transaction in clause 49 of Schedule 1:

(o) prescribing forms and information for the purposes of clause 46 of Schedule 1.

(2) Subsection (1)(a)(v) and (x) and (f) are subject to section 550 (which provides for certain procedural requirements relating to regulations made under those provisions).

(3) A time or an event prescribed under subsection (1)(e) in respect of regulated products may be any time, or any event that occurs, on or after the time at which the products are first offered under a regulated offer or otherwise become regulated products (regardless of whether or not the products have been issued).

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 543(1)(c)(i): amended, on 9 August 2017, by section 90(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(ii): amended, on 9 August 2017, by section 90(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(iii): amended, on 9 August 2017, by section 90(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(iiia): inserted, on 9 August 2017, by section 90(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(iiib): inserted, on 9 August 2017, by section 90(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(iiic): inserted, on 9 August 2017, by section 90(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(vi): amended, on 9 August 2017, by section 90(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(vii): inserted, on 9 August 2017, by section 90(4) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(c)(viii): inserted, on 9 August 2017, by section 90(4) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(d): amended, on 9 August 2017, by section 90(5) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(e): amended, on 9 August 2017, by section 90(6) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(ea): inserted, on 9 August 2017, by section 90(7) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(1)(l): replaced, on 9 April 2019, by section 47 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 543(1)(la): inserted, on 1 April 2014, by section 54 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 543(1)(lb): inserted, on 1 April 2014, by section 54 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 543(3): inserted, on 9 August 2017, by section 90(8) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 543(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

544 Regulations for purposes of Part 4 (governance of financial products)

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for all or any of the following purposes:

Reporting to supervisor

(a) prescribing the information that must be made available under subpart 1 or 2 of Part 4, the times or events referred to in either of those subparts, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared):

Particular types of schemes

(b) prescribing, for registrations as particular types of schemes, additional application requirements:

(c) prescribing other types of registered schemes, and any additional registration requirements applying to those types of schemes:

(d) prescribing, as the superannuation scheme rules for the purposes of section 129, the permitted withdrawals for retirement or other purposes of the scheme and the other incidental or secondary permitted withdrawals (for example, financial hardship withdrawals, early partial withdrawals, and insurance benefits) and any other registration requirements for superannuation schemes (which may include provisions to be implied in a governing document: *see* subsection (2)):

(e) prescribing application and registration requirements for superannuation schemes and workplace savings schemes:

(f) providing for the FMA to carry out any function of determining whether a scheme is or is not employer-related or has, or does not have, any other status under this Act or the regulations, and the criteria it must apply and its powers and procedures in doing so:

Contents of governing documents

(g) prescribing the matters that must be contained in a governing document required for the purposes of Part 4 (including to supplement, require more detail to be provided in relation to, or add to, the matters required to be contained in it by that Part):

(h) prescribing provisions to be implied in a governing document (*see* subsection (2)):

Meetings of product holders

(i) authorising a person to call meetings of product holders (whether in general, or at specified times or in relation to events or in connection with specified matters):

(j) prescribing the frequency of meetings of product holders, the methods of holding meetings, the quorum, and the other procedures to be followed in calling and conducting meetings of product holders (including providing for electronic voting by product holders and for product holder proposals) and providing for the making of written resolutions in lieu of meetings:

(k) prescribing circumstances for the purposes of section 163:

Custodians

(l) prescribing the duties and obligations of custodians in relation to scheme property:

(m) prescribing provisions regulating the keeping, retention, reconciliation, inspection, and audit or review of records or procedures of a custodian:

(n) prescribing matters for the purposes of section 159, including prescribing circumstances, prescribing the manner of providing the confirmation information, and prescribing information as confirmation information:

Management of registered schemes

(o) prescribing circumstances for the purposes of section 166:

(p) prescribing matters relating to the reporting of limit breaks and pricing errors and non-compliance with pricing methodologies:

(q) prescribing any steps that must be taken for the purposes of section 168 (including whose position needs to be remedied or restored, who needs to be informed, when and how those steps must be taken, and any related obligations or other matters):

(r) prescribing overseas schemes, interests, benefits, or transactions for the purposes of section 174(b) and (d):

(s) prescribing circumstances for the purposes of section 176(5):

(t) prescribing requirements for the purposes of section 189:

(u) prescribing circumstances for the purposes of section 190(2)(b):

Registers and keeping copies of documents

(v) prescribing matters for the purposes of subpart 4 of Part 4, including—

(i) matters for the purposes of section 215(1)(b):

(ii) types of derivatives for the purposes of section 215(2)(a):

(iii) financial products for the purposes of section 215(2)(b):

(iv) circumstances for the purposes of section 215(2)(c):

(v) requirements for the purposes of section 215(3), including requirements relating to the keeping of records in respect of derivatives, the audit or review of those records, the inspection of those records, and making copies of, or extracts from, those records available:

(vi) particulars for the purposes of section 217(1)(f):

(via) circumstances in which information specified in a paragraph in section 217(1) is not required to be contained in a register:

(vii) circumstances for the purposes of section 217(2):

(viii) requirements for the purposes of section 218, including when an audit or a review must be carried out, the prescribed manner in which the audit or review must be carried out, and the required scope or extent of the audit or review:

(ix) circumstances for the purposes of section 221(2)(c):

(x) purposes for the purposes of section 225(3)(a):

(xi) requirements for the purposes of section 227(1)(b):

Miscellaneous

(w) prescribing the form of, or information that must or must not be contained in or attached to, any information required to be provided or made available by or under Part 4 and the manner in which it may be made available or given.

(2) A provision prescribed for the purposes of subsection (1)(d) or (h) may, without limitation, do any of the following (including to supplement, or to add to, duties and powers prescribed by this Act, the Financial Markets Supervisors Act 2011, and, in relation to KiwiSaver schemes, the KiwiSaver Act 2006):

(a) specify the duties and powers of the supervisor of the debt security or the scheme:

(b) specify the duties of the issuer of the debt security or the manager of the scheme.

(3) Subsection (1)(k), (o), (r), (s), and (v)(iii), (iv), (via), and (ix) are subject to section 550 (which provides for certain procedural requirements relating to regulations made under those subparagraphs).

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 544(1)(v)(via): inserted, on 9 August 2017, by section 91(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 544(3): amended, on 9 August 2017, by section 91(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 544(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

545 Regulations for purposes of Part 5 (dealing in financial products on markets)

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for all or any of the following purposes:

Insider conduct and market manipulation

(a) exempting (on terms and conditions, if any) conduct from being—

(i) insider conduct that is conduct that would otherwise fall within section 241, 242, or 243:

(ii) market manipulation that is conduct that would otherwise fall within section 262 or 265:

Substantial holding disclosure

(b) prescribing further matters relating to a matter, a relevant event, or a substantial holding, that must be disclosed under subpart 5 of Part 5, which may include (without limitation)—

(i) the nature of the relevant interests in the substantial holding (including before and after the relevant event in the case of sections 277 and 278):

(ii) the number, nominal value (if any), and class of financial products in which the person has or had the substantial holding (including

before and after the relevant event in the case of sections 277 and 278):

(iii) the date of the relevant event:

(iv) the terms and conditions (including consideration) of the transaction giving rise to the relevant event:

(v) details as to the circumstances in which the relevant event occurred:

(vi) the date of the last disclosure by the person under that subpart in respect of the substantial holding:

(vii) information relating to the relevant event or substantial holding and concerning other persons who have made disclosures under that subpart:

(c) prescribing the documents, certificates, and statements that must accompany or be annexed to those disclosures:

(d) determining when disclosure of the further matters referred to in paragraph (b) is required (including by requiring disclosure only on request):

(e) prescribing the form of or for, and the method of, disclosure under that subpart (and of any other acknowledgments or notices required by the subpart) or providing for the relevant licensed market operator to determine that form or method and providing for the way in which it must do so:

(f) prescribing the manner referred to in section 275:

(g) exempting (on terms and conditions, if any) classes of persons, classes of transactions, or classes of relevant interests, substantial holdings, or relevant events from compliance with any provisions of that subpart or regulations made under any of paragraphs (b) to (e):

Directors' and senior managers' disclosure obligations

(h) prescribing further matters relating to a relevant interest, or acquisition or disposal of a relevant interest, that must be disclosed by directors and senior managers under subpart 6 of Part 5, which may include (without limitation)—

(i) the nature of the relevant interest:

(ii) the number and class of financial products to which the relevant interest relates or related:

(iii) the date of the disclosure obligation becoming applicable, or the date of the acquisition or disposal:

(iv) the consideration paid or received for the acquisition or disposal:

(v) details as to the circumstances in which the acquisition or disposal occurred:

(vi) the date of the last disclosure by the director or senior manager:

(i) determining when the disclosure in paragraph (h) is required (including by requiring disclosure only on request) and prescribing the form of or for, and the method of, disclosure or providing for the relevant licensed market operator to determine that form or method and for the way in which it must do so:

(j) exempting (on terms and conditions, if any) classes of persons, classes of transactions, or classes of relevant interests, acquisitions, or disposals from compliance with any provisions of that subpart or regulations made under paragraph (h) or (i):

(k) prescribing acquisitions or disposals for the purposes of section 297(2)(a)(vi):

Licensed markets

(l) prescribing conduct that does not constitute a financial product market for the purposes of this Act:

(m) exempting (on terms and conditions, if any) wholesale markets or other financial product markets from the operation of subpart 7 of Part 5:

(n) prescribing information and the form and method referred to in section 354:

Transfer of transferable financial products

(o) prescribing matters for the purposes of subpart 9 of Part 5, including—

(i) financial products to which that subpart does not apply:

(ii) forms for the purposes of that subpart:

(iii) information to be included in products transfers or brokers transfers:

(iv) persons for the purposes of paragraph (f) of the definition of authorised transaction in section 372(3).

(2) Subsection (1)(a), (g), (j), and (m) are subject to section 550 (which provides for certain procedural requirements relating to regulations made under those paragraphs).

(3) Before making a recommendation in relation to subsection (1)(l) or (m), the Minister must have regard to the matters set out in section 308.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 545(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

546 Regulations for purposes of Part 6 (market services)

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for all or any of the following purposes:

Issue of licences

(a) prescribing matters relating to the issue of market services licences, including—

(i) eligibility criteria for licences and for the purposes of section 400 (including requirements relating to competence, qualifications, and experience, prudential requirements, and requirements relating to the business, operation, or management of an applicant and, for the purposes of section 400, a related body corporate or an entity referred to in section 400(1A)):

(ii) requirements that the applicant's directors, senior managers, and proposed directors and senior managers must satisfy:

(iii) matters that the FMA must have regard to:

(iv) persons or classes of persons whom the FMA must consult:

(v) information for the purposes of section 401(2)(e):

(vi) eligibility criteria to be met by a DIMS licensee before a custodian of investor money or investor property is, subject to conditions imposed, under paragraph (d)(iii), permitted to be an associated person of the DIMS licensee:

(b) prescribing overseas markets and circumstances for the purposes of section 389(1)(c):

(c) exempting (on terms and conditions, if any) services from the licensing requirement for the purposes of section 389(2)(b), (3)(b), (4)(b), and (4A):

(ca) *[Repealed]*

(cb) prescribing terms and conditions of the exemption for Lloyd's underwriters under section 389(4)(a), including any term or condition that imposes requirements on Lloyd's, Lloyd's underwriters, or Lloyd's managing agents (*see* section 449A):

(cc) *[Repealed]*

Conditions of licences

(d) prescribing conditions that market services licences are subject to, the kinds of conditions that the FMA may impose on those licences, or matters to which conditions imposed by the FMA may relate, including (without limitation) providing for—

(i) conditions that regulate the manner in which licensed market services must be carried out under the licence:

(ii) conditions that impose prudential requirements on licensees or authorised bodies or otherwise regulate the business, operation, or management of licensees or authorised bodies (for example, requirements to have a credit rating or to maintain a minimum amount of capital, requirements relating to margins, or requirements relating to the receipt of money and property from clients):

(iii) in the case of a DIMS licensee, the conditions subject to which a custodian of investor money or investor property is permitted to be an associated person of the DIMS licensee:

(iv) in the case of a licence relating to a financial advice service, conditions of a kind described in section 403(4):

(v) in the case of a licence to act as an administrator of a financial benchmark, conditions of a kind described in section 403(5):

(vi) in relation to a licence relating to acting as a financial institution, conditions that prohibit or regulate incentives, or the offer or giving of incentives to any person, in connection with a relevant service or an associated product:

(e) stating whether a condition imposed on a market services licence by the regulations is a Part 6 services provision that gives rise to civil liability under section 449(4):

Reporting

(f) prescribing matters relating to reports or other disclosure under subpart 3 of Part 6, including the times and events referred to in that subpart and the information that must be contained in the reports (including prescribing the manner in which the information is to be presented, calculated, or prepared):

Disclosure obligations

(g) prescribing the information that must, or must not, be contained in disclosure statements for the purposes of subpart 4 of Part 6 (including prescribing the manner in which the information is to be presented, calculated, or prepared):

(h) prohibiting or restricting the use in those disclosure statements of prescribed words, information, sounds, images, graphics, or other matters:

(i) prescribing requirements as to the form, layout, or method of presentation of those disclosure statements (including the length of the whole or any part of the statement, the size of type used, and when information may be incorporated by reference):

(j) determining when disclosure is required, and when minimum disclosure may be given, under that subpart (including by requiring disclosure only on request) and what minimum disclosure must be given:

(k) prohibiting or restricting the combining of disclosure statements:

(ka) prescribing the information that must be made available under section 426A, the times or events referred to in that section, the persons who may make a request, the persons to whom information must be made available, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared):

(kb) prescribing circumstances for the purposes of section 427(3)(a):

(kc) prescribing conditions for the purposes of section 427(3)(b) (for example, requiring a corrective statement or a warning notice to be provided to an investor or requiring some other specified action to be taken to avoid or mitigate any actual or potential adverse effects of making the defective disclosure as referred to in section 427(1)):

Client agreements

(l) prescribing the matters that must be contained in a client agreement required for the purposes of subpart 5 of Part 6:

(m) prescribing provisions to be implied in a client agreement (*see* subsection (3)):

Financial advice services and client money or property services

(ma) prescribing kinds of financial planning for the purposes of section 431C(1)(d):

(mb) prescribing eligibility criteria for the purposes of section 431I:

(mc) prescribing the information that must be made available under section 431O, and when and the manner in which it must be made available:

(md) prescribing the information that must be disclosed under section 431X and the manner in which it must be disclosed (including prescribing the manner in which the information is to be presented, calculated, or prepared):

(me) prescribing documents or information the giving of which does not constitute the giving of financial advice under clause 7(f) of Schedule 5:

(mf) prescribing activities for the purposes of clause 7(g) of Schedule 5 (activities that are not giving financial advice):

(mg) prescribing occupations for the purposes of clause 8(2) or 19(1) of Schedule 5:

(mh) prescribing circumstances in which financial advice is not regulated financial advice for the purposes of clause 17 of Schedule 5:

(mi) prescribing circumstances in which a client money or property service is not a regulated client money or property service for the purposes of clause 22 of Schedule 5:

(mj) providing for any or all of sections 431ZC to 431ZH to apply to wholesale clients and the extent to which and the circumstances in which they so apply:

(mk) prescribing the duties and obligations of providers of client money or property services in relation to client money and client property:

(ml) prescribing entities for the purposes of section 431ZC:

(mm) specifying who may be a related body corporate for the purposes of section 431ZC:

(mn) prescribing circumstances for the purposes of section 431ZC(3)(a):

(mo) providing for the matters referred to in section 431ZC(3)(b):

(mp) regulating the establishment and operation of a trust account under subpart 5B of Part 6 and the receipt, handling, and application of client money and client property by a provider of client money or property services (including prescribing requirements relating to the investment of money that is held in trust and providing for how interest or other income from that investment is to be paid, retained, or otherwise dealt with):

(mq) regulating the keeping, retention, reconciliation, inspection, and audit or review of trust account records and other records and procedures of providers of client money or property services:

(mr) prescribing any other requirements necessary or desirable to ensure that trust accounts are duly kept and that persons on whose behalf client money and client property are held by providers are informed of the client money and client property held and of the transactions made in connection with it (including prescribing what confirmation information must be made available and any other matters for the purposes of section 431ZF):

(ms) prescribing matters to regulate the delivery of client money or client property to the person on whose behalf they are held, and other steps to be taken or provisions to apply, in connection with the termination of any client money or property service:

Discretionary investment management services

(n) prescribing matters relating to the reporting of limit breaks:

(o) prescribing circumstances for the purposes of section 445:

Regulating conduct of financial institutions

(oa) prescribing requirements for fair conduct programmes, including (without limitation) additional, or more detailed, requirements relating to the matters set out in section 446J(1)(a) to (l) or requirements relating to 1 or more of the following in connection with a relevant service or an associated product:

(i) governance and management of conduct and risks associated with that conduct:

(ii) monitoring outcomes for consumers, including whether consumers' interests are being had regard to:

(iii) how the services or products are designed and managed:

(iv) dealing with consumer complaints:

(v) dealing with insurance claims:

(vi) communicating with consumers, including particular disclosure requirements and requirements for warnings:

(vii) procedures or processes that intermediaries or agents must follow to support the financial institution's compliance with the fair conduct principle:

(viii) the design and management of incentives:

(ob) prescribing classes of service for the purposes of section 446F(1)(b):

(oc) prescribing matters for the purposes of section 446H:

(od) prescribing factors for the purposes of section 446J(2)(g):

(oe) prescribing requirements for the purposes of section 446J(4)(a) or (b):

(of) prescribing matters for the purposes of section 446Q(4)(b) and (c):

(og) prohibiting or regulating any incentive, or any practice, activity, or other conduct in connection with offering or giving any incentive to any person, in connection with a relevant service or an associated product, including prescribing the manner in which an incentive may be offered or given:

(oh) prescribing classes of contract for the purposes of paragraph (b)(i) of the definition of consumer credit contract in section 446P:

(oi) prescribing matters for the purposes of section 446V(3)(b):

Miscellaneous

(oj) prescribing the procedure of the code committee:

(ok) prescribing the procedure of the disciplinary committee:

(p) prescribing persons or classes of persons to whom notices under Part 6 must be given:

(q) prescribing the circumstances referred to in section 424(3) or 426(1):

(r) prescribing overseas schemes, benefits, interests, or transactions for the purposes of section 441(b) and (d):

(s) prescribing the form or contents of any certificate or other document referred to in Part 6, and the manner in which it may be made or given.

(2) Subsection (1)(b), (c), (me), (mf), (mg), (mh), (mi), (mn), (o), (ob), (oe), and (of) is subject to section 550 (which provides for certain procedural requirements relating to regulations made under that paragraph).

(3) A provision prescribed for the purposes of subsection (1)(m) may, without limitation, specify the duties of the licensee or authorised body under the client agreement (including to supplement, or to add to, any duties prescribed by this Act).

(4) The Minister may make a recommendation for regulations under subsection (1)(og) (which relates to prohibiting or regulating incentives) only if the Minister—

(a) has had regard to the purposes of this Act and the fair conduct principle; and

(b) has had regard to whether the regulations are likely to—

(i) appropriately reduce or manage conflicts or potential conflicts between the interests of consumers and the interests of persons who would otherwise be entitled to receive incentives; or

(ii) otherwise mitigate or avoid the actual or potential adverse effects of incentives on the interests of consumers; and

(c) has had regard to the likely effect of the regulations—

(i) on the availability of financial advice and the availability of financial services and financial advice products; and

(ii) on the financial services industry generally; and

(d) is satisfied that the matters to which the regulations relate are not more appropriately dealt with in an Act.

(5) The breach of a term or condition prescribed under subsection (1)(c), (ca), (cb), or (cc) is a breach of section 388 (unless the regulations otherwise provide).

(7) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116
This note is not part of the Act.

Section 546(1)(a)(i): amended, on 9 April 2019, by section 48(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(c): replaced, on 1 July 2026, by section 65(1) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 546(1)(ca): repealed, on 1 July 2026, by section 65(2) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 546(1)(cb): inserted, on 30 June 2022, by section 21(1) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(cc): repealed, on 1 July 2026, by section 65(2) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 546(1)(d)(iv): inserted, on 9 April 2019, by section 48(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(d)(v): inserted, on 14 March 2021, by section 48 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 546(1)(d)(vi): inserted, on 30 June 2022, by section 21(2) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(ka): inserted, on 9 August 2017, by section 92 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 546(1)(kb): inserted, on 9 August 2017, by section 92 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 546(1)(kc): inserted, on 9 August 2017, by section 92 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 546(1)(ma) heading: inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(ma): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mb): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mc): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(md): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(me): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mf): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mg): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mh): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mi): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mj): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mk): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(ml): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mm): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mn): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mo): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mp): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mq): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(mr): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(ms): inserted, on 9 April 2019, by section 48(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(1)(oa) heading: replaced, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oa): replaced, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(ob): replaced, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oc): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(od): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oe): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(of): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(og): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oh): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oi): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oj) heading: inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(oj): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(1)(ok): inserted, on 30 June 2022, by section 21(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(2): amended, on 1 July 2026, by section 65(3) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 546(2): amended, on 30 June 2022, by section 21(5) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(2): amended, on 9 April 2019, by section 48(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 546(4): inserted, on 30 June 2022, by section 21(6) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(5): inserted, on 30 June 2022, by section 21(6) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 546(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

547 Transitionals, savings, and orderly implementation of Act and related enactments

[Repealed]

Section 547: repealed, on 15 September 2018, by section 547(3).

548 Other regulations

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with section 549, make regulations for all or any of the following purposes:

Part 2 fair dealing

(a) declaring financial advice products as financial products for the purposes of any provision of Part 2 or section 464:

(b) prescribing circumstances for the purposes of section 34(2)(e):

(c) prescribing kinds of entities for the purposes of the definition of co-operative in section 34(4):

Definitions

(d) providing for matters relating to terms defined in this Act and related matters, including the following:

(i) excluding dealing from being dealing in financial products for the purposes of this Act:

(ia) declaring products to be financial advice products:

(ii) declaring classes of services not to be financial services for the purposes of any provision of this Act:

(iii) *[Repealed]*

(iv) prescribing services for the purposes of the definition of prescribed intermediary services and applying subpart 4 or 5 of Part 6 (or both) to those services:

(iva) specifying persons as product providers for the purposes of the definition of product provider in section 6(1):

(v) declaring interests or rights not to be securities for the purposes of this Act:

(vi) prescribing circumstances for the purposes of section 6(3) (whether in relation to the redemption date, the interest rate, or both):

(vii) prescribing matters for the purposes of section 8(4)(a)(ii):

(viii) excluding (whether by class or in a particular case) a price, estimate, rate, index, or value from being a financial benchmark for the purposes of section 6(7):

(e) prescribing kinds of schemes and deposit products for the purposes of section 11(2) and specifying conduct for the purposes of section 11(2)(c)(iv) (definitions relating to issued and issuer):

(f) prescribing circumstances for the purposes of section 13(3):

(g) prescribing matters relating to when information may be incorporated by reference for the purposes of section 13(4):

Excluded circumstances relating to when directors are treated as having contravened provisions

(h) prescribing circumstances for the purposes of section 534(2):

Trusts Act 2019 disapplied

(ha) providing that specified provisions of the Trusts Act 2019 do not apply to a trust, or a class of trusts,—

(i) that is or will be regulated by or under this Act:

(ii) that would be regulated by or under this Act except for the fact that an exclusion under Schedule 1 applies:

Schedule 3 schemes

(i) prescribing the information that must be prepared and provided under clause 6 of Schedule 3, the times or events referred to in that clause, and the manner of providing the information (including prescribing the manner in which the information is to be presented, calculated, or prepared):

(j) prescribing provisions to be implied in a trust deed of a Schedule 3 scheme (which may, without limitation, specify duties under the trust deed, including by supplementing, or adding to, any duties prescribed by this Act):

(ja) prescribing criteria, requirements, or both for the purposes of clause 2(1)(b)(iv) of Schedule 3:

Registers

(k) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for any register kept under this Act, including matters that relate to—

(i) the operation of the register:

(ii) the form of the register:

(iii) the information to be contained in the register:

(iv) access to the register:

(v) search criteria for the register:

(vi) circumstances in which amendments must be made to the register:

Giving of information and other service requirements

(l) prescribing how information may or must be given to, provided to, or served on any person under this Act and other matters relating to that procedure (including when the information is treated as received, or as having been given, provided, or served, for the purposes of this Act and the regulations):

Enforcement

(m) setting the infringement fee for each infringement offence, which must not exceed $20,000:

(n) prescribing information to be included in infringement notices and reminder notices and the form of notices:

Fees and charges

(o) prescribing fees and charges payable in respect of any matter under this Act or the manner in which fees and charges may be calculated:

Prescribed manner

(p) prescribing, for the purposes of any provision of this Act that requires a thing to be done in a prescribed manner (or for the purposes of any other regulations empowered to prescribe the manner in which something must be done), the manner in which the thing must be done, including prescribing—

(i) by whom, when, where, and how the thing must be done:

(ii) the form that must be used in connection with doing the thing:

(iii) what information or other evidence or documents must be provided in connection with the thing:

(iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply:

(v) that fees or charges must be paid in connection with doing the thing:

(vi) that the FMA may determine or prescribe any of the matters under subparagraphs (i) to (iv):

General

(q) prescribing, for the purposes of provisions of this Act that require money to be repaid with interest, the rate of interest or method for determining the rate of interest:

(r) prescribing kinds of schemes for the purposes of paragraph (b) of the definition of special resolution in section 6(1) and section 161(1)(c):

(s) prescribing a date or dates for the purposes of clause 57(1)(a) of Schedule 4:

(t) prescribing clauses of Schedule 1 for the purposes of clause 59(1) of Schedule 4:

(u) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Subsection (1)(b), (d)(i), (ii), (iii), (v), and (viii), (h), and (ha) are subject to section 550 (which provides for certain procedural requirements relating to regulations made under those subparagraphs).

(3) Subsection (1)(d)(iii) is repealed on 1 April 2017 (but any regulations made under that subparagraph continue in force despite that repeal).

(4) Nothing in sections 543 to 547, or in any other provision that authorises regulations to be made under this Act, limits subsection (1)(p).

(5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 548(1)(a): amended, on 9 April 2019, by section 49(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 548(1)(d)(ia): inserted, on 9 April 2019, by section 49(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 548(1)(d)(iii): repealed, on 1 April 2017, by section 548(3).

Section 548(1)(d)(iva): inserted, on 9 April 2019, by section 49(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 548(1)(d)(viii): inserted, on 14 March 2021, by section 49(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 548(1)(ha) heading: inserted, on 30 January 2021, by section 171(1) of the Trusts Act 2019 (2019 No 38).

Section 548(1)(ha): inserted, on 30 January 2021, by section 171(1) of the Trusts Act 2019 (2019 No 38).

Section 548(1)(ja): inserted, on 9 April 2019, by section 49(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 548(2): amended, on 14 March 2021, by section 49(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 548(2): amended, on 30 January 2021, by section 171(2) of the Trusts Act 2019 (2019 No 38).

Section 548(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

549 Minister must consult FMA about regulations

The Minister must consult the FMA before making a recommendation under this subpart.

550 Procedural requirements for regulations relating to exemptions, exclusions, and definitions

(1) The Minister must, before making a recommendation in relation to a provision referred to in—

(a) subsection (2), have regard to the main and additional purposes of this Act set out in sections 3 and 4; and

(b) subsection (2)(a), (b), or (e), be satisfied that the extent to which requirements are disapplied is not broader than is reasonably necessary to address the matters that gave rise to the regulations; and

(c) subsection (2)(c), (d), (da), (db), (ea), (eb), and (f), be satisfied that the extent of the exemption or exclusion is not broader than is reasonably necessary to address the matters that gave rise to the regulations; and

(d) subsection (2)(g), be satisfied that the extent to which the application of section 534 is reduced is not broader than is reasonably necessary to address the matters that gave rise to the regulations; and

(e) subsection (2)(h), have regard to the purpose and principles of the Trusts Act 2019 and be satisfied that the extent to which that Act is disapplied is not broader than is reasonably necessary to address the matters that gave rise to the regulations.

(2) The provisions are—

(a) sections 543(1)(a)(v) and (x), and (f), and 548(1)(b) (regulations may prescribe circumstances in which requirements do not apply):

(b) section 544(1)(k), (o), (r), (s), and (v)(iii), (iv), (via), and (ix) (regulations may prescribe circumstances in which requirements do not apply):

(c) section 545(1)(a), (g), (j), and (m) (regulations may provide for exemptions from certain requirements):

(d) section 546(1)(b) and (c) (regulations may prescribe exemptions relating to requirement to be licensed):

(da) section 546(1)(me), (mf), (mg), (mh), and (mi) (regulations may prescribe matters in relation to exclusions from definitions of financial advice, regulated financial advice, and regulated client money or property service):

(db) section 546(1)(mn) (regulations may prescribe circumstances in which requirements do not apply):

(e) section 546(1)(o) and (oe) (regulations may disapply requirements):

(ea) section 546(1)(ob) (regulations may exclude services from being relevant services under subpart 6A of Part 6):

(eb) section 546(1)(of) (regulations may exclude occupations and activities from involvement in provision of relevant services or associated products):

(f) section 548(1)(d)(i), (ii), (v), and (viii) (regulations relating to definitions):

(g) section 548(1)(h) (regulations may prescribe circumstances in which section 534 does not apply):

(h) section 548(1)(ha) (regulations may disapply provisions of Trusts Act 2019).

(3) The Minister must, before making a recommendation in relation to section 548(1)(d)(iii) (regulations relating to definition of retirement scheme) in relation to any enactment, have regard to the purposes of that enactment and be satisfied that the extent of the exclusion is not broader than is reasonably necessary to address the matters that gave rise to the regulations.

Section 550(1)(c): amended, on 30 June 2022, by section 22(1) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 550(1)(c): amended, on 9 April 2019, by section 50(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 550(1)(d): amended, on 30 January 2021, by section 172(1) of the Trusts Act 2019 (2019 No 38).

Section 550(1)(e): inserted, on 30 January 2021, by section 172(2) of the Trusts Act 2019 (2019 No 38).

Section 550(2)(b): amended, on 9 August 2017, by section 93 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 550(2)(d): amended, on 1 July 2026, by section 66 of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Section 550(2)(da): inserted, on 9 April 2019, by section 50(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 550(2)(db): inserted, on 9 April 2019, by section 50(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 550(2)(e): replaced, on 30 June 2022, by section 22(3) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 550(2)(ea): inserted, on 30 June 2022, by section 22(4) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 550(2)(eb): inserted, on 30 June 2022, by section 22(4) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Section 550(2)(f): amended, on 14 March 2021, by section 50 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 550(2)(h): inserted, on 30 January 2021, by section 172(3) of the Trusts Act 2019 (2019 No 38).

551 Miscellaneous provisions relating to exemptions

(1) The breach of a term or condition of an exemption provided by regulations is a breach of the obligation for which the exemption applies (unless the regulations otherwise provide).

(2) Exemptions made under regulations may extend to all, or classes of, persons, transactions, or other matters in relation to specified overseas jurisdictions.

(3) Subsection (2) does not limit this subpart.

Compare: 1988 No 234 ss 49E, 49F

552 Miscellaneous provisions relating to fees and charges

(1) Regulations may authorise a person to whom a fee or charge is payable to refund or waive, in whole or in part and on any conditions that may be prescribed, payment of the fee or charge in relation to any person or class of persons.

(2) A person to whom a prescribed fee or charge is payable may refuse to perform a function or exercise a power until the prescribed fee or charge is paid.

(3) Any fee, charge, or other amount payable to a person under this Act is recoverable by the person in any court of competent jurisdiction as a debt due to the person.

(4) This subpart does not limit section 67 of the Financial Markets Authority Act 2011.

(5) If regulations authorise a person to grant a refund or waiver to a class of persons,—

(a) the instrument granting the refund or waiver is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and

(b) the regulations must contain a statement to that effect.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)		
Publication	See the relevant publication, presentation, and disallowance table in the regulations under which it is made	LA19 ss 73, 74, Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives, unless a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 552(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

552A Validation of fees used to recover costs of other Companies Office registers, etc

(1) This section applies to a fee—

(a) that—

(i) is or was payable or purportedly payable on or before 30 June 2022 under any of the Acts listed in subsection (4) or any regulations made under any of those Acts; and

(ii) was (or is or will be) used in whole or in part to recover the costs or a share of the costs of the Registrar in operating 1 or more registers under this Act or in exercising or performing any other powers, functions, and duties of the Registrar under this Act or any regulations made under this Act; or

(b) that—

(i) is or was payable or purportedly payable on or before 30 June 2022 under this Act or any regulations made under this Act; and

(ii) was (or is or will be) used in whole or in part to recover the costs or a share of the costs of 1 or more registers operated under any of the Acts listed in subsection (5) or in exercising or performing the powers, functions, and duties of a Registrar under any of those Acts or any regulations made under any of those Acts.

(2) The fee is and always has been validly imposed.

(3) Money received by the Registrar of any register maintained by the Companies Office in payment of the fee—

(a) is and always has been lawfully collected and applied; and

(b) may continue to be applied on and after 1 July 2022 to recover costs referred to in subsection (1)(a)(ii) and (b)(ii).

(4) The Acts are—

(a) the Auditor Regulation Act 2011:

(b) the Building Societies Act 1965:

(c) the Companies Act 1993:

(d) the Financial Reporting Act 1993:

(e) the Financial Service Providers (Registration and Dispute Resolution) Act 2008:

(f) the Friendly Societies and Credit Unions Act 1982:

(g) the Incorporated Societies Act 1908:

(h) the Insolvency Practitioners Regulation Act 2019:

(i) the Limited Partnerships Act 2008:

(j) the Personal Property Securities Act 1999:

(k) the Retirement Villages Act 2003:

(l) the Securities Act 1978.

(5) The Acts are—

(a) the Auditor Regulation Act 2011:

(b) the Building Societies Act 1965:

(c) the Charitable Trusts Act 1957:

(d) the Companies Act 1993:

(e) the Financial Reporting Act 1993:

(f) the Financial Reporting Act 2013:

(g) the Financial Service Providers (Registration and Dispute Resolution) Act 2008:

(h) the Friendly Societies and Credit Unions Act 1982:

(i) the Incorporated Societies Act 1908:

(j) the Incorporated Societies Act 2022:

(k) the Industrial and Provident Societies Act 1908:

(l) the Insolvency Practitioners Regulation Act 2019:

(m) the Limited Partnerships Act 2008:

(n) the New Zealand Business Number Act 2016:

(o) the Personal Property Securities Act 1999:

(p) the Retirement Villages Act 2003:

(q) the Securities Act 1978.

(6) In this section,—

Companies Office means the division or part of each of the following departments (formerly or currently in existence) that collected or collects fees under this Act or any of the Acts listed in subsections (4) and (5):

(a) the former Department of Justice:

(b) the former Ministry of Commerce:

(c) the former Ministry of Economic Development:

(d) the Ministry of Business, Innovation, and Employment

fee—

(a) includes any penalty or overdue fee imposed, or interest charged, in respect of an unpaid or overdue fee; and

(b) in relation to the Insolvency Practitioners Regulation Act 2019, includes a levy imposed under section 81 of that Act.

Section 552A: inserted, on 25 May 2022, by section 11 of the Companies Office Registers Funding Validation Act 2022 (2022 No 27).

553 Miscellaneous provisions relating to implied provisions

Any provision that is implied into a deed or an agreement by or under this Act—

(a) applies despite anything to the contrary in the deed or agreement; and

(b) is enforceable by the parties to the deed or agreement and by any person on whom the provision confers, or purports to confer, a benefit; but

(c) applies subject to any exemption from compliance with that provision by the FMA under subpart 2.

554 Regulations or exemptions may require compliance with generally accepted accounting practice, standards, frameworks, or FMA methodologies

(1) Regulations, notices issued under subpart 4, or exemptions granted by the FMA may require any person, class of persons, information, or class of information to comply with any of the following:

(a) generally accepted accounting practice, either generally or in specified circumstances:

(b) a financial reporting standard:

(baaa) the climate-related disclosure framework, either generally or in specified circumstances:

(ba) a climate standard:

(c) an auditing and assurance standard:

(d) a notice issued under subpart 4.

(2) Regulations, a notice issued under subpart 4, or an exemption granted by the FMA may require compliance with generally accepted accounting practice, a financial reporting standard, the climate-related disclosure framework, a climate standard, an auditing and assurance standard, or a notice issued under subpart 4—

(a) in whole or in part; and

(b) with modifications, additions, or variations specified in the regulations, notice, or exemption.

(3) In this section,—

auditing and assurance standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

climate standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

financial reporting standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013.

Section 554 heading: amended, on 27 October 2022, by section 18(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 554(1)(baaa): inserted, on 27 October 2022, by section 18(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 554(1)(ba): inserted, on 27 October 2022, by section 18(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 554(2): amended, on 27 October 2022, by section 18(3) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 554(3): replaced, on 1 April 2014, by section 56 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 554(3) **climate standard**: inserted, on 27 October 2022, by section 18(4) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

555 Different matters may be prescribed in respect of different circumstances

Different matters may be prescribed, prohibited, restricted, specified, or required under the regulations in respect of different kinds or classes of financial products, services, persons, or other circumstances.

Subpart 2—Exemptions

556 FMA may grant exemptions

(1) The FMA may, on the terms and conditions (if any) that it thinks fit, exempt any person or class of persons or any transaction or class of transactions from compliance with any provision or provisions of—

(a) Parts 2 to 7A, subpart 8 of Part 8, and any of the schedules; or

(b) any regulations.

(2) To avoid doubt, an exemption may extend to exempt from compliance with any provision that is implied into a deed or an agreement by or under any other provision referred to in subsection (1).

(3) Nothing in subpart 6 or 7 limits subsection (1).

(3A) The FMA may, on the terms and conditions (if any) that it thinks fit, exempt any trust or class of trusts (or any person or class of persons in respect of a trust or class of trusts) from any provision or provisions of the Trusts Act 2019 if—

(a) the trust or that class of trusts is constituted (or is to be constituted) under a trust deed or trust deeds that would be required to be lodged under section 103 except for the fact that the FMA has granted or will grant an exemption from that requirement under subsection (1); or

(b) both of the following apply:

(i) a managed investment scheme is constituted (or is to be constituted) as 1 or more trusts or as including 1 or more trusts (or both):

(ii) the scheme would be required to be registered under subpart 2 of Part 4 except for the fact that the FMA has granted or will grant an exemption from that requirement under subsection (1).

(4) Subpart 5 (general provisions relating to certain FMA instruments) applies to an exemption granted under this section.

Section 556(1)(a): amended, on 27 October 2022, by section 19 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 556(1)(a): amended, on 9 August 2017, by section 94 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 556(3A): inserted, on 30 January 2021, by section 173 of the Trusts Act 2019 (2019 No 38).

557 Restriction on FMA's exemption power

(1) The FMA must not grant an exemption under this subpart unless it is satisfied that—

(a) granting the exemption is necessary or desirable in order to promote either or both of the main purposes of this Act as specified in section 3 or any of the additional purposes specified in section 4; and

(b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

(2) In the case of section 556(3A), the FMA must also have regard to the purpose and principles of the Trusts Act 2019.

Section 557(2): inserted, on 30 January 2021, by section 174 of the Trusts Act 2019 (2019 No 38).

558 Exemption in force for not more than 5 years

An exemption granted under this subpart may continue in force for not more than 5 years (and at the close of the date that is 5 years after the exemption first comes into force, the exemption must be treated as having been revoked unless it is sooner revoked or expires).

559 Breach of exemption conditions

The breach of a term or condition of an exemption granted under this subpart is a breach of the provision to which the exemption relates (unless the terms of the exemption otherwise provide).

Compare: 1988 No 234 s 49E

560 Exemptions in respect of specified overseas jurisdictions

(1) Exemptions granted under this subpart may extend to all, or classes of, persons, transactions, or other matters in relation to specified overseas jurisdictions.

(2) Subsection (1) does not limit this subpart.

Compare: 1988 No 234 s 49F

561 Effect of exemptions on regulated offers

(1) If the FMA grants an exemption under this subpart from any provision of subpart 1 or 2 of Part 3 or Schedule 1 and that exemption applies in respect of an offer of financial products that would be a regulated offer, the offer continues to be a regulated offer unless subsection (2) applies.

(2) An offer of financial products that would, but for this subsection, be a regulated offer is not a regulated offer if the terms of an exemption granted under this subpart state that the offer is not a regulated offer.

(3) A statement under subsection (2) may be in respect of an offer or a class of offers.

561A Financial reporting and climate-related disclosure exemptions

(1) An exemption granted under this subpart in relation to any provision of Part 7 may, if the FMA thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period are required to be lodged under that Part.

(1A) An exemption granted under this subpart in relation to any provision of Part 7A may, if the FMA thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the climate statements or group climate statements for that period are required to be lodged under that Part.

(2) In deciding whether to grant, amend, or revoke an exemption under this subpart in relation to any provision of Part 7 or 7A, the FMA must consult the Reserve Bank if the exemption concerns any of the following:

(a) a registered bank:

(b) a licensed insurer:

(c) an NBDT.

Section 561A: inserted, on 1 April 2014, by section 57 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 561A heading: replaced, on 27 October 2022, by section 20(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 561A(1A): inserted, on 27 October 2022, by section 20(2) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Section 561A(2): amended, on 27 October 2022, by section 20(3) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Subpart 3—FMA's designation power

562 FMA's designation power

(1) The FMA may—

(a) declare that a security that would not otherwise be a financial product is a financial product of a particular kind:

(b) declare that a financial product is, or is to become, a financial product of a particular kind (whether or not it was previously a financial product of a different kind):

Example

A share is normally an equity security.

However, a particular type of share may have terms that mean that, in substance, the share is similar to a debt security.

The FMA may declare that a share of that kind is a debt security.

(c) declare that a security that would otherwise be a financial product of a particular kind is not a financial product:

(d) declare that an offer of financial products that would not otherwise require disclosure under Part 3 because of an exclusion under Part 1 of Schedule 1 does require disclosure under Part 3:

Example

A small offer is generally excluded from requiring disclosure (*see* clause 12 of Schedule 1).

However, an offer of a particular kind may involve significant risks for investors that may otherwise be undisclosed to investors.

The FMA may declare that disclosure under Part 3 is required despite the exclusion (and, accordingly, the offer is a regulated offer).

(e) declare that an offer of financial products for sale that would not otherwise require disclosure under Part 3 does require disclosure under Part 3 (*see* section 563(1)(c)):

Example

Offers of financial products for sale generally require disclosure only in limited circumstances (*see* Part 2 of Schedule 1).

However, an issuer could structure an offer with a view to circumventing, evading, or defeating the disclosure provisions of this Act.

The FMA may declare that disclosure of the offer under Part 3 is required despite the fact that the provisions in Part 2 of Schedule 1 do not apply.

(f) declare, in relation to a managed investment product or if a declaration is made under paragraph (a) or (b) declaring that a security or financial product is a managed investment product, that a scheme is, or is to become, a managed investment scheme in relation to that managed investment product:

(g) if a declaration is made under paragraph (a), (b), or (f), declare that a person or class of person is, or is to become, the issuer or offeror of the relevant financial products:

(ga) declare that a person or class of person that would otherwise be a wholesale investor or a wholesale client is, or is to become, a retail investor or a retail client:

(gb) declare that advice—

(i) that would not otherwise be financial advice is financial advice; or

(ii) that would otherwise be financial advice is not financial advice; or

(iii) that would not otherwise be regulated financial advice is regulated financial advice; or

(iv) that would otherwise be regulated financial advice is not regulated financial advice:

(gc) declare that a service—

(i) that would not otherwise be a financial advice service is a financial advice service; or

(ii) that would otherwise be a financial advice service is not a financial advice service:

(h) declare a person, service, or conduct to be not exempt under any exemption that would otherwise apply under any of the following provisions (and accordingly the licensing requirement under this Act applies):

(i) section 389(2):

(ii) section 389(3):

(i) declare a person, service, or conduct to be not exempt under any exemption or exclusion that would otherwise apply under section 238(1)(a) to (h) (in relation to either subpart 5 or 6 of Part 5), or under section 285, 287, or 309.

(2) A declaration may specify terms and conditions relating to—

(a) the circumstances in which the declaration applies, including (without limitation) by reference to any person or class of persons or any transaction or class of transactions:

(b) transitional matters.

(3) Nothing in this section prevents the FMA from granting an exemption under subpart 2 that applies to an offer, a financial product, or any other matter that is the subject of a declaration under this section.

Example

The FMA declares that a particular type of share (which would otherwise be an equity security) is a debt security.

However, some of the regulatory requirements that relate to debt securities are inappropriate in respect of these shares.

Accordingly, the FMA grants an exemption (on terms and conditions) from those requirements in order to customise the regulatory requirements that will apply.

(4) The provisions of this Act apply subject to a declaration under this subpart.

(5) Subpart 5 (general provisions relating to certain FMA instruments) applies to a declaration under this section.

Section 562(1)(g): amended, on 9 April 2019, by section 51(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 562(1)(ga): inserted, on 9 April 2019, by section 51(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 562(1)(gb): inserted, on 9 April 2019, by section 51(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 562(1)(gc): inserted, on 9 April 2019, by section 51(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Section 562(1)(h): replaced, on 9 April 2019, by section 51(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

563 Procedural requirements

(1) The FMA must not make a declaration under this subpart unless—

(a) it is satisfied that the declaration is necessary or desirable in order to promote either or both of the main purposes of this Act specified in section 3 or any of the additional purposes specified in section 4; and

(b) in the case of section 562(1)(a) to (d), it has had regard to the economic substance of the relevant security; and

(c) in the case of section 562(1)(e), it is satisfied that the offer or class of offers has, or would have, a purpose or an effect of circumventing, evading, or defeating any of the purposes referred to in paragraph (a) (having regard to the economic substance of the offer or offers); and

(ca) in the case of section 562(1)(gb), (gc), or (h)(i), it is satisfied that the declaration is necessary or desirable in order to promote the additional purpose specified in section 431B; and

(d) it has consulted the persons or representatives of the persons that the FMA considers will be substantially affected by the declaration.

(2) A failure to comply with subsection (1)(d) does not affect the validity of the declaration.

Section 563(1)(ca): inserted, on 9 April 2019, by section 52 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

564 Transitional matters

A declaration under this subpart—

(a) does not apply to financial products issued or transferred before the commencement of the declaration; and

(b) applies subject to any terms and conditions of the declaration relating to transitional matters.

565 FMA may make interim orders pending exercise of powers

(1) The FMA may make an interim order that no offers, issues, sales, or other acquisitions or disposals of securities specified in the order may be made, or services specified in the order may be supplied, while the interim order is in force if—

(a) the FMA is considering, at any time, whether it may exercise a power under this subpart in respect of those securities or services; and

(b) the FMA considers that making an interim order is desirable in the public interest.

(2) An order under subsection (1)—

(a) must specify the offeror or offerors or service provider or providers to which the order applies; and

(b) may require—

(i) all, or any specified class or classes, of the associated persons of the offeror or offerors or service provider or providers to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and

(ii) an offeror or service provider to provide a copy of the order to all or any of those associated persons.

(3) For the purpose of subsection (2), the order is not required to refer to the associated persons by name.

(4) The FMA—

(a) may act under subsection (1) or section 566(1)(b) without giving the offeror or service provider to which the order relates an opportunity to make submissions to, or be heard before, the FMA in respect of the matter; but

(b) must, after acting under subsection (1) or section 566(1)(b), give that offeror or service provider or that person's representative an opportunity to make written submissions and to be heard on the matter.

(5) The FMA must, immediately after making the order, notify each of the following that the order has been made and the reasons for the order:

(a) each offeror or service provider to which the order relates:

(b) the Registrar, if the order relates to a regulated offer.

566 Period in which interim order is in force

(1) An interim order under section 565 is in force from the time at which it is made until the close of—

(a) the date that is 15 working days after the day on which it is made; or

(b) a later date specified by the FMA by notice to the offeror or service provider to which the order relates.

(2) For the purposes of subsection (1)(b),—

(a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to complete its consideration as referred to in section 565(1)(a) within the 15-working-day period referred to in subsection (1)(a):

(b) the later date must be a date that is no more than 30 working days after the day on which the interim order is made.

Subpart 4—Frameworks or methodologies

567 Purpose

(1) The purpose of this subpart is to provide for the FMA to issue frameworks or methodologies relating to detailed or technical matters (rather than matters of general principle).

(2) A notice issued under this subpart applies only to the extent provided for in this Act or the regulations (*see* section 554).

568 FMA may specify frameworks or methodologies

(1) The FMA may issue a notice that specifies frameworks or methodologies relating to how matters are required or permitted to be determined, calculated, valued, presented, or prepared for the purposes of—

(a) information that is to be made available under subpart 4 of Part 3:

(b) the governing documents for debt securities and registered schemes, statements of investment policy and objectives, and determining the materiality of limit breaks or pricing errors under Part 4:

(c) the eligibility criteria for the issue of market services licences:

(d) the conditions that may be imposed on market services licences:

(e) any other matter that, by this Act or any other enactment, is required or permitted to be done in accordance with those frameworks or methodologies or the notices issued under this subpart.

(2) The frameworks or methodologies may (without limitation)—

(a) include requirements relating to how income, values, assets, revenue, liabilities, financial products, transactions, amounts payable, or other matters are to be determined, calculated, valued, presented, or prepared:

(b) provide for income, values, assets, revenue, liabilities, financial products, transactions, amounts payable, or other matters to be included or disregarded (in whole or in part) for the purposes of paragraph (a).

(3) A notice issued by the FMA—

(a) may specify different matters and requirements in respect of different kinds or classes of financial products, services, persons, or other circumstances:

(b) must not specify matters and requirements that are inconsistent with this Act or any regulations.

(4) Subpart 5 (general provisions relating to certain FMA instruments) applies to a notice issued under this section.

Compare: 1978 No 103 s 54D

569 Consultation

(1) The FMA must not issue a notice under this subpart unless the FMA has consulted the persons or representatives of the persons that the FMA considers will be substantially affected by the issue of the notice.

(2) A failure to comply with subsection (1) does not affect the validity of the notice.

Compare: 1978 No 103 s 54E

Subpart 5—General provisions relating to certain FMA instruments

570 Application of subpart

This subpart applies to the following instruments:

(a) notices issued under section 69:

(ab) notices issued under section 461L:

(b) exemptions granted under subpart 2:

(c) declarations made under subpart 3:

(d) notices issued under subpart 4.

Section 570(ab): inserted, on 1 April 2014, by section 58 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

571 Status and publication of instruments

(1) An instrument to which this subpart applies is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

(5) The FMA's reasons for making an instrument (including why the instrument is appropriate) must be published together with the instrument.

(6) *[Repealed]*

Legislation Act 2019 requirements for secondary legislation made under section 69, or under section 461L in respect of a class of FMC reporting entities		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation made under section 461L in respect of a specified FMC reporting entity, or under subpart 4		
Publication	The maker must: • notify it in the *Gazette*	LA19 ss 73, 74(1)(a), Sch 1 cl 14

	• publish it on a website maintained by, or on behalf of, the maker • make it available in printed form for purchase on request by members of the public	
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation made under subpart 2 that is of general application and applies to a class of persons or transactions, but not including secondary legislation granted in relation to a particular person or transaction or persons associated with, or transactions involving, a particular person

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives, unless the exemption in Schedule 3 of the Legislation Act 2019 applies	LA19 s 114, Sch 3
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for all other secondary legislation made under subpart 2

Publication	The maker must: • notify it in the *Gazette* • publish it on a website maintained by, or on behalf of, the maker • make it available in printed form for purchase on request by members of the public However, that requirement does not apply if the presentation exemption in Schedule 3 of the Legislation Act 2019 applies. While that exemption applies, it is not required to be published	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives, unless the exemption in Schedule 3 of the Legislation Act 2019 applies	LA19 s 114, Sch 3
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation made under subpart 3 that is of general application and applies to a class of persons or transactions, but not including secondary legislation granted in relation to a particular person or transaction or persons associated with, or transactions involving, a particular person

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for all other secondary legislation made under subpart 3		
Publication	The maker must: • notify it in the *Gazette* • publish it on a website maintained by, or on behalf of, the maker • make it available in printed form for purchase on request by members of the public	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 571(1): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 571(2): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 571(3): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 571(4): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 571(6): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

571A Deferral of obligations to publish, notify, and make available non-class exemptions

[Repealed]

Section 571A: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

572 Variation and revocation

The FMA may vary or revoke an instrument to which this subpart applies in the same way as it may make the instrument (with the provisions relating to the making of the instrument applying with all necessary modifications).

Subpart 6—Recognition and application regimes

573 Purpose of this subpart

The purpose of this subpart is to enable recognition and application regimes to be implemented that—

(a) provide for exemptions from this Act and the regulations so that offerors may offer financial products in New Zealand in accordance with the securities laws of designated countries:

(b) extend the territorial scope of this Act and the regulations so that offerors may offer financial products in designated countries in accordance with New Zealand laws, and investors in those countries may rely on and enforce those laws.

Compare: 1978 No 103 s 71

574 Definition of country in this subpart

In this subpart and subpart 7, **country** includes a state, territory, country, or group of countries in respect of which a single securities law, or set of laws, is in force.

Compare: 1978 No 103 s 72

Exemption from Act and regulations for New Zealand offers under recognition regime

575 Exemption from Act and regulations for New Zealand offers under recognition regime

(1) A provision of this Act or the regulations does not apply to a financial product offered to a person in New Zealand if—

(a) a recognition regime set out in regulations made under section 576 applies to the product; and

(b) the recognition regime provides an exemption from that provision for the product; and

(c) the offeror of the product has opted into the recognition regime; and

(d) any other preconditions of the recognition regime are met.

(2) For the purposes of subsection (1), an offeror opts into a recognition regime in respect of a product by notifying the Registrar—

(a) that an offer of the financial product is to be made under the recognition regime; and

(b) of the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand at that address of documents on behalf of the offeror.

(3) The Registrar must send a copy of the notification to the FMA.

Compare: 1978 No 103 s 73

576 Power to exempt from Act and regulations under recognition regime

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations, for the purpose of implementing a recognition regime for a designated country, that provide for—

(a) exemptions from provisions of this Act and the regulations; and

(b) the other matters set out in section 577.

(2) The Minister may recommend making an Order in Council under this section only—

(a) if he or she is satisfied that it is in the public interest after having regard to—

(i) the securities laws of the designated country; and

(ii) the interests of New Zealand investors; and

(b) after consulting with the FMA.

(3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1978 No 103 s 74

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 576(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

577 Matters that must be stated in regulations implementing recognition regime

(1) The regulations made under section 576 must state—

(a) the country to which the recognition regime applies; and

(b) the classes of financial products to which the recognition regime applies (whether by reference to type of issuer, offeror, offer, or any other matter); and

(c) the exemptions from provisions of this Act and the regulations for those products; and

(d) the preconditions that must be met for the recognition regime to apply, for example (without limitation), requiring specified information relating to the offer or financial products to be provided to the FMA or Registrar; and

(e) the terms and conditions that must be complied with under the recognition regime, for example (without limitation), requiring—

(i) the offer of the financial products to be made in accordance with specified provisions of the designated country's laws:

(ii) warnings to be given to investors so as to inform them that the offer of the financial products is regulated under the designated

country's laws and that New Zealand laws relating to the offer of financial products do not apply to the offer:

(iii) specified information relating to the offer or financial products to be provided to the FMA or Registrar.

(2) Regulations may provide different exemptions, preconditions, and terms and conditions for different classes of financial products, offers, persons, or circumstances.

Compare: 1978 No 103 s 75

578 FMA may declare failure to meet preconditions of recognition regime to be non-material

(1) If the FMA is satisfied, in relation to an offer, that a failure to meet a precondition referred to in section 577(1)(d) is minor or technical only, the FMA may declare in writing that the failure is non-material.

(2) If the FMA makes a declaration, the precondition must be treated as having been met at the time it was required to be met by the regulations made under section 576.

Compare: Corporations Act 2001 s 1200B(3), (4) (Aust); SR 2008/153 r 8(3), (4)

579 Offence for breach of regulations implementing recognition regime

If there is a contravention, in respect of a financial product, of a term or condition that must be complied with under a recognition regime, each of the following persons commits an offence and is liable on conviction to a fine not exceeding $50,000:

(a) the offeror of the financial product; and

(b) every person who is a director of the offeror at the time of the contravention; and

(c) every person who has authorised himself or herself to be named, and is named, in any advertisement relating to the financial product as a director of the offeror or as having agreed to become a director either immediately or after an interval of time.

Compare: 1978 No 103 s 76

Extension of Act and regulations to overseas offers under application regime

580 Extension of Act and regulations to overseas offers under application regime

A provision of this Act or the regulations applies to a financial product that is offered to a person outside New Zealand if—

(a) an application regime set out in regulations made under section 581 applies to the financial product; and

(b) the application regime applies that provision to the financial product; and

(c) any other preconditions of the application regime are met.

Compare: 1978 No 103 s 77

581 Power to extend Act and regulations under application regime

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations, for the purpose of implementing an application regime for a designated country, that provide for—

(a) the application of provisions of this Act and the regulations to financial products offered to persons in that country; and

(b) the other matters set out in section 582.

(2) The Minister may recommend making an Order in Council under this section only—

(a) if he or she is satisfied that it is appropriate for New Zealand laws to apply to financial products offered to persons in the designated country as set out in the proposed application regime; and

(b) after consulting with the FMA.

(3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1978 No 103 s 78

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 581(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

582 Matters that must be stated in regulations implementing application regime

(1) The regulations made under section 581 must state—

(a) the country to which the application regime applies; and

(b) the classes of financial products to which the application regime applies (whether by reference to type of issuer, offeror, offer, or any other matter); and

(c) the provisions of this Act and the regulations that apply to those financial products; and

(d) whether or not, or the extent to which, exemptions from those provisions granted by the FMA under this Act may also apply to those financial products; and

(e) the preconditions (if any) that must be met for the application regime to apply; and

(f) the terms and conditions (if any) that must be complied with under the application regime.

(2) The regulations may provide different applications of provisions, preconditions, and terms and conditions for different classes of financial products, offers, persons, or circumstances.

Compare: 1978 No 103 s 79

Subpart 7—Enforcement of overseas pecuniary penalties under application regime

583 Purpose of this subpart

The purpose of this subpart is to enable application regimes to be implemented that provide for enforcement in New Zealand of fines and pecuniary penalties imposed for breaches of securities laws of designated countries.

Compare: 1978 No 103 s 71

584 Enforcement of overseas pecuniary penalties under application regime

This subpart applies to a judgment given by a court under a provision of the law of another country if—

(a) an application regime set out in regulations made under section 585 applies this subpart to that provision of the law of that country; and

(b) the judgment requires payment of a penalty; and

(c) any other preconditions of the application regime are met.

Compare: 1978 No 103 s 80

585 Power to enforce overseas penalties under application regime

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, for the purpose of implementing an application regime for a designated country, make regulations that provide for—

(a) the application of this subpart to provisions of the securities laws of that country under or in respect of which a penalty may be imposed; and

(b) the preconditions of the application regime (if any).

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1978 No 103 s 81

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 585(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

586 Interpretation

In this subpart,—

court of rendition, in relation to a judgment, means the court by which the judgment was given

enforcement, in relation to a judgment, includes execution of a judgment

judgment includes an order

penalty means a fine or other pecuniary penalty (whether criminal or civil)

place of rendition, in relation to a judgment, means the country in which the court of rendition is established

registered judgment means a judgment that is registered under section 587.

Compare: 1978 No 103 s 82

587 Registration of judgment

The High Court must register a judgment to which this subpart applies under section 584 as a civil judgment debt if an application is made to it in accordance with regulations made under section 585.

Compare: 1978 No 103 s 83

588 Effect of registration

(1) A registered judgment has the same force and effect, and may give rise to the same proceedings by way of enforcement, as if the judgment had been given by the High Court.

(2) Subsection (1) is subject to sections 589 and 590.

Compare: 1978 No 103 s 84

589 Enforceability of registered judgment

A registered judgment is capable of being enforced in or by the High Court only if, and to the extent that, at the time when the proceeding for enforcement is or is to be taken, the judgment is capable of being enforced in or by—

(a) the court of rendition; or

(b) a court in the place of rendition.

Compare: 1978 No 103 s 85

590 Stay may be granted

(1) The High Court may, on application by a person against whom the registered judgment has been given, order that proceedings in the High Court to enforce the judgment—

(a) not be commenced until a specified time; or

(b) be stayed for a specified period.

(2) The order—

(a) must be made subject to conditions that,—

(i) within the period specified in the order, the person make and prosecute an appropriate application for relief in respect of the registered judgment; and

(ii) the application be prosecuted in an expeditious manner; and

(b) may be made subject to other conditions, including as to the giving of security, that the High Court thinks fit.

(3) For the purposes of subsection (2)(a)(i), an **appropriate application for relief** is an application to set aside, vary, or appeal against the registered judgment that is made to a court or tribunal that has jurisdiction under the law in force in the place of rendition to grant the application.

Compare: 1978 No 103 s 86

591 Costs

(1) The following are recoverable in proceedings by way of enforcement of a registered judgment:

(a) the reasonable costs and expenses of, and incidental to, obtaining and lodging the copy of the judgment; and

(b) the costs and expenses reasonably incurred in attempting to execute the judgment in the court of rendition.

(2) The entitlement of a person to, and the liability of a person for, the costs or expenses of, and incidental to, those proceedings are the same as they are in proceedings by way of enforcement of—

(a) a similar judgment given by the High Court; or

(b) if there is no such similar judgment, the most closely analogous judgment given by the High Court.

Compare: 1978 No 103 s 87

592 Interest

Interest on the amount of a registered judgment—

(a) is payable at the same rate or rates and in respect of the same period or periods as would be applicable in the court of rendition; and

(b) is recoverable to the extent that the judgment creditor satisfies the High Court as to the amount of the interest.

Compare: 1978 No 103 s 88

593 Rules of private international law not to apply

If a judgment is registered in the High Court under this subpart, the courts of New Zealand must not, merely because of the operation of a rule of private international law, refuse to permit proceedings by way of enforcement of the registered judgment to be taken or continued.

Compare: 1978 No 103 s 89

594 Other regulations for registration of judgments under application regime

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the registration of judgments under this subpart, including (without limitation) providing for—

(a) the verification requirements for those judgments:

(b) the registration and service of facsimiles of those judgments:

(c) the service of notice of registration of those judgments:

(d) other requirements for the way in which those judgments may be registered (for example, the currency of registrations and the registration of partly satisfied judgments).

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1978 No 103 s 90

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 594(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 8—Miscellaneous provisions

Subpart 8 heading: amended, on 9 April 2019, by section 54 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

595 Registers

The provisions in Schedule 2 apply to the keeping of registers under this Act.

596 Schedule 3 schemes

The FMA may approve, or withdraw an approval of, a scheme as a Schedule 3 scheme under Schedule 3, and the provisions of that schedule apply to a Schedule 3 scheme.

597 Transitional provisions

[Repealed]

Section 597: repealed, on 9 April 2019, by section 55 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1
Provisions relating to when disclosure is required and exclusions for offers and services

ss 39, 40

Contents

Page

Part 1
Disclosure exclusions for offers of financial products for issue or sale

1 Overview of Part 429
2 Part subject to FMA's power to require disclosure 429

Exclusion for wholesale investors

3 Offer to wholesale investor 429

Exclusion for persons in close relationship

4 Offers to close business associates 430
5 Offers to relatives 431

Exclusion for offers through licensed intermediaries and DIMS licensees

6 Offers of financial products through licensed intermediaries 432
7 Offers of financial products through DIMS licensees 432

Exclusion for employee share purchase schemes

8 Offers under employee share purchase schemes 432

Exclusion for persons under control

9 Offers to persons under control do not need disclosure 433

Exclusion for dividend reinvestment plan

10 Offers of financial products under dividend reinvestment plans 433

Exclusion for financial products for no consideration

11 Offers of financial products for no consideration 435

Exclusion for small offers

12 Small offers 435
13 Advertising restriction for small offers 436
14 Matters relating to calculation 437

Exclusion for transfer of controlling interest

15 Offers of controlling interest where 5 or fewer investors 438

Exclusion for small schemes

16 Exclusion for small schemes 438

17 Advertising restriction for small schemes 438
18 Counting of scheme participants 438

Exclusion for quoted financial products

19 Exclusion for offers of financial products of same class as quoted financial products 439

Exclusions for derivatives

20 Exclusions for certain offers of derivatives 440

Exclusion for registered banks

21 Offers of prescribed financial products or debt securities by registered banks 440

Exclusion for the Crown, etc

22 Offers by the Crown, etc 441

Exclusion for retirement villages

23 Offers of interests in retirement villages 441

Exclusion for renewals or variations

24 Offers of renewals or variations 442

Limited disclosure and other requirements

25 Purposes of clauses 26 to 29 442
26 Disclosure and other requirements 442
27 False or misleading statements and omissions 444
27A Offeror is FMC reporting entity in prescribed circumstances 444
28 Persons who must inform offeror about deficiencies in limited disclosure document 444
28A Failure to lodge or give information to Registrar or FMA 445
29 Regulations may prevent exclusions from applying in inappropriate circumstances 445

Part 2
Which offers of financial products for sale require disclosure

30 Application of this Part 446
31 Sale where financial products issued with view to original holder dealing with products 446
32 Sale where issuer advises, encourages, or knowingly assists offeror 447
33 Off-market sale by controller 448
34 Sale amounting to indirect off-market sale by controller 448

Part 3
Definitions and certificates for exclusions for offers and services

35 Meaning of retail investor and retail service 449

36 Meaning of wholesale investor 449
37 Investment businesses 450
38 Investment activity criteria 450
39 Meaning of large 451
40 Definition of government agency 452
41 Eligible investors 452
42 Offeror may not rely on eligible investor certificate in certain circumstances 453
43 Confirmation of certification 454
44 Safe harbour if certificate given 455
45 Offeror or provider may not rely on safe harbour certificate if knows A was not in fact wholesale investor 455
46 Other provisions relating to certificates 456
47 Offences relating to certificates 456

Control and other definitions for schedule

48 Meaning of control in this schedule 456
49 Other definitions for schedule 457

Part 1
Disclosure exclusions for offers of financial products for issue or sale

1 Overview of Part

In this Part,—

(a) clauses 3 to 11 specify that offers to particular persons do not require disclosure under Part 3 of this Act (although disclosure to other persons may be required):

(b) clauses 12 to 24 specify that certain offers as a whole do not require disclosure under Part 3 of this Act, whether as a result of the nature of the offer (for example, a small offer) or the nature of the issuer (for example, an offer by the Crown):

(c) clauses 25 to 29 provide for limited disclosure and other requirements, and for restrictions, in relation to the exclusions.

2 Part subject to FMA's power to require disclosure

This Part is subject to a declaration under section 562(1)(d) (FMA's power to declare that an offer requires disclosure).

Exclusion for wholesale investors

3 Offer to wholesale investor

(1) An offer of financial products to a wholesale investor does not require disclosure under Part 3 of this Act.

(2) A person is a **wholesale investor** if—

(a) the person is an investment business (*see* clause 37); or

(b) the person meets the investment activity criteria specified in clause 38; or

(c) the person is large (*see* clause 39); or

(d) the person is a government agency (*see* clause 40).

(3) A person is also a **wholesale investor**, in relation to an offer of financial products, if—

(a) the person is an eligible investor (*see* clause 41); or

(b) in relation to an offer of financial products for issue or sale,—

(i) the minimum amount payable by the person on acceptance of the offer is at least $750,000; or

(ii) the amount payable by the person on acceptance of the offer plus the amounts previously paid by the person for financial products of the issuer of the same class that are held by the person add up to at least $750,000; or

(iii) it is proposed that the person will acquire the financial products under a bona fide underwriting or sub-underwriting agreement; or

(c) in relation to an offer of a derivative for issue or sale, the notional value of the derivative is at least $5 million (*see* clause 49).

(4) In calculating the amount payable, or paid, for financial products for the purposes of subclause (3)(b)(i) or (ii), any amount payable, or paid, must be disregarded to the extent to which it is to be paid, or was paid, out of money lent by the offeror or any associated person of the offeror.

Exclusion for persons in close relationship

4 Offers to close business associates

(1) An offer of financial products to a close business associate of the offeror does not require disclosure under Part 3 of this Act.

(2) A person (**A**) is a close business associate of the offeror if—

(a) A is a director or senior manager of the offeror or of a related body corporate of the offeror; or

(b) A holds or controls 5% or more of the voting products of the offeror; or

(c) A is a related body corporate of the offeror; or

(d) A holds or controls 20% or more of the voting products of a related body corporate of the offeror; or

(e) A is a partner of the offeror or of a director of the offeror (under the Partnership Law Act 2019); or

(f) A is a spouse, civil union partner, or de facto partner of a person who is a close business associate of the offeror under any of paragraphs (a) to (e) or subclause (3); or

(g) A is a child, parent, brother, or sister of a person who is a close business associate of the offeror under any of paragraphs (a) to (f) or subclause (3) (whether or not by a step relationship).

(3) A person (**A**) is also a close business associate of the offeror, in relation to an offer of financial products, if A has a close professional or business relationship with the offeror, or a director or senior manager of the offeror, that allows A to—

(a) assess the merits of the offer; or

(b) obtain information from the offeror or any other person involved in the offer that will enable A to assess the merits of the offer.

(4) In this clause, **control**, in relation to a voting product, means having, directly or indirectly, effective control of the voting rights attached to the product.

Schedule 1 clause 4(2)(e): amended, on 21 April 2020, by section 86 of the Partnership Law Act 2019 (2019 No 53).

5 Offers to relatives

(1) An offer of financial products to a relative of the offeror or of a director of the offeror does not require disclosure under Part 3 of this Act.

(2) In this clause, **relative**, in relation to a person (**A**), means any of the following:

(a) A's spouse, civil union partner, or de facto partner (**B**):

(b) a grandparent, parent, child, grandchild, brother, sister, nephew, niece, uncle, aunt, or first cousin of A or B, whether or not by a step relationship:

(c) a spouse, civil union partner, or de facto partner of a person who is a relative under paragraph (b):

(d) a trustee of a trust under which A, or a relative of A (under paragraphs (a) to (c)), is a beneficiary who—

(i) is presently entitled to a share of the trust estate or of the income of the trust estate; or

(ii) is, individually or together with other beneficiaries, in a position to control the trustee:

(e) a trustee of a trust if—

(i) the trust is a family trust within the meaning of section 173M(5) of the Tax Administration Act 1994; and

(ii) a majority of the individuals who are beneficiaries under the trust are relatives of A (under paragraphs (a) to (c)).

Exclusion for offers through licensed intermediaries and DIMS licensees

6 Offers of financial products through licensed intermediaries

(1) An offer of financial products to a person (**A**) does not require disclosure under Part 3 of this Act if—

(a) the offer is by or through a licensed intermediary in the course of supplying prescribed intermediary services to A; and

(b) the prescribed intermediary services supplied to A by the licensed intermediary in relation to the offer are covered by the market services licence held by the licensed intermediary.

(2) In this clause, **licensed intermediary** means a person who holds a market services licence that covers prescribed intermediary services.

7 Offers of financial products through DIMS licensees

An offer of financial products to a person (**A**) does not require disclosure under Part 3 of this Act if—

(a) the offer is through a DIMS licensee; and

(b) the DIMS licensee decides whether to acquire the financial products on behalf of A in the course of supplying a discretionary investment management service to A.

Exclusion for employee share purchase schemes

8 Offers under employee share purchase schemes

(1) An offer of specified financial products to an eligible person under an employee share purchase scheme does not require disclosure under Part 3 of this Act if—

(a) the offer is made as part of the remuneration arrangements for the eligible person or is otherwise made in connection with the employment or engagement of the eligible person; and

(b) raising funds for the issuer is not the primary purpose of the offer to the eligible person; and

(c) the total number of specified financial products issued or transferred under all of the issuer's employee share purchase schemes in any 12-month period does not exceed,—

(i) in the case of an offer of voting products or options over voting products, 10% of the voting products of the issuer as at the start of the 12-month period:

(ii) in the case of any other offer of specified financial products, 10% of the specified financial products of the issuer that are of the same class as at the start of the 12-month period.

(2) In this clause,—

eligible person—

(a) means an employee or a director of the issuer of the specified financial products or of any of its subsidiaries; and

(b) includes a person who provides personal services (other than as an employee) principally to the issuer of the specified financial products or any of its subsidiaries

specified financial products means—

(a) equity securities; or

(b) prescribed financial products.

(3) In calculating the total number of specified financial products issued or transferred under all of the issuer's employee share purchase schemes for the purposes of subclause (1)(c), an issue or a sale to a person must be disregarded if the issue or sale results from an offer that—

(a) does not require disclosure under Part 3 of this Act for any reason other than as a result of the application of this clause; or

(b) is not received in New Zealand; or

(c) is a regulated offer that is separate from the offer under the employee share purchase scheme.

Schedule 1 clause 8(1)(c): amended, on 9 August 2017, by section 95(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 8(3): amended, on 9 August 2017, by section 95(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 8(3)(a): replaced, on 9 August 2017, by section 95(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Exclusion for persons under control

9 Offers to persons under control do not need disclosure

If, under any of clauses 3 to 8, an offer of financial products to a person (**A**) would not require disclosure under Part 3 of this Act, an offer of those financial products to an entity controlled by A does not require disclosure under Part 3 of this Act (*see* clause 48).

Exclusion for dividend reinvestment plan

10 Offers of financial products under dividend reinvestment plans

(1) An offer of specified financial products to a person (**A**) under a dividend reinvestment plan does not require disclosure under Part 3 of this Act if—

(a) A already holds financial products of the issuer that are of the same class as the specified financial products, and—

(i) A is entitled to acquire those products by applying all or any specified part of any dividends declared by the issuer and payable to A; or

(ii) A has a right to require the issuer to issue those products to A as fully paid financial products in consideration only for A forgoing the right to receive all or any specified part of any dividends declared by the issuer and otherwise payable to A; and

(b) the dividend reinvestment plan contains provisions requiring that,—

(i) at the time the price of the specified financial products is set, the issuer has no information that is not publicly available that would, or would be likely to, have a material adverse effect on the realisable price of the financial products if the information were publicly available; and

(ii) the right to acquire, or require the issuer to issue, specified financial products is offered to all holders of financial products of the issuer of the same class, other than product holders who are resident outside New Zealand and who are excluded by the issuer to avoid a risk of breaching the laws of the relevant overseas country; and

(iii) every product holder to whom the right is offered is given a reasonable opportunity to accept it; and

(iv) the specified financial products issued or transferred to a product holder are issued on the terms disclosed to the holder; and

(v) the specified financial products issued or transferred to a product holder are subject to the same rights as the financial products issued to all holders of financial products of the same class who agree to receive the financial products.

(2) In this clause,—

dividend means,—

(a) in relation to equity securities in a company within the meaning of section 2(1) of the Companies Act 1993, a dividend within the meaning of section 53 of that Act; and

(b) in relation to any other equity securities, a distribution of the income or gains of the issuer to a holder of the equity securities that is comparable to a dividend referred to in paragraph (a); and

(c) in relation to managed investment products, a distribution of the financial benefits of the scheme to a holder of the product

specified financial products means—

(a) equity securities in a company:

(b) managed investment products.

Schedule 1 clause 10(1)(b)(iv): amended, on 9 August 2017, by section 95(4) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 10(1)(b)(v): amended, on 9 August 2017, by section 95(4) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Exclusion for financial products for no consideration

11 Offers of financial products for no consideration

(1) An offer of financial products (other than options or other financial products to which this clause does not apply) does not require disclosure under Part 3 of this Act if no consideration is to be provided for the issue or transfer of the products.

(2) An offer of an option to a person does not require disclosure under Part 3 of this Act if—

(a) no consideration is to be provided for the issue or transfer of the option; and

(b) no consideration is to be provided for the underlying financial products on the exercise of the option.

(3) This clause does not apply if the financial products—

(a) are interests in a KiwiSaver scheme, a superannuation scheme, a workplace savings scheme, or a prescribed scheme; or

(b) are derivatives other than options; or

(c) impose or may impose a liability on the product holder in respect of the issuer or a registered scheme (for example, an obligation to make contributions or to pay a call).

Exclusion for small offers

12 Small offers

(1) Personal offers of financial products do not require disclosure under Part 3 of this Act if—

(a) the financial products are equity securities or debt securities; and

(b) none of the offers results in a breach of the 20-investor limit under subclause (2)(a) or (3)(a); and

(c) none of the offers results in a breach of the $2 million limit under subclause (2)(b) or (3)(b).

(2) An offer by a person to issue financial products—

(a) results in a breach of the 20-investor limit if it results in the number of persons to whom financial products of the issuer have been issued exceeding 20 in any 12-month period:

(b) results in a breach of the $2 million limit if it results in the amount being raised from the issue of financial products of the issuer exceeding $2 million in any 12-month period.

(3) An offer by a person to sell financial products of an issuer—

(a) results in a breach of the 20-investor limit if it results in the number of persons to whom the person sells financial products of the issuer exceeding 20 in any 12-month period:

(b) results in a breach of the $2 million limit if it results in the amount being raised by the person from selling financial products of the issuer exceeding $2 million in any 12-month period.

(4) Subclause (1) does not apply to an offer for sale to which clause 31 or 34 applies.

(5) In this clause,—

financial products of the issuer means equity securities and debt securities issued by the issuer (regardless of whether or not those products are of the same class or kind as those under offer)

income year has the same meaning as in section YA 1 of the Income Tax Act 2007

personal offer means an offer that is made to, and may only be accepted by, a person who—

(a) is likely to be interested in the offer, having regard to—

(i) previous contact between the person making the offer and that person; or

(ii) some professional or other connection between the person making the offer and that person; or

(iii) statements or actions by that person that indicate that that person is interested in offers of that kind (for example, through that person's membership of or participation in an angel network); or

(b) has an annual gross income of at least $200,000 for each of the person's 2 most recently completed income years before the relevant time; or

(c) is controlled by a person referred to in paragraph (b) (*see* clause 48).

13 Advertising restriction for small offers

(1) A person must not advertise an offer or intended offer of financial products that would be a regulated offer but for clause 12.

(2) Subclause (1) does not apply to a communication that is distributed by or on behalf of the offeror if the offeror took all reasonable steps to ensure that the only persons who received the communication were persons referred to in the definition of personal offer in clause 12(5) or persons acting on their behalf.

(3) A contravention of this clause does not prevent the exclusion referred to in clause 12 from continuing to apply (but may give rise to consequences under Part 8 of this Act).

14 Matters relating to calculation

(1) In calculating issues and sales of the financial products of an issuer, and the amount raised from issues and sales, for the purposes of clause 12, an issue or a sale to a person must be disregarded if the issue or sale results from an offer that—

(a) does not require disclosure under Part 3 of this Act because of any other exclusion under this schedule; or

(b) is not received in New Zealand; or

(c) is a regulated offer that is separate from the small offer.

(2) If financial products are issued or sold to 2 or more persons as joint holders of the products, those persons must be treated as a single person for the purposes of counting the number of persons to whom financial products are issued or sold under clause 12.

(3) In calculating the amount of money raised by the person by issuing financial products, the following must be included:

(a) the amount payable for the products at the time when the products are issued:

(b) if the products are shares issued partly paid, any amount payable at a future time if a call is made:

(c) if the product is an option, any amount payable on the exercise of the option:

(d) if the products carry a right to convert the products into other financial products, any amount payable on the exercise of that right.

(4) For the purposes of paragraph (b) of the definition of personal offer in clause 12,—

(a) in determining the annual gross income of the person, the annual gross income of an entity controlled by the person may be included in the annual gross income of the person; and

(b) the frameworks and methodologies prescribed by the FMA under subpart 4 of Part 9 of this Act for the purposes of that paragraph (if any) must be complied with when determining whether the paragraph is satisfied.

Exclusion for transfer of controlling interest

15 Offers of controlling interest where 5 or fewer investors

(1) An offer of equity securities that comprise more than 50% of the voting products of an entity does not require disclosure under Part 3 of this Act if—

(a) 5 or fewer persons acquire equity securities under the offer; and

(b) if more than 1 person acquires equity securities under the offer, those persons are acting jointly or in concert; and

(c) in the circumstances, the persons who acquire equity securities under the offer are in a position to—

(i) assess the merits of the offer; or

(ii) obtain information from the offeror or any other person involved in the offer that will enable them to assess the merits of the offer.

(2) If equity securities are acquired by 2 or more persons as joint holders of the securities, those persons must be treated as a single person for the purposes of counting the number of persons who acquire the securities under subclause (1).

Exclusion for small schemes

16 Exclusion for small schemes

An offer of managed investment products does not require disclosure under Part 3 of this Act if the relevant managed investment scheme—

(a) has 5 or fewer scheme participants (*see* clause 18); and

(b) is not promoted by a person, or an associate of a person, who is in the business of promoting managed investment schemes.

17 Advertising restriction for small schemes

(1) A person must not advertise an offer or intended offer of financial products that would be a regulated offer but for clause 16.

(2) A contravention of this clause does not prevent the exclusion referred to in clause 16 from continuing to apply (but may give rise to consequences under Part 8 of this Act).

18 Counting of scheme participants

(1) For the purposes of counting the number of scheme participants in a managed investment scheme,—

(a) joint holders of a managed investment product count as a single scheme participant; and

(b) a managed investment product held on trust for a beneficiary is taken to be held by the beneficiary (rather than the trustee) if the beneficiary is presently entitled to a share of the trust estate or of the income of

the trust estate or the beneficiary is, individually or together with other beneficiaries, in a position to control the trustee.

(2) The FMA may, in writing, determine that the total number of scheme participants in all of the schemes subject to the determination must be counted (as if they were 1 scheme) for the purposes of determining the number of scheme participants of any 1 of those schemes under this Part.

(3) The FMA must give written notice of the determination to the manager of each of the schemes.

Exclusion for quoted financial products

19 Exclusion for offers of financial products of same class as quoted financial products

(1) An offer of financial products does not require disclosure under Part 3 of this Act if—

(a) the financial products are equity securities, debt securities, or managed investment products; and

(b) the financial products are of the same class as quoted financial products that have been quoted on a licensed market at all times during the 3-month period before the time of the offer; and

(c) trading in that class of financial products on the licensed market on which they are quoted was not suspended for more than a total of 5 trading days during the 3-month period referred to in paragraph (b); and

(d) in the case of an offer by way of issue, it is a term of the offer that the issuer will take any necessary steps to ensure that the financial products are, immediately after the issue, quoted; and

(e) in the case of an offer by way of sale, the offeror has reasonable grounds to believe that the financial products will, immediately after sale, be quoted; and

(f) the market rules of the licensed market on which the financial products are quoted contain continuous disclosure provisions.

(1A) An offer of options to acquire, by way of issue, financial products (and the offer of those option underlyings) does not require disclosure under Part 3 of this Act if—

(a) the options and option underlyings are equity securities, debt securities, or managed investment products; and

(b) the option underlyings are of the same class as quoted financial products that have been quoted on a licensed market at all times during the 3-month period before the time of the offer; and

(c) trading in those quoted financial products on the licensed market on which they are quoted was not suspended for more than a total of 5 trading days during the 3-month period referred to in paragraph (b); and

(d) it is a term of the offer that the issuer will take any necessary steps to ensure that, immediately after the option underlyings are issued, the option underlyings are quoted; and

(e) the market rules of the licensed market on which the option underlyings are quoted contain continuous disclosure provisions.

(1B) In this clause, **option underlyings**, in relation to an offer of options, means the underlying financial products to which the options relate.

(2) However, this clause does not apply to the financial products of an issuer if the FMA has made an order under section 474 in respect of the issuer.

Schedule 1 clause 19(1)(e): replaced, on 9 April 2019, by section 56(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 19(1A): inserted, on 9 August 2017, by section 95(5) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 19(1B): inserted, on 9 August 2017, by section 95(5) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Exclusions for derivatives

20 Exclusions for certain offers of derivatives

(1) An offer of a derivative for issue does not require disclosure under Part 3 of this Act if the person who offers the derivative is not a derivatives issuer.

(2) An offer of a derivative for sale does not require disclosure under Part 3 of this Act if the derivative was not issued by a derivatives issuer.

(3) An offer of a quoted derivative for issue or sale does not require disclosure under Part 3 of this Act if the derivative is issued by a participant in the licensed market on which the derivative is quoted.

(4) An offer of a derivative for issue or sale does not require disclosure under Part 3 of this Act if the derivative is—

(a) approved for trading on a prescribed overseas market; and

(b) issued by a prescribed person or class of persons.

Exclusion for registered banks

21 Offers of prescribed financial products or debt securities by registered banks

An offer of financial products does not require disclosure under Part 3 of this Act if the financial products are—

(a) financial products of a kind prescribed for the purposes of this paragraph that are issued by a registered bank; or

(b) debt securities issued by a registered bank; or

(c) financial products of a kind prescribed for the purposes of this paragraph that are issued by a subsidiary of a registered bank; or

(d) prescribed currency forwards that are issued by a registered bank or a subsidiary of a registered bank.

Schedule 1 clause 21 heading: amended, on 15 March 2021, by section 56(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 21(a): replaced, on 15 March 2021, by section 56(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 21(c): amended, on 15 March 2021, by section 56(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Exclusion for the Crown, etc

22 Offers by the Crown, etc

(1) An offer of financial products does not require disclosure under Part 3 of this Act if the issuer of the financial products is—

(a) the Crown; or

(b) the Board of Trustees of the National Provident Fund continued under the National Provident Fund Restructuring Act 1990; or

(c) the Reserve Bank; or

(d) Kāinga Ora–Homes and Communities established by the Kāinga Ora–Homes and Communities Act 2019; or

(e) the Māori Trustee, but in relation only to money constituted in the common fund of the Māori Trustee that is entitled to the protection against deficiency afforded by section 27 of the Māori Trustee Act 1953; or

(f) Public Trust, but in relation only to money constituted in the common fund of Public Trust that is entitled to the protection against deficiency afforded by section 52 of the Public Trust Act 2001.

(2) An offer of an interest in the Government Superannuation Fund does not require disclosure under Part 3 of this Act.

Schedule 1 clause 22(1)(d): amended, on 1 October 2019, by section 33 of the Kāinga Ora–Homes and Communities Act 2019 (2019 No 50).

Exclusion for retirement villages

23 Offers of interests in retirement villages

An offer of an interest in a retirement village does not require disclosure under Part 3 of this Act if the interest is exempted from Part 3 of this Act by section 107(1) of the Retirement Villages Act 2003.

Exclusion for renewals or variations

24 Offers of renewals or variations

An offer of a renewal or variation of the terms or conditions of a financial product does not require disclosure under Part 3 of this Act.

Limited disclosure and other requirements

25 Purposes of clauses 26 to 29

The purposes of clauses 26 to 29 are to—

(a) provide for limited disclosure or other requirements (or both) to apply where, although full compliance with Parts 3 and 4 of this Act is not necessary, some disclosure or other requirements are necessary or desirable in order to promote either or both of the main purposes of this Act specified in section 3 or any of the additional purposes specified in section 4; and

(b) prevent an exclusion from applying in inappropriate circumstances (having regard to whether the exclusion may cause significant detriment to investors).

26 Disclosure and other requirements

(1) This clause applies to a person (**A**) who offers financial products to another person (**B**) without disclosure under Part 3 of this Act in reliance upon any of clauses 3 to 24.

(2) A must ensure that—

(a) B or a prescribed person or both are provided with a limited disclosure document (an **LDD**) that complies with subclause (4); and

(aa) the prescribed requirements (if any) relating to an entry for the offer in the register of offers of financial products (a **register entry**) are complied with; and

(ab) B or a prescribed person or both are provided with any other prescribed information in the prescribed manner; and

(ac) all prescribed limits or restrictions (if any) applying in connection with the offer, the financial products, or the investors are met; and

(b) B or a prescribed person or both have, in the prescribed manner, given a certificate or an acknowledgement that is required by the regulations (if any); and

(c) the directors of A or a prescribed person or both have, in the prescribed manner, given any consents or approvals that are required by the regulations (if any); and

(d) all governance requirements (for example, relating to governing documents and supervision) that are required by the regulations (if any) are complied with; and

(e) all other prescribed conditions (if any) are complied with (for example, restrictions on advertising and publicity, a requirement to keep records, or a requirement to provide information relating to the offer to the Registrar or the FMA).

(3) A must perform the duty under subclause (2)(a) in the prescribed manner.

(4) The LDD must—

(a) contain, or be accompanied by, the prescribed information (if any); and

(b) comply with all requirements of the regulations relating to the form and presentation of the document.

(5) Subclauses (2)(a) and (3) apply only if the regulations require an LDD to be provided.

(6) The following apply if A is not the issuer of the financial products:

(a) the issuer must, if required by the regulations, ensure that a requirement, a condition, or any other matter of a kind referred to in any of paragraphs (a) to (e) of subclause (2) is complied with (and the issuer must perform that duty in the prescribed manner):

(b) the regulations may provide for a requirement, a condition, or any other matter of a kind referred to in any of paragraphs (a) to (e) of subclause (2) to be complied with by A or the issuer or both (and, accordingly, A or the issuer or both must so comply).

(7) A contravention of a requirement prescribed for the purposes of this clause does not prevent the exclusion referred to in subclause (1) from continuing to apply (but may give rise to consequences under Part 8 of this Act or an offence under clause 28A).

Schedule 1 clause 26(2)(a): replaced, on 9 August 2017, by section 95(6) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(2)(aa): inserted, on 9 August 2017, by section 95(6) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(2)(ab): inserted, on 9 August 2017, by section 95(6) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(2)(ac): inserted, on 9 August 2017, by section 95(6) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(4): amended, on 9 August 2017, by section 95(7) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(5): amended, on 9 August 2017, by section 95(8) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(6): replaced, on 9 August 2017, by section 95(9) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 26(7): inserted, on 9 August 2017, by section 95(9) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

27 False or misleading statements and omissions

(1) A person must not provide an LDD to a person if—

(a) there is—

(i) a statement in the LDD, any application form that accompanies the LDD, or the register entry that is false or misleading or is likely to mislead; or

(ii) an omission from the LDD or the register entry of information that is required to be contained in the LDD or the register entry by this Act or the regulations; and

(b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

(2) For the purposes of this clause, a statement about a future matter (including the doing of, or refusing to do, an act) must be taken to be misleading if the person making the statement does not have reasonable grounds for making it.

(3) Subclause (2) does not limit the meaning of a reference to a misleading statement.

(4) This clause does not limit clause 26(2) to (4).

(5) *See* section 511 (offence to knowingly or recklessly contravene this clause) and section 496 (which provides that a person may be treated as suffering loss or damage in the case of a contravention of this clause).

Schedule 1 clause 27(1): replaced, on 9 August 2017, by section 95(10) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

27A Offeror is FMC reporting entity in prescribed circumstances

A person to whom clause 26 applies is an FMC reporting entity in the prescribed circumstances.

Schedule 1 clause 27A: inserted, on 1 April 2014, by section 60 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

28 Persons who must inform offeror about deficiencies in limited disclosure document

(1) A person referred to in subclause (2) must, in relation to an offer of financial products made without disclosure under Part 3 of this Act in reliance upon any of clauses 3 to 24, notify the offeror in writing as soon as practicable if the person becomes aware at any time before the end of the application period that—

(a) a material statement in the LDD or the register entry is false or misleading or is likely to mislead; or

(b) there is a material omission from the LDD or the register entry of information that is required to be contained in the LDD or the register entry by this Act or the regulations.

(2) The persons are—

(a) each director of the offeror:

(b) the issuer (if the offeror is not the issuer) and each director of the issuer:

(c) a person who is required to give a consent or an approval as referred to in clause 26(2)(c).

(3) A person referred to in subclause (2)(c) is required to notify the offeror of matters under this clause only if the matters relate to the matter to which the person's consent or approval relates.

(4) In this clause, **application period** means the period in which applications for financial products under the LDD may be made.

Schedule 1 clause 28 heading: amended, on 9 August 2017, by section 95(11) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 28(1)(a): replaced, on 9 August 2017, by section 95(12) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 28(1)(b): replaced, on 9 August 2017, by section 95(12) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 28(4): replaced, on 9 August 2017, by section 95(13) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

28A Failure to lodge or give information to Registrar or FMA

(1) A person who fails to comply with a requirement under clause 26 to lodge or otherwise give any information or other document to the Registrar or the FMA commits an offence and is liable on conviction to a fine not exceeding $50,000.

(2) The offence in this clause is an infringement offence (*see* subpart 5 of Part 8).

Schedule 1 clause 28A: inserted, on 9 August 2017, by section 95(14) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

29 Regulations may prevent exclusions from applying in inappropriate circumstances

(1) An exclusion under any of clauses 3 to 24 does not apply—

(a) in the circumstances prescribed by regulations made under this clause; or

(b) if any additional requirements prescribed by regulations made under this clause are not satisfied.

(2) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with subclause (3), make regulations—

(a) prescribing circumstances in which an exclusion referred to in subclause (1) does not apply:

(b) prescribing additional requirements that must be satisfied before an exclusion referred to in subclause (1) may apply:

(c) prescribing transitional and savings provisions in connection with any regulations made under paragraph (a) or (b).

(3) The Minister must, before making a recommendation under subclause (2),—

(a) consult the FMA; and

(b) be satisfied that the regulations are needed in order to prevent an exclusion referred to in subclause (1) from applying in inappropriate circumstances, having regard to whether the exclusion may cause significant detriment to investors.

(4) Regulations under this clause are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 29(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 2
Which offers of financial products for sale require disclosure

30 Application of this Part

(1) Clauses 31 to 34 specify when an offer of financial products for sale requires disclosure under Part 3 of this Act.

(2) Despite subclause (1), an offer of financial products for sale does not require such disclosure if an exclusion under Part 1 of this schedule applies to the offer of financial products for sale.

(3) An offer of financial products for sale may also require disclosure under Part 3 of this Act as a result of a declaration under section 562(1)(e).

31 Sale where financial products issued with view to original holder dealing with products

(1) An offer of financial products for sale requires disclosure under Part 3 of this Act if—

(a) the issuer issued the financial products with a view to the original holder dealing with the products; and

(b) the offer of the financial products for sale is made within 12 months after the date on which the financial products were issued; and

(c) the financial products have not previously been offered for issue or sale—

(i) under a regulated offer; or

(ii) under an offer made, in the prescribed circumstances, in reliance upon clause 19; or

(iii) under an offer outside New Zealand under an application regime under subpart 6 of Part 9 of this Act.

(2) An offer of financial products for sale to a person outside New Zealand requires disclosure under Part 3 of this Act if—

(a) section 50 (when PDS must be given) applies to the products under section 580; and

(b) the issuer issued the financial products with a view to the financial products being offered for sale outside New Zealand in circumstances in which an application regime under subpart 6 of Part 9 of this Act would have applied to the products; and

(c) the offer of the financial products for sale is made within 12 months after the date on which the financial products were issued; and

(d) the financial products have not previously been offered for issue or sale—

(i) under a regulated offer; or

(ii) under an offer made, in the prescribed circumstances, in reliance upon clause 19; or

(iii) under an offer outside New Zealand under an application regime under subpart 6 of Part 9 of this Act.

(3) Financial products must be taken to be issued with the view referred to in subclause (1)(a) or (2)(b) if there are reasonable grounds for concluding that the products were issued with the view (whether or not there may have been other reasons or purposes for the issue).

(4) In this clause,—

dealing with the products means selling or transferring the financial products, or granting, issuing, or transferring interests in, or options over, the financial products

original holder means the person to whom the financial products were issued.

Compare: 1978 No 103 s 6(2), (2AA); Corporations Act 2001 s 707(3), (4) (Aust)

32 Sale where issuer advises, encourages, or knowingly assists offeror

(1) An offer of financial products for sale requires disclosure under Part 3 of this Act if—

(a) the issuer advises, encourages, or knowingly assists the offeror in connection with the offer of the financial products; or

(b) the issuer is the offeror.

(2) However, subclause (1) does not apply—

(a) if the offer of the financial products is made only to persons who, at the time of the offer, are holders of financial products of the issuer under terms of a relevant instrument that require the offer to be made to those persons; or

(b) to an offer of quoted financial products for sale; or

(c) to an offer of financial products for sale through a facility that is described in section 309(2)(b).

(3) In subclause (2)(a), **relevant instrument**, in relation to an offer of financial products, means—

(a) the constitution of the issuer; or

(b) a pre-emptive rights agreement between all of the product holders of the class of financial products under offer.

Compare: 1978 No 103 s 6(2A), (3)

33 Off-market sale by controller

An offer of financial products for sale requires disclosure under Part 3 of this Act if—

(a) the offeror controls the issuer; and

(b) either—

(i) the financial products are not quoted; or

(ii) although the financial products are quoted, the products are not offered for sale in the ordinary course of trading on a licensed market.

Compare: Corporations Act 2001 s 707(2) (Aust)

34 Sale amounting to indirect off-market sale by controller

(1) An offer of financial products for sale requires disclosure under Part 3 of this Act if—

(a) the offer of the financial products is made within 12 months after the date on which the products were sold by a person who controlled the issuer (the **controller**) at the time of the sale; and

(b) the controller sold the financial products with a view to the purchaser dealing with the products; and

(c) at the time of the sale by the controller,—

(i) the financial products were not quoted; or

(ii) although the financial products were quoted, those products were not offered for sale in the ordinary course of trading on a licensed market; and

(d) the controller sold the financial products otherwise than under—

(i) a regulated offer; or

(ii) an offer made, in the prescribed circumstances, in reliance upon clause 19.

(2) Financial products must be taken to be sold with the view referred to in subclause (1)(b) if there are reasonable grounds for concluding that the products were sold with that view (whether or not there may have been other reasons or purposes for the sale).

(3) In this clause,—

dealing with the products means selling or transferring the financial products, or granting, issuing, or transferring interests in, or options over, the financial products

purchaser means the person to whom the financial products were sold by the controller.

Compare: Corporations Act 2001 s 707(5), (6) (Aust)

Part 3
Definitions and certificates for exclusions for offers and services

35 Meaning of retail investor and retail service

(1) A person is a **retail investor**, in relation to an offer of financial products, the supply of a discretionary investment management service, or any other relevant transaction, if the person is not a wholesale investor in relation to the offer or service.

(2) A service is a **retail service** if that service is supplied—

(a) to a retail investor; or

(b) to a class of investors where there is at least 1 retail investor in that class.

36 Meaning of wholesale investor

A person is a **wholesale investor**,—

(a) in relation to an offer of financial products, when the person is a wholesale investor under the definition of that term in clause 3; or

(b) in relation to the supply of a discretionary investment management service or any other relevant transaction, if (at the relevant time) the person—

(i) is an investment business (*see* clause 37); or

(ii) meets the investment activity criteria specified in clause 38; or

(iii) is large (*see* clause 39); or

(iv) is a government agency (*see* clause 40); or

(v) is an eligible investor (*see* clause 41).

37 Investment businesses

(1) A person is an **investment business** if the person is—

(a) an entity whose principal business consists of 1 or more of the following:

(i) investing in financial products; or

(ii) acting as an underwriter; or

(iii) providing a financial advice service; or

(iv) providing a client money or property service; or

(v) trading in financial products on behalf of other persons; or

(b) a registered bank; or

(c) an NBDT; or

(d) a licensed insurer (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010); or

(e) a manager of a registered scheme, or a discretionary investment management service, that holds a market services licence; or

(f) a derivatives issuer that holds a market services licence; or

(g) a financial adviser.

(2) Subclause (1)(a) does not apply to an entity if the entity was established or acquired with a view to using it as an entity to which offers of financial products may be made in reliance upon the exclusion in clause 3.

(3) Subclause (2) does not limit clause 9.

Schedule 1 clause 37(1)(a)(iii): replaced, on 15 March 2021, by section 56(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 37(1)(a)(iv): replaced, on 15 March 2021, by section 56(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 37(1)(c): replaced, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Schedule 1 clause 37(1)(g): replaced, on 15 March 2021, by section 56(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

38 Investment activity criteria

(1) A person (**A**) meets the investment activity criteria for the purposes of clause 3(2)(b) or 36(b)(ii) if at least 1 of the following paragraphs applies:

(a) A owns, or at any time during the 2-year period before the relevant time has owned, a portfolio of specified financial products of a value of at least $1 million (in aggregate):

(b) A has, during the 2-year period before the relevant time, carried out 1 or more transactions to acquire specified financial products where the amount payable under those transactions (in aggregate) is at least

$1 million and the other parties to the transactions are not associated persons of A:

(c) A is an individual who has, within the last 10 years before the relevant time, been employed or engaged in an investment business and has, for at least 2 years during that 10-year period, participated to a material extent in the investment decisions made by the investment business.

(2) For the purposes of—

(a) subclause (1)(a), in determining the specified financial products owned by A, the specified financial products owned by an entity controlled by A may be treated as being owned by A:

(b) subclause (1)(b), in determining the transactions carried out by A, transactions carried out by an entity controlled by A may be treated as carried out by A:

(c) applying subclause (1)(a) and (b) in relation to derivatives, the value of a derivative or the amount payable under a transaction to acquire a derivative must be treated as being the notional value of the derivative divided by 10 (*see* clause 49).

(3) The frameworks and methodologies prescribed by the FMA under subpart 4 of Part 9 of this Act for the purposes of this clause (if any) must be complied with when determining whether any of the paragraphs of subclause (1) are satisfied.

(4) In this clause, **specified financial products**, in relation to A, means financial products other than—

(a) financial products of a kind prescribed for the purposes of this paragraph:

(b) interests in a retirement scheme:

(c) financial products issued by an associated person of A.

Schedule 1 clause 38(4)(a): replaced, on 15 March 2021, by section 56(7) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

39 Meaning of large

(1) A person is **large** if at least 1 of the following paragraphs applies:

(a) as at the last day of each of the 2 most recently completed financial years of the person before the relevant time, the net assets of the person and the entities controlled by the person exceeded $5 million:

(b) in each of the 2 most recently completed financial years of the person before the relevant time, the total consolidated turnover of the person and the entities controlled by the person exceeded $5 million.

(2) The frameworks and methodologies prescribed by the FMA under subpart 4 of Part 9 of this Act for the purposes of this clause (if any) must be complied with when determining whether either of the paragraphs of subclause (1) is satisfied.

40 Definition of government agency

A **government agency** is any of the following:

(a) a public service agency as defined in section 5 of the Public Service Act 2020:

(b) a Crown entity under section 7 of the Crown Entities Act 2004:

(c) a local authority:

(d) a State enterprise (within the meaning of section 2 of the State-Owned Enterprises Act 1986):

(e) the Reserve Bank:

(f) the Board of Trustees of the National Provident Fund continued under the National Provident Fund Restructuring Act 1990 (and a company appointed under clause 3(1)(b) of Schedule 4 of that Act).

Schedule 1 clause 40(a): replaced, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

41 Eligible investors

(1) A person (**A**) is an **eligible investor**, in relation to a relevant transaction or class of relevant transactions, if—

(a) A certifies in writing, before the relevant time,—

(i) as to the matters specified in subclause (2) or (2A) or (3) or (4) (as the case may be); and

(ii) that A understands the consequences of certifying himself, herself, or itself to be an eligible investor; and

(b) A states in the certificate the grounds for this certification; and

(c) a financial adviser, a qualified statutory accountant, or a lawyer signs a written confirmation of the certification in accordance with clause 43.

(2) In relation to an offer of financial products (or a class of those transactions), A must certify that A has previous experience in acquiring or disposing of financial products that allows A to assess—

(a) the merits of the transaction or class of transactions (including assessing the value and the risks of the financial products involved); and

(b) A's own information needs in relation to the transaction or those transactions; and

(c) the adequacy of the information provided by any person involved in the transaction or those transactions.

(2A) In relation to the supply of a financial advice service or a client money or property service (or a class of those services), A must certify that A has previous experience in acquiring or disposing of financial advice products that allows A to assess—

(a) the merits of the service or services to be provided (including assessing their value and the risks involved); and

(b) A's own information needs in relation to the service or services; and

(c) the adequacy of the information provided by any person involved in the service or services.

(3) In relation to the supply of a discretionary investment management service (or a class of those services), A must certify that A has previous experience in acquiring or disposing of financial products that allows A to assess—

(a) the merits of the service or services to be provided (including assessing its value and the risks involved); and

(b) A's own information needs in relation to the service or services; and

(c) the adequacy of the information provided by any person involved in the service or services.

(4) In relation to any other relevant transaction (or a class of those transactions), A must certify as to A's experience and other matters prescribed for the purposes of this subclause.

(5) The certification must specify the offer of financial products, market service, or other relevant transaction or class of relevant transactions to which it applies.

(6) In relation to the supply of a financial advice service or client money or property service (or a class of those services), the certification under subclause (1)(a)(ii) must include a certificate that A understands that the competency standards and requirements of the code of conduct will not be applicable (if relevant) and that the financial adviser or provider may not be a member of an approved dispute resolution scheme.

Schedule 1 clause 41(1)(a)(i): amended, on 15 March 2021, by section 56(8) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 41(1)(c): amended, on 15 March 2021, by section 56(9) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 41(1)(c): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Schedule 1 clause 41(2A): inserted, on 15 March 2021, by section 56(10) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 41(6): inserted, on 15 March 2021, by section 56(11) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

42 Offeror may not rely on eligible investor certificate in certain circumstances

(1) Clause 41 does not apply to an offer of financial products, the supply of a market service, or any other relevant transaction if the offeror, provider, or other relevant person, before the relevant time, knew that A did not in fact have previous experience of the kind referred to in clause 41(2), (2A), (3), or (4) (as the case may be).

(2) Clause 41 does not apply to an offer of financial products, the supply of a market service, or any other relevant transaction if the offeror, provider, or other relevant person knew, or had reasonable grounds to believe, that the—

(a) financial adviser, qualified statutory accountant, or lawyer referred to in clause 41(1)(c) was an associated person of the offeror, provider, or other relevant person; or

(b) financial adviser or qualified statutory accountant referred to in clause 41(1)(c) had, within the 2 years immediately before the relevant time, provided professional services to the offeror, provider, or other relevant person, or a related body corporate of the offeror, provider, or relevant person.

(3) Clause 41 does not apply to an offer of financial products, the supply of a market service, or any other relevant transaction if the certificate was given more than 2 years before the relevant time.

Schedule 1 clause 42(1): amended, on 15 March 2021, by section 56(12) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 42(2)(a): amended, on 15 March 2021, by section 56(13) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 42(2)(a): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Schedule 1 clause 42(2)(b): amended, on 15 March 2021, by section 56(13) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 42(2)(b): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

43 Confirmation of certification

(1) A financial adviser, a qualified statutory accountant, or a lawyer (**A**) must not confirm a certification of a person (**B**) under clause 41 unless A, having considered B's grounds for the certification,—

(a) is satisfied that B has been sufficiently advised of the consequences of the certification; and

(b) has no reason to believe that the certification is incorrect or that further information or investigation is required as to whether or not the certification is correct.

(2) A may be the financial adviser, qualified statutory accountant, or lawyer of B (but does not need to be).

Schedule 1 clause 43(1): amended, on 15 March 2021, by section 56(14) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 43(1): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Schedule 1 clause 43(2): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

44 Safe harbour if certificate given

(1) The purpose of this clause is to provide certainty (subject to clauses 45 to 46) to—

(a) an offeror (or other relevant person) that a person is a wholesale investor of the kind referred to in clause 3(2); or

(b) a provider (or other relevant person) that a person is a wholesale investor of the kind referred to in clause 36(b)(i) to (iv).

(2) A person (**A**) must be treated as being a wholesale investor as referred to in subclause (1)(a) or (b) (as the case may be) if A—

(a) certifies in writing that A—

(i) is a wholesale investor within the meaning of clause 3(2) or 36(b) (as the case may be); and

(ii) understands the consequences of certifying himself, herself, or itself to be a wholesale investor; and

(b) states in the certificate—

(i) the paragraph in clause 3(2) or the subparagraph in clause 36(b) that is claimed to apply to A; and

(ii) the grounds on which A claims that the paragraph or subparagraph applies; and

(c) gives a copy of the certificate to the offeror, provider, or other relevant person.

(3) A certificate under this clause ceases to be effective for the purposes of subclause (2) on the date that is 2 years after the date on which it was given.

45 Offeror or provider may not rely on safe harbour certificate if knows A was not in fact wholesale investor

(1) Clause 44(2) does not apply to an offer of financial products to A if the offeror, before the financial products are issued or transferred to A under the offer, knows that A was not in fact a wholesale investor within the meaning of clause 3(2) at the time the certificate was given.

(2) Clause 44(2) does not apply to the supply of a discretionary investment management service to A if the provider, before the investment authority is granted for the service, knows that A was not in fact a wholesale investor within the meaning of clause 36(b) at the time the certificate was given.

(3) Clause 44(2) does not apply to any other relevant transaction entered into with A if the relevant person, before the relevant time for that transaction (rather than the relevant time for the certificate), knows that A was not in fact a wholesale investor within the meaning of clause 3(2) or 36(b) at the time the certificate was given.

46 Other provisions relating to certificates

(1) A certificate under clause 41 or 44 is effective only if the certificate—

(a) is in a separate written document; and

(b) is in the prescribed form (if any); and

(c) contains the prescribed information (if any); and

(d) is otherwise given in the prescribed manner (if any).

(2) If a person gives written notice to an offeror, provider, or other relevant person that the certificate under clause 41 or 44 is revoked, the offeror, provider, or relevant person may not rely on the certificate in respect of any subsequent offer, service, or transaction.

47 Offences relating to certificates

(1) Every person commits an offence who gives a certificate under clause 41 or 44 knowing that it is false or misleading in a material particular.

(2) Every person (**A**) commits an offence who incites, counsels, or procures any person to give a certificate under clause 41 or 44 that A knows is false or misleading in a material particular.

(3) Every person who commits an offence under this clause is liable, on conviction, to a fine not exceeding $50,000.

Control and other definitions for schedule

48 Meaning of control in this schedule

(1) In this schedule, a person **controls** an entity if the person—

(a) is the entity's holding company (within the meaning of section 5 of the Companies Act 1993); or

(b) has the capacity to determine the outcome of decisions about the entity's financial and operating policies.

(2) In determining whether the person has the capacity referred to in subclause (1)(b),—

(a) the practical influence the person can exert (rather than the rights the person can enforce) is the issue to be considered; and

(b) any practice or pattern of behaviour affecting the entity's financial or operating policies must be taken into account (even if it involves a breach of an agreement or a breach of trust).

(3) The person does not control the entity by virtue of subclause (1)(b) merely because the person and another person jointly have the capacity to determine the outcome of decisions about the entity's financial and operating policies.

Compare: Corporations Act 2001 s 50AA (Aust)

49 Other definitions for schedule

(1) In this schedule,—

notional value, in relation to a derivative, means the face value or the notional amount in respect of the derivative as at the date on which the relevant agreement is entered into by the parties (*see* subclause (2))

relevant person, in relation to—

(a) an offer of financial products, means the offeror:

(ab) the supply of a financial advice service or a client money or property service to a person, means the provider of the service:

(b) the supply of a discretionary investment management service, means the provider of that service:

(c) any other relevant transaction, means the person prescribed for the purposes of this definition

relevant time, in relation to—

(a) applying the investment activity criteria in clause 38 and the meaning of large in clause 39 for the purposes of a certificate given under clause 44, means immediately before the certificate is given:

(b) an offer of financial products to a person in any other case, means immediately before financial products are issued or transferred to the person under the offer:

(ba) the supply of a financial advice service or a client money or property service to a person, means immediately before the service is supplied:

(c) the supply of a discretionary investment management service to a person in any other case, means immediately before the investment authority for the service is granted:

(d) a relevant transaction in any other case, means the time prescribed for the purposes of this definition

relevant transaction means—

(a) an offer of financial products for issue or sale; or

(ab) the supply of a financial advice service or client money or property service; or

(b) the supply of a discretionary investment management service; or

(c) any other prescribed transaction or service involving any dealing in financial products or any supply of a market service.

(2) For the purposes of determining the notional value of a derivative under this schedule, the frameworks and methodologies prescribed by the FMA under subpart 4 of Part 9 of this Act for the purposes of this subclause (if any) must be complied with.

Schedule 1 clause 49(1) **relevant person** paragraph (ab): inserted, on 15 March 2021, by section 56(15) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 49(1) **relevant time** paragraph (ba): inserted, on 15 March 2021, by section 56(16) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 1 clause 49(1) **relevant transaction** paragraph (ab): inserted, on 15 March 2021, by section 56(17) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 2
Registers

ss 6, 595

Contents

Page

Register of offers of financial products

1 Register of offers of financial products 459
2 Purposes of register 459
3 Contents of register 460

Register of managed investment schemes

4 Register of managed investment schemes 461
5 Purposes of register 461
6 Contents of register 461
7 Registration directions by FMA 462

Keeping of registers under this schedule

8 Registrar may keep other registers 462
9 Registers to be kept by Registrar 462
10 Operation of and access to registers 462
11 Amendments to registers 462
12 Search of register 463

Miscellaneous

13 Lodging or giving documents or otherwise notifying Registrar 463
14 Certificate of lodgement or registration 463
15 When documents are lodged 464
16 Registrar may give notice of lodgement or notification of changes 464
17 Certified copy of information on register 464
18 Power of Registrar to delegate 464

Register of offers of financial products

1 Register of offers of financial products

A register called the register of offers of financial products is established.

Compare: 1978 No 103 s 43N

2 Purposes of register

The purposes of the register of offers of financial products are—

(a) to give public notice of offers of financial products; and

(b) to enable any person to—

(i) obtain information contained in, or concerning, product disclosure statements; and

(ii) obtain other information about, or copies of documents relating to, offers of financial products; and

(iii) compare information about offers of financial products; and

(c) to assist any person to decide whether or not to acquire financial products under an offer of financial products; and

(d) to assist any person to give financial advice or to otherwise comment on an offer of financial products; and

(e) to assist any person—

(i) in the exercise of the person's powers under this Act or any other enactment; or

(ii) in the performance of the person's functions or duties under this Act or any other enactment.

Compare: 1978 No 103 s 43O

Schedule 2 clause 2(d): amended, on 15 March 2021, by section 57 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

3 Contents of register

(1) The register of offers of financial products must contain all of the following information, to the extent that the information is relevant, for each regulated offer:

(a) the name of the issuer and the issuer's financial service provider number (if any):

(b) in the case of a sale offer, the name of the offeror and the offeror's financial service provider number (if any):

(c) the name of any supervisor and the supervisor's financial service provider number (if any):

(d) a copy of the PDS:

(e) the name of the offer that is specified in the PDS and the offer number given by the Registrar on lodgement of the PDS:

(f) the kind of financial product or products being offered (for example, an equity security, a debt security, a managed investment product, or a derivative):

(g) the date of the PDS:

(h) the status of the PDS (being a status that is determined and described in the prescribed manner):

(i) any other prescribed information.

(2) The register must contain any other prescribed information (whether or not relating to a regulated offer).

(3) In this clause, **financial service provider number**, in relation to a person, is the number given to the person on the person's registration under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Register of managed investment schemes

4 Register of managed investment schemes

A register called the register of managed investment schemes is established.

5 Purposes of register

The purposes of the register of managed investment schemes are—

(a) to give public notice of the registration of managed investment schemes; and

(b) to enable any person to—

(i) obtain information about, and copies of documents relating to, registered schemes; and

(ii) know how to contact the managers and supervisors of registered schemes; and

(c) to assist any person—

(i) in the exercise of the person's powers under this Act or any other enactment; or

(ii) in the performance of the person's functions or duties under this Act or any other enactment.

6 Contents of register

(1) The register of managed investment schemes must contain all of the following information, to the extent that the information is relevant, for each scheme:

(a) the name of the scheme:

(b) the type or types of scheme it is (if any) or any status that it has (and whether that applies to the scheme or in respect of a section of the scheme only) (for example, whether it is a KiwiSaver scheme, a superannuation scheme, a legacy scheme, a restricted scheme, a complying superannuation fund, or other type of scheme):

(c) the name of each person who is a licensed manager or licensed supervisor of the scheme and an address for service in each case:

(d) for a restricted scheme, the name of the licensed independent trustee:

(e) any other prescribed information.

(2) However, the register of managed investment schemes is not required to contain information in the prescribed circumstances.

7 Registration directions by FMA

The Registrar must make the appropriate entry in the register of managed investment schemes (or not enter a matter in the register) in accordance with any direction—

(a) made by the FMA that a scheme be registered or is not entitled to be registered, is or is not a particular type of registered scheme, or has or does not have any particular status; or

(b) otherwise made by the FMA in the exercise of any other discretion under Part 4 that relates to, or affects, the register.

Keeping of registers under this schedule

8 Registrar may keep other registers

The Registrar may keep any other registers that he or she considers necessary for the purposes of this Act.

9 Registers to be kept by Registrar

Each register established under this schedule (the **register**) must be kept by the Registrar in accordance with this schedule and the regulations.

10 Operation of and access to registers

(1) The register may—

(a) be an electronic register; or

(b) be kept in any other manner that the Registrar thinks fit.

(2) The register must be operated at all times unless—

(a) the Registrar suspends the operation of the register, in whole or in part, in accordance with subclause (3); or

(b) otherwise provided in regulations.

(3) The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practical to provide access to the register.

11 Amendments to registers

(1) The Registrar may amend the register if—

(a) an issuer or the FMA informs the Registrar of information that is different from the information entered on the register; or

(b) the Registrar is satisfied at any time that the register contains a typographical error or a mistake, or omits information supplied to the Registrar.

(2) The Registrar must amend the register if the regulations require the Registrar to do so in circumstances specified by the regulations.

Compare: 1978 No 103 s 43R

12 Search of register

(1) A person may search the register in accordance with this Act or the regulations.

(2) The register may be searched only by reference to the contents of the register required by this schedule or any other prescribed criteria.

(3) A search of the register may be carried out only by the following persons for the following purposes:

(a) a person, for a purpose referred to in clause 2 or 5 or, in the case of a register kept under clause 8, a prescribed purpose:

(b) a person, for the purpose of advising another person in connection with any of the purposes referred to in this subclause:

(c) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual.

(4) A person who searches the register for personal information in breach of this clause must be treated, for the purposes of Parts 5 and 6 of the Privacy Act 2020, as having breached an information privacy principle under section 69(2)(a)(i) of that Act.

Compare: 1978 No 103 s 43S

Schedule 2 clause 12(4): replaced, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Miscellaneous

13 Lodging or giving documents or otherwise notifying Registrar

(1) If a document or notification required by or for the purposes of this Act must or may be lodged with or given to the Registrar, the document or notification must be lodged or given in the manner specified by the Registrar (who, for example, may specify a form to be used or require notification by electronic means, or may specify any of the matters referred to in section 548(1)(p)(i) to (iv)).

(2) The Registrar may refuse to perform or exercise a function, power, or duty in relation to the document or notification if subclause (1) is not complied with.

Schedule 2 clause 13(1): amended, on 9 August 2017, by section 96 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

14 Certificate of lodgement or registration

(1) The Registrar must, on the lodgement of a PDS, give a certificate of the lodgement (and the certificate is conclusive evidence that the PDS has been lodged).

(2) The Registrar must, on the registration of a managed investment scheme, give a certificate of the registration (and the certificate is conclusive evidence that the scheme has been registered).

(3) The certificate must, in the case of a PDS, specify an offer number for the regulated offer.

Compare: 1978 No 103 s 42(3), (4)

15 When documents are lodged

(1) A document is lodged when—

(a) the document is constituted as part of the register; or

(b) particulars of the document are entered in the register.

(2) However, if the document does not relate to an offer for which there is or will be a register entry, the document is lodged when it is received by the Registrar.

16 Registrar may give notice of lodgement or notification of changes

(1) If a document or notification is lodged with or given to the Registrar under this Act, the Registrar may, in any manner that the Registrar thinks fit, give notice of the lodgement or notification to any person or class of persons or to the public generally.

(2) The Registrar may, in any manner that the Registrar thinks fit, give notice to any person or class of persons or to the public generally of any changes in the information kept in a register.

17 Certified copy of information on register

(1) The Registrar must provide a copy, or a certified copy, of any information on a register to any person who applies for it and pays the prescribed fee (if any).

(2) A certified copy of information on a register purporting to be signed by the Registrar is conclusive evidence for all purposes that the information in the certified copy has been duly entered in the register.

18 Power of Registrar to delegate

(1) The Registrar may delegate to any person, either generally or particularly, any of the Registrar's functions, duties, and powers under this Act except the power of delegation.

(2) A delegation—

(a) must be in writing; and

(b) may be made subject to any restrictions and conditions the Registrar thinks fit; and

(c) is revocable at any time, in writing; and

(d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.

(3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) A person who appears to act under a delegation is presumed to be acting in accordance with the terms of the delegation in the absence of evidence to the contrary.

Schedule 3
Schedule 3 schemes

ss 6(1), 596

1 Purpose of schedule

The purpose of this schedule is to provide for the statutory recognition of single-person self-managed superannuation schemes.

2 Approval of Schedule 3 schemes

(1) The FMA may, by written notice to the trustees of a scheme,—

(a) approve the scheme as a Schedule 3 scheme if it is satisfied the scheme meets the approval criteria set out in clause 3:

(b) withdraw an approval of the scheme if—

(i) it is no longer satisfied that the scheme meets those approval criteria; or

(ii) the trustees have contravened the obligations relating to the scheme under this schedule; or

(iii) the trustees have contravened the trust deed; or

(iv) the trustees apply for the approval to be withdrawn and the FMA is satisfied that the prescribed criteria and requirements (if any) are satisfied.

(2) If a Schedule 3 scheme is wound up, the approval of the scheme must be treated as withdrawn as soon as the distribution of assets has been completed.

Schedule 3 clause 2(1)(b)(iii): replaced, on 15 March 2021, by section 58(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 3 clause 2(1)(b)(iv): inserted, on 15 March 2021, by section 58(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 3 clause 2(2): inserted, on 15 March 2021, by section 58(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

3 Criteria for approving Schedule 3 schemes

(1) A scheme may be approved as a Schedule 3 scheme if—

(a) the scheme meets the following requirements:

(i) it is a trust established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; and

(ii) its purpose is to provide retirement benefits to the scheme participant; and

(iii) participation in the scheme is restricted to persons who meet the New Zealand criteria set out in subclause (2); and

(iv) it is not a defined benefit scheme; and

(b) the scheme has only 1 scheme participant who is an individual and who meets the New Zealand criteria set out in subclause (2); and

(c) the scheme participant is either a trustee, or a director of a sole corporate trustee, of the scheme.

(2) The New Zealand criteria are that the person, at the time of becoming a participant,—

(a) is, or normally is, living in New Zealand, or is an employee of the State services (within the meaning of the Public Service Act 2020) who is—

(i) serving outside New Zealand; and

(ii) employed on New Zealand terms and conditions; and

(iii) serving in a jurisdiction where offers of superannuation scheme membership are lawful; and

(b) is a New Zealand citizen or is entitled, in terms of the Immigration Act 2009, to be in New Zealand indefinitely.

Schedule 3 clause 3(2)(a): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

4 Procedure for exercising powers

The FMA must not exercise a power under clause 2(1)(b)(i) to (iii), or refuse an application for approval to be withdrawn, unless—

(a) the FMA gives the trustees no less than 10 working days' written notice of the following matters before it exercises the power:

(i) that the FMA may exercise the power or refuse the application; and

(ii) the reasons why it may do so; and

(b) the FMA gives the trustees or the trustees' representative an opportunity to make written submissions on the matter within that notice period.

Schedule 3 clause 4: replaced, on 15 March 2021, by section 58(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

5 Notice requirements

(1) The notice under clause 2(1)(b) must—

(a) state the FMA's reasons for giving the notice; and

(b) specify the date on which the withdrawal of the approval takes effect.

(2) The FMA must give a copy of the notice to every prescribed person.

Schedule 3 clause 5(1): amended, on 15 March 2021, by section 58(4) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

6 Reporting obligations for approved Schedule 3 schemes

The trustees of an approved Schedule 3 scheme must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed

manner, prepare and provide to the FMA reports that contain the information that is required to be provided by the regulations.

7 Implied provisions of trust deed

(1) The trust deed of an approved Schedule 3 scheme is treated as containing any provision that is implied into it under this Act.

(2) The trust deed has no effect to the extent that it contravenes, or is inconsistent with, any implied provision.

8 Application of Trusts Act 2019

Section 14 of the Trusts Act 2019 (sole trustee cannot be sole beneficiary) does not apply to—

(a) an approved Schedule 3 scheme; or

(b) a scheme that has been or will be constituted with the intention that the scheme will be approved as a Schedule 3 scheme.

Schedule 3 clause 8: inserted, on 30 January 2021, by section 175 of the Trusts Act 2019 (2019 No 38).

Schedule 4
Transitional, savings, and related provisions

s 14A

Schedule 4 heading: amended, on 9 April 2019, by section 59(1) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 4 heading: amended, on 9 April 2019, by section 59(2) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Contents

		Page
1	Overview	475
2	Transitional provisions subject to transitional regulations and exemptions	476
3	Interpretation	476
	Part 1 **Transitional provisions on enactment of this Act for offers of financial products**	
4	Act applies to offer unless former enactments continue to apply	476
5	Former enactments continue to apply if prospectus registered before commencement	477
6	Issuer may elect to comply with former enactments instead of this Act if prospectus registered within 12 months or 2 years of commencement	477
7	Former enactments apply if no prospectus required unless issuer elects otherwise	477
8	This Act and 1978 Act are (on transitional basis) alternative means of compliance	478
9	All offers and allotments under old law must cease after scheme registered	478
10	All offers and allotments under old law must cease within 2 years of commencement	478
10A	Banks' regulatory capital	478
11	FMA may continue to perform and exercise functions, duties, and powers	479
12	Part does not prevent PDS from being lodged	479
13	Part 2 applies even if former enactments apply to offer	479
14	Unsubstantiated representations prohibitions do not apply to prospectuses and investment statements	480
	Part 2 **Transitional provisions on enactment of this Act relating to securities allotted under Securities Act 1978**	
15	Part applies to securities allotted under Securities Act 1978	480

16 Interpretation in this Part 480

Until effective date

17 Former enactments continue to apply until effective date in accordance with regulations 481
18 KiwiSaver schemes, superannuation schemes, and unit trusts continue under former enactments until effective date 481
19 Transition period 482

Transitional provisions on and after effective date

20 Ongoing requirements of this Act apply on and after effective date 482
21 Issuer of debt security must lodge trust deed and supply information 483
22 Managed investment scheme treated as being registered and issuer must supply information 483
23 Type of registration 484
24 Registrar to amend register 486
25 Restriction on making regulated offers and accepting contributions if requirements have not been complied with 486
26 Issuer may amend or replace governing document with FMA's consent 486
27 Conversion of governing documents to separate governing documents *[Repealed]* 487
28 Amalgamation of schemes *[Repealed]* 487
29 Amended enactments continue to apply or have effect in connection with securities in accordance with regulations 487
30 Issuer must send notification to security holders 488
31 PDS treated as having been given 489
32 FMA may continue to perform and exercise functions, duties, and powers 489
33 Certain requirements of former law continue for participatory securities that are not financial products 489

Part 3
Other transitional provisions on enactment of this Act

Unit trusts and superannuation schemes in relation to which offers to public have not been made

34 Unit trusts in relation to which offers to public have not been made 491
35 Superannuation schemes in relation to which offers to public have not been made 491

Amended enactments continue to apply or have effect in connection with schemes

36 Amended enactments continue to apply or have effect in connection with schemes in accordance with regulations 492
37 KiwiSaver schemes and superannuation schemes are retirement schemes during transition period 492

Extra transitional provisions relating to managed investment schemes

38 Remaining trustees (if any) cease to hold office 492
39 Restricted schemes have 3 years to sell investments so as to comply with related party asset 5% cap rule 493
40 Savings related to Superannuation Schemes Act 1976 493

Repealed enactments continue to be financial markets legislation

41 Repealed enactments continue to be financial markets legislation 493

Licensing of financial product markets

42 Transition process for existing financial product markets 493

Substantial holding disclosure

43 Previous disclosure under former enactment has effect under this Act 495
44 Corporate trustees and nominee companies that opt in to substantial holding exemption 495

Market services licences

45 Authorised dealers treated as holding market services licence 495
46 FMA may exercise powers in respect of licences 496

Approval of electronic transfer systems continues

47 Approval of electronic transfer systems continues 496

Banning orders

48 References to banning orders under this Act include references to banning orders under former enactments 496
49 References to failing to comply with this Act include references to failing to comply with former enactments for purposes of banning orders 497

Financial reporting

50 Issuers continue to be issuers under Financial Reporting Act 1993 *[Repealed]* 497
51 Section 10A of Auditor Regulation Act 2011 also applies to exemptions granted under Securities Act 1978 497

Offences and contraventions under repealed, revoked, or amended enactments

52 Transitional provision for offences and contravention under repealed, revoked, or amended enactments 498

Contributory mortgages

53 Former law continues for contributory mortgages 498

Appointments as default KiwiSaver scheme providers

54 Appointments as default KiwiSaver scheme providers 499

Persons who participate in offer under Securities Act 1978 continue to be financial service providers

55 Persons who participate in offer under Securities Act 1978 continue to be financial service providers 499

Miscellaneous matters relating to Schedule 1

56 Sale offers under clauses 31 and 34 of Schedule 1 500
57 Transitional disclosure exclusion 500
58 Exclusions for employee share purchase schemes and small offers can take into account offers under former law 501
59 Additional Securities Act 1978 exemption 501

Recognition regime regulations

60 FMA may make order prohibiting recognition regime offer on basis of contravention of former regulations 501
61 FMA may declare failure to meet preconditions of recognition regime under Securities Act 1978 to be non-material 502

Amendment to section 46 of Trustee Act 1956

62 Amendment to section 46 of Trustee Act 1956 does not affect existing proceedings 502

Part 4
Transitional provisions relating to Regulatory Systems (Commercial Matters) Amendment Act 2017

63 Financial reporting for registered schemes and funds 502

Part 5
Transitional provisions relating to Financial Markets Conduct Regulations 2014

64 Definition 503
65 Certification as to eligible investors under Financial Advisers Act 2008 503
66 Service disclosure statement and investment proposal for existing DIMS 503
67 Existing licences continue and cover supervision 503

68 Extension of licences to cover substantially the same matters under new law 504
69 Governance requirements for PIE call fund units, PIE term fund units, and bank notice products that are specified units 504
70 Certain superannuation schemes that elect to be treated as registered 504

Part 6
Transitional provisions relating to Financial Services Legislation Amendment Act 2019

Subpart 1—Transitional licences

71 FMA may issue transitional licence 505
72 Duration and coverage of transitional licence 505
73 When transitional licence must be issued 506
74 Licence may cover authorised bodies 506
75 Certain transitional licence holders may not engage nominated representatives 507
76 Transitional licence may authorise entity to be engaged 507
77 Application of Part 6 of Act, etc 508
78 FMA may refuse to consider application made before specified time, event, or circumstance 509

Subpart 2—Renewal of financial adviser authorisation and QFE status not required in transitional period

79 Renewal of financial adviser authorisation and QFE status not required in transitional period 509

Subpart 3—Preparation of code

80 Code may be prepared before commencement 510

Subpart 4—Miscellaneous transitional provisions

81 New competency requirements do not prevent certain persons from continuing to give certain advice 510
82 Former QFE advisers not prevented from providing certain services 511
83 Nominated representatives not prevented from providing certain services 512
84 Financial advisers treated as holding DIMS licence 513
85 How service disclosure statement for existing DIMS is made available to existing clients 514
86 Code working group continues as code committee 515
87 Certification for eligible investors under Financial Advisers Act 2008 continues under this Act 515
88 Disciplinary committee continues 516
89 Continuation of pending investigations and disciplinary proceedings 516

89A Complaints about financial adviser conduct under former code of conduct 516

Subpart 5—Transitional and savings regulations

90 Transitional and savings regulations *[Repealed]* 517

Part 7
Provisions relating to Part 1 of Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021

91 Interpretation in this Part 518
92 Definitions of large listed issuer, large, and large manager may take into account accounting periods that commence before commencement of clause 518
93 Climate-related disclosures for climate reporting entities under section 461O(1) 518
94 Climate-related disclosures relating to registered schemes 518

Part 8
Provisions relating to Financial Markets (Conduct of Institutions) Amendment Act 2022

95 Dealing with applications to act as financial institution from existing banks, insurers, and NBDTs 519
96 Regulations may provide that licensing requirement does not apply until particular date 520
97 Applications for financial institution licence may be made before commencement 521
98 Incentives regulations may apply to existing agreements 521

Part 9
Provisions relating to Part 2 of Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021

99 Interpretation in this Part 522
100 Application of Part 7A assurance engagement obligations to accounting periods 523

Part 10
Provisions relating to Regulatory Systems (Economic Development) Amendment Act 2025

101 Exemptions relating to transition from Securities Act 1978 may continue in force indefinitely 523
102 References to qualified auditor treated as references to qualified FMC auditor 524

Part 11
Provisions relating to Credit Contracts and Consumer Finance Amendment Act 2026

103 Creditor may be treated as holding market services licence 525

104 FMA may exercise powers in respect of licences 525

1 Overview

(1) This schedule provides for transitional provisions as follows:

(a) Part 1 provides for whether the former law (in particular, the Securities Act 1978) or the new law (this Act) applies to an offer of financial products:

(b) Part 2 provides for the former law to continue to apply to securities allotted under the Securities Act 1978 until an effective date, at which point ongoing requirements of this Act may apply:

(c) Part 3 provides for miscellaneous transitional provisions relating to the enactment of this Act (for example, provisions relating to the licensing of financial product markets):

(d) Part 4 provides for a transitional provision relating to the Regulatory Systems (Commercial Matters) Amendment Act 2017:

(e) Part 5 provides for transitional provisions relating to the Financial Markets Conduct Regulations 2014:

(f) Part 6 provides for transitional provisions relating to the Financial Services Legislation Amendment Act 2019:

(g) Part 7 provides for transitional provisions relating to Part 1 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021:

(h) Part 8 provides for transitional provisions relating to the Financial Markets (Conduct of Institutions) Amendment Act 2022:

(i) Part 9 provides for transitional provisions relating to Part 2 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021:

(j) Part 10 provides for transitional provisions relating to the Regulatory Systems (Economic Development) Amendment Act 2025:

(k) Part 11 provides for transitional provisions relating to the Credit Contracts and Consumer Finance Amendment Act 2026.

(2) Subclause (1) is only a guide to the general scheme and effect of this schedule.

Schedule 4 clause 1(1)(d): inserted, on 9 August 2017, by section 97(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 4 clause 1(1)(e): inserted, on 9 August 2017, by section 97(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 4 clause 1(1)(f): inserted, on 9 April 2019, by section 59(3) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 4 clause 1(1)(g): inserted, on 27 October 2022, by section 21(1) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Schedule 4 clause 1(1)(h): inserted, on 25 July 2023, by section 23(1) (and see section 23(2)) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Schedule 4 clause 1(1)(i): inserted, on 27 October 2024, by section 31(1) (and see section 31(2)) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Schedule 4 clause 1(1)(j): inserted, on 30 March 2025, by section 103(1) (and see section 103(2)) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Schedule 4 clause 1(1)(k): inserted, on 1 July 2026, by section 67(1) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

2 Transitional provisions subject to transitional regulations and exemptions

This schedule is subject to—

(a) any regulations made under section 547:

(b) any exemption granted under subpart 2 of Part 9 of this Act.

3 Interpretation

In this schedule, **this Act** means the Financial Markets Conduct Act 2013 and includes the Financial Markets (Repeals and Amendments) Act 2013.

Part 1
Transitional provisions on enactment of this Act for offers of financial products

4 Act applies to offer unless former enactments continue to apply

(1) This Act applies to an offer of financial products unless the former enactments apply in accordance with this Part.

(2) In this Part,—

1978 Act means the Securities Act 1978

12-month date means the date that is 12 months after the commencement of this clause

2-year date means the date that is 2 years after the commencement of this clause

continuous issue securities means debt securities or managed investment products that are of a kind that were, before the commencement of this clause, continuously offered by a continuous issuer to the public for subscription

continuous issuer means an issuer that in the ordinary course of its business before the commencement of this clause continuously offered debt securities or managed investment products to the public for subscription

former enactments means each of the following:

(a) the 1978 Act (as in force immediately before the commencement of this clause):

(b) the Securities Regulations 2009 and any other regulations made under the 1978 Act (as in force immediately before the commencement of this clause):

(c) exemptions granted under the 1978 Act (to the extent that those exemptions apply to the relevant offer of securities)—

(i) as in force immediately before the commencement of this clause (but subject to any variation or revocation under clause 11); or

(ii) as in force after being granted by the FMA under clause 11.

(3) In this Part, **issuer**, **prospectus**, **registered prospectus**, and **securities** have the same meanings as in the 1978 Act.

(4) In this Part, a reference to an offer of securities to the public has the same meaning as in section 3 of the 1978 Act.

5 Former enactments continue to apply if prospectus registered before commencement

If securities are offered in a prospectus that is registered under the 1978 Act before the commencement of this clause, the former enactments continue to apply to the offer and allotment of those securities under that prospectus as if this Act had not been enacted.

6 Issuer may elect to comply with former enactments instead of this Act if prospectus registered within 12 months or 2 years of commencement

(1) Despite the repeal of the 1978 Act, an issuer of securities may register a prospectus in respect of the securities in accordance with the former enactments on or before—

(a) the 2-year date in the case of continuous issue securities; or

(b) the 12-month date in any other case.

(2) If securities are offered in a prospectus that is registered under subclause (1) and the issuer makes an election under subclause (3), the former enactments apply, as if this Act had not been enacted, to the offer and allotment of those securities under that prospectus.

(3) For the purposes of subclause (2), an issuer may elect for the former enactments to apply to an offer of securities by including a statement in the prospectus to the effect that the Securities Act 1978 applies to the offer.

(4) The statement referred to in subclause (3) may include additional information about an applicable exemption granted under the 1978 Act that is necessary to ensure that the statement is not misleading.

7 Former enactments apply if no prospectus required unless issuer elects otherwise

(1) If, under the 1978 Act or an exemption granted under that Act, no registered prospectus is required for an offer of securities to the public in New Zealand,

the former enactments apply, as if this Act had not been enacted, to any offer and allotment of those securities that is made before the close of the 2-year date unless the issuer makes an election, under subclause (3), for this Act to apply.

(2) However,—

(a) subclause (1) does not permit an offer to be made in reliance upon section 5(2CB) or (2CBA) of the 1978 Act:

(b) subclause (1) does not apply in the prescribed circumstances.

(3) For the purposes of subclause (1), an issuer may elect for this Act to apply to an offer of securities made after a particular date by—

(a) giving to the FMA, before that date, a notice to the effect that this Act applies to the offer of the securities made after that date; and

(b) including a copy of that notice on an Internet site maintained by, or on behalf of, the issuer at all reasonable times during the period between that date and the earlier of the close of the offer or the close of the 2-year date.

8 This Act and 1978 Act are (on transitional basis) alternative means of compliance

If, in accordance with this Part,—

(a) this Act applies to an offer of securities, the former enactments do not apply to the offer:

(b) the former enactments apply to an offer of securities, this Act does not apply to the offer.

9 All offers and allotments under old law must cease after scheme registered

Despite clauses 4 to 8, no offer or allotment of managed investment products may be made under the former enactments after the date on which the managed investment scheme to which the products relate becomes a registered scheme (or is treated as being a registered scheme under Part 2 of this schedule).

10 All offers and allotments under old law must cease within 2 years of commencement

Despite clauses 4 to 8, no offer or allotment of securities may be made under the former enactments after the 2-year date (and this Act applies to all offers and acquisitions of financial products made after that date).

10A Banks' regulatory capital

(1) This clause applies in respect of convertible securities offered and allotted before the close of the 2-year date (unless the issuer makes an election as referred to in clause 7(3)).

(2) Despite clauses 7 and 10,—

(a) the former enactments apply, as if this Act had not been enacted, to any offer and allotment of the convertible securities and the specified equity securities to which the convertible securities relate; and

(b) an allotment of those specified equity securities may be made before, on, or after the 2-year date; and

(c) in the case of a specified equity security that is allotted after the 2-year date, clause 20 applies to the security on and after its allotment.

(3) In this clause, **convertible security** and **specified equity security** have the same meanings as in the Securities Act (Banks' Regulatory Capital) Exemption Notice 2014 (as in force before its revocation).

(4) In this clause, **former enactments**—

(a) has the same meaning as in clause 4(2); and

(b) includes the Securities Act (Banks' Regulatory Capital) Exemption Notice 2014 and the Securities Act (Heartland Bank Regulatory Capital) Exemption Notice (No 3) 2016 as in force on 30 November 2016 (as if those notices continued in force after their revocation).

Schedule 4 clause 10A: inserted, on 9 August 2017, by section 97(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

11 FMA may continue to perform and exercise functions, duties, and powers

If the former enactments continue to apply to an offer of securities, the FMA may continue to perform and exercise all of its functions, duties, and powers conferred or imposed on it by or under the former enactments as if this Act had not been enacted (for example, it may grant, vary, or revoke an exemption under section 70B of the 1978 Act).

12 Part does not prevent PDS from being lodged

Nothing in this Part prevents an issuer from lodging a PDS in preparation for making an offer of financial products under Part 3 of this Act.

13 Part 2 applies even if former enactments apply to offer

(1) Despite clause 8, Part 2 of this Act (and any other provision of this Act relating to the enforcement, application, or effect of that Part) applies to an offer of securities to which the former enactments apply.

(2) However, conduct that contravenes, or leads to liability under, sections 55A to 57 (in respect of an untrue statement) or 58 of the 1978 Act does not contravene sections 19 to 23 of this Act.

(3) For the purpose of this section, conduct must be treated as contravening, or leading to liability under, sections 55A to 57 or 58 of the 1978 Act even if the

conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

Compare: Australian Securities and Investments Commission Act 2001 ss 12DA(1A), 12DB(2) (Aust)

14 Unsubstantiated representations prohibitions do not apply to prospectuses and investment statements

(1) Section 23 and the provision of the Fair Trading Act 1986 that corresponds to section 23 do not apply to a representation made in a registered prospectus or an investment statement (within the meaning of the 1978 Act).

(2) Subclause (1) applies despite clause 13(1).

Part 2
Transitional provisions on enactment of this Act relating to securities allotted under Securities Act 1978

15 Part applies to securities allotted under Securities Act 1978

(1) This Part applies to an allotted security offered pursuant to an offer for which, or for which but for an exemption granted by the FMA or the Securities Commission under the 1978 Act, an investment statement or a registered prospectus, or both, is or was required under that Act.

(2) However, this Part does not apply to a security if, before the commencement of this clause, the security was cancelled, redeemed, or forfeited, or all of the obligations owing under the security had been discharged.

(3) A security referred to in subclause (1) includes a security allotted under an offer to which the 1978 Act applies under Part 1 of this schedule.

16 Interpretation in this Part

(1) In this Part,—

1978 Act means the Securities Act 1978

effective date, in relation to a particular security, means the earlier of the dates set out in clause 19(1)

former enactments—

(a) means the 1978 Act, the Securities Regulations 2009, exemptions granted under the 1978 Act, and any other enactments made under the 1978 Act; and

(b) includes,—

(i) in relation to an interest in a KiwiSaver scheme, the KiwiSaver Act 2006:

(ii) in relation to an interest in a superannuation scheme (other than a KiwiSaver scheme), the Superannuation Schemes Act 1989:

(iii) in relation to a unit in a unit trust, the Unit Trusts Act 1960:

(iv) the Securities Trustees and Statutory Supervisors Act 2011

issuer, in relation to a security, means,—

(a) before the effective date, the issuer within the meaning of the 1978 Act:

(b) on and after the effective date, the issuer within the meaning of section 11

KiwiSaver schemes register means the KiwiSaver schemes register established under the KiwiSaver Act 2006

transition period has the meaning set out in clause 19(1).

(2) In this Part, **investment statement**, **registered prospectus**, and **securities** have the same meanings as in the 1978 Act (as in force immediately before the commencement of this clause).

(3) In this clause and clause 18, **KiwiSaver scheme**, **scheme**, **superannuation scheme**, **unit**, and **unit trust** have the same meanings as in section 2(1) of the 1978 Act (as in force immediately before the commencement of this clause).

Until effective date

17 Former enactments continue to apply until effective date in accordance with regulations

(1) If a former enactment would apply (but for its repeal, revocation, or amendment by this Act) to a security to which this Part applies (or to any scheme to which the security relates), that enactment continues to apply during the transition period in accordance with regulations made under section 547 (if any).

(2) *See* section 547, under which regulations may provide for former enactments to continue to apply (or to apply with modifications or additions), or for provisions of this Act or the Financial Markets (Repeals and Amendments) Act 2013 to apply with modifications or additions, as set out in the regulations.

(3) Despite subclauses (1) and (2), the provisions of the KiwiSaver Act 2006 amended by sections 101, 105, and 107 of the Financial Markets (Repeals and Amendments) Act 2013 apply as amended to an interest in a KiwiSaver scheme to which this Part applies and to that KiwiSaver scheme.

18 KiwiSaver schemes, superannuation schemes, and unit trusts continue under former enactments until effective date

(1) If a security to which this Part applies is—

(a) an interest in a KiwiSaver scheme, the KiwiSaver scheme continues to be registered in the KiwiSaver schemes register during the transition period as if this Act had not been enacted:

(b) an interest in a superannuation scheme (other than a KiwiSaver scheme), the superannuation scheme continues to be registered under the Superannuation Schemes Act 1989 during the transition period as if this Act had not been enacted:

(c) a unit in a unit trust, the unit trust continues to be subject to the Unit Trusts Act 1960 during the transition period as if this Act had not been enacted.

(2) This clause does not limit clause 17.

19 Transition period

(1) In this Part, the **transition period** for a particular security is the period beginning on the date on which this clause comes into force and ending on the close of the day before the earlier of the following dates:

(a) the date that the issuer of the security elects; or

(b) the date that is 2 years after the commencement of this clause.

(2) If the issuer elects an effective date that is earlier than 2 years after the commencement of this clause, the issuer must notify the FMA and the Registrar of the elected date at least 20 working days before that date.

Transitional provisions on and after effective date

20 Ongoing requirements of this Act apply on and after effective date

(1) On and after the effective date for a particular security to which this Part applies, the following apply to the security (and, in the case of a managed investment product, to the managed investment scheme to which it relates):

(a) subpart 4 of Part 3 of this Act (ongoing disclosure) other than section 95:

(b) Part 4 of this Act (governance of financial products):

(c) Part 7 of this Act (financial reporting):

(d) any regulations made for the purposes of subpart 4 of Part 3, Part 4, or Part 7 of this Act:

(e) any other provision of this Act relating to the enforcement, application, or effect of subpart 4 of Part 3, Part 4, or Part 7 of this Act.

(2) The provisions referred to in subclause (1) apply with all necessary modifications as if the security had been offered and allotted under a regulated offer under this Act.

(2A) For the purposes of subclause (1), the security must, on and after the effective date, be treated as being a regulated product under section 451(1)(a) and, accordingly, the issuer must be treated as being an FMC reporting entity (unless section 452 applies).

(2B) *See* section 56 of the Financial Reporting Act 2013 (which provides for the former law to generally continue to apply to accounting periods that commence before the commencement of that Act).

(3) However, subclause (1) and clauses 21, 22, and 30 (obligations relating to registration of a scheme under this Act) do not apply to a security if,—

(a) before the effective date, the security is cancelled, redeemed, or forfeited, or all of the obligations owing under the security have been discharged; or

(b) on the effective date, the security is not a financial product within the meaning of section 7 (but *see* clause 33); or

(c) under the 1978 Act, the security was a debt security but, as a result of section 5(2C) or (3) of that Act, section 33(2) of that Act did not apply to the security; or

(d) under the 1978 Act, the security was a participatory security but, as a result of section 5(3) of that Act, section 33(3) of that Act did not apply to the security.

Schedule 4 clause 20(2A): inserted, on 1 April 2014, by section 61(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Schedule 4 clause 20(2A): amended, on 14 March 2021, by section 51 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Schedule 4 clause 20(2B): inserted, on 1 April 2014, by section 61(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

21 Issuer of debt security must lodge trust deed and supply information

(1) If a security to which this Part applies is a debt security (within the meaning of section 8), the issuer must—

(a) ensure that a copy of the trust deed that complies with sections 104 to 106 is lodged with the Registrar before the effective date; and

(b) supply to the Registrar and the FMA, before the effective date,—

(i) the names and addresses of the persons who, on the effective date, will be the issuer and the licensed supervisor; and

(ii) all other prescribed information relating to the debt security.

(2) *See* subpart 3 of Part 8 of this Act, which provides for civil liability for a contravention of subclause (1).

22 Managed investment scheme treated as being registered and issuer must supply information

(1) If a security to which this Part applies is a managed investment product,—

(a) the managed investment scheme to which the product relates (the **scheme**) must, on and after the effective date, be treated as being a registered scheme; and

(b) the issuer must ensure that a copy of the governing document for the scheme that complies with sections 135 to 137 is lodged with the Registrar before the effective date; and

(c) the issuer must supply to the Registrar and the FMA, before the effective date,—

(i) the name and address of the person who, on the effective date, will be the manager; and

(ii) the name and address of the person who, on the effective date, will be the licensed supervisor (unless the scheme is a restricted scheme); and

(iii) all other prescribed information relating to the managed investment product and the scheme.

(2) *See* subpart 3 of Part 8 of this Act, which provides for civil liability for a contravention of subclause (1)(b) or (c).

(3) Nothing in this clause or clause 23 prevents the FMA from—

(a) directing that the registration of a scheme to which this clause applies be cancelled under section 195; or

(b) exercising any other power in respect of such a scheme.

23 Type of registration

(1) A managed investment scheme that is treated as being registered under clause 22 must be treated as being registered on the register of managed investment schemes as the 1 or more of the following types of scheme that apply to it:

(a) a KiwiSaver scheme if, immediately before the effective date, the scheme was registered as a KiwiSaver scheme in the KiwiSaver schemes register:

(b) a KiwiSaver scheme that is a restricted scheme if paragraph (a) applies and, immediately before the effective date, the scheme was identified as a restricted scheme on the KiwiSaver schemes register:

(c) a superannuation scheme if, immediately before the effective date, the scheme was registered under the Superannuation Schemes Act 1989 (unless paragraph (f) applies):

(d) a superannuation scheme that is a restricted scheme if paragraph (c) applies and an Order in Council has designated the scheme as a restricted scheme under subclause (2):

(e) a superannuation scheme that is a legacy scheme if paragraph (c) applies and an Order in Council has designated the scheme as a legacy scheme under subclause (2):

(f) a workplace savings scheme if, immediately before the effective date, the scheme was registered under the Superannuation Schemes Act 1989

and an Order in Council has designated the scheme as a workplace savings scheme under subclause (2):

(g) a workplace savings scheme that is a restricted scheme if paragraph (f) applies and an Order in Council has designated the scheme as a restricted scheme under subclause (2):

(h) a restricted scheme that is an employer-related scheme if paragraph (b), (d), or (g) applies and an Order in Council under subclause (2) has designated the scheme as an employer-related scheme:

(i) a complying superannuation fund if paragraph (c) applies and, immediately before the effective date, the scheme was approved as a complying superannuation fund under section 35 of the Superannuation Schemes Act 1989.

(2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the FMA,—

(a) designate a scheme as a restricted scheme for the purposes of subclause (1)(d) or (g):

(b) designate a scheme as a legacy scheme for the purposes of subclause (1)(e):

(c) designate a scheme as a workplace savings scheme for the purposes of subclause (1)(f):

(d) designate any scheme that will be a restricted scheme under this section as being an employer-related scheme for the purposes of section 172.

(3) A scheme may be designated under subclause (2)(b) or (c) as a type of scheme in respect of a section of the scheme only and, in that case, subclause (1) treats the scheme as being on the register of managed investment schemes as that type in respect of that section of the scheme.

(4) Section 131(1)(c) (which prevents certain changes without the FMA's consent to the conditions of entry of scheme participants) applies to a restricted scheme on and after the date on which a designation by Order in Council comes into force under subclause (2) in all cases as if that date of designation were the date of the scheme's registration under this Part.

(5) An order under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 4 clause 23(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

24 Registrar to amend register

(1) The Registrar must, on or as soon as practicable after the effective date for a managed investment scheme to which clause 22(1)(a) applies, amend the register of managed investment schemes to include an entry relating to the scheme.

(2) The Registrar is not required to act under subclause (1) before clause 22(1)(b) and (c) have been complied with.

25 Restriction on making regulated offers and accepting contributions if requirements have not been complied with

(1) This clause applies if an issuer contravenes clause 22(1)(b) or (c) in respect of a managed investment scheme that is treated as being a registered scheme under clause 22(1)(a).

(2) The issuer must not, on and after the effective date, make a regulated offer of a managed investment product, or accept further contributions, in respect of that managed investment scheme.

(3) Subclause (2) ceases to apply if—

(a) the issuer lodges with the Registrar a copy of the governing document for the scheme that complies with sections 135 to 137; and

(b) the issuer supplies to the Registrar and the FMA the prescribed information; and

(c) the register of managed investment schemes includes an entry relating to the scheme.

(4) *See* subpart 3 of Part 8 of this Act, which provides for civil liability for a contravention of this clause.

26 Issuer may amend or replace governing document with FMA's consent

(1) This clause applies—

(a) to a governing document that, immediately before the commencement of this clause, relates to a debt security or constitutes or governs a scheme; and

(b) despite anything to the contrary in the governing document or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to the governing document.

(2) The issuer of the debt security or the manager of the scheme (as the case may be) may amend or replace the governing document with the FMA's consent if the FMA is satisfied that—

(a) the amendment or replacement is necessary or desirable to ensure, or in connection with ensuring, that the governing document complies with the requirements of this Act; or

(b) (for any amendments or differences in the replaced governing document to which paragraph (a) does not apply) the procedures of the existing governing document for amendments have been complied with.

(3) An amendment or a replacement made under this clause must be treated for all purposes as if it were made in accordance with the governing document.

(4) On the amendment or replacement under this clause of a governing document that constitutes or governs a scheme,—

(a) the scheme must be treated as the same scheme as it was immediately before the amendment or replacement of the existing governing document; and

(b) the persons who were members of the scheme immediately before the amendment or replacement of the existing governing document continue to be members of the same scheme; and

(c) the assets or liabilities of a scheme or fund must be treated as if they vested in the scheme or fund immediately after the amendment or replacement of the existing governing document, but for the purposes of the Inland Revenue Acts this must be treated as if it is not a transfer (as defined in section YA 1 of the Income Tax Act 2007).

(5) In this clause and clauses 27 and 28, **scheme** has the same meaning as in section 2(1) of the 1978 Act (as in force immediately before the commencement of this clause).

(6) To avoid doubt, this clause does not limit the ways in which a governing document may be amended or replaced in accordance with its terms or any enactment or rule of law.

(7) The FMA's discretion to set preconditions for requests to it includes (without limitation) a discretion to set preconditions that satisfy the FMA that it is appropriate for the amendment or replacement to be done under this section rather than by means of another power or process.

27 Conversion of governing documents to separate governing documents

[Repealed]

Schedule 4 clause 27: repealed, on 1 December 2016, by clause 27(5).

28 Amalgamation of schemes

[Repealed]

Schedule 4 clause 28: repealed, on 1 December 2016, by clause 28(5).

29 Amended enactments continue to apply or have effect in connection with securities in accordance with regulations

(1) If, before the commencement of this clause, an enactment that is amended by this Act applied, or had an effect, in connection with a security to which this Part applies, the enactment continues to apply, or have the effect, in connection

with the security in accordance with regulations made under section 547 (if any) until the effective date.

(2) *See* section 547, under which regulations may provide for an enactment that is amended by this Act to continue to apply (or to apply with modifications or additions), or for provisions of this Act or the Financial Markets (Repeals and Amendments) Act 2013 to apply with modifications or additions, as set out in the regulations.

(3) Subclause (1) must be treated as applying to a security offered under the 1978 Act in accordance with Part 1 of this schedule.

(4) *See* clause 36 (amended enactments continue to apply or have effect in connection with schemes).

30 Issuer must send notification to security holders

(1) The issuer of a security must, before or within 3 months after the effective date, send a written notice containing the following information to the security holder at the holder's last known address:

(a) the effective date and a statement to the effect that the requirements of this Act will apply after that date:

(b) the names and addresses of the issuer, the supervisor (if any), and the custodian (if any):

(c) in the case of a debt security or managed investment product,—

(i) a statement to the effect that the holder may obtain a copy of the governing document by electronic means; and

(ii) a statement to the effect that the holder has a right to receive from the issuer, free of charge, a copy of the governing document if the holder, within 15 working days of receiving the notice, makes a request to the issuer to receive a copy of the governing document:

(d) if a PDS has been lodged for an offer of financial products of the same class as the security, a statement to the effect that the holder may obtain a copy of the PDS by electronic means:

(e) in the case of a managed investment product, the statement of investment policy and objectives or a statement to the effect that the holder may obtain a copy of that statement by electronic means:

(f) if the notice contains a statement to the effect that the holder may obtain a copy of a document by electronic means, a statement as to how the holder may obtain a copy of the document by electronic means (for example, from a specified Internet site address):

(g) any other prescribed information.

(2) This section does not apply to a security referred to in clause 20(3).

(3) If a security holder, within 15 working days of receiving the notice, makes a request to the issuer to receive a copy of the governing document, the issuer must, as soon as practicable, send to the holder, free of charge, a copy of that document.

(4) A person who contravenes this clause commits an offence and is liable on conviction to a fine not exceeding $50,000.

(5) The offence in this clause is an infringement offence (*see* subpart 5 of Part 8 of this Act).

(6) In this clause and clause 31, **security holder** means,—

(a) in the case of a security to which section 215(1) does not apply, the holder of that security on the date that the notice is sent under subclause (1); or

(b) in the case of any other security, the person who is registered as the holder of the security in a register kept under subpart 4 of Part 4 of this Act on the date that the notice is sent under subclause (1).

31 PDS treated as having been given

(1) This clause applies if—

(a) a notice is sent to a security holder under clause 30 before the effective date; and

(b) a PDS has, before the effective date, been lodged for an offer of financial products of the same class as the security held by the security holder; and

(c) a statement is included in the notice referred to in paragraph (a) as required by clause 30(1)(d); and

(d) the security held by the security holder is a financial product that the issuer, in the ordinary course of its business, continuously offers for issue.

(2) The PDS referred to in subclause (1)(b) must be treated as having been given to the security holder for the purposes of section 50.

32 FMA may continue to perform and exercise functions, duties, and powers

If the former enactments continue to apply to securities or a scheme under this Part, the FMA may continue to perform and exercise all of its functions, duties, and powers conferred or imposed on it by or under the former enactments as if this Act had not been enacted (for example, it may grant, vary, or revoke an exemption under section 70B of the 1978 Act).

33 Certain requirements of former law continue for participatory securities that are not financial products

(1) This clause applies to a participatory security to which this Part applies if—

(a) a statutory supervisor was, or was required to be, appointed in respect of the security under section 33(3) of the Securities Act 1978; and

(b) on the effective date, the security is not a financial product within the meaning of section 7.

(2) However, this clause—

(a) does not apply in relation to a participatory security if, before the effective date, the security was cancelled, redeemed, or forfeited, or all of the obligations owing under the security had been discharged:

(b) ceases to apply to a security (and the scheme to which it relates) if the participatory security holders in the scheme opt out of this clause by way of a resolution approved by those holders holding no less than 75% of the value of the participatory securities.

(3) The following enactments continue to apply on and after the effective date (as if this Act had not been enacted) to a security to which this clause applies, the scheme to which the security relates, and the statutory supervisor of the security:

(a) sections 45, 48, and 49 of the 1978 Act:

(b) regulations 41 and 42 and Schedules 16 and 17 of the Securities Regulations 2009:

(c) any other provision of the 1978 Act or the Securities Regulations 2009 relating to the enforcement, application, or effect of the provisions referred to in paragraph (a) or (b) or the making of regulations relating to, or the granting of exemptions from compliance with, those provisions:

(d) the Securities Trustees and Statutory Supervisors Act 2011.

(4) For the purposes of this clause, the Governor-General may, by Order in Council, make regulations under section 70(1)(g) of the 1978 Act (as if that Act continued in force) for the purpose of replacing any regulations made under that paragraph (and those regulations that are replaced then cease to apply under subclause (3)).

(5) Regulations for the purposes of subclause (4) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation referred to in subclause (5)		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 4 clause 33(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 3
Other transitional provisions on enactment of this Act

Unit trusts and superannuation schemes in relation to which offers to public have not been made

34 Unit trusts in relation to which offers to public have not been made

(1) This clause applies to a unit trust to which the Unit Trusts Act 1960 applied immediately before the commencement of this clause unless Part 2 of this schedule applies to any unit in the unit trust.

(2) The Unit Trusts Act 1960 continues to apply during the transition period described in subclause (3) as if this Act had not been enacted.

(3) The transition period for a unit trust is the period beginning on the date on which this clause comes into force and ending on the close of the day before the earlier of the following dates:

(a) the date that the unit trust is registered as a registered scheme under this Act; or

(b) the date that is 2 years after the commencement of this clause.

(4) In this clause, **unit** and **unit trust** have the same meanings as in section 2(1) of the Securities Act 1978.

35 Superannuation schemes in relation to which offers to public have not been made

(1) This clause applies to a superannuation scheme that, immediately before the commencement of this clause, was registered under the Superannuation Schemes Act 1989 unless Part 2 of this schedule applies to any interest in the scheme.

(2) The Superannuation Schemes Act 1989 continues to apply during the transition period described in subclause (3) as if this Act had not been enacted.

(3) The transition period for a superannuation scheme is the period beginning on the date on which this clause comes into force and ending on the close of the day before the earlier of the following dates:

(a) the date that the scheme is registered as a registered scheme under this Act or is approved as a Schedule 3 scheme; or

(b) the date that is 2 years after the commencement of this clause.

Amended enactments continue to apply or have effect in connection with schemes

36 Amended enactments continue to apply or have effect in connection with schemes in accordance with regulations

(1) If, before the commencement of this clause, an enactment that is amended by this Act applied, or had an effect, in connection with a specified scheme, the enactment continues to apply, or have the effect, in connection with the specified scheme in accordance with regulations made under section 547 until the end of the transition period.

(2) *See* section 547, under which regulations may provide for an enactment that is amended by this Act to continue to apply (or to apply with modifications or additions), or for provisions of this Act or the Financial Markets (Repeals and Amendments) Act 2013 to apply with modifications or additions, as set out in the regulations.

(3) In this clause and clause 37,—

specified scheme means any of the following:

(a) a KiwiSaver scheme, superannuation scheme, or unit trust referred to in clause 18:

(b) a unit trust referred to in clause 34:

(c) a superannuation scheme referred to in clause 35

transition period means, in relation to a specified scheme, the transition period that applies to the scheme under Part 2 of this schedule or clause 34 or 35 (as the case may be).

37 KiwiSaver schemes and superannuation schemes are retirement schemes during transition period

A specified scheme that is a KiwiSaver scheme or superannuation scheme must, during the transition period, be treated as being a retirement scheme (as defined in section 6(1)).

Extra transitional provisions relating to managed investment schemes

38 Remaining trustees (if any) cease to hold office

(1) This clause applies to a person (if any) who is a trustee of a registered scheme that is a trust and who is not the manager or supervisor of the scheme under this Act.

(2) The person ceases to hold office at the end of the transition period referred to in clause 36(3), provided that there is a manager or supervisor for the scheme as required by this Act.

39 Restricted schemes have 3 years to sell investments so as to comply with related party asset 5% cap rule

The manager of a restricted scheme must ensure that, on or before the third anniversary after the date on which this clause comes into force, the restricted scheme does not have an in-house assets ratio of 5% or more in relation to any related party or scheme participant (as determined in accordance with section 176).

40 Savings related to Superannuation Schemes Act 1976

(1) All superannuation annuities, superannuation allowances, annuities, amounts, expenses, and refunds that were payable out of the Consolidated Account under sections 5A(2), 6(4), and 7(6) of the Superannuation Schemes Act 1976 (which related to certain payments out of the Consolidated Account as a result of the dissolution of the New Zealand Superannuation Corporation and the New Zealand Superannuation Scheme) continue to be so payable as if those sections and section 5A(3) of that Act had not been repealed.

(2) This clause applies despite the repeal of—

(a) the Superannuation Schemes Act 1976 by section 32 of the Superannuation Schemes Act 1989; and

(b) section 33 of the Superannuation Schemes Act 1989 by this Act.

Compare: 1989 No 10 s 33

Repealed enactments continue to be financial markets legislation

41 Repealed enactments continue to be financial markets legislation

Every enactment that is repealed or revoked by this Act and that was, immediately before the commencement of this clause, financial markets legislation within the meaning of section 4 of the Financial Markets Authority Act 2011 must be treated as continuing to be financial markets legislation within the meaning of that Act (and to be referred to within the same Part of Schedule 1 of that Act).

Licensing of financial product markets

42 Transition process for existing financial product markets

(1) In this clause,—

deemed licence means a financial product market licence that an existing exchange is, by subclause (2), deemed to hold

existing exchange means a person that, immediately before the commencement of subclause (2), was a registered exchange within the meaning of section 2(1) of the Securities Markets Act 1988 or an authorised futures exchange within the meaning of section 37(1) of that Act

existing market means a market that, immediately before the commencement of subclause (2), was a registered market within the meaning of section 2(1) of the Securities Markets Act 1988 or an authorised futures market within the meaning of section 37(1) of that Act

existing market rules means market rules, within the meaning of section 2(1) of the Securities Markets Act 1988, that, immediately before the commencement of subclause (2), applied to an existing market

existing unlicensed market operator means a person other than an existing exchange that, immediately before the commencement of subclause (7), lawfully operated a securities market or a futures market within the meaning of the Securities Markets Act 1988

market of an existing exchange, in relation to an existing exchange, means an existing market that the existing exchange was, immediately before the commencement of subclause (2), authorised to operate

transitional period means the period that commences on the commencement of subclause (7) and ends on the commencement of section 310.

Existing exchanges

(2) On and from the commencement of this subclause, every existing exchange is deemed to hold, under this Act, for each market of the existing exchange, a financial product market licence that authorises the existing exchange to operate a financial product market that is of the same kind as the existing market of the existing exchange.

(3) Every existing market rule for an existing market continues to have effect in relation to that market as if it had been approved under section 331 or, as the case requires, been notified under section 334.

(4) Section 321, so far as applicable and with any necessary modifications, applies to each existing market, and the FMA must, as soon as practicable after the commencement of this subclause, set out, for each existing market, the matters required to be included by subsection (2) of that section and, in doing so, must—

(a) treat the commencement of this subclause as the date on which the deemed licence was issued; and

(b) formulate, in consultation with the existing exchange, the conditions of the deemed licence, being conditions of the kind described in section 318(1)(a) to (d) (and, for that purpose, the references to the Minister in section 318(1)(d) must be treated as being references to the FMA); and

(c) determine whether the deemed licence is deemed to have been issued under section 316 or 317.

(5) Any matter stated under section 321(2), as applied by subclause (4), is deemed to be incorporated into the deemed licence.

(6) Nothing in this clause prevents—

(a) the Minister from exercising a power under this Act—

(i) to vary, revoke, add to, or substitute the conditions of a deemed licence; or

(ii) to suspend or cancel a deemed licence; or

(b) the exercise, in respect of a deemed licence, of any other power that may, under this Act, be exercised in respect of a financial product market licence.

Existing unlicensed market operator

(7) On an application to the Minister by an unlicensed market operator, the Minister may, during the transitional period, issue a financial product market licence to the existing unlicensed market operator and, after the transitional period, that licence has effect as if it had been issued under section 316 or, as the case requires, section 317.

(8) During the transitional period, the Minister may approve any proposed market rules for the market operated by an existing unlicensed market operator and, after the transitional period, that approval has effect as if it had been given by the FMA under section 331.

Substantial holding disclosure

43 Previous disclosure under former enactment has effect under this Act

A disclosure of a substantial holding under subpart 3 of Part 2 of the Securities Markets Act 1988 must be treated as a disclosure under subpart 5 of Part 5 of this Act for the purposes of section 277 and other provisions of that Part.

44 Corporate trustees and nominee companies that opt in to substantial holding exemption

If, before the commencement of this clause, a person has opted in to an exemption under section 31 of the Securities Markets Act 1988 (and has not withdrawn the notice to opt in), the person must be treated as having opted in to the exemption in section 285.

Market services licences

45 Authorised dealers treated as holding market services licence

(1) Every person who, immediately before the commencement of this clause, is authorised or approved to carry on the business of dealing in futures contracts under section 38 of the Securities Markets Act 1988 must be treated as holding, on and from the commencement of this clause, a licence issued under subpart 2 of Part 6 of this Act.

(2) Subclause (1) does not apply if the person is not required to hold a licence under Part 6 of this Act.

(3) The licence under subclause (1) must be treated as—

(a) covering the same service that is authorised or approved under section 38 of the Securities Markets Act 1988 (and that service must be treated as a market service for the purposes of this Act):

(b) subject to the conditions, limitations, or restrictions that, immediately before the commencement of this clause, were imposed by or under the Securities Markets Act 1988 on the authorisation or approval (and those conditions, limitations, or restrictions must be treated as the conditions of the licence for the purposes of this Act):

(c) in the case of a registered bank, covering the service of acting as a derivatives issuer for all derivatives:

(d) expiring on the earlier of—

(i) the date that the licence is cancelled under Part 6 of this Act; and

(ii) the date that is 2 years after the commencement of this clause.

(4) Subclause (3)(a) and (b) do not limit subclause (3)(c).

46 FMA may exercise powers in respect of licences

(1) Nothing in clause 45 prevents the FMA from exercising—

(a) a power under Part 6 of this Act to vary, revoke, add to, or substitute any of the conditions of a licence referred to in that clause; or

(b) any other powers under this Act in respect of the licence.

(2) A licence referred to in clause 45 may also be subject to the conditions prescribed by the regulations.

Approval of electronic transfer systems continues

47 Approval of electronic transfer systems continues

An Order in Council made under section 7 of the Securities Transfer Act 1991 that is in force immediately before the repeal of that Act continues in force as if it had been made under section 376 (and may be amended or revoked as if it had been made under that section).

Banning orders

48 References to banning orders under this Act include references to banning orders under former enactments

(1) This clause applies to a provision of any enactment that refers to a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under this Act (or any similar reference).

(2) The provision must be treated as including a reference to a person who is prohibited from being a director or promoter of, or being concerned or taking

part in the management of, an incorporated or unincorporated body under the Securities Act 1978, the Securities Markets Act 1988, or the Financial Advisers Act 2008.

Example

Section 151(2)(ea) of the Companies Act 1993 specifies that a person is disqualified from being a director of a company if the person is prohibited from being a director or promoter under this Act.

If a person has been so prohibited under the Securities Act 1978, the Securities Markets Act 1988, or the Financial Advisers Act 2008, the person will be disqualified under section 151(2)(ea) of the Companies Act 1993.

49 References to failing to comply with this Act include references to failing to comply with former enactments for purposes of banning orders

(1) This clause applies to a provision of any enactment that—

(a) gives a court or a Registrar the power to make an order prohibiting a person from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body (or any order to similar effect); and

(b) refers to a failure or persistent failure to comply with this Act as a ground for making the order.

(2) The reference to a failure or persistent failure to comply with this Act must be treated as including a reference to a failure or persistent failure to comply with the Securities Act 1978, the Securities Markets Act 1988, or the Financial Advisers Act 2008.

Example

Section 383 of the Companies Act 1993 refers to persistently failing to comply with this Act as a ground for disqualifying a director.

This ground must be treated as including a persistent failure to comply with the Securities Act 1978, the Securities Markets Act 1988, or the Financial Advisers Act 2008.

Financial reporting

50 Issuers continue to be issuers under Financial Reporting Act 1993

[Repealed]

Schedule 4 clause 50: repealed, on 1 April 2014, by section 61(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

51 Section 10A of Auditor Regulation Act 2011 also applies to exemptions granted under Securities Act 1978

Section 10A of the Auditor Regulation Act 2011 (which provides that licence and registration requirements of that Act do not apply if an FMA exemption applies) also applies in relation to exemptions granted by the FMA under the

Securities Act 1978 as if references to the Financial Markets Conduct Act 2013 were references to that Act.

Offences and contraventions under repealed, revoked, or amended enactments

52 Transitional provision for offences and contravention under repealed, revoked, or amended enactments

(1) This section applies to an offence committed under, or a contravention of, any of the enactments repealed or revoked by section 4 or 5 of the Financial Markets (Repeals and Amendments) Act 2013, or amended by the Financial Markets (Repeals and Amendments) Act 2013, before the commencement of the provision that repealed, revoked, or amended that enactment.

(2) The enactments repealed or revoked by section 4 or 5 of the Financial Markets (Repeals and Amendments) Act 2013, or amended by the Financial Markets (Repeals and Amendments) Act 2013, continue to have effect as if they had not been repealed, revoked, or amended for the purpose of—

(a) investigating an offence or a contravention to which this section applies:

(b) commencing or completing proceedings for an offence or a contravention to which this section applies:

(c) imposing a penalty or other remedy, or making an order, in relation to an offence or a contravention to which this section applies.

Contributory mortgages

53 Former law continues for contributory mortgages

(1) This clause applies in relation to an interest in a contributory mortgage that was offered to the public for subscription by a contributory mortgage broker under the Securities Act 1978.

(2) However, this clause does not apply in relation to an interest in a contributory mortgage if, before the commencement of this clause, the interest was cancelled, redeemed, or forfeited, or all of the obligations owing under the interest had been discharged.

(3) To the extent that the following enactments would otherwise apply to an interest to which this clause applies, those enactments continue to apply as if this Act had not been enacted:

(a) the Securities Act 1978:

(b) the Securities Act (Contributory Mortgage) Regulations 1988:

(c) an exemption granted under the Securities Act 1978 from any of the provisions of those regulations that are in force immediately before the commencement of this clause.

(4) For the purposes of an interest to which this clause applies, the Governor-General may, by Order in Council, make regulations under section 70(1)(h) of

the Securities Act 1978 (as if that Act continued in force) for the purpose of replacing any regulations made under that paragraph (and those regulations that are replaced then cease to apply under subclause (3)).

(5) Regulations for the purposes of subclause (4) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation referred to in subclause (5)		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 4 clause 53(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Appointments as default KiwiSaver scheme providers

54 Appointments as default KiwiSaver scheme providers

(1) If, immediately before the commencement of this clause, an instrument of appointment is in effect under section 177 of the KiwiSaver Act 2006, the instrument continues in effect as if it had been made under section 132 of that Act (and, accordingly, an appointment under the instrument continues subject to the terms and conditions of the appointment).

(2) If a default KiwiSaver scheme that is the subject of an instrument of appointment referred to in subclause (1) has not yet been reregistered under clause 22(1)(a), the grounds for revocation of the instrument of appointment under section 137(2) of the KiwiSaver Act 2006 include the grounds in section 184(2) of the KiwiSaver Act 2006 (as in force on the date on which this Act receives the Royal assent).

Persons who participate in offer under Securities Act 1978 continue to be financial service providers

55 Persons who participate in offer under Securities Act 1978 continue to be financial service providers

(1) The definition of **financial service** in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 must be treated as including the following services:

(a) participating in an offer of securities to the public under the Securities Act 1978 in either of the following capacities (within the meaning of those terms under section 2(1) of that Act):

(i) as an issuer of the securities:

(ii) as a promoter:

(b) acting in any of the following capacities (within the meaning of those terms under section 2(1) of the Securities Act 1978) in respect of securities offered to the public under that Act:

(i) as a trustee:

(ii) as a statutory supervisor:

(iii) as a unit trustee:

(iv) as a superannuation trustee:

(v) as a manager.

(2) The service referred to in—

(a) subclause (1)(a) must be treated as being a service referred to in section 5(1)(i) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008:

(b) subclause (1)(b) must be treated as being a service referred to in section 5(1)(ia) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

(3) The references in subclause (1)(a) and (b) to an offer to the public under the Securities Act 1978 include an offer to which the Securities Act 1978 applies in accordance with Part 1 of this schedule.

Miscellaneous matters relating to Schedule 1

56 Sale offers under clauses 31 and 34 of Schedule 1

(1) Clause 31(1)(c) and (2)(d) of Schedule 1 must be treated as including a reference to an issue or a sale to the public in New Zealand under the Securities Act 1978 or to the public outside New Zealand under an application regime under Part 5 of that Act.

(2) Clause 34(1)(d) of Schedule 1 must be treated as including a reference to an offer to the public in New Zealand under the Securities Act 1978.

57 Transitional disclosure exclusion

(1) An offer of financial products does not require disclosure under Part 3 of this Act if the offer—

(a) is made before the relevant prescribed date; and

(b) is of a kind that, had it been made under the Securities Act 1978,—

(i) nothing in Part 2 of the Securities Act 1978 (except sections 38B and 58) would have applied in respect of the financial products offered as a result of section 5(2CB) or (2CBA) of that Act; or

(ii) the offer would not have been an offer of securities to the public as a result of section 3(2)(a)(i) to (iii) of that Act.

(2) For the purposes of subclause (1)(a), different dates may be prescribed in relation to different kinds of offers or other circumstances.

(3) Subclause (1) must be treated as being an exclusion under Part 1 of Schedule 1.

58 Exclusions for employee share purchase schemes and small offers can take into account offers under former law

The reference to a regulated offer in clauses 8(3)(c) and 14(1)(c) of Schedule 1 (which require issues or sales that result from certain offers to be disregarded in making calculations) must be treated as including a reference to an offer of securities to the public in New Zealand that is made under the Securities Act 1978.

59 Additional Securities Act 1978 exemption

(1) Section 5(1) of the Securities Act 1978 must be treated as including an exemption to the effect that nothing in Part 2 of the Securities Act 1978 applies in respect of a financial product if the offer of the financial product would not require disclosure under Part 3 of this Act (if that Part were in force) as a result of an exclusion in any 1 or more of the clauses of Schedule 1 of this Act that are prescribed for the purposes of this subclause.

(2) If a person makes an offer in reliance upon subclause (1), clauses 26 to 28 of Schedule 1 apply to the person and the offer with all necessary modifications as if it were an offer made in reliance upon any of the clauses of Schedule 1 referred to in subclause (1) (and, accordingly, a contravention of clauses 26 to 28 gives rise to civil liability under Part 8 of this Act).

(3) Conditions, requirements, and other matters may be prescribed under section 543(1)(c) that apply to the exemption referred to in subclause (1) regardless of whether or not those conditions, requirements, or other matters apply to any exclusion in Schedule 1 of this Act.

(4) Regulations may be made under section 70AAA of the Securities Act 1978 in respect of the exemption in subclause (1).

(5) Subclause (1) ceases to apply upon the repeal of the Securities Act 1978 and may not, after it ceases to apply, be relied upon in making an offer under Part 1 of this schedule.

Recognition regime regulations

60 FMA may make order prohibiting recognition regime offer on basis of contravention of former regulations

The reference to regulations in section 471(1)(a) must be treated as including a reference to regulations made under section 74 of the Securities Act 1978.

61 FMA may declare failure to meet preconditions of recognition regime under Securities Act 1978 to be non-material

(1) The references to a precondition in section 578 must be treated as including references to a precondition referred to in section 75(1)(d) of the Securities Act 1978.

(2) The reference to regulations in section 578(2) must be treated as including a reference to regulations made under section 74 of the Securities Act 1978.

Amendment to section 46 of Trustee Act 1956

62 Amendment to section 46 of Trustee Act 1956 does not affect existing proceedings

Nothing in the amendment made to section 46 of the Trustee Act 1956 by section 150 and the Schedule of the Financial Markets (Repeals and Amendments) Act 2013 affects any proceeding commenced before that amendment comes into force, and any such proceeding must be decided as if the amendment had not been made.

Part 4
Transitional provisions relating to Regulatory Systems (Commercial Matters) Amendment Act 2017

Schedule 4 Part 4: inserted, on 9 August 2017, by section 97(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

63 Financial reporting for registered schemes and funds

Sections 461A and 461H of this Act, as amended by sections 80 and 81 of the Regulatory Systems (Commercial Matters) Amendment Act 2017, apply to a registered scheme (and any separate fund) in relation to the following accounting periods of the scheme:

(a) an accounting period that commenced before, but ends on or after, the commencement of this clause:

(b) accounting periods that commence on or after the commencement of this clause.

Part 5
Transitional provisions relating to Financial Markets Conduct Regulations 2014

Schedule 4 Part 5: inserted, on 9 August 2017, by section 97(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

64 Definition

In clauses 65 to 70, **Regulations** means the Financial Markets Conduct Regulations 2014.

65 Certification as to eligible investors under Financial Advisers Act 2008

(1) This clause applies to a certification that is referred to in clause 3(4) of Schedule 1 of the Regulations and that is in effect immediately before that subclause is revoked.

(2) The certification remains in effect after the revocation (subject to any revocation under section 5F of the Financial Advisers Act 2008).

66 Service disclosure statement and investment proposal for existing DIMS

(1) This clause applies in relation to a DIMS provided by a person (**A**) to an investor (**B**) if, immediately before the commencement of this clause, clause 6 of Schedule 1 of the Regulations (**clause 6**) applies in relation to the DIMS.

(2) The following apply after the revocation of clause 6:

(a) A is not required to provide an SDS under sections 423 and 424 to B if A, under clause 6, was not required to do so before the revocation:

(b) A is not required to provide an investment proposal under regulation 206 of the Regulations to B if A, under clause 6, was not required to do so before the revocation:

(c) regulation 226(1)(a) of the Regulations does not apply to a client agreement if, under clause 6, that paragraph did not apply to the client agreement before the revocation:

(d) section 437(2) to (4) does not apply to an investment authority if, under clause 6, those subsections did not apply to the investment authority before the revocation.

(3) In this clause,—

investment proposal has the same meaning as in regulation 206(2) of the Regulations

SDS has the same meaning as in the Regulations.

67 Existing licences continue and cover supervision

(1) If, immediately before the revocation of clause 8 of Schedule 1 of the Regulations, that clause applies to a licence,—

(a) the licence continues in effect on and after that revocation; and

(b) if the licence is treated as covering certain matters under clause 8(2) of that schedule, the licence must be treated as continuing to cover those matters.

(2) This clause applies despite clause 8(4) of Schedule 1 of the Regulations, but nothing in this clause affects the duration of the licence under section 12 of the Financial Markets Supervisors Act 2011 or prevents the FMA from exercising any power in relation to the licence.

68 Extension of licences to cover substantially the same matters under new law

(1) If, immediately before the revocation of clause 9 of Schedule 1 of the Regulations, that clause applies to a licence, the following apply on and after that revocation:

(a) if, immediately before that revocation, the licence is subject to a variation under clause 9(3) of that schedule, the licence continues to be subject to the variation; and

(b) if the licence continues to be subject to conditions, limitations, or restrictions under clause 9(4) of that schedule, the licence must be treated as continuing to be subject to the conditions, limitations, or restrictions.

(2) This clause applies despite clause 9(7) of Schedule 1 of the Regulations, but nothing in this clause prevents the FMA from exercising any power in relation to the licence.

69 Governance requirements for PIE call fund units, PIE term fund units, and bank notice products that are specified units

(1) This clause applies to a security if, immediately before the commencement of this clause, clause 19 of Schedule 1 of the Regulations applies to the security.

(2) Clauses 20(1), 21, 22, and 30 of this schedule do not apply to the security if clause 28 of Schedule 8 of the Regulations applies in respect of the managed investment scheme to which the security relates.

70 Certain superannuation schemes that elect to be treated as registered

If, immediately before the revocation of clause 30A of Schedule 1 of the Regulations, that clause applies to a scheme and to the interests in the scheme, that clause continues to apply to the scheme and the interests on and after that revocation.

Part 6
Transitional provisions relating to Financial Services Legislation Amendment Act 2019

Schedule 4 Part 6: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 1—Transitional licences

Schedule 4 Part 6 subpart 1: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

71 FMA may issue transitional licence

(1) The FMA may issue a transitional licence that covers the service of acting as a provider of a financial advice service.

(2) A transitional licence must be treated as being a licence issued under subpart 2 of Part 6 of this Act (subject to the provisions of this subpart).

(3) Section 395(1), (1A), and (3) (application for licence) applies to a transitional licence.

(4) However,—

(a) an application for a transitional licence must be made before the commencement of section 16 of the Financial Services Legislation Amendment Act 2019 (which amends section 388 to make acting as a provider of a financial advice service a market service for which a licence is required); and

(b) a transitional licence may not cover a type of market service other than a financial advice service.

(5) Subclause (4)(a) does not limit section 395(1A) (which allows the FMA to specify time frames within which applications must be made).

(6) This clause does not prevent a licensee from holding both a transitional licence and 1 or more other licences that cover the service referred to in subclause (1) (but *see* clause 72(2)).

Schedule 4 clause 71: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

72 Duration and coverage of transitional licence

(1) A transitional licence continues in force until the close of the date that is 2 years after the commencement of section 16 of the Financial Services Legislation Amendment Act 2019 unless it is sooner cancelled.

(2) However, a transitional licence no longer covers a type of regulated financial advice if—

(a) another licence is issued to the licensee under subpart 2 of Part 6 of this Act; and

(b) that other licence covers that type of regulated financial advice.

(3) Subclause (2)—

(a) applies regardless of what conditions are imposed on the other licence (for example, new limits or restrictions on the regulated financial advice that may be provided):

(b) does not limit the FMA's power under section 408.

Schedule 4 clause 72: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

73 When transitional licence must be issued

The FMA must, after receiving an application for a transitional licence, issue the licence if the FMA is satisfied that—

(a) the eligibility criteria (if any) that are prescribed by the regulations for transitional licences are satisfied; and

(b) the applicant's directors and senior managers are fit and proper persons to hold their respective positions and otherwise satisfy the requirements that are prescribed by the regulations for transitional licences (if any); and

(c) there is no reason to believe that the applicant is likely to contravene the market services licensee obligations; and

(d) the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide the service.

Schedule 4 clause 73: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

74 Licence may cover authorised bodies

(1) A transitional licence may, in its conditions, authorise 1 or more named entities to provide the market service covered by the licence if the FMA is satisfied that—

(a) there is no reason to believe that the entity is likely to contravene the market services licensee obligations; and

(b) the entity is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide that service; and

(c) the entity meets the eligibility criteria and other requirements prescribed by the regulations for the purposes of this clause (if any).

(2) The entity must be treated as being an authorised body that is authorised under section 400(1A).

(3) This clause does not apply if the licensee is an individual.

Schedule 4 clause 74: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

75 Certain transitional licence holders may not engage nominated representatives

(1) A transitional licence is subject to a condition that the licensee or an authorised body may nominate an individual as a nominated representative of the licensee or body under section 431T only if, immediately before the commencement of this clause, the licensee or body (as the case may be) was any of the following:

(a) a qualifying financial entity (QFE) or a member of a QFE group under the Financial Advisers Act 2008:

(b) an entity that—

(i) is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 in respect of a financial adviser service; and

(ii) engages 1 or more individuals, who are not registered under that Act, to provide on its behalf a class service (within the meaning of section 5 of the Financial Advisers Act 2008 as in force before its repeal).

(2) If the licensee or authorised body (as the case may be) is an entity referred to in subclause (1)(b) (and is not a person referred to in subclause (1)(a)), the transitional licence is also subject to a condition that a nominated representative must not provide, on behalf of the licensee or body, a personalised service (within the meaning of section 5 of the Financial Advisers Act 2008 as in force before its repeal).

Schedule 4 clause 75: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

76 Transitional licence may authorise entity to be engaged

(1) This clause applies if—

(a) a person (**P**) is a licensee or an authorised body under a transitional licence (**P's licence**); and

(b) another person (**E**) holds a transitional licence or is an authorised body under P's licence; and

(c) immediately before the commencement of this clause, P and E are parties to an agreement under which either or both of the following occurs:

(i) P engages E to give financial advice to P's retail clients on P's behalf:

(ii) P engages E, who engages 1 or more individuals to give financial advice to P's retail clients on P's behalf.

(2) P's licence is subject to a condition that authorises P and E to continue the conduct that is the subject of the agreement referred to in subclause (1)(c) (*see* section 431F(1)(b)).

(3) This clause is subject to any other conditions on P's licence (which may, for example, impose limits or restrictions on the type of advice that may be given).

Schedule 4 clause 76: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

77 Application of Part 6 of Act, etc

(1) Part 6 of this Act applies in relation to transitional licences with all necessary modifications including the following:

(a) references in sections 397 and 398 to a decision under section 396 must be treated as references to a decision under clause 73:

(b) sections 396, 397(1)(b) and (c), 399, 403(3)(c), and 407 do not apply:

(c) references to the requirements of section 396 or 400 in section 403(3)(b) or subpart 3 of Part 6 of this Act must be treated as references to the requirements of clause 73 or 74.

Example

Subpart 3 of Part 6 provides for certain consequences if the licensing requirements in section 396 are not, or are no longer, satisfied. These include a duty for the licence holder to report matters to the FMA (*see* section 412) and the FMA could suspend or cancel the licence (*see* section 414(3)).

ABC Limited satisfies the licensing requirements in clause 73 and is granted a transitional licence. However, a change occurs that means that ABC Limited no longer satisfies a requirement.

Under paragraph (c), the ordinary monitoring and enforcement consequences apply to the transitional licence as if the references to licensing requirements in section 396 were references to the licensing requirements in clause 73.

ABC Limited must, therefore, report the matter to the FMA and the FMA may exercise a power under subpart 3 of Part 6.

(2) However, a transitional licence must be disregarded for the purposes of section 397(1)(b) when the FMA is considering an application for another licence.

(3) Matters may be prescribed under section 546(1)(a) for the purposes of clauses 73(a) and (b) and 74(1)(c).

(4) A decision of the FMA under this subpart may be appealed under subpart 9 of Part 8 of this Act as if it were a decision under Part 6 of this Act.

Schedule 4 clause 77: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

78 FMA may refuse to consider application made before specified time, event, or circumstance

(1) This clause applies to an application for—

(a) a transitional licence; or

(b) a licence under subpart 2 of Part 6 of this Act that covers the service of acting as a provider of a financial advice service.

(2) The FMA may, under section 395(1A), refuse to consider the application if it is made—

(a) before a date specified by the FMA; or

(b) before an event specified by the FMA has occurred; or

(c) before circumstances specified by the FMA have been satisfied.

(3) This clause does not limit section 395(1A).

(4) This clause ceases to apply on the close of the date that is 2 years after the commencement of section 16 of the Financial Services Legislation Amendment Act 2019.

Schedule 4 clause 78: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 2—Renewal of financial adviser authorisation and QFE status not required in transitional period

Schedule 4 Part 6 subpart 2: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

79 Renewal of financial adviser authorisation and QFE status not required in transitional period

(1) This clause applies to a person (**A**) if,—

(a) immediately before the commencement of this clause, A is an authorised financial adviser or has QFE status (within the meaning of the Financial Advisers Act 2008); but

(b) A's period of authorisation or period of a grant of QFE status would, but for this clause, terminate under section 57(1)(a) or 75A(1)(a) of that Act after that commencement.

(2) Despite sections 57(1)(a) and 75A(1)(a) of the Financial Advisers Act 2008, A's authorisation or QFE status must be treated as continuing until the commencement of section 97(1) of the Financial Services Legislation Amendment Act 2019 (which repeals the Financial Advisers Act 2008).

(3) However, subclause (2) ceases to apply if—

(a) A's authorisation or QFE status terminates under section 57(1)(b) to (d) or 75A(1)(b) to (d) of the Financial Advisers Act 2008; or

(b) an application for the renewal of A's authorisation or QFE status is made before the commencement of this clause but is declined by the FMA after that commencement.

Schedule 4 clause 79: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 3—Preparation of code

Schedule 4 Part 6 subpart 3: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

80 Code may be prepared before commencement

(1) Any action taken by or on behalf of the body of persons appointed by the Minister and known as the code working group in preparing the code of conduct must be treated as having been validly taken by the code committee under, and for the purposes of, clauses 32 to 39 of Schedule 5.

(2) For the purposes of subclause (1), a reference in clauses 32 to 39 of Schedule 5 to the code committee includes a reference to the code working group.

(3) The Minister may exercise or perform a power or duty under Schedule 5 before that schedule comes into force.

(4) Subclauses (1) and (3) apply regardless of whether the action is taken before or after the Financial Services Legislation Amendment Act 2019 is enacted.

(5) The Minister must ensure that the code comes into force no later than the date on which subpart 5A of Part 6 comes into force.

(6) If Schedule 5 requires the code or any other information to be published on an Internet site maintained by or on behalf of the code committee, the code or information may instead, before the commencement of that schedule, be published on an Internet site maintained by or on behalf of the department of State that is responsible for the administration of this Act.

Schedule 4 clause 80: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Subpart 4—Miscellaneous transitional provisions

Schedule 4 Part 6 subpart 4: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

81 New competency requirements do not prevent certain persons from continuing to give certain advice

(1) This clause applies to a person (**A**) if,—

(a) immediately before the commencement of this clause, A is—

(i) an authorised financial adviser (within the meaning of the Financial Advisers Act 2008); or

(ii) an individual who is registered under the FSP Act in respect of a financial adviser service; or

(iii) a qualifying financial entity (within the meaning of the Financial Advisers Act 2008) or an entity that is registered under the FSP Act in respect of a financial adviser service; and

(b) in the case of—

(i) paragraph (a)(i) or (ii),—

(A) A is engaged by a financial advice provider (**P**) to give regulated financial advice as a financial adviser on P's behalf; or

(B) A holds a transitional licence, or a licence issued under subpart 2 of Part 6 of this Act, that covers the service of acting as a provider of a financial advice service; or

(ii) paragraph (a)(iii), A is a financial advice provider that is registered under the FSP Act in respect of a financial advice service.

(2) Section 431I (duty to meet standards of competence) does not prevent A from giving regulated financial advice about a particular matter or in particular circumstances if, immediately before the commencement of this clause, A would have been permitted to provide that advice under the Financial Advisers Act 2008.

(3) Accordingly, P is not required to ensure compliance with section 431I (and is not otherwise liable in relation to that section) to the extent that A is permitted to act under subclause (2).

(4) In the case of subclause (1)(b)(i)(A), subclause (2) applies only if the advice is given on P's behalf.

(5) This clause is subject to the conditions on A's licence or P's licence (which may, for example, impose limits or restrictions on the services that are covered by the licence).

(6) In this clause,—

financial adviser service has the same meaning as in the Financial Advisers Act 2008 (as in force before its repeal)

FSP Act means the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

(7) This clause ceases to apply on the close of the date that is 2 years after the commencement of this clause.

Schedule 4 clause 81: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

82 Former QFE advisers not prevented from providing certain services

(1) This clause applies to an individual (**A**)—

(a) who, immediately before the commencement of this clause, is a QFE adviser (within the meaning of the Financial Advisers Act 2008); and

(b) who, after the commencement of this clause, has become a financial adviser; and

(c) who is engaged by a financial advice provider (**P**) to give regulated financial advice on P's behalf.

(2) Section 431I (duty to meet standards of competence) does not prevent A from providing, on behalf of P,—

(a) a personalised service in relation to P's category 1 products (but only if, immediately before the commencement of this clause, P was a QFE or member of a QFE group that engaged A); or

(b) a personalised service in relation to category 2 products; or

(c) a class service in relation to category 1 products or category 2 products.

(3) Accordingly, P is not required to ensure compliance with section 431I (and is not otherwise liable in relation to that section) to the extent that A is permitted to act under subclause (2).

(4) This clause is subject to the conditions on P's licence (which may, for example, impose limits or restrictions on the services that are covered by the licence).

(5) In this clause and clause 83, **category 1 product**, **category 2 product**, **class service**, **personalised service**, **QFE**, and **QFE group** have the same meanings as in section 5 of the Financial Advisers Act 2008 as in force before its repeal.

(6) This clause ceases to apply on the close of the date that is 2 years after the commencement of this clause.

Schedule 4 clause 82: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

83 Nominated representatives not prevented from providing certain services

(1) This clause applies to an individual (**A**)—

(a) who becomes a nominated representative in accordance with clause 75; and

(b) who is engaged by a financial advice provider (**P**) to give regulated financial advice on P's behalf.

(2) Section 431I (duty to meet standards of competence) does not prevent A from providing, on behalf of P,—

(a) a personalised service in relation to P's category 1 products; or

(b) a personalised service in relation to category 2 products; or

(c) a class service in relation to category 1 products or category 2 products.

(3) Accordingly, P is not required to ensure compliance with section 431I (and is not otherwise liable in relation to that section) to the extent that A is permitted to act under subclause (2).

(4) However, this clause is subject to clause 75(2) (which imposes a condition restricting the advice that certain nominated representatives may provide).

(5) This clause ceases to apply on the close of the date that is 2 years after the commencement of this clause.

Schedule 4 clause 83: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

84 Financial advisers treated as holding DIMS licence

(1) This clause applies to a person (**A**) who, immediately before the commencement of this clause,—

(a) is permitted to provide a discretionary investment management service under section 18(1)(d) of the Financial Advisers Act 2008; and

(b) provides that service to 1 or more retail clients (as defined in that Act).

(2) A must, on and after the commencement of this clause, be treated as holding a market services licence that—

(a) covers the service of acting as a provider of a discretionary investment management service; and

(b) is subject to a condition that the service that A can provide under the licence is limited to the discretionary investment management service that A could provide immediately before the commencement of this clause; and

(c) is subject to the conditions, limitations, or restrictions that, immediately before the commencement of this clause, were imposed by or under the Financial Advisers Act 2008 on A's authorisation under that Act, except standard conditions as defined in section 5 of that Act (and those conditions, limitations, or restrictions that the licence is subject to must be treated as conditions of the licence for the purposes of this Act); and

(d) has an expiry date that is the earliest of the following:

(i) the date that A is issued with another licence that covers the service; and

(ii) the date that the licence is cancelled; and

(iii) the date that is 2 years after the commencement of this clause.

(3) However, subclause (2) does not apply if, before the commencement of this clause, A has given written notification to the FMA that A does not want subclause (2) to apply.

(4) Nothing in this clause—

(a) prevents the FMA from exercising any power in relation to the licence; or

(b) limits the conditions that the licence is subject to under section 402 (for example, conditions imposed by regulations).

Schedule 4 clause 84: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

85 How service disclosure statement for existing DIMS is made available to existing clients

(1) This clause applies if—

(a) a person (**A**)—

(i) is a person referred to in clause 84(1); and

(ii) provides a DIMS under the licence referred to in clause 84(2) or a licence issued under Part 6 of this Act; and

(b) A is providing a DIMS to an investor (**C**) under an investment authority that was granted before the commencement of this clause.

(2) The requirement in sections 423 and 424 to provide an SDS relating to the DIMS to C does not apply.

(3) However, subclause (2) ceases to apply on the specified date unless A, before the specified date, has sent a written notice that contains, or is accompanied by, the following information to C at C's last known address:

(a) a statement to the effect that the requirements of this Act apply to the DIMS on and after a date that is referred to in the statement (being the date on which clause 84 comes into force):

(b) the names and addresses of A and the custodian (if any):

(c) either—

(i) a copy of the SDS relating to the DIMS (being an SDS that complies with regulation 205 of the 2014 regulations but subject to subclause (4)(b) of this clause); or

(ii) a statement to the effect that C may obtain a copy of that SDS on request to A and also by electronic means, and a statement as to how C may obtain a copy of that SDS by electronic means (for example, from a specified Internet site address).

(4) If subclause (2) applies,—

(a) regulation 206 of the 2014 regulations (investment proposal must be provided to investors) does not apply in relation to the DIMS provided by A to C; and

(b) the SDS that is made available to C under subclause (3)(c)—

(i) is not required to refer to the investment proposal; but

(ii) must state that information about the investment strategy applying to the investor, and about the returns, fees, and expenses of that strategy, will be made available to the investor by way of regular reports; and

(c) regulation 226(1)(a) of the 2014 regulations does not apply to the client agreement in respect of the DIMS provided to C.

(5) However, subclause (4)(c) ceases to apply on the specified date unless the SDS that is made available to C under subclause (3)(c) provides adequately for the matters in regulation 226(1)(a)(i) to (iv) of the 2014 regulations.

(6) Section 437(2) to (4) does not apply to an investment authority referred to in subclause (1)(b).

(7) However,—

(a) subclause (6) ceases to apply on the specified date unless A, before the specified date, has sent a written notice that discloses the scope of the investment authority to C at C's last known address, including the matters referred to in section 437(2)(a) to (c); and

(b) if there are no limits on the investment authority on a matter referred to in section 437(2)(a) or (b) or if the matter is capable of change without the prior written consent of C, the written notice under paragraph (a) must clearly disclose that fact.

(8) This clause does not apply to an investment authority granted after the licence referred to in subclause (1) is issued.

(9) In this clause,—

2014 regulations means the Financial Markets Conduct Regulations 2014

SDS or **service disclosure statement**, in relation to the DIMS, means a disclosure statement under section 423 for the DIMS

specified date means the first anniversary of the date on which this clause comes into force.

Schedule 4 clause 85: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

86 Code working group continues as code committee

(1) The body of persons appointed by the Minister and known as the code working group, its chairperson, and its other members immediately before the commencement of this clause must be treated as being the code committee, its chairperson, and its members under clauses 24 and 26 to 28 of Schedule 5 (with the chairperson and other members having the same period of appointment as they respectively have as members of the code working group).

(2) This clause does not limit clauses 26(1)(b), (2), and (4) and 28(2) and (3) of Schedule 5.

Schedule 4 clause 86: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

87 Certification for eligible investors under Financial Advisers Act 2008 continues under this Act

(1) A certification given under section 5D(1) of the Financial Advisers Act 2008 that is in effect immediately before the repeal of that Act remains in effect

after the repeal as if it were a certificate given under clause 41(1) and (2A) of Schedule 1 of this Act.

(2) Subclause (1) is subject to clause 42 of Schedule 1.

Schedule 4 clause 87: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

88 Disciplinary committee continues

(1) The disciplinary committee established under section 103 of the Financial Advisers Act 2008 must be treated as being the disciplinary committee established under clause 49 of Schedule 5.

(2) A person who, immediately before the commencement of this clause, is the chairperson or another member of the disciplinary committee established under section 103 of the Financial Advisers Act 2008 must be treated as being the chairperson or another member of the disciplinary committee established under clause 49 of Schedule 5.

(3) A person's period of appointment under subclause (2) ends on the same date that the person's appointment would have ended under the Financial Advisers Act 2008.

(4) Subclauses (2) and (3) do not limit clause 52 of Schedule 5.

Schedule 4 clause 88: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

89 Continuation of pending investigations and disciplinary proceedings

(1) All investigations and disciplinary proceedings under subpart 2 of Part 4 of the Financial Advisers Act 2008 that have been commenced before the commencement of this clause and that have not been completed before that commencement are to be continued and completed as if the Financial Services Legislation Amendment Act 2019 had not been enacted (with the disciplinary committee established under clause 49 of Schedule 5 acting as the disciplinary committee).

(2) However, the disciplinary committee may exercise a power under clause 46 of Schedule 5 in relation to any of those proceedings if the committee is satisfied that the person who is the subject of the complaint to which the proceedings relate has breached the code of conduct under the Financial Advisers Act 2008.

Schedule 4 clause 89: inserted, on 15 March 2021, by section 59(6) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

89A Complaints about financial adviser conduct under former code of conduct

(1) This clause applies to a complaint that is made on or after the commencement of this clause if—

(a) the complaint is about—

(i) the conduct of a person (**A**) in that person's capacity as a financial adviser under the Financial Advisers Act 2008, where that conduct occurred before 15 March 2021; or

(ii) a breach of code standard 13 of the former code (to the extent continued by clause 41 of Schedule 1 of the FMC Regulations (as in force immediately before its revocation)) by a person to whom that clause applied (**A**); and

(b) the conduct or the breach is not the subject of a proceeding to which clause 89 applies; and

(c) the complaint is initiated by the FMA or is made by any other person.

(2) The FMA and the disciplinary committee established under clause 49 of Schedule 5 may deal with the complaint under Part 5 of Schedule 5.

(3) However, the disciplinary committee—

(a) may only do any 1 or more of the actions referred to in section 101(3)(d) and (f) to (h) of the Financial Advisers Act 2008 (as in force immediately before its repeal); and

(b) may only do 1 or more of those actions if it is satisfied that A breached the code of professional conduct in force under section 94 of the Financial Advisers Act 2008 (or as continued in effect under clause 41 of Schedule 1 of the FMC Regulations (as in force immediately before its revocation)).

(4) In this clause,—

FMC Regulations means the Financial Markets Conduct Regulations 2014

former code means the code of professional conduct in force under section 94 of the Financial Advisers Act 2008.

Schedule 4 clause 89A: inserted, on 30 March 2025, by section 103(3) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Subpart 5—Transitional and savings regulations

Schedule 4 Part 6 subpart 5: inserted, on 9 April 2019, by section 59(5) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

90 Transitional and savings regulations

[Repealed]

Schedule 4 clause 90: repealed, on the close of 15 March 2024, by clause 90(3).

Part 7
Provisions relating to Part 1 of Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021

Schedule 4 Part 7: inserted, on 27 October 2022, by section 21(2)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

91 Interpretation in this Part

In this Part, **climate standard** has the same meaning as in section 5(1) of the Financial Reporting Act 2013.

Schedule 4 clause 91: inserted, on 27 October 2022, by section 21(2)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

92 Definitions of large listed issuer, large, and large manager may take into account accounting periods that commence before commencement of clause

In sections 461P(1), 461Q, and 461S, a reference to preceding accounting periods may include an accounting period regardless of whether the accounting period commenced before, on, or after the commencement of this clause.

Schedule 4 clause 92: inserted, on 27 October 2022, by section 21(2)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

93 Climate-related disclosures for climate reporting entities under section 461O(1)

(1) The following provisions of this Act apply to a climate reporting entity under section 461O(1) in respect of accounting periods of the entity that commence on or after the date on which the External Reporting Board issues the first climate standard that applies to the entity:

(a) subpart 2 of Part 7A (which relates to CRD records):

(b) subpart 3 of Part 7A (which relates to preparation of climate statements):

(c) subpart 5 of Part 7A (which relates to lodgement of climate statements).

(2) The provisions listed in subclause (1) do not apply to a climate reporting entity under section 461O(1) in respect of accounting periods of the entity that commence before the date on which the External Reporting Board issues the first climate standard that applies to the entity.

Schedule 4 clause 93: inserted, on 27 October 2022, by section 21(2)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

94 Climate-related disclosures relating to registered schemes

(1) The following provisions of this Act apply to a climate reporting entity under section 461O(2) in respect of accounting periods of a registered scheme that commence on or after the date on which the External Reporting Board issues the first climate standard that applies to the scheme:

(a) subpart 2 of Part 7A (which relates to CRD records):

(b) subpart 3 of Part 7A (which relates to preparation of climate statements):

(c) subpart 5 of Part 7A (which relates to lodgement of climate statements).

(2) The provisions listed in subclause (1) do not apply to a climate reporting entity under section 461O(2) in respect of accounting periods of a registered scheme that commence before the date on which the External Reporting Board issues the first climate standard that applies to the scheme.

Schedule 4 clause 94: inserted, on 27 October 2022, by section 21(2)(a) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Part 8
Provisions relating to Financial Markets (Conduct of Institutions) Amendment Act 2022

Schedule 4 Part 8: inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

95 Dealing with applications to act as financial institution from existing banks, insurers, and NBDTs

(1) This clause applies to a person (**A**) if,—

(a) immediately before the commencement of this clause, A is a registered bank, a licensed insurer, or a licensed NBDT; and

(b) an application is made for a licence to cover A's service of acting as a financial institution (whether under an existing or a new licence and whether under section 395 or, by way of an application to vary the conditions of a licence, under section 404 of this Act).

(2) To the extent that the application relates to A, the FMA must not decline the application unless the Reserve Bank has given its consent.

(3) The Reserve Bank may withhold its consent only if the Reserve Bank is satisfied,—

(a) in a case where A is a registered bank or a licensed NBDT, that withholding the consent is necessary for maintaining a sound and efficient financial system:

(b) in a case where A is a licensed insurer, that withholding the consent is necessary for maintaining a sound and efficient insurance sector.

(4) If the FMA has asked for the Reserve Bank's consent but the Reserve Bank refuses to give its consent, the FMA must accept the application (to the extent that it relates to A) even if it does not consider that 1 or more of the requirements referred to in section 396 or 400 are satisfied.

(5) The FMA may exercise a power under section 414(2) in respect of the requirements referred to in section 396 or 400 (without having to be satisfied under section 414(1)).

(6) Subclause (5) ceases to apply in relation to a person when the FMA first becomes satisfied that those requirements referred to in section 396 or 400 are satisfied in relation to the person.

Schedule 4 clause 95: inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

96 Regulations may provide that licensing requirement does not apply until particular date

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for the purpose set out in subclause (2) (and those regulations have effect despite the commencement of section 8 of the Financial Markets (Conduct of Institutions) Amendment Act 2022).

(2) The purpose is to provide that the requirement to hold, or be authorised under, a licence to provide the service of acting as a financial institution does not apply to a class of persons specified in the regulations until on or after a date specified in those regulations.

(3) A date specified in those regulations must be on or before the fifth anniversary of the date on which the Financial Markets (Conduct of Institutions) Amendment Act 2022 receives the Royal assent.

(4) The Minister must consult the FMA before making a recommendation under this clause.

(5) Regulations made under this clause are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Example

The requirement for financial institutions to hold a market services licence comes into force on a particular date (**date A**).

However, regulations under this clause provide that the requirement does not apply to NBDTs until a later date (**date B**).

While the requirement applies to registered banks and insurers on date A, it only starts to apply to NBDTs on date B.

Legislation Act 2019 requirements for secondary legislation made under this clause		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 4 clause 96: inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

97 Applications for financial institution licence may be made before commencement

(1) A person may apply for a market services licence to cover the service of acting as a financial institution—

(a) before the commencement of section 8 of the Financial Markets (Conduct of Institutions) Amendment Act 2022; and

(b) if regulations under clause 96 apply, before the date referred to in clause 96(2).

(2) For the purposes of dealing with the application, any provisions of the Financial Markets (Conduct of Institutions) Amendment Act 2022 that are relevant to the matter and that are not yet in force must be treated as if they were in force.

(3) The FMA may refuse to consider the application if it is made—

(a) before a date specified by the FMA; or

(b) before an event specified by the FMA has occurred; or

(c) before circumstances specified by the FMA exist.

(4) Subclause (3) ceases to apply to an application made after the later of—

(a) the commencement of section 8 of the Financial Markets (Conduct of Institutions) Amendment Act 2022; and

(b) the date referred to in clause 96(2) (if the regulations made under that clause apply in relation to the applicant).

(5) This clause does not limit section 395(1A).

Schedule 4 clause 97: inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

98 Incentives regulations may apply to existing agreements

(1) Regulations made under section 546(1)(og) may provide that they apply to 1 or more classes of incentives offered, given, or otherwise payable on or after the commencement of those regulations.

(2) Subclause (1) may apply even if an incentive is offered, given, or otherwise payable under an agreement entered into before either or both of the following:

(a) the commencement of those regulations:

(b) the enactment of the Financial Markets (Conduct of Institutions) Amendment Act 2022.

(3) However, nothing in those regulations applies to—

(a) any incentive that is given or otherwise paid or payable before the commencement of those regulations; or

(b) any incentive that a person has become entitled to before that commencement (even if it is given or otherwise payable after that commencement).

(4) If the regulations apply to an agreement referred to in subclause (2), compliance with those regulations does not—

(a) place any party to the agreement or any other person in breach of the agreement, or make any of them liable for a civil wrong; or

(b) entitle any person to terminate or cancel an agreement, or to accelerate the performance of an obligation, or to impose a penalty or an increased charge, unless the regulations provide otherwise.

Example

A company (**A**) acts as an insurer. A offers motor vehicle insurance to consumers.

A car dealer (**B**) offers A's insurance to its customers when they buy cars. A is contractually obliged to pay B an incentive based on the volume of A's insurance products that are sold.

The contract providing for the incentive is entered into before commencement of the regulations.

The regulations cannot apply to incentives that are payable before the commencement of the regulations. However, this clause allows the regulations to apply to incentives payable after commencement even though the contract was entered into before commencement.

The regulations ban a certain incentive that would otherwise be payable under the contract.

A must no longer pay the incentive. A does not breach the contract by refusing to pay the incentive and B has no right to cancel the contract because of that refusal.

Schedule 4 clause 98: inserted, on 25 July 2023, by section 23 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36).

Part 9
Provisions relating to Part 2 of Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021

Schedule 4 Part 9: inserted, on 27 October 2024, by section 31(3) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

99 Interpretation in this Part

In this Part,—

commencement date means the commencement date of section 25 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021

new, in relation to a section of this Act, means the section as replaced or amended by a provision of Part 2 of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021

Part 7A assurance engagement obligations means—

(a) new section 461ZH (which relates to assurance engagements required for parts of climate statements relating to greenhouse gas emissions); and

(b) new section 461ZI (which relates to lodgement); and

(c) except in clause 96(2), new section 461ZJ (which relates to annual reports).

Schedule 4 clause 99: inserted, on 27 October 2024, by section 31(3) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

100 Application of Part 7A assurance engagement obligations to accounting periods

(1) The Part 7A assurance engagement obligations apply to a climate reporting entity under section 461O(1) in relation to the following accounting periods of the climate reporting entity:

(a) an accounting period that commenced before, but ends on or after, the commencement date:

(b) accounting periods that commence on or after the commencement date.

(2) The Part 7A assurance engagement obligations apply to a manager of a registered scheme that is a climate reporting entity in respect of the scheme in relation to the following accounting periods of the scheme:

(a) an accounting period that commenced before, but ends on or after, the commencement date:

(b) accounting periods that commence on or after the commencement date.

Schedule 4 clause 100: inserted, on 27 October 2024, by section 31(3) of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39).

Part 10
Provisions relating to Regulatory Systems (Economic Development) Amendment Act 2025

Schedule 4 Part 10: inserted, on 30 March 2025, by section 103(4) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

101 Exemptions relating to transition from Securities Act 1978 may continue in force indefinitely

(1) Section 558 (exemption in force for not more than 5 years) does not apply to the following:

(a) the Financial Markets Conduct (Communal Facilities in Real Property Developments) Exemption Notice 2021:

(b) the Financial Markets Conduct (Employee Share Purchase Scheme Shares Offered under Securities Act 1978) Exemption Notice 2021:

(c) the Financial Markets Conduct (Equine Bloodstock) Exemption Notice 2021 (subject to subclause (2)):

(d) the Financial Markets Conduct (Irrigation Companies) Exemption Notice 2022 (subject to subclause (2)):

(e) the Financial Markets Conduct (Multiple-participant Schemes—Participation Agreements) Exemption Notice 2022 (subject to subclause (2)):

(f) the Financial Markets Conduct (Securities Offered under Securities Act 1978 Exemptions Recognising Overseas Regimes) Exemption Notice 2021:

(g) the Financial Markets Conduct (Small Co-operatives) Exemption Notice 2022 (subject to subclause (2)).

(2) However, section 558 continues to apply to the following:

(a) clauses 6 to 8 of the Financial Markets Conduct (Equine Bloodstock) Exemption Notice 2021:

(b) clauses 4, 8 to 18, and 20 to 24 and Schedules 1 to 3 of the Financial Markets Conduct (Irrigation Companies) Exemption Notice 2022 and the cross-heading above clause 8:

(c) clauses 5 to 8 of the Financial Markets Conduct (Multiple-participant Schemes—Participation Agreements) Exemption Notice 2022:

(d) clauses 4, 7 to 9, and 11 to 15 and Schedules 1 and 2 of the Financial Markets Conduct (Small Co-operatives) Exemption Notice 2022.

(3) This clause does not prevent the FMA from exercising a power to amend or revoke a notice to which this clause applies.

Schedule 4 clause 101: inserted, on 30 March 2025, by section 103(4) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

102 References to qualified auditor treated as references to qualified FMC auditor

(1) This clause applies to a reference to a qualified auditor in an existing exemption if, immediately before the commencement of this clause, the reference has the same meaning as in this Act.

(2) The reference must be treated as being a reference to a qualified FMC auditor.

(3) In this clause, **existing exemption** means an exemption under subpart 2 of Part 9 as in force immediately before the commencement of this clause.

Schedule 4 clause 102: inserted, on 30 March 2025, by section 103(4) of the Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11).

Part 11
Provisions relating to Credit Contracts and Consumer Finance Amendment Act 2026

Schedule 4 Part 11: inserted, on 1 July 2026, by section 67(3)(a) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

103 Creditor may be treated as holding market services licence

(1) This clause applies to a person (**C**) that,—

(a) immediately before the commencement of this clause,—

(i) holds a certification under Part 5A of the CCCFA that covers the service of being a creditor under a consumer credit contract; or

(ii) provides that service but does not hold that certification because the person is exempt under section 131C(1)(a) of the CCCFA; and

(b) on the commencement of this clause, is not exempt under this Act from the licensing requirement under section 388(e).

(2) C must be treated as holding a market services licence that covers the service of acting as a creditor under a consumer credit contract.

(3) If C's certification under Part 5A of the CCCFA was subject to conditions referred to in section 131K of the CCCFA, the licence under subclause (2) must, in respect of the service of acting as a creditor under a consumer credit contract, be treated as being subject to those conditions (and those conditions must be treated as being conditions of the licence for the purposes of this Act).

(4) However, subclause (3) does not apply to the extent that the conditions referred to in section 131K of the CCCFA are inconsistent with any conditions referred to in section 402 of this Act.

(5) If, immediately before the commencement of this clause, C's certification was suspended under section 131P of the CCCFA for a specified period or until a specified requirement is met, the licence under subclause (2) must be treated as suspended for that period or until that requirement is met.

(6) In this Part, **CCCFA** means the Credit Contracts and Consumer Finance Act 2003.

Schedule 4 clause 103: inserted, on 1 July 2026, by section 67(3)(a) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

104 FMA may exercise powers in respect of licences

Nothing in clause 103 prevents the FMA from exercising any powers under this Act in respect of a licence referred to in that clause (for example, to vary, revoke, add to, or substitute any conditions or to suspend or cancel the licence).

Schedule 4 clause 104: inserted, on 1 July 2026, by section 67(3)(a) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

Schedule 5
Other provisions relating to financial advice services and client money or property services

ss 6, 387A, 431C, 431W

Schedule 5: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Contents

		Page
1	Overview	528
	Part 1 **Retail and wholesale financial advice or client money or property service clients**	
2	Who are clients	529
3	Who are retail clients	529
4	Who are wholesale clients	529
5	How to opt out of being wholesale client	530
6	Giving notification of opt out	531
	Part 2 **Financial advice exclusions**	
7	Exclusions from definition of financial advice	531
	Exclusions from regulated financial advice	
8	Ancillary services and other occupations	532
9	Incidental to provision of credit by business not providing financial service	533
10	Advice given for purpose of complying with lender responsibilities	533
11	Crown-related entities	534
12	Trustee corporations	535
13	Non-financial not-for-profit organisation	535
14	Workplace financial products	536
15	Advice to product provider	536
16	Activities governed by other regulatory frameworks	536
17	Prescribed circumstances	537
18	Controlling owners, directors, etc	537
	Part 3 **Client money or property service exclusions**	
19	Service given in course of carrying out other occupations	537
20	Crown-related entities	538
21	Other exclusions	539
22	Prescribed circumstances	539

23 Controlling owners, directors, etc 539

Part 4
Code of professional conduct and code committee

Code committee

24 Establishment of code committee 540
25 Functions of code committee 540
26 Membership of code committee 541
27 Who Minister must appoint 541
28 Chairperson 541
29 Proceedings of code committee 542
30 Certain provisions of Crown Entities Act 2004 apply to members of code committee 542
31 Funding of code committee 542

Code of professional conduct for financial advice services

32 Content of code 542
33 Code committee must prepare code 543
34 Minister's approval of draft code 544
35 Minister may require revision or consultation 544
36 Minister's approval of revised draft code 545
37 Consultation with FMA 545
38 Deadline for Minister's approval of draft code 545
39 Commencement and status of code 546

Changes to code

40 Changes to code 546

Part 5
Complaints and disciplinary proceedings

Who deals with complaints

41 Complaint about financial adviser 547
42 Investigation by FMA 547

Complaint about financial adviser

43 FMA may refer complaint to disciplinary committee 547
44 Disciplinary committee must give notice of complaint 548
45 Content of notice of complaint 548
46 Disciplinary committee may discipline financial adviser 548
47 Other matters relating to discipline 549
48 Reasonable opportunity to be heard 550

Disciplinary committee

49 Minister must establish disciplinary committee 550
50 Functions of disciplinary committee 550
51 Membership of disciplinary committee 550

52	Ceasing to be member of disciplinary committee	551
53	Delegation by chairperson of disciplinary committee	552
54	Proceedings of disciplinary committee	552
55	Disciplinary committee may hear evidence in disciplinary proceeding	552
56	Determining proceeding on papers	553
57	Issuing of summons by disciplinary committee	553
58	Serving of summons	554
59	Failure to comply with summons to attend disciplinary committee hearing	554
60	Witnesses' fees, allowances, and expenses	555
61	Protection for witnesses and counsel in disciplinary proceeding	555
62	Contempt of disciplinary committee	555
63	Certain provisions of Crown Entities Act 2004 apply to members of disciplinary committee	556
64	Funding of disciplinary committee	556

1 Overview

(1) This schedule provides for matters relating to—

(a) financial advice services (*see* subpart 5A of Part 6 of this Act); and

(b) client money or property services (*see* subpart 5B of Part 6 of this Act).

(2) In particular,—

(a) Part 1 identifies when a client is a retail client or a wholesale client. This determines whether a financial advice provider needs to be licensed and whether certain duties apply:

(b) Part 2 sets out situations when financial advice is not provided and when financial advice services are not regulated under this Act:

(c) Part 3 sets out situations when client money or property services are not regulated under this Act:

(d) Part 4 provides for a code of professional conduct for financial advice services and for the establishment and operation of a code committee:

(e) Part 5 provides for complaints and disciplinary proceedings against financial advisers.

(3) This clause is only a guide to the general scheme and effect of this schedule.

Schedule 5 clause 1: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Part 1
Retail and wholesale financial advice or client money or property service clients

Schedule 5 Part 1: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

2 Who are clients

In this Act, a **client**,—

(a) in relation to a financial advice service, means a person who receives the service (whether or not on payment of a charge); and

(b) in relation to a client money or property service, means the person on whose behalf the client money or client property is received, held, paid, or transferred under the service (but excludes the product provider); but

(c) does not include a person who receives the financial advice or client money or property service from another person if the service is both provided and received in the course of, and for the purposes of,—

(i) the same business; or

(ii) the businesses of related bodies corporate; or

(iii) the businesses of a group of entities that consists of a licensee and its authorised bodies.

Example

If a company employee (**A**) gives financial advice to the board of directors on investments to be made by the company, the directors are not clients of A. However, if A, in the course of business, gives that same financial advice to another employee (**B**) in relation to B's own investments, B is a client of A for the purposes of this Act.

Compare: 2008 No 91 s 5A

Schedule 5 clause 2: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

3 Who are retail clients

A **retail client**, in respect of a financial advice service or a client money or property service, is a client of a provider of that service who is not a wholesale client.

Compare: 2008 No 91 s 5B

Schedule 5 clause 3: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

4 Who are wholesale clients

(1) A person is a **wholesale client**, in relation to a financial advice service or a client money or property service (unless the person has opted out from being a wholesale client under clause 5) if—

(a) the person is an investment business under clause 37 of Schedule 1; or

(b) the person meets the investment activity criteria specified in clause 38 of Schedule 1; or

(c) the person is large under clause 39 of Schedule 1; or

(d) the person is a government agency under clause 40 of Schedule 1; or

(e) the person is in the business of being a product provider and receives the financial advice service or client money or property service in the course of that business; or

(f) the person is an eligible investor in relation to the service under clause 41 of Schedule 1.

(2) The **relevant time**, for the purposes of applying Schedule 1 under subclause (1), is the time immediately before the service is supplied to the person.

(3) If subclause (1) applies to a person (**C**), it applies equally to any entity controlled by C to the same extent as it applies to C (where **controlled** has a meaning that corresponds to the definition of control in clause 48 of Schedule 1).

Compare: 2008 No 91 s 5C

Schedule 5 clause 4: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

5 How to opt out of being wholesale client

(1) A person may opt out of being a wholesale client, in relation to a financial advice provider or CMPS provider, by giving the financial advice provider or CMPS provider a signed notification to that effect.

(2) A notification may be specific to a particular service, or class of services, or may be general for all services provided by the financial advice provider or CMPS provider to whom it is given.

(3) A person may vary or revoke a notification in the same way as the notification may be given.

(4) A notification (or variation or revocation of a notification) under this clause is effective only in relation to services provided after it is given.

(5) This clause does not apply if a person is a wholesale client by reason of being an eligible investor under clause 41 of Schedule 1.

(6) In this clause and clause 6, **CMPS provider** means a provider of a client money or property service.

Compare: 2008 No 91 s 5G

Schedule 5 clause 5: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

6 Giving notification of opt out

(1) A notification under clause 5 is sufficiently given to a financial advice provider or CMPS provider if it is—

(a) provided to the financial advice provider or CMPS provider; or

(b) delivered or posted to the financial advice provider or CMPS provider at the person's business address stated on the register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 or the person's last known place of business in New Zealand; or

(c) sent by email to the person's email address stated on the register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

(2) The notification is treated as received by the person no later than 7 days after it is posted or 2 days after it is emailed, unless the person to whom it is posted or sent proves that it was not received (otherwise than through fault on the person's part).

Compare: 2008 No 91 s 5H

Schedule 5 clause 6: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Part 2
Financial advice exclusions

Schedule 5 Part 2: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

7 Exclusions from definition of financial advice

A person does not give financial advice merely by doing 1 or more of the following:

(a) providing factual information (for example, information about the cost or terms and conditions of a financial advice product, or about the procedure for acquiring or disposing of a financial advice product):

(b) carrying out an instruction from a person to acquire or dispose of, or not to acquire or dispose of, a financial advice product for that person:

(c) making a recommendation or giving an opinion about a kind of financial advice product in general rather than a particular financial advice product (for example, an opinion about shares generally rather than shares of a particular company):

(d) recommending that a person obtain financial advice:

(e) passing on financial advice given by another person (unless the person holds out that the financial advice is the person's own advice):

(f) giving or making available any of the following:

(i) a disclosure document:

(ii) information from a register entry:

(iii) an advertisement referred to in section 89:

(iv) any other document or information that the person is required by law to give or make available:

(v) a document or information prescribed by the regulations:

(g) carrying out a prescribed activity.

Compare: 2008 No 91 ss 10(3), 14(1)(o)

Schedule 5 clause 7: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Exclusions from regulated financial advice

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

8 Ancillary services and other occupations

(1) Financial advice is not regulated financial advice if it is given by an incorporated law firm (as defined in section 6 of the Lawyers and Conveyancers Act 2006)—

(a) in the ordinary course of its business; and

(b) as an ancillary part of providing legal services or conveyancing services (as defined in section 6 of that Act).

(2) Financial advice is not regulated financial advice if the person giving the advice—

(a) carries on one of the following occupations:

(i) conveyancing practitioner (as defined in section 6 of the Lawyers and Conveyancers Act 2006):

(ii) journalist:

(iii) lawyer:

(iv) lecturer (being a person employed by an institution (as defined in section 159 of the Education Act 1989) to teach or instruct students of the institution):

(v) qualified statutory accountant:

(vi) real estate agent (being an agent as defined in section 4(1) of the Real Estate Agents Act 2008):

(vii) registered legal executive (being a member of the New Zealand Institute of Legal Executives Incorporated who holds a current annual registration certificate issued by that body):

(viii) registered valuer (as defined in section 2 of the Valuers Act 1948):

(ix) tax agent (as defined in section 3(1) of the Tax Administration Act 1994):

(x) teacher (being a person who holds a teaching position as defined in section 348 of the Education Act 1989):

(xi) an occupation prescribed by the regulations; and

(b) gives the advice—

(i) in the ordinary course of carrying on that occupation; and

(ii) as an ancillary part of carrying on the principal activity of that occupation, being an activity that is not the provision of a financial service.

(3) Financial advice is not regulated financial advice if—

(a) it is given by a person who is not an incorporated law firm and is not carrying on an occupation referred to in subclause (2)(a); and

(b) it is given only as an ancillary part of a business whose principal activity is not the provision of a financial service.

(4) Financial advice is not regulated financial advice if it is given by a director of an entity in the person's capacity as a director.

Compare: 2008 No 91 ss 13(1), 14(1)(a), (d), (i)

Schedule 5 clause 8: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

9 Incidental to provision of credit by business not providing financial service

(1) Financial advice is not regulated financial advice if—

(a) it is given in connection with providing credit under a credit contract; and

(b) the credit is provided, and the advice is given, as an incidental part of a business the principal activity of which is not the provision of a financial service.

(2) In this clause, something is an **incidental part** of a business if it is carried on to facilitate the carrying out of the business or is ancillary to the business.

Compare: 2008 No 91 s 13(2)

Schedule 5 clause 9: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

10 Advice given for purpose of complying with lender responsibilities

(1) Financial advice is not regulated financial advice if—

(a) the advice is given—

(i) by a lender to a borrower; and

(ii) in relation to a consumer credit contract or relevant insurance contract (the **agreement**); and

(iii) either—

(A) in order to comply with the lender's lender responsibilities; or

(B) as a reasonably incidental consequence of complying with the lender's lender responsibilities; and

(b) the lender has taken reasonable steps to ensure that the borrower understands that the advice is not regulated financial advice and the implications of that.

(2) A lender is taken to have complied with subclause (1)(b) if the lender gives the borrower a statement in the prescribed manner.

(3) In this clause,—

borrower has the same meaning as in section 9B(1) of the CCCF Act

CCCF Act means the Credit Contracts and Consumer Finance Act 2003

lender has the same meaning as in section 9B(1) of the CCCF Act

lender responsibilities means the lender responsibilities set out in section 9C(3)(a) to (e) and 9C(5) of the CCCF Act

relevant insurance contract has the same meaning as in section 9B(1) of the CCCF Act.

Schedule 5 clause 10: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

11 Crown-related entities

(1) Financial advice is not regulated financial advice if it is given in the ordinary course of the business of one of the following:

(a) a Crown entity under section 7 of the Crown Entities Act 2004, other than Public Trust:

(b) a department named in Schedule 1 of the State Sector Act 1988:

(c) a government-related organisation as defined in section 4 of the Crown Organisations (Criminal Liability) Act 2002:

(d) the Reserve Bank.

(2) Financial advice is not regulated financial advice if the person giving the advice—

(a) is one of the following:

(i) a Minister of the Crown:

(ii) a member of Parliament:

(iii) an employee (as defined in section 2 of the State Sector Act 1988):

(iv) a chief executive in any part of the State services (as defined in section 2 of the State Sector Act 1988):

(v) the holder of, or a person performing the duties of, an office established by an enactment (other than the Māori Trustee):

(vi) a person performing duties that are expressly conferred on him or her by virtue of his or her office by an enactment; and

(b) gives the advice in the ordinary course of carrying on that occupation, or exercising the powers or performing the functions of that office or position.

Compare: 2008 No 91 s 14(1)(a), (b), (c), (e)

Schedule 5 clause 11: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

12 Trustee corporations

(1) Financial advice is not regulated financial advice if it is given in the ordinary course of the business of a trustee corporation providing—

(a) legal or financial services in relation to the preparation of a will; or

(b) estate management and administration services (and associated legal, financial, and other services carried out under the Act governing the corporation).

(2) In this clause, **trustee corporation** means one of the following:

(a) Public Trust:

(b) the Māori Trustee:

(c) a corporation that is authorised by an Act to administer the estates of deceased persons and other trust estates:

(d) a wholly owned subsidiary of a corporation referred to in paragraph (c) that is guaranteed by the corporation.

Compare: 2008 No 91 s 14(1)(h)

Schedule 5 clause 12: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

13 Non-financial not-for-profit organisation

(1) Financial advice is not regulated financial advice if it is given—

(a) in the ordinary course of the business of a non-financial not-for-profit organisation; and

(b) for no charge.

(2) In this clause, **non-financial not-for-profit organisation** means an organisation—

(a) that operates other than for the purposes of profit or gain to an owner, a member, or a shareholder; and

(b) that is not the product provider (or related to the product provider) of a financial advice product.

Compare: 2008 No 91 s 14(1)(f)

Schedule 5 clause 13: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

14 Workplace financial products

Financial advice is not regulated financial advice if it is given—

(a) by or for an employer; and

(b) to an employee of the employer; and

(c) in relation to a financial advice product that is made available through the employee's workplace.

Compare: 2008 No 91 s 14(1)(g)

Schedule 5 clause 14: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

15 Advice to product provider

Financial advice is not regulated financial advice if it is given—

(a) in connection with a financial advice product; and

(b) to the provider of the financial advice product; and

(c) by a person engaged by the provider to give the advice.

Compare: 2008 No 91 s 14(1)(p)

Schedule 5 clause 15: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

16 Activities governed by other regulatory frameworks

(1) Financial advice is not regulated financial advice if—

(a) the advice is given as part of a discretionary investment management service; and

(b) the provision of that service is—

(i) covered by a market services licence; or

(ii) exempted from the licensing requirement under section 389.

(2) Financial advice is not regulated financial advice if it is given—

(a) in the ordinary course of a business carried on by a rating agency approved under section 86 of the Non-bank Deposit Takers Act 2013 or section 62 of the Insurance (Prudential Supervision) Act 2010; and

(b) in connection with a rating given or to be given by the agency.

(3) Financial advice given to a person (**A**) is not regulated financial advice if—

(a) the advice is given—

(i) in connection with an offer of a financial product; and

(ii) by or on behalf of the offeror; and

(b) the offer to A does not require disclosure under Part 3 because of any 1 or more of clauses 3 to 5 of Schedule 1.

(4) Financial advice is not regulated financial advice if it is given—

(a) by an offeror or a target company in the course of a takeover offer that is regulated under the Takeovers Code; or

(b) by an independent adviser in the course of exercising his or her functions under the Takeovers Code.

Compare: 2008 No 91 s 14(1)(j)–(m)

Schedule 5 clause 16: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

17 Prescribed circumstances

Financial advice is not regulated financial advice if it is given in prescribed circumstances.

Compare: 2008 No 91 s 14(1)(q)

Schedule 5 clause 17: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

18 Controlling owners, directors, etc

If an exclusion under clauses 8 to 17 applies to a person (**A**), it applies equally to any controlling owner, director, employee, agent, or other person acting in the course of, and for the purposes of, A's business to the same extent as it applies to A.

Compare: 2008 No 91 s 14(2)

Schedule 5 clause 18: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Part 3
Client money or property service exclusions

Schedule 5 Part 3: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

19 Service given in course of carrying out other occupations

(1) A client money or property service is not a regulated client money or property service if the person giving the service—

(a) carries on one of the following occupations:

(i) conveyancing practitioner (as defined in section 6 of the Lawyers and Conveyancers Act 2006):

(ii) lawyer:

(iii) qualified statutory accountant:

(iv) real estate agent (being an agent as defined in section 4(1) of the Real Estate Agents Act 2008):

(v) registered legal executive (being a member of the New Zealand Institute of Legal Executives Incorporated who holds a current annual registration certificate issued by that body):

(vi) tax agent (as defined in section 3(1) of the Tax Administration Act 1994):

(vii) an occupation prescribed by the regulations; and

(b) gives the service—

(i) in the ordinary course of carrying on that occupation; and

(ii) as an ancillary part of carrying on the principal activity of that occupation, being an activity that is not the provision of a financial service.

(2) A client money or property service is not a regulated client money or property service if it is given by an incorporated law firm (as defined in section 6 of the Lawyers and Conveyancers Act 2006)—

(a) in the ordinary course of its business; and

(b) as an ancillary part of providing legal services or conveyancing services (as defined in section 6 of that Act).

Compare: 2008 No 91 s 77C(1)(a)

Schedule 5 clause 19: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

20 Crown-related entities

(1) A client money or property service is not a regulated client money or property service if it is given in the ordinary course of the business of one of the following:

(a) a Crown entity under section 7 of the Crown Entities Act 2004, other than Public Trust:

(b) a department named in Schedule 1 of the State Sector Act 1988:

(c) a government-related organisation as defined in section 4 of the Crown Organisations (Criminal Liability) Act 2002:

(d) the Reserve Bank.

(2) A client money or property service is not a regulated client money or property service if the person giving the service—

(a) is one of the following:

(i) an employee (as defined in section 2 of the State Sector Act 1988):

(ii) a chief executive in any part of the State services (as defined in section 2 of the State Sector Act 1988):

(iii) the holder of, or a person performing the duties of, an office established by an enactment:

(iv) a person performing duties that are expressly conferred on him or her by virtue of his or her office by an enactment; and

(b) gives the service in the ordinary course of carrying on that occupation, or exercising the powers or performing the functions of that office or position.

Compare: 2008 No 91 s 77C(1)(b)

Schedule 5 clause 20: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

21 Other exclusions

(1) A client money or property service is not a regulated client money or property service if—

(a) the person giving the service is an operator of a designated FMI and the service is provided by the receipt, holding, payment, or transfer of money or property in accordance with the designated FMI's rules; or

(b) the service is provided by a derivatives issuer in the ordinary course of acting as a derivatives issuer under a licence under Part 6; or

(c) the service is provided by an employer to an employee in connection with a financial product made available through the person's workplace.

(2) In subclause (1)(a),—

designated FMI and **operator** have the meanings given in section 5 of the Financial Market Infrastructures Act 2021

rules is to be read in accordance with section 35 of that Act.

Compare: 2008 No 91 s 77C(1)(c)–(e)

Schedule 5 clause 21: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 5 clause 21(1)(a): replaced, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

Schedule 5 clause 21(2): inserted, on 1 March 2024, by section 163(1) of the Financial Market Infrastructures Act 2021 (2021 No 13).

22 Prescribed circumstances

A client money or property service is not a regulated client money or property service if it is given in prescribed circumstances.

Compare: 2008 No 91 s 77C(1)(f)

Schedule 5 clause 22: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

23 Controlling owners, directors, etc

If an exemption under clauses 19 to 22 applies to a person (**A**), it applies equally to any controlling owner, director, employee, agent, or other person

acting in the course of, and for the purposes of, A's business to the same extent as it applies to A.

Compare: 2008 No 91 s 77C(2)

Schedule 5 clause 23: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Part 4
Code of professional conduct and code committee

Schedule 5 Part 4: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Code committee

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

24 Establishment of code committee

The code committee is established.

Compare: 2008 No 91 s 81

Schedule 5 clause 24: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

25 Functions of code committee

(1) The functions of the code committee are—

(a) to produce a draft code for approval by the Minister; and

(b) to review the code from time to time; and

(c) to recommend to the Minister changes to the code as the code committee thinks fit; and

(d) to liaise from time to time with the following about the development, review, and implementation of the code:

(i) the Minister:

(ii) the FMA:

(iii) persons that the committee reasonably considers to be representative of the financial advice industry:

(iv) persons that the committee reasonably considers to be representative of consumers of financial advice.

(2) *See* clause 80 of Schedule 4 (which provides for the code to be prepared before the commencement of clauses 32 to 39).

Compare: 2008 No 91 s 82

Schedule 5 clause 25: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

26 Membership of code committee

(1) The Minister may at any time—

(a) appoint a member of the code committee; or

(b) discharge a member of the code committee (and the Minister may exercise this power entirely at his or her discretion).

(2) The appointment of a member of the code committee must be for a specified period, but a member may be discharged under subclause (1)(b) before his or her period of appointment has expired.

(3) The code committee must have not less than 7 members and not more than 11 members, and the Minister must ensure that the number of current members does not fall below 7.

(4) A member of the code committee may resign by notice in writing to the Minister.

Compare: 2008 No 91 s 83(1)–(3), (5)

Schedule 5 clause 26: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

27 Who Minister must appoint

The Minister must appoint as members of the code committee—

(a) 2 persons who, in the Minister's opinion, are each qualified for appointment because of their knowledge of, and skills and experience in relation to, consumer affairs or dispute resolution; and

(b) other persons who, in the Minister's opinion, are each qualified for appointment because of—

(i) their individual knowledge of, and skills and experience in relation to, the provision of financial services; or

(ii) any other appropriate knowledge, skills, and experience that will assist the code committee to perform its functions.

Compare: 2008 No 91 s 83(4)

Schedule 5 clause 27: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

28 Chairperson

(1) The Minister must appoint one of the members of the code committee as the chairperson of the code committee.

(2) The Minister may, at any time and entirely at his or her discretion, discharge the chairperson from that office (whether or not the Minister also discharges the chairperson as a member of the code committee).

(3) The chairperson may, without resigning as a member of the code committee, resign from that office by notice in writing to the Minister.

Compare: 2008 No 91 s 84(2)

Schedule 5 clause 28: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

29 Proceedings of code committee

(1) Meetings of the code committee must be held at the times and places as the code committee or the chairperson from time to time decides.

(2) The quorum for a meeting of the code committee is 5 members.

(3) Every question before the code committee must be determined by a majority of the votes of the members present or otherwise.

(4) The chairperson of the code committee has a deliberative vote and, in the case of an equality of votes, a casting vote.

(5) The code committee may regulate its own procedure.

(6) Subclause (5) applies except as provided in this clause and in any regulations.

Compare: 2008 No 91 s 84

Schedule 5 clause 29: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

30 Certain provisions of Crown Entities Act 2004 apply to members of code committee

Clause 15 of Schedule 5 of the Crown Entities Act 2004 applies as if the code committee were a committee appointed under clause 14 of that schedule and with all other necessary modifications.

Compare: 2008 No 91 s 85

Schedule 5 clause 30: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

31 Funding of code committee

The FMA must fund the code committee.

Compare: 2008 No 91 s 85A

Schedule 5 clause 31: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Code of professional conduct for financial advice services

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

32 Content of code

(1) The code must provide for minimum standards of professional conduct that must be demonstrated by persons who give regulated financial advice, including minimum standards—

(a) of general competence, knowledge, and skills that apply to all persons that give financial advice; and

(b) of particular competence, knowledge, and skills that apply in respect of different types of financial advice, financial advice products, or other circumstances; and

(c) of ethical behaviour; and

(d) of conduct and client care.

(2) However, the code must not include limits on the types of financial advice that may be given by a person because the person is a nominated representative.

(3) The code—

(a) must identify different types of financial advice, financial advice products, or other circumstances for the purposes of subclause (1)(b); and

(b) may specify different standards under subclause (1), or other matters under subclause (4), in respect of different types of financial advice, financial advice products, or other circumstances.

(4) The code must also provide for—

(a) continuing professional development for persons that give financial advice, including specification of minimum requirements that a person must meet for the purpose of continuing professional development:

(b) the way or ways in which a person may demonstrate their competence, knowledge, and skill.

(5) Subclause (4)(b) does not prevent a person from demonstrating their competence, knowledge, or skill in a way that is not specifically set out in the code.

(6) The code may limit or modify standards, or provide for separate standards, for the duration of 1 or more periods of transition.

Compare: 2008 No 91 s 86

Schedule 5 clause 32: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

33 Code committee must prepare code

(1) The code committee must prepare a draft code.

(2) In preparing the draft code, the code committee must—

(a) have regard to—

(i) the main and additional purposes of this Act specified in sections 3 and 4 and the additional purpose set out in section 431B; and

(ii) New Zealand's international obligations that are relevant to financial markets or financial advice services; and

(b) prepare an impact analysis document that describes how the proposed standards may contribute to, or detract from, the matters referred to in paragraph (a) (including a description of any trade-offs between those impacts); and

(c) consult the FMA; and

(d) consult any persons that it reasonably considers to be representative of the financial advice industry; and

(e) consult any persons that it reasonably considers to be representative of consumers of financial advice; and

(f) allow an opportunity for any person affected by the code to make submissions to the code committee.

(3) The code committee must publish, on an Internet site maintained by or on behalf of the committee,—

(a) the impact analysis document prepared under subclause (2)(b); and

(b) a summary of the submissions made to the committee; and

(c) a brief response to those submissions.

Compare: 2008 No 91 s 87

Schedule 5 clause 33: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

34 Minister's approval of draft code

(1) After receiving the draft code prepared by the code committee, the Minister must—

(a) approve it; or

(b) decline to approve it.

(2) The Minister must approve the draft code prepared by the code committee if the Minister is satisfied that—

(a) a majority of the code committee has approved the draft code; and

(b) the code committee has complied with its obligations under clause 33(2); and

(c) the draft code is consistent with this Act.

(3) A failure by the code committee to comply with its obligations under clause 33(2) or (3) does not affect the validity of the code.

(4) This clause is subject to clause 35.

Compare: 2008 No 91 s 88

Schedule 5 clause 34: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

35 Minister may require revision or consultation

(1) If the Minister is not satisfied as to a matter specified in clause 34(2),—

(a) the Minister must direct the code committee to revise the draft code or undertake further consultation or receive submissions, as necessary; and

(b) the code committee must as soon as practicable comply with the Minister's direction.

(2) If the Minister considers that the draft code is not consistent with this Act, the Minister must, in directing the code committee to revise the draft code, state in what respects the Minister considers that the draft code is not consistent.

Compare: 2008 No 91 s 89

Schedule 5 clause 35: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

36 Minister's approval of revised draft code

(1) After receiving a revised draft code, the Minister must—

(a) approve the revised draft code; or

(b) if the Minister considers that the draft code requires further amendment to be consistent with this Act,—

(i) make any amendments to the draft code that the Minister considers necessary; and

(ii) approve the draft code as amended.

(2) Before making any amendment to the draft code under this clause, the Minister must—

(a) advise the code committee of the Minister's intention to do so; and

(b) give the code committee a reasonable opportunity to make submissions on the matter; and

(c) consider those submissions.

Compare: 2008 No 91 s 90

Schedule 5 clause 36: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

37 Consultation with FMA

The Minister must consult the FMA before exercising a power under clauses 34 to 36.

Schedule 5 clause 37: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

38 Deadline for Minister's approval of draft code

(1) The Minister must approve the draft code within 90 days after receiving the draft code or, if clause 35 applies, within 90 days after receiving the revised draft code.

(2) If the Minister does not do so, the Minister is taken to have approved the code at the expiry of those 90 days.

Compare: 2008 No 91 s 91

Schedule 5 clause 38: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Schedule 5 clause 38(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

39 Commencement and status of code

(1) The code may specify different commencement dates for different provisions, but no date may be before the 28th day after the date on which the code is published in accordance with subsection (2).

(2) The approved code is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(3) That Act applies as if—

(a) the Minister were the maker of the code; and

(b) the code were made by the Minister approving it.

Compare: 2008 No 91 s 94

Legislation Act 2019 requirements for secondary legislation referred to in subclause (2)		
Publication	The maker must: • notify it in the *Gazette* • publish it on a website maintained by, or on behalf of, the code committee	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 5 clause 39: replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Changes to code

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

40 Changes to code

(1) A change to the code may be proposed by—

(a) the code committee; or

(b) the FMA; or

(c) the Minister.

(2) The procedure for changing the code is the same as the procedure set out in clauses 32 to 39 for the preparation and approval of the draft code.

(3) However, the code committee must, in relation to a proposed change,—

(a) prepare an impact analysis document that describes how the proposed change may contribute to, or detract from, the matters referred to in clause 33(2)(a) (including a description of any trade-offs between those impacts); and

(b) publish the document on an Internet site maintained by or on behalf of the code committee.

Compare: 2008 No 91 s 95

Schedule 5 clause 40: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Part 5
Complaints and disciplinary proceedings

Schedule 5 Part 5: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Who deals with complaints

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

41 Complaint about financial adviser

(1) Any person may complain to the FMA about the conduct of another person (**A**) in A's capacity as a financial adviser.

(2) The FMA may initiate a complaint.

Compare: 2008 No 91 s 96

Schedule 5 clause 41: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

42 Investigation by FMA

(1) After receiving or initiating a complaint, the FMA may investigate the complaint if it is practicable to do so having regard to—

(a) the nature and number of complaints to be investigated; and

(b) the FMA's regulatory priorities as reflected in its statement of intent; and

(c) the FMA's available resources.

(2) The FMA need not investigate a complaint if it is satisfied that—

(a) the complaint is vexatious; or

(b) the complaint is not sufficiently serious to warrant investigation.

Compare: 2008 No 91 s 97

Schedule 5 clause 42: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Complaint about financial adviser

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

43 FMA may refer complaint to disciplinary committee

When the FMA has, under clause 42, investigated a complaint about a financial adviser, it may refer the complaint to the disciplinary committee if, in the

FMA's opinion, the conduct complained of amounts to a contravention of a provision of subpart 5A of Part 6 (for example, a contravention of the code).

Compare: 2008 No 91 s 98

Schedule 5 clause 43: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

44 Disciplinary committee must give notice of complaint

The disciplinary committee must serve a written notice of the complaint on a financial adviser if—

(a) the FMA refers a complaint about the financial adviser to the disciplinary committee; and

(b) the disciplinary committee considers that a hearing is necessary to deal with the complaint.

Compare: 2008 No 91 s 99

Schedule 5 clause 44: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

45 Content of notice of complaint

The disciplinary committee's notice of complaint to the financial adviser concerned (**A**) must—

(a) state that the disciplinary committee considers that there is reason to believe that A may have contravened a provision of subpart 5A of Part 6; and

(b) contain the particulars that are reasonably necessary to clearly inform A of the nature of the contravention; and

(c) specify a date, which must not be sooner than 20 working days after the date of service of the notice, on which the disciplinary committee intends to hear the matter.

Compare: 2008 No 91 s 100

Schedule 5 clause 45: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

46 Disciplinary committee may discipline financial adviser

(1) In this clause,—

A is the person who is the subject of the complaint

FSP Act means the Financial Service Providers (Registration and Dispute Resolution) Act 2008

Registrar means the Registrar of Financial Service Providers.

(2) The disciplinary committee may take any of the actions referred to in subclause (3) if it is satisfied that A has contravened a provision of subpart 5A of Part 6.

(3) The disciplinary committee may do 1 or more of the following:

(a) direct the Registrar to deregister A under the FSP Act:

(b) direct the Registrar to—

(i) deregister A under the FSP Act; and

(ii) prevent A from being reregistered for a financial advice service under the FSP Act for a specified period:

(c) direct the Registrar to suspend A's registration under the FSP Act for a period of no more than 12 months or until A meets specified conditions relating to the registration (but, in any case, not for a period of more than 12 months):

(d) censure A:

(e) order that A may, for a period not exceeding 3 years, give regulated financial advice for the purposes of a financial advice service only subject to any conditions as to employment, engagement, supervision, or otherwise that the disciplinary committee may specify in the order:

(f) order that A undertake training specified in the order:

(g) order that A must pay a fine not exceeding $10,000:

(h) take no action.

(4) Deregistration or suspension of A's registration under the FSP Act under subclause (3) relates only to A's registration for a financial advice service.

(5) *See* sections 532A to 532C, which provide for an appeal from a decision under this clause.

Compare: 2008 No 91 s 101(1)–(3)

Schedule 5 clause 46: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

47 Other matters relating to discipline

(1) No fine may be imposed under clause 46(3)(g) in relation to an act or omission that constitutes—

(a) an offence for which A has been convicted by a court; or

(b) a contravention, or an involvement in a contravention, for which A has been ordered to pay a pecuniary penalty.

(2) In any case to which clause 46(2) applies, the disciplinary committee may order that A must pay costs and expenses of, and incidental to, the investigation by the FMA and the disciplinary committee's proceeding.

(3) The disciplinary committee may publicly notify the action in any way that it thinks fit.

(4) Clause 46 and this clause apply whether or not A is a financial adviser at the time of the complaint, the investigation, or the disciplinary proceeding.

Compare: 2008 No 91 s 101(4)–(7)

Schedule 5 clause 47: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

48 Reasonable opportunity to be heard

The disciplinary committee must not take any of the actions specified in clause 46(3) unless it has first—

(a) informed A in writing as to why it may take any of those actions; and

(b) given A or his or her representative a reasonable opportunity to make written submissions and be heard on the question.

Compare: 2008 No 91 s 102

Schedule 5 clause 48: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Disciplinary committee

Heading: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

49 Minister must establish disciplinary committee

The Minister must establish a disciplinary committee.

Compare: 2008 No 91 s 103

Schedule 5 clause 49: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

50 Functions of disciplinary committee

The functions of the disciplinary committee are to—

(a) conduct disciplinary proceedings arising out of complaints regarding financial advisers referred to it by the FMA; and

(b) take any of the actions referred to in clause 46(3) as a result of disciplinary proceedings.

Compare: 2008 No 91 s 104

Schedule 5 clause 50: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

51 Membership of disciplinary committee

(1) The Minister may at any time appoint a member of the disciplinary committee.

(2) The appointment of a member of the disciplinary committee must be for a specified period.

(3) The Minister must appoint one of the members of the disciplinary committee as the chairperson of the disciplinary committee.

(4) The disciplinary committee must have not less than 4 members and not more than 6 members including the chairperson, and the Minister must ensure that the number of current members does not fall below 4.

(5) Apart from the chairperson, the Minister must appoint as members of the disciplinary committee—

(a) at least 1 member who works or has worked in the financial advice industry; and

(b) at least 1 member who is independent of the financial advice industry; and

(c) at least 1 member who is a lawyer with not less than 7 years' legal experience.

Compare: 2008 No 91 s 105

Schedule 5 clause 51: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

52 Ceasing to be member of disciplinary committee

(1) A person ceases to be a member of the disciplinary committee if—

(a) the person is convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer; or

(b) the person dies or is, under the Insolvency Act 2006, adjudged bankrupt; or

(c) the Minister, by notice to the person, removes the person from the committee on the grounds of inability to perform the functions of the office, or for neglect of duty, or misconduct, proved to the satisfaction of the Minister; or

(d) the person resigns by notice in writing to the Minister.

(2) A person who ceases to be a member of the disciplinary committee is not entitled to compensation.

(3) A member continues in office despite the expiry of his or her period of appointment until—

(a) the member is reappointed; or

(b) the member's successor is appointed; or

(c) the member is notified that a replacement member will not be appointed; or

(d) the member vacates or is removed from office.

(4) A member who continues in office for any period under subclause (3), unless he or she was removed from office, may act as a member during that period for the purpose of—

(a) completing any proceedings partly heard by the committee before the expiry of his or her period of appointment:

(b) hearing any other proceedings.

(5) A member who has resigned, or whose successor is appointed or who will not be replaced (unless he or she was removed from office), may continue in office for the purpose of completing any proceedings that are partly or wholly heard.

Schedule 5 clause 52: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

53 Delegation by chairperson of disciplinary committee

(1) The chairperson of the disciplinary committee may delegate any of the chairperson's functions, duties, and powers to a member of the disciplinary committee who the chairperson is satisfied has the necessary capability, skills, and experience to perform or exercise those functions, duties, and powers.

(2) A delegation—

(a) must be in writing; and

(b) must be to a named person; and

(c) is revocable at any time, in writing; and

(d) does not prevent the performance or exercise of a function, duty, or power by the chairperson.

(3) A person to whom any functions, duties, or powers are delegated may perform or exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Schedule 5 clause 53: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

54 Proceedings of disciplinary committee

(1) Meetings of the disciplinary committee must be held at the times and places as the disciplinary committee or the chairperson from time to time decides.

(2) The quorum for a meeting of the disciplinary committee is 3 members.

(3) Every question before the disciplinary committee must be determined by a majority of the votes of the members present at the meeting.

(4) The chairperson of the disciplinary committee has a deliberative vote and, in the case of an equality of votes, a casting vote.

(5) The disciplinary committee may regulate its own procedure.

(6) Subclause (5) applies except as provided in this clause and in any regulations.

Compare: 2008 No 91 s 106

Schedule 5 clause 54: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

55 Disciplinary committee may hear evidence in disciplinary proceeding

(1) In a disciplinary proceeding, the disciplinary committee may—

(a) receive evidence on oath (and for that purpose a member of the disciplinary committee may administer an oath):

(b) permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath, statutory declaration, or otherwise.

(2) A hearing before the disciplinary committee in a disciplinary proceeding is a judicial proceeding for the purposes of sections 108 and 109 of the Crimes Act 1961.

Compare: 2008 No 91 s 107

Schedule 5 clause 55: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

56 Determining proceeding on papers

(1) Despite anything in this Act to the contrary, the disciplinary committee may determine a disciplinary proceeding on the papers if the committee considers it appropriate.

(2) Before doing so, the disciplinary committee must give the parties a reasonable opportunity to comment on whether the proceeding should be dealt with in that manner.

Schedule 5 clause 56: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

57 Issuing of summons by disciplinary committee

(1) For the purposes of any matter before the disciplinary committee, the committee may, on the application of any party to a proceeding, or on the committee's own initiative, issue a summons to any person requiring that person to attend a hearing before the disciplinary committee and to do all or any of the following:

(a) give evidence:

(b) give evidence under oath:

(c) produce documents, things, or information, or any specified documents, things, or information, in the possession or control of that person, that are relevant to the hearing.

(2) The summons must be in writing, be signed by a relevant person, and state—

(a) the date and time when, and the place where, the person must attend; and

(b) the documents, things, or information that the person is required to bring and produce to the disciplinary committee; and

(c) the entitlement to be tendered or paid a sum in respect of witnesses' fees, allowances, and expenses; and

(d) the penalty for failing to attend.

(3) In subclause (2), **relevant person** means—

(a) the chairperson of the disciplinary committee; or

(b) any officer of the disciplinary committee purporting to act by the direction or with the authority of the chairperson.

(4) The disciplinary committee may require that any documents, things, or information produced under this clause be verified by oath, statutory declaration, or otherwise.

Compare: 2008 No 91 s 109

Schedule 5 clause 57: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

58 Serving of summons

(1) A summons may be served—

(a) by delivering it personally to the person summoned; or

(b) by posting it to the person summoned at that person's usual place of residence; or

(c) by emailing it to the person summoned at an email address that is used by the person.

(2) A summons must,—

(a) if it is to be served under subclause (1)(a), be served at least 48 hours before the attendance of the witness is required:

(b) if it is to be served under subclause (1)(b) or (c), be served at least 10 days before the attendance of the witness is required.

(3) A summons that is posted is treated as having been served when it would have been delivered in the ordinary course of post.

(4) In the absence of proof to the contrary, a summons that is emailed to a person must be treated as served on the person on the second working day after the date on which it is emailed, and, in proving that the summons was emailed, it is sufficient to prove that the summons was properly addressed and sent to the email address.

Compare: 2008 No 91 s 110

Schedule 5 clause 58: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

59 Failure to comply with summons to attend disciplinary committee hearing

(1) A person summoned under clause 57 commits an offence if he or she, without reasonable excuse,—

(a) fails to attend in accordance with the summons; or

(b) does not give evidence when required to do so; or

(c) does not give evidence under oath when required to do so; or

(d) does not answer any question that is lawfully asked by the disciplinary committee; or

(e) does not provide any documents, things, or information that the summons requires the person to provide.

(2) A person who commits an offence under this clause is liable on conviction to a fine not exceeding $5,000.

(3) A person must not be convicted of an offence under this clause if witnesses' fees, allowances, and expenses to which the person is entitled under clause 60 have not been paid or tendered to him or her.

Compare: 2008 No 91 s 137

Schedule 5 clause 59: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

60 Witnesses' fees, allowances, and expenses

(1) A witness appearing before the disciplinary committee under a summons is entitled to be paid witnesses' fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Criminal Procedure Act 2011.

(2) The person requiring attendance of the witness must pay or tender to the witness the fees, allowances, and expenses at the time the summons is served or at some other reasonable time before the hearing.

Compare: 2008 No 91 s 111

Schedule 5 clause 60: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

61 Protection for witnesses and counsel in disciplinary proceeding

(1) Every person who does the following things has the same privileges as witnesses have in a court:

(a) provides documents, things, or information to the disciplinary committee in relation to a disciplinary matter; or

(b) gives evidence or answers questions at a hearing of the disciplinary committee in relation to a disciplinary matter.

(2) Every counsel appearing before the disciplinary committee in relation to a disciplinary matter has the same privileges and immunities as counsel in a court.

Compare: 2008 No 91 s 112

Schedule 5 clause 61: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

62 Contempt of disciplinary committee

(1) Every person commits an offence and is liable on conviction to a fine not exceeding $5,000 who—

(a) assaults, threatens, intimidates, or wilfully insults any person, being a member of the disciplinary committee, an officer of the disciplinary committee, or any witness, during that person's sitting or attendance in

the disciplinary committee, or in going to or returning from the disciplinary committee; or

(b) wilfully interrupts or obstructs a proceeding of the disciplinary committee or otherwise misbehaves in the disciplinary committee; or

(c) wilfully and without lawful excuse disobeys any order or direction of the disciplinary committee in the course of the hearing of any proceeding; or

(d) contravenes a condition of an order made by the disciplinary committee under clause 46(3)(e).

(2) A member of the disciplinary committee may order the exclusion from a sitting of the disciplinary committee of any person whose behaviour, in that member's opinion, constitutes an offence against subclause (1), whether or not that person is charged with the offence.

(3) Any constable may take the steps that are reasonably necessary to enforce the exclusion.

Schedule 5 clause 62: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

63 Certain provisions of Crown Entities Act 2004 apply to members of disciplinary committee

Clause 15 of Schedule 5 of the Crown Entities Act 2004 applies as if the disciplinary committee were a committee appointed under clause 14 of that schedule and with all other necessary modifications.

Compare: 2008 No 91 s 113

Schedule 5 clause 63: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

64 Funding of disciplinary committee

The FMA must fund the disciplinary committee.

Compare: 2008 No 91 s 113A

Schedule 5 clause 64: inserted, on 15 March 2021, by section 60 of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Notes

1 General

This is a consolidation of the Financial Markets Conduct Act 2013 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Local Government (System Improvements) Amendment Act 2026 (2026 No 64): section 47

Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29): Part 2

Regulatory Systems (Economic Development) Amendment Act 2025 (2025 No 11): Part 9

Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47): sections 14(1) and (2), 17–19

Water Services Acts Repeal Act 2024 (2024 No 2): section 12(1)

Deposit Takers Act 2023 (2023 No 35): section 487

Financial Markets (Conduct of Institutions) Amendment Act 2022 (2022 No 36): Part 1

Companies Office Registers Funding Validation Act 2022 (2022 No 27): section 11

Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (2021 No 39): Parts 1, 2

Reserve Bank of New Zealand Act 2021 (2021 No 31): section 300(1)

Financial Market Infrastructures Act 2021 (2021 No 13): section 163(1) (as amended by Reserve Bank of New Zealand Act 2021 (2021 No 31))

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Privacy Act 2020 (2020 No 31): section 217

Partnership Law Act 2019 (2019 No 53): section 86

Kāinga Ora–Homes and Communities Act 2019 (2019 No 50): section 33

Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46): Part 2

Trusts Act 2019 (2019 No 38): sections 161, 166–175

Financial Services Legislation Amendment Act 2019 (2019 No 8): Part 1

Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12): Part 1 subpart 7

Contract and Commercial Law Act 2017 (2017 No 5): section 347

Financial Markets Legislation (Phase 3) Commencement Order 2015 (LI 2015/252)

Financial Reporting Amendment Act 2014 (2014 No 64): section 17

Financial Markets Legislation (Phase 2) Commencement Order 2014 (LI 2014/325): clause 2

Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51): clause 2

Non-bank Deposit Takers Act 2013 (2013 No 104): section 102

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): sections 46–61

Financial Markets Conduct Act 2013 (2013 No 69): section 547(3), section 548(3), Schedule 4 clauses 27(5), 28(5), 90(3)

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2026