

Financial Markets (Regulators and KiwiSaver) Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Financial Markets (Regulators and KiwiSaver) Bill and recommends that it be passed with the amendments shown.

Introduction

The bill would establish a new market conduct regulator—the Financial Markets Authority (FMA)—which would have responsibilities regarding the regulation of the financial sector. The FMA would take over the existing functions of the Securities Commission, which would be disestablished. It would also assume the responsibilities of the Government Actuary and some of the regulatory functions of the Registrar of Companies, and have a role in the oversight of registered securities exchanges. The bill would also make changes to improve the governance arrangements for KiwiSaver schemes and to provide for better disclosure of fund performance information.

Our commentary covers the major amendments we recommend to the bill. Minor and technical amendments are not discussed.

Part 1—Preliminary

Interpretation

We recommend a broader definition of “financial markets participant” to ensure that some participants would not be inadvertently excluded from the FMA’s jurisdiction. Under the bill as introduced, for example, some dual-listed issuers with allotted securities in another country might not fall within the jurisdiction of the FMA. Under the proposed amendments, the definition in the bill of “financial service provider” would be unnecessary, and we recommend its removal.

As discussed below in relation to Part 6, subpart 3, we recommend the removal of references to a Rulings Panel.

Part 2—Financial Markets Authority

Objective and functions

While retaining the FMA’s objective of promoting fair, efficient, transparent financial markets, we recommend adding a reference to facilitating the development of such markets. This amended objective would more explicitly acknowledge the FMA’s function of “facilitating the confident and informed participation of businesses, investors, and consumers in financial markets”, as set out in paragraph 9(1)(c). We also recommend that this function be given more prominence by moving its position within the clause to paragraph 9(1)(aa). We see the facilitation of capital market activity as a fundamental purpose of securities law, and note that such a concept is likely to be reflected in the purpose statement of any new securities legislation that might result from the current review of securities law.

Labour Party members would have preferred that the bill contained a set of enforceable principles to guide market participants, similar to those which apply to financial market businesses in the United Kingdom.

Financial literacy

We considered whether it was appropriate to give the FMA an educational function, as conferred by subparagraph 9(1)(c)(iv), as we consider it desirable that responsibility for financial literacy education be consolidated in one agency, and we note that the Re-

retirement Commissioner already works in this area. We acknowledge the FMA's role in providing guidance to investors, but believe this should be supplementary to the work of a principal educational body, such as the Retirement Commissioner. Accordingly, we recommend amending subparagraph 9(1)(c)(iv)—which, as recommended above, would become subparagraph 9(1)(aa)(iv)—to reflect the FMA's supplementary role regarding investment literacy by removing the express example referring to education about investing.

Part 3—Powers of the Financial Markets Authority

Subpart 1—Information-gathering powers

We recommend that the FMA's search powers in clause 29 and Schedule 2 be amended to take into account the Search and Surveillance Bill as reported to the House by the Justice and Electoral Committee. The main change would be to empower the FMA to search a thing or a vehicle, in addition to a place as currently provided. This would allow for the fact that financial records are often stored in computer files, and dubious financial schemes have been known to operate out of vehicles. It would also allow remote-access searches of computer systems.

Subpart 2—Information-sharing powers

We recommend amending clause 30 to provide for the FMA to share information and documents with an overseas regulator, provided the FMA was satisfied that there were appropriate protections to maintain confidentiality.

Subpart 3—Power to exercise a person's right of action

Subpart 3 of Part 3 of the bill would give the FMA the power to exercise a person's right to bring a civil action against a financial market participant, or to take over existing proceedings, where it considered it to be in the public interest to do so. We considered carefully whether it was appropriate to include such a significant new power in this bill, in the light of submissions both for and against. Alternatives were to leave the issue to be developed further as part of the more comprehensive review of securities laws, or as part of a broader class actions bill.

While we would also like to see progress on a class actions bill, we concluded that the power should be retained here, as it would form an important addition to the FMA's regulatory toolbox, and bolster its ability to serve the public interest. We see the power as valuable to allow the FMA to pursue inappropriate behaviour, by means including representative actions.

We do, however, recommend several changes to the bill to fine-tune the power and strengthen the rights of individuals. We note that the power is similar to that available to the market conduct regulator in Australia, the Australian Securities and Investment Commission. The changes we propose would further align the two regimes.

Under the bill as introduced (clauses 35 to 37), the person whose right of action was being exercised would have an opportunity to object to the FMA commencing proceedings on their behalf, in which case the FMA would need to obtain the leave of the High Court before exercising the power. We recommend amendments to strengthen the rights of individuals. New subclause 36(2A) would prevent the High Court from overriding the objections of individuals. This would mean that individuals would be free to opt out and take their own action if they chose. The time allowed for objections would also be lengthened from 10 to 30 working days, although the FMA would be able to act earlier if the person consented (new subclause 35(1A)). If an individual had already commenced proceedings, the FMA could take over those proceedings only with consent (subclause 35(2)).

It should be noted that the new restrictions on the High Court's power to grant leave would apply only to individuals. If the party was a company or other body corporate, the High Court could still grant leave under clause 36. This would allow the FMA, for example, to pursue negligent directors of a company on behalf of its shareholders. We consider this an important power to deal with breaches of directors' duties.

As introduced, clause 38 would require a person on whose behalf the FMA took a civil action to meet part or all of the costs of the action, if the High Court considered this fair and reasonable. We consider it more appropriate for the FMA to seek to recover costs from the defendant in the course of the litigation. Accordingly, we recommend amending this clause so that the FMA would have no absolute right to obtain costs from a person, but the court could order the FMA's actual costs to be paid out of any damages awarded.

We also recommend the insertion of new clause 40A requiring the FMA to consult a person on whose behalf it was taking action, unless doing so might prejudice its ability to conduct the proceedings.

We also recommend the insertion of new clauses 41A and 41B. Clause 41A provides that if the FMA applies for the leave of the High Court to commence proceedings, the date on which the application is filed must, for the purposes of the Limitation Act 2010, be treated as the date on which the claim is filed. New clause 41B makes it clear that the FMA's exercise of its power under this subpart would not be limited to acts, omissions, or civil proceedings that occurred after commencement, but would also extend to prior causes of action or proceedings.

Subpart 4—Warning power

We recommend amending clause 47 to extend the FMA's warning power in order to target the practice of unsolicited "low-ball" offers to holders of securities. As introduced, the bill would enable the FMA to require a warning about a low-ball offer to be published on the internet site of the person making the offer. As those who make such offers generally do not have websites, we recommend providing for the FMA to require its warning to be included in the offer documents of any person, or their associates, making the offer. We believe this would be effective, as the investor would receive the FMA's warning at the time they considered the offer.

Our proposed amendment would also require the FMA to give public notice on its internet site of its reasons for making, varying, or revoking such an order, together with the terms of the order and any other information the FMA considered relevant. Such information might include the current market value of the securities, to enable investors to make informed decisions.

Further changes relating to low-ball offers are also recommended for inclusion in Part 6 of the bill, which would amend the Securities Markets Act 1988.

Subpart 5—Confidentiality of information and documents

We recommend the inclusion of new clauses 55A and 55B dealing with the confidentiality of information and documents provided to the FMA. New subclause 55A(3) would insert provisions restricting

the publication or disclosure of information except in prescribed circumstances.

Part 4—Miscellaneous provisions

Subpart 1—Ability to fund the FMA through levies

Clause 63 provides for a levy, to be prescribed by regulations, on financial market participants in order to contribute to funding the work of the FMA. Similar provisions for levy funding are provided for in the Financial Advisers Act 2008, the Securities Trustees and Statutory Supervisors Bill, and the Auditor Regulation and External Reporting Bill.

We recommend consolidating such provisions into this bill by repealing the levy power in section 153 of the Financial Advisers Act 2008 and omitting the proposed levy powers in the Securities Trustees and Statutory Supervisors Bill, and the Auditor Regulation and External Reporting Bill. New subclause 63(5A) would also make it clear that multiple levies might be imposed.

We consider it appropriate that those who benefit from the FMA's activities and oversight should contribute to its funding, and note that the FMA's functions under other legislation may benefit people other than participants in financial markets. Accordingly, we recommend amending clause 63 so that levies could also be imposed on classes of legal persons registered or incorporated under the Acts listed in Part 2 of Schedule 1, with provision for different levies to be imposed for different classes of person. While this would potentially broaden the coverage of the levies to include building and friendly societies as well as New Zealand and overseas companies registered under the Companies Act 1993, this would not mean that all such people would be subject to a levy, nor would they be levied at the same rate. Consultation would be required on the details of levy funding before regulations were made, and the Government would need to ensure that there was a sufficient link between the FMA functions being funded and those being levied.

We understand that the Government is about to start consultations to determine the initial levy. Accordingly, we recommend the insertion of subclause 64(1A) and amendment of subclause 64(3) to require the FMA to consult affected parties on its requests for levy funding

for the financial year starting 1 July 2013, including consultation on the proportion of its costs that should be met through levies.

Subpart 2—Disestablishment of the Government Actuary

Clauses 72 to 74 of the bill would disestablish the office of the Government Actuary and subsume his powers into the FMA. We recommend the insertion of a transitional provision as new clause 74A to allow the Government Actuary to continue in office for the purposes of the Government Superannuation Fund until 30 September 2011, to complete his current work.

Part 5—Amendments to Securities Act 1978

Part 5 of the bill would amend the Securities Act 1978, which regulates offers of securities to the public.

Securities registration process

Clause 97 of the bill would substitute new sections 42 to 44 of the Securities Act, providing for a new registration process for securities offers. This would replace the current informal pre-registration vetting process (in which the Registrar of Companies considers each prospectus for compliance with the Act prior to registration) with a process based on post-registration consideration of prospectuses by the FMA during a “consideration period”.

We propose various amendments to this clause to improve its workability in the light of concern that the proposed process might increase costs and uncertainty, and might not work well in the case of continuously issued securities, for which issuers normally renew prospectuses annually. Difficulties were also envisaged where a prospectus was amended. The main changes we propose (new sections 43D, 43E and 43EA) are to include a statutory exemption from the consideration period for continuous issuers, and to clarify that allotment could continue under a valid registered prospectus while a replacement prospectus was subject to scrutiny.

We also recommend including a transitional provision, new clause 124A, allowing the FMA to carry out the sort of pre-registration scrutiny of prospectuses currently undertaken by the Registrar of Companies, on either a formal or informal basis, to smooth the tran-

sition for issuers from the old prospectus registration regime to the new regime.

Part 6—Amendments to Securities Markets Act 1988

Part 6 of the bill would amend the Securities Markets Act 1988, which regulates trading in securities, for example through registered exchanges (currently only NZX Limited). We have examined this part of the bill carefully in the light of some submissions which were strongly critical of the proposals. Two of the main concerns were that the bill's changes would increase uncertainty, and would disadvantage the NZX relative to overseas exchanges. While the amendments we recommend to this part of the bill appear extensive, they would in effect pare it back to certain core provisions, which are closely connected with the establishment of the FMA, its role, and its interactions with regulated exchanges, removing others which are not urgent at this stage, and which could be considered in greater detail later as the market continues to develop.

We recommend that the bill retain the following core provisions:

- *Rule approval processes:* clause 134, inserting new subpart 1A of Part 2B, would shift the processes for approval of rules governing registered exchanges from the Minister to the FMA
- *Power for the FMA to request rules:* clause 134, inserting new section 36M
- *Oversight regime:* clause 138, inserting new sections 36Y to 36YF

We have, however, recommended various adjustments to these and the existing provisions of the Securities Markets Act 1988. In particular, we recommend the following changes to adjust the nature and scale of its regulation to cater for different types of securities and futures markets:

- to focus registration and oversight on particular markets (rather than the body corporate in general)
- to add new criteria to the power to exempt markets, and extend this power to Part 2, (new clause 132B amending section 36E)
- to add a new criterion for the consideration of market rules (under new section 36FA, clause 133).

Market integrity regulations

We recommend that the provisions relating to market integrity regulations (clause 134, inserting new sections 36P, 36Q, and 36R) be removed from the bill. We consider that such reserve regulation-making powers are not urgent, and could be considered further in the review of securities laws. Their inclusion in the bill at this stage would, however, increase uncertainty.

Real-time data feed

For purposes of clarification as to how the FMA would receive real-time data for the purposes of surveillance of activity in regulated markets, we recommend new clause 139A (inserting new section 36ZFA) to ensure that the FMA would have access to real-time trading and other information.

Overseas and futures exchanges

We recommend various amendments to clauses 148 and 149 to address issues of equivalence between the NZX and overseas and futures exchanges.

Securities Markets Rulings Panel

We consider it unnecessary at this stage to establish a statutory Securities Markets Rulings Panel to replace the NZX's existing New Zealand Markets Disciplinary Tribunal, and therefore recommend the amendment of clause 151.

However, to ensure that the tribunal is a sufficiently independent adjudicative body, we recommend the insertion of new paragraph 36Y(b)(iv) (inserted by clause 138).

Unsolicited offers

We recommend inserting a new regulation-making power to allow rules to be set for unsolicited offers to acquire securities (clause 158 inserting new sections 48DA to 48DC). These regulations could require offers to disclose the current market price of a quoted security or a fair estimate of the value of an unquoted security, require notice of the offer to be given to issuers and the FMA, and that a "pause period" apply during which no acceptance could be effective and no

transfer could be made, to allow investors who had received an unsolicited offer to reconsider any decision to accept the offer. In addition, we recommend new powers for the FMA to make restraining and other orders to secure compliance with these regulations (clause 151 inserting new sections 42EA and 42EB).

Part 7—Amendments to KiwiSaver Act 2006

We recommend numerous amendments to this part of the bill to improve the workability of provisions, and to clarify the roles and responsibilities of managers and trustees. The main ones involve shifting responsibility for various functions from the trustee to the manager to reflect the manager's primary role in the marketing and operation of non-restricted KiwiSaver schemes and regulatory compliance, and making various transitional provisions to give the schemes time to arrange compliance with the new regime.

We recommend several changes in clause 173, in particular, to amend new section 116C and to insert new sections 116E and 116F to set out the functions and liability of trustees and managers of KiwiSaver schemes within the KiwiSaver Act itself, rather than in the KiwiSaver rules in Schedule 1 of the Act. We consider this desirable to ensure that the trustee's supervisory functions and the manager's liability are statutory rather than implied into trust deeds. We note that this approach would be more consistent with the Unit Trusts Act 1960.

Duties of KiwiSaver trustees and managers

We recommend amending the duties of trustees and managers set out in clauses 1B and 1C of the KiwiSaver scheme rules (in Schedule 1 of the KiwiSaver Act), as inserted by clause 206 of the bill. The wording we propose would align these duties more closely with the provisions of the Trustee Act 1956 and equivalent Australian provisions, and would impose on the managers and trustees a duty to act in the best interests of the members of the scheme when exercising powers and performing duties. The following points should be noted in relation to these changes:

- The duty would not require a trustee or manager to consider the interests of each individual member of the scheme, but rather their collective interests.

- The duty would be consistent with powers of the trustee and manager to charge fees or to be indemnified under the trust deed, given that such powers are necessary to ensure the trustee and manager have sufficient resources and protection to carry out their duties in the best interests of the members of the scheme. The KiwiSaver Act recognises that reasonable fees are appropriate.
- Among the changes to clause 1B (of Schedule 1) of the KiwiSaver scheme rules, we recommend adjusting the standard of care applying to trustees, so that trustees are held to the standard of a prudent trustee of a KiwiSaver scheme.

Transitional provisions

We recommend changes to clauses 209 to 216 to facilitate the structural and documentation changes necessary to comply with the new regime and provide for other transitional matters. A grace period until 30 September 2012 would minimise compliance costs by allowing schemes to make the necessary changes as part of either their 2011 or 2012 prospectus renewal process.

New clause 216A also recommends including a transitional regulation-making power for the period until 31 December 2013.

Appendix

Committee process

The Financial Markets (Regulators and Kiwisaver) Bill was referred to the committee on 23 September 2010. The closing date for submissions was 10 November 2010. We received and considered 33 submissions from interested groups and individuals. We heard 21 submissions.

We received advice from the Ministry of Economic Development. The Regulations Review Committee reported to the committee on the powers contained in clauses 118, 120, 134, 148, and 157.

Committee membership

Hon Lianne Dalziel (Chairperson)

Hilary Calvert

David Clendon

Clare Curran

Te Ururoa Flavell

Melissa Lee

Peseta Sam Lotu-liga

Hon Nanaia Mahuta (until 9 February 2011)

Hon David Parker (from 9 February 2011)

Katrina Shanks

Jonathan Young

**Financial Markets (Regulators and
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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

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314

Amendments to replace references to Commissioner for Financial Advisers

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Markets (Regulators and KiwiSaver) Act **2010**.

2 Commencement

5

(1) **Section 1**, this section, **Part 1**, **subpart 1 of Part 4**, and **sections 117 to 119, 124, 158, and 205** 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 bringing different provisions into force on different dates. 10

(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 July 2013. 15

Part 1

Preliminary provisions

3 Purpose of Parts 1 to 4

The purpose of **Parts 1 to 4** is to— 20

(a) establish the Financial Markets Authority as an independent Crown entity for the purposes of section 7 of the Crown Entities Act 2004; and

(b) state the Financial Markets Authority's main objective and its functions; and 25

(c) provide for the Financial Markets Authority to have certain general information-gathering and enforcement powers; and

(d) provide for the disestablishment of the Securities Commission and of the office of the Government Actuary. 30

4 Interpretation

In **Parts 1 to 4**, unless the context otherwise requires,—
associate member means a member appointed under **section 11(1)**

chairperson means the chairperson of the board of the FMA
dealings in securities has the same meaning as in section 2(1)
of the Securities Markets Act 1988

document has the same meaning as in section 4 of the Evi-
dence Act 2006

5

financial markets—

- (a) means the financial markets in New Zealand; and
- (b) ~~includes markets in New Zealand for the provision of financial services~~

(b) includes—

10

(i) markets in New Zealand for the provision of fi-
nancial services; and

(ii) the capital markets in New Zealand

financial markets legislation means the Acts listed in **Sched-
ule 1** and the enactments made under those Acts

15

financial markets participant means any of the following:

- (a) ~~a financial service provider; and~~
- (b) ~~a controlling owner, director, or senior manager (within the meaning of section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008) of a financial service provider; and~~

20

- (c) a holding company, subsidiary, or other related com-
pany (within the meaning of sections 2(3) and 5 to 8 of
the Companies Act 1993) of a financial service provider

financial markets participant—

25

- (a) means a person who is, or is required to be, registered, licensed, appointed, or authorised under, or for the purposes of, any of the Acts listed in **Part 1 of Sched-
ule 1** or any of the enactments made under those Acts (or would be required to be so registered, licensed, ap-
pointed, or authorised but for an exemption granted or provided by or under any of those Acts); and

30

(b) includes any of the following:

- (i) a person who participates in an offer of securities to the public as an issuer or a promoter (within the meaning of those terms in section 2(1) of the Securities Act 1978);

35

- (ii) a person who acts, in respect of securities offered to the public, as a trustee, a unit trustee, a superannuation trustee, a statutory supervisor, a manager, an expert, or a qualified auditor (within the meaning of those terms in section 2(1) of the Securities Act 1978): 5
- (iii) a public issuer (within the meaning of section 2(1) of the Securities Markets Act 1988):
- (iv) an issuer within the meaning of section 4 of the Financial Reporting Act 1993; and 10
- (c) also includes any of the following:
- (i) a body corporate that is related to a person referred to in **paragraph (a) or (b)** (within the meaning of section 5B(2) of the Securities Markets Act 1988); or 15
- (ii) a director or senior manager of a person referred to in **paragraph (a) or (b)** (within the meaning of those terms in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 but applied even if the person referred to in those paragraphs is not a financial service provider); or 20
- (iii) a person who was previously a person referred to in any of **paragraphs (a), (b), or (c)(i) or (ii)**, in respect of any action, event, or circumstance while the person was such a person 25
- financial service** has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008
- financial service provider**— 30
- (a) means a person who is or is required to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008:
- (b) includes a person who participates in an offer of securities to the public as an issuer, a contributory mortgage broker, a trustee, a unit trustee, a superannuation trustee, a statutory supervisor, a promoter, or a manager within the meaning of those terms in section 2(1) of the Securities Act 1978 35

FMA means the Financial Markets Authority established by **Part 2**

law enforcement or regulatory agency means any of the following:

- (a) any department of State that, with the authority of the Prime Minister, is responsible for the administration of any part of the financial markets legislation: 5
- (b) the Commerce Commission:
- (c) the Director of the Serious Fraud Office:
- (d) the New Zealand Police: 10
- (e) the Registrar of Companies:
- (f) the Registrar of Financial Service Providers:
- (g) the Reserve Bank of New Zealand:
- (h) the Takeovers Panel

member— 15

- (a) means a member of the board of the FMA referred to in **section 10**; and
- (b) in the circumstances set out in **section 12**, includes an associate member

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 **Parts 1 to 4** 20

overseas regulator means a body in another country that performs functions that correspond with, or are similar to, any of those conferred on the FMA 25

Rulings Panel means the Securities Markets Rulings Panel established under **Part 3A** of the Securities Markets Act 1988. securities has the same meaning as in section 2D of the Securities Act 1978. 30

5 Act binds the Crown

This Act binds the Crown.

Part 2
Financial Markets Authority

Establishment of FMA

- 6 Financial Markets Authority established**
This section establishes the Financial Markets Authority. 5
- 7 FMA is Crown entity**
(1) The FMA is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
(2) The Crown Entities Act 2004 applies to the FMA except to the extent that this Act expressly provides otherwise. 10
- FMA's main objective and functions*
- 8 FMA's main objective**
~~The FMA's main objective is to promote fair, efficient, and transparent financial markets.~~
- 8 FMA's main objective** 15
The FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.
- 9 FMA's functions**
(1) The FMA's functions are as follows:
(aa) to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, including (without limitation) by— 20
(i) collecting and disseminating information or research about any matter relating to those markets:
(ii) issuing warnings, reports, or guidelines, or making comments, about any matter relating to those markets, financial markets participants, or other persons engaged in conduct relating to those markets (including in relation to 1 or more particular persons): 25
(iii) providing information about its functions, powers, and duties under this Act and other enactments (including promoting awareness by 30

- investors that all investments involve risks and that it is not the role of the FMA to remove those risks):
- (iv) providing, or facilitating the provision of, public information and education about any matter relating to those markets: 5
- (a) to perform and exercise the functions, powers, and duties conferred or imposed on it by or under the financial markets legislation and any other enactments:
- (b) to monitor compliance with, investigate conduct that constitutes or may constitute a contravention of, and enforce— 10
- (i) the Acts referred to in **Part 1 of Schedule 1** (and the enactments made under those Acts); and
- (ii) the Acts referred to in **Part 2 of Schedule 1** (and the enactments made under those Acts) to the extent that those Acts or other enactments apply, or otherwise relate, to financial markets participants: 15
- (c) to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, including (without limitation) by— 20
- (i) collecting and disseminating information or research about any matter relating to those markets:
- (ii) issuing warnings, reports, or guidelines, or making comments, about any matter relating to those markets or financial markets participants or other persons engaged in conduct that involves dealings in securities (including in relation to † or more particular persons): 25 30
- (iii) providing information about its functions, powers, and duties under this Act and other enactments (including promoting awareness by investors that all investments involve risks and that it is not the role of the FMA to remove those risks): 35
- (iv) providing, or facilitating the provision of, education about any matter relating to those markets (for example, education about investing):

- (d) to monitor, and conduct inquiries and investigations into any matter relating to, financial markets or the activities of financial markets participants or of other persons engaged in conduct ~~that involves dealings in securities relating to those markets:~~ 5
- (e) to keep under review the law and practices relating to financial markets, financial markets participants, and other persons engaged in conduct ~~that involves dealings in securities relating to those markets:~~
- (f) to co-operate with— 10
- (i) any other law enforcement or regulatory agency (including under **section 30**):
- (ii) overseas regulators (including under **section 30 or 31**).
- ~~(g) to provide administrative and support services to the Rulings Panel. 15~~
- (2) **Subsection (1)(a) and (b)** do not limit the functions, powers, and duties conferred or imposed on any other person in respect of financial markets legislation.
- (3) The fact that some other person has functions, powers, and duties in respect of financial markets legislation does not limit or restrict the FMA's functions, powers, and duties in respect of that legislation. 20
- (4) Except as expressly provided otherwise in this or any other Act, the FMA must act independently in performing its statutory functions and duties, and exercising its statutory powers, under— 25
- (a) this Act; and
- (b) any other Act that expressly provides for the functions, powers, or duties of the FMA (other than the Crown Entities Act 2004). 30
- Compare: 1978 No 103 s 10

Membership of board of FMA

10 Membership of board of FMA

The board of the FMA consists of not fewer than 5, and not more than 9, members. 35

Compare: 1978 No 103 s 11(1)

- 11 Associate members** 5
- (1) The Minister may appoint any person to be an associate member of the board of the FMA after consulting the chairperson.
- (2) The Minister may appoint no more than 5 associate members.
- (3) **Subsection (1)** applies despite section 28(1)(b) of the Crown Entities Act 2004.
- (4) An associate member may be appointed only in relation to a matter or a class of matters to be specified in the member's notice of appointment, and for the period, not exceeding 5 years, that is specified in that instrument. 10
- (5) An associate member may not be appointed as chairperson, deputy chairperson, or a temporary deputy chairperson under clause 5 of Schedule 5 of the Crown Entities Act 2004.
Compare: 1986 No 5 s 11(1)-(2), (6)
- 12 Associate member treated as member of board** 15
- (1) An associate member must be treated as being a member of the board of the FMA for the purposes of the performance or exercise of any function, duty, or power of a member of the board of the FMA under this Act or any other enactment.
- (2) Despite **subsection (1)**, an associate member may attend and vote only at a meeting of the FMA relating to the matter or class of matters specified in that member's notice of appointment (including a meeting relating to matters incidental to the matter or class of matters so specified). 20
- (3) Except where **section 11**, this section, or the context otherwise requires, a reference in this Act or in any other enactment to a member of the FMA must be construed as including a reference to an associate member. 25
Compare: 1986 No 5 s 11(3), (4)
- 13 Removal of associate members** 30
- (1) The Minister may remove any associate member from office on the same grounds and in the same manner as the Governor-General may remove a member under section 39 of the Crown Entities Act 2004.

- (2) **Subsection (1)** applies despite section 39(1) of the Crown Entities Act 2004.
Compare: 1986 No 5 s 13(2), (3)

Provisions relating to divisions

- 14 FMA may act by divisions** 5
- (1) The FMA or chairperson may determine that the powers of the FMA in relation to any matter or class of matters may be exercised by separate divisions of the FMA.
- (2) The FMA or chairperson may revoke or amend a determination made under **subsection (1)**. 10
- (3) Every determination (or revocation or amendment of a determination) must be recorded in writing and signed by 3 members or the chairperson.
- (4) The powers in this section are an exception to clause 14 of Schedule 5 of the Crown Entities Act 2004. 15
- (5) This section does not limit the power of the board of the FMA to delegate any of the functions or powers of the FMA or the board under section 73 of the Crown Entities Act 2004.
Compare: 1978 No 103 s 14B
- 15 Membership, chairperson, meetings, and resolutions of division** 20
- (1) Each division consists of the members who are assigned to it for the time being by the FMA or chairperson.
- (2) Each division must have at least 3 members.
- (3) If the members assigned to a division do not include the chairperson, the FMA or chairperson must nominate 1 of those members as chairperson of the division. 25
Compare: 1978 No 103 s 14C
- 16 Powers of division**
- (1) For the purposes of determining any matter or class of matters specified in a determination under **section 14**,— 30
- (a) the FMA consists of the division of the FMA specified in the determination; and
- (b) the powers of that division are not affected by any changes or vacancies in its membership. 35

- (2) A division of the FMA may exercise powers of the FMA even though another division of the FMA is exercising powers of the FMA at the same time.

Compare: 1978 No 103 s 14D

Provisions relating to meetings of FMA 5

17 Quorum for meetings of FMA

- (1) At any meeting of the FMA, the quorum necessary for the transaction of business is 3 members.

- (2) This section and **section 18** apply despite clause 9(1) of Schedule 5 of the Crown Entities Act 2004. 10

Compare: 1978 No 103 s 15(5), (6)

18 Completion of proceedings where member unable to attend meeting

- (1) This section applies if— 15

(a) a meeting of the FMA with 3 or more members commences any proceeding, inquiry, investigation, or the transaction of other business; and

(b) the number of those members able to attend any subsequent meeting is reduced to 2 as a result of illness, accident, or other unavoidable cause, or the expiration of a member's term, or the resignation or removal from office of a member. 20

- (2) Despite **section 17(1)**, the remaining 2 members of the FMA constitute a quorum for the purposes of completing the proceeding, inquiry, investigation, or transaction of business. 25

- (3) At a meeting of the FMA at which those 2 members are present, each of those members has a deliberative vote and, in the event of an equality of votes, the presiding member has a casting vote.

- (4) This section applies whether or not a division of the FMA is acting. 30

Compare: 1978 No 103 s 15A

19 Assent to resolution without meeting

- (1) A resolution in writing signed, or assented to in writing (whether sent by post, delivery, or electronic communication), 35

by 3 members of the FMA is as valid and effectual as if it had been passed at a meeting of the FMA duly called and constituted.

- (2) This section applies despite clause 13(1) of Schedule 5 of the Crown Entities Act 2004. 5
Compare: 1978 No 103 s 16

Miscellaneous matters

20 Minister may request that FMA inquire and report

The Minister may, by notice to the FMA, request that the FMA inquire into, and report on, any matter relating to the financial markets ~~or financial markets participants~~, financial markets participants, or other persons engaged in conduct relating to those markets. 10

21 Provisions relating to Government Superannuation Fund

- (1) Despite anything in this Act, any person who, immediately before becoming a member or an employee of the FMA, is a contributor to the Government Superannuation Fund under Part 2 of the Government Superannuation Fund Act 1956 must be treated, for the purposes of that Act, as being employed in the Government service so long as he or she continues to be a member or an employee of the FMA. 15 20
- (2) The Government Superannuation Fund Act 1956 applies to a person referred to in **subsection (1)** in all respects as if his or her service as a member or an employee of the FMA were Government service. 25
- (3) Nothing in this section entitles any person referred to in **subsection (1)** to become a contributor to the Government Superannuation Fund after he or she has once ceased to be a contributor.
- (4) **Subsection (3)** is subject to the Government Superannuation Fund Act 1956. 30
- (5) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with this section, to a person who is in the service of the FMA (whether as a member or an employee) and who is a contributor to the Government Super- 35

annuation Fund, **controlling authority**, in relation to the person, means the FMA.

Compare: 1978 No 103 s 22(2)–(4)

- 22 Protection from liability for FMA and members and employees** 5
- (1) The FMA is not liable for anything it may do or fail to do in the course of the performance or exercise or intended performance or exercise of its functions, powers, or duties, unless it is shown that it acted in bad faith or without reasonable care.
- (2) No member or employee of the FMA, nor any delegate of the FMA, is liable for anything that person may do or say or fail to do or say in the course of the operations of the FMA, unless it is shown ~~by the FMA~~ that the person acted in bad faith. 10
- ~~(3) Section 59(3) of the Crown Entities Act 2004 (which provides that a statutory entity may bring an action against a member for breach of an individual duty) does not apply, unless it is shown that the person acted in bad faith.~~ 15
- (4) Nothing in **subsections (1) and (2)** applies in respect of proceedings for—
- (a) an offence against section 78, 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or 20
- (b) the offence of conspiring to commit an offence against any of those sections of the Crimes Act 1961; or
- (c) the offence of attempting to commit an offence against any of those sections of the Crimes Act 1961. 25
- (5) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.
- (6) This section contains an exception to section 121 of the Crown Entities Act 2004. 30
- (7) This section is subject to **clauses 29 and 30 of Schedule 2** (which provide for immunities in respect of entry or search powers). 35
- Compare: 1978 No 103 s 28(1)–(5B)

- 23 FMA’s warnings, reports, guidelines, or comments protected by qualified privilege**
 For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any warning, report, guideline, or comment issued or made by the FMA in the course of the performance or intended performance of its functions must be treated as an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.
 Compare: 1978 No 103 s 28(7); 1986 No 5 s 106(10) 5
- 24 Evidence of orders and decisions of FMA** 10
 In any proceeding under this Act or any other enactment, a certificate purporting to be signed by the chairperson and certifying that an order or a decision described in, or a copy of which is attached to, the certificate was made by the FMA on a date specified in the certificate is sufficient evidence, until the contrary is proved, that the order or decision was so made by the FMA. 15
 Compare: 1978 No 103 s 29
- Part 3**
- General information-gathering and enforcement powers** 20
- Subpart 1—General information-gathering powers
- Power to obtain information, documents, and evidence* 25
- 25 FMA may require person to supply information, produce documents, or give evidence**
- (1) If the FMA considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act or any provision of the financial markets legislation, the FMA may, by written notice served on any person, require the person— 30
- (a) to supply to the FMA, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or 35

- (b) to produce to the FMA, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or 5
- (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or 10
- (d) to appear before the FMA, or a specified person, at a time and place specified in the notice to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice.
- (2) The FMA may also exercise its powers under **subsection (1)** for the purposes of complying with the request of an overseas regulator under **section 31** or otherwise co-operating with an overseas regulator. 15
- (3) Information supplied in response to a notice under **subsection (1)(a)** must be— 20
- (a) given in writing; and
- (b) signed in the manner specified in the notice.
- (4) If a document is produced in response to a notice under **subsection (1)**, the FMA, or the person to whom the document is produced, may— 25
- (a) inspect and make records of that document; and
- (b) take copies of the document or of extracts from the document.
- (5) In this section and **sections 26 and 27**, **specified person** means— 30
- (a) a member or an employee of the FMA; or
- (b) another person to whom the board of the FMA has delegated the power to receive the relevant evidence (being a person that the FMA is satisfied is suitably qualified or trained, or is a member of a class of persons who are 35
- (6) **Subpart 5** contains miscellaneous provisions relating to the powers in this subpart.

Compare: 1978 No 103 ss 67, 68, 69D; 1986 No 5 s 98

26 Powers of FMA to receive evidence

- (1) The FMA may receive evidence through a specified person, or any 2 or more specified persons.
- (2) The FMA may receive in evidence, whether admissible in a court of law or not, any statement, document, information, or matter that,—
- (a) in the opinion of the FMA or the specified person who is receiving it, may assist the FMA in dealing effectively with any matter before it; or
- (b) the FMA may receive under **section 31**. 10
- Compare: 1978 No 103 ss 69B(1), 69BA

27 How evidence may be given

- (1) The FMA may receive evidence—
- (a) given on oath:
- (b) given not on oath: 15
- (c) if the specified person who is receiving the evidence permits it, given by a written statement:
- (d) if the specified person who is receiving the evidence permits it, given by a written statement verified on oath:
- (e) given by audio-visual communication, if the FMA and the person giving the evidence agree. 20
- (2) A specified person may administer an oath for the purpose of a person giving evidence on oath.
- Compare: 1978 No 103 s 69C; 1986 No 5 s 99(2)–(4)

28 Witnesses' expenses 25

- (1) If a person has appeared as a witness (whether or not under a notice under **section 25**), the FMA may, if it thinks fit, order any sum to be paid to that witness for his or her expenses.
- (2) That sum must not exceed the amount that would be payable to the witness if his or her attendance had been as a witness for the Crown in a criminal case in accordance with regulations for the time being in force for the payment of witnesses for the Crown in criminal cases. 30
- Compare: 1978 No 103 s 69E; 1986 No 5 s 99(5)

*Power to enter and search place, vehicle, or
other thing***29 Power to enter and search place, vehicle, or other thing**

- (1) The FMA may authorise a specified person to enter and search a place, vehicle, or other thing for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of any provision of the financial markets legislation if the FMA is satisfied that there are reasonable grounds—
- (a) to suspect that person has engaged in or is engaging in conduct that constitutes or may constitute such a contravention; and
- (b) to believe that the search will find evidential material in or on or part of the place, vehicle, or thing.
- (2) A specified person authorised under **subsection (1)** may enter and search the place, vehicle, or other thing if—
- (a) the occupier of the place consents or the person in charge of the vehicle or thing consents (as the case may be); or
- (b) the specified person obtains a warrant under **subsection (3)**.
- (3) A Judge of the High Court or a District Court Judge may issue a search warrant in relation to a place, vehicle, or other thing, on application by a specified person authorised under **subsection (1)**, if the Judge is satisfied that there are reasonable grounds—
- (a) to suspect that a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of any provision of the financial markets legislation; and
- (b) to believe that the search will find evidential material in or on or part of the place, vehicle, or thing specified in the application.
- (4) In this section and **Schedule 2**,—
- evidential material** means evidence or any other item, tangible or intangible, of relevance to the purpose referred to in **subsection (1)**

specified person means—

- (a) an employee of the FMA; or
- (b) any other person that the FMA is satisfied is suitably qualified or trained, or is a member of a class of persons who are suitably qualified or trained, to act under this section 5

thing includes an intangible thing (for example, an email address or access information to an Internet data storage facility)

vehicle means any conveyance that is capable of being moved under a person's control, whether or not the conveyance is used for the carriage of persons or goods, and includes a motor vehicle, aircraft, train, ship, or bicycle. 10

- (5) **Schedule 2** applies for the purposes of this section.

Subpart 2—Sharing information and documents 15

Power to share information and documents with other law enforcement or regulatory agencies and overseas regulators

30 Sharing of information and documents with law enforcement or regulatory agencies and overseas regulators 20

- (1) The FMA may provide to a law enforcement or regulatory agency or an overseas regulator any information, or a copy of any document, that the FMA—
 - (a) holds in relation to the performance or exercise of the FMA's functions, powers, or duties under this Act or any other enactment; and 25
 - (b) ~~considers may assist the law enforcement or regulatory agency in the performance or exercise of the law enforcement or regulatory agency's functions, powers, or duties under any enactment.~~ 30
 - (b) considers may assist, as the case may be,—
 - (i) the law enforcement or regulatory agency in the performance or exercise of the law enforcement or regulatory agency's functions, powers, or duties under any enactment; or 35

- (ii) the overseas regulator in the performance or exercise of the overseas regulator's functions, powers, or duties under foreign law.
- (1A) However, the FMA may provide information, or a copy of a document, to an overseas regulator under this section only if the FMA is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993). 5
- (2) The FMA may use any information, or a copy of any document, provided to it by a law enforcement or regulatory agency under any enactment, or by an overseas regulator, in the FMA's performance or exercise of its functions, powers, or duties under this Act or any other enactment. 10
- (3) This section applies despite anything to the contrary in any contract, deed, or document. 15
Compare: 1978 No 103 ss 17A, 17B

Power to act on requests of overseas regulators

- 31 Power of FMA to act on requests of overseas regulators**
- (1) An overseas regulator may request the FMA to inquire into any matter related to the functions of that overseas regulator. 20
- (2) The FMA may obtain information, documents, or evidence that, in the FMA's opinion, is likely to assist the FMA in complying with that request by— 25
- (a) exercising its powers under **section 25** or authorising a person under **section 48** to exercise powers under **section 25(1)(a) to (c)**; or
- (b) exercising its powers to receive evidence.
- (3) If the powers under **section 25** are exercised for the purposes of complying with that request or otherwise co-operating with an overseas regulator, that fact must be specified in the notice that is served under **section 25**. 30
- (4) The FMA may transmit the information, documents, or evidence obtained by it to the overseas regulator in the manner that the FMA thinks fit. 35
Compare: 1978 No 103 s 69F

32 FMA’s consideration of requests

- (1) The FMA may comply with a request under **section 31** only if the FMA is satisfied that—
- (a) compliance will not substantially affect the performance of its other functions; and 5
 - (b) appropriate protections are or will be in place for the purpose of maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993); and 10
 - (c) it is appropriate to do so after taking into account any matters the FMA thinks relevant.
- (2) The matters the FMA may take into account under **subsection (1)** include, without limitation,—
- (a) whether the FMA is likely to be able to obtain the requested information, documents, or evidence: 15
 - (b) the cost to the FMA of complying with the request:
 - (c) whether the overseas regulator could more conveniently have the request satisfied by another source:
 - (d) the extent to which the functions of the overseas regulator correspond with the functions of the FMA: 20
 - (e) whether the overseas regulator would be likely to comply with a similar request made by the FMA and whether any arrangement with the overseas regulator to that effect exists: 25
 - (f) whether, in the FMA’s opinion, it would be more appropriate for the request to be dealt with under the Mutual Assistance in Criminal Matters Act 1992.

Compare: 1978 No 103 s 69G

Conditions 30

33 Conditions that may be imposed on providing information, documents, or evidence to other agencies or regulators

- (1) The FMA may impose any conditions in relation to providing information, documents, or evidence to a law enforcement or regulatory agency or an overseas regulator (whether in compliance with a request or otherwise). 35

- (2) The FMA must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- (3) ~~The conditions~~Conditions imposed under **subsection (1)** may include, without limitation, conditions relating to— 5
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
 - (b) the storing of, the use of, or access to anything provided:
 - (c) the copying, returning, or disposing of copies of documents provided: 10
 - (d) payment of the costs incurred by the FMA in providing anything or in generally complying with a request.

Compare: 1978 No 103 s 69H

Subpart 3—FMA may exercise person’s
right of action 15

34 FMA may exercise person’s right of action

- (1) If, as a result of an inquiry or investigation carried out by the FMA, the FMA considers that it is in the public interest for it to do so, the FMA may, in accordance with this subpart,— 20
- (a) exercise the right of action that a person (**person A**) has against a ~~specified person~~ person who is or has been a financial markets participant by commencing and controlling specified proceedings against the ~~specified person~~ person who is or has been a financial markets participant; or 25
 - (b) take over specified proceedings that have been commenced by a person (**person A**) against a ~~specified person~~ person who is or has been a financial markets participant for the purpose of continuing the proceedings. 30
- (2) ~~In this subpart,—~~
- specified person** means any of the following:
- (a) ~~any person who is or has been a financial markets participant;~~
 - (b) ~~any person who is or has acted as a qualified auditor under the Securities Act 1978;~~ 35

- (c) any person referred to in section 57(1) of the Securities Act 1978 (which relates to statements made by experts)
- specified proceedings** means any of the following kinds of proceedings:
- (a) civil proceedings (within the meaning of section 2 of the Judicature Act 1908) under any financial markets legislation: 5
- (b) proceedings seeking damages or other relief for fraud, negligence, default, breach of duty, or other misconduct, committed in connection with a matter to which the inquiry or investigation referred to in **subsection (1)** related: 10
- (2) In this subpart, **specified proceedings** means any of the following kinds of proceedings:
- (a) proceedings under, or in respect of, any financial markets legislation (other than criminal proceedings): 15
- (b) proceedings seeking damages or other relief for fraud, negligence, default, breach of duty, or other misconduct, committed in connection with a matter to which the inquiry or investigation referred to in **subsection (1)** related. 20
- (3) In exercising a power under this section, the FMA must act in the public interest, but (subject to that duty) may take into account the interests of—
- (a) person A; and 25
- (b) the shareholders, members, and creditors of person A; and
- (c) if person A is an issuer, any security holders of securities issued by person A.
- (3A) In **subsection (3)(c)**, **issuer** and **security holders** have the same meaning as in section 2(1) of the Securities Act 1978. 30
- (4) The FMA must, when considering whether exercising a power under this section is in the public interest, have regard to—
- (a) its main objective under **section 8**; and
- (b) the likely effect of the proceedings on the future conduct of specified persons financial markets participants in connection with the financial markets; and 35
- (c) whether exercising the powers is an efficient and effective use of the FMA's resources; and

- (d) the extent to which the proceedings involve matters of general commercial significance or importance to the financial markets; and
- (e) the likelihood of person A commencing the proceedings (if those proceedings have not yet been commenced) and diligently continuing the proceedings; and 5
- (f) any other matters it considers relevant.

35 Requirements for FMA exercising person's right of action

- (1) The FMA may commence proceedings under **section 34(1)(a)** without the leave of the High Court only if— 10
 - (a) person A has not yet commenced proceedings in respect of the matter; and
 - (b) the FMA serves written notice on person A of its intention to commence proceedings; and
 - (c) within ~~10~~ 30 working days of the FMA giving that notice, person A does not— 15
 - (i) commence proceedings; or
 - (ii) give written notice to the FMA that it objects to the FMA commencing the proceedings ~~or controlling the conduct of the proceedings.~~ 20
- (1A) However, the FMA may commence proceedings under **section 34(1)(a)** before the 30-working-day period referred to in **subsection (1)(c)** expires (without the leave of the High Court) if person A gives written notice to the FMA that he, she, or it consents to the FMA commencing the proceedings. 25
- ~~(2)~~ ~~The FMA must not exercise the power under **section 34(1)(b)** without the leave of the High Court.~~
- (2) The FMA may exercise a power under **section 34(1)(b)** only if—
 - (a) person A gives written notice to the FMA that he, she, or it consents to the FMA taking over the proceedings (in which case the High Court may, on an application from the FMA, make an order under **section 39** to facilitate the takeover); or 30
 - (b) the leave of the High Court is given under **section 36.** 35

36 High Court may grant leave in certain circumstances

- (1) The FMA may, with the leave of the High Court,—

- (a) commence proceedings under **section 34(1)(a)** if person A objects under **section 35(1)(c)(ii)**; or
 - (b) take over proceedings under **section 34(1)(b)** if proceedings have been commenced by person A.
- (2) The High Court must give leave if it is satisfied that it is in the public interest for— 5
- (a) the FMA to exercise a power under **section 34(1)(a) or (b)** (as the case may be); and
 - (b) the FMA, rather than person A, to control the conduct of the proceedings. 10
- (2A) Despite **subsections (1) and (2)**, if person A is an individual, this section does not apply (and, accordingly, the High Court may not give leave under this section).
- (3) The High Court must, when considering whether to give leave, have regard to— 15
- (a) whether person A intends to commence or diligently continue the proceedings (as the case may be); and
 - (b) the interests of the persons referred to in **section 34(3)**; and
 - (c) any other matters it considers relevant. 20

37 Procedural requirements for leave to exercise person’s right of action

- (1) The FMA must serve notice of an application for leave under **section 36** on person A (unless the High Court orders otherwise). 25
- (2) In relation to that application for leave, person A—
- (a) may appear and be heard; and
 - (b) must, if person A appears, inform the High Court whether person A intends to commence or continue proceedings. 30

38 Costs of proceedings to be met by person

The High Court must, on the application of the FMA, order that the whole or part of the reasonable costs of commencing or taking over the proceedings under this subpart and in conducting those proceedings (including any costs relating to any settlement, compromise, or discontinuance approved under 35

section 41) must be met by person A if the High Court considers that it would be fair and reasonable for person A to bear those costs.

39 Powers of High Court for proceedings exercising person's right of action

- (1) The High Court may, on the application of the FMA, make any order it thinks fit in relation to proceedings commenced or taken over, or to be commenced or taken over, under this subpart, including (without limitation) an order—
- (a) authorising the FMA to control the conduct of the proceedings: 10
 - (b) giving directions for the conduct of the proceedings:
 - (c) requiring person A or the directors of person A to provide information or assistance in relation to the proceedings: 15
 - (ca) directing that any amount ordered to be paid by a defendant in the proceedings must be applied first to pay, in whole or in part, the FMA's actual costs in commencing or taking over the proceedings under this subpart and in conducting those proceedings: 20
 - (d) subject to paragraph (ca), directing that any amount ordered to be paid by a defendant in the proceedings must be paid, in whole or part, to any persons referred to in **section 34(3)(b) or (c)** instead of to person A.
- (2) If the FMA proposes to exercise a power under this subpart, the High Court may grant interim relief on the application of the FMA, whether or not the FMA has given the required notice, obtained leave, or satisfied any other requirements for its exercise of a power under this subpart. 25
- (3) The High Court may grant that interim relief on the conditions it thinks fit, including (without limitation) conditions as to the giving of notice or making of an application for leave. 30

40 Representative actions

- (1) If the FMA commences or takes over proceedings under this subpart in respect of person A, and other persons have the same or substantially the same interest in relation to the subject-matter of the proceedings as person A, the High Court may 35

appoint the FMA to represent all or some of the persons having the same or substantially the same interest.

- (2) The High Court may, for the purpose referred to in **subsection (1)**, make any order that it thinks fit, including (without limitation) an order— 5
- (a) as to the control and conduct of the proceedings:
 - (b) as to the costs of the proceedings:
 - (c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the persons represented. 10

40A FMA must consult person A

- (1) The FMA must, after commencing or taking over proceedings under this subpart in respect of person A, consult with person A as to the conduct of those proceedings— 15
- (a) as the FMA considers appropriate; or
 - (b) as otherwise directed by the High Court.
- (2) However, the FMA is not required to consult with person A, and the High Court must not direct the FMA to do so, if the FMA considers that consultation would materially prejudice the FMA in its ability to efficiently or effectively conduct the proceedings. 20

41 Proceedings must not be settled, compromised, or discontinued without approval

~~The FMA must not settle, compromise, or discontinue any proceedings that it has commenced or taken over under this subpart without the approval of the High Court.~~ 25

No proceedings commenced or taken over under this subpart may be settled, compromised, or discontinued without the approval of the High Court.

41A Special limitation provision 30

If the FMA applies for the leave of the High Court to commence proceedings under **section 34(1)(a)**, the date on which that application for leave is filed must, for the purposes of—

- (a) the Limitation Act 2010, be treated as being the date on which the claim is filed in relation to those proceedings: 35

- (b) the Limitation Act 1950 (as applied under section 59 of the Limitation Act 2010), be treated as being the date on which the proceedings are brought.

41B Transitional provisions

- (1) The FMA may exercise a power under **section 34** regardless of whether the date on which the relevant claim accrued, or the date of the act or omission on which the relevant claim is based, was before or after the commencement of this section. 5
- (2) In **subsection (1), claim** has the same meaning as in section 4 of the Limitation Act 2010. 10
- (3) To avoid doubt, if a person ceased to be a financial markets participant before the commencement of this section, the person must still be treated as being a person who has been a financial markets participant as referred to in **section 34**.
- (4) The FMA may exercise the power to take over specified proceedings under **section 34(1)(b)** regardless of whether those proceedings were commenced before or after the commencement of this section. 15

Subpart 4—Other powers

Power to make confidentiality orders 20

42 Power to make confidentiality orders

- (1) The FMA may, on its own initiative or on the application of any person, make an order prohibiting the publication or communication of any information, document, or evidence that is provided or obtained in connection with any inquiry, investigation, or other proceeding of the FMA under this Act or any other enactment. 25
- (2) The FMA may make an order under **subsection (1)** on the terms and conditions (if any) that it thinks fit.
- (3) An order under **subsection (1)** may be expressed to have effect— 30
- (a) from the commencement of any inquiry, investigation, or other proceeding of the FMA to the end of that inquiry, investigation, or proceeding; or
- (b) for any shorter period. 35

- (4) At the end of the inquiry, investigation, or proceeding, the Official Information Act 1982 applies and the Privacy Act 1993 apply to any information or document or evidence that was the subject of the order under **subsection (1)**.
Compare: 1978 No 103 s 69N

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43 Publication or disclosure with FMA’s consent

- (1) An order under **section 42** does not prohibit the publication or disclosure of any information, document, or evidence by a person if the publication or disclosure is with the FMA’s consent.
- (2) For the purposes of **subsection (1)**, the FMA’s consent must not be unreasonably withheld.
- (3) It is reasonable for the FMA to withhold its consent if it considers that the publication or disclosure of any information, document, or evidence would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of contraventions of the financial markets legislation.
- (4) **Subsection (3)** does not limit the circumstances in which it may be reasonable for the FMA to withhold its consent.

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Power to accept undertakings

44 FMA may accept undertakings

- (1) The FMA may accept a written undertaking given by, or on behalf of, a person in connection with a matter in relation to which the FMA is performing or exercising any of its functions, powers, or duties for the purposes of this Act or any other enactment.
- (2) The person may withdraw or vary the undertaking with the consent of the FMA.
Compare: 1978 No 103 s 69J

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45 Enforcement of undertakings

- (1) If the FMA considers that a person who has given an undertaking under **section 44** has breached a term of that undertaking, the FMA may apply to the High Court for an order under **subsection (2)**.

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- (2) The High Court may make any of the following orders if it is satisfied that the person has breached a term of the undertaking:
- (a) an order directing the person to comply with that term:
 - (b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach: 5
 - (c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss, injury, or damage as a result of the breach: 10
 - (d) an order for any consequential relief that the court thinks appropriate.
- (3) The High Court must, before making an order under **subsection (2)**, take into account— 15
- (a) the nature and extent of the breach of the term of the undertaking; and
 - (b) the nature and extent of any loss, injury, or damage suffered by a person as a result of the breach of the term of the undertaking; and 20
 - (c) the circumstances in which the breach of the term of the undertaking took place (including whether the breach was intentional, inadvertent, or caused by negligence); and
 - (d) any other matters that it considers relevant. 25
- Compare: 1978 No 103 s 69K

Power to state case for opinion of High Court

46 FMA may state case for opinion of High Court

- (1) The FMA may, at any time, state a case for the opinion of the High Court on a question of law arising in a matter before it under this Act or any other enactment. 30
- (2) The High Court may order the removal into the Court of Appeal of a case stated for the opinion of the High Court under this section.

- (3) The High Court or the Court of Appeal, as the case may be, must hear and determine the question, and remit the case with its opinion to the FMA.

Compare: 1978 No 103 s 69O

Power to require warning to be disclosed 5

47 FMA may require its warning to be disclosed

- (1) If the FMA has issued a warning about any matter relating to a relevant person, the FMA may, by written notice served on the relevant person, order the relevant person, or all or any associated persons of the relevant person, or both to do 1 or more of the following: 10

- (a) prominently disclose a copy of the warning on ~~an Internet site~~¹ or more Internet sites maintained by or on behalf of the relevant person or any of those associated persons: 15

- (b) in the case of a relevant person that is an issuer, ensure that—

- (i) a registered prospectus specified in the order is promptly amended so that it contains a copy of the warning in a prominent position: 20

- (ii) every investment statement of the kind that is specified in the order and that is distributed by or on behalf of the issuer contains a copy of the warning in a prominent position or is accompanied by a copy of the warning: 25

- (ba) ensure that any offer document of the kind that is specified in the order contains, or is amended to contain, a copy of the warning in a prominent position or is accompanied by a copy of the warning:

- (c) ensure that any document of the kind that is specified in the order and that is required by any provision of the financial markets legislation to be given by the relevant person, or any of those associated persons, to another person contains, or is amended to contain, a copy of the warning in a prominent position or is accompanied by a copy of the warning. 35

- (2) The FMA may make an order under **subsection (1)** on the terms and conditions (if any) that it thinks fit.

- (2A) If an order under **subsection (1)** extends to associated persons of the relevant person, 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 5
 - (b) the relevant person to provide a copy of the order to all or any of those associated persons.
- (2B) For the purpose of **subsection (2A)**, the order is not required to refer to the associated persons by name. 10
- (3) The FMA may exercise a power under **subsection (1)** only if—
- (aa) the FMA has had regard to whether exercising the power contributes to its function of promoting the confident and informed participation of businesses, investors, and consumers in the financial markets; and 15
 - (a) the FMA gives the relevant person at least 3 working days' written notice of the following matters before the FMA exercises the power:
 - (i) that the FMA may make an order under **subsection (1)**; and 20
 - (ii) the reasons why it is considering exercising that power; and
 - (b) the FMA gives the relevant person or the relevant person's representative an opportunity to make written submissions and to be heard on the matter within that notice period. 25
- (4) The FMA may—
- (a) vary an order made under **subsection (1)** in the same way as it may make the order: 30
 - (b) revoke an order made under **subsection (1)** if it is satisfied that it should not continue in force.
- (5) In this section,—
- (a) **relevant person** means—
 - (i) a person who is or has been a financial markets participant; or 35
 - (ii) a person who is or has acted as a qualified auditor under the Securities Act 1978; or

- (iii) a person who is or has engaged in conduct that involves dealings in securities:
- (ab) a person (A) is an **associated person** of a relevant person if—
 - (i) A and the relevant person are associated persons within the meaning of section 2(1) of the Securities Act 1978; or 5
 - (ii) A and the relevant person are acting jointly or in concert; or
 - (iii) A acts, or is accustomed to act, in accordance with the wishes of the relevant person; or 10
 - (iv) the relevant person is a director or senior manager of A (within the meaning of those terms in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 but applied even if A is not a financial service provider); or 15
 - (v) A and the relevant person are related bodies corporate (within the meaning of section 5B(2) of the Securities Markets Act 1988): 20
- (ac) **offer document** means a document that contains or refers to an offer to acquire or dispose of securities: 20
- (b) **issuer, registered prospectus, investment statement, offer, and distributed** have the same meaning as in section 2(1) of the Securities Act 1978. 25

47A FMA must give notice of orders

- (1) If the FMA makes an order under **section 47**,—
 - (a) it must, immediately after exercising the power, give notice on its Internet site of—
 - (i) the reasons for making the order; and 30
 - (ii) the terms and conditions of the order (if any); and
 - (iii) any other information the FMA thinks relevant in the circumstances; and
 - (b) it may give public notice by any other means of the matters in **paragraph (a)**; and 35
 - (c) it may notify any other person of the matters in **paragraph (a)**.
- (2) If the FMA varies or revokes an order under **section 47**,—

- (a) it must, immediately after exercising the power, give notice on its Internet site of—
- (i) the reasons for the variation or revocation; and
- (ii) the terms and conditions of the variation (if any);
and 5
- (iii) any other information the FMA thinks relevant in the circumstances; and
- (b) it may give public notice by any other means of the matters in **paragraph (a)**; and
- (c) it may notify any other person of the matters in **paragraph (a)**. 10

47B Offence of failing to comply with order

- (1) Every relevant person to whom an order under **section 47** applies commits an offence if the relevant person refuses or fails, without reasonable excuse, to comply with the order. 15
- (2) If an order under **section 47** applies to an associated person of a relevant person, the associated person commits an offence if the associated person—
- (a) knew, or ought reasonably to have known, that the order applied to the associated person; and 20
- (b) refuses or fails, without reasonable excuse, to comply with the order.
- (3) Every person who commits an offence against **subsection (1) or (2)** is liable on summary conviction to a fine not exceeding \$300,000. 25

Subpart 5—Miscellaneous provisions
relating to powers*FMA may authorise person to obtain
information or documents*

- 48 Power to authorise person to obtain information or documents** 30
- (1) The FMA may, in accordance with **section 49**, authorise any person to exercise any of the powers under **section 25(1)(a) to (c)** if exercising that power is for the purpose of—
- (a) this Act or any Act listed in **Schedule 1** or any enactment made under any of those Acts; or 35

- (b) complying with the request of an overseas regulator under **section 31** or otherwise co-operating with an overseas regulator.
- (2) An authorisation under **subsection (1)** may relate to a particular case, or a class or classes of cases, specified by the FMA. 5
- (3) For the purposes of **subsection (1)**, a notice served under **section 25(1)(a) to (c)** may require the information or documents (as the case may be) to be supplied or produced to a person authorised under **subsection (1)** (rather than to the FMA). 10
- (4) The fact that any person authorised by the FMA exercises, or attempts to exercise, any of the powers in **section 25(1)(a) to (c)** is sufficient evidence that the exercise of the power has been authorised by the FMA unless there is evidence to the contrary. 15
- (5) Section 73 of the Crown Entities Act 2004 does not limit this section.
- Compare: 1978 No 103 ss 67A, 68

49 Requirements for persons authorised to obtain information or documents 20

- (1) The FMA must not authorise a person under **section 48** unless the FMA is satisfied that the person is suitably qualified or trained, or the person is a member of a class of persons who are suitably qualified or trained, to exercise a power under **section 25(1)(a) to (c)**. 25
- (2) A person authorised by the FMA to exercise a power under **section 25(1)(a) to (c)** must, if requested at the time of exercising the power, produce evidence of that person's authority to exercise the power. 30
- Compare: 1978 No 103 s 68A

50 Disclosure of information or documents from exercise of powers

- (1) ~~On the direction of the FMA, a person who is authorised under **section 48** must give all information and documents, or specified information and documents, obtained in the course of~~ 35

exercising the powers under **section 25** to any person specified by the FMA for the purposes of—

- (a) this Act or the financial markets legislation; or
- (b) detecting and prosecuting offences against any enactment other than those that are referred to in **paragraph (a)**; but, in this case, the information and documents are not admissible in any criminal proceedings against the person from whom the information or documents were obtained or any person to whom the information or documents relate: 5 10
- (c) assisting the FMA to comply with the request of an overseas regulator under **section 31** or otherwise co-operate with an overseas regulator: 10

(2) The Minister may, by written notice, require the FMA to give a direction under **subsection (1)**; and the FMA must comply with that requirement. 15

(3) Section 115 of the Crown Entities Act 2004 does not apply to a requirement of the Minister under **subsection (2)**.

(4) This section is subject to **section 42** of this Act and to section 31X of the Takeovers Act 1993. 20
Compare: 1978 No 103 s 68B

51 Non-disclosure of information or documents from exercise of powers under section 25

A person authorised under **section 48** must not disclose to any other person any information or documents acquired in the course of exercising powers under **section 25** except— 25

- (a) in accordance with **section 50**; or
- (b) for the purposes of this Act or the financial markets legislation; or
- (c) in accordance with the Official Information Act 1982 or the Privacy Act 1993; or 30
- (d) in the course of criminal proceedings (but subject to the limitation in **section 50(1)(b)**):

Compare: 1978 No 103 s 68D

51 Non-disclosure of information or documents from exercise of powers under section 25 except in certain circumstances

- (1) A person authorised under **section 48** must not publish or disclose to any other person any information or documents acquired in the course of exercising powers under **section 25** except— 5
- (a) to the FMA; or
- (b) as directed by the FMA in accordance with **section 55A(3)**; or 10
- (c) in accordance with the Official Information Act 1982 or the Privacy Act 1993.
- (2) A person authorised under **section 48** who wilfully contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$200,000. 15

52 Protection from liability for persons exercising powers

Without limiting any other statutory protection from liability, no person is liable for any act done or omitted to be done by the person in the exercise or intended exercise of the person's powers under **section 25, 50, or 51** unless the person acts in bad faith. 20

Compare: 1978 No 103 s 68F

Privileges

53 Witnesses and counsel to have privileges of witnesses and counsel in court 25

- (1) Every person has the same privileges in relation to providing information and documents to, and answering questions before, the FMA, a member or an employee or a delegate of the FMA, or a person authorised under **section 48**, as witnesses have in proceedings before a court. 30
- (2) If a power under **section 25** or the FMA's power to receive evidence is exercised for the purposes of complying with a request from an overseas regulator under **section 31** or otherwise co-operating with an overseas regulator, the person in respect of whom the power is exercised has the privilege against self-incrimination referred to in section 60 of the Evidence Act 35

2006 applied with all necessary modifications as if the reference to an offence under New Zealand law were a reference to an offence under foreign law.

- (3) **Subsection (2)** does not limit any other privilege that the person may have. 5
- (4) Every person appearing as counsel before the FMA, or a member or an employee or a delegate of the FMA, has the same privileges as counsel have in proceedings before a court.
Compare: 1978 No 103 s 69S

Effect of proceedings on exercise of powers 10

54 Effect of proceedings

- (1) If a person commences a proceeding in any court in respect of the exercise of any powers conferred by **section 25**, until a final decision in relation to the proceeding is given,—
- (a) the powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and 15
- (b) no person is excused from fulfilling his or her obligations under that section by reason of the proceeding; and
- (c) ~~information that is obtained as a result of the exercise of powers to which the proceeding relates is not admissible as evidence in any criminal proceedings against the person to whom the information relates.~~ 20
- (2) However, an interim order may be made by the High Court overriding the effect of **subsection (1)**, but only if the High Court is satisfied that— 25
- (a) the applicant has established a prima facie case that the exercise of the power in question is unlawful; and
- (b) the applicant would suffer substantial harm from the exercise or discharge of the power or obligation; and 30
- (c) if the power or obligation is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in **subsection (3)**, or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and 35
- (d) the terms of that order do not unduly hinder or restrict the FMA in performing or exercising its functions.

powers, or duties under this Act or any provision of the financial markets legislation.

- (3) The remedies are as follows:
- (a) any remedy that the High Court may grant in making a final decision in relation to the proceeding (for example, a declaration): 5
 - (b) any damages that the applicant may be able to claim in concurrent or subsequent proceedings:
 - (c) any opportunity that the applicant may have, as defendant in a proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or obligation. 10

Compare: 1978 No 103 s 68I

55 Effect of final decision that exercise of powers under section 25 unlawful 15

In any case where a final decision given in a proceeding in respect of the exercise of powers conferred by **section 25** declares that the exercise of any powers conferred by that section is unlawful, to the extent to which the exercise of those powers is declared unlawful,— 20

- (a) the FMA must ensure that, as soon as practicable after the decision is given,—
 - (i) any information supplied under **section 25(1)** is destroyed:
 - (ii) any documents obtained under **section 25(1)** are returned to the person who previously had possession of those documents or previously had them under the person's control and any copies of those documents are destroyed: 25
 - (iii) any information derived from or based on that information or those documents is destroyed: 30
- (b) no information supplied under **section 25(1)**, and no documents obtained under **section 25(1)**, are admissible in evidence in any proceedings. 35

Compare: 1978 No 103 s 68K

*Confidentiality***55A Confidentiality of information and documents**

- (1) This section applies to the following information and documents:
- (a) information and documents supplied or disclosed to, or obtained by, the following under **subpart 1**:
 - (i) the FMA:
 - (ii) a person authorised under **section 48** (an **authorised person**):
 - (b) information derived from information and documents referred to in **paragraph (a)**.
- (2) However, this section does not apply to information and documents to which section 23 of the Corporations (Investigation and Management) Act 1989 applies.
- (3) The FMA must not publish or disclose, or direct an authorised person to publish or disclose, any information or document to which this section applies unless—
- (a) the information or document is available to the public under any enactment or is otherwise publicly available;
 - or
 - (b) the information is in a statistical or summary form; or
 - (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the FMA by this Act or any other enactment; or
 - (d) the publication or disclosure of the information or document is to a law enforcement or regulatory agency under **subpart 2**; or
 - (e) the publication or disclosure of the information or document is to an overseas regulator under **subpart 2** or otherwise for the purpose of assisting the FMA to co-operate with an overseas regulator; or
 - (f) the publication or disclosure of the information or document is to a person who the FMA is satisfied has a proper interest in receiving the information or document; or
 - (g) the publication or disclosure of the information or document is with the consent of the person to whom the in-

formation or document relates or of the person to whom the information or document is confidential.

- (4) The FMA must not publish or disclose, or direct an authorised person to publish or disclose, any information or document under **subsection (3)(f)** unless the FMA is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 1993). 5

55B Conditions relating to publication or disclosure of information or documents 10

- (1) The FMA may, by written notice to a person to whom any information or document is published or disclosed under **section 55A(3)(c), (f), or (g)**, impose any conditions in relation to the publication, disclosure, or use of the information or document by the person. 15
- (2) The FMA must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- (3) Conditions imposed under **subsection (1)** may include, without limitation, conditions relating to— 20
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
- (b) the storing of, the use of, or access to anything provided: 25
- (c) the copying, returning, or disposing of copies of documents provided.
- (4) A person who refuses or fails, without reasonable excuse, to comply with any conditions commits an offence and is liable on summary conviction to a fine not exceeding \$200,000. 30

Other offences

56 **Criminal liability for obstructing exercise of powers**

- (1) Every person commits an offence who—
- (a) refuses or fails, without reasonable excuse, to comply with a notice under **section 25**; or 35

- (b) in purported compliance with a notice under **section 25**, supplies information, or produces a document, or gives evidence, knowing it to be false or misleading; or
- (c) resists, obstructs, or delays a person acting under a warrant issued under **section 29**; or 5
- (d) having been required under a notice under **section 25(1)(d)** to appear before the FMA or a specified person referred to in that paragraph, for the purposes of any matter, without reasonable excuse—
- (i) refuses or fails to appear; or 10
- (ii) refuses to take an oath or affirmation as a witness; or
- (iii) refuses to answer any question; or
- (iv) refuses or fails to provide any document or information that the person is required to provide; or 15
- (e) deceives or attempts to deceive or knowingly misleads the FMA or a specified person referred to in **section 25(5)** in providing evidence to either of them; or
- (f) wilfully acts in contravention of any order made by the FMA under **section 42**. 20
- ~~(g) refuses or fails, without reasonable excuse, to comply with an order made by the FMA under **section 47**; or~~
- ~~(h) wilfully contravenes **section 51**.~~
- (2) A body corporate commits an offence under **subsection (1)(d)** if it is required to appear under **section 25(1)(d)** and, without reasonable excuse, an authorised representative on its behalf refuses or fails to appear, refuses to take an oath or affirmation as a witness, refuses to answer any question, or refuses or fails to provide any document or information that the body corporate is required to provide. 30
- (3) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$300,000.

Compare: 1978 No 103 s 59A

Other miscellaneous provisions

35

57 Notices

- (1) A notice served by the FMA for the purposes of this Part is sufficiently served if it is—

- (a) in writing; and
 - (b) signed by 1 or more of the members or by any person purporting to act with the authority of the FMA; and
 - (c) served in accordance with **section 58**.
- (2) All documents purporting to be signed by or on behalf of the FMA must, in all courts and in all proceedings under this Act, be treated as having been so signed with due authority unless the contrary is proved. 5
- Compare: 1986 No 5 s 101
- 58 Service of notices** 10
- (1) Any notice or other document required or authorised to be served on any person for the purposes of this Part may—
- (a) be served on an individual—
 - (i) by delivering it personally or by an agent (such as a courier) to the person; or 15
 - (ii) by sending it by post addressed to the person at the person’s usual or last known place of residence or business; or
 - (iii) by sending it by fax or email to the person’s fax number or email address provided by the person for the purpose; or 20
 - (iv) in any other manner a District Court Judge directs:
 - (b) be served on a company, within the meaning of the Companies Act 1993, in a manner provided for in section 388 of that Act: 25
 - (c) be served on an overseas company in a manner provided for in section 390 of the Companies Act 1993:
 - (d) be served on any other body corporate in a manner in which it could be served if the body corporate were a company within the meaning of the Companies Act 1993. 30
- (2) In the absence of proof to the contrary, a notice, document, or notification sent to a person in accordance with—
- (a) **subsection (1)(a)(ii)** must be treated as having been served on the person when it would have been delivered in the ordinary course of post; and, in proving the 35

- delivery, it is sufficient to prove that the letter was properly addressed and posted:
- (b) **subsection (1)(a)(iii)** must be treated as having been served on the person on the second working day after the day on which it is sent. 5
- (3) Section 392 of the Companies Act 1993 applies for the purposes of **subsection (1)(b) to (d)**.
- (4) If a person is absent from New Zealand, a notice served on the person's agent in New Zealand in accordance with **subsection (1)** must be treated as having been served on the person. 10
- (5) If a person has died, the notice may be served, in accordance with **subsection (1)**, on his or her personal representative.
- 59 Powers not limited**
- This Part does not limit any power that the FMA or any other person has under any other enactment. 15
- Compare: 1978 No 103 s 68C
- 60 Limitation on disclosure of information obtained in FMA's operations**
- (1) No court or other person may require a member or an employee of the FMA, any delegate of the FMA, any expert appointed by the FMA, any person authorised under **section 48**, or any other person present at a meeting of the FMA to— 20
- (a) give evidence in court or in any proceedings of a judicial nature of anything coming to his or her knowledge in connection with the operations of the FMA; or 25
- (b) make discovery of a document or produce a document for inspection in court or in any proceedings of a judicial nature if the document was provided or obtained in connection with the operations of the FMA.
- (2) **Subsection (1)** does not apply to— 30
- (a) proceedings in respect of the falsity of any testimony; or
- (b) proceedings to which the FMA is a party (including where the FMA is acting under **subpart 3**); or
- (c) proceedings in respect of— 35
- (i) an offence under **section 47B or 56**; or

- (ii) an offence against section 78, 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
 - (iii) the offence of conspiring to commit an offence against any of those sections of the Crimes Act 1961; or 5
 - (iv) the offence of attempting to commit an offence against any of those sections of the Crimes Act 1961.
- (3) This section does not limit the application of the Official Information Act 1982. 10
Compare: 1978 No 103 s 69V

- 61 Part does not limit Privacy Act 1993**
Nothing in this Part limits the Privacy Act 1993.

Part 4
Miscellaneous provisions 15

Subpart 1—Fees, charges, costs, and levies

- 62 Regulations relating to fees, charges, and costs**
- (1) The Governor-General may, by Order in Council, make regulations for either or both of the following purposes:
- (a) prescribing fees and charges that the FMA may require to be paid to it by a financial markets participant or the manner in which those fees and charges are to be calculated— 20
 - (i) in connection with the performance or exercise by the FMA of any function, power, or duty under this Act or any other enactment: 25
 - (ii) on an application to the FMA to perform or exercise any function, power, or duty under this Act or any other enactment:
 - (b) authorising the FMA to require payment by a financial markets participant of any costs incurred by the FMA in connection with an application referred to in **paragraph (a)(ii)**. 30
- (2) Any fee, charge, or cost payable to the FMA is recoverable by the FMA in any court of competent jurisdiction as a debt due to the FMA. 35

- 63 Levy of financial markets participants and other persons registered or incorporated under Acts referred to in Schedule 1**
- (1) Every person that is included in a prescribed class of financial markets participants must pay to the FMA on behalf of the Crown a levy prescribed by regulations. 5
- (1) Every person that is included in a prescribed class of specified persons must pay to the Crown, or a prescribed person on behalf of the Crown, a levy prescribed by regulations.
- (1A) In this section and **section 64**, **specified persons** means— 10
- (a) financial markets participants; and
- (b) any other person registered or incorporated, or who applies to be registered or incorporated, under an Act referred to in **Part 2 of Schedule 1**.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levy. 15
- (3) A levy must be prescribed on the basis that the following costs should be met fully out of the levy:
- (a) a portion of the costs of the FMA in performing or exercising its functions, powers, and duties under this Act and any other enactment, where the size of the portion to be met by levies under this Act is determined by the Minister; and 20
- (b) the costs of collecting the levy money. 25
- (4) A levy may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.
- (5) The regulations may— 30
- (a) specify the class or classes of ~~financial markets participants~~ specified persons that are required to pay a levy:
- (b) specify the amount of levies, or method of calculating or ascertaining the amount of levies:
- (c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs: 35
- (d) refund, or provide for refunds of, any over-recovery of the actual costs:

- (e) provide for the payment and collection of levies:
- (f) provide different levies for different classes of ~~financial markets participants~~ specified persons:
- (g) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced: 5
- (h) for the first financial year to which the levy applies, include in a levy amount or method the costs relating to establishing the FMA ~~or the Rulings Panel~~, disestablishing the Securities Commission, and the FMA ~~or the Rulings Panel~~ performing or exercising its functions, duties, and powers under any enactment: 10
- (i) require payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced. 15
- (5A) If a person is in 2 or more classes of specified persons in respect of which different levies have been prescribed, the person must pay each of those levies.
- (6) The levy for a financial year that starts after the FMA ~~or the Rulings Panel~~ begins to carry out any additional function under any enactment may recover the costs of performing that additional function, irrespective of the fact that the regulations may be made and come into effect after the start of the financial year. 20
25
- (7) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the FMA, or to any other person prescribed for the purposes of this subsection, on behalf of the Crown.
- ~~(8) The FMA must pay into a Crown Bank Account, and separately account for, each levy payment.~~ 30
- (8) The FMA, or any other person prescribed for the purposes of this subsection, must ensure that each levy payment is paid into a Crown Bank Account and is separately accounted for.
- 64 FMA must consult about request for appropriation** 35
- (1) The FMA must, before submitting a request to the Minister seeking an appropriation of public money for the following

- year, or any change to an appropriation for the current year, that relates to costs that are intended to be recovered by way of levies under **section 63**, consult about that request with—
- (a) the persons or organisations that the FMA considers are able to represent the views of those ~~financial markets participants~~ specified persons who are liable to pay a levy under that section; and
 - (b) any other representatives of persons whom the FMA believes to be significantly affected by a levy.
- (1A) Consultation under **subsection (1)** must include consultation relating to the portion of the costs of the FMA that should be met by the levy. 10
- (2) The FMA must, at the time when the request is submitted, report to the Minister on the outcome of that consultation.
 - (3) This section applies to requests in respect of the ~~FMA's first financial year~~ financial year beginning on 1 July 2013 and later financial years. 15
 - (4) A failure to comply with ~~**subsection (1)**~~ this section does not affect the validity of any regulations made under **section 63**.
- Subpart 2—Transitional provisions 20
- 65 Interpretation**
- In this subpart, unless the context otherwise requires,—
- commencement date** means the date on which this section comes into force
- Commission** means the Securities Commission established under the Securities Act 1978 25
- property**—
- (a) means every type of property; and
 - (b) includes money, and every type of estate and interest in property 30
- successor**, in respect of a function, duty, or power of the Government Actuary under ~~any an~~ an enactment, means the person who replaces the Government Actuary in respect of that function, duty, or power in accordance with **sections 76 and 78 and Schedules 3 and 4** 35

suitable alternative position, in relation to an employee, means a position—

- (a) for which the employee has the appropriate skills and experience; and
- (b) the pay and conditions of which are, in their overall effect, no less favourable to the employee than those applying to the employee immediately before the date of the employee’s transfer to that position

transferred employee means a person who,—

- (a) immediately before the commencement date, is employed by the Commission; and
- (b) is transferred to the FMA under **section 67(1)(f)**.

Disestablishment of Securities Commission

66 Securities Commission disestablished

- (1) The Commission is disestablished. 15
- (2) The members of the Commission cease to hold office at the close of the day before the commencement date.
- (3) For the purpose of completing or deciding any inquiry, application, or matter that has been heard or considered (in whole or in part) before the commencement date, the board of the FMA may delegate any of the functions or powers of the FMA or the board in accordance with sections 73 to 76 of the Crown Entities Act 2004 to 1 or more former members of the Commission as if those former members were referred to in section 73(1) of that Act. 20
- (4) **Subsection (3)** does not limit the power of the board of the FMA to make any other delegation in accordance with sections 73 to 76 of the Crown Entities Act 2004. 25

67 Consequences of disestablishment

- (1) On the commencement date,— 30
 - (a) the functions, duties, and powers of the Commission under any enactment vest in the FMA, except as specifically provided otherwise in this Act, but only to the extent that those functions, duties, and powers are consistent with the functions, duties, and powers of the FMA 35

- under this Act and any other enactment (subject to **subsection (4)**); and
- (b) all property belonging to the Commission vests in the FMA; and
 - (c) all information and documents held by the Commission are held by the FMA; and 5
 - (d) all money payable to or by the Commission becomes payable to or by the FMA; and
 - (e) all rights, liabilities, contracts, entitlements, and engagements of the Commission become the rights, liabilities, contracts, entitlements, and engagements of the FMA; and 10
 - (f) subject to **section 69**, every employee of the Commission becomes an employee of the FMA on the same terms and conditions as applied immediately before he or she became an employee of the FMA; and 15
 - (g) anything done, or omitted to be done, or that is to be done, by or in relation to the Commission is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the FMA; and 20
 - (h) the commencement, continuation, or enforcement of proceedings by or against the Commission may instead be commenced, continued, or enforced by or against the FMA without amendment to the proceedings; and
 - (i) the completion of a matter or thing that would, but for this section, have been completed by the Commission may be completed by the FMA. 25
- (2) The transfer of information from the Commission to the FMA under **subsection (1)(c)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 30
- (3) The disestablishment of the Commission does not, by itself, affect any of the following matters:
- (a) any decision made, or anything done or omitted to be done, by the Commission in relation to the performance or exercise of its functions, powers, or duties under any enactment: 35
 - (b) any proceedings commenced by or against the Commission:

- (c) any other matter or thing arising out of the Commission's performance or exercise, or purported performance or exercise, of its functions, powers, or duties under any enactment.
- (4) Despite **subsection (1)(a)**, it is a function of the FMA to perform or exercise any functions, powers, or duties of the Commission that is necessary or desirable for it to perform or exercise, on a temporary basis, for the purpose of effectively managing the transition of functions from the Commission to the FMA.

68 References to Securities Commission

- (1) A reference (express or implied) to the Commission in any enactment, or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the commencement date, must be read as a reference to the FMA.
- (2) A reference (express or implied) to an officer or employee of the Commission in any enactment, or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the commencement date must be read as a reference to—
 - (a) the corresponding employee of the FMA; or
 - (b) if there is no corresponding employee, any other employee of the FMA as the FMA thinks fit.
- (3) This section is subject to **subpart 3**.

69 Transfer of employees

- (1) The terms and conditions of employment of a transferred employee immediately before the commencement date continue to apply in relation to that employee until—
 - (a) those terms and conditions are varied by agreement between the transferred employee and the FMA; or
 - (b) the transferred employee accepts a subsequent appointment with the FMA.
- (2) For the purposes of every enactment, law, determination, contract, and agreement relating to the employment of a transferred employee,—

- (a) the employment agreement of that employee is to be treated as unbroken; and
- (b) the employee's period of service with the Commission, and every other period of service of that employee that is recognised by the Commission as continuous service, is to be treated as a period of service with the FMA. 5
- (3) To avoid doubt, the employment of a transferred employee by the FMA does not constitute new employment for the purposes of the KiwiSaver Act 2006.
- (4) A transferred employee is not entitled to receive any payment or benefit from the Commission or the FMA on the grounds that the person's position in the Commission has ceased to exist or the person has ceased to be an employee of the Commission as a result of the transfer to the FMA. 10
- (5) This section overrides Part 6A of the Employment Relations Act 2000. 15

70 Effect of Act

Nothing effected or authorised by **sections 66 to 69**—

- (a) places the Commission, the FMA, or any other person in breach of contract or confidence, or makes any of them liable for a civil wrong; or 20
- (b) entitles a person to terminate or cancel a contract or an arrangement, or to accelerate the performance of an obligation, or to impose a penalty or an increased charge; or 25
- (c) places the Commission, the FMA, or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or 30
- (d) releases a surety from an obligation; or
- (e) invalidates or discharges a contract or surety.

71 Registers

- (1) The Registrar-General of Land or any other person charged with keeping books or registers is not required to change the name of the Commission to the FMA in the books or registers, or in a document, solely because of the provisions of this Act. 35

- (2) If the FMA presents an instrument referred to in **subsection (3)** to a Registrar or another person, the presentation of that instrument by the FMA is, in the absence of proof to the contrary, sufficient evidence that the property is vested in the FMA.
- (3) For the purposes of this section, the instrument need not be an instrument of transfer, but must—
- (a) be executed or purport to be executed by the FMA; and
 - (b) relate to a property held by the Commission immediately before the commencement date; and
 - (c) be accompanied by a certificate by the FMA that the property became vested in the FMA by virtue of the provisions of this Act.

*Disestablishment of office of Government
Actuary*

- 72 Office of Government Actuary disestablished** 15
- (1) The office of the Government Actuary is disestablished.
- (2) This section is subject to **section 74A**.

73 Consequences of disestablishment

- (1) On the commencement date, in respect of any function, duty, or power of the Government Actuary under any enactment for which the FMA is the successor,—
- (a) all information and documents held by the Government Actuary are held by the FMA; and
 - (b) anything done, or omitted to be done, or that is to be done, by or in relation to the Government Actuary is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the FMA; and
 - (c) the commencement, continuation, or enforcement of proceedings by or against the Government Actuary may instead be commenced, continued, or enforced by or against the FMA without amendment to the proceedings; and
 - (d) the completion of a matter or thing that would, but for this section, have been completed by the Government Actuary may be completed by the FMA.

- (2) On the commencement date, in respect of any function, duty, or power of the Government Actuary under any enactment for which the FMA is not the successor,—
- (a) all information and documents held by the Government Actuary are held by the department for the time being responsible for the administration of the Superannuation Schemes Act 1989 (the **department**); and 5
 - (b) anything done, or omitted to be done, or that is to be done, by or in relation to the Government Actuary is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the chief executive of the department; and 10
 - (c) the commencement, continuation, or enforcement of proceedings by or against the Government Actuary may instead be commenced, continued, or enforced by or against the chief executive of the department without amendment to the proceedings; and 15
 - (d) the completion of a matter or thing that would, but for this section, have been completed by the Government Actuary may be completed by the chief executive of the department. 20
- (3) The transfer of information from the Government Actuary to the FMA under **subsection (1)(a)**, or from the Government Actuary to the department under **subsection (2)(a)**, does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 25
- (4) The disestablishment of the office of the Government Actuary does not, by itself, affect any of the following matters:
- (a) any decision made, or anything done or omitted to be done, by the Government Actuary in relation to the performance or exercise of his or her functions, powers, or duties under any enactment: 30
 - (b) any proceedings commenced by or against the Government Actuary:
 - (c) any other matter or thing arising out of the Government Actuary's performance or exercise, or purported performance or exercise, of his or her functions, powers, or duties under any enactment. 35
- (5) This section is subject to **section 74A**.

74 References to Government Actuary

- (1) A reference (express or implied) to the Government Actuary in any enactment, or in any instrument, register, record, notice, security, document, or communication made, given, passed, or executed before or on the commencement date, must be read as a reference to the successor. 5
- (2) This section is subject to **subpart 3** and **section 74A**.

74A Office of Government Actuary continues for limited purpose until 30 September 2011

- (1) Despite **section 72**, the office of the Government Actuary continues until the close of 30 September 2011 for the purpose of the Government Actuary performing any function or duty, or exercising any power, in relation to the Government Superannuation Fund under any of the following enactments as in force immediately before their amendment by **section 76** of this Act: 10
- (a) Government Superannuation Fund Act 1956:
- (b) Government Superannuation Fund Amendment Act 1969:
- (c) Government Superannuation Fund (Ceasing Contributions) Regulations 1995: 20
- (d) Government Superannuation Fund Regulations 1995.
- (2) To the extent required by **subsection (1)**, until the close of 30 September 2011,—
- (a) **sections 73 and 74** do not apply; and 25
- (b) the enactments described in **subsection (1)** continue to apply as if they had not been amended by **section 76** of this Act.

Miscellaneous provisions

75 Ministry of Economic Development employees 30

- (1) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in the Ministry of Economic Development has ceased to exist if—
- (a) the position ceases to exist as a result of a change in the functions of the Ministry of Economic Development or 35

- the Registrar of Companies ~~because of~~ in connection with the establishment of the FMA; and
- (b) the person is offered a suitable alternative position by the FMA; and
- (c) the offer is made— 5
- (i) in the period between the date on which this Act receives the Royal assent and the date that is 6 months after the commencement date; and
- (ii) for employment that commences on or after the commencement date. 10
- (2) This section overrides Part 6A of the Employment Relations Act 2000.

Subpart 3—Amendments to other enactments

- 76 Amendments to other enactments** 15
- The enactments specified in **Schedule 3** are amended in the manner specified in that schedule.

76A Transitional provisions relating to consequential amendments to Unit Trusts Act 1960

- (1) Every person who, before the commencement of this section, was approved by a Minister under section 4(2) of the Unit Trusts Act 1960 must, after that commencement, be treated as having been approved by the FMA under that provision. 20
- (2) If, before the commencement of this section, an application has been made by a Minister under section 19(1) of the Unit Trusts Act 1960 and the court has not yet made a decision on the application, the FMA may continue with the application. 25
- (3) If, before the commencement of this section, an inspector is appointed by a Minister under section 21 of the Unit Trusts Act 1960, the inspector— 30
- (a) may continue the investigation as if section 21 had not been amended by this Act; but
- (b) must make his or her report to the FMA rather than the Minister.

- (4) A consent under section 25(3) of the Unit Trusts Act 1960 given before the commencement of this section remains valid despite the amendment made to that provision by this Act.

**77 Amendments consequential on replacement of
Commission by FMA**

5

- (1) The provisions of the Acts specified in **Part 1 of Schedule 4** are amended by omitting “Securities Commission” in each place where it appears and substituting in each case “Financial Markets Authority”.
- (2) The provisions of the regulations specified in **Part 2 of Schedule 4** are amended by omitting “Securities Commission” in each place where it appears and substituting in each case “Financial Markets Authority”. 10
- (3) The provisions of the Acts specified in **Part 3 of Schedule 4** are amended by omitting “Commission” in each place where it appears and substituting in each case “FMA”. 15
- (4) The provisions of the regulations specified in **Part 4 of Schedule 4** are amended by omitting “Commission” in each place where it appears and substituting in each case “FMA”.
- (5) The provisions of the Acts specified in **Part 5 of Schedule 4** are amended by omitting “Commission’s” in each place where it appears and substituting in each case “FMA’s”. 20

**78 Amendments consequential on replacement of
Government Actuary by FMA**

- (1) The provisions of the Acts specified in **Part 6 of Schedule 4** are amended by omitting “Government Actuary” in each place where it appears and substituting in each case “FMA”. 25
- (2) The provisions of the regulations specified in **Part 7 of Schedule 4** are amended by omitting “Government Actuary” in each place where it appears and substituting in each case “FMA”. 30

Part 5 Amendments to Securities Act 1978

- 79 Principal Act amended**
This **Part** amends the Securities Act 1978.
- 80 Long Title amended** 5
The Long Title is amended by omitting “**to establish a Securities Commission; and**”.
- 81 Interpretation**
- (1) Section 2(1) is amended by repealing the definitions of **Commission, overseas regulator, registered prospectus, Registrar, and Takeovers Panel**. 10
- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- “**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** 15
- “**register** means, except in respect of a register kept under section 51, the register of securities offers kept under **sections 43N to 43S**
- “**registered prospectus** means,— 20
- “(a) except if **paragraph (b)** applies,—
- “(i) a prospectus that has been registered under **section 42** and the registration of which has not been cancelled under **section 43G(2)(b)**; or
- “(ii) a document that, except in the matters specified in **section 41(1)**, is identical to such a prospectus: 25
- “(b) if an instrument that amends a prospectus of the kind specified in **paragraph (a)(i)** has been registered under **section 43**, and the registration of that prospectus as so amended has not been cancelled under **section 43G(2)(b)**,— 30
- “(i) that prospectus as so amended; or
- “(ii) a document that, except for the matters specified in **section 41(1)**, is identical to that prospectus as so amended 35

“**Registrar** means the Registrar of Financial Service Providers under the Financial Service Providers (Registration and Dispute Resolution) Act 2008”.

82 Meaning of advertisement

Section 2A(2) is amended by adding the following paragraph: 5

“(c) documents, information, and other matters required to be made publicly available under **section 54C**.”

83 Exemptions from this Act

(1) Section 5 is amended by inserting the following subsection after subsection (1): 10

“(2) An exemption under subsection (1) does not apply—
“(a) in the ~~prescribed~~ circumstances prescribed by regulations made under **section 70AB**; or
“(b) if any additional ~~prescribed~~ requirements prescribed by regulations made under **section 70AB** are not satisfied.” 15

(2) Section 5(2C), (3), (3A), and (4) are amended by omitting “44” and substituting “**43E43B**”.

(3) Section 5(2D) is amended by omitting “38F” and substituting “38E and **43F**”. 20

(4) Section 5(3) is amended by omitting “69” and substituting “65F”.

(5) Section 5(4) is amended by omitting “38F” and substituting “38E”.

(6) Section 5(5) to (6) are repealed. 25

84 Exemption for employer superannuation schemes

Section 5A is amended by omitting “44” and substituting “**43E43B**”.

85 Previously allotted securities

Section 6(1) is amended by omitting “44” and substituting “**43E43B**”. 30

- 86 Term implied in certain offers of previously allotted securities**
Section 6A(1)(a) is amended by omitting “44” and substituting “**43E43B**”.
- 87 Part 1 repealed** 5
Part 1 is repealed.
- 88 Restrictions on offer of securities to public**
- (1) Section 33(2) is amended by inserting the following paragraph after paragraph (a):
“(ab) the trust deed complies with this Act and the regulations; and” 10
- (2) Section 33(3) is amended by inserting the following paragraph after paragraph (a):
“(ab) the deed of participation complies with this Act and the regulations; and” 15
- 89 Restrictions on distribution of prospectuses**
Section 34(1)(a) is amended by omitting “memorandum” and substituting “an instrument”.
- 90 Void irregular allotments** 20
Section 37 is amended by inserting the following subsection after subsection (1A):
“(1B) No allotment of a security offered to the public for subscription may be made in contravention of **section 43D(1) or (2), 43I(4), or 43K(5)(b)**.”
- 91 Court must make relief order in certain circumstances** 25
Section 37AC(1)(e) is amended by repealing subparagraph (i) and substituting the following subparagraph:
“(i) the contravention of section 37 was caused by a failure to comply with a condition of an exemption granted under section 5(5) (as in force before its repeal) or under **section 70B** or of an exemption provided under section 5(3A) or 5A; and” 30

- 92 Consent for purposes of section 37AC(1)(c) or (d)**
- (1) Section 37AD(1)(b)(iii) is amended by omitting “granted under section 5(5) or provided under section 5(3A) or 5A” and substituting “of a kind referred to in **section 37AC(1)(e)(i)**”.
- (2) Section 37AD(1)(b)(iv) is amended by omitting “section 5” and substituting “this Act”. 5
- (3) Section 37AD(1)(b) is amended by repealing subparagraph (vi) and substituting the following subparagraph:
 “(vi) a statement that information concerning that prospectus can be obtained from the register.”. 10
- (4) Section 37AD(2) is amended by omitting “section 5 or section 5A” and substituting “this Act”.
- 93 Voidable irregular allotments**
- Section 37A(1)(ab)(i) is amended by repealing subparagraph (B) and substituting the following subparagraph: 15
 “(B) every instrument that amends that prospectus that is registered under **section 43** before the time of allotment; or”.
- 94 Prohibition of advertisements**
- Section 38B is amended by repealing subsection (7) and substituting the following subsection: 20
 “(7) The FMA must, after an order has been made under this section, give the issuer or the issuer’s representative an opportunity to make written submissions and to be heard on the matter.”
- 95 Section 38F repealed** 25
 Section 38F is repealed.
- 96 Requirements relating to prospectuses delivered to Registrar for registration**
- Section 41 is amended by adding the following subsection as subsection (2): 30
 “(2) The prescribed information and documents must be supplied to the Registrar, when the prospectus is delivered to the Registrar for registration, in the manner specified by the Registrar

when the prospectus is delivered to the Registrar for registration.”

97 New sections 42 to 43M substituted

Sections 42 to 44 are repealed and the following sections substituted: 5

“42 Registration of prospectus

“(1) The Registrar must promptly register every prospectus delivered to him or her.

“(2) However, the Registrar must refuse to register a prospectus if,— 10

“(a) in his or her opinion,—

“(i) it does not comply with section 39(1)(a) or **41(1)(b)**; or

“(ii) it contains any matter that is not clearly legible; or 15

“(iii) **section 41(2)** is not complied with; or

“(b) the prescribed amount payable on registration is not paid; or

“(c) the date of registration would be earlier than the date of the prospectus. 20

“(3) The Registrar must, on the registration of a prospectus under this section, give a certificate of the registration (and the certificate is conclusive evidence that the prospectus has been registered under this section).

“(4) The certificate must specify a registration number for the prospectus. 25

“43 Amendment of registered prospectus

“(1) A registered prospectus may be amended by an instrument to amend the prospectus that is delivered to the Registrar and registered under this section. 30

“(2) The prescribed information and documents must be supplied to the Registrar, when an instrument to amend the prospectus is delivered to the Registrar for registration, in the manner specified by the Registrar ~~when an instrument to amend the prospectus is delivered to the Registrar for registration~~. 35

- “(3) Every instrument to amend a registered prospectus that is delivered to the Registrar must be—
- “(a) signed by the issuer of the prospectus (if an individual) and every person who is a director of the issuer at the time the instrument is delivered to the Registrar, or by the issuer’s or director’s agent authorised in writing; and 5
- “(b) accompanied by a copy of the registered prospectus as amended.
- “(4) The Registrar must promptly register every instrument delivered to him or her in accordance with this section. 10
- “(5) However, the Registrar must refuse to register an instrument under this section if,—
- “(a) in his or her opinion,—
- “(i) he or she could, under **section 42(2)**, have refused to register the registered prospectus as amended if it had been delivered for registration at the time of the delivery to him or her of the instrument; or 15
- “(ii) **subsection (2) or (3)** is not complied with; or
- “(b) the prescribed amount payable on registration is not paid; or 20
- “(c) the date of the registered prospectus is altered.
- “(6) The Registrar must, on the registration of an instrument of amendment under this section, give a certificate of that registration (and the certificate is conclusive evidence that the instrument has been registered under this section). 25
- “**43A Registrar not required to consider certain matters**
- It is not the function of the Registrar, when acting under **section 42 or 43**, to consider whether a prospectus—
- “(a) complies with section 39(1)(b) or (c), 40, or **41(1)(a)**; 30
- or
- “(b) contains a statement that is false or misleading as to a material particular or omits any material particular.
- “**43B Publication of registration**
- “(1) If a prospectus, or an instrument to amend a prospectus, is registered under **section 42 or 43**, the issuer must, within 5 35
- working days after it receives the certificate of the registration,

ensure that ~~its Internet site~~ an Internet site maintained by or on behalf of the issuer—

“(a) contains a reasonably prominent statement—

“(i) to the effect that the prospectus or instrument has been registered; and 5

“(ii) describing where a copy of the prospectus or instrument 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 ~~issuer’s Internet site~~ Internet site maintained by or on behalf of the issuer if the period within which allotments of securities may be made under the prospectus in accordance with this Act has finally ended (for example, as a result of section 37A(1)(c)). 10 15

“(3) If a prospectus, or an instrument to amend a prospectus, is registered under **section 42 or 43**, the Registrar may, in any manner that the Registrar thinks fit, give notice of the registration to any person or class of persons or to the public generally.

“(4) 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 referred to in **section 43P** in respect of a registered prospectus. 20

“FMA’s consideration of prospectuses, amendments, trust deeds, and deeds of participation” 25

“**43C FMA’s consideration of prospectuses, amendments, trust deeds, and deeds of participation**

“(1) The Registrar must, immediately after a prospectus or an instrument to amend a prospectus is registered under this Act, notify the FMA of the registration for the purpose of allowing the FMA an opportunity to consider whether the prospectus, or the prospectus as amended,— 30

“(a) complies with this Act and the regulations; or

“(ab) contains any material misdescription or error or any material matter that is not clearly legible; or 35

- “(b) is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus or instrument was registered).
- “(2) The Registrar must, immediately after a trust deed, a deed of participation, or an instrument to amend a deed of that kind is registered under this Act, notify the FMA of the registration for the purpose of allowing the FMA an opportunity to consider whether the trust deed or deed of participation, or the trust deed or deed of participation as amended,— 5
10
- “(a) complies with this Act and the regulations; or
“(b) contains any material misdescription or error or any material matter that is not clearly legible.
- “(3) The nature and extent of the consideration (if any) that the FMA gives to a prospectus, trust deed, or deed of participation or an instrument to amend a prospectus or deed ~~(if any)~~ is at the FMA’s discretion. 15
- “(4) Nothing in this section or any other provision of this Act limits the FMA’s power to consider or reconsider at any time whether— 20
- “(a) a registered prospectus—
“(i) complies with this Act and the regulations; or
“(ia) contains any material misdescription or error or any material matter that is not clearly legible; or
“(ii) is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus or instrument was registered): 25
- “(b) a trust deed or deed of participation— 30
“(i) complies with this Act and the regulations; or
“(ii) contains any material misdescription or error or any material matter that is not clearly legible.
- “**43D No allotments may be made and no applications or subscription money may be accepted during consideration period** 35
- “(1) No allotment of securities offered to the public for subscription may be made, and no applications for those securities or

- subscriptions for those securities may be accepted, during the period—
- “(a) starting on the date that the prospectus relating to the offer of the securities is registered; and
- “(b) ending on the close of— 5
- “(i) the date that is 5 working days after that date; or
- “(ii) a later date specified by the FMA by notice to the issuer.
- “(2) ~~No allotment of securities offered to the public for subscription may be made, and no applications for those securities or subscriptions for those securities may be accepted, during the period—~~ 10
- “(a) ~~starting on the date that an instrument to amend the prospectus relating to the offer of the securities is registered; and~~ 15
- “(b) ~~ending on the close of—~~
- “(i) ~~the date that is 5 working days after that date; or~~
- “(ii) ~~a later date specified by the FMA by notice to the issuer.~~
- “(2) However, — 20
- “(a) if the prospectus is a continuous issue prospectus, **subsection (1)** applies to the prospectus only if it is of a class that is prescribed by the FMA in a notice under **section 43EA**:
- “(b) if **subsection (1)** applies to a prospectus that relates to particular securities but another registered prospectus also relates to those securities, **subsection (1)** does not prevent— 25
- “(i) an offer and allotment of those securities being made in accordance with this Act in reliance upon the other registered prospectus; and 30
- “(ii) applications for those securities and subscriptions for those securities from being accepted in respect of the offer and allotment referred to in **subparagraph (i)**. 35
- “(2A) In **subsection (2)** and **section 43EA**, a prospectus is a **continuous issue prospectus** if it—

- “(a) relates to securities that the issuer, in the ordinary course of its business, continuously offers to the public for subscription; and
- “(b) is not the first prospectus to be registered in respect of that class of securities. 5
- “(3) The later date specified under **subsection (1)(b)(ii) or (2)(b)(ii)** must be no more than 10 working days after the prospectus ~~or the instrument to amend the prospectus (as the case may be)~~ is registered.
- “(4) If a person contravenes **subsection (1) or (2), section 37(1B)** and (4) to (7) apply (which provide that an allotment of a security in contravention of **subsection (1) or (2)** is invalid and of no effect). 10
- “43E **FMA may remove restrictions if its consideration is complete or consideration or further consideration is unnecessary** 15
- “(1) ~~This section applies if the FMA is satisfied that—~~
- “(a) ~~its consideration of a prospectus or an instrument to amend a prospectus is complete; or~~
- “(b) ~~further consideration of a prospectus or an instrument to amend a prospectus is, in the circumstances, unnecessary (for example, because an amendment is of a minor nature).~~ 20
- “(1) This section applies if the FMA is satisfied that—
- “(a) its consideration of a prospectus is complete; or 25
- “(b) consideration or further consideration of a prospectus is, in the circumstances, unnecessary.
- “(2) The FMA may give notice to the issuer that—
- “(a) the period that applies under **section 43D** ends at a particular time specified by the FMA (being an earlier 30 time than that provided for under **section 43D**); or
- “(b) **section 43D(1) or (2)** does not apply in respect of the prospectus ~~or instrument (as the case may be)~~.
- “(3) **Section 43D** is subject to this section.
- “(4) Nothing in this section limits **section 70B** (which also allows the FMA to grant exemptions in respect of compliance with **section 43D**). 35

“43EA FMA may prescribe classes of continuous issue prospectuses to which section 43D(1) applies

“(1) The FMA may issue a notice that prescribes the class or classes of continuous issue prospectuses to which **section 43D(1)** applies. 5

“(2) The FMA must, before issuing a notice under **subsection (1)** in respect of a class of continuous issue prospectuses, be satisfied that it is in the public interest for the FMA to have an opportunity to act under **section 43C(1)** in respect of those prospectuses before the allotment of securities in reliance upon those prospectuses (for example, where in the circumstances a particular risk relates to a particular class of issuers or securities). 10

“(3) A notice issued by the FMA—

“(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the House of Representatives under section 4 of that Act; and 15

“(b) is a regulation for the purposes of the Acts and Regulations Publication Act 1989. 20

“(4) The FMA may vary or revoke a notice issued under this section, and **subsections (2) and (3)** apply, with necessary modifications, in all respects to the variation or revocation.

“FMA’s powers to prohibit distribution of investment statements, prohibit allotments, or cancel registration of prospectuses 25

“43F Prohibition of distribution of investment statement

“(1) The FMA may, at any time, make an order prohibiting the distribution of an investment statement if the FMA is of the opinion that the investment statement— 30

“(a) is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities to which it relates; or

“(b) is inconsistent with any registered prospectus referred to in it; or 35

“(c) does not comply with this Act or the regulations.

- “(2) If an order is made under **subsection (1)** in respect of an investment statement,—
- “(a) no allotment may be made of any securities subscribed for whether before or after the order is made (being securities to which the investment statement relates): 5
- “(b) all subscriptions received for securities to which the investment statement relates, not being subscriptions for securities that were allotted before the order is made or subscriptions received after the order is revoked, must be immediately repaid to the subscribers. 10
- “(3) An allotment made in contravention of **subsection (2)(a)** is invalid and of no effect.
- “**43G FMA may prohibit allotment or cancel registration**
- “(1) This section applies if, at any time, the FMA is of the opinion that— 15
- “(a) a registered prospectus does not comply with this Act or the regulations; or
- “(ab) a registered prospectus contains any material misdescription or error or any material matter that is not clearly legible; or 20
- “(b) a registered prospectus is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus was registered); or 25
- “(c) section 41 has not been complied with in respect of a registered prospectus; or
- “(d) a trust deed or deed of participation in respect of the securities offered in a registered prospectus—
- “(i) does not comply with this Act or the regulations; 30
or
- “(ii) contains any material misdescription or error or any material matter that is not clearly legible.
- “(2) The FMA may exercise either or both of the following powers in respect of the registered prospectus if it considers that it is 35
desirable in the public interest:

- “(a) make an order prohibiting the allotment of securities under the registered prospectus for a period not exceeding 18 months:
- “(b) cancel the registration of the registered prospectus (with effect from the time that the Registrar is notified of the cancellation). 5
- “(3) If an order is made under **subsection (2)(a)** in respect of a registered prospectus,—
- “(a) during the period in which the order is in force, no allotment may be made of any securities subscribed for whether before or after the order is made (being securities to which the prospectus relates); and 10
- “(b) all subscriptions received for securities to which the prospectus relates, not being subscriptions for securities that were allotted before the order is made or subscriptions received after the order ceases to be in force, must be immediately repaid to the subscribers. 15
- “(4) If the registration of a registered prospectus is cancelled,—
- “(a) no allotment may be made of any securities subscribed for whether before or after the cancellation (being securities to which the prospectus relates); and 20
- “(b) all subscriptions received for securities to which the prospectus relates, not being subscriptions for securities that were allotted before the cancellation, must be immediately repaid to the subscribers. 25
- “(5) An allotment made in contravention of **subsection (3)(a) or (4)(a)** is invalid and of no effect.

“**43H Repayment of subscriptions**

- “(1) If any subscriptions that are required under **section 43F or 43G** to be repaid to the subscribers entitled to those subscriptions are not repaid within 1 month after the relevant date, the issuer and all the directors of the issuer are jointly and severally liable to repay the subscriptions with interest at the prescribed rate from the date the subscriptions were received by or on behalf of the issuer. 30 35
- “(2) A director of an issuer is not liable to repay any subscriptions and interest on the subscriptions under **subsection (1)** if the director proves that the default in the repayment of the sub-

- “(a) the FMA gives the issuer at least 5 working days’ written notice of the following matters before the FMA exercises the power:
- “(i) that the FMA may make an order under **section 43F or 43G**, ~~vary or revoke an order under **section 43I(2) or (3)**~~, or ~~may~~ cancel the registration of the prospectus under **section 43G** (as the case may be); and 5
- “(ii) the reasons why it is considering exercising that power; and 10
- “(b) the FMA gives the issuer or the issuer’s representative an opportunity to make written submissions and to be heard on the matter within that notice period.
- “(2) If the FMA exercises a power under **section 43F or 43G**,—
- “(a) it must, immediately after exercising the power, notify the issuer of— 15
- “(i) the reasons for making the order or for the cancellation; and
- “(ii) the terms and conditions of the order (if any); and
- “(b) it must, immediately after exercising the power, give notice to the Registrar and on its Internet site of— 20
- “(i) the reasons for making the order or for the cancellation; and
- “(ii) the terms and conditions of the order (if any); and
- “(iii) any other information the FMA thinks relevant in the circumstances; and 25
- “(c) it may give public notice by any other means of the matters in **paragraph (b)**; and
- “(d) it may notify any other person of the matters in **paragraph (b)**. 30
- “(3) If the FMA varies or revokes an order under **section 43I**,—
- “(a) it must, immediately after exercising the power, notify the Registrar and the issuer of—
- “(i) the terms and conditions of the variation or revocation; and 35
- “(ii) the reasons for the variation or revocation; and
- “(iii) any other information the FMA thinks relevant in the circumstances; and

- “(b) it may give notice on its Internet site or give public notice by any other means of those matters; and
- “(c) it may notify any other person of those matters.

“**43K FMA may make interim orders pending exercise of powers** 5

“(1) The FMA may make an interim order that prohibits the allotment of securities—

“(a) to which an investment statement relates while the interim order is in force if—

“(i) the FMA is considering, at any time, whether it may exercise a power under **section 43F** in respect of the investment statement; and

“(ii) the FMA considers that making an interim order is desirable in the public interest:

“(b) under a registered prospectus while the interim order is in force if— 15

“(i) the FMA is considering, at any time, whether it may exercise a power under **section 43G** in respect of the prospectus; and

“(ii) the FMA considers that making an interim order is desirable in the public interest. 20

“(2) An interim order under **subsection (1)** 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 25

“(b) a later date specified by the FMA by notice to the issuer.

“(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)(i) or (b)(i)** within the 15-working-day period referred to in **subsection (2)(a)**: 30

“(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. 35

“(4) The FMA—

- “(a) may act under **subsection (1) or (2)(b)** without giving the issuer 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 the issuer or the issuer’s representative an opportunity to make written submissions and to be heard on the matter. 5
- “(5) If an interim order is made in respect of an investment statement or a registered prospectus,—
- “(a) the FMA must immediately after making the order notify the issuer and the Registrar that the order has been made and the reasons for the order; and 10
- “(b) during the period in which the order is in force, no allotment may be made of any securities subscribed for whether before or after the order is made; and
- “(c) **section 37(1B)** and (4) to (7) apply (which provide that an allotment of a security in contravention of **paragraph (b)** is invalid and of no effect). 15
- “**43L FMA may revoke interim order**
- “(1) The FMA may revoke an interim order made under **section 43K** if it is satisfied that the order should not continue in force. 20
- “(2) If an interim order is revoked, the FMA must immediately notify the issuer and the Registrar of the revocation.
- “**43M Nothing done or omitted to be done by Registrar or FMA guarantees or represents that prospectus complies with Act and regulations** 25
- “(1) Nothing done or omitted to be done under this Act by the Registrar or the FMA guarantees or represents that—
- “(a) a prospectus—
- “(i) complies with this Act and the regulations:
- “(ia) does not contain any material misdescription or error or any material matter that is not clearly legible: 30
- “(ii) is not false or misleading as to a material particular:
- “(iii) does not omit any material particular; or 35
- “(b) the FMA has considered a prospectus with a view to determining whether it—

- “(i) complies with this Act and the regulations:
“(ia) contains any material misdescription or error or any material matter that is not clearly legible:
“(ii) is false or misleading as to a material particular:
“(iii) omits any material particular. 5
- “(2) This section does not limit **section 22** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** (which provides protection from liability for the FMA and its members and employees).”
- 98 New heading and sections 43N to 43S inserted 10**
The following heading and sections are inserted after **section 43M** (as inserted by **section 97**):
“Register of securities offers
- “43N Register of securities offers**
- “(1) A register called the register of securities offers is established. 15
- “(2) The register must be kept by the Registrar.
- “(3) The register may be—
“(a) an electronic register; or
“(b) kept in any other manner that the Registrar thinks fit.
- “(4) The register must be operated at all times unless— 20
“(a) the Registrar suspends the operation of the register, in whole or in part, in accordance with **subsection (5)**; or
“(b) otherwise provided in regulations.
- “(5) 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. 25
- “43O Purpose of register**
The purpose of the register is—
“(a) to give public notice of offers of securities made under registered prospectuses; and 30
“(b) to enable any person to—
“(i) obtain information contained in, or concerning, registered prospectuses; and

- “(ii) obtain other information about, or copies of documents relating to, offers of securities made under registered prospectuses; and
- “(iii) compare information about offers of securities made under registered prospectuses; and 5
- “(c) to assist any person to decide whether or not to subscribe for securities offered to the public; and
- “(d) to assist any person to perform a financial adviser service (within the meaning of the Financial Advisers Act 2008) or to otherwise comment on an offer of securities to the public; and 10
- “(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. 15

“**43P Contents of register**

- “(1) The register must contain all of the following information and documents, to the extent that the information or documents are relevant, for each registered prospectus: 20
 - “(a) the name of the issuer and the issuer’s financial service provider number (if any);
 - “(b) the name of every promoter in relation to the offer and the promoter’s financial service provider number, if any (subject to **subsection (2)**): 25
 - “(c) the name of every relevant trustee or supervisor and the relevant trustee or supervisor’s financial service provider number (if any):
 - “(d) the name of the offer that is specified in the prospectus and the registration number for the prospectus (as specified in the certificate given under **section 42**): 30
 - “(e) the type of security or securities being offered (for example, an equity security, a debt security, a participatory security, a unit in a unit trust, an interest in a superannuation scheme, or a life insurance policy): 35
 - “(f) the date of the prospectus:
 - ~~“(g) the date of registration of the prospectus and of every instrument that amends the prospectus:~~

- “(h) the date specified in the prospectus as the last day on which the offer is able to be accepted or, if there is no such date, a statement to that effect:
- “(i) if there is any minimum or maximum number or amount of the securities being offered, the number or amount: 5
- “(j) the status of the prospectus (being a status that is determined and described in the prescribed manner):
- “(ja) the date of registration of the prospectus and of every instrument that amends the prospectus:
- “(k) a copy of the prospectus and of every instrument that amends the prospectus: 10
- “(l) a copy of each investment statement distributed by the issuer, a promoter, or both, in respect of the offer:
- “(m) a copy of any relevant deed (incorporating or together with all amendments to the deed): 15
- “(n) a copy of all documents that are required by the regulations to be attached to, or to accompany, the prospectus when it is delivered to the Registrar for registration:
- “(o) a copy of any certificate registered under section 37A(1A) and any financial statements that accompany that certificate: 20
- “(p) any notice or information provided by the FMA in respect of the prospectus or an investment statement for the offer under **section 43J or 43K:**
- “(q) a copy of the most recent financial statements of, or relating to, the issuer (and, if there is a scheme, the scheme) that have been registered under section 18 of the Financial Reporting Act 1993, together with a copy of the auditor’s report on those statements: 25
- “(r) any documents, information, and other matters made publicly available under **section 54C:** 30
- “(s) any other prescribed matters.
- “(2) **Subsection (1)(b)** does not apply in respect of a director who is a promoter merely as a result of paragraph (b) of the definition of promoter in section 2. 35
- “(3) The register must also contain—
- “(a) all other documents required to be registered by the Registrar under this Act; and
- “(b) any other prescribed information or documents.

- “(4) In this section and **section 43S**,—
- “**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 5
- “**relevant deed** means, in the case of an offer of—
- “(a) debt securities, the trust deed:
- “(b) participatory securities, the deed of participation:
- “(c) units in a unit trust, the trust deed for the unit trust:
- “(d) interests in a superannuation scheme, the trust deed for the superannuation scheme 10
- “**relevant trustee or supervisor** means, in the case of an offer of—
- “(a) debt securities, the trustee:
- “(b) participatory securities, the statutory supervisor: 15
- “(c) units in a unit trust, the unit trustee:
- “(d) interests in a superannuation scheme, the superannuation trustee.
- “**43Q Duty to notify relevant matters and provide certain documents and information to Registrar** 20
- “(1) An issuer must, in the prescribed manner,—
- “(a) notify the Registrar of any relevant changes in respect of a registered prospectus within 5 working days of becoming aware of the change; and
- “(b) provide to the Registrar a copy of any documents, information, and other matters ~~to be made~~ made, or to be made, publicly available under **section 54C** before the date that is 5 working days after that material is made available under that section; and 25
- “(c) provide to the Registrar, before the date that is 5 working days after it is first distributed, a copy of each investment statement that is ~~to be~~ or is to be, distributed by the issuer in respect of the offer. 30
- “(2) In this section, **relevant changes**, in respect of a registered prospectus,— 35
- “(a) means—

- “(i) any change in the information referred to in **section 43P(1)(a) to (i)** in respect of the prospectus;
or
- “(ii) any change in circumstances that would result in a change to the status of the prospectus as referred to in **section 43P(1)(j)**; or 5
- “(iii) any other prescribed change that is relevant to the issuer, the scheme (if any), or the prospectus; but
- “(b) does not include—
- “(i) any change in respect of which the FMA is required to notify the Registrar (for example, an order made under **section 43G**); or 10
- “(ii) any change that occurs after the period within which allotments of securities may be made under the prospectus has ended as a result of section 37A(1)(c); or 15
- “(iii) any other change that is prescribed.
- “(3) An issuer commits an offence and is liable on summary conviction to a fine not exceeding \$300,000 if the issuer,—
- “(a) without reasonable excuse, contravenes **subsection (1) or (2)**; or 20
- “(b) in purported compliance with **subsection (1) or (2)**, supplies a document, information, or other matter knowing it to be false or misleading.
- “(4) This section does not apply to changes that occur, or investment statements that are distributed, before the commencement of this section. 25
- “43R Amendments to register**
- “(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 30
- “(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. 35
- “(2) The Registrar must amend the register if the regulations require the Registrar to do so in circumstances specified by the regulations.

“43S 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 following criteria: 5
- “(a) the name of an offer as specified in a prospectus:
 - “(b) the registration number of a prospectus:
 - “(c) the name of an issuer:
 - “(d) the name of a promoter:
 - “(e) the name of a relevant trustee or supervisor: 10
 - “(f) the financial service provider number of an issuer, a promoter, or a relevant trustee or supervisor:
 - “(g) the status of a prospectus (being a status that is determined and described in the prescribed manner):
 - “(h) prospectuses that have a particular date or have a date within a range of dates: 15
 - “(i) prospectuses that were registered on a particular date or at any time during a range of dates:
 - “(j) prospectuses under which offers are open for acceptance on a particular date or at any time during a range of dates: 20
 - “(k) orders made by the FMA in respect of prospectuses that are in force on a particular date or at any time during a range of dates:
 - “(l) the type of security being offered: 25
 - “(m) any other prescribed criteria:
 - “(n) any combination of the criteria in **paragraphs (a) to (m)**.
- “(3) A search of the register may be carried out only by the following persons for the following purposes: 30
- “(a) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual:
 - “(b) a person, for a purpose referred to in **section 430**:
 - “(c) a person, for the purpose of advising another person in connection with any of the purposes referred to in this section. 35
- ~~“(4) A search of the register for personal information that has not been carried out in accordance with this section constitutes an~~

~~action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.~~

“(4) A person who searches the register for personal information in breach of this section must be treated, for the purposes of Part 8 of the Privacy Act 1993, as having breached an information privacy principle under section 66(1)(a)(i) of that Act.” 5

99 Notices and submissions concerning delayed allotment orders

Section 44AB is amended by repealing subsection (1) and substituting the following subsection: 10

“(1) The FMA may make a delayed allotment order only if—
“(a) the FMA gives the issuer at least 3 working days’ written notice of the following matters before the FMA makes the delayed allotment order:
“(i) that the FMA is considering making a delayed allotment order; and 15
“(ii) the paragraph of section 44A(1) that is alleged to apply to the issuer; and
“(iii) the reasons why the FMA is considering making a delayed allotment order; and 20
“(b) the FMA gives the issuer or the issuer’s representative an opportunity to make written submissions and to be heard on the matter within that notice period.”

100 Limited notice and submissions for urgent delayed allotment orders 25

Section 44AC is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) it may give less than 3 working days’ notice before it makes the order, and the notice and the submissions may be oral rather than written; but”. 30

101 Notices and submissions concerning prohibition orders

Section 44AF is amended by repealing subsection (1) and substituting the following subsection:

“(1) The FMA may make a prohibition order only if—

- “(a) the FMA gives the person concerned (**person A**) at least 10 working days’ written notice of the following matters before the FMA makes the prohibition order:
- “(i) that the FMA is considering making a prohibition order; and 5
- “(ii) the nature of person A’s failure to comply with his, her, or its disclosure obligations; and
- “(iii) the reasons why the FMA is considering making the prohibition order; and
- “(b) the FMA gives person A or person A’s representative 10 an opportunity to make written submissions and to be heard on the matter within that notice period.”

102 Commission’s powers in respect of contributory mortgages

Section 44B is amended by repealing subsection (2) and substituting the following subsections: 15

- “(2) The FMA may, either on the receipt of that report or for any other reason, if it is satisfied that a contributory mortgage broker is contravening, or has contravened, any of the provisions of this Act or the regulations, and that it is desirable in the public interest to do so, exercise any 1 or more of the following powers: 20
- “(a) make an order prohibiting the contributory mortgage broker from offering interests in contributory mortgages to the public for subscription for a period not exceeding 10 working days; or 25
- “(b) make an order prohibiting the contributory mortgage broker from offering interests in contributory mortgages to the public for subscription for the period that the FMA thinks fit; or 30
- “(c) make an order that the contributory mortgage broker must promptly cease to act as contributory mortgage broker in respect of all or any contributory mortgages that have previously been allotted by him, her, or it, and make an order appointing another person to act as contributory mortgage broker in his, her, or its place with respect to those contributory mortgages; or 35

- “(d) make an order removing any of the directors of any nominee company of the contributory mortgage broker and make an order appointing any person as a director in his or her place.
- “(2AA) The FMA— 5
- “(a) may act under **subsection (2)(a)** without giving the contributory mortgage broker an opportunity to make submissions to, and be heard before, the FMA in respect of the matter; but
- “(b) must, after acting under **subsection (2)(a)**, give the contributory mortgage broker or the contributory mortgage broker’s representative an opportunity to make written submissions and to be heard on the matter. 10
- “(2A) The FMA may make an order under **subsection (2)(b) to (d)** only if— 15
- “(a) the FMA gives the relevant person or persons at least 5 working days’ written notice of the following matters before the FMA makes the order:
- “(i) that the FMA is considering making an order under **subsection (2)(b), (c), or (d)** (as the case 20 may be); and
- “(ii) the reasons why it is considering making the order; and
- “(b) the FMA gives the relevant person or persons or a representative of the relevant person or persons an opportunity to make written submissions and to be heard on the matter within that notice period. 25
- “(2B) In **subsection (2A)**, **relevant person or persons** means,—
- “(a) in the case of **subsection (2)(b) or (c)**, the contributory mortgage broker: 30
- “(b) in the case of **subsection (2)(d)**, the contributory mortgage broker and every director of the broker’s nominee company.”
- 103 Sections 46 to 47A substituted** 35
- Sections 46 and 47 are repealed and the following sections substituted:

“46 Registration of trust deeds and deeds of participation

“(1) The Registrar must promptly register every copy of a trust deed or deed of participation delivered to him or her for registration under this Act.

“(2) However, the Registrar must refuse to register a copy of a trust deed or deed of participation if,—

“(a) in his or her opinion, it contains any matter that is not clearly legible; or

“(b) the prescribed amount payable on registration is not paid.

“(3) The Registrar must, on the registration of a copy of a trust deed or deed of participation under this section, give a certificate of that registration (and the certificate is conclusive evidence that the deed has been registered under this section).

“47 Amendment of registered deed

“(1) If a trust deed or deed of participation that has been registered under this Act has been lawfully amended, the issuer must ensure that there is delivered to the Registrar, as soon as practicable after the amendment, a copy of the instrument by which the amendment to the deed was made.

“(2) The Registrar must promptly register every copy of an instrument amending a deed that—

“(a) is delivered to him or her for registration under this section; and

“(b) if the Registrar so requires, is accompanied by a copy of the deed as amended.

“(3) However, the Registrar must refuse to register a copy of an instrument amending a deed if,—

“(a) in his or her opinion, the deed as amended contains any matter that is not clearly legible; or

“(b) the prescribed amount payable on registration is not paid.

“(4) The Registrar must, on the registration of a copy of an instrument of amendment under this section, give a certificate of that registration (and the certificate is conclusive evidence that the instrument has been registered under this section).

“47A Registrar not required to consider certain matters

It is not the function of the Registrar, when acting under **section 46 or 47**, to consider whether a trust deed or deed of participation—

- “(a) complies with this Act or the regulations; or 5
- “(b) contains any misdescription or error.”

104 New sections 54C to 54F inserted

The following sections are inserted after section 54B:

“54C Documents, information, and other matters to be made publicly available 10

“(1) Every issuer of securities offered to the public for subscription must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, make publicly available the documents, information, and other matters that are required to be made publicly available by the regulations. 15

“(2) The documents, information, and other matters must, if required by the regulations, be presented, calculated, or prepared in accordance with the frameworks or methodologies specified in a notice issued by the FMA under **section 54D**. 20

“54D FMA may specify frameworks or methodologies

“(1) The FMA may issue a notice that specifies frameworks or methodologies relating to the manner in which documents, information, or other matters that are to be made publicly available under **section 54C** are to be presented, calculated, or prepared. 25

“(2) A notice issued by the FMA—
 “(a) may specify different matters and requirements in respect of different kinds of securities or different classes of issuers: 30
 “(b) must not specify matters and requirements that are inconsistent with regulations made under **section 70(1)(cb)**.

“(3) A notice issued by the FMA—
 “(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the 35

- House of Representatives under section 4 of that Act;
but
- “(b) is not a regulation for the purposes of the Acts and
Regulations Publication Act 1989.
- “(4) A notice issued by the FMA must, as soon as practicable after 5
it is issued, be—
- “(a) published on an Internet site maintained by or on behalf
of the FMA; and
- “(b) notified in the *Gazette*; and
- “(c) made available in printed form for purchase on request 10
by members of the public.
- “(5) A notification in the *Gazette* for the purpose of **subsec-
tion (4)(b)** does not have to include the text of the notice.
- “**54E Consultation**
- “(1) The FMA must not issue a notice under **section 54D** unless 15
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. 20
- “**54F FMA may vary or revoke notice**
- “(1) The FMA may vary or revoke a notice issued under **section
54D**.
- “(2) **Sections 54D(2) to (5) and 54E** apply, with necessary modi-
fications, in all respects to a variation or revocation under this 25
section.”
- 105 Which persons are liable for misstatements**
- Section 56(3) is amended by repealing paragraphs (a) and (b)
and substituting the following paragraphs:
- “(a) the advertisement was distributed or the prospectus was 30
registered, as the case may be, without his or her know-
ledge or consent, and on becoming aware of its distribu-
tion or registration he or she promptly gave notice to the
trustee, statutory supervisor, unit trustee, or superannu-
ation trustee (if any) and the FMA that it was distributed 35

or registered without his or her knowledge or consent;
or

- “(b) after the distribution of the advertisement or the registration of the prospectus, as the case may be, and before the securities were subscribed for, he or she, on becoming aware of any untrue statement in the advertisement or the prospectus, withdrew his or her consent to the distribution or the registration and promptly gave notice to the trustee, statutory supervisor, unit trustee, or superannuation trustee (if any) and the FMA of the withdrawal and of the reason for the withdrawal; or”.

106 Which experts are liable for misstatements

Section 57(2) is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) after distribution of the advertisement or registered prospectus and before the securities were subscribed for, he or she, on becoming aware of the untrue statement or omission, withdrew his or her consent in writing and gave notice to the trustee, statutory supervisor, unit trustee, or superannuation trustee (if any) and the FMA of the withdrawal and of the reason for the withdrawal; or”.

106A Time limit for applying for civil remedies

- (1) Section 57E(1) is amended by omitting “2 years” and substituting “3 years”.
- (2) Nothing in **subsection (1)**—
- (a) enables an application for a pecuniary penalty order to be made that was barred before the commencement of this section; or
- (b) affects any proceedings commenced before the commencement of this section.

107 Criminal liability for misstatement in advertisement or registered prospectus

Section 58(3) is amended by omitting “41(b)” and substituting “**41(1)(b)**”.

108 Section 59A substituted

Section 59A is repealed and the following section substituted:

“59A Criminal liability for delivering prospectus or amendment for registration that does not comply with various requirements

5

“(1) The issuer of securities to which a prospectus relates commits an offence if, when the prospectus is delivered to the Registrar for registration under this Act,—

“(a) any of sections 39(1), 40, or **41(1)** are not complied with in respect of the prospectus; and

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“(b) the issuer knows, or ought reasonably to know, that any of sections 39(1), 40, or **41(1)** have not been complied with in respect of the prospectus.

“(2) The issuer of securities to which a registered prospectus relates commits an offence if—

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“(a) an instrument to amend the prospectus is delivered to the Registrar for registration under this Act that would result, if the amendment were made, in the prospectus failing to comply with section 39(1) or 40; and

“(b) when the instrument is delivered for registration under this Act, the issuer knows, or ought reasonably to know, that if the amendment in the instrument were made it would result in the prospectus failing to comply with section 39(1) or 40.

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“(3) An issuer that commits an offence under **subsection (1) or (2)** is liable, on summary conviction, to a fine not exceeding \$30,000.

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“(4) This section applies in respect of prospectuses and instruments of amendment delivered to the Registrar for registration under this Act on or after the commencement of this section.”

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109 Other offences

(1) Section 60(1)(c) is repealed.

(2) Section 60(1)(d) is amended by inserting “**43B(1)**,” after “35,”.

(3) Section 60(2) is amended by—

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(a) inserting “**43D(1) or (2)**,” after “37(4),”; and

- (b) omitting “54A, and 54B” and substituting “and 54A to **54C**”.

110 When Court may make management banning orders

- (1) Section 60A(1)(a) is amended by omitting “any of sections 58, 59, or 59A” and substituting “section 58 or 59”. 5
- (2) Section 60A(1) is amended by inserting the following paragraph after paragraph (a):
- “(ab) A has been convicted of an offence against **section 47B or 56** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**; or”. 10

111 Persons automatically banned from management

- (1) Section 60E is amended by repealing subsection (1) and substituting the following subsection:
- “(1) This section applies to a person if—
- “(a) the person has been convicted of an offence against either section 58 of this Act or **section 47B or 56** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**; or 15
- “(b) a pecuniary penalty order has been made against the person under this Act.” 20
- (2) Section 60E is amended by inserting the following subsection after subsection (2):
- “(2A) The Court may give leave for the purposes of subsection (2)—
- “(a) at the time of conviction or making of the order, or at any other time on the application of the relevant person: 25
- “(b) in respect of a particular incorporated or unincorporated body, a class of incorporated or unincorporated bodies, or incorporated or unincorporated bodies generally.”

112 When Court may prohibit payment or transfer of money, securities, or other property

- Section 60G(1)(a) is amended by omitting “under this Act” and substituting “under **Parts 1 to 4** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”. 30

113 New sections 65G and 65H inserted

The following sections are inserted after section 65F:

“65G Appeals against decisions of FMA on questions of law only

A person that considers that a decision of the FMA under any of the following provisions is wrong in law may appeal against the decision to the High Court on a question of law only:

“(a) section 38B (which relates to the prohibition of advertisements):

“(b) **section 43F** (which relates to the prohibition of the distribution of investment statements): 10

“(c) **section 43G** (which relates to orders to prohibit allotments or the cancellation of the registration of prospectuses):

“(d) section 44A (which relates to delayed allotment orders): 15

“(e) section 44AE (which relates to prohibition orders):

“(f) section 44B (which relates to the FMA’s powers in respect of contributory mortgages).

“65H 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. 20

“(2) A delegation—

“(a) must be in writing; and

“(b) may be made subject to any restrictions and conditions the Registrar thinks fit; and 25

“(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. 30

“(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.” 35

- 114 Section 66 repealed**
Section 66 is repealed.
- 115 Part 3 repealed**
- (1) Part 3 is repealed.
- (2) Despite the repeal of sections 69P to 69R of the principal Act (which relate to appeals), those provisions continue to apply as if references to the Commission were references to the FMA for the following purposes:
- (a) until the commencement of **section 113**, for the purposes of the Securities Act 1978: 10
- (b) until the commencement of **section 156**, for the purposes of the Securities Markets Act 1988.
- 116 Heading to Part 4 amended**
The heading to Part 4 is amended by adding “**and exemptions**”. 15
- 117 Regulations and Orders in Council**
- (1) Section 70(1) is amended by inserting the following paragraph after paragraph (ca):
- “(cb) prescribing, in respect of securities offered to the public, the documents, information, and other matters that must be made publicly available under **section 54C**, the times or events referred to in that section, and the manner of making the documents, information, and other matters publicly available (including prescribing the manner in which the documents, information, or matters are to be presented, calculated, or prepared); and different matters and requirements may be prescribed in respect of different kinds of securities or different classes of issuers or offerees:”. 20 25
- (2) Section 70(1) is amended by inserting the following paragraphs after paragraph (h): 30
- “(ha) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for the register, including matters that relate to—
- “(i) the operation of the register: 35

- “(ii) the form of the register:
- “(iii) the information or documents to be contained in the register:
- “(iv) the information and documents to be supplied under **sections 41(2) and 43(2)**: 5
- “(v) access to the register:
- “(vi) search criteria for the register:
- “(vii) circumstances in which amendments must be made to the register:
- “(viii) the manner in which the status of a registered prospectus is determined and manner in which that status is described in the register: 10
- “(hb) prescribing matters for the purposes of **section 43Q**, including—
- “(i) the manner in which information, documents, or other matters are notified or provided: 15
- “(ii) changes for the purposes of **section 43Q(2)(a)(iii) and (b)(iii)**.”.

118 New section 70AB inserted

The following section is inserted after section 70: 20

“70AB Regulations relating to exemptions under section 5(1)

- “(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with **subsection (2)**, make regulations—
- “(a) prescribing circumstances in which any exemption under section 5(1) does not apply: 25
- “(b) prescribing additional requirements that must be satisfied before any exemption under section 5(1) may apply:
- “(c) prescribing transitional and savings provisions in connection with any regulations made under **paragraph (a) or (b)**. 30
- “(2) The Minister must, before making a recommendation under **subsection (1)**,—
- “(a) consult with the FMA; and 35
- “(b) be satisfied that the regulations are needed in order to prevent an exemption in section 5(1) from applying in inappropriate circumstances, having regard to whether

the exemption may, in relation to securities of a particular kind, cause significant detriment to subscribers for those securities who are members of the public in New Zealand.”

- 119 Fees and charges** 5
- (1) Section 70A(1)(b) is amended by omitting “a memorandum of amendments to” and substituting “an instrument that amends”.
- (2) Section 70A(1) is amended by adding “; and” and also by adding the following paragraphs:
- “(c) prescribing the amount to be paid on the registration of any other information or document under this Act and different amounts may be prescribed in respect of different amounts of securities being offered, different kinds of securities, or different classes of issuers or offerees: 10
- “(d) requiring the Registrar to provide to the FMA a portion of any amounts paid on the registration of a prospectus, trust deed, deed of participation, or an instrument that amends any of those kinds of documents.” 15
- (3) Section 70A is amended by inserting the following subsection after subsection (1): 20
- “(1A) Regulations made under subsection (1) may prescribe amounts to be paid on the registration of a prospectus, trust deed, deed of participation, or an instrument that amends any of those kinds of documents on the basis that those amounts recover (in whole or in part) the costs of the FMA in performing or exercising functions, powers, or duties under **sections 43C to 43L** (in addition to recovering (in whole or in part) the costs of the Registrar in performing or exercising functions, powers, or duties in connection with the registration of those documents).” 25 30
- 120 New sections 70B to 70D inserted**
- The following sections are inserted after section 70A:
- “70B 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 trans- 35

- action or class of transactions from compliance with any provision or provisions of—
- “(a) Part 2; or
- “(b) any regulations made under section 70(1).
- “(2) The FMA must not grant an exemption under this section unless it is satisfied that— 5
- “(a) the exemption would not cause significant detriment to subscribers for the securities to which the exemption relates who are members of the public in New Zealand; and 10
- “(b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- “(3) Nothing in Part 5 limits **subsection (1)**.
- “**70C Status and publication of exemptions** 15
- “(1) An exemption granted under **section 70B**—
- “(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and
- “(b) must be presented to the House of Representatives under section 4 of that Act. 20
- “(2) A class exemption (but not any other exemption granted under **section 70B**) is a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- “(3) An exemption granted under **section 70B** that is not a class exemption must, as soon as practicable after it is granted, be— 25
- “(a) published on an Internet site maintained by or on behalf of the FMA; and
- “(b) notified in the *Gazette*; and
- “(c) made available in printed form for purchase on request by members of the public. 30
- “(4) A notification in the *Gazette* for the purpose of **subsection (3)(b)** does not have to include the text of the exemption.
- “(5) The FMA’s reasons for granting an exemption under **section 70B** (including why the exemption is appropriate) must be published together with the exemption. 35
- “(6) In this section, **class exemption**—

- “(a) means an exemption granted under **section 70B** that is of general application and that applies to a class of persons or a class of transactions; but
- “(b) does not include an exemption granted under **section 70B** in relation to— 5
- “(i) a particular person or transaction; or
- “(ii) persons associated with, or transactions involving, a particular entity.
- “70D Variation or revocation of exemptions**
- “(1) The FMA may vary or revoke an exemption granted under **section 70B**. 10
- “(2) **Sections 70B(2) and 70C** apply, with necessary modifications, in all respects to a variation or revocation under this section.”
- 121 Matters that must be stated in regulations implementing application regime** 15
- Section 79(1) is amended by repealing paragraph (d) and substituting the following paragraph:
- “(d) whether or not, or the extent to which, exemptions from those provisions granted by the FMA under **section 70B** may also apply for those securities; and” 20
- 122 Schedule 1 repealed**
- Schedule 1 is repealed.
- Transitional provisions*
- 123 Registration of prospectus continues** 25
- (1) If a prospectus was registered under the principal Act before the commencement of this subsection (or is registered in accordance with **section 126**),—
- (a) the prospectus must continue to be treated as being a registered prospectus under the principal Act; and 30
- (b) the principal Act (as amended by this Act) continues to apply to the prospectus as if it had been registered under **section 42** of the principal Act (as substituted by this Act); and

- (c) every memorandum of amendments to the prospectus registered under the principal Act before the commencement of this subsection (or in accordance with **section 126**) must continue to be treated as registered.
- (2) However,— 5
- (a) **subsection (1)** does not apply if, before the commencement of this subsection, the registration of the prospectus has been cancelled; and
- (b) **sections 43B to 43E** of the principal Act (as substituted by this Act) do not apply to a prospectus referred to in **subsection (1)** (except as referred to in **paragraph (c)**); and 10
- (c) **sections 43B to 43E** of the principal Act (as substituted by this Act) apply to an instrument to amend a prospectus referred to in **subsection (1)** only if the instrument is registered after the commencement of this subsection. 15
- (3) For the purpose of including information and documents in the register for a current prospectus, the issuer of the securities to which the prospectus relates must, within 40 working days after the commencement of this subsection, supply the prescribed information and documents to the Registrar in the prescribed manner. 20
- (4) The Registrar is not required to include in the register information and documents for a prospectus referred to in **subsection (1)** if— 25
- (a) the period within which allotments of securities may be made under the prospectus in accordance with the principal Act finally ended before the commencement of this subsection (for example, as a result of section 37A(1)(c) of the principal Act); or 30
- (b) that information or those documents are of a kind that is prescribed as being information or documents that are not required to be included in the register.
- (5) In **subsection (3), current prospectus**— 35
- (a) means a prospectus that was registered before the commencement of **subsection (1)** (or is registered in accordance with **section 126**) and under which allot-

- ments may still be made in accordance with the principal Act after that commencement; but
- (b) does not include a prospectus if no allotments of securities will be made under the prospectus after the date that is 40 working days after the commencement of this subsection. 5
- (6) An issuer commits an offence and is liable on summary conviction to a fine not exceeding \$30,000 if the issuer,—
- (a) without reasonable excuse, fails to comply with **subsection (3)**; or 10
- (b) in purported compliance with that subsection, supplies information or a document knowing it to be false or misleading.

124 Regulations for purposes of section 123

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with **subsection (2)**, make regulations prescribing— 15
- (a) information and documents for the purposes of **section 123(3)**; and
- (b) the manner of supplying that information and those documents to the Registrar; and 20
- (c) information and documents for the purposes of **section 123(4)(b)**.
- (2) The Minister must consult with the FMA before making a recommendation under **subsection (1)**. 25
- (3) Different matters may be prescribed under **subsection (1)** in respect of different kinds of securities or different classes of issuers.

124A FMA may perform functions formerly performed by Registrar of Companies in relation to registration of prospectuses 30

For the purpose of effectively managing the transition relating to the amendments in **sections 96 and 97** of this Act (which include changes to the process for registering prospectuses), the FMA may, in the manner that it thinks fit and on a temporary basis, perform the same, or substantially similar, functions as the Registrar of Companies performed, before the 35

commencement of this section, in relation to the registration of prospectuses under the principal Act (whether those functions were performed on a formal or an informal basis).

125 Registration of deeds continues

If a trust deed or deed of participation was registered under the principal Act before the commencement of this section (or is registered in accordance with **section 126**),—

- (a) the deed must continue to be treated as being a deed that is registered under the principal Act; and
- (b) the principal Act (as amended by this Act) continues to apply to the deed as if it had been registered under **section 46** of the principal Act (as substituted by this Act); and
- (c) every instrument of amendments to the deed registered under the principal Act before the commencement of this section (or in accordance with **section 126**) must continue to be treated as registered.

126 Prospectuses, amendments, and deeds delivered but not yet registered must be dealt with under old law

- (1) If, before the commencement of this section,—
 - (a) a prospectus is delivered for registration under the principal Act but the Registrar has not yet decided whether or not to register it, the prospectus must be dealt with in accordance with section 42 of the principal Act as in force before the commencement of **section 97**;
 - (b) a memorandum of amendments is delivered for registration under section 43 of the principal Act but the Registrar has not yet decided whether or not to register it, the memorandum must be dealt with in accordance with section 43 of the principal Act as in force before the commencement of **section 97**;
 - (c) a copy of a trust deed or deed of participation is delivered for registration under section 46 of the principal Act but the Registrar has not yet decided whether or not to register it, the deed must be dealt with in accordance with section 46 of the principal Act as in force before the commencement of **section 103**;

- (d) an instrument of amendments is delivered for registration under section 47 of the principal Act but the Registrar has not yet decided whether or not to register it, the instrument must be dealt with in accordance with section 47 of the principal Act as in force before the commencement of **section 103**. 5
- (2) In **subsection (1)**, **Registrar** has the same meaning as in section 2(1) of the principal Act (as in force before the commencement of **section 81**).
- 127 Exemptions continue in force** 10
- (1) This section applies to every exemption granted under section 5(5) of the principal Act that is in force immediately before the commencement of this section.
- (2) The exemption—
- (a) continues in force as if it were granted under **section 70B** of the principal Act (as inserted by this Act); and 15
- (b) may be amended or revoked as if ~~made~~ granted under that section.
- Part 6**
- Amendments to Securities Markets Act 1988** 20
- 128 Principal Act amended**
- This **Part** amends the Securities Markets Act 1988.
- 129 Interpretation**
- (1) Section 2(1) is amended by repealing the definitions of **business rules, conduct rules, and listing rules, and registered exchange**. 25
- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- ~~“authorised referring body, in **Part 3A**, has the same meaning as in **section 40B**~~ 30
- “authorised futures market has the meaning set out in section 37(1)

“**business rules** means the rules of a registered exchange for a registered market that relate to the matters set out in **section 36H(1)(b)**, in the case of a securities market, or **section 36H(2)**, in the case of a futures market

“**designated settlement system**, in **Part 3A**, has the same meaning as in **section 40B** 5

“**exchange participant** means any of the following:

“(a) a public issuer:

“(b) a person authorised by a registered exchange to undertake trading activities on, or otherwise participate in, a securities registered market 10

“(c) a person authorised by a registered exchange to undertake trading activities on, or otherwise participate in, a futures market:

“(d) a director or employee of any person referred to in **paragraph (a), (b), or (c)** 15

“**issuer** has the meaning set out in section 2(1) of the Securities Act 1978

“**listing rules** means the rules of a registered exchange for a registered market that relate to the matters set out in **section 36H(1)(a)** 20

“**market integrity regulations** means regulations made under **section 36P**

“**market rules** means, ~~—~~ means the following rules for a registered market: 25

“(a) in relation to a securities market, the business rules and listing rules of a registered exchange for the securities market; and

“(b) in relation to a futures market, the business rules of a registered exchange for the futures market 30

“**participant**, in **Part 3A**, has the same meaning as in **section 40B**

“**Rulings Panel** means the Securities Markets Rulings Panel established under **section 40C**

“**Rulings Panel regulations** means regulations made under **section 49GA** 35

“**securities markets rules or regulations**, in **Part 3A**, has the same meaning as in **section 40B**

~~“specified operator, in Part 3A, has the same meaning as in section 40B~~

~~“registered exchange means,—~~

~~“(a) a person that holds a market registration under **section 36F**;~~ 5

~~“(b) a subsidiary of a person to which **paragraph (a)** applies (if the subsidiary operates the registered market);~~

~~“(c) a person that is treated as if it were a registered exchange under **section 36ZY(4)**~~

~~“registered market means—~~ 10

~~“(a) a securities or futures market that is registered under **section 36F**;~~

~~“(b) a securities or futures market that is treated as if it were a registered market under **section 36ZY(4)**~~

~~“unsolicited offer has the meaning set out in **section 48DA(1)**~~ 15

~~“unsolicited offer obligation means any provision of any regulations made under **section 48DB** that is stated by those regulations to be an unsolicited offer obligation”.~~

(2A) The definition of **control** in section 2(1) is amended by omitting “subpart 1” and substituting “**subpart 1B**”. 20

(2B) Paragraph (a) of the definition of **dealings in securities** in section 2(1) is amended by omitting “of a public issuer” and substituting “listed on a registered market”.

(2C) Paragraph (a)(i) of the definition of **dealings in securities** in section 2(1) is amended by inserting “(and, in the case of a futures contract, these steps include acquiring or disposing of as defined in section 37(1))” after “securities”. 25

(2D) Paragraph (b) of the definition of **dealings in securities** in section 2(1) is amended by omitting “registered exchange” and substituting “registered market”. 30

(2E) The definition of **listed** in section 2(1) is amended by omitting “the relevant registered exchange’s securities market” and substituting “a registered market”.

(2F) Paragraph (a) of the definition of **public issuer** in section 2(1) is amended by adding “in relation to a registered market (and includes a registered exchange that is listed on its own registered market)”. 35

- (2G) The definition of **public issuer** in section 2(1) is amended by repealing paragraph (b) and substituting the following paragraph:
- “(b) a person to whom paragraph (a) previously applied, in respect of any action or event or circumstance to which this Act applied at that time”. 5
- (3) Paragraph (b) of the definition of **registered exchange** is amended by omitting “section 36X(3)” and substituting “~~section 36ZY(3)~~”.
- (3) The definition of **registered exchange’s securities market** in section 2(1) is amended by omitting “operated by a registered exchange” and substituting “that is a registered market”. 10
- (3A) Paragraph (b) of the definition of **security** in section 2(1) is amended by omitting “registered exchange’s securities market or approved for trading on an authorised futures exchange” and substituting “registered market or approved for trading on an authorised futures market”. 15
- (3B) The definition of **trading day** in section 2(1) is amended by omitting “registered exchange’s securities market” and substituting “registered market”. 20
- (3C) Section 2 is amended by adding the following subsection:
- “(5) For the purposes of this Act and every other enactment, unless the context otherwise requires, a person is a party to a listing agreement with a registered exchange if the person is party to that listing agreement in respect of a registered market of the registered exchange (or, in the case of a registered exchange, if the exchange is listed on its own registered market).” 25
- 129A What is material information in relation to futures contracts**
- Section 3A is amended by omitting “authorised futures exchange” and substituting “authorised futures market”. 30
- 129B Situations not giving rise to relevant interests**
- Section 6(1)(b) is amended by omitting “registered exchange’s securities market” and substituting “registered market”.

129C Application of subpart 1 to insider conduct in relation to futures contracts

Section 11E is amended by omitting “authorised futures exchange” and substituting “authorised futures market”.

130 Purpose of this subpart

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- (1) Section 19A(2) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

“(a) promoting fair, orderly, and transparent listed markets:

“(b) providing an appropriate level of protection for investors:”.

10

- (2) Section 19A(2) is amended by repealing paragraphs (f) and (g) and substituting the following paragraph:

“(f) recognising the importance to the New Zealand listed markets of attracting and retaining exchange participants and maintaining international competitiveness:”.

15

131 Public issuers must disclose in accordance with listing rules if continuous disclosure listing rules apply

Section 19B(2) is amended by omitting “this Act” and substituting “Part 5”.

131A Registered exchange must publish disclosures

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Section 35G(a) and (b) is amended by omitting “registered exchange’s securities market” and substituting “relevant registered market”.

131B New heading to Part 2B substituted

The heading to Part 2B is omitted and the following heading substituted: “Registered markets”.

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132 Heading to subpart 1 of Part 2B amended

The heading to subpart 1 of Part 2B is amended by omitting “, conduct, and control”.

132 **Heading to subpart 1 of Part 2B amended**

The heading to subpart 1 of Part 2B is amended by omitting “, conduct, and control of exchanges” and substituting “of markets”.

132A **No holding out as securities exchange unless registered under this subpart** 5

Section 36A is amended by repealing subsection (2) and substituting the following subsections:

“(2) Subsection (1)(a) and (b)(i) do not apply to—

“(a) a registered exchange; or

“(b) a subsidiary of a registered exchange.

10

“(2A) Subsection (1)(b)(ii) does not apply to—

“(a) a registered exchange in respect of its registered market; or

“(b) a subsidiary of a registered exchange in respect of the exchange’s registered market.”

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132B **Power to exempt securities markets and futures markets from this Part**

(1) The heading to section 36E is amended by inserting “Part 2 and” after “from”.

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(2) Section 36E(1) is amended by inserting “Part 2 and” after “provisions of”.

(3) Section 36E is amended by inserting the following subsection after subsection (2):

“(2A) The Minister must, in considering whether to grant an exemption, have regard to—

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“(a) the nature of the relevant securities or futures market, or class of securities or futures markets; and

“(b) the likely effect of the proposed exemption on the integrity or effectiveness of securities or futures markets in New Zealand; and

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“(c) the likely effect of the proposed exemption on the confidence of investors in securities or futures markets in New Zealand; and

- “(d) whether there are public benefits from the securities or futures market, or class of securities or futures markets, being operated under the proposed exemption; and
“(e) any other matters he or she considers relevant.”

133 Registration of exchanges 5

Section 36F is amended by repealing subsections (2) and (3) and substituting the following subsections:

“(2) A body corporate may apply to become a registered exchange by delivering to the FMA—

“(a) an application for registration in the form, and containing the information, required by the FMA; and 10

“(b) a copy of the proposed market rules for the securities markets and futures markets to which the application applies; and

“(c) any fees required to be paid to the FMA by regulations made under section 49D. 15

“(3) The FMA must register the body corporate as a registered exchange in respect of the securities markets and futures markets to which the application applies after—

“(a) receipt of the documents referred to in **subsection (2)**; 20
and

“(b) receipt of any fees, charges, and costs required to be paid to the FMA by regulations made under section 49D; and

“(c) approval of the proposed market rules under **section 36L** 25

“(4) The FMA must, on the registration of an exchange under this section, give a certificate of the registration to the exchange (and the certificate is conclusive evidence that the exchange is registered under this section).” 30

133 New headings and sections 36F to 36FAB substituted

The heading above section 36F and section 36F are repealed and the following headings and sections substituted:

“How to obtain registration of market

“36F Application for market registration 35

“(1) A body corporate may apply for a market registration for—

- “(a) 1 or more securities markets; or
“(b) 1 or more securities markets and 1 or more futures mar-
kets; or
“(c) 1 or more futures markets, if the body corporate already
holds a market registration for a securities market. 5
- “(2) The applicant for a market registration must deliver to the
FMA—
“(a) an application for registration in the form, and contain-
ing the information, required by the FMA, but which
must— 10
“(i) include a copy of any proposed new market rules,
or proposed changes to existing market rules,
for the relevant market (the **proposed market**
rules); and
“(ii) identify any existing market rules that it proposes
to apply to the relevant market; and 15
“(b) any fees required to be paid to the FMA by regulations
made under section 49D.
- “(3) The FMA must grant the applicant a market registration, by
written notice to the applicant, after— 20
“(a) receipt of the documents referred to in **subsection (2)**;
and
“(b) receipt of any fees, charges, and costs required to be
paid to the FMA by regulations made under section
49D; and 25
“(c) approval, under **sections 36K and 36L**, of the
proposed market rules provided under **subsection**
(2)(a)(i) for the market.
- “**36FAA Notification of market registration**
“(1) A notice of market registration under **section 36F(3)**— 30
“(a) must identify the market registered and the person that
holds the market registration under that section (the
registered exchange); and
“(b) must identify the proposed market rules approved for
the market (if any), and must identify the existing mar-
ket rules that apply to the market (if any), but need not
incorporate them; and 35

- “(c) is a regulation for the purposes of the Regulations (Dis-allowance) Act 1989 (but not for the purposes of the Acts and Regulations Publication Act 1989); and
- “(d) must, as soon as practicable after it is given, be—
- “(i) published on an Internet site maintained by or on behalf of the FMA; and 5
- “(ii) notified in the *Gazette*.
- “(2) A notice of market registration may relate to more than 1 market.
- “Restrictions on registered exchanges” 10
- “36FAB No operation by registered exchange of unregistered market**
- “(1) No registered exchange may operate in New Zealand a securities or futures market for which it does not hold a market registration under this Part or an authorisation under Part 3 (but see section 36E, under which a market may be exempted from this section). 15
- “(2) Every person who acts in contravention of **subsection (1)** commits an offence (see section 43B for the maximum penalty of a \$10,000 fine per day).” 20
- 134 New subpart 1A of Part 2B inserted**
- Sections 36G to 36R and the heading above section 36G are repealed and the following subpart is substituted:
- “Subpart 1A—Market rules and market integrity regulations for registered exchanges” 25
- “36FA Purpose and criteria applying under this subpart**
- “(1) The purpose of this subpart is to—
- “(a) provide for the approval of the rules, and changes to the rules, applying to securities and futures markets under contract between a registered exchange and the exchange participants (and for a power to request changes); and 30
- “(b) enable the making of market integrity regulations for securities and futures markets of registered exchanges on matters of significant public interest. 35

- “(1) The purpose of this subpart is to provide for the approval of the market rules, and changes to the market rules, applying to registered markets under contract between a registered exchange and the exchange participants.
- “(2) The following criteria are relevant to the implementation of that purpose (without limiting other relevant criteria):
- “(a) promoting fair, orderly, and transparent securities and futures markets:
 - “(b) providing an appropriate level of protection for investors: 10
 - “(c) recognising the importance to securities and futures markets of attracting and retaining exchange participants and maintaining international competitiveness:
 - “(ca) encouraging growth and innovation in New Zealand’s securities and futures markets: 15
 - “(d) recognising the importance of maintaining international best practices in New Zealand’s securities and futures markets:
 - “(e) recognising New Zealand’s obligations under any international convention, international agreement, or international arrangement to which the Government of New Zealand is a party. 20
- “(3) The FMA must determine the weight to be given to each criterion in relation to the rules for any particular market, having regard to the nature of that market. 25

“Key requirements

- “36G Registered exchange must operate markets Registered markets must be operated under market rules that comply with this subpart**
- “(1) A registered exchange must operate each of its ~~securities markets and, if registered in respect of futures markets, each of its futures~~ registered markets in accordance with market rules for that market that—
- “(a) include the required matters set out in **section 36H** (subject to **section 36H(3)**); and 35
 - “(b) have effect under **section 36I**.

“(2) A registered exchange that acts in contravention of **subsection (1)** commits an offence (*see* section 43B(2) for the maximum penalty of a \$10,000 fine per day).

“Compare: 1988 No 234 s 36G

“**36H Required matters for market rules** 5

“(1) Market rules for a securities market must—

“(a) include rules (**listing rules**) that—

“(i) relate to the approval of persons for the purpose of enabling securities issued by those persons to be traded on the securities market; and 10

“(ii) require those persons to be party to a listing agreement with the registered exchange and relate to the entry into, and revocation of, those listing agreements; and

“(iii) relate to the governance of those persons; and 15

“(iv) relate to the conduct or activities of those persons in relation to that market or to securities traded on that market; and

“(v) relate to the monitoring and enforcement of those rules (~~including who may refer breaches, or reviews of decisions under the rules, to the Rulings Panel~~); and 20

“(b) include rules (**business rules**) that—

“(i) relate to the authorisation of persons to undertake trading activities on, or otherwise participate in, the securities market; and 25

“(ii) relate to the conduct or activities of those persons in relation to the securities market; and

“(iii) govern the conduct of business on the securities market; and 30

“(iv) relate to the monitoring and enforcement of those rules (~~including who may refer breaches, or reviews of decisions under the rules, to the Rulings Panel~~).

“(2) Market rules for a futures market must include rules (**business rules**) that— 35

- “(a) relate to the authorisation of persons to undertake trading activities on, or otherwise participate in, the futures market; and
- “(b) relate to the conduct or activities of those persons in relation to the futures market; and 5
- “(c) govern the conduct of business on the futures market; and
- “(d) relate to the monitoring and enforcement of those rules (including who may refer breaches, or reviews of decisions under the rules, to the Rulings Panel). 10
- “(3) ~~The market rules need not deal with a matter set out in **subsection (1) or (2)** to the extent that the matter is dealt with in market integrity regulations.~~
- “Compare: 1988 No 234 s 36H
- “**36I When market rules have effect** 15
- “ A market rule, or part of a market rule, for a registered market has no effect, either in contract or for the purposes of **section 36G**, until it has been approved by the FMA under **section 36L**.
- “(2) **Subsection (1)** does not apply to any provision of the market integrity regulations that is deemed, by those regulations, to be contained in the market rules. 20
- “(3) If a market rule, or part of a market rule, is inconsistent with a market integrity regulation, the market integrity regulation prevails. 25
- “Process for approving new market rules and changes to market rules*
- “**36IA Application of process for approving market rules and changes**
- Sections 36K and 36L** apply to proposed market rules provided to the FMA by an applicant under **section 36F** and proposed changes to market rules provided to the FMA by a registered exchange under **section 36J**. 30

“36J Registered exchange must provide proposed new market rules and changes to FMA

“(1) A registered exchange must provide a proposed new market rule or a proposed change to an existing market rule to the FMA before making that rule or change. 5

“(1) A registered exchange must provide any proposed change to its market rules for a registered market to the FMA before making that change.

“(2) A **change**, in relation to ~~a~~ market rules for the purposes of this subpart, includes a new market rule and an amendment to, and a revocation or cancellation of, the an existing market rule. 10

“(3) **Subsection (1)** does not apply to any provision of the market integrity regulations that is deemed, by those regulations, to be contained in the market rules. 15

“Compare: 1988 No 234 s 36J

“36K Approval process for proposed market rules and changes

“(1) The FMA must, within the approval period, by written notice to the applicant for registration or the registered exchange,—

“(a) approve the proposed market rules or change provided under **section 36F** or **section 36J** (*see section 36L*); 20
or

“(b) extend the approval period; or

“(c) decline to approve the proposed market rules or change.

“(2) The approval period is 40 working days, or (if extended under **subsection (1)(b)**) 60 working days, after the FMA receives ~~a the~~ proposed market rules or change from the registered exchange. 25

“(3) The revision by the applicant or registered exchange of the proposed market rules or change during the approval period in response to comments by the FMA, and the resubmittal of the revised proposed market rules or change, does not result in the commencement of a new approval period under this section. 30

“(4) A notice under this section—

“(a) must identify the market rules, change, or changes approved to which it relates, but need not incorporate it in the notice them; and 35

- “(b) is a regulation for the purposes of the Regulations (Dis-allowance) Act 1989 (but not for the purposes of the Acts and Regulations Publication Act 1989); and
- “(c) must, as soon as practicable after it is given, be—
- “(i) published on an Internet site maintained by or on behalf of the FMA; and
- “(ii) notified in the *Gazette*.
- “(4A) A separate notice under this section of the decision to approve rules is not needed if there is a notice of market registration under **section 36FAA** that notifies approval of these rules. 10
- “(5) The FMA’s reasons for a decision under **subsection (1)(b) or (c)** must be published together with the decision.
- “36L Approval of market rules**
- “(1) The FMA must approve a ~~proposed market rule or change the proposed market rules or a change~~ provided to it under this Part unless the FMA is satisfied that— 15
- “(a) it is not in the public interest to do so after having had regard to—
- “(i) the consistency of the rules or change with the ~~general obligations of the relevant registered exchange~~ under **section 36Y**; and 20
- “(ii) the criteria stated in **section 36FA** and any other matters that it considers relevant; or
- “(b) ~~if the proposed rule or change relates to the continuous disclosure provisions of the listing rules; the changed continuous disclosure provisions do not achieve the purpose of subpart 1 of Part 2 (after having regard to that purpose; the criteria stated in section 19A; any market integrity regulations; and any other matters that the FMA considers relevant).~~ 25
- “(b) (if the rules include listing rules or the change affects listing rules) the listing rules, or the listing rules as changed, for the market will not achieve the purpose of subpart 1 of Part 2, after having regard to— 30
- “(i) that purpose; and 35
- “(ii) the criteria stated in section 19A; and
- “(iii) any other matters that the FMA considers relevant.

“(2) The FMA must, in considering whether to approve proposed market rules provided under **section 36F**, take into account any existing rules that the applicant proposes to also apply to the relevant market.

“Power to request market rules

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“36M Power for FMA to request market rules on certain matters

“(1) The FMA may, if it considers it necessary or desirable to promote any of the criteria set out in **section 36FA** or the meeting of any of the obligations set out in **section 36Y**, request a registered exchange to prepare a draft market rule or draft change for any of its registered markets on a matter specified in a written notice to the registered exchange.

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“(1B) The FMA may make a request under **subsection (1)** only—

“(a) after carrying out a review under **section 36YB(1) or (2)**; or

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“(b) if it believes on reasonable grounds that it is urgent to do so at any other time.

“(2) The registered exchange 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:

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“(a) provide a proposed rule or change to the FMA under **section 36J** that addresses the requested matter:

“(b) provide the FMA with a written report that—

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“(i) identifies any requested matter or matters that have not been addressed by a proposed rule or change; and

“(ii) explains why the registered exchange has not done so; and

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“(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 registered exchange proposes to provide for the matter or matters (if at all).

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“(3) 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 36H**.

“Miscellaneous provisions on market rules

“**36N Market rules must be available for public inspection** 5

“(1) A registered exchange ~~that operates a securities market or futures market~~ must ensure that a copy of the market rules for ~~that market~~ each of its registered markets are—

“(a) available for public inspection, free of charge and during normal office hours, at the head office of that registered exchange; and 10

“(b) published on an Internet site maintained by, or on behalf of, the registered exchange at all reasonable times.

“(2) A registered exchange that fails to comply with **subsection (1)** commits an offence (*see* section 43B for the maximum penalty of a \$5,000 fine) 15

“Compare: 1988 No 234 s 36Q

“**36O Application of Acts relating to regulations to contractual market rules**

“ To avoid doubt, market rules are not regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989 or for any other purpose. 20

“(2) **Subsection (1)** does not apply to a provision of the market rules to the extent that market integrity regulations have ~~deemed that provision to be contained in the market rules.~~ 25

“Compare: 1988 No 234 s 36R

“Market integrity regulations

“**36P Market integrity regulations**

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister made in accordance with ~~section 36Q~~, make regulations that provide (in relation to any ~~+~~ or more of the securities or futures markets of a registered exchange) for any or all of the matters for which rules are required for that market under **section 36H**. 30 35

- “(2) In addition, those regulations may provide for—
- “(a) the carrying out of the following functions:
 - “(i) the monitoring and enforcement of the market integrity regulations (including who may refer breaches, or reviews of decisions under them, to the Rulings Panel); 5
 - “(ii) the waiver of compliance with provisions of the market rules or market integrity regulations in accordance with criteria set by the regulations: 10
 - “(b) fees or charges to be paid (and prescribe those fees or charges or a means by which they may be calculated or ascertained) in connection with the carrying out of any function under the market rules or market integrity regulations: 10
 - “(c) any other matters contemplated by this **Part**, necessary for its administration, or necessary for giving it full effect. 15
- “(3) Those regulations must not impose obligations on any person other than—
- “(a) the registered exchange, the FMA, or any other person carrying out any function relating to the registered exchange’s securities market or futures market: 20
 - “(b) exchange participants, applicants to be exchange participants, and former exchange participants: 25
 - “(c) the Rulings Panel. 25

“36Q Requirements for market integrity regulations

- “(1) The Minister may make a recommendation under **section 36P(1)** only if the Minister—
- “(a) has consulted—
 - “(i) the FMA; and 30
 - “(ii) the relevant registered exchange; and
 - “(iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposal; and
 - “(b) is satisfied that the proposed recommendation concerns matters that are of significant public interest; and 35
 - “(c) has had regard to—

- “(i) the consistency of the recommendation with the general obligations of the relevant registered exchange under **section 36Y**; and
- “(ii) the criteria stated in **section 36FA** and any other matters that he or she considers relevant; and 5
- “(iii) any views of the relevant registered exchange in relation to any monitoring or enforcement obligations to be imposed on it under the recommendation.
- “(2) A failure to comply with **subsection (1)(a)** does not invalidate any regulations made under this section. 10
- “36R Effect of market integrity regulations on market rules**
- “(1) Market integrity regulations may—
- “(a) add to, modify, replace, or negate any or all provisions of the market rules; 15
- “(b) deem any or all of the provisions in the regulations to be contained in the market rules.
- “(2) Any provisions deemed to be contained in the market rules have effect in contract as if they were part of those rules and had been included in accordance with the processes, under those rules, for amending the rules. 20

“Application of subpart to futures markets

“36RA Application of subpart to registered exchange in relation to futures markets

This subpart applies in respect of the futures market or markets of a registered exchange only if the exchange is registered in respect of its futures markets under this Part.” 25

135 Heading above section 36S substituted

The heading above section 36S is repealed and the following heading substituted: 30

- “Subpart 1B—Control limits for registered exchanges”.
- 136 Heading above section 36X and sections 36X to 36Z repealed**
The heading above section 36X and sections 36X to 36Z are repealed. 5
- 137 ~~Heading to subpart 2 of Part 2B substituted~~ New subpart 2 heading substituted in Part 2B**
~~The heading to subpart 2 of Part 2B~~ subpart 2 heading in Part 2B is repealed; and the following heading substituted: 10
“Subpart 2—Obligations and oversight of registered exchanges in respect of registered markets”.
- 138 New heading and sections 36Y to 36YF inserted**
The following heading and sections are inserted before the heading above section 36ZD: 15
“*General obligations of registered exchange in respect of registered markets*”
- “36Y General obligations of registered exchange in respect of registered markets** 20
A registered exchange must,—
“(a) to the extent that it is reasonably practicable, do all things necessary to ensure that each ~~securities market and futures market that it operates is~~ of its registered markets is a fair, orderly, and transparent market; and 25
“(b) have adequate arrangements for ~~supervising those operating its registered~~ operating its registered markets, including arrangements for—
“(i) for handling conflicts between the commercial interests of the registered exchange and the need 30
for the registered exchange to ensure that the markets operate in the way referred to in **paragraph (a)**; and
“(ii) for monitoring the conduct of exchange participants on or in relation to the markets; and 35

- “(iii) for enforcing compliance with the relevant market rules; and
- “(iv) that ensure there is a sufficiently independent adjudicative body to adjudicate on contraventions of market rules that are referred to it; and 5
- “(c) have sufficient resources (including financial, technological, and human resources) to operate ~~those~~ its registered markets properly ~~and for the required supervisory arrangements to be provided.~~
- “**36YA Registered exchange must give annual report to FMA** 10
- “(1) A registered exchange must, within 3 months after the end of its financial year, give a report to the FMA and the Minister on ~~how well it has met~~ the extent to which it has complied with its obligations under **section 36Y** in the preceding financial year. 15
- “(2) The annual report for a financial year must contain, or be accompanied by, the information (if any) in relation to the registered exchange’s performance against its obligations under **section 36Y**, specified by the FMA before the commencement of the relevant financial year. 20
- ~~“(3) The first annual report under this section may, if the registered exchange wishes, relate to only the period from the commencement of this section to the end of its financial year.~~
- “(3) The FMA and the registered exchange may, on the terms and conditions that they think fit, agree that the first annual report and the first review under **section 36YB** relate to a period prior to the commencement of this section. 25
- “**36YB FMA may carry out general obligations review of registered exchange**
- “(1) The FMA may, at any time, carry out a review of how well a registered exchange is meeting any or all of its obligations under **section 36Y**. 30
- “(2) The FMA must carry out ~~that review~~ a review of how well a registered exchange is meeting all of its obligations under **section 36Y** at least once in respect of each financial year of a registered exchange. 35

- “(3) The FMA—
- “(a) may, in carrying out the review, take into account the most recent annual report and other information provided under **section 36YA** and any other information it considers appropriate; and 5
- “(b) must, after carrying out the review, provide a draft written report on its review to the registered exchange and take into account any submissions made by the exchange within the reasonable period for submissions specified by the FMA. 10
- “(3A) The FMA must not carry out a review of a designated settlement system (within the meaning of section 156M(1) of the Reserve Bank of New Zealand Act 1989) of a registered exchange under this section (but nothing in this subsection prevents a review under that Act being carried on in conjunction with a review under this section). 15
- “(4) The first review of a financial year under **subsection (2)** may relate ~~only~~ to the period covered by the first annual report provided under **section 36YA**.
- “**36YC FMA must make written report on general obligations review** 20
- “(1) The FMA must give a written report on a review under **section 36YB** to the Minister and the registered exchange—
- “(a) as soon as practicable after carrying out the review; and
- “(b) in any case, within 3 months after the exchange has provided an annual report to the FMA under **section 36YA**. 25
- “(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. 30

“36YD FMA may require registered exchange to submit action plan on failure to meet general obligations

- “(1) If the FMA considers that the registered exchange has failed or is failing to meet any 1 or more of its obligations under **section 36Y** after carrying out a review under **section 36YB(1) or (2)**, it may, by written notice, require the exchange to submit an action plan to the FMA. 5
- “(2) The notice must—
- “(a) ~~give notice~~ set out the details of the failure; and
 - “(b) specify the date by which the action plan must be submitted to the FMA. 10
- “(3) The registered exchange 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— 15
 - “(i) the actions that the registered exchange proposes to take to remedy the failure or avoid any further failure; and
 - “(ii) the timetable for taking those actions: 20
 - “(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 registered exchange does not consider that matter to be a failure or gives any other reasons why the registered exchange has not provided an action plan on the matter. 25

“36YE Approval, amendment, or rejection of action plan

- “(1) If a registered exchange submits an action plan, the FMA may— 30
- “(a) approve the action plan; or
 - “(b) require the registered exchange 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. 35
- “(2) If the FMA requires the registered exchange to amend an action plan provided to the FMA, the registered exchange 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 5
 - “(ii) explains why the registered exchange does not consider that the matter needs amending or gives any other reasons why the registered exchange has not provided an amendment addressing the matter. 10
 - “(3) If the FMA approves the action plan (whether as first provided or after amendment), the registered exchange must comply with the action plan.
 - “(4) An action plan that has been approved by the FMA may be varied at any time by the registered exchange with the consent of the FMA agreement between the registered exchange and the FMA. 15
- “**36YF Minister may give general obligation direction to registered exchange** 20
- “(1) The Minister may, on the recommendation of the FMA, give a written direction to a registered exchange if—
 - “(a) the Minister considers that the registered exchange has failed or is failing to meet any 1 or more of its obligations under **section 36Y**; and 25
 - “(b) any of the following has occurred:
 - “(i) the registered exchange has not provided an action plan when required under **section 36YD**; or
 - “(ii) the registered exchange has not provided an amended action plan when required under **section 36YE**; or 30
 - “(iii) the FMA has rejected a registered exchange’s action plan; or
 - “(iv) the registered exchange has not complied with an approved action plan. 35
 - “(2) The direction may specify—

- “(a) the actions that the registered exchange must take to remedy any failure or avoid any further failure to meet any 1 or more of its obligations under **section 36Y**; and
“(b) the timetable for taking those actions.
“(3) The registered exchange must comply with the direction.” 5
- 139 Registered exchange must notify Commission of disciplinary actions and suspected contraventions**
- (1) Section 36ZD is amended by omitting “conduct rules” in each place where it appears and substituting in each case “market rules”. 10
- (2) Section 36ZD is amended by adding the following subsection as subsection (2):
- “(2) The FMA must notify the registered exchange of its decision to take, or not to take, any action in relation to a notification under subsection (1)(b)(ii).” 15
- 139A New heading and section 36ZFA inserted**
The following heading and section are inserted after section 36ZF:
- “Real-time surveillance information*
- “36ZFA Registered exchange must ensure FMA has access to real-time trading and other information** 20
- “(1) A registered exchange 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 exchange’s registered markets. 25
- “(2) The FMA must pay all reasonable costs of the registered exchange in providing the information under this section.”
- 140 Registered exchange must give Commission material information given to market participants**
- (1) The heading to section 36ZG is amended by omitting “**market participants**” and substituting “**exchange participants**”. 30
- (2) Section 36ZG is amended by omitting “participants, or any class of participants, of a securities market or futures market operated by the exchange,” and substituting “exchange participants, or any class of exchange participants,”. 35

Section 36ZG is amended by omitting “a securities or futures market operated by the exchange” and substituting “a registered market”.

- 141 When disclosure of material information required** 5
Section 36ZH is amended by omitting “market participants” and substituting “exchange participants”.
- 142 Form and method of disclosure**
Section 36ZI is amended by omitting “market participants” and substituting “exchange participants”.
- 143 New section 36ZK substituted** 10
Section 36ZK is repealed and the following section substituted:
- “36ZK Registered exchange must give FMA or Takeovers Panel other information and assistance on request**
- “(1) A registered exchange must give to the FMA or the Takeovers Panel (or any person authorised by the FMA or Takeovers Panel) information, assistance, and access to the exchange’s facilities if the FMA or Takeovers Panel reasonably requests it in order to carry out its functions. 15
- “(2) In addition, a registered exchange must, if requested by the FMA,— 20
- “(a) give to the FMA (or any person authorised by the FMA) the information, assistance, and access to the exchange’s facilities that are necessary or desirable to enable the FMA to carry out real-time surveillance of the operation of the registered exchange’s securities and futures markets; and 25
- “(b) make all reasonable endeavours to assist the FMA to acquire the licences or other assistance from any third party that are necessary or desirable for that purpose. 30
- “(3) The FMA must pay all reasonable costs of the registered exchange in relation to providing the information, assistance, and access under **subsection (2)(a) or (b)**.

~~“(4) The FMA or Takeovers Panel must require information, assistance, or access under this section by notice in writing to the registered exchange.”~~²²

144 Power to disclose further information

Section 36ZL is amended by adding the following subsection: 5

~~“(3) A registered exchange may provide to the Rulings Panel any information that the exchange considers may assist the Rulings Panel in the performance of its functions.”~~²²

143 Registered exchange must give notice and have regard to submissions on continuous disclosure determinations 10

Section 36ZM(1)(a) is amended by inserting “for any of its registered markets” after “listing rules”.

145 Commission may give directions to registered exchanges

(1) Section 36ZO(1) is amended by inserting “to a registered exchange in relation to any of its registered markets” after “subsection (2)”. 15

(2) Section 36ZO(2)(a)(ii) is amended by omitting “futures market operated by the registered exchange” and substituting “registered market”.

(3) Section 36ZO(3) is amended by omitting “conduct rules” in each place where it appears and substituting in each case “market rules”. 20

145A Grounds for other directions

Section 36ZQ(a)(ii) is amended by omitting “futures market operated by the registered exchange” and substituting “registered market”. 25

146 Offence

Section 36ZX is amended by repealing subsection (1) and substituting the following subsection:

~~“(1) A registered exchange commits an offence if it intentionally or recklessly—~~ 30

- “(a) fails to give a notice, provide information, give assistance, or provide access as required under this subpart; or
- “(b) contravenes section 36ZM; or
- “(c) fails to comply with a direction under **section 36YF** or section 36ZO.” 5

147 New heading and section 36ZXA inserted

The following heading and section are inserted after section 36ZX:

“Application of subpart to futures markets” 10

“36ZXA Application of subpart to registered exchange that is also authorised futures exchange

This subpart applies to a registered exchange in respect of every futures market that it operates (whether as an authorised futures exchange or if the exchange is registered in respect of the futures market under this Part).²² 15

148 New subpart 3 of Part 2B inserted

The following subpart is inserted after subpart 2 of Part 2B:

“Subpart 3—Overseas exchanges

“36ZY Overseas exchanges” 20

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—

- “(a) authorise a body corporate to, in connection with carrying on business in New Zealand, do the things otherwise prohibited by section 36A(1); and 25

- “(b) specify the provisions of subpart 2 (if any) that apply to the body corporate; and

- “(c) specify the terms and conditions (if any) applying to the authorisation.

“(2) The Minister may not make a recommendation for the purposes of **subsection (1)** unless he or she is satisfied that it is in the public interest to do so, having regard to the regulatory regime that applies to that body corporate in any other country in connection with its operation of a securities market. 30

“(3) For the purposes of this Act (other than subpart 1A or subpart 2, except to the extent specified under **subsection (1)(b)**) and 35

every other enactment, every body corporate that is authorised under **subsection (1)** must be treated as if it were registered as a registered exchange under section 36F.

~~“Compare: 1988 No 234 s 36X~~

~~“36ZYA Revocation or amendment of authorisation~~ 5

~~“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—~~

~~“(a) vary or revoke an authorisation granted under **section 36ZY**; or~~

~~“(b) vary, revoke, or suspend any term or condition of such an authorisation.~~ 10

~~“(2) The Minister may not make a recommendation for the purposes of **subsection (1)** unless—~~

~~“(a) he or she has consulted the body corporate concerned; and~~ 15

~~“(b) he or she is satisfied that it is in the public interest to make the recommendation.~~

~~“Compare: 1988 No 234 s 36Y~~

~~“36ZY Overseas exchanges~~

~~“(1) The FMA may (on the terms and conditions it thinks fit), by notice in the *Gazette*, authorise a body corporate to hold a market registration for—~~ 20

~~“(a) 1 or more securities markets; or~~

~~“(b) 1 or more securities markets and 1 or more futures markets; or~~ 25

~~“(c) 1 or more futures markets, if the body corporate already holds a market registration for a securities market.~~

~~“(2) The notice must state the terms and conditions that apply to the body corporate under the authorisation (and may, in those terms (without limitation), add to, modify, or disapply any provisions of **subparts 1A and 2**).~~ 30

~~“(3) The FMA must not grant the authorisation unless it is satisfied that—~~

~~“(a) the body corporate is authorised to operate the relevant market in another jurisdiction; and~~ 35

~~“(b) the operation of the market by the body corporate will be subject to requirements and supervision under the~~

- proposed terms or conditions of the authorisation or the law and regulatory requirements of its home jurisdiction, or both; and
- “(c) those requirements and that supervision are likely to have at least equivalent outcomes, in terms of the degree of integrity and effectiveness of the market and the confidence of investors in the market, to the likely outcomes for that market if the market were registered under **section 36F**. 5
- “(4) This Act (other than **subpart 1B** of this Part) and every other enactment, applies to a body corporate authorised to operate a market under this section as if the relevant market were a registered market and the body corporate were a registered exchange holding that market registration under **section 36F** (except as specified under **subsection (2)**). 10 15
- “Compare: 1988 No 234 s 36X
- “36ZYA Revocation or amendment of authorisation**
- “(1) The FMA may, by notice in the *Gazette*, vary or revoke an authorisation granted under **section 36ZY** or vary, revoke, or suspend any term or condition of the authorisation. 20
- “(2) However, the FMA must not do so unless—
- “(a) it has consulted the body corporate concerned; and
- “(b) it is satisfied that it is in the public interest to do so.
- “36ZYB Offence for breach of terms or conditions of authorisation** 25
- Every person who acts in contravention of a term or condition of an authorisation granted under **section 36ZY** commits an offence (*see* section 43B for the maximum penalty of a \$10,000 fine per day).
- “Compare: 1988 No 234 s 36Z” 30
- 149 Interpretation of terms used in this Part**
- (1)** Paragraphs (ab) and (c) of the definition of **authorised futures exchange** in section 37(1) are amended by omitting “conduct rules” and substituting in each case “market rules”.

- (1) Paragraph (a) of the definition of **authorised futures contract** in section 37(1) is amended by omitting “authorised futures exchange” and substituting “authorised futures market”.
- (2) Section 37(1) is amended by repealing the definition of **authorised futures exchange** and substituting the following definitions: 5
- “**authorised futures exchange** means—
- “(a) a body corporate that is declared by the FMA under subsection (8) to be an authorised futures exchange for the purposes of this Part: 10
- “(b) a registered exchange that holds a market registration under Part 2B in respect of its futures market:
- “(c) a subsidiary of a person to which **paragraph (a) or (b)** applies (if the subsidiary conducts the market to which the authorisation or market registration relates) 15
- “**authorised futures market** means a futures market to which an authorisation under subsection (8) applies (but also includes a futures market that is registered under Part 2B)”.
- (3) Section 37(8) is amended by omitting “or exchange in New Zealand for trading in futures contracts to be an authorised futures exchange” and substituting “in New Zealand for trading in futures contracts to be an authorised futures exchange in respect of that market”. 20
- (4) Section 37 is amended by inserting the following subsections after subsection (8): 25
- “(8AA) The notice must state the terms and conditions that apply to the body corporate under the authorisation under subsection (8) (including, without limitation, any terms and conditions relating to **subsection (8AB)**).
- “(8AB) The FMA must not grant the authorisation declaration under subsection (8) unless it is satisfied that— 30
- “(a) the operation of the futures market by the body corporate will be subject to requirements and supervision under the proposed terms and conditions of the authorisation or the law and regulatory requirements of another jurisdiction (if the body corporate is authorised to conduct the market in another jurisdiction), or both; and 35

“(b) those requirements and that supervision are likely to have at least equivalent outcomes, in terms of the degree of integrity and effectiveness of the market and the confidence of investors in the market, to the likely outcomes for that market if it were registered under **section 36F**.” 5

149A No holding out as futures exchange unless authorised under this Part

(1) Section 37A(1)(b)(ii) is amended by omitting “or exchange”.

(2) Section 37A is amended by repealing subsection (2) and substituting the following subsections: 10

“(2) Subsection (1)(a) and (b)(i) do not apply to an authorised futures exchange.

“(2A) Subsection (1)(b)(ii) does not apply to—

“(a) an authorised futures exchange in respect of its authorised futures market; or 15

“(b) a subsidiary of an authorised futures exchange in respect of the exchange’s authorised futures market.”

149B Power to apply and remove restriction on operating futures market 20

(1) Section 37C(1)(c) is amended by omitting “or exchange”.

(2) Section 37C(1)(c) is amended by omitting “or exchanges”.

149C New section 37E inserted

The following section is inserted after section 37D:

“37E No operation by authorised futures exchange of unauthorised futures market 25

“(1) No authorised futures exchange may operate in New Zealand a futures market for which it does not have an authorisation under this Part or a market registration under Part 2B.

“(2) Every person who acts in contravention of **subsection (1)** commits an offence (*see* section 43C for the maximum penalty of a \$10,000 fine per day).” 30

150 Dealers in futures contracts to be authorised

Section 38(4) is amended by omitting “within the meaning of paragraph (ab) of the definition of authorised futures exchange in section 37(1), means conduct rules” and substituting “that is a registered exchange (or subsidiary of a registered exchange), means market rules”. 5

151 New Part inserted

The following Part is inserted after Part 3:

“Part 3A**“Securities Markets Rulings Panel** 10**“40A Purpose of this Part**

The purpose of this Part is to establish an independent statutory body to adjudicate on breaches of, and review decisions made under, securities markets rules or regulations.

“40B Interpretation 15

In this Part,—

“**authorised referring body**, in respect of a matter, means the body or person authorised by securities markets rules or regulations to refer that matter to the Rulings Panel (for example, a registered exchange, a specified operator, or the FMA) 20

“**designated settlement system** means the designated settlement system (within the meaning of section 156M(1) of the Reserve Bank of New Zealand Act 1989) of a registered exchange

“**participant** means— 25

“(a) an exchange participant or former exchange participant:

“(b) a participant (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989) in relation to a designated settlement system, or a former participant:

“(e) any other person to whom the securities markets rules or regulations apply 30

“**securities markets rules or regulations** means—

“(a) the following rules of registered exchanges:

“(i) market rules:

“(ii) in the case of a registered exchange that is an authorised futures exchange, the rules governing a 35

futures market operated by the authorised futures exchange:

“(iii) rules of a designated settlement system:

“(b) market integrity regulations

“**specified operator**, in respect of a designated settlement system, means the person identified in an Order in Council made under section 156N of the Reserve Bank of New Zealand Act 1989 as the specified operator of that system.” 5

“Subpart 1—Securities Markets Rulings
Panel 10

“*Securities Markets Rulings Panel*

“**40C Securities Markets Rulings Panel established**

This section establishes the Securities Markets Rulings Panel.

“**40D Membership of Rulings Panel**

“(1) The Rulings Panel consists of up to 15 members appointed by the Governor-General on the recommendation of the Minister. 15

“(2) The Governor-General may, on the recommendation of the Minister,—

“(a) appoint 1 of the members, who must be a barrister or solicitor of the High Court of at least 7 years’ standing, as the chairperson; and 20

“(b) appoint another member as the deputy chairperson.

“(3) The Minister must, before recommending an appointment, consult with the Minister of Justice, the FMA, and every registered exchange. 25

“**40E Functions of Rulings Panel**

The functions of the Rulings Panel are to—

“(a) adjudicate on breaches of, and review decisions made under, securities markets rules or regulations by hearing and deciding the matters referred to it by authorised referring bodies; and 30

“(b) make remedial and other orders, and take other actions, authorised by or under this Part as appropriate.

“40F Provisions applying to Rulings Panel

The provisions in the **Schedule** (which include provisions relating to membership and conflicts of interest) apply to the Rulings Panel.

“Divisions of Rulings Panel

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“40G Rulings Panel may act by divisions

“(1) The Rulings Panel or chairperson may determine that the powers of the Rulings Panel in relation to a matter or class of matters may be exercised by separate divisions of the Rulings Panel.

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“(2) The Rulings Panel or chairperson may revoke or amend a determination made under **subsection (1)**.

“(3) Every determination (or revocation or amendment of a determination) must be recorded in writing and signed by 3 members, or the chairperson, of the Rulings Panel.

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“40H Membership, chairperson, meetings, and resolutions of division

“(1) Each division consists of the members who are assigned to it for the time being by the Rulings Panel or chairperson.

“(2) When assigning members to a division, the Rulings Panel or chairperson must ensure that each division—

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“(a) has as least 3 members who are not interested in the matter or class of matters likely to come before the division; and

“(b) has at least 1 member who is a barrister or solicitor of the High Court of at least 7 years² standing; and

25

“(c) has, among its members, suitable experience and expertise in, and knowledge of, the matter or class of matters likely to come before the division.

“(3) If the members assigned to a division do not include the chairperson, the Rulings Panel or chairperson must nominate 1 of those members as chairperson of the division.

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“(4) In **subsection (2)**, **interested** has the same meaning as in **clause 14 of the Schedule**.

~~40I~~ Powers of division

~~(1)~~ For the purposes of considering any matter or class of matters specified in a determination under **section 40G**, the Rulings Panel consists of the division of the Rulings Panel specified in the determination.

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~~(2)~~ A division of the Rulings Panel may exercise powers of the Rulings Panel even though another division of the Rulings Panel is exercising powers of the Rulings Panel at the same time.

Quorum

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~~40J~~ Quorum

~~(1)~~ The quorum at any sitting of the Rulings Panel or a division of the Rulings Panel is 3 members of the Rulings Panel.

~~(2)~~ Every question before the Rulings Panel or a division of the Rulings Panel is to be determined by the opinion of the majority of the members present at a sitting of the Rulings Panel or division, and, if the members are equally divided in their opinions, that of the chairperson prevails.

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**~~Subpart 2—Powers and procedures of
Rulings Panel~~**

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~~40K~~ Rulings Panel may determine own procedures

The Rulings Panel may determine its own procedures, subject to this Act and the Rulings Panel regulations.

Powers

~~40L~~ Rulings Panel may receive and hear evidence

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~~(1)~~ The Evidence Act 2006 applies to the Rulings Panel and its members, and to all proceedings before the Rulings Panel, in the same manner as if the Rulings Panel were a court within the meaning of that Act.

~~(2)~~ However, the Rulings Panel may—

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~~(a)~~ receive in evidence, whether admissible in a court of law or not, any statement, document, information, or matter that, in the opinion of the Rulings Panel, may

assist the Rulings Panel in dealing effectively with any matter before it:

- “(b) receive evidence on oath (and for that purpose a member of the Rulings Panel may administer an oath):
 - “(c) 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: 5
 - “(d) receive evidence given by audio-visual communication, if the Rulings Panel and the person giving the evidence agree: 10
- “(3) A hearing before the Rulings Panel is a judicial proceeding for the purposes of sections 108 and 109 of the Crimes Act 1961.

“40M Powers of Rulings Panel relating to proceedings and parties 15

The Rulings Panel may do any or all of the following things in relation to proceedings or the parties to them:

- “(a) request a party to provide to the Rulings Panel, within a specified period, any documents, things, or information that are in the possession or control of the party and that are relevant to the proceedings: 20
- “(b) request further written submissions from any party, as long as it then gives the relevant parties an opportunity to comment on those submissions:
- “(c) request the parties to provide copies of any documents that it reasonably requires: 25
- “(d) set deadlines for further submissions and comments by the parties:
- “(e) appoint an expert adviser to report on specific issues, as long as the parties are notified before the appointment is made: 30
- “(f) call a conference of the parties:

“40N Parties’ failures to act do not affect Rulings Panel’s powers to decide matter

The Rulings Panel’s power to decide a matter are not affected by the failure of any party to— 35

- “(a) make a submission or comment within the time allowed; or
- “(b) give specified information within the time allowed; or
- “(c) attend, or participate in, a conference of the parties called by the Rulings Panel; or
- “(d) do any other thing the Rulings Panel asks for or directs.

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“40O Rulings Panel may draw inference from parties’ failures to act and decide matter based on available information

If any failure of the kind referred to in **section 40N** occurs in proceedings, the Rulings Panel may—

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- “(a) draw from the failure any reasonable inferences it thinks fit; and
- “(b) decide the matter concerned on the basis of the information available to it; and
- “(c) give any weight it thinks fit to information that—
 - “(i) it asked for, or directed to be provided; but
 - “(ii) was provided later than requested or directed.

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“Witnesses

“40P District Court may authorise Rulings Panel to summon witnesses

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“(1) A District Court Judge may, on the application of the Rulings Panel or a party to proceedings, give a certificate authorising the Rulings Panel to issue a summons under **section 40Q**.

“(2) A District Court Judge must not give a certificate under **subsection (1)** unless satisfied that—

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- “(a) the evidence of the witness is or may be material to the hearing of a matter by the Rulings Panel; and
- “(b) it is necessary or desirable that the summons be issued to compel the attendance of the witness at the hearing.

“Compare: 2008 No 91 s 108

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“40Q Issuing of summons by Rulings Panel

“(1) The Rulings Panel must, on production of a certificate referred to in **section 40P**, issue a summons to a person requiring that person to attend a hearing before the Rulings Panel and to do all or any of the following:

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- “(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. 5
- “(2) The summons must be in writing, be signed by the chairperson of the Rulings Panel, and specify—
- “(a) the date and time when, and the place where, the person must attend; and 10
- “(b) the documents, things, or information that the person is required to bring and produce to the Rulings Panel; 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. 15
- “(3) The Rulings Panel may require that any documents, things, or information produced under this section be verified by oath, statutory declaration, or otherwise.
- “Compare: 2008 No 91 s 109
- “40R Serving of summons 20**
- “(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.
- “(2) A summons must,— 25
- “(a) if it is to be served under **subsection (1)(a)**, be served at least 48 hours before the attendance of the witness is required;
- “(b) if it is to be served under **subsection (1)(b)**, be served at least 10 days before the attendance of the witness is required. 30
- “(3) A summons that is posted is treated as having been served when it would have been delivered in the ordinary course of post.
- “Compare: 2008 No 91 s 110 35

“40S Witnesses’ expenses

“(1) A witness appearing before the Rulings Panel under a summons is entitled to be paid witnesses’ fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Summary Proceedings Act 1957.

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“(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

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“40T Failure to comply with summons

“(1) A person summoned under **section 40Q** commits an offence if he or she, without sufficient cause,—

“(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 Rulings Panel; or

“(e) does not provide any documents, things, or information that the summons requires the person to provide.

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“(2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$5,000.

“(3) A person must not be convicted of an offence under this section if witnesses’ fees, allowances, and expenses to which the person is entitled under **section 40S** have not been paid or tendered to him or her.

25

“Compare: 2008 No 91 s 137

“40U Protection for witnesses and counsel

“(1) Every person who does the following things has the same privileges as witnesses have in a court:

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“(a) provides documents, things, or information to the Rulings Panel; or

“(b) gives evidence or answers questions at a hearing of the Rulings Panel.

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“(2) Every counsel appearing before the Rulings Panel in relation to a matter has the same privileges and immunities as counsel in a court.

“Compare: 2008 No 91 s 112

“Hearings and decisions

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“40V Persons entitled to be heard

The following persons are entitled to be heard at the hearing of a matter referred to the Rulings Panel, or to provide written submissions and evidence if the matter is not set down for a hearing:

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“(a) the authorised referring body and the other party or parties to the matter:

“(b) a registered exchange that is directly interested in the matter (whether or not it referred the matter to the Rulings Panel):

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“(c) a specified operator that is directly interested in the matter (whether or not it referred the matter to the Rulings Panel):

“(d) the FMA:

“40W Hearing

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If the Rulings Panel is of the opinion that it is proper to do so, having regard to the interests of any party and to the public interest, it may hold a hearing or any part of a hearing in private.

“Compare: 1996 No 27 s 257

“40X Decisions of Rulings Panel

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“(1) The Rulings Panel must, as soon as practicable after it makes a final decision on a matter referred to it, give the decision, in writing and together with the reasons for the decision, to the persons that were entitled to be heard under **section 40V**:

“(2) The Rulings Panel must publicise the terms of, and the reasons for, every decision:

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“(3) However, the Rulings Panel must not publicise any part, or all, of a particular decision, including the name or any particulars of the affairs of any person, if the Rulings Panel considers

that there are special circumstances that justify the non-publication.

“40Y Rulings Panel must consider previous decisions

The Rulings Panel must take into account previous decisions in respect of any similar situations previously dealt with by the Rulings Panel or the New Zealand Markets Disciplinary Tribunal. 5

“Orders

“40Z Remedial orders

On deciding that there has been a breach of securities markets rules or regulations, the Rulings Panel may take no further action or may make any 1 or more of the following orders that are available to it (according to the applicable securities markets rules or regulations) in respect of the matter: 10

“Publication orders 15

“(a) an order that a public statement be issued that a participant has breached the securities markets rules or regulations: 15

“(b) an order that a public censure be issued in respect of a participant: 20

“Education orders

“(c) an order requiring a participant to complete an education or compliance programme designed to address the cause of any breach of the securities markets rules or regulations and prevent future breaches: 25

“Probation orders

“(d) an order requiring a registered exchange or a specified operator to subject a person’s continued designation as a participant to specified terms and conditions for a specified period not exceeding 2 years: 30

“Orders affecting listing

“(e) an order requiring a registered exchange to—

“(i) suspend the listing of a security or class of securities of a person for a specified period not exceeding 2 years: 35

- “(ii) cancel the listing of a security or class of securities of a person:
- “(f) an order requiring a registered exchange to cancel a person’s listing agreement:
- “*Orders affecting authorisation to participate* 5
- “(g) an order requiring a registered exchange to—
- “(i) suspend a person’s authorisation to participate in a securities or futures market of the registered exchange for a specified period not exceeding 2 years: 10
- “(ii) revoke a person’s authorisation to participate in a securities or futures market of the registered exchange:
- “(h) an order requiring the specified operator to—
- “(i) suspend a person’s authorisation to participate in the designated settlement system for a specified period not exceeding 2 years: 15
- “(ii) revoke a person’s authorisation to participate in the designated settlement system:
- “*Remedial action orders* 20
- “(i) an order requiring a participant to take any specified action to remedy a breach of the securities markets rules or regulations that the Ruling Panel thinks fit:
- “*Compliance orders*
- “(j) an order requiring a participant to take or cease any specified action in order to restore the participant to a position of compliance with the securities markets rules or regulations: 25
- “*Monetary orders*
- “(k) an order requiring a participant to pay up to \$200,000 to any other person as compensation for that person’s loss or damage resulting from the breach: 30
- “(l) an order requiring a participant to refund up to \$200,000 to any other person:
- “(m) an order requiring a participant to pay a pecuniary penalty to the Crown (*see section 40ZA*): 35

“Costs orders

“(n) an order regarding the reasonable costs of any proceedings.

“40ZA Pecuniary penalty orders

“(1) The Rulings Panel may make a pecuniary penalty order under **section 40Z(m)**— 5

“(a) only on an application by the FMA or a registered exchange; and

“(b) of an amount not exceeding whichever of the following amounts is greater: 10

“(i) \$500,000;

“(ii) 3 times the value of any ascertainable commercial gain (or avoidance of loss) resulting from the breach.

“(2) In determining whether to make a pecuniary penalty order and, if an order is made, the amount of the order, the Rulings Panel must consider the seriousness of the breach of securities market rules or regulations, having regard to the following: 15

“(a) the nature and extent of the breach; and

“(b) the likelihood, nature, and extent of any damage to the integrity or reputation of New Zealand’s securities or futures markets because of the breach; and 20

“(c) the nature and extent of any loss or damage suffered by any person because of the breach; and

“(d) the circumstances in which the breach occurred; and 25

“(e) whether or not the participant has previously been found by the Rulings Panel, the New Zealand Markets Disciplinary Tribunal, or the court, in proceedings under the securities markets rules or regulations or under this Act, to have engaged in any similar conduct; and 30

“(f) any civil remedy order imposed by the court under Part 5; and

“(g) section 42ZH (only 1 pecuniary penalty order may be made for the same conduct); and

“(h) section 43ZC (no pecuniary penalty and fine for the same conduct). 35

“Compare: 1978 No 103 s 55F

~~40ZB~~ Interim orders

- ~~(1)~~ At any time before making its final decision on a matter referred to it under the securities markets rules or regulations, the Rulings Panel may make ~~1~~ of the following orders as an interim order: 5
- ~~(a)~~ a probation order (~~section 40Z(d)~~);
 - ~~(b)~~ an order suspending a listing (~~section 40Z(e)(i)~~);
 - ~~(c)~~ an order suspending a person's authorisation to participate (~~section 40Z(g)(i) or (h)(i)~~).
- ~~(2)~~ **Subsection (1)** does not authorise the Rulings Panel to make an interim order of a kind that would not be available to it under **section 40Z** if the Rulings Panel were making its final decision on that matter. 10
- ~~(3)~~ An interim order—
- ~~(a)~~ may be subject to any conditions that the Rulings Panel thinks fit; and 15
 - ~~(b)~~ expires on the close of the day on which the Rulings Panel finally determines the matter.

~~40ZC~~ Confidentiality orders

- ~~(1)~~ The Rulings Panel may, on its own initiative or on the application of any person, make an order prohibiting the publication or communication of any information, document, or evidence that is provided or obtained in connection with any proceeding of the Rulings Panel under this Part. 20
- ~~(2)~~ The Rulings Panel may make a confidentiality order on the terms and conditions (if any) that it thinks fit. 25
- ~~(3)~~ A confidentiality order may be expressed to have effect—
- ~~(a)~~ from the commencement of the proceeding of the Rulings Panel to the end of that proceeding; or
 - ~~(b)~~ for any shorter period. 30
- ~~(4)~~ Every person commits an offence who wilfully acts in contravention of a confidentiality order and is liable on summary conviction to a fine not exceeding \$300,000.

~~40ZD~~ Orders generally

- Every order of the Rulings Panel under this subpart— 35
- ~~(a)~~ must be in writing; and

“(b) may be amended or revoked at any time by the Rulings Panel.

“40ZE Enforcement of Rulings Panel’s orders

“(1) The Rulings Panel may file a copy of an order made by the Rulings Panel in the office of the court. 5

“(2) On filing, the order is enforceable as a final judgment of the court.

“(3) For the purposes of this section, **court** means—

“(a) the High Court; or

“(b) a District Court in any case where an amount of money made payable by the order does not exceed the jurisdiction of the District Court in civil cases. 10

“Compare: 1996 No 99 Schedule 1 cl 35

“Reviews of decisions

“40ZF Powers of Rulings Panel on reviewing decisions made under securities markets rules or regulations 15

“(1) After reviewing a decision of a person made under securities markets rules or regulations, the Rulings Panel may decide to—

“(a) confirm the decision; or 20

“(b) take any 1 or more of the following actions that are available to it (according to the applicable securities markets rules or regulations) in respect of the matter:

“(i) reverse the decision:

“(ii) modify the decision: 25

“(iii) make any other decision that the person could have made under the applicable securities markets rules or regulations:

“(iv) refer the matter back to the person with directions to reconsider, either generally or in respect of any specified aspect, the whole or any part of the decision. 30

“(2) In giving a direction under **subsection (1)(b)(iv)**, the Rulings Panel—

“(a) must state its reasons for the direction; and 35

- “(b) may give any other directions it thinks just as to the matter referred back for reconsideration.
- “(3) If the Rulings Panel gives directions under **subsection (1)(b)(iv)**, the person who made the decision—
- “(a) must reconsider the matter; and 5
- “(b) in doing so, must—
- “(i) take the Rulings Panel’s reasons into account; and
- “(ii) give effect to the Rulings Panel’s directions.
- “Subpart 3—Appeals 10
- “**40ZG Appeal against monetary orders made by Rulings Panel**
- “(1) A person may, with the leave of the High Court, appeal to the High Court against a monetary order made by the Rulings Panel under **section 40Z(k), (l), or (m)**, or against the amount payable under a monetary order. 15
- “(2) **Subsection (1)** does not give a right of appeal against a decision of the Rulings Panel on whether a person has breached the securities markets rules or regulations.
- “**40ZH Appeal against decisions of Rulings Panel on question of law** 20
- “(1) A person may, with the leave of the High Court, appeal to the High Court, on a question of law only, against a decision or an order of the Rulings Panel.
- “(2) This section is subject to **section 40ZG**.
- “**40ZI Who may exercise right of appeal** 25
- A person may exercise a right of appeal under **section 40ZG or 40ZH** only if the person is—
- “(a) the authorised referring body or the other party or parties to the matter;
- “(b) a person in whose favour or against whom the decision 30 or order of the Rulings Panel is made;
- “(c) a registered exchange that is directly interested in the matter (whether or not it referred the matter to the Rulings Panel):

“(d) a specified operator that is directly interested in the matter (whether or not it referred the matter to the Rulings Panel):

“(e) the FMA:

“40ZJ Decisions and orders have effect pending determination of appeal 5

A decision or an order against which an appeal is brought under this subpart continues in force unless the High Court orders otherwise:

“Compare: 2008 No 91 s 140

10

“40ZK High Court may order proceedings be heard in private

“(1) The High Court may order that the hearing or any part of the hearing of any appeal under this subpart be held in private:

“(2) The High Court may make an order prohibiting the publication of any report or description of a proceeding or any part of a proceeding (whether heard in public or in private), but no order may prohibit the publication of any determination of the court:

15

“40ZL Appeal to Court of Appeal in certain cases

“(1) Any party to an appeal before the High Court under this subpart who is dissatisfied with a decision or an order of the High Court may, with the leave of the High Court or of the Court of Appeal, appeal to the Court of Appeal:

20

“(2) Section 66 of the Judicature Act 1908 applies to the appeal:

“(3) In determining whether to grant leave to appeal under this section, the court to which the application for leave is made must have regard to the following matters:

25

“(a) whether any question of law or general principle is involved:

“(b) the importance of the issues to the parties:

“(c) the amount of money in issue:

30

“(d) any other matters that in the particular circumstances the court thinks fit:

“(4) The court granting leave may, in its discretion, impose any conditions that it thinks fit, whether as to costs or otherwise:

~~“Subpart 4—Miscellaneous provisions
relating to Rulings Panel~~

~~“40ZM Administrative support and funding of Rulings Panel
and expenses of members~~

- ~~“(1) The FMA must provide the administrative and support ser- 5
vices necessary to enable the Rulings Panel to perform its
functions efficiently and effectively.~~
- ~~“(2) The FMA must fund the Rulings Panel.~~
- ~~“(3) A member of the Rulings Panel is entitled, in accordance with 10
the fees framework, to be reimbursed for actual and reasonable
travelling and other expenses incurred in carrying out his or
her office as a member.~~
- ~~“(4) In **subsection (3)**, **fees framework** means the framework de- 15
termined by the Government from time to time for the classifi-
cation and remuneration of statutory and other bodies in which
the Crown has an interest.~~

~~“40ZN Rulings Panel must provide annual report~~

~~As soon as practicable after the end of each financial year,
the Rulings Panel must provide an annual report to the FMA
that—~~

- ~~“(a) summarises the activities and decisions of the Rulings 20
Panel made during the financial year; and~~
- ~~“(b) addresses any matter prescribed by Rulings Panel regu-
lations; and~~
- ~~“(c) addresses any matter that the FMA asks the Rulings 25
Panel to address.”~~

~~152 Only 1 pecuniary penalty order may be made for same
conduct~~

~~Section 42ZH is amended by inserting “or a civil remedy pro- 30
vision and a provision of the market rules or market integrity
regulations,” before “proceedings”.~~

~~151 New heading and sections 42EA and 42EB inserted~~

~~The following heading and sections are inserted before the
heading above section 42F:~~

“Unsolicited offer orders

“42EA When FMA may make unsolicited offer orders

The FMA may make an unsolicited offer order against a person in accordance with this subpart if the FMA is satisfied that the person has acted, is acting, or intends to act in contravention of an unsolicited offer obligation or exemption. 5

“42EB Terms of unsolicited offer orders

“(1) An unsolicited offer order may—

“(a) restrain a person from acquiring a security, a power to dispose of a security, or an interest in or right attaching to a security, as a result of the unsolicited offer: 10

“(b) restrain a person from taking any action that is, or that may reasonably be expected to constitute, a contravention of an unsolicited offer obligation or exemption:

“(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 obligation or exemption: 15

“(d) direct a person not to register the transfer of a security:

“(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 obligation or exemption. 20
25

“(2) An unsolicited offer order may be directed at any person.”

152 Commission must follow steps before making orders

Section 42F(1)(c)(ii) is amended by inserting “or an unsolicited offer order” after “disclosure order”.

152A Commission may shorten steps for specified orders 30

Section 42G(3) is amended by adding the following paragraph:

“(e) an unsolicited offer order.”

152B What are civil remedy provisions

Section 42S is amended by adding the following paragraph:

“(g) an unsolicited offer obligation or exemption.”

152C Maximum amount of pecuniary penalty

Section 42W(a) is amended by omitting “or market manipulation prohibition” and substituting “, market manipulation prohibition, or unsolicited offer prohibition”. 5

152D Guidance for Court on how to determine gains made or losses avoided for purposes of maximum amount

(1) Section 42X(1)(a) and (b) is amended by omitting “in a public issuer”. 10

(2) Section 42X is amended by adding the following subsection:

“(3) In the case of a contravention of an unsolicited offer prohibition, subsection (2) does not apply.”

153 Penalties for failing to comply with Part 2B 15

(1) Section 43B(2) is amended by repealing paragraphs (c) and (d) and substituting the following paragraphs:

“(c) **section 36FAB(1)** (no operation by registered exchange of unregistered market):

“(d) **section 36G(1)** (registered exchange must operate markets under market rules that comply with **subpart 1A of Part 2B**):”. 20

(2) Section 43B(2)(e) is amended by omitting “section 36Z” and substituting “**section 36ZYB**”.

(3) Section 43B(3) is amended by omitting “section 36Q(1) (conduct rules must be available for public inspection)” and substituting “**section 36N** (market rules must be available for public inspection)”. 25

153A Penalties for failing to comply with Part 3

Section 43C(2) is amended by adding the following paragraph: 30

“(c) **section 37E(1)** (no operation by authorised futures exchange of unauthorised futures market).”

154 Persons automatically banned from management

Section 43I is amended by inserting the following subsection after subsection (2):

“(2A) The court may give leave for the purposes of subsection (2)—

“(a) at the time of conviction or making of the order, or at any other time on the application of the relevant person: 5

“(b) in respect of a particular incorporated or unincorporated body, a class of incorporated or unincorporated bodies, or incorporated or unincorporated bodies generally.”

155 No pecuniary penalty and fine for same conduct

10

Section 43ZC is amended by inserting “(whether under **Part 3A** or this Part)” after “penalty”.

155 When Court may prohibit payment or transfer of money, securities, or other property

Section 43P(1)(a) is amended by inserting “or any regulations made under this Act” after “contravention of this Act”.

15

156 New heading and ~~section 47A~~ sections 47AA and 47A inserted

The following heading and sections are inserted after section 47:

20

“47AA Protection for securities registers, etc, in connection with unsolicited offer obligations

The person responsible for administering the register of securities for a public issuer or other issuer, or any other person specified in the regulations made under **section 48DB**, is not liable for any act done or omitted to be done by that person in compliance with—

25

“(a) an unsolicited offer order made by the FMA under **section 42EA** or an injunction or a civil remedy order made under **section 42ZE** in connection with a contravention of an unsolicited offer order; or

30

“(b) any provision of those regulations that is stated, by those regulations, to be a protected act or omission for the purposes of this section.

*“Appeals***“47A Appeals against decisions of FMA on questions of law only**

A person that considers that a decision of the FMA under any of the following provisions is wrong in law may appeal against the decision to the High Court on a question of law only: 5

“(a) section 34 (which relates to requirements for persons to disclose relevant interests and powers to get relevant interests):

“(b) section 36ZO (which relates to directions by the FMA to registered exchanges): 10

“(c) subpart 1 of Part 5 (which relates to the FMA’s enforcement powers).”

157 New sections 48 to 48B substituted

Sections 48 to 48B are repealed and the following sections substituted: 15

“48 Exemptions granted by FMA

“(1) The FMA may, on the terms and conditions (if any) that it thinks fit,—

“(a) exempt any transaction, class of transactions, person, class of persons, or class of relevant interests, acquisitions, or disposals from compliance with any directors’ and officers’ disclosure obligation or obligations: 20

“(b) exempt any person or class of persons, any transaction or class of transactions, or any class of relevant interests, substantial holdings, or relevant events from compliance with any substantial holding disclosure obligation or obligations: 25

“(ba) exempt any offer, class of offers, security, class of securities, person, or class of persons from compliance with any unsolicited offer obligation or obligations: 30

“(c) exempt any person or class of persons from compliance with any requirement of the Futures Industry (Client Funds) Regulations 1990 or regulations that replace them.

“(2) The FMA must not grant an exemption under this section unless it is satisfied that— 35

- “(a) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption; and
- “(b) in the case of **subsection (1)(c)**, there are adequate alternative safeguards for preserving client money and client property. 5

“48A Status and publication of exemptions

- “(1) An exemption granted under **section 48**—
 - “(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and 10
 - “(b) must be presented to the House of Representatives under section 4 of that Act.
- “(2) A class exemption (but not any other exemption granted under **section 48**) is a regulation for the purposes of the Acts and Regulations Publication Act 1989. 15
- “(3) An exemption granted under **section 48** that is not a class exemption must, as soon as practicable after it is granted, be—
 - “(a) published on an Internet site maintained by or on behalf of the FMA; and
 - “(b) notified in the *Gazette*; and 20
 - “(c) made available in printed form for purchase on request by members of the public.
- “(4) A notification in the *Gazette* for the purpose of **subsection (3)(b)** does not have to include the text of the exemption.
- “(5) The FMA’s reasons for granting an exemption under **section 48** (including why the exemption is appropriate) must be published together with the exemption. 25
- “(6) In this section, **class exemption**—
 - “(a) means an exemption of general application that applies to a class of persons, transactions, offers, securities, 30 relevant interests, substantial holdings, relevant events, acquisitions, or disposals; but
 - “(b) does not include an exemption granted in relation to—
 - “(i) particular persons, transactions, offers, securities, 35 relevant interests, substantial holdings, relevant events, acquisitions, or disposals; or

- “(ii) persons, transactions, offers, securities, relevant interests, substantial holdings, relevant events, acquisitions, or disposals associated with or involving a particular entity.
- “**48B Variation or revocation of exemptions** 5
“(1) The FMA may vary or revoke an exemption granted under **section 48**.
“(2) **Section 48A** and this section apply, with necessary modifications, in all respects to a variation or revocation under this section.” 10
- 158 New section 49CA inserted**
The following section is inserted after section 49C:
- “49CA Rulings Panel regulations**
“(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 purpose of— 15
“(a) governing the operation of the Rulings Panel:
“(b) prescribing the procedures of the Rulings Panel in relation to carrying out any of its statutory functions:
“(c) prescribing matters to be addressed by the Rulings Panel in its annual report under **section 40ZN**. 20
“(2) The Minister must consult with the FMA before making a recommendation under **subsection (1)**.”²²
- 159 New Schedule added**
The **Schedule** set out in **Schedule 5** of this Act is added. 25
- 158 New sections 48DA to 48DC inserted**
The following sections are inserted after the heading above section 48E:
- “48DA Definitions relating to unsolicited offer regulations and related provisions** 30
“(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 security, to acquire a power to dispose of a security, or to acquire another interest in or

- right attaching to a security, made by a person (A) to another person (B) (whether the acquisition is by A or an associated person of A):
- “(b) it is unsolicited by B:
- “(c) it is not made on a registered market: 5
- “(d) it is within the class or classes of unsolicited offers to which the regulations apply:
- “(e) it is not a takeover offer for securities under the takeovers code or an acquisition or a redemption by a company of its shares under the Companies Act 1993. 10
- “(2) For the purposes of this section, **sections 47AA, 48DB, 48DC**, and any regulations made under this section,—
- “(a) **associated person** has the meaning set out in **section 47(5)(ab)** of the **Financial Markets (Regulators and Kiwisaver) Act 2010:** 15
- “(b) an **offer** made by A includes an invitation or proposal for A (or an associated person of A) to make an offer:
- “(c) regulations may define or clarify the meaning of **unsolicited**.
- “**48DB Regulations concerning unsolicited offer regulations** 20
- “(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— 25
- “(a) ensuring offerees are fully informed of—
- “(i) the current market price of a listed security or, for a non-listed security, a fair estimate of the value of the security and the basis for making that estimate; and 30
- “(ii) any warnings issued by the FMA (if ordered by the FMA to be contained in or to accompany offer documents); and
- “(iii) their rights and remedies under the regulations; and 35
- “(b) ensuring that notice of an unsolicited offer to security holders is given to the relevant public issuer or issuer and the FMA; and

- “(c) ensuring that no agreement to transfer may bind offer-
ees for a minimum period for the purpose of enabling
offerees to consider, and reconsider, any decision to ac-
cept an offer:
- “(d) requiring there to be minimum or maximum offer 5
periods 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 prac- 10
tices in the making of unsolicited offers; and
- “(b) consult with the FMA.

**“48DC Specific provisions for regulations concerning
unsolicited offers**

The regulations made under **section 48DB** may, without 15
limiting that section,—

- “(a) define the class or classes of unsolicited offers and se-
curities to which the regulations apply:
- “(b) prescribe requirements in relation to unsolicited offers 20
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 docu-
ments or other corrective statements, and the implica-
tion of terms into the offer or any resulting agreement:
- “(c) prescribe the information, statements, certificates, or 25
other documents that must be supplied to offerees, the
relevant public issuer or issuer, and the FMA:
- “(d) provide for the exercise of a right to withdraw a noti-
fication of a decision to accept an unsolicited offer, a 30
right to refuse to complete a transfer, or any other right
or remedy of offerees, and any consequences and obli-
gations that apply in those cases:
- “(e) provide for any powers of, and requirements on, public 35
issuers, issuers, or their agents in connection with trans-
fers under an unsolicited offer and provide for protec-
tions from liability for those persons, persons adminis-
tering a register of securities, and other persons for the
purposes of **section 47AA**:

- “(f) provide for the regulations to—
- “(i) extend to, or in respect of, any conduct of an associated person of an offeror and any conduct that, in substance or effect, constitutes an unsolicited offer: 5
- “(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 inviting others to make an offer to sell a security in circumstances in which, if the invitation were an offer to acquire the security, it would be an unsolicited offer to which the regulations applied): 10
- “(g) provide for transitional matters.”

Transitional provisions 15

160 Transitional provisions for conduct rules and registered exchanges

- (1) Any conduct rules that had effect under section 36I of the principal Act immediately before the commencement of this section— 20
- (a) continue to have effect under **section 36I** of the principal Act (as amended by this Act); and
- (b) must be treated as market rules that have been approved under **section 36L** of the principal Act (as amended by this Act). 25
- (2) Any reference in an enactment, proceedings, or other thing (whether express or implied) to conduct rules must be read as a reference to market rules.
- ~~(3) NZX Limited continues to be registered under section 36F of the principal Act (as amended by this Act) and the FMA must, as soon as practicable after this section comes into force, give a certificate of registration to NZX Limited under **section 36F(4)**: 30~~
- (3) NZX Limited continues to be a registered exchange under the principal Act (as amended by this Act), holding a market registration for its NZSX, NZDX, and NZAX markets (without the need for any further notice of market registration). 35

160A Transitional provision for authorised futures exchanges

- (1) Any body corporate that is an authorised futures exchange under section 37(8) of the principal Act on the date on which **section 149** of this Act comes into force continues, after that date, to be an authorised futures exchange under section 37(8) of the principal Act (as amended by this Act) in respect of the authorised futures market or markets stated in the notice under **subsection (3)** (without the need for any further notice of authorisation). 5
- (2) The FMA must carry out a review of each authorisation to— 10
- (a) determine the futures market to which the authorisation should apply; and
- (b) ensure that it is satisfied that—
- (i) the operation of each of those futures markets by the authorised futures exchange will be subject to requirements and supervision under the existing or proposed terms and conditions of the authorisation or the law and regulatory requirements of another jurisdiction (if the exchange is also authorised to conduct the market in another jurisdiction), or both; and 15 20
- (ii) those requirements and that supervision are likely to have at least equivalent outcomes, in terms of the degree of integrity and effectiveness of the market and the confidence of investors in the market, to the likely outcomes for that market if the market were registered under **section 36F**. 25
- (3) The FMA must, by notice in the *Gazette* after completing each review, give a notice of the name of the authorised futures exchange and the futures markets for which it is authorised. 30
- (4) The FMA must use its best endeavours to complete the reviews no later than 6 months after the date on which this section comes into force.

161 Exemptions continue in force 35

- (1) This section applies to every exemption granted under section 48 of the principal Act that is in force immediately before the commencement of this section.

- (2) The exemption—
- (a) continues in force as if it were granted under **section 48** of the principal Act (as substituted by this Act); and
 - (b) may be amended or revoked as if ~~made~~ granted under that section. 5
- 162 Consequential amendment to Remuneration Authority Act 1977**
- (1) This section amends the Remuneration Authority Act 1977.
 - (2) Schedule 4 is amended by inserting the following item after the item relating to the Retirement Commissioner: 10
“The members of the Securities Markets Rulings Panel”.
- 163 Amendment to Securities Markets Amendment Act 2002**
- (1) This section amends the Securities Markets Amendment Act 2002.
 - (2) Section 33(4) and (5) (which contain transitional provisions relating to the New Zealand Stock Exchange) are repealed. 15

Part 7

Amendments to KiwiSaver Act 2006

- 164 Principal Act amended**
- This **Part** amends the KiwiSaver Act 2006. 20
- 165 Interpretation**
- (1AA) The definition of **default KiwiSaver provider** in section 4(1) is amended by omitting “person” and substituting “manager”.
- (1) The definition of **independent trustee** in section 4(1) is amended by inserting “restricted” after “in relation to a”. 25
 - (2) The definition of **KiwiSaver scheme** in section 4(1) is amended by omitting “a scheme that is provisionally registered under section 137 or”.
 - (3) Section 4(1) is amended by repealing the definition of **trust deed** and substituting the following definition: 30

- “**trust deed**, in relation to a KiwiSaver scheme or a registered superannuation scheme,—
- “(a) means the trust deed that sets out the trusts governing a ~~KiwiSaver~~ the scheme, as amended from time to time; and 5
- “(b) includes a participation agreement and any other document that, under the terms of the relevant trust deed, forms part of or determines ~~any of the terms~~ a term of the trust deed”.
- (4) Section 4(1) is amended by repealing the definition of **trustees** 10 and substituting the following definition:
- “**trustees**,—
- “(a) in relation to a restricted KiwiSaver scheme, means the independent trustee ~~and any other trustee~~ referred to in **section 116A** and any other trustee who is designated 15 or appointed as trustee of the scheme under the trust deed; or the successor of that person; and
- “(b) in relation to any other KiwiSaver scheme, means the person who is designated or appointed as trustee of the scheme under the trust deed; or the successor of that 20 person; and
- “(c) in relation to any other superannuation scheme, has the same meaning as in section 2(1) of the Superannuation Schemes Act 1989”.
- (5) The definition of **umbrella trust** in section 4(1) is amended by 25 adding “; as in force immediately before its repeal by **section 191** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.
- (6) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order: 30
- “**administration manager**,—
- “(a) in relation to a restricted KiwiSaver scheme, means ~~the person (if any)~~ a person to whom the trustees have contracted some or all of the administration of the scheme; and 35
- “(b) in relation to any other KiwiSaver scheme, means ~~the person (if any)~~ a person to whom the manager has contracted some or all of the administration of the scheme

“**benefit** means ~~any~~ a lump sum, allowance, refund, or other payment arising from membership of a KiwiSaver scheme

“**investment manager**,—

“(a) in relation to a restricted KiwiSaver scheme, means ~~the person (if any)~~ a person to whom the trustees have contracted the investment of some or all of the funds of the scheme; and 5

“(b) in relation to any other KiwiSaver scheme, means ~~the person (if any)~~ a person to whom the manager has contracted the investment of some or all of the funds of the scheme 10

“**manager**, in relation to a KiwiSaver scheme other than a restricted scheme, means the person designated or appointed as manager of the scheme under the trust deed

“**manager** means the person designated or appointed under the trust deed as manager of a KiwiSaver scheme other than a restricted scheme 15

“**New Zealand resident** means a person resident in New Zealand under section YD 1 or YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007 20

“**nominated person**, in relation to trustees, means a person nominated by the trustees and eligible to act as a nominated person under **section 116I**

“**nominee**, in relation to a nominated person, means a person appointed by the nominated person and eligible to act as a nominee under **section 116J** 25

“**restricted KiwiSaver scheme** or **restricted scheme** means a KiwiSaver scheme identified as a restricted scheme on the KiwiSaver schemes register”.

166 Meaning of provider 30

(1) Section 5(1) is amended by inserting “restricted” after “provider of a”.

(2) Section 5 is amended by inserting the following subsection after subsection (1):

“(1A) For the purpose of anything that must or may be done by or to or in relation to a provider of any other KiwiSaver 35

scheme under this Act, **provider**, unless the context otherwise requires, means the manager of the scheme.”

167 Application

Section 6(2)(a) is amended by omitting “(within the meaning of sections YD 1 or YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007)”.

168 Effect on existing members of change, etc, in employer chosen scheme

Section 49(2) is amended by omitting “section 9BAA of the Superannuation Schemes Act 1989” and substituting “**section 119G**”.

169 Notification of transfers and requirement to transfer funds and information

Section 56 is amended by adding the following subsections:

“(5) Despite subsections (3) and (4), in the circumstances described in **subsection (6)**, the provider of the old scheme must not transfer the member’s accumulation to the new scheme other than by way of distributing the assets of the old scheme as the scheme is wound up.

“(6) The circumstances are that ~~the trustees have,~~—

“(a) the trustees (in the case of a restricted KiwiSaver scheme) have, or the manager (in the case of any other KiwiSaver scheme) has, under **section 119D**, notified ~~every member~~ members of the old scheme of a proposal to transfer all of the members of the old scheme to another scheme; or

“(b) the trustees have, under section 173, lodged a copy of a winding-up order or resolution with the FMA (in the case of a restricted KiwiSaver scheme) or notified the manager of a winding-up order or resolution (in the case of any other KiwiSaver scheme).”

- 170 Involuntary transfers**
Section 57(2) is amended by omitting “section 9BAA of the Superannuation Schemes Act 1989” and substituting “**section 119G**”.
- 171 Compulsory employer contribution amount: general rule** 5
Section 101D(5)(b)(i) is amended by inserting “or **section 119G** of this Act” after “section 9BAA of the Superannuation Schemes Act 1989”.
- 172 Schemes eligible to be KiwiSaver scheme**
(1) Section 116(1) is amended by inserting “(but not a restricted scheme)” after “eligible to be a KiwiSaver scheme” 10
(2) Section 116(1) is amended by repealing paragraph (a) and substituting the following paragraph:
“(a) it is established and governed by a trust deed that is interpreted and administered in accordance with New Zealand law; and” 15
(3) Section 116(1) is amended by repealing paragraphs (e) and (f) and substituting the following paragraphs:
“(e) it has a trustee (~~see section 116B~~) manager; and
“(f) it has a manager (~~see section 116C~~) trustee.” 20
(4) Section 116(2) is repealed.
(5) Section 116(3) is amended by omitting “(i) and (ii)”.
(6) Section 116 is amended by adding the following subsection:
“(5) This section does not apply to restricted KiwiSaver schemes.”
- 173 New sections 116A to ~~116D~~ 116J inserted** 25
The following sections are inserted after section 116:
“116A Requirements for restricted KiwiSaver schemes
“(1) A scheme that is identified on the KiwiSaver schemes register as a restricted KiwiSaver scheme must—
“(a) comply with **section 116(1)(a)** to (d); and 30
“(b) have at least 1 independent trustee; and
“(c) have—
“(i) at least 1 trustee who is a New Zealand resident;
or

- “(ii) if any of the trustees is a corporate trustee, at least 1 director of the corporate trustee who is a New Zealand resident; and
- “(d) restrict membership of the scheme, in its conditions of entry of members to the scheme and in the way in which those conditions are applied, to 1 or more ~~classes of persons who are employed by a particular employer, or who belong to a particular profession, calling, trade, or occupation, or to a particular association, society, or other body having a definable community of interest.~~ of the classes of persons described in **subsection (1A)**. 5 10
- “(1A) The classes of persons are—
- “(a) persons who are employed by a particular employer:
- “(b) persons who are employed by a related body corporate (within the meaning of section 5B(2) of the Securities Markets Act 1988) of a particular employer: 15
- “(c) persons who belong to a particular profession, calling, trade, or occupation:
- “(d) persons who belong to a particular association, society, or other body with a definable community of interest: 20
- “(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)**.
- “(1B) In **subsection (1A)(e)**, **immediate family member**, in relation to a person, means the persons’s spouse, civil union partner, de facto partner, parent, child, step-parent, or stepchild. 25
- “(2) A restricted scheme must ~~not change its~~ obtain the prior written consent of the FMA before changing the conditions of entry of members to the scheme, or the way in which those conditions are applied, in a way that expands or is likely to expand the classes of persons who may become members of the scheme. 30
- “(3) ~~The trustees of a restricted scheme must notify the FMA as soon as practicable after the scheme ceases to comply with **subsection (1)(c)**.~~ 35
- “(3) As soon as practicable after a restricted scheme ceases to comply with **subsection (1)(c)**, the trustees of the scheme must notify the FMA of that fact.

~~“116B~~ **Trustees of KiwiSaver schemes**

- ~~“(1) The investments and property of a KiwiSaver scheme must be vested in the trustees.~~
- ~~“(2) A KiwiSaver scheme other than a restricted KiwiSaver scheme must not have more than 1 trustee.~~ 5

~~“116C~~ **Managers**Requirements for managers of KiwiSaver schemes

- ~~“(1) A KiwiSaver scheme other than a restricted scheme must have a manager, who~~The manager of a KiwiSaver scheme is responsible for performing the following functions: 10
- ~~“(a) offering interests in the scheme for subscription;~~
- ~~“(b) issuing interests in the scheme;~~
- ~~“(c) managing scheme investments and property;~~
- ~~“(d) administering the scheme.~~
- ~~“(2) The manager—~~ 15
- ~~“(a) must be a company within the meaning of the Companies Act 1993 that is a reporting entity within the meaning of the Financial Reporting Act 1993; and~~
- ~~“(b) must have at least 1 director who is a New Zealand resident; and~~ 20
- ~~“(c) must be designated or appointed as manager of the scheme under the trust deed; and~~
- ~~“(d) must be a party to the trust deed or bound to comply with the relevant provisions of the trust deed as if it were a party to the trust deed.~~ 25
- ~~“(2A) The manager has the same liability for its acts and omissions in the performance of its functions and duties, and the exercise of its powers, as it would if it performed those functions or duties, or exercised those powers, as a trustee.~~
- ~~“(3) The manager must notify the FMA as soon as practicable after the manager ceases to have at least 1 director who is a New Zealand resident.~~ 30
- ~~“(3) As soon as practicable after a manager ceases to comply with **subsection (2)(b)**, the manager must notify the FMA of that fact.~~ 35

“116D Administration managers and investment managers

†The trustees of a restricted KiwiSaver scheme or the manager of any other KiwiSaver scheme—

- “(a) may appoint an administration manager to undertake some or all of the administration of the scheme; and 5
- “(b) may appoint an investment manager to undertake the investment of some or all of the funds of the scheme.

“116E Duty of manager with respect to money received

“(1) This section applies to all money received by the manager, or an agent of the manager, in respect of contributions. 10

“(2) On receipt by the manager,—

- “(a) the manager must pay the money into a separate bank account; and
- “(b) the money is subject to the trusts governing the scheme that are set out in the trust deed. 15

“Compare: 1960 No 99 ss 14(1) and 15

“116F Requirements for trustees of KiwiSaver schemes

“(1) The trustees of a KiwiSaver scheme must supervise the manager’s performance of—

- “(a) the functions set out in **section 116C(1)**; and 20
- “(b) any other functions that the manager performs in relation to the scheme under the trust deed or an enactment.

“(2) The trustees must not delegate the function described in **subsection (1)**.

“(3) A KiwiSaver scheme other than a restricted scheme must not have more than 1 trustee, and that trustee must be a body corporate that is incorporated in New Zealand. 25

“116G Manager and trustee must be independent

“(1) This section applies to a KiwiSaver scheme other than a restricted scheme. 30

“(2) A person (A) must not act as trustee of a scheme, and another person (B) must not act as manager of the scheme, if A and B are associated persons (within the meaning of subpart YB of the Income Tax Act 2007).

“116H Investments and property of KiwiSaver schemes

The investments and property of a KiwiSaver scheme must be vested in—

“(a) the trustees; or

“(b) 1 or more nominated persons of the trustees; or 5

“(c) 1 or more nominees of a nominated person of the trustees.

“116I Nomination of person

“(1) If authorised by the trust deed, the trustees of a KiwiSaver scheme may nominate, in writing, 1 or more persons in which are vested any of the investments or property referred to in **section 116H.** 10

“(2) The following persons are not eligible to be nominated as, or to act as, a nominated person:

“(a) the manager of the scheme: 15

“(b) a person who is an associated person (within the meaning of subpart YB of the Income Tax Act 2007) of the manager.

“(3) The trustees, in addition to their own obligations as trustees in relation to the scheme, are jointly and severally liable with the nominated person for the due and faithful performance and observance by the nominated person of all the duties and obligations imposed on the nominated person in relation to the scheme either by this Act or by law. 20

“Compare: 1960 No 99 ss 6 and 6A 25

“116J Appointment of nominee by nominated person

“(1) A nominated person may, if authorised in writing by the trustees, appoint 1 or more nominees in which are vested any of the investments or property referred to in **section 116H.**

“(2) The following persons are not eligible to be appointed as, or to act as, a nominee: 30

“(a) the manager of the scheme:

“(b) a person who is an associated person (within the meaning of subpart YB of the Income Tax Act 2007) of the manager. 35

- “(3) The trustee and the nominated person that appointed the nominee, in addition to their own obligations in relation to the scheme, are jointly and severally liable with the nominee for the due and faithful performance and observance by the nominee of all the duties and obligations imposed on the nominee in relation to the scheme by this Act or by law.” 5
- “Compare: 1960 No 99 ss 6B and 6C”

174 Additional duty of independent trustees

- (1) Section 117(1) is amended by inserting “of a restricted Kiwi-Saver scheme” after “a trustee”. 10
- (2) Section 117(1) is amended by omitting “sections 131, 132, 135, or 148” in each place where it appears and substituting in each case “any of the sections specified in **subsection (3)**”.
- (3) Section 117(2)(a) is amended by omitting “must exercise” and substituting “is required to exercise under section 13B or 13C of the Trustee Act 1956 would exercise in managing the affairs of others”. 15
- (4) Section 117 is amended by adding the following subsection:
- “(3) The sections referred to in subsection (1) are—
- “(a) ~~sections~~ section 131(1) and (4); and 20
- “(b) sections 131(2) and (3), 132, 135, and 148 of this Act as in force immediately before their repeal by **section 187, 188, or 191 of the Financial Markets (Regulators and KiwiSaver) Act 2010.**”

175 Heading above section 118 repealed 25

The heading above section 118 is repealed.

176 KiwiSaver scheme must be treated as registered superannuation scheme for most purposes

- (1) Section 118(2) is amended by omitting “but subject to subsection (3),”. 30
- (2) Section 118(2)(a) is amended by omitting “except as provided in sections 119 to 123”.
- (3) Section 118(3) is repealed.

177 New headings and sections 119 to 122 substituted

Sections 119 to 122 are repealed and the following headings and sections substituted:

“Trust deeds

“119 Content of trust deeds

5

“(1) The trust deed of a KiwiSaver scheme must specify the following matters:

“(a) the conditions of entry of members to the scheme:

“(b) the conditions ~~as to~~ of termination of membership of the scheme:

10

“(c) the contributions payable:

“(d) the conditions under which benefits become payable and the way in which the benefits ~~are to~~ will be determined:

“(e) the number of trustees, and provision for their appointment, removal from office, and retirement:

15

“(f) the circumstances in which the scheme may be wound up and the way in which the assets of the scheme are to be distributed in the event of a ~~winding up~~ winding-up:

“(g) in the case of a KiwiSaver scheme other than a restricted scheme, provision for the appointment, removal from office, and retirement of the manager.

20

“(2) If other provisions of this Act expressly set out requirements in relation to the matters set out in **subsection (1)** (for example, by terms implied by the KiwiSaver scheme rules or provision for how a scheme must be wound up),—

25

“(a) the trust deed is subject to those provisions; and

“(b) **subsection (1)** is satisfied by reference to the relevant provisions in this Act in respect of those matters.

“Compare: 1989 No 10 s 7

30

“119A Implied provision as to amendments reducing accrued benefits, etc

“(1) There is implied in the trust deed of a KiwiSaver scheme a provision that an amendment requiring consent must not be made ~~without~~ unless the trustees (in the case of a restricted KiwiSaver scheme) have, or the manager (in the case of any other KiwiSaver scheme) has, obtained the written consent of every member who would be adversely affected by the amendment.

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- “(2) In **subsection (1), amendment requiring consent** means an amendment of the trust deed that would have the effect of—
- “(a) reducing, postponing, or otherwise adversely affecting 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 is made; or 5
 - “(b) removing ~~any right of the~~ a right of members to participate in the management of the scheme; or
 - “(c) increasing the contributions, fees, or charges payable by ~~any~~ a member; or 10
 - “(d) providing for the reversion of any assets of the scheme to ~~any an~~ employer to ~~any~~ a greater extent than already provided for in the trust deed.
- “Compare: 1989 No 10 s 9 15

“**119B Application of sections 119C to 119I**

Sections 119C to 119I apply to transfers or proposed transfers between KiwiSaver schemes, other than transfers to which subpart 3 of Part 2 applies.

“**119C Implied provision as to transfer of members, etc** 20

- “(1) There is implied in the trust deed of a KiwiSaver scheme a provision that no member of the scheme will be transferred to another KiwiSaver scheme, or to another section of the same scheme, ~~without~~ unless the trustees (in the case of a restricted KiwiSaver scheme) have, or the manager (in the case of any other KiwiSaver scheme) has, obtained the written consent of the member concerned. 25

- “(2) This section is subject to **section 119G**.

“Compare: 1989 No 10 s 9B(1), (1A), (5)

“**119D Procedural requirements in case of certain transfers** 30

- “(1) This section and **sections 119E to 119H** apply if it is proposed to transfer (whether at the same time or over an extended period) all or a substantial number of members from a KiwiSaver scheme to ~~any other~~ another KiwiSaver scheme.

- ~~“(2) If this section applies, the trustees of each scheme affected must notify the persons described in **subsection (3)** in accordance with **subsection (4)**.”~~
- “(2) If this section applies,—
- “(a) the manager of each KiwiSaver scheme affected (other than a restricted scheme) must notify the persons described in **subsection (3)** in accordance with **subsection (3A)**; and 5
- “(b) the trustees of each restricted KiwiSaver scheme affected must notify the persons described in **subsection (3)** in accordance with **subsection (4)**. 10
- “(3) The persons who must be notified are—
- “(a) all members of each the scheme (other than those members who, in the opinion of the FMA, are not likely to be materially affected by the proposed transfer); and 15
- “(b) the FMA.
- “(3A) If this subsection applies, the manager must, at least 1 month before the date on which the manager requires members to give their written consent to a proposed transfer,—
- “(a) consult the trustee of the scheme on the proposed transfer; and 20
- “(b) notify the members described in **subsection (3)(a)** in writing of—
- “(i) the proposed transfer and its implications for members; and 25
- “(ii) the date on which the proposed transfer is to occur; and
- “(iii) the date by which the written consent of members to the proposed transfer must be received by the manager; and 30
- “(iv) any comments concerning the proposed transfer made by the trustee as a result of consultation under **paragraph (a)**; and
- “(v) the fact that a copy of the notice has been forwarded to the FMA; and 35
- “(c) notify the FMA in writing of the matters described in **paragraph (b)(i) to (iv)**.
- “(4) At least 1 month before the date by which the written consent of members to a proposed transfer must be received by the

~~trustees of each scheme affected.~~ If this subsection applies, the trustees must, at least 1 month before the date on which they require members to give their written consent to a proposed transfer,—

“(a) ~~the trustees must~~ notify the members described in **subsection (3)(a)** in writing of— 5

“(i) the proposed transfer and its implications for members; and

“(ii) the date on which the proposed transfer is to occur; and 10

“(iii) the date by which the written consent of members to the proposed transfer must be received by the trustees; and

“(iv) the fact that a copy of the notice has been forwarded to the FMA; and 15

“(b) ~~the trustees must~~ notify the FMA in writing of the matters described in **paragraph (a)(i) to (iii)**.

“(5) ~~The giving of notice under subsection (2)~~ Giving notice under this section does not derogate from the need to comply with any other provision of this Act. 20

“(6) For the purposes of this section and **section 119E**, references to the transfer of members from one scheme to another include references to transfers of members from one section of a scheme to another section of the same scheme.

“Compare: 1989 No 10 s 9B(2)–(3), (5) 25

“119E When requirements of section 119D not met

For the purposes of section 169, and without limiting ~~the provisions~~ of that section, it is a ground for the FMA to have reasonable cause to believe that a particular scheme to which members are transferred fails to meet the requirements of **section 119D** if,— 30

“(a) over any 12-month period, either—

“(i) 20% or more of the members of ~~any other~~ another KiwiSaver scheme are transferred to the particular KiwiSaver scheme; or 35

“(ii) the number of members of the particular KiwiSaver scheme is increased by 20% or more by

- reason of any a transfer of members from any
other another KiwiSaver scheme; and
- “(b) the members of the particular KiwiSaver scheme who
are described in **section 119D(3)(a)** have not been no-
tified of the transfer, or any notification given has not
adequately set out the implications of the transfer. 5

“Compare: 1989 No 10 s 9B(4)

~~“119F~~ **Information required in case of transfer under section
119D**

- “(1) In respect of a transfer that occurs under **section 119D**,— 10
- “(a) a member (A) of the scheme who gives consent to a
proposed transfer under **section 119D** must give to the
trustees the following information:
- “(i) A’s name, address, and date of birth; and
- “(ii) A’s tax file number; and 15
- “(iii) the date on which A first became a member of a
KiwiSaver scheme; and
- “(iv) if A is an employee,—
- “(A) the name and address of each of A’s em-
ployers; and 20
- “(B) the rate at which A intends each of those
employers to make deductions of contri-
butions from his or her salary or wages;
and
- “(v) the name, address, and tax file number of both the
provider and the scheme; and 25
- “(vi) any other information that the Commissioner re-
quires; and
- “(b) the trustees of the scheme from which it is proposed to
transfer members must, in addition to the matters to be 30
notified in writing under **section 119D(4)**, provide to
the satisfaction of the FMA evidence that they have pro-
vided to the Commissioner, in respect of each member
of the scheme, the information set out in **paragraph
(a)**: 35
- “(2) Despite **subsection (1)(b)**, the trustees of a scheme are not
required to provide to the Commissioner any or all of the in-
formation listed in **subsection (1)(a)** in respect of any or all

of the members of the scheme if the information is not in the control or possession of the trustees or the manager.

“119F Information required in case of transfer under section 119D

In respect of a transfer to which **section 119D** applies, the provider of the scheme from which a member (A) transfers must give the following information to the provider of the scheme to which A transfers: 5

“(a) A’s name, address, and date of birth:

“(b) A’s tax file number: 10

“(c) the date on which A first became a member of a Kiwi-Saver scheme:

“(d) if A is an employee,—

“(i) the name and address of each of A’s employers; and 15

“(ii) the rate at which A intends each of those employers to make deductions of contributions from his or her salary or wages:

“(e) the name, address, and tax file number of both the provider and the scheme: 20

“(f) any other information that the Commissioner requires the provider to give to the provider of the scheme to which A transfers.

“119G When FMA may approve section 119D transfers without consent of members 25

“(1) In respect of a transfer to which **section 119D** applies, the requirement in **section 119C** to obtain the written consent of all or any of the members of a scheme does not apply if the FMA approves the transfer under this section.

“(2) This section applies despite anything to the contrary in a scheme’s trust deed. 30

“(3) The FMA may approve the transfer if the FMA is satisfied that—

“(a) the terms and conditions of the scheme to which the members are to be transferred (the **new scheme**) are no less favourable to members than the terms and condi- 35

- tions of the scheme from which they are being transferred (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 5
- “(c) the procedure in **section 119H** has been followed.
- “(4) The FMA may decline to approve a transfer if the FMA considers that the transfer would adversely affect the interests of all or any of the members of the old scheme in any a material way. 10
- “(5) In determining whether **subsection (3) or (4)** applies, the FMA may—
- “(a) have regard to the likely effect of the new scheme on benefits to members as a whole; and 15
- “(b) have regard to any other matter that the FMA considers relevant.
- “(6) For a transfer that the FMA has approved,—
- “(a) each relevant member of the old scheme is treated as offering to be a member of the new scheme on the terms and conditions for that new scheme; and 20
- “(b) the provider of the new scheme is treated as accepting the member’s offer.
- “(7) The FMA may publish, in any form that the FMA thinks fit, guidance ~~as to~~ on matters that the FMA considers relevant under this section (including principles that the FMA may use to decide whether to approve ~~the~~ a transfer). 25

“Compare: 1989 No 10 s 9BAA

“**119H How approval under section 119G may be granted**

- “(1AA) An application for approval under **section 119G** may be made by— 30
- “(a) the trustees (in the case of a restricted KiwiSaver scheme) of the old scheme or the new scheme:
- “(b) the trustee or the manager (in the case of any other Kiwi-Saver scheme) of the old scheme or the new scheme: 35
- “(c) a relevant employer.

- “(1) The FMA may accept an application for approval ~~under **section 119G**~~ that is made by all or any of the trustees of the old scheme, the trustees of the new scheme, or a relevant employer, ~~if the FMA~~ if it is satisfied that—
- “(a) it is reasonable in all of the circumstances of the case that the person have standing to make the application; and
- “(b) the person falls within a class specified in guidelines published by the FMA (if any) for the purposes of this subsection.
- “(2) The FMA may require the applicant to give the FMA, with the application or at any later time,—
- “(a) a certificate, signed by a person of ~~any~~ a class specified by the FMA, that the transfer meets the requirements of **section 119G**; and
- “(b) any other information about the new scheme, the old scheme, or the transfer.
- “(3) The applicant must give notice to every member ~~to whom the transfer will relate~~ of the old scheme—
- “(a) that the applicant has applied for approval to transfer the members without their written consent; and
- “(b) that the member may make submissions to the FMA about the transfer.
- “(4) The FMA must have regard to ~~any submission~~ submissions before deciding whether or not to give approval.
- “(5) The FMA may give approval subject to any terms and conditions that the FMA may specify in the notice of approval, and the approval is effective only if the transfer is carried out in accordance with those terms and conditions.
- “Compare: 1989 No 10 s 9BAB
- “**119I FMA may exempt trustees and managers from requirement to obtain written consent of all members**
The FMA may exempt ~~trustees of a~~ the trustees of a restricted KiwiSaver scheme or the manager of any other KiwiSaver scheme from the requirement to obtain the written consent of all members of the scheme who are required to give consent under **section 119A or 119C** if the FMA is satisfied that—

- “(a) the trustees have not, or the manager has not, been able to contact all members of the scheme of those members despite having taken all reasonable steps to do so; and
- “(b) the proposed action is not unreasonable in relation to the best interests of any member who has 1 or more of those members who have not been contacted. 5

“Compare: 1989 No 10 s 9BA

“**119J Application and enforcement of implied provisions**

- “(1) **Sections 119A to 119I, 129A, and 129B** apply notwithstanding anything to the contrary in the trust deed. 10
- “(2) Every provision implied in a trust deed in accordance with **sections 119A to 119I, 129A, and 129B** is enforceable by the manager, the trustees, or any a member of the scheme.

“Compare: 1989 No 10 s 11

“*Financial information* 15

“**120 ~~Accounts~~ Financial statements**

The trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) must ensure that—

- “(a) proper books of accounts are kept in respect of the scheme; and 20
- “(b) ~~annual accounts~~ annual financial statements in respect of the scheme are prepared in accordance with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993); and 25
- “(c) ~~those annual accounts~~ the annual financial statements are audited by an auditor (being a chartered accountant within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996); and
- “(d) ~~in the case of a KiwiSaver scheme other than a restricted scheme, those audited accounts are approved by the trustees.~~ 30

“Compare: 1989 No 10 s 13(1)

*“Prospective members’ rights to information***“121 Prospective members’ rights to information**

- “(1) A person who is eligible to become a member of a KiwiSaver scheme has the right, on request,—
- “(a) to look at, at any reasonable time, a copy of the trust deed: 5
 - “(b) to receive, on payment of a reasonable fee, a copy of the trust deed:
 - “(c) to receive, free of charge, a copy of the annual ~~accounts~~ financial statements and any auditor’s report. 10
- “(2) In **subsection (1)**, **trust deed** does not include ~~any~~ a participation agreement that would not relate to a person if the person were to become a member of the scheme.
- “(3) Nothing in **subsection (1)** limits any provision in the Securities Act 1978. 15
- “Compare: 1989 No 10 s 15A

*“Members’ rights to information***“122 Members’ rights to information**

- “(1) Each member of a KiwiSaver scheme must—
- “(a) be given, within 6 months of the close of each financial year of the scheme, a copy of the annual report ~~of the trustees prepared under section 123~~ in respect of that year; and 20
 - “(b) have the right, on request,—
 - “(i) to receive an estimate of the member’s benefits: 25
 - “(ii) to look at, at any reasonable time, a copy of the trust deed:
 - “(iii) to receive, on payment of a reasonable fee, a copy of the trust deed:
 - “(iv) to receive, free of charge, a copy of the annual ~~accounts~~ financial statements and any auditor’s report. 30
- “(2) **Subsection (1)(a)** does not apply in relation to a member’s account that is an inactive account unless the member requests a copy of the annual report. 35
- “(3) The requirement in **subsection (1)(a)** is treated as met in respect of a member if—

- “(a) the member has consented, in writing, to receive a World Wide Web uniform resource locator for access to an electronic copy of the annual report (the **annual report URL**); and
- “(b) the member is given the annual report URL within 6 months of the close of the relevant financial year. 5
- “(4) In **subsection (1), trust deed** does not include any a participation agreement that does not relate to the member.
- “(5) Nothing in **subsection (1)** limits sections 54A and ~~54B~~, 54B, or any other provision of the Securities Act 1978. 10
“Compare: 1989 No 10 s 17”
- 178 New heading inserted**
The following heading is inserted above section 123:
“Annual reports, returns, and statements”.
- 179 Requirement for annual report** 15
Section 123(5) is amended by adding the following paragraph:
“(i) unless the scheme is a restricted scheme, the name of the manager and the name of every director of the manager.”
- 180 Requirement for annual return** 20
(1) Section 125(4)(b) is amended by inserting “or the manager” after “trustees”.
(2) Section 125(4)(c) is amended by adding “or the manager”.
- 181 Requirement for annual personalised statement of contributions and accumulations for members** 25
Section 125A is amended by adding “, and”, and also by adding the following paragraph:
“(c) any other prescribed information.”
- 179 New section 123 substituted** 30
Section 123 is repealed and the following section substituted:

123 Requirement for annual report

“(1) The trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) must, within 5 months after the end of each financial year, prepare a report on the scheme for that year.

5

“(2) In the case of a KiwiSaver scheme other than a restricted scheme, the manager must consult the trustee about the annual report.

“(3) The annual report must contain, or have attached to it, the prescribed information, statements, certificates, and documents.

10

“(4) The trustees or the manager (as the case may be) must, within 28 days after the annual report is completed, send to the FMA a copy of the completed report and, if not already contained in or attached to the report, a copy of the annual financial statements.”

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180 Requirement for annual return

(1) Section 125(1) is amended by omitting “trustees of a KiwiSaver scheme” and substituting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)”.

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(2) Section 125(4)(b) and (c) are amended by omitting “trustees” and substituting “trustees or the manager (as the case may be)”.

181 New section 125A substituted

Section 125A is repealed and the following section substituted:

25

125A Requirement for annual personalised statement of contributions and accumulations for members

The trustees (in the case of a complying superannuation fund or a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) must provide annually to each person who is a member of that fund or scheme during the relevant year a statement showing the following for that person:

30

“(a) the amount of each type of contribution received by the provider of the fund or scheme (as the case may be) for the year; and

35

“(b) the member’s accumulation at the end of the year; and

“(c) any other prescribed information.”

**182 KiwiSaver scheme rules are implied in trust deeds
establishing KiwiSaver scheme**

- (1) Section 126(3)(b) is amended by inserting “, the manager,” after “trustees”. 5
- (2) Section 126(4) is amended by omitting “sections 8 to 10 of the Superannuation Schemes Act 1989 (as applied by section 120)” and substituting “**sections 119A to 119I, 129A, and 129B**”.
- (3) Section 126(5) is amended by omitting “sections 8 to 10 of the Superannuation Schemes Act 1989” and substituting “**sections 119A to 119I, 129A, and 129B**”.
- (3) Section 126(5) is repealed. 10

183 Section 128 repealed
Section 128 is repealed.

15

183A Terms relating to members’ tax credits implied into trust deed

Section 128A(2)(b) is amended by inserting “a manager,” after “trustee,”.

183B Terms relating to compulsory employer contributions implied into trust deed

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Section 128D(2)(b) is amended by omitting “and by a member,” and substituting “a manager, or a member”.

184 Amendment of trust deed or participation agreement governing KiwiSaver scheme

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Section 129(2)(a) and (b) are repealed and the following paragraphs substituted:

- “(a) will comply with **section 119**; and
- “(b) will not contain any provision that is contrary to those implied by **sections 119A to 119I, 129A, and 129B**; and”.

30

184 Amendment of trust deed or participation agreement governing KiwiSaver scheme

(1) Section 129 is amended by repealing subsections (1) and (2) and substituting the following subsections:

“(1) This section applies if the trustees (in the case of a restricted KiwiSaver scheme) or the trustee or the manager (in the case of any other KiwiSaver scheme) propose to amend the trust deed of the scheme in a way that will or may affect—

“(a) the members of the scheme in their capacity as members of the scheme; or 10

“(b) the trustees of the scheme in their capacity as trustees of the scheme; or

“(c) the manager of the scheme in its capacity as manager of the scheme.

“(2) Before an amendment of the type referred to in **subsection (1)** is made, the trustees of the scheme, or the trustees’ solicitor, must give a certificate that the trust deed, when amended as proposed,—

“(a) will comply with **section 119**; and

“(b) will not contain a provision that is contrary to those implied by **sections 119A to 119I, 129A, and 129B**; and 20

“(c) will not contain a provision that is contrary to the KiwiSaver scheme rules.”

(2) Section 129(3) is amended by— 25

(a) omitting “lodge” and substituting “ensure that”; and

(b) inserting “are lodged” after “copy of the amendment”.

185 New sections 129A and 129B and heading inserted

The following sections and heading are inserted after section 129: 30

“129A Implied provision as to alterations to scheme

“(1) There is implied in the trust deed of a KiwiSaver scheme a provision that an alteration to the scheme described in **subsection (2)** must be effected by way of amendment to the trust deed in accordance with **section 129(2)** and (3). 35

“(2) The provision in **Subsection (1)** applies to an alteration to the scheme that—

“(a) would be contrary to or have the effect of nullifying, reversing, or amending ~~any~~ a matter stated in the trust deed; ~~or any~~ or a provision implied in the trust deed by this Act; or

“(b) would have the effect of extending, varying, or limiting the scope of the trust deed in ~~any~~ a material particular. 5

“Compare: 1989 No 10 s 9A

“Reversion of scheme assets to employer

“129B Implied provision as to reversion of scheme assets to employer 10

There is implied in the trust deed of a KiwiSaver scheme that provides for the reversion of any assets of the scheme to ~~any~~ an employer a provision that no part of the assets may revert to an employer without the prior written consent of the FMA.

“Compare: 1989 No 10 s 10”.

15

186 Consent to reversion of assets to employer

Section 130 is amended by omitting “section 10 of the Superannuation Schemes Act 1989 (as applied by section 120)” and substituting “**section 129B**”.

187 Applications for registration of scheme governed by trust deed 20

Section 131(2) and (3) are repealed.

188 Section 132 repealed

Section 132 is repealed.

189 Matters required to be specified in application 25

Section 133 is amended by omitting “or 132”.

190 Registration of scheme

Section 134(1) is amended by omitting “or 132”.

**191 Heading above section 135, heading above section 148,
and sections 135 to 155 repealed**

The heading above section 135, the heading above section 148,
and sections 135 to 155 are repealed.

191A Purpose of register

5

(1) Section 158(a) is amended by inserting the following subparagraphs after subparagraph (i):

“(ia) determine whether a scheme is a restricted scheme; and

“(ib) know how to contact the manager of a scheme other than a restricted scheme; and”. 10

(2) Section 158(a) is amended by adding the following subparagraph:

“(v) know how to access information about the manager or trustees that is contained in the register of financial service providers established and maintained under section 24 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (including details of the relevant dispute resolution scheme); and”. 15
20

192 Contents of register in relation to KiwiSaver schemes

(1) Section 160 is amended by inserting the following paragraph after paragraph (b):

“(ba) whether it is a restricted scheme; and”.

(2) Section 160 is amended by inserting the following ~~paragraph~~ paragraphs after paragraph (d): 25

“(da) in the case of a KiwiSaver scheme other than a restricted scheme, the name of the manager of the scheme and an address for service for the manager; and

“(db) the unique identifiers issued to the trustees and the manager by the Registrar of Financial Service Providers and contained in the register of financial service providers established and maintained under section 24 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and”. 30
35

192A Duty to notify changes to Government Actuary

Section 164(1) is amended by omitting “KiwiSaver scheme” and substituting “restricted KiwiSaver scheme and the manager of any other KiwiSaver scheme”.

**193 Cancellation of registration and order to wind up
KiwiSaver scheme**

5

(1) Section 168(a) is amended by inserting “other than a restricted scheme” after “that a KiwiSaver scheme”.

(2) Section 168 is amended by inserting the following paragraph after paragraph (a):

10

“(ab) on giving 28 days’ notice to the trustees, if satisfied on reasonable grounds that a restricted scheme no longer meets the requirements set out in **section 116A(1)(a) to (c)**; or”.

194 New section 168A inserted

15

The following section is inserted after section 168:

“168A Scheme may cease to be restricted scheme

“(1) The FMA may determine that a restricted KiwiSaver scheme should cease to be a restricted scheme—

“(a) if it is satisfied that the scheme no longer meets the requirements set out in **section 116A(1)(d) or (2)**; or

20

“(b) at the request of the trustees of the scheme, if it is satisfied that the members of the scheme have been adequately advised of the consequences of the scheme ceasing to be a restricted scheme.

25

“(2) If the FMA makes a determination under **subsection (1)**, the FMA must—

“(a) notify the trustees of the determination; and

“(b) amend the register so that the scheme is no longer identified as a restricted scheme.

30

“(3) However, the FMA must not amend the register earlier than 6 months after the date of the determination without the consent of the trustees.

“(4) The trustees must, as soon as practicable after being notified by the FMA under **subsection (2)(a)**, notify the members of the scheme of the determination.”

35

195 Powers of FMA Government Actuary in event of scheme operating in contravention of this Act, etc

(1) Section 169(2) is amended by omitting “section 120 or 126 and” and substituting “**sections 119A to 119I, 126, 129A, or 129B**, including”.

5

(1A) Section 169(4)(a) is amended by omitting “trustees” and substituting “trustees of a restricted KiwiSaver scheme, or the trustee or manager of any other KiwiSaver scheme.”.

(2) Section 169(4)(b) is amended by omitting “trustees or the administration manager or the” and substituting “trustees, the manager, the administration manager, or the”.

10

196 Implied terms continue to be implied on cancellation of registration

Section 171 is amended by repealing paragraph (a) and substituting the following paragraph:

15

“(a) **sections 119A to 119I, 129A, and 129B**; and”.

197 Receiver or liquidator to designate or appoint independent trustee if required

Section 172(3) is amended by omitting “one” and substituting “a restricted scheme”.

20

198 Initial steps in winding up of KiwiSaver scheme

Section 173(1) is amended by adding “; and” and also by adding the following paragraph:

“(c) in the case of a KiwiSaver scheme other than a restricted scheme, notify the manager of the scheme of any order or resolution.”

25

198A Winding up report

(1) Section 174(a) and (b) are amended by omitting “accounts” and substituting in each case “financial statements”.

(2) Section 174(b) is amended by inserting “by an auditor (being a chartered accountant within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996)” after “audited”.

30

- (3) Section 174 is amended by repealing paragraph (c) and substituting the following paragraph:
- “(c) must, within 28 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 member of the scheme immediately before it was wound up; and 5
- “(ii) the FMA and the members are advised in writing of the manner in which remaining assets (if any) of the scheme are to be distributed; and”. 10
- 199 New section 174A inserted**
- The following section is inserted after section 174:
- “174A Registration deemed to be cancelled when assets distributed** 15
- The registration of a KiwiSaver scheme that has been wound up is deemed to be cancelled as soon as the distribution of the assets is completed.”
- 200 Appointment of default providers**
- (1) Section 177(1) is amended by omitting “eligible KiwiSaver providers” and substituting “managers”. 20
- (2) Section 177(2) is repealed.
- (3) Section 177 is amended by adding the following subsection:
- “(6) A restricted scheme is not eligible to be a default KiwiSaver scheme.” 25
- 201 Power of High Court to act in respect of terms and conditions of appointment as default KiwiSaver scheme and regulations relating to default KiwiSaver schemes**
- (1) Section 183(1) is amended by omitting “a provider” and substituting “the manager”. 30
- (2) Section 183 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) If this section applies, the High Court may make any orders on any terms and conditions that it thinks appropriate, including, without limitation,— 35

- “(a) an order to restrain the ~~trustees of the default KiwiSaver scheme, the manager of the scheme who has been appointed under section 177~~ trustee or the manager of the scheme, or both, from engaging in conduct that constitutes, or would constitute, the breach: 5
- “(b) an order to require the ~~trustees of the default KiwiSaver scheme, the manager of the scheme who has been appointed under section 177~~ trustee or the manager of the scheme, or both,— 10
- “(i) to do a particular act or thing: 10
- “(ii) to comply with the conditions of the instrument of appointment: 10
- “(c) an interim order.”

201A Unclaimed money held by trustees of KiwiSaver scheme 15
Section 195(2)(b) is amended by omitting “made reasonable efforts” and substituting “ensured that reasonable efforts have been made”.

202 Offence to fail to provide information under this Part 20
Section 197(2) is amended by omitting “sections 15A, 16, and 17 of the Superannuation Schemes Act 1989, as applied by section 122 of this Act” and substituting “**sections 121 and 122**”.

202 Offence to fail to provide information under this Part 25
Section 197(2) is amended by—

(a) omitting “sections 15A, 16, and 17 of the Superannuation Schemes Act 1989, as applied by section 122 of this Act” and substituting “**sections 121 and 122**”; 25
and

(b) omitting “trustees” in each place where it appears and substituting in each case “trustees (in the case of a restricted scheme) or the manager (in the case of any other scheme)”. 30

203 Application of section 13G of Trustee Act 1956 if power of investment exercised in relation to member allocated to scheme under sections 50 to 52

(1) Section 202(1)(b) is amended by omitting “trustees of the scheme purport” and substituting “trustee or the manager of the scheme purports”. 5

(2) Section 202(2) is amended by inserting “or the manager” after “trustees”.

(2) Section 202(2) is amended by omitting “trustees” and substituting “trustee or the manager (as the case may be)”. 10

204 Certain sections of Securities Act 1978 modified in relation to KiwiSaver scheme

(1) Section 210(2)(a) is amended by omitting “(as issuer)” and substituting “(as issuer in respect of a restricted KiwiSaver scheme), the manager (as issuer in respect of any other Kiwi-Saver scheme),”. 15

(2) Section 210(2)(b) is amended by inserting “or the manager (as the case may be)” after “trustees”.

205 Regulations

(1) Section 228 is amended by inserting the following paragraph after paragraph (f): 20

“(fa) prescribing the information, statements, certificates, or documents that must, or must not, be contained in or attached to the annual report prepared under **section 123**.”. 25

(2) Section 228 is amended by inserting the following paragraphs after paragraph (g):

“(ga) prescribing information that must be included in annual personalised statements for members under **section 125A**.” 30

“(gb) prescribing how the information included in an annual personalised statement under **section 125A** must be presented, calculated, or prepared.”.

206 Schedule 1 amended

(1) Schedule 1 is amended by repealing clause 1 and substituting the following clauses and headings:

“1 Application

“(1) The KiwiSaver scheme rules in **clauses 1A and 1F** to 17 5 apply to all KiwiSaver schemes.

“(2) The KiwiSaver scheme rules in **clauses 1B to 1E** apply to KiwiSaver schemes other than restricted schemes.

“1A Enforceability

The KiwiSaver scheme rules are enforceable by the trustees, 10 the manager (in the case of a KiwiSaver scheme other than a restricted scheme); or any, or a member of a scheme.

“Rules applying to KiwiSaver schemes other than restricted schemes

“1B Trustee’s functions 15

“(1) The functions of the trustee of a KiwiSaver scheme are—

“(a) to supervise the manager’s performance of—

“(i) the functions set out in **section 116C(1)**; and

“(ii) any other functions that the manager performs in relation to the scheme under the trust deed or any 20 enactment; and

“(b) to perform the other functions and duties; and to exercise the other powers; of the trustee under the trust deed or this Act.

“(2) In performing these functions, the trustee— 25

“(a) must act in the best interests of members of the scheme; and

“(b) must exercise the care, diligence, and skill required of a trustee by sections 13B and 13C of the Trustee Act 1956. 30

“(3) **Subclause (2)** applies despite anything to the contrary in section 13D(1) of the Trustee Act 1956.

“(4) The trustee must not delegate the function set out in **sub-clause (1)(a)**.

“1C Manager’s functions

In performing the functions of a manager under **section 116C(1)**, the trust deed, or any enactment, the manager—

- “(a) must use the manager’s best endeavours and skill to ensure that the affairs of the scheme are conducted in a proper and efficient manner; and 5
- “(b) must act in the best interests of members of the scheme; and
- “(c) must exercise the care, diligence, and skill that a prudent person engaged in the profession or business of being a manager of a KiwiSaver scheme would exercise in managing the affairs of others; unless the manager is exercising a power of investment, in which case **clause 1F(2)** applies; and 10
- “(d) has the same liability for any of the manager’s acts and omissions in the exercise and performance of the powers, functions, and duties as manager as the manager would have if the manager exercised and performed those powers, functions, and duties as a trustee. 15

“1B Trustee’s duties

The trustee, in exercising its powers and performing its duties as the trustee, must—

- “(a) act in the best interests of the members of the scheme; and
- “(b) exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a trustee would exercise in acting as the trustee of a Kiwi-Saver scheme other than a restricted scheme. 25

“1C Manager’s duties

“(1) The manager, in exercising its powers and performing its duties as the manager, must—

- “(a) act in the best interests of the members of the scheme; and
- “(b) exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a manager would exercise in managing the affairs of 35

- others, unless the manager is exercising a power of investment, in which case **clause 1F(2)** applies.
- “(2) The manager must use the manager’s best endeavours and skill to ensure that the affairs of the scheme are conducted in a proper and efficient manner. 5
- “**1D Scheme investments and property**
- “(1) The trustee must comply with every direction of the manager relating to the acquisition or disposal of scheme investments and property, unless **subclause (2)** applies.
- “(2) The trustee must refuse to act on a direction of the manager relating to the acquisition or disposal of scheme investments ~~and~~ or property if the trustee considers that the proposed acquisition or disposal— 10
- “(a) would be in breach of the trust deed or ~~any~~ an enactment; or 15
- “(b) would be manifestly not in the best interests of the members of the scheme.
- “(3) If the trustee refuses to act on a direction of the manager, the trustee must notify the manager and the FMA in writing of the trustee’s reasons for refusing to do so. 20
- “**1E Manager to provide information to trustee**
- If requested by the trustee, the manager must—
- “(a) make available to the trustee all documents and records relating to the scheme that are held by the manager, an administration manager (~~if any~~), or an investment manager (~~if any~~) of the scheme: 25
- “(b) provide the trustee with any information required by the trustee about—
- “(i) the scheme:
- “(ii) the affairs of the manager: 30
- “(iii) the property of the manager (whether acquired before or after the date of the manager’s appointment).

“Rules applying to all KiwiSaver schemes

“1F Investment of scheme money

- “(1) All money belonging to a KiwiSaver scheme and available for investment must be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds. 5
- “(2) ~~The trustees, the manager (in the case of a KiwiSaver scheme other than a restricted scheme), and the investment managers (if any) of the scheme~~The trustees (in the case of a restricted scheme), the manager (in the case of any other KiwiSaver scheme), and the investment managers (if any) of a scheme must, in exercising ~~the~~a power of investment, exercise the care, diligence, and skill required of a trustee by sections 13B ~~and or~~ 13C of the Trustee Act 1956. 10
- “(3) **Subclause (2)** applies despite anything to the contrary in section 13D(1) of the Trustee Act 1956. 15
“Compare: 1989 No 10 s 8”.
- (2) Clause 2(1) of Schedule 1 is amended by inserting the following paragraph after paragraph (a):
“(ab) the manager of the scheme.”.
- (3) The heading to clause 5 of Schedule 1 is amended by inserting “and managers” after “Trustees”. 20
- (4) Clause 5(1) of Schedule 1 is amended by omitting “trustees” and substituting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)”. 25
- (5) The heading to clause 6 of Schedule 1 is amended by inserting “and managers” after “Trustees”.
- (6) Clause 6 of Schedule 1 is amended by omitting “trustee” and substituting “trustee (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)”. 30
- (7) Clause 7(1) of Schedule 1 is amended by omitting “trustees” and substituting “trustees of a restricted KiwiSaver scheme and the manager of any other KiwiSaver scheme”.
- (8) Clause 8(7)(b) of Schedule 1 is amended by omitting “trustees” in the first place where it appears and substituting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)”. 35

- (9) Clause 8(7)(b)(ii) of Schedule 1 is amended by omitting “trustees” and substituting “trustees or the manager (as the case may be)”.
- (10) Clause 8(7)(b)(iii) of Schedule 1 is amended by omitting “trustees” and substituting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)”. 5
- (11) Clause 9 of Schedule 1 is amended by omitting “trustees” and substituting “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)”. 10
- (12) Clause 14 of Schedule 1 is amended by—
- (a) omitting “trustees” in the first and second places where it appears and substituting in each case “trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme)”; and 15
- (b) omitting “trustees” in every other place where it appears and substituting in each case “trustees or manager (as the case may be)”.
- (13) Clause 17(a) of Schedule 1 is amended by omitting “fund provider (as defined in the Income Tax Act 2007)” and substituting “provider”. 20
- (14) Clause 17(b) of Schedule 1 is amended by omitting “fund provider” and substituting “provider”.
- 207 Schedule 2 amended** 25
- (1) Clause 3 of Part 1 of Schedule 2 is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:
- “(a) the trustee of the scheme and, where the trustee is a company, the directors of the trustee; and
- “(b) the manager of the scheme and the directors of the manager; and” 30
- (2) Clause 4 of Part 1 of Schedule 2 is repealed and the following clause substituted:
- “4 The name and contact address of at least 1 of the directors of the manager who is a New Zealand resident.” 35
- (2A) Clause 7 of Part 1 of Schedule 2 is amended by omitting “accounts” and substituting “financial statements”.

- (3) Clause 11 of Part 1 of Schedule 2 is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:
- “(a) complies with **section 119**; and
- “(b) does not contain any provision that is contrary to those implied by **sections 119A to 119I, 129A, and 129B**; and”.
- (3) Clause 11 of Part 1 of Schedule 2 is repealed and the following clause substituted:
- “11 A certificate by the trustee or the trustee’s solicitor stating that the trust deed—
- “(a) complies with **section 119**; and
- “(b) does not contain a provision that is contrary to those implied by **sections 119A to 119I, 129A, and 129B**; and
- “(c) does not contain any provision that is contrary to the KiwiSaver scheme rules (as implied by section 126 and Schedule 1).”
- (4) Parts 2 and 3 of Schedule 2 are repealed.

Consequential amendments 20

- 208 Consequential amendments**
The enactments listed in **Schedule 6** of this Act are amended in the manner indicated in that schedule.

Transitional provisions

- 209 Interpretation** 25
In **sections 210 to 216**, **commencement date** means the date on which this section comes into force.

- 209 Interpretation** 30
In this section and in **sections 210 to 216B**, unless the context otherwise requires,—
commencement date means the date on which this section comes into force
effective date, in relation to a particular KiwiSaver scheme, means the earlier of the dates set out in **section 209A(2)**

existing KiwiSaver scheme means a KiwiSaver scheme registered in the KiwiSaver schemes register immediately before the commencement date

existing member, in relation to a KiwiSaver scheme, means a person who was a member of the scheme immediately before the effective date 5

register means the KiwiSaver schemes register established under section 156 of the principal Act

relevant enactments means the principal Act and the enactments amended by **section 208** of this Act 10

security means an interest in a KiwiSaver scheme offered to the public for subscription.

209A Transition period for existing schemes

(1) To the extent that the relevant enactments as amended by this **Part** would otherwise apply to an existing KiwiSaver scheme, those enactments continue in force during the transition period described in **subsection (2)** as if they had not been amended by this **Part**. 15

(2) The transition period for a particular scheme is the period beginning on the commencement date and ending on the close of the day before the earlier of the following dates: 20

(a) the date that the trustees of the scheme elect to comply with the relevant enactments as amended by this **Part**;
or

(b) 1 October 2012. 25

(3) The relevant enactments as amended by this **Part** apply to a particular scheme on and from the earlier of the dates set out in **subsection (2)**.

(4) If the trustees elect an effective date that is earlier than 1 October 2012, the trustees must notify the FMA and the Commissioner of the elected date at least 20 working days before that date. 30

(5) A failure to comply with **subsection (4)** does not limit **subsection (3)**.

(6) This section is subject to **section 209B**. 35

209B Certain provisions have effect during transition period

Despite **section 209A**,—

- (a) **section 56(5)** of the principal Act (as inserted by **section 169** of this Act) applies to a KiwiSaver scheme during the scheme's transition period as if the reference in **section 56(5)** to the circumstances in **section 56(6)** were a reference to the trustees of the scheme having lodged a copy of a winding-up order or resolution with the FMA under section 173 of the principal Act; and 5
- (b) **section 116A(2)** of the principal Act (as inserted by **section 173** of this Act) applies to a KiwiSaver scheme listed in **section 211 or 212** of this Act during the scheme's transition period. 10

210 Registrar must amend register to identify restricted schemes 15

- (1) The Registrar of the KiwiSaver schemes register (the **Registrar**) must, as soon as practicable after the commencement date, amend the register to ensure that it identifies the schemes listed in **sections 211 and 212** as restricted schemes.
- (2) The Registrar must not amend the register to identify a KiwiSaver scheme as a restricted scheme other than in accordance with this section. 20

210 FMA must amend register

- (1) On, or as soon as practicable after, the effective date for a KiwiSaver scheme, the FMA must— 25
 - (a) in the case of a scheme listed in **section 211 or 212**, amend the register to identify the scheme as a restricted scheme; and
 - (b) in the case of any other KiwiSaver scheme, amend the register to identify the name of the manager of the scheme. 30
- (2) The FMA must not amend the register to identify a KiwiSaver scheme as a restricted scheme other than in accordance with **subsection (1)(a)**.

211 Certain employer schemes are to be restricted schemes

The following KiwiSaver schemes are restricted schemes
Each of the following KiwiSaver schemes is eligible, on its effective date, to be identified as a restricted scheme on the KiwiSaver schemes register:

- | | |
|--|----|
| (a) Allied Farmers KiwiSaver Scheme: | 5 |
| (b) Douglas Pharmaceuticals KiwiSaver Scheme: | |
| (c) Ecolab KiwiSaver Scheme: | |
| (d) Foodstuffs (Wellington) KiwiSaver Scheme: | |
| (e) Foodstuffs KiwiSaver Scheme: | 10 |
| (f) Griffins KiwiSaver Scheme: | |
| (g) Hexion KiwiSaver Scheme: | |
| (h) Ravensdown KiwiSaver Scheme: | |
| (i) Stevenson Group KiwiSaver Scheme: | |
| (j) Tait Electronics Ltd KiwiSaver Scheme: | 15 |
| (k) Turners & Growers KiwiSaver Scheme: | |

212 Certain restricted-entry schemes are to be restricted schemes

The following KiwiSaver schemes are restricted schemes
Each of the following KiwiSaver schemes is eligible, on its effective date, to be identified as a restricted scheme on the KiwiSaver schemes register:

- | | |
|--|----|
| (a) BCF KiwiSaver Scheme: | |
| (b) Koinonia Fund: | |
| (c) Medical Assurance Society KiwiSaver Plan: | 25 |
| (d) New Zealand Harbours KiwiSaver Scheme: | |
| (e) NZ Maritime Officers KiwiSaver Scheme: | |
| (f) PSBG KiwiSaver Scheme: | |
| (g) SRF KiwiSaver Scheme: | |
| (h) Supereasy KiwiSaver Superannuation Scheme: | 30 |
| (i) Waterfront Industry KiwiSaver Scheme: | |

212A Parties to trust deed may execute amendment to trust deed

- (1) This section applies—
- | | |
|--|----|
| (a) <u>to a trust deed that, immediately before the commencement date, governs a KiwiSaver scheme; and</u> | 35 |
|--|----|

- (b) to a new trust deed that replaces an existing trust deed under **section 212B**; and
- (c) despite anything to the contrary in the trust deed or a relevant enactment, or in any other enactment, rule of law, or agreement, including anything relating to the consent of any person or organisation to the making of amendments to the trust deed. 5
- (2) The parties to the trust deed may, from time to time, until 30 September 2012, make any amendments to the trust deed that are necessary or desirable to ensure, or in connection with ensuring, that the trust deed complies with the relevant enactments as amended by this **Part**. 10
- (3) However, the parties must not amend the trust deed under this section without the prior written consent of the FMA.
- (4) An amendment to the trust deed made under this section must be treated for all purposes as if it were authorised to be made and were made in accordance with the provisions of the trust deed before the amendment was made. 15
- (5) This section expires, and is repealed, on the close of 30 September 2012. 20

212B Conversion of umbrella trusts to separate trusts

- (1) This section applies—
 - (a) to a trust deed (**existing trust deed**) that, immediately before the commencement date, governs a KiwiSaver scheme and a registered superannuation scheme under an umbrella trust; and 25
 - (b) despite anything to the contrary in the trust deed or a relevant enactment, or in any other enactment, rule of law, or agreement, including anything relating to the consent of any person or organisation to the making of amendments to the trust deed. 30
- (2) The parties to an existing trust deed may, until 30 September 2012, rescind the existing trust deed, provided that the existing trust deed is immediately replaced with a new trust deed in respect of each scheme governed by the existing trust deed. 35
- (3) However,—

- (a) an existing trust deed must not be rescinded, and new trust deeds must not be executed, under this section without the prior written consent of the FMA; and
- (b) the parties to, and provisions of, a new trust deed must differ from the parties to, and provisions of, the existing trust deed only to the extent that is necessary or desirable to ensure, or in connection with ensuring, that the new trust deed complies with the relevant enactments as amended by this **Part**. 5
- (4) On the replacement of an existing trust deed with new trust deeds under this section,— 10
- (a) the KiwiSaver scheme and the registered superannuation scheme—
- (i) are governed by separate trusts rather than by an umbrella trust; and 15
- (ii) must be treated as separate persons for the purposes of the Income Tax Act 2007 and the Tax Administration Act 1994; and
- (b) no assets or liabilities are removed from the KiwiSaver scheme or the registered superannuation scheme; and 20
- (c) no new settlement (as defined in section YA 1 of the Income Tax Act 2007) occurs; and
- (d) the KiwiSaver scheme must be treated as the same scheme; and
- (e) the registered superannuation scheme must be treated as the same scheme; and 25
- (f) the persons who were members of each scheme immediately before the replacement of the existing trust deed continue to be members of the same scheme.
- (5) This section expires, and is repealed, on the close of 30 September 2012. 30

212C Providers must notify existing members of changes

- (1) The provider of a KiwiSaver scheme must, no later than 3 months after the effective date for the scheme,—
- (a) prepare a document (the **information document**) that identifies— 35
- (i) the material amendments to the trust deed of the scheme made under **section 212A or 212B**; and

- (ii) if an existing trust deed has been replaced with a new trust deed under **section 212B(2)**, the material differences between the existing trust deed and the new trust deed; and
- (iii) the material variations in the terms or conditions of a security that result from amendments to relevant enactments made by this **Part**; and 5
- (b) send, to the address (as defined in section 4(1) of the principal Act) of every existing member of the scheme a written statement that complies with **subsection (2)**. 10
- (2) The written statement must contain all of the following:
- (a) the effective date;
- (b) the names of the trustees;
- (c) a brief description of the material amendments, differences, and variations described in the information document; 15
- (d) in the case of a KiwiSaver scheme other than a restricted scheme, the name of the manager;
- (e) a statement to the effect that the member is entitled to receive a copy of the information document free of charge; 20
- (f) a statement to the effect that a copy of the information document is available, free of charge and at all reasonable times, on an Internet site maintained by, or on behalf of, the provider. 25
- (3) The provider must, if an existing member of the scheme requests a copy of the information document, ensure that a hard copy of the information document is sent, free of charge, to the member.
- (4) Until 31 December 2013, the provider must ensure that a copy of the information document is available, at all reasonable times, on an Internet site maintained by or on behalf of the provider. 30
- 212D Application of Securities Act 1978: promoter**
- (1) This section applies to a person who, in respect of a KiwiSaver scheme other than a restricted scheme,— 35
- (a) was a trustee of the scheme before the effective date; and

- (b) is a trustee of the scheme on or after the effective date.
- (2) For the purposes of the Securities Act 1978, the person is not a promoter in relation to interests in the scheme offered to the public for subscription on or after the effective date by reason only that the person was, before the effective date and in the person's capacity as trustee, instrumental in the formulation of a plan or programme pursuant to which interests in the scheme are offered to the public. 5
- 212E Application of Securities Act 1978: offer of securities to the public** 10
To avoid doubt, none of the following constitutes an offer of a security to the public for the purposes of the Securities Act 1978:
- (a) an amendment to a trust deed under **section 212A or 212B**: 15
- (b) a replacement of an existing trust deed with a new trust deed under **section 212B(2)(b)**:
- (c) if an existing trust deed is replaced with a new trust deed under **section 212B(2)(b)**, a difference between the existing trust deed and the new trust deed: 20
- (d) the change of issuer in relation to an interest in a Kiwi-Saver scheme other than a restricted scheme from the trustees to the manager (see the definition of **issuer** in section 2(1) of the Securities Act 1978 as amended by **section 208** of this Act): 25
- (e) any other variation in the terms or conditions of a security resulting from amendments to relevant enactments made by this **Part**.
- 213 Certain participation agreements executed before registration continue to have effect** 30
 The repeal of section 128 of the principal Act by **section 183** of this Act does not affect the status of any a participation agreement as forming part of the trust deed.
- 214 Certain scheme provider agreements continue in force**
 (1) This section applies to a scheme provider agreement that— 35

- (a) relates to a KiwiSaver scheme other than a restricted scheme; and
- (b) was entered into before, and has effect immediately before, the ~~commencement date~~ effective date.
- (2) ~~The~~ On and from the effective date, the scheme provider agreement is binding on and enforceable by, against, or in favour of the manager ~~as if the manager instead of the trustees had entered into the agreement as provider of the scheme.~~ 5
- 215 Parties to trust deed may execute amendment to trust deed** 10
- (1) The parties to the trust deed may make any amendments to the trust deed that are necessary or desirable in order to ensure that the trust deed complies with the requirements of the principal Act as amended by this Act.
- (2) ~~Subsection (1)~~ applies despite anything to the contrary in the trust deed or other enactment, rule of law, or agreement. 15
- (3) However, the parties must not amend the trust deed under ~~sub-section (1)~~ without the consent of the FMA.
- (4) An amendment to the trust deed made under this section must be treated for all purposes as if it were authorised to be made and were made in accordance with the provisions of the trust deed before the amendment was made. 20
- 216 References to department in instruments of appointment**
- Unless the context otherwise requires, a reference (express or implied) to the department in ~~any an~~ instrument of appointment made under section 177 of the principal Act before or on the commencement date must be read as a reference to the FMA. 25
- 216A Transitional regulations** 30
- (1) In this section, **transition** means the transition from the relevant enactments as in force immediately before their amendment by this **Part** to the relevant enactments as amended by this **Part**.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing 35

- transitional or savings provisions for the purpose of facilitating or ensuring an orderly transition.
- (3) The Minister must not recommend that regulations be made under this section unless he or she is satisfied that the regulations are necessary to facilitate or ensure an orderly transition. 5
- (4) Regulations made under this section may, for a period specified in the regulations that ends no later than the close of 31 December 2013,—
- (a) provide that 1 or more provisions (including definitions) of this **Part**, or of an enactment amended by this **Part**, do not apply, or apply with modifications or additions, to or in respect of a KiwiSaver scheme: 10
- (b) provide that 1 or more terms in this **Part**, or in an enactment amended by this **Part**, have the meaning given to them by the regulations to the extent that they apply to or in respect of a KiwiSaver scheme: 15
- (c) provide that 1 or more provisions repealed, amended, or revoked by this **Part** are to continue to apply, or apply with modifications or additions, to or in respect of a KiwiSaver scheme as if they had not been repealed, amended, or revoked: 20
- (d) provide for any other matter necessary to facilitate or ensure an orderly transition.
- (5) On the close of 31 December 2013,—
- (a) this section expires and is repealed; and 25
- (b) any regulations made under this section that are in force on 31 December 2013 expire and are revoked.

Part 8

Amendments to Financial Advisers Act 2008

30

217 Principal Act amended

This **Part** amends the Financial Advisers Act 2008.

218 Office of Commissioner for Financial Advisers disestablished

The office of the Commissioner for Financial Advisers is dis- 35
established.

Amendments to Financial Advisers Act 2008

- 219 Interpretation**
The definition of **Commissioner for Financial Advisers** or **Commissioner** in section 5 is repealed.
- 220 Outline of this Part** 5
Section 78(2)(a) is repealed.
- 221 Heading to subpart 1 of Part 4 amended**
The heading to subpart 1 of Part 4 is amended by omitting “Commissioner for Financial Advisers, code of professional conduct,” and substituting “Code of professional conduct”. 10
- 222 Heading above section 79 and sections 79 and 80 repealed**
The heading above section 79 and sections 79 and 80 are repealed.
- 223 Section 81 substituted**
Section 81 is repealed and the following section substituted: 15
“81 Establishment of code committee
The code committee is established.”
- 224 Membership of disciplinary committee**
Section 105(3) is amended by omitting “the Commissioner” and substituting “one of the members of the disciplinary committee”. 20
- 225 Failure to comply with summons by Commissioner to attend disciplinary committee hearing**
The heading to section 137 is amended by omitting “by Commissioner”. 25
- 226 Levy**
Section 153(2) is amended by omitting “the Commissioner”.

**227 Consequential replacements of references to ~~Commissioner~~
Commissioner**

- (1) The provisions specified in **Part 1 of Schedule 7** are consequentially amended by omitting “Commissioner” in each place where it appears and substituting in each case “FMA”. 5
- (2) The provisions specified in **Part 2 of Schedule 7** are consequentially amended by omitting “Commissioner’s” in each place where it appears and substituting in each case “FMA’s”.

*Transitional provisions***228 Transitional provisions for general transfer of functions
of Commissioner for Financial Advisers to FMA** 10

On and from the date on which this section comes into force, (except as specified in **section 229**),—

- (a) all information and documents held by the Commissioner for Financial Advisers are held by the FMA (and this transfer does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993); and 15
- (b) anything done or omitted to be done or that is to be done by, or in relation to, the Commissioner for Financial Advisers must be treated as having been done or omitted or to be done by, or in relation to, the FMA; and 20
- (c) the FMA may complete any matter or thing that would, but for this **Part**, have been completed by the Commissioner for Financial Advisers; and 25
- (d) any reference in an enactment, proceedings, or other thing (whether express or implied) to the Commissioner for Financial Advisers must be read as a reference to the FMA.

**229 Functions of Commissioner for Financial Advisers as
chair of disciplinary committee continue to reside with
chair** 30

- (1) **Section 228** does not apply to any information or documents held by, any act or omission by, any matter or thing uncompleted by, or any reference to the Commissioner for Financial 35

Advisers in his or her capacity as chairperson of the disciplinary committee.

- (2) The matters referred to in **subsection (1)** continue to reside with the chairperson of the disciplinary committee for the time being.

5

Schedule 1

Financial markets legislation

s 4

Part 1

Financial Advisers Act 2008	
Financial Service Providers (Registration and Dispute Resolution) Act 2008	5
Parts 4 and 5 and Schedules 1 and 2 of the KiwiSaver Act 2006	
Securities Act 1978	
Securities Markets Act 1988	
<u>Securities Transfer Act 1991</u>	10
Superannuation Schemes Act 1989	
Unit Trusts Act 1960	

Part 2

Anti-Money Laundering and Countering Financing of Terrorism Act 2009	15
Building Societies Act 1965	
Companies Act 1993	
<u>Co-operative Companies Act 1996</u>	
Corporations (Investigation and Management) Act 1989	
Sections <u>220</u> , 228, 229, 240, 242, and 256 to 260 of the Crimes Act 1961	20
Financial Reporting Act 1993	
Friendly Societies and Credit Unions Act 1982	
Industrial and Provident Societies Act 1908	
Limited Partnerships Act 2008	25
Part 5C of the Reserve Bank of New Zealand Act 1989	
Trustee Companies Act 1967	

Schedule 2
Provisions relating to search power

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Search warrants

- 1 Interpretation**
- (1) In this schedule, unless the context otherwise requires,—
access, in relation to any computer system, means instruct, communicate with, store data in, receive data from, or otherwise make use of any of the resources of the computer system 5
access information includes codes, passwords, and encryption keys, and any related information that enables access to a computer system or any other data storage device

applicant means a specified person authorised under **section 29**

computer system—

(a) means—

(i) a computer; or 5

(ii) 2 or more interconnected computers; or

(iii) any communication links between computers or to remote terminals or another device; or

(iv) 2 or more interconnected computers combined with any communication links between computers or to remote terminals or any other device; and 10

(b) includes any part of the items described in **paragraph (a)** and all related input, output, processing, storage, software, or communication facilities, and stored data 15

issuing officer means a Judge of the High Court or a District Court Judge

remote access search means a search of a thing such as an Internet data storage facility that does not have a physical address that a person can enter and search 20

thing seized does not include anything made or generated by a person exercising a search power (for example, photographs, drawings, or audio or video recordings made by or on behalf of that person, or a forensic copy of a computer hard drive).

thing includes an intangible thing (for example, an email address or access information for an Internet data storage facility). 25

(2) For the purposes of the definition of computer system, a computer is interconnected with another computer if it can be lawfully used to provide access to that other computer— 30

(a) with or without access information; and

(b) whether or not either or both computers are currently turned on; and

(c) whether or not access is currently occurring.

2 Application for search warrant 35

(1) An application for a search warrant must contain, in reasonable detail, the following particulars:

- (a) the name of the applicant:
- (b) the provision authorising the making of the application:
- (c) the grounds on which the application is made (including the reasons why the legal requirements for issuing the warrant are believed by the applicant to be satisfied): 5
- (d) the address or other description of the place, vehicle, or other thing proposed to be entered and searched:
- (e) a description of the item or items or other evidential material believed to be in or on or part of the place, vehicle, or other thing that is or are sought by the applicant: 10
- (f) the period for which the warrant is sought:
- (g) if the applicant wants to be able to execute the warrant on more than 1 occasion, the grounds on which execution on more than 1 occasion is believed to be necessary.
- (2) The issuing officer may require the applicant to supply further information concerning the grounds on which the search warrant is sought. 15
- (3) The applicant must disclose in the application—
- (a) details of any other application for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place, vehicle, or other thing proposed to be searched; and 20
- (b) the result of that application or those applications.
- (4) The applicant must, before making an application for a search warrant, make reasonable inquiries within the FMA for the purpose of complying with **subclause (3)**. 25
- (5) The issuing officer may authorise the search warrant to be executed on more than 1 occasion during the period in which the warrant is in force if he or she is satisfied that this is required for the purposes for which the warrant is being issued. 30
- (6) An application for a search warrant must contain or be accompanied by a statement by the applicant confirming the truth and accuracy of the contents of the application.
- 3 Mode of application for search warrant**
- (1) An application for a search warrant— 35
- (a) must be in writing, unless **subclause (3)** applies; and
- (b) may be transmitted to the issuing officer electronically.

- (2) The applicant must appear in person before, or communicate orally with, the issuing officer, unless **subclause (4)** applies.
- (3) An issuing officer may allow an application for a search warrant to be made orally (for example, by telephone call) or by personal appearance and excuse the applicant from putting all or any part of the application (including any required material) in writing if—
- (a) the issuing officer is satisfied that the delay that would be caused by requiring an applicant to put all or any part of the application (including any required material) in writing would compromise the effectiveness of the search; and
 - (b) the issuing officer is satisfied that the question of whether the warrant should be issued can properly be determined on the basis of an oral communication or a personal appearance (together with the material described in **paragraph (c)**); and
 - (c) the information required by **clause 2(1) to (3)** is supplied (whether orally, or partly orally and partly in writing) to the issuing officer.
- (4) An issuing officer may allow an application for a search warrant to be made without either an appearance in person or an oral communication with the issuing officer if—
- (a) the issuing officer is satisfied that the question of whether the search warrant should be issued can properly be determined on the basis of any written communication by the applicant (including the material described in **paragraph (b)**); and
 - (b) the information required by **clause 2(1) to (3)** has been supplied to the issuing officer; and
 - (c) the issuing officer is satisfied that there is no need to ask any questions of, or seek any further information from, the applicant.
- (5) An issuing officer who allows an application for a search warrant to be made under **subclause (3)** must record the grounds for the application as soon as practicable.

4 Retention of documents

- (1) A copy (whether in electronic form or otherwise) of every written application for a search warrant, or (in the case of an oral application) the record of the application made by the issuing officer, must be retained under the control of the Registrar of the District Court at which, or under the control of the Registrar of the District Court that is closest to the place at which, the application was made, until,—
- (a) in a case where a search warrant is issued, the completion of any proceedings in respect of which the validity of the warrant may be in issue; and
- (b) in any other case, the expiry of 2 years after the records were first retained under the control of the Registrar of a District Court.
- (2) An applicant to whom a search warrant is issued must retain (whether in electronic form or otherwise) the warrant, a copy of the application (if made in written form), ~~and~~ copies of all documents tendered by the applicant in support of the application, and a copy of any search warrant report referred to in clause 6A required to be prepared, until,—
- (a) in the case of a warrant that is executed, the completion of any proceedings in respect of which the validity of the warrant may be in issue; and
- (b) in any other case, the destruction or transfer of the warrant and other documents is required by the Public Records Act 2005 or any other enactment or rule of law.

5 Restrictions on issue of search warrant

- An issuing officer must not issue a warrant to seize any thing held by a lawyer that is a communication of a kind to which legal professional privilege normally applies unless the issuing officer is satisfied that ~~the information provided by the applicant indicates~~ there is a prima facie case that the thing was made, or received, ~~completed, or compiled,~~ or prepared—
- (a) for a dishonest purpose; or
- (b) for the purpose of planning to commit or committing an offence.

6 Form and content of search warrant

- (1) Every search warrant issued must be in the prescribed form.
- (2) Every search warrant issued must be directed to every person who has authority to execute the warrant.
- (3) A search warrant may be— 5
 - (a) executed by any or all of the persons to whom it is directed:
 - (b) subject to any conditions specified in the warrant that the issuing officer considers reasonable, including (without limitation)— 10
 - (i) any restriction on the time of execution that is reasonable:
 - (ii) a condition that the occupier or person in charge of a place must provide reasonable assistance to a person executing the warrant if, in the absence of such assistance, it would not be practical to execute the warrant without undue delay: 15
 - (c) executed only once, unless execution on more than 1 occasion has been authorised.
- (4) Every search warrant must contain, in reasonable detail, the following particulars: 20
 - (a) the name or other individual designation of the issuing officer and the date of issue:
 - (b) the provision or provisions authorising the issue of the warrant (including, where relevant, the suspected offence or offences): 25
 - (c) that the person executing the warrant may use any assistance that is reasonable in the circumstances:
 - (d) that any person authorised to do so may execute the warrant: 30
 - (e) that the person executing the warrant may use any force that is reasonable in the circumstances to enter or break open or access any area within the place, vehicle, or other thing being searched, or the thing found:
 - (f) the address or description of the place, vehicle, or other thing that may be entered and searched: 35
 - (g) a description of what may be seized:
 - (h) the period during which the warrant may be executed, being—

- (i) a period specified by the issuing officer not exceeding 14 days from the date of issue; or
- (ii) if the issuing officer is satisfied that a period of longer than 14 days is necessary for execution, a period specified by the issuing officer not exceeding 30 days from the date of issue: 5
- (i) any conditions specified by the issuing officer under **subclause (3)(b)**:
- (j) if the warrant may be executed on more than 1 occasion, the number of times that the warrant may be executed: 10
- (k) if the warrant is intended to authorise ~~the~~ a remote access and search of things such as Internet data storage facilities that are (for example, a search of a thing such as an Internet data storage facility that is not situated at a physical location that can be searched), the access information that identifies the thing to be searched remotely: 15
- (l) an explanation of the availability of relevant privileges and an outline of how any of those privileges may be claimed. 20
- (4A) A search warrant may authorise the search of more than 1 place, vehicle, or other thing.
- (4B) An issuing officer may not issue a search warrant authorising the remote access search of a thing unless he or she is satisfied that the thing is not located at a physical address that a person can enter and search. 25
- (5) A person is not required, as a consequence of a condition imposed under **subclause (3)(b)(ii)**, to give any information tending to incriminate the person.
- 6A Issuing officer may require search warrant report** 30
- (1) An issuing officer may impose a condition under **clause 6(3)(b)** requiring the FMA to provide that issuing officer with a search warrant report within a specified period.
- (2) A search warrant report must contain the following information: 35
- (a) whether the search warrant was executed:

- (b) whether the execution of the search warrant resulted in the seizure of evidential material, and, if so, whether that material was material—
 (i) specified in the search warrant; or
 (ii) seized under **clause 16**; or 5
 (iii) some of which was specified in the warrant and some of which was seized under **clause 16**;
- (c) whether any other powers exercised in conjunction with the execution of the warrant resulted in the seizure of evidential material: 10
- (d) whether any criminal proceedings have been brought, or are under consideration, that relate to any evidential material seized.
- 7 Transmission of search warrant** 15
 If it is not possible or practicable for the person charged with executing the warrant to have it in his or her possession at the time of execution, one of the following documents (which is deemed for all legal purposes to constitute the warrant) may be executed:
- (a) a facsimile, or a ~~print-out~~ printout of an electronically generated copy, of a warrant issued by the issuing officer: 20
- (b) a copy made by the person to whom the warrant is directed, at the direction of the issuing officer and endorsed to that effect. 25
- 8 When search warrant executed**
 A search warrant is executed when the person executing the warrant and any person assisting in the execution of the warrant—
- (a) has seized all the items specified in the warrant; or 30
 (b) leaves the place, vehicle, or other thing being searched and does not return within 4 hours.
- 9 When search warrant invalid**
 (1) A search warrant is invalid—
- (a) if, having regard to the information contained in the application, the grounds or conditions for lawful issue 35

- of a warrant set out in **section 29** were not satisfied at the time the search warrant was issued:
- (b) if the warrant contains a defect, irregularity, omission, or want of form that is likely to mislead anyone executing or affected by the warrant as to its purpose or scope. 5
- (2) If a warrant is invalid under this ~~section~~ clause, section 204 of the Summary Proceedings Act 1957 does not apply to that warrant.
- Carrying out inspection and search powers
- 10 Application** 10
- For the purposes of this schedule, **search power** means—
- (a) every search warrant issued under this Act; and
- (b) every power conferred under **section 29** to enter and search (without warrant) any place, vehicle, or other thing. 15
- 11 Search powers**
- Every search power authorises the person exercising it—
- (a) to enter and search the place, vehicle, or other thing that the person is authorised to enter and search, and any item or items found in that place, vehicle, or other thing, at any time that is reasonable ~~in the circumstances~~: 20
- (b) to request any person to assist with the entry and search (including, without limitation, a member of a hapu or an iwi if the place to be entered is of cultural or spiritual significance to that hapu or iwi): 25
- (c) to use any force in respect of any property that is reasonable for the purposes of carrying out the entry and search and ~~the seizure of any item authorised by the search power to be seized~~ any lawful seizure: 30
- (d) to seize any thing ~~authorised to~~ that may lawfully be seized:
- (e) to bring and use in or on the place, vehicle, or other thing searched any equipment, to use any equipment found on the place, vehicle, or other thing, and to extract any electricity from the place, vehicle, or other thing to 35
operate the equipment that it is reasonable to use in the

circumstances, for the purposes of carrying out the entry and search:

- (f) to copy any document, or part of a document, that may lawfully be seized:
- (g) to access and copy intangible material from ~~computers~~ and a computer system or other data storage devices located ~~at or accessible from~~ (in whole or in part) at the place, vehicle, or other thing searched (including copying by means of previewing, cloning, or other forensic methods either before or after removal for examination): 5
- (h) to use any reasonable measures to—
 - (i) gain access to any computer system or other data storage device ~~that is located (in whole or in part) at the place, vehicle, or other thing to be searched; or that can be accessed from a computer or other data storage device that is at that place;~~ and 15
 - (ii) create a forensic copy of any material in such a computer system or other data storage device:
- (i) to take photographs, sound and video recordings, and drawings of the place, vehicle, or other thing searched, and of any thing found in that place, vehicle, or other thing, if the person exercising the power has reasonable grounds to believe that the photographs or sound or video recordings or drawings may be relevant ~~in any~~ proceedings related to the purposes of the entry and search. 20 25

11A Remote access search of thing authorised by warrant

Every person executing a search warrant authorising a remote access search may— 30

- (a) access and copy intangible material from the thing being searched (including copying by means of previewing, cloning, or other forensic methods); and
- (b) use reasonable measures to—
 - (i) gain access to the thing; and 35
 - (ii) create a forensic copy of material in the thing.

12 Items of uncertain status may be seized

If a person exercising a search power is uncertain whether any item found may lawfully be seized, and it is not reasonably practicable to determine whether that item can be seized at the place or vehicle where the search takes place, the person exercising the search power may remove the item for the purpose of examination or analysis to determine whether it may be lawfully seized. 5

13 Powers of persons called to assist

- (1) Every person called on to assist a person exercising a search power is subject to the control of the person with overall responsibility for exercising that power. 10
- (2) Every person called on to assist a person exercising a search power may—
- (a) enter the place, vehicle, or other thing to be searched: 15
 - (b) while under the direction of the person exercising the power, use reasonable force in respect of any property for the purposes of carrying out the entry and search and any lawful seizure:
 - (c) search areas within the place, vehicle, or other thing that the person exercising the power has determined may lawfully be searched: 20
 - (d) seize any thing that may lawfully be seized:
 - (e) take photographs, sound and video recordings, and drawings of the place, vehicle, or other thing, and things found in the place, vehicle, or other thing, if the person exercising the power has determined that those things may be lawfully taken: 25
 - (f) bring into or onto the place, vehicle, or other thing and use any equipment, make use of any equipment found on the place, vehicle, or other thing, or extract electricity from the place, vehicle, or other thing for the purposes of operating the equipment that the person exercising the power has determined may be lawfully used: 30
 - (g) access and copy intangible material from ~~computers and~~ a computer system or other data storage devices located (in whole or in part) at ~~or accessible from~~ the place, vehicle, or other thing searched (including copy- 35

- ing by means of previewing, cloning, or other forensic methods either before or after removal for examination):
- (h) copy any document, or part of a document, that the person exercising the power has determined may be lawfully copied: 5
 - (i) use any reasonable measures to—
 - (i) gain access to any computer system or other data storage device that is located (in whole or in part) at the place, vehicle, or other thing to be searched; or that can be accessed from a computer or other data storage device that is at that place; and 10
 - (ii) create a forensic copy of any material in such a computer system or other data storage device.
 - (3) If a constable is assisting another person exercising the search power, the constable may, without any direction or supervision by the person he or she is assisting, exercise any power ordinarily exercisable by the constable. 15
 - (4) The person exercising the search power must—
 - (a) accompany any assistant on the first occasion when the assistant enters the place, vehicle, or other thing to be searched; and 20
 - (b) provide such other supervision of any assistant as is reasonable in the circumstances. 25
 - (5) **Subclause (4)** does not apply if the assistant is a constable. 25
- 13A Powers of persons called on to assist remote access search**
- Every person called on to assist a person executing a search warrant authorising a remote access search may—
- (a) access and copy intangible material from the thing being searched (including copying by means of previewing, cloning, or other forensic methods); and 30
 - (b) use reasonable measures to—
 - (i) gain access to the thing; and
 - (ii) create a forensic copy of material in the thing.
- 14 Limitation on exercise of powers** 35
- The powers conferred by **clauses 11 to 13A** are subject to—

- (a) any conditions imposed under **clause 6(3)(b)** by an issuing officer who issues a search warrant:
- (b) **clauses 22 to 26** (which relate to privileges).

15 Securing place, vehicle, or other thing to be searched

- (1) The person carrying out a search may, in a manner and for a duration that is reasonable for the purposes of carrying out the search,—
- (a) secure the place, vehicle, or other thing searched, any area within that place, vehicle, or other thing, or any thing found within that place, vehicle, or other thing;
 - (b) exclude any person from the place, vehicle, or other thing searched, or from any area within the place, vehicle, or other thing, or give any other reasonable direction to such a person, if the person carrying out the search has reasonable grounds to believe that the person will obstruct or hinder the exercise of the power.
- (2) A person who exercises any power under **subclause (1)** must on the request of any person affected by the exercise of the power—
- (a) identify himself or herself; and
 - (b) advise the person affected of the reason and authority for the exercise of the power.

15A Moving vehicle for purpose of search, safekeeping, or road safety

- A person who exercises a search power may move a vehicle to another place if he or she finds the vehicle and he or she—
- (a) has lawful authority to search the vehicle, but it is impracticable to do so at that place; or
 - (b) has reasonable grounds to believe that it is necessary to move the vehicle for safekeeping or for road safety purposes.

16 Seizure of items in plain view

- (1) A person who exercises a search power or who is lawfully in any place as part of his or her duties may seize any item or items that he or she, or any person assisting him or her, finds in the course of carrying out the search or as a result of

observations at that place, if the person has reasonable grounds to believe that he or she could have seized the item or items under—

- (a) any search warrant that could have been obtained by him or her under this Act or any other enactment; or 5
 - (b) any other search power exercisable by him or her under this Act or any other enactment.
- (2) If a person seizes any item or items under **subclause (1)** in circumstances where he or she is not already exercising a search power, the person may exercise any applicable power conferred by **clause 11** in relation to the seizure of the item or items. 10

16A Search warrants to enter and search vehicles

If a search warrant is issued authorising the entry and search of a vehicle, the person executing the warrant may enter any place where the person has reasonable grounds to believe that the vehicle is for the purpose of locating it and searching it. 15

16B Duty to remain stopped

If a person exercises a power to search a vehicle, the person may require the vehicle to remain stopped for as long as is reasonably necessary to undertake the search. 20

17 Duty of persons with knowledge of computer or computer network system or other data storage devices to assist access

- (1) A person exercising a search power at any place or vehicle or in respect of any other thing may require a relevant person to provide access information and other information or assistance that is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible from,— 25
- (a) a computer system that is located (in whole or in part) at the place or in the vehicle or other thing being searched: 30
 - (b) any other data storage device that is located (in whole or in part) at the place or in the vehicle or other thing being searched.
- (2) In this clause,— 35

access information includes access codes, passwords, and encryption keys, and any related information that enables access to a computer or other data storage device

relevant person is a person who—

- (a) is the owner or lessee of the computer or other data storage device; or is in possession or control of the computer or other data storage device; an employee of any of the above; or any service provider who provides service to the above and holds access information; and 5
 - (b) has relevant knowledge of— 10
 - (i) the computer or a computer network of which the computer or other data storage device forms a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer or other data storage device. 15
- (2) In this clause, a **relevant person** is a person who—
- (a) is the owner or lessee of the computer system or other data storage device, or is in possession or control of the computer system or data storage device, an employee of any of the above, or any service provider who provides service to the above and holds access information; and 20
 - (b) has relevant knowledge of—
 - (i) the computer system or other data storage device; 25
or
 - (ii) measures applied to protect data held in, or accessible from, the computer system or other data storage device.
- (3) A relevant person may not be required under **subclause (1)** to give any information tending to incriminate the person. 30
- (4) **Subclause (3)** does not prevent a person exercising a search power from requiring a relevant person to provide information that—
- (a) is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible from, a computer system or other data storage device that— 35
 - (i) is at or in the place, vehicle, or other thing to be searched; and

- (ii) contains or may contain information tending to incriminate the relevant person; but
- (b) does not itself tend to incriminate the relevant person.
- (5) **Subclause (3)** does not prevent a person exercising a search power from requiring a relevant person to provide assistance that is reasonable and necessary to allow the person exercising the search power to access data held in, or accessible from, a computer system or other data storage device that—
- (a) is at or in the place, vehicle, or other thing concerned; and
- (b) contains or may contain information tending to incriminate the relevant person.
- (6) **Subclauses (1), (4), and (5)** are subject to **clauses 22 to 26** (which relate to privileges).
- 18 Identification and notice requirements for person exercising search power (other than remote access search)**
- (1) A person exercising a search power (other than a remote access search) must,—
- (a) before initial entry into or onto the place, vehicle, or other thing to be searched,—
- (i) announce his or her intention to enter and search the place, vehicle, or other thing under a statutory power; and
- (ii) identify himself or herself; and
- (b) before or on initial entry into or onto the place, vehicle, or other thing to be searched,—
- (i) give the occupier (if present) of the place or the person in charge of the vehicle or other thing a copy of the search warrant or advice about the enactment (the **authority**) that authorises him or her to conduct the entry and search; and
- (ii) produce to the occupier of the place or the person in charge of the vehicle or other thing evidence of his or her identity (which may include details of a unique identifier instead of a name).
- (2) The person exercising the search power is not required to comply with **subclause (1)(a)** if he or she has reasonable grounds to believe that—

- (a) no person is lawfully present in or on the place, vehicle, or other thing to be searched; or
- (b) compliance with **subclause (1)(a)** would—
- (i) endanger the safety of any person; or
- (ii) prejudice the successful exercise of the entry and search power; or
- (iii) prejudice ongoing investigations. 5
- (3) The person exercising the search power may use reasonable force in order to effect entry into or onto the place, vehicle, or other thing if— 10
- (a) **subclause (2)** applies; or
- (b) following a request, the person present refuses entry or does not allow entry within a reasonable time.
- (4) If the occupier of a place is not present at any time during the search, or no person is in charge of the vehicle or other thing during the search, the person carrying out the search must,— 15
- (a) on completion of the search, leave a copy of the authority referred to in **subclause (1)(b)(i)** and the notice referred to in **subclause (5)** in a prominent position at the place or in or on the vehicle or other thing; or 20
- (b) if this is not reasonably practicable, provide the copy of the authority referred to in **subclause (1)(b)(i)** and the notice referred to in **subclause (5)** to the occupier of the place or the owner of the vehicle or other thing no later than 7 days after the exercise of the power. 25
- (5) The notice required by **subclause (4)** is a written notice containing the following particulars:
- (a) the date and time of the commencement and completion of the search:
- (b) the name or unique identifier of the person who had overall responsibility for that search: 30
- (c) the address of the office to which inquiries should be made:
- (d) if nothing is seized, the fact that nothing was seized:
- (e) if anything was seized, the fact that seizure occurred and (if an inventory is not provided at the same time under **clauses 19 to 21**) that an inventory of the things seized will be provided to the occupier of the place or person 35

- in charge of the vehicle or other thing no later than 7 days after the seizure.
- (6) For the purposes of this clause and **clauses 19 to 21**,—
- (a) the following persons may not be treated as the occupier of the place or the person in charge of the vehicle or other thing: 5
- (i) any person who is under 14 years of age;
- (ii) any person who the person executing the warrant has reasonable grounds to believe is not the occupier of the place or person in charge of the vehicle or other thing: 10
- (b) every reference to a copy of the authority referred to in **subclause (1)(b)(i)** means, in a case where a search is undertaken without a search warrant, written advice about the enactment that authorises the search. 15
- (7) **Subclauses (4) and (5)** are subject to **clauses 20 and 21**.
- (8) This clause does not apply to a remote access search.

18A Identification and notice requirements for remote access search

- (1) A person who conducts a remote access search must, on completion of the search, send an electronic message to the email address of the thing searched— 20
- (a) attaching a copy of the search warrant; and
- (b) setting out the following particulars:
- (i) the date and time of the commencement and completion of the search: 25
- (ii) the name and unique identifier of the person who had overall responsibility for that search:
- (iii) the address of the office to which inquiries should be made. 30
- (2) If the person conducting the search is unable to deliver the electronic message required by **subclause (1)** (or it is returned undelivered), the person must take all reasonable steps to identify the user of the thing searched and to send the information referred to in **subclause (1)(a) and (b)** to that person. 35

19 Inventory of items seized

- (1) The person who carries out a search must, at the time he or she seizes any thing, or as soon as practicable after the seizure of any thing, and in any case not later than 7 days after that seizure, provide to the occupier of the place ~~in which~~, or the person in charge of the vehicle or other thing, from where the seizure took place, and to every other person who the person who carried out the search has reason to believe is the owner of the thing that was seized,—
- (a) written notice specifying what was seized; and
- (b) a copy of the authority referred to in **clause 18(1)(b)(i)**.
- (2) A written notice referred to in **subclause (1)(a)**—
- (a) must contain information about the extent to which a person from whom a thing was seized or the owner of the thing has a right to apply—
- (i) to have access to the thing; or
- (ii) to have access to any document relating to the application for a search warrant or the exercise of any other search power that led to the seizure; and
- (b) must contain information about the right to bring a claim that any privileged or confidential information has been seized; but
- (c) need not be provided to the occupier of the place ~~in~~ or person in charge of the vehicle or other thing from which the seizure took place, if the person who carries out the search is satisfied that none of the items seized are owned by that person.
- (3) If the occupier of the place or person in charge of the vehicle or other thing is not present at the time of seizure, a written notice referred to in **subclause (1)(a)** and a copy of the authority referred to in **clause 18(1)(b)(i)** may be provided to that person by leaving the notice in a prominent position at the place or in or on the vehicle or other thing.
- (4) **Subclause (1)** is subject to **subclauses (2) and (3)**.
- (5) This clause is subject to **clauses 20 and 21**.

20 Compliance with certain provisions may be deferred in certain circumstances

- (1) A person exercising a search power may apply to a District Court Judge for a postponement of the obligation to comply with **clause 18(4) or (5) or 19** on the grounds that compliance would— 5
- (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations.
- (2) An application may be made under **subclause (1)**,— 10
- (a) in the case of an entry and search power that is a search warrant, at the time of the initial application or until the expiry of 7 days after the warrant is finally executed; or
 - (b) in the case of any other entry and search power, until the expiry of 7 days after the search power is exercised.
- (3) On an application under **subclause (1)**, the District Court Judge may postpone for a specified period not exceeding 12 months the obligation to comply with **clause 18(4) or (5) or 19**, if the Judge is satisfied that there are reasonable grounds for believing that compliance would— 15
- (a) endanger the safety of any person; or 20
 - (b) prejudice ongoing investigations.

21 Further postponement of, or dispensation from, obligation to comply with certain provisions

- (1) A person who has obtained an order under **clause 20(3)** may, before the expiry of that order, apply to a District Court Judge for a further postponement of, or dispensation from, the obligation to comply with **clause 18(4) or (5) or 19** on the grounds that compliance would— 25
- (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations. 30
- (2) An application for a further postponement may be made on only 1 occasion.
- (3) On an application under **subclause (1)**, the District Court Judge may postpone for a further specified period not exceeding 12 months, or order a permanent dispensation from, the obligation to comply with **clause 18(4) or (5) or 19** if the Judge is satisfied that compliance would— 35
- (a) endanger the safety of any person; or

- (b) prejudice ongoing investigations.
- (4) A District Court Judge may not grant, under **subclause (3)**, any postponement of, or dispensation from, an obligation in respect of any thing that has been seized, unless the thing seized is— 5
 - (a) a copy or clone of any information taken or made; or
 - (b) a thing the possession of which by the person from whom it was seized is unlawful under New Zealand law.

Privileges

- 22 Privileges** 10
- (1) If a person could, in a criminal proceeding, assert a privilege under sections 54 to 57 of the Evidence Act 2006 in respect of any communication or information, the person is taken to have the same privilege for the purposes of a search warrant or the exercise of any other search power under this schedule. 15
 - (2) **Subclause (3)** applies to documents that are books of account or accounting records kept—
 - (a) by a solicitor in relation to any trust account money that is subject to section 112 of the Lawyers and Conveyancers Act 2006; or 20
 - (b) by a nominee company that—
 - (i) is subject to practice rules made by the Council of the New Zealand Law Society pursuant to section 96 of the Lawyers and Conveyancers Act 2006; and 25
 - (ii) is operated by a barrister and solicitor or an incorporated law firm as a nominee in respect of securities and documents of title held for clients.
 - (3) The application by **subclause (1)** of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect— 30
 - (a) the issuing of a search warrant or the exercise of any other search power in respect of a document to which this subclause applies; or
 - (b) the obligation to comply with that search warrant or other search power in respect of a document to which this subclause applies; or 35

- (c) the admissibility, in a criminal proceeding for an offence described in the search warrant, or for an offence in respect of which any other search power was exercised, of any evidence that relates to the contents of a document obtained under the search warrant or as the result of the exercise of any other search power. 5
- (4) A person who has a privilege under this clause has the right—
- (a) to prevent the search under this Act of any communication or information to which the privilege would apply if it were sought to be disclosed in a proceeding: 10
- (b) to require the return of any such communication or information to the person if it is seized or secured by a person exercising a search power, pending determination of the claim to privilege.
- (5) Section 65 of the Evidence Act 2006 (which relates to waiver of privilege) applies in respect of any privilege under this clause. 15
- (6) Nothing in this clause affects the application of section 60 of the Evidence Act 2006 (which relates to the privilege against self-incrimination): 20

22 Recognition of privilege

- (1) The following privileges are recognised for the purposes of this schedule:
- (a) legal professional privilege, to the extent that (under section 53(5) of the Evidence Act 2006) it forms part of the general law: 25
- (b) privilege for communications with legal advisers (as described in section 54 of the Evidence Act 2006):
- (c) privilege for preparatory materials for proceedings (as described in section 56 of the Evidence Act 2006): 30
- (d) privilege for settlement negotiations or mediation (as described in section 57 of the Evidence Act 2006):
- (e) privilege for communications with ministers of religion (as described in section 58 of the Evidence Act 2006):
- (f) privilege in criminal proceedings for information obtained by medical practitioners and clinical psychologists (as described in section 59 of the Evidence Act 2006): 35

- (h) privilege for informers (as described in section 64 of the Evidence Act 2006):
- (i) the rights conferred on a journalist under section 68 of the Evidence Act 2006 to protect certain sources.
- (2) For the purposes of this schedule, no privilege applies in respect of any communication or information if there is a prima facie case that the communication or information is made or received, or compiled or prepared,— 5
- (a) for a dishonest purpose; or
- (b) to enable or aid any person to commit or plan to commit what the person claiming the privilege knew, or ought reasonably to have known, to be an offence. 10
- (3) **Subclause (4)** applies to documents that are books of account or accounting records kept—
- (a) by a solicitor in relation to any trust account money that is subject to section 112 of the Lawyers and Conveyancers Act 2006; or 15
- (b) by a nominee company that—
- (i) is subject to practice rules made by the Council of the New Zealand Law Society under section 96 of the Lawyers and Conveyancers Act 2006; and 20
- (ii) is operated by a barrister and solicitor or an incorporated law firm as a nominee in respect of securities and documents of title held for clients. 25
- (4) The application by **subclause (1)** of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect—
- (a) the issuing of a search warrant or exercise of any other search power in respect of a document to which this subclause applies; or 30
- (b) the obligation to comply with that search warrant or other search power in respect of a document to which this subclause applies; or
- (c) the admissibility, in a criminal proceeding for an offence described in the search warrant or for an offence in respect of which any other search power was exercised, of any evidence that relates to the contents of a 35

document obtained under the search warrant or as the
result of the exercise of any other search power.

22A Effect of privilege on search warrants and search powers

A person who makes a claim of privilege (being a privilege
recognised by this schedule) in respect of any thing that is
seized or sought to be seized has the right, in accordance with
clauses 22B to 26,—

- (a) to prevent the search under this Act of any communica-
tion or information to which the privilege would apply
if it were sought to be disclosed in a proceeding, pend-
ing determination of the claim to privilege, and subse-
quently if the claim to privilege is upheld;
- (b) to require the return of a copy of, or access to, any
such communication or information to the person if it is
seized or secured by a person exercising a search power,
pending determination of the claim to privilege.

**22B Search warrants that extend to lawyers' premises or
material held by lawyers**

- (1) This clause applies to the execution of a search warrant that
authorises the search of materials held by a lawyer relating to
a client.
- (2) If this clause applies, the search warrant may not be executed
unless—
- (a) the lawyer is present; or
- (b) a representative of the lawyer is present.
- (3) If the person who is to execute the search warrant is unable to
contact the lawyer or his or her representative, that person must
instead contact the New Zealand Law Society and request that
a person be appointed by the Society to represent the interests
of the clients of the lawyer in relation to the search.
- (4) Before executing the search warrant, the person who is to exe-
cute it must give the lawyer or his or her representative, or any
person appointed by the New Zealand Law Society under **sub-
clause (3)**,—
- (a) the opportunity to claim privilege on behalf of the
lawyer's client; or

- (b) the opportunity to make an interim claim of privilege if instructions have not been obtained from the client.

23 Searches otherwise affecting privileged materials

(1) This clause applies if—

- (a) a person executes a search warrant; ~~or~~ or exercises another search power; and 5
- (b) ~~a person exercising a search power~~ he or she has reasonable grounds to believe that any thing discovered in the search may be the subject of a privilege ~~referred to in~~ **clause 22(1)** recognised by this schedule. 10

(2) If this clause applies, the person responsible for executing the search warrant or other person exercising the search power—

- (a) must provide to any person who he or she believes may be able to claim a privilege ~~referred to in~~ **clause 22(1)** recognised by this schedule a reasonable opportunity to claim it; and 15
- (b) may, if the person executing the search warrant or exercising the other search power is unable to identify or contact a person who may be able to claim a privilege, or that person's lawyer, within a reasonable period,— 20
- (i) apply to a District Court for a determination as to the status of the thing; and
- (ii) do any thing necessary to enable that court to make that determination.

24 Interim steps pending resolution of privilege claim

If a person executing a search warrant or exercising ~~a~~ an other search power is ~~prohibited under~~ **clause 22 or 23** ~~from searching any thing~~ unable, under **clause 22A, 22B, or 23**, to search a thing (whether as a result of the requirements of any of those provisions, or because of a claim of privilege made in respect of the thing, or for any other reason), the person— 30

- (a) may—
- (i) secure the thing; and
- (ii) if the thing is intangible (for example, computer data), secure the thing by making a forensic copy; 35
- and

- (iii) deliver the thing, or a copy of it, to the District Court, to enable the determination of a claim to privilege; and
 - (b) must supply to the lawyer or other person who may or does claim privilege a copy of, or access to, the secured thing; and 5
 - (c) must not search the thing secured, unless no claim of privilege is made, or a claim of privilege is withdrawn, or the search is in accordance with the directions of the court determining the claim of privilege. 10
- 25 Claims for privilege for things seized or sought to be seized**
- Any person who wishes to claim privilege in respect of any thing seized or sought to be seized by a person executing a search warrant or exercising ~~a~~ another search power— 15
- (a) must provide to the person responsible for executing the search warrant or exercising the other search power a particularised list of the things in respect of which the privilege is claimed, as soon as practicable after being provided with the opportunity to claim privilege or being advised that a search is to be, or is being, or has been conducted, as the case requires: 20
 - (b) if the thing or things in respect of which the privilege is claimed cannot be adequately particularised in accordance with **paragraph (a)**, may apply to a District Court for directions or relief (with a copy of the thing provided under **clause 24(b)**). 25
- 26 Admission of evidence**
- (1) If a District Court upholds a claim to privilege under **clauses 22 to 25** in respect of any communication or information, the communication or information to which the privilege applies is not admissible in any proceedings arising from, or related to, the execution of the search warrant or exercise of the other search power, as the case requires. 30
 - (2) Subject to **subclause (1)**, this schedule does not limit or affect the admissibility of any evidence, or the discretion of any court to admit or refuse to admit any evidence, in any proceedings. 35

Disposal of things seized

- 27 Disposal of things seized**
- (1) In any proceedings relating to any thing seized under a search warrant or the exercise of any other search power under this schedule, the court may order, either at the trial or hearing 5
or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in any manner that the court thinks fit.
- (2) The FMA may, at any time, unless an order has been made under **subclause (1)**, return the thing to the person from 10
whom it was seized, or apply to a District Court Judge for an order for its disposal.
- (3) On any such application, the District Court Judge may make any order that a court may make under **subclause (1)**.
- (4) If proceedings for an offence relating to the thing are not 15
brought within a period of 3 months of seizure, any person claiming to be entitled to the thing may, after the expiry of that period, apply to a District Court Judge for an order that it be delivered to him or her.
- (5) On any such application, the District Court Judge may— 20
(a) adjourn the application, on any terms that he or she thinks fit, for proceedings to be brought; or
(b) make any order that a court may make under **subclause (1)**.
- 28 Court order for disposal of things seized to be suspended on conviction** 25
- (1) If any person is convicted in any proceedings for an offence relating to anything for which a search warrant has been issued, and any order is made under **clause 27**, the operation 30
of the order is suspended,—
(a) in any case, until the expiration of the time prescribed by the Summary Proceedings Act 1957 for the filing of a notice of appeal or an application for leave to appeal; and
(b) if a notice of appeal is filed within the time so pre- 35
scribed, until the determination of the appeal; and

- (c) if application for leave to appeal is filed within the time so prescribed, until the application is determined, and, if leave to appeal is granted, until the determination of the appeal.
- (2) If the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order. 5

28A Disposal of forensic copies

- (1) A person who makes a forensic copy of any data held in a computer system or other data storage device must, if he or she determines that the data does not contain any evidential material, ensure that the forensic copy and any copies made from that copy are deleted, erased, or otherwise destroyed in a way that prevents retrieval of the copy or copies by any method. 10
- (2) However, if an examination of the data shows that it contains a mixture of data that is evidential material and data that is not evidential material,— 15
- (a) the forensic copy of the data and any copies made of that copy may be retained in their entirety; and
- (b) that forensic copy and any copies made of that copy may continue to be searched, if such a search was authorised by the search power under which the data was seized and copied. 20

Immunities

- 29 Immunities in relation to exercise of entry or search powers** 25
- (1) Every person is immune from civil or criminal liability—
- (a) for any act done in good faith in order to obtain a search warrant;
- (b) for any act done in good faith in relation to the execution of a search warrant, if the execution is carried out in a reasonable manner. 30
- (2) Every person is immune from civil and criminal liability for any act done in good faith in order to exercise an entry power or a search power if— 35

- (a) the power is exercised by that person in a reasonable manner; and
- (b) the person believes on reasonable grounds that the pre-conditions for the exercise of that power have been satisfied. 5
- (3) Every person is immune from civil and criminal liability for any act done in good faith and in a reasonable manner in order to assist a person to exercise an entry power or a search power or in order to examine or analyse any thing that is seized.
- (4) In any civil proceeding in which a person asserts that he or she has an immunity under this clause, the onus is on that person to prove those facts necessary to establish the basis of the claim. 10
- 30 Immunity of FMA**
If any person is immune from civil liability under **clause 29** in respect of anything done or omitted to be done, the FMA is also immune from civil liability in tort in respect of that person's conduct. 15

Offences

- 31 False application for search warrant** 20
Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 1 year, who makes an application for a search warrant that contains any assertion or other statement known by the person to be false.
- 32 Offence of failing to carry out obligations in relation to computer system search** 25
Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months, who fails, without reasonable excuse, to assist a person exercising a search power when requested to do so under **clause 17**. 30

Miscellaneous

33 **Effect of proceedings**

- (1) This clause applies when any proceeding has been commenced in any court in respect of—
- (a) the exercise of any power conferred by **section 29**; or 5
 - (b) the discharge of any duty imposed by this schedule; or
 - (c) the use for investigative purposes of any evidential material obtained from the execution of a power conferred by **section 29**.
- (2) Until a final decision in relation to the proceeding is given, unless an interim order made under **subclause (3)** is in force,— 10
- (a) the power or duty to which the proceeding relates may be, or may continue to be, exercised or discharged as if the proceeding had not been commenced, and no person is excused from fulfilling any obligation under this schedule by reason of that proceeding; and 15
 - (b) any evidential material obtained from the execution of the power or discharge of the duty to which the proceeding relates may be, or may continue to be, used for investigative purposes. 20
- (3) An interim order may be made by the High Court overriding the effect of **subclause (2)**, but only if the High Court is satisfied that—
- (a) the applicant for the order has established a prima facie case that the warrant in question is unlawful; and 25
 - (b) that applicant would suffer substantial harm from the exercise or discharge of the power or duty; and
 - (c) if the power or duty is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in **subclause (4)**, or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and 30
 - (d) the terms of that order do not unduly hinder or restrict the investigation or prosecution.
- (4) The remedies are as follows: 35
- (a) any remedy that the court may grant in making a final decision in relation to the proceeding (for example, a declaration):

- (b) any damages that the applicant for the order may be able to claim in concurrent or subsequent proceedings:
- (c) any opportunity that the applicant may have, as defendant in a criminal proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or duty. 5
- (5) An interim order made under **subclause (3)**—
- (a) ceases to have effect on—
- (i) a date specified in that order; or
- (ii) any date subsequently specified by the High Court on being satisfied that **paragraphs (a) to (d) of subclause (3)** continue to apply; and 10
- (b) may be extended or renewed (whether before, on, or after its expiry) by the High Court, but only if the High Court is satisfied that **paragraphs (a) to (d) of subclause (3)** continue to apply. 15
- 34** **Service of orders and notices under schedule**
- (1) Where an order or a notice is to be given to a person for the purposes of this schedule, it may be given—
- (a) by delivering it personally to the person; or 20
- (b) by delivering it at the usual or last known place of residence or business of the person, including by fax or by electronic mail; or
- (c) by sending it by prepaid post addressed to the person at the usual or last known place of residence or business of the person. 25
- (2) Where an order or notice is to be served on a corporation for the purposes of this schedule, service on an officer of the corporation, or on the registered office of the corporation, in accordance with **subclause (1)** is deemed to be service on the corporation. 30
- (3) Where an order or notice is to be served on a partnership for the purposes of this schedule, service on any one of the partners in accordance with **subclause (1) or (2)** is deemed to be service on the partnership. 35
- (4) Where an order or notice is sent by post to a person in accordance with **subclause (1)(c)**, the order or notice is deemed, in

the absence of proof to the contrary, to have been given on the
third day after the day on which it was posted.

Schedule 3

s 76

Amendments to other enactments

Part 1

Amendments to Acts

- Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35)** 5
- Section 130(1)(b): omit “Securities Commission” and substitute “Financial Markets Authority”.
- Section 137(4) and (5): repeal and substitute:
- “(4) The Financial Markets Authority may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under **Parts 1 to 4** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**, the Securities Act 1978, the Securities Markets Act 1988, and the Financial Advisers Act 2008 for the purpose of exercising its powers or performing its functions and duties under this Act as an AML/CFT supervisor. 10 15
- “(5) The Financial Markets Authority may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under this Act as an AML/CFT supervisor for the purpose of exercising its powers or performing its functions and duties under **Parts 1 to 4** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**, the Securities Act 1978, the Securities Markets Act 1988, and the Financial Advisers Act 2008.” 20 25
- Section 140(2): insert after paragraph (d):
- “(da) **Parts 1 to 4** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**.”.
- Building Societies Act 1965 (1965 No 22)**
- Section 2(1): insert in its appropriate alphabetical order: 30
- “**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.
- Section 9C(2)(c): omit “Registrar” and substitute “FMA”.
- Section 28(2): omit “Registrar” and substitute “FMA”. 35
- Section 74(3): omit “Registrar” and substitute “FMA”.

Part 1—*continued*

Building Societies Act 1965 (1965 No 22)—*continued*

Section 76(4): repeal and substitute:

“(4) If in any financial year default is made in holding an annual general meeting in accordance with this section, the FMA may—

“(a) call or direct the calling of an annual general meeting in that financial year; and

“(b) give any ancillary or consequential directions as the FMA thinks fit (including directions modifying or supplementing the operation of the society’s rules in relation to the calling, holding, and conducting of the meeting).”

Section 76(5): omit “Registrar” and substitute “FMA”.

Section 100(7)(a): omit “Registrar” and substitute “FMA”.

Section 118(3)(c): omit “Registrar” and substitute “FMA”.

Section 118(5): omit “Registrar” and substitute “FMA”. 15

Heading to section 122D: omit “**Registrar**” and substitute “**FMA**”.

Section 122D(1) to (4): omit “Registrar” in each place where it appears and substitute in each case “FMA”.

Section 122D(3): omit “Registrar’s” and substitute “FMA’s”.

Section 123(1) and (3): omit “Registrar” in each place where it appears and substitute in each case “FMA”. 20

Section 123(4): repeal and substitute:

“(4) Before exercising its powers under subsection (1) in a case where no application is made, the FMA must—

“(a) give to the society not less than 14 days’ notice in writing of the action the FMA proposes to take, specifying briefly the grounds on which the FMA proposes to take it; and

“(b) consider any representations with respect to the proposed action that may be made to the FMA by the society within the period of the notice or any further period that the FMA may allow, and, if the society so requests, give it an opportunity of being heard by the FMA within that period or further period.”

Part 1—*continued***Building Societies Act 1965 (1965 No 22)**—*continued*

Section 123(6): repeal and substitute:

“(6) Despite anything in the rules of a society, if a special meeting is called under this section,—

“(a) the FMA may direct at what time and place the meeting is to be held, and what matters are to be discussed and determined at the meeting, and may give any other directions as it thinks fit with respect to the calling, holding, and conduct of the meeting: 5

“(b) the FMA may appoint a person to be chairperson at the meeting; and if the FMA does not do so the meeting may appoint its own chairperson: 10

“(c) the meeting has all the powers of a meeting called according to the society’s rules.

“(6A) Nothing in this section limits any power that the FMA has under the **Financial Markets (Regulators and KiwiSaver) Act 2010** or any other enactment.” 15

Companies Act 1993 (1993 No 105)

Section 2(1): insert in their appropriate alphabetical order:

“**financial markets participant** has the same meaning as in **section 4** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** 20

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

Section 196(5): insert “or the FMA” after “the Registrar”. 25

~~Section 196: insert after subsection (6):~~

~~“(6A) If a company is a financial markets participant, the company must, within 5 working days of the power becoming exercisable, give written notice to the FMA of the fact that the FMA is entitled to appoint an auditor under subsection (5) (in addition to complying with subsection (6)).” 30~~

~~Section 196(7): insert “or (6A)” after “subsection (6)”.~~

Section 197: insert after paragraph (c):

“(ca) if the auditor is appointed by the FMA, by the FMA:”.

Part 1—*continued*

Companies Act 1993 (1993 No 105)—*continued*

Section 241(2)(c): insert after subparagraph (v):

“(va) in the case of a financial markets participant, the FMA; or”.

Section 250(2): insert after paragraph (e):

“(ea) in the case of a financial markets participant, the FMA; or”.

New section 258B: insert after section 258A:

“258B Duty to supply report to FMA

“(1) If a report is made under section 258A in respect of a financial markets participant, the Registrar ~~must~~ may supply a copy of the report to the FMA. 10

“(2) Any communications between—

“(a) the Registrar and the FMA that relate to that report are protected by absolute privilege:

“(b) the liquidator and the FMA that relate to that report are protected by absolute privilege.” 15

New section 371A: insert after section 371:

“371A Sharing of information with Financial Markets Authority

“(1) The Registrar may provide to the FMA any information, or a copy of any document, that the Registrar— 20

“(a) holds in relation to the exercise or performance of the Registrar’s functions, powers, or duties; and

“(b) considers may assist the FMA in the exercise or performance of the FMA’s functions, powers, or duties under this Act or any other enactment. 25

“(2) The Registrar may use any information, or a copy of any document, provided to him or her by the FMA under **section 30** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** in the Registrar’s exercise or performance of the Registrar’s functions, powers, or duties. 30

“(3) In this section, **Registrar’s functions, powers, or duties** means his or her functions, powers, or duties under this Act or any other enactment (including functions, powers, or duties as the Registrar under the Financial Service Providers (Regis- 35

Part 1—*continued***Companies Act 1993 (1993 No 105)**—*continued*

tration and Dispute Resolution) Act 2008 and the Securities Act 1978).

“(4) This section applies despite anything to the contrary in any contract, deed, or document.

“(5) Nothing in this section limits the Privacy Act 1993.” 5

Section 373(4)(i): insert “or the FMA” after “Registrar”.

Section 383(3): repeal and substitute:

“(3) An application for an order under this section may be made by the Registrar, the FMA, the Official Assignee, or by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company. 10

“(3A) **Subsection (3B)** applies on the hearing of—

“(a) an application for an order under this section by the Registrar, the FMA, the Official Assignee, or the liquidator; or 15

“(b) an application for leave under this section by a person against whom an order has been made on the application of the Registrar, the FMA, the Official Assignee, or the liquidator.

“(3B) The Registrar, the FMA, the Official Assignee, or the liquidator (as the case may be)— 20

“(a) must appear and call the attention of the Court to any matters that seem to him, her, or it to be relevant; and

“(b) may give evidence or call witnesses.”

Heading to section 385: insert “or FMA” after “Registrar”. 25

Section 385(3), (4), (5), (7), and (8): insert “or the FMA” after “Registrar” in each place where it appears.

New section 385A: insert after section 385:

“**385A Appeals from FMA’s exercise of power under section 385**

“(1) A person who is aggrieved by the FMA’s exercise of a power under section 385 may appeal to the Court within 15 working days after the date that the notice is published in the *Gazette* under section 385(3), or within any further time as the Court may allow. 30

Part 1—*continued*

Companies Act 1993 (1993 No 105)—*continued*

“(2) On hearing the appeal, the Court may approve the FMA’s exercise of the power or may give any directions or make any determination in the matter that the Court thinks fit.

“(3) Section 370 provides for appeals from the Registrar’s acts or decisions under section 385.” 5

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Long Title: insert “**and the Financial Markets Authority**” after “**Registrar of Companies**”.

Section 2(1): insert in its appropriate alphabetical order: 10

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

Section 5(2): omit “Securities Commission” and substitute “FMA”.

Heading to section 7: insert “**or FMA**” after “**Registrar**”. 15

Section 7: insert “or the FMA,” after “Registrar,”.

Section 8(3): omit “Securities Commission” and substitute “FMA”.

Heading to section 11: insert “**and FMA**” after “**Registrar**”.

Section 11: add as subsection (2):

“(2) The Registrar must send a copy of the information disclosed under **subsection (1)** to the FMA.” 20

~~Section 19: insert “or the FMA” after “Registrar”.~~

Section 23(1)(a)(i), (2)(e), (3), (4)(b), and (5)(a): insert “or the FMA” after “Registrar” in each place where it appears.

~~Section 23(1)(a)(ii) and (2): insert “or by the FMA” after “by the Registrar” in each place where it appears.~~ 25

Section 23(2): insert “nor the FMA” after “Neither the Registrar”.

Sections 30 to 33: repeal and substitute:

“**30 Registrar or FMA may declare corporation to be at risk**

“(1) If the Registrar or the FMA has reasonable grounds to believe that any corporation is, or may be, a corporation to which this Act applies, the Registrar or the FMA may give written notice 30

Part 1—*continued***Corporations (Investigation and Management) Act 1989 (1989
No 11)**—*continued*

to the corporation that it is considered to be a corporation at risk.

“(2) Every notice given under **subsection (1)** must state the grounds on which it is given.

“(3) The FMA may only exercise a power under this section in respect of a corporation that is a financial markets participant (within the meaning of **section 4** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**).

“31 Obligation to consult with Registrar or FMA

“(1) Every corporation to whom a notice is given under **section 30** must promptly consult with the Registrar or the FMA (as the case may be)—

“(a) as to the circumstances of that corporation; and

“(b) as to the methods of resolving the difficulties of that corporation.

“(2) Every associated person of a corporation to whom a notice has been given under **section 30**, and any officer or employee of the corporation or associated person, must, when required to do so by the Registrar or the FMA (as the case may be) by notice in writing to that person, promptly consult with the Registrar or the FMA—

“(a) as to the circumstances of that corporation; and

“(b) as to the methods of resolving the difficulties of that corporation.

“32 Power of Registrar or FMA to give advice and assistance

If the Registrar or the FMA gives a notice to a corporation under **section 30**, or gives a notice to an associated person under **section 31(2)**, the Registrar or the FMA may—

“(a) give advice to the corporation or associated person concerning its affairs:

“(b) give advice and assistance in connection with the negotiation of any sale or other disposition of the whole or

Part 1—*continued*

**Corporations (Investigation and Management) Act 1989 (1989
No 11)**—*continued*

any part of the capital or business undertaking of that corporation or associated person:

- “(c) give advice and assistance in connection with any scheme for resolving the difficulties of that corporation or associated person. 5

“33 Power of Registrar or FMA to give directions to corporation declared to be at risk

“(1) The Registrar or the FMA may give a direction in writing to any corporation to which a notice has been given under **section 30** by the Registrar or the FMA (as the case may be) requiring it— 10

“(a) not to remove from New Zealand, transfer, charge, or otherwise deal with any of its property or funds except with the prior approval of the Registrar or the FMA and subject to the terms and conditions that the Registrar or the FMA may specify: 15

“(b) to place in a trust account any money received for investment:

“(c) to take any other action that is specified in the notice to preserve the interests of the corporation’s members and creditors. 20

“(2) The Registrar or the FMA may amend any direction that he, she, or it has given.

“(3) The Registrar may only exercise a power under **subsection (1) or (2)** with the prior consent of the FMA.” 25

Section 34(2): add “or the FMA (as the case may be)”.

Section 36(2)(b): insert “or the FMA (as the case may be)” after “Registrar”.

Section 36(2)(c): insert “or the FMA (as the case may be)” after “Registrar”. 30

Section 37(2): add “or the FMA (as the case may be)”.

Section 38(1): omit “Securities Commission” and substitute “FMA”.

Section 39: omit “Securities Commission” and substitute “FMA”.

Part 1—*continued***Corporations (Investigation and Management) Act 1989 (1989
No 11)**—*continued*

Section 40: omit “Securities Commission” and substitute “FMA”.

Section 63: omit “Securities Commission” and substitute “FMA”.

Crown Entities Act 2004 (2004 No 115)

Part 3 of Schedule 1: insert in its appropriate alphabetical order:

Name	Exemption from acquisition of securities, borrowing, guarantee, and derivative rules	Exemption from section 165 (net surplus payable to Crown)
	s 161 s 162 s 163 s 164	

Financial Markets
Authority

Item relating to the Securities Commission in Part 3 of Schedule 1: 5
omit.

Defence Act 1990 (1990 No 28)

Section 73A: omit “to 73D” and substitute “and 73C”.

Section 73D: repeal.

Fair Trading Act 1986 (1986 No 121)

10

Section 48A: repeal and substitute:

**“48A Sharing of information and documents with Financial
Markets Authority or Takeovers Panel**

“(1) The Commission may provide to the Financial Markets Au-
thority or the Takeovers Panel any information, or a copy of 15
any document, that the Commission—

“(a) holds in relation to the exercise of the Commission’s
powers, or the performance of its functions and duties,
in respect of this Act; and

“(b) considers may assist the Financial Markets Authority 20
or the Takeovers Panel in the exercise of its powers, or
the performance of its functions and duties, ~~in respect
of false, misleading, or deceptive conduct under the Fi-~~
ancial Markets (Regulators and KiwiSaver) Act

Part 1—*continued*

Fair Trading Act 1986 (1986 No 121)—*continued*

2010, any enactment listed in **Schedule 1** of that Act, the Takeovers Act 1993, or the Takeovers Code in force under that Act.

“(2) The Commission may use any information, or a copy of any document, provided to it by the Financial Markets Authority under **section 30** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** or by the Takeovers Panel under section 15B of the Takeovers Act 1993 in the Commission’s exercise of its powers, or the performance of its functions and duties, in respect of this Act.

“(3) This section applies despite anything to the contrary in any contract, deed, or document.

“(4) Nothing in this section limits the Privacy Act 1993.”

Financial Advisers Act 2008 (2008 No 91)

Definition of **Commission** in section 5: repeal. 15

Section 5: insert in its appropriate alphabetical order:

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

Section 26: repeal. 20

Section 59(1)(e): repeal and substitute:

“(e) has failed to pay a fee as required by this Act or the regulations or a levy as required by **section 63** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** or regulations made under that section.” 25

Section 75D(1)(e): repeal and substitute:

“(e) the QFE or any partner entity of the QFE has failed to pay a fee as required by this Act or the regulations or a levy as required by **section 63** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** or regulations made under that section.” 30

Section 79(2): repeal and substitute:

“(2) The Commissioner is a member of the board of the FMA.”

Part 1—*continued***Financial Advisers Act 2008 (2008 No 91)**—*continued*

Section 79(4): omit “Commission” and substitute “Commissioner”.

Section 79(6)(b): repeal.

Section 116: repeal.

Section 137C(b): omit “any of sections 58, 59, and 59A” and substitute “section 58 or 59”. 5

Section 137C: insert after paragraph (b):

“(ba) the person has been convicted of an offence against **section 47B or 56** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**; or”.

Section 137F(1)(a): repeal and substitute: 10

“(a) an investigation is being carried out under the **Financial Markets (Regulators and KiwiSaver) Act 2010** in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or”. 15

Section 137R(4): repeal and substitute:

“(4) A person that considers that a decision of the FMA in respect of a temporary banning order is wrong in law may appeal against the decision to the High Court on a question of law only.” 20

Section 147 and heading above section 147: repeal.

Heading above section 152: omit “and levies”.

Section 153: repeal.

Section 161A: repeal.

Financial Reporting Act 1993 (1993 No 106) 25

Section 2(1): insert in its appropriate alphabetical order:

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

Section 4(1)(a)(i): omit “exemption granted by the Securities Commission pursuant to section 5 of the Securities Act 1978” and substitute “exemption granted by the FMA or the Securities Commission under the Securities Act 1978”. 30

Part 1—*continued*

Financial Reporting Act 1993 (1993 No 106)—*continued*

Section 4B(1) to (3): omit “Securities Commission” in each place where it appears and substitute in each case “FMA”.

Section 4C: omit “Securities Commission” and substitute “FMA”.

Section 4D: repeal and substitute:

“4D FMA must notify reasons for exemption 5

The FMA’s reasons for granting an exemption under section 4B (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.”

Section 16(2): omit “Securities Commission” and substitute “FMA”.

Section 35A: repeal and substitute: 10

“35A FMA may grant exemptions to directors of issuers that are incorporated or constituted outside New Zealand

“(1) The FMA may exempt any directors of an issuer that is incorporated or constituted outside New Zealand, or any directors of a class of those issuers, from compliance with any provision of sections 8 to 11, 13 to 16, 18, 36, 36A, or 38. 15

“(2) The FMA must not grant an exemption under this section unless it is satisfied that—

“(a) the exemption would not cause significant detriment to subscribers for the securities of the issuer who are members of the public in New Zealand, having regard to the financial reporting requirements that must be complied with in relation to the issuer under the law in force in the country where the issuer is incorporated or constituted; and 20
25

“(b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

“(3) The exemption may be granted on any terms and conditions that the FMA thinks fit. 30

“(4) The FMA may vary or revoke an exemption in the same way as an exemption may be granted under this section.

“(5) The FMA must not grant an exemption under this section in respect of an issuer that is a licensed insurer.

Part 1—*continued*Financial Reporting Act 1993 (1993 No 106)—*continued***“35AB Transitional provision for exemptions granted by
Securities Commission**

Every exemption granted under section 35A (as in force before the commencement of this section) by the Securities Commission that is in force immediately before this section comes into force— 5

“(a) continues in force as if it were granted under **section 35A** by the FMA; and

“(b) may be amended or revoked as if ~~made~~ granted under that section. 10

“35AC Status and publication of exemptions under section 35A

“(1) An exemption granted under **section 35A**—

“(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and

“(b) must be presented to the House of Representatives under section 4 of that Act. 15

“(2) A class exemption (but not any other exemption granted under **section 35A**) is a regulation for the purposes of the Acts and Regulations Publication Act 1989.

“(3) An exemption granted under **section 35A** that is not a class exemption must, as soon as practicable after it is granted, be— 20

“(a) published on an Internet site maintained by or on behalf of the FMA; and

“(b) notified in the *Gazette*; and

“(c) made available in printed form for purchase on request by members of the public. 25

“(4) A notification in the *Gazette* for the purpose of **subsection (3)(b)** does not have to include the text of the exemption.

“(5) The FMA’s reasons for granting an exemption under **section 35A** (including why the exemption is appropriate) must be published together with the exemption. 30

“(6) In this section, **class exemption** means an exemption that is of general application and applies in respect of a class of issuers.”

Part 1—*continued*

Financial Reporting Act 1993 (1993 No 106)—*continued*

Section 35B: add:

“(7) The Registrar of Companies’ reasons for granting an exemption (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.”

Section 35C(1): repeal and substitute: 5

“(1) In deciding whether or not to grant, amend, or revoke an exemption under section **35A** or 35B, the FMA or the Registrar of Companies (as the case may be)—

“(a) may consult with any persons or organisations that the FMA or Registrar thinks fit; but 10

“(b) must consult with—

“(i) the Commissioner of Inland Revenue if the exemption is under section 35B and involves any provision of section 10; and

“(ii) the Reserve Bank of New Zealand if the exemption concerns a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989).” 15

Section 35D: omit “Securities Commission” and substitute “FMA”.

Section 35E: repeal. 20

Section 42B(1) and (2): omit “Securities Commission” in each place where it appears and substitute in each case “FMA”.

Financial Service Providers (Registration and Dispute Resolution) Act 2008 (2008 No 97)

Section 79A(1): omit “Commission” and substitute “Financial Markets Authority”. 25

Section 79B(2): omit “Commission” and substitute “Financial Markets Authority”.

Friendly Societies and Credit Unions Act 1982 (1982 No 118)

Definition of **Government Actuary** in section 2: repeal. 30

Section 3(2): repeal.

Section 4(2): repeal.

Part 1—*continued***Friendly Societies and Credit Unions Act 1982 (1982 No 118)**—*continued*

Heading to section 7: omit “**and Government Actuary**”.

Section 7(2): repeal.

Section 7(3): omit “and Government Actuary shall have” and substitute “has”.

Section 7(3): omit “their respective” and substitute “his or her”. 5

Section 158(2): omit “or the Government Actuary,”.

Government Superannuation Fund Act 1956 (1956 No 47)

Section 2(1): insert in its appropriate alphabetical order:

“**actuary** means—

“(a) a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or

“(b) a person whom the Authority considers to have an equivalent professional qualification”.

Section 15E(6): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”. 15

Section 33(1A): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 43(5)(b): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 52A(5)(b): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”. 20

Section 71R(5): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”.

Section 81UA(8)(b): omit “Government Actuary” and substitute “Authority, after receiving advice from an actuary,”. 25

Section 94(1) to (3): repeal and substitute:

“(1) The Authority must obtain a report from an actuary that examines the financial position of the Fund as at dates determined by the Minister, being dates that are no more than 3 years apart.

“(2) The report in respect of each such examination must— 30
“(a) show the state of the Fund as at the date on which the financial position of the Fund was examined, having re-

Part 1—*continued*

Government Superannuation Fund Act 1956 (1956 No 47)—*continued*

gard to the prospective liabilities and assets of, and the probable annual sums required by, the Fund to provide benefits falling due within the ensuing 3 years without affecting or having recourse to the actuarial reserve ap-
pertaining to the contributor's contributions; and 5

“(b) be received by the Authority no later than 7 months after the date the Fund was examined.

“(3) The Authority must send a copy of the report to the Minister within 28 days after the date that the Authority receives it.”

Section 95(1): omit “Government Actuary” and substitute “Author- 10
ity, after receiving advice from an actuary,”.

Section 95(2): omit “Government Actuary” and substitute “Author-
ity, after receiving advice from an actuary,”.

Government Superannuation Fund Amendment Act 1969 (1969 No 38) 15

Section 11: omit “, on the advice of the Government Actuary,”.

Human Rights Act 1993 (1993 No 82)

Section 2(1): insert in its appropriate alphabetical order:

“**actuary** means—

“(a) a person who is a Fellow of the New Zealand Society 20
of Actuaries Incorporated; or

“(b) a person whom the Commission or the Complaints Div-
ision, as the case may be, considers to have an equiva-
lent professional qualification”.

Section 48(2)(b): omit “the Government Actuary” and substitute “an 25
actuary”.

Section 70(6)(b): omit “the Government Actuary” and substitute “an
actuary”.

Income Tax Act 2007 (2007 No 97)

Section EY 6(1): omit “the Government Actuary or any other actu- 30
ary” and substitute “an actuary”.

Part 1—*continued***Income Tax Act 2007 (2007 No 97)**—*continued*

Section EY 11(3): omit “by the Government Actuary”.

Section EY 11(13): omit “Government Actuary’s decision can object” and substitute “FMA’s decision may appeal against the decision”.

Section EZ 29(4)(b): omit “the Government Actuary or any other actuary” and substitute “an actuary”. 5

Section HM 18(1)(c): insert “or the FMA” after “Securities Commission”.

Section YA 1: insert in its appropriate alphabetical order:

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

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Definition of **complying superannuation fund** in section YA 1: omit “by the Government Actuary”.

Industrial and Provident Societies Act 1908 (1908 No 81) 15

Section 16(a) and (c): insert “, the Financial Markets Authority,” after “Registrar” in each place where it appears.

Section 19(1A): repeal and substitute:

“(1A) If any registered society has no auditor, the Registrar or the Financial Markets Authority may, on the application of any member of the society, appoint an auditor of the society. 20

“(1B) The remuneration of an auditor appointed by the Registrar or the Financial Markets Authority may be fixed by the Registrar or the Financial Markets Authority (as the case may be).”

Judicature Act 1908 (1908 No 89) 25

Section 24B(1)(e): omit “Securities Commission” and substitute “Financial Markets Authority”.

KiwiSaver Act 2006 (2006 No 40)

Definition of **Government Actuary** in section 4(1): repeal.

Part 1—*continued*

KiwiSaver Act 2006 (2006 No 40)—*continued*

Section 4(1): insert in its appropriate alphabetical order:

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

Section 30(1): omit “Government Actuary” and substitute “FMA”. 5

Section 30(1)(a): omit “he or she” and substitute “the FMA”.

Section 30(2): omit “Government Actuary” and substitute “FMA”.

Section 31(2): omit “Government Actuary’s” and substitute “FMA’s”.

Heading to section 101I: omit “**Government Actuary’s**” and substitute “**FMA’s**”. 10

Section 101I(5): omit “Government Actuary’s” and substitute “FMA’s”.

Section 101I(7): omit “Government Actuary’s” and substitute “FMA’s”. 15

Section 134(1): omit “Government Actuary” in each place where it appears and substitute in each case “FMA”.

Section 134(1)(a): omit “he or she” and substitute “the FMA”.

Section 134(2): omit “Government Actuary” and substitute “FMA”.

Heading to section 137: omit “**Government Actuary**” and substitute “**FMA**”. 20

Section 137(1): omit “Government Actuary” in each place where it appears and substitute in each case “FMA”.

Section 137(1)(a): omit “he or she” and substitute “the FMA”.

Section 141(2)(a): omit “he or she” and substitute “the FMA”. 25

Section 177: add:

“(5) In determining whether ~~or not to appoint an eligible Kiwisaver provider to appoint a manager as a default KiwiSaver provider~~ under this section, the Minister must seek the advice of the FMA.” 30

Sections 180 and 181: repeal and substitute:

“**180 Appointment must be notified to FMA and Commissioner**
The Minister must, as soon as practicable after an appointment under section 177 has been made,—

Part 1—*continued***KiwiSaver Act 2006 (2006 No 40)**—*continued*

- “(a) notify the FMA and the Commissioner that the appointment has been made; and
- “(b) provide the FMA and the Commissioner with a copy of the instrument of appointment.
- “**181 Availability of instrument of appointment** 5
- “(1) The FMA must—
- “(a) make copies of the instrument of appointment provided to it under **section 180**—
- “(i) available for inspection, during working hours, free of charge at its head office; and 10
- “(ii) available for purchase at a reasonable price at its head office; and
- “(b) publish the copy of that instrument of appointment on an Internet site maintained by or on behalf of the FMA; and 15
- “(c) give notice in the *Gazette*—
- “(i) that the instrument of appointment has been executed and of the date of execution; and
- “(ii) that the instrument of appointment is available for inspection during working hours, free of charge, and the place at which it can be inspected; and 20
- “(iii) that copies of the instrument of appointment can be purchased and the place at which they can be purchased; and 25
- “(iv) that the instrument of appointment is available on the Internet, free of charge, and the ~~website~~ Internet site address.
- “(2) This section also applies to any variation, renewal, or revocation of the instrument of appointment.” 30
- Section 186: repeal and substitute:
- “**186 Right of appeal against certain decisions of FMA**
- “(1) A person affected by a decision of the FMA under any of the following provisions may appeal against the decision to the High Court: 35

Part 1—*continued*

KiwiSaver Act 2006 (2006 No 40)—*continued*

- “(a) section 30 (approval of employer as exempt employer):
- “(b) section 31 (revocation of exempt employer approval):
- “(c) section 134 (registration):
- “(d) section 168 (cancellation of registration and order to
wind up): 5
- “(e) section 169 (powers of FMA if scheme operating in
contravention of this Act).
- “(2) A decision against which an appeal is lodged under this section
continues in force unless the High Court orders otherwise.”
- Section 187: repeal. 10
- Sections 188 and 189: repeal and substitute:
- “188 Sharing of information and documents with
Commissioner for purpose of administering KiwiSaver
schemes**
- “(1) The FMA may provide to the Commissioner any information, 15
or a copy of any document, that the FMA—
 - “(a) holds in relation to the performance or exercise of the
FMA’s functions, powers, or duties under this Act or in
connection with 1 or more KiwiSaver schemes under
this Act or any other enactment; and 20
 - “(b) considers may assist the Commissioner in the per-
formance or exercise of the Commissioner’s functions,
powers, or duties under this Act or in connection with
1 or more KiwiSaver schemes under this Act or any
other enactment. 25
- “(2) The FMA may use any information, or a copy of any docu-
ment, provided to it by the Commissioner under any enactment
in the FMA’s performance or exercise of its functions, powers,
or duties under this Act or in connection with 1 or more Kiwi-
Saver schemes under this Act or any other enactment. 30
- “(3) This section applies despite anything to the contrary in any
contract, deed, or document.

Part 1—*continued***KiwiSaver Act 2006 (2006 No 40)**—*continued***“189 Conditions that may be imposed on providing information, documents, or evidence to Commissioner**

- “(1) The FMA may impose any conditions in relation to providing information or documents to the Commissioner (whether in compliance with a request or otherwise). 5
- “(2) The FMA must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- “(3) Those conditions may include, without limitation, conditions relating to— 10
- “*(a)* maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
- “*(b)* the storing of, use of, or access to anything provided:
- “*(c)* the copying, returning, or disposing of copies of documents provided.” 15

Section 190: repeal.

Section 193: repeal.

Section 210(1)(c) and (d): repeal and substitute:

- “*(c)* **section 43D, 43F, 43G, 43I, or 43K** of the Securities Act 1978 (which relate to various restrictions on the allotment of securities).” 20

Section 210(2)(a): omit “38F(9)(b), 38F(13), 44(6)(b), or 44(7)” and substitute “**43F(2)(b), 43G(3)(b) or (4)(b)**”.

Section 228(t): omit “or the Securities Regulations 1983” and substitute “or any regulations made under that Act”. 25

Life Insurance Act 1908 (1908 No 105)

Section 22: repeal and substitute:

“22 Statements and abstracts to be examined by chief executive 30

- “(1) The chief executive of the Ministry of Economic Development must—
- “*(a)* consider each statement (and accompanying auditor’s report) or abstract received under section 21; and

Part 1—*continued*

Life Insurance Act 1908 (1908 No 105)—*continued*

“(b) report on the statement, report, or abstract, as he or she thinks fit, to the Minister.

“(2) The chief executive of the Ministry of Economic Development must consider any further information relating to the statement, report, or abstract that he or she receives under section 21(1) and may, if he or she thinks fit, report on that information to the Minister, either in a report under **subsection (1)** or in a separate report. 5

“(3) The Minister may publish, in the *Gazette*, any report that he or she receives under this section.” 10

Section 40A(3)(b): omit “Government Actuary” and substitute “chief executive of the Ministry of Economic Development to the Minister”.

Section 40H(2): omit “the Government Actuary,”.

Section 40I(3): omit “Government Actuary” and substitute “chief executive of the Ministry of Economic Development”. 15

Limited Partnerships Act 2008 (2008 No 1)

Section 89(2): add:

“(e) in the case of a limited partnership that is a financial markets participant (within the meaning of **section 4** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**, the Financial Markets Authority.” 20

National Provident Fund Restructuring Act 1990 (1990 No 126)

Definition of **Government Actuary** in section 2: repeal.

Section 2: insert in its appropriate alphabetical order: 25

“**actuary** means—

“(a) a person who is a Fellow of the New Zealand Society of Actuaries Incorporated; or

“(b) a person whom the Board considers to have an equivalent professional qualification” 30

Section 44(4): omit “and (in the case of the Minister) taking advice from the Government Actuary,”.

Part 1—*continued***National Provident Fund Restructuring Amendment Act 1991
(1991 No 114)**

Section 15(2): omit “the Government Actuary and”.

Section 15(2): omit “have each” and substitute “has”.

Official Information Act 1982 (1982 No 156)

5

Schedule 1: insert in its appropriate alphabetical order:
“Financial Markets Authority”.

Item relating to Securities Commission in Schedule 1: omit.

Ombudsmen Act 1975 (1975 No 9)

Part 2 of Schedule 1: insert in its appropriate alphabetical order:

10

“Financial Markets Authority”.

Item relating to Securities Commission in Part 2 of Schedule 1: omit.

Privacy Act 1993 (1993 No 28)

Part 1 of Schedule 2: insert in its appropriate alphabetical order:

Securities Act 1978

Section 43N**Remuneration Authority Act 1977 (1977 No 110)**

15

Section 17(3): repeal.

Schedule 4: insert after the item relating to the Employment Relations Authority:

“The members and associate members of the Financial Markets Authority”.

20

Item relating to Securities Commission in Schedule 4: omit.

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Section 2(1): insert in its appropriate alphabetical order:

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

25

Section 81A(1)(a)(i): omit “Securities Commission” and substitute “FMA”.

Part 1—*continued*

Reserve Bank of New Zealand Act 1989 (1989 No 157)—*continued*

Section 156L: repeal and substitute:

“156L Limit on FMA’s powers in relation to Bank

For the purposes of this Part, the FMA may exercise its powers under **subpart 1 of Part 3** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** in relation to the Bank only if, and to the extent that, the Bank is—

- “(a) a participant in a settlement system; or
- “(b) an operator of a settlement system.”

Definition of **Commission** in section 156M(1): repeal.

Section 157E(1)(a): omit “Securities Commission” and substitute “FMA”. 10

Section 157ZO(2)(e): omit “Securities Commission” and substitute “FMA”.

Securities Markets Act 1988 (1988 No 234)

Definition of **Commission** in section 2(1): repeal. 15

Section 2(1): insert in its appropriate alphabetical order:

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

Section 36ZO(4): repeal and substitute: 20

“(4) The direction is subject to appeal only in accordance with **section 47A**.”

Section 42I(4): repeal and substitute:

“(4) An order made under this subpart is subject to appeal only in accordance with **section 47A**.” 25

Section 44: repeal.

Securities Transfer Act 1991 (1991 No 119)

Section 7(6): repeal and substitute:

“(6) The Financial Markets Authority (FMA) must not make a recommendation under subsection (1) unless— 30

“(a) the FMA has done everything reasonably possible to consult with the persons and organisations or their rep-

Part 1—*continued***Securities Transfer Act 1991 (1991 No 119)**—*continued*

representatives that the FMA considers will be substantially affected by any Order in Council made in accordance with the recommendation, and those persons and organisations or their representatives have had the opportunity to comment to the FMA; and

“(b) the FMA has considered those comments.”

5

Summary Proceedings Act 1957 (1957 No 87)

Item relating to section 385(9) of the Companies Act 1993 in Part 2 of Schedule 1: insert “or Financial Markets Authority” after “Registrar”.

10

Superannuation Schemes Act 1989 (1989 No 10)

Definition of **Government Actuary** in section 2(1): repeal.

Section 2(1): insert in its appropriate alphabetical order:

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

15

Section 6(1): omit “Government Actuary shall” and substitute “FMA must”.

Section 17(2): omit “and 54B” and substitute “to **54C**”.

Heading above section 19 and section 19: repeal and substitute:

20

“Powers of FMA as to cancellation of registration, etc

“19 Cancellation of registration

“(1) The FMA may cancel the registration of a superannuation scheme—

25

“(a) if a scheme that is not constituted under an Act of Parliament ceases to have a trustee who is a New Zealand resident; or

“(b) if the FMA is satisfied on reasonable grounds that the scheme is no longer a superannuation scheme within the meaning of section 2 and the FMA has given not less than 28 days’ notice in writing to the trustees.

30

Part 1—*continued*

Superannuation Schemes Act 1989 (1989 No 10)—*continued*

- “(2) The FMA must cancel the registration of a superannuation scheme on receipt of an application by the trustees if the FMA is satisfied that the members and other beneficiaries of the scheme have been advised of the consequences of the scheme ceasing to be registered. 5
- “(3) Where the registration of a scheme is cancelled, each provision set out in sections 8 to 10 continues to be implied in the trust deed of the scheme unless—
- “(a) evidence has been produced to the FMA to its satisfaction that all of the members and other beneficiaries of the scheme have consented to the provision no longer applying; or 10
- “(b) in any other case, the FMA has notified the trustees in writing that it is satisfied that the provision is no longer necessary.” 15
- Section 20(2): omit “Government Actuary shall” and substitute “FMA must”.
- Section 22(1): omit “Government Actuary shall” and substitute “FMA must”.
- Section 23: repeal and substitute: 20
- “23 Right of appeal against certain decisions of FMA**
- “(1) A person affected by a decision of the FMA under any of the following provisions may appeal against the decision to the High Court:
- “(a) **section 19** (cancellation of registration): 25
- “(b) section 20 (powers of FMA if scheme is operating in contravention of this Act):
- “(c) section 34 (approval of scheme as complying superannuation fund):
- “(d) section 36 (revocation of approval of scheme as complying superannuation fund): 30
- “(e) section EY 11 of the Income Tax Act 2007 (certain superannuation schemes exempted from being treated as schemes providing life insurance).

Part 1—*continued***Superannuation Schemes Act 1989 (1989 No 10)**—*continued*

“(2) A decision against which an appeal is lodged under this section continues in force unless the High Court orders otherwise.”

Section 24: repeal.

Section 26: repeal.

Section 27: repeal.

5

Takeovers Act 1993 (1993 No 107)

Definition of **Securities Commission** in section 2(1): repeal.

Section 2(1): insert in its appropriate alphabetical order:

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

10

Sections 15A and 15B: repeal and substitute:

“15A Sharing of information and documents with FMA

“(1) The Panel may provide to the FMA any information, or a copy of any document, that the Panel—

15

“(a) holds in relation to the exercise of the Panel’s powers or the performance of its functions and duties; and

“(b) considers may assist the FMA in the exercise of the FMA’s powers or the performance of its functions and duties under any enactment.

20

“(2) The Panel may use any information, or a copy of any document, provided to it by the FMA under **section 30** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** in the Panel’s exercise of its powers or the performance of its functions and duties.

25

“(3) This section applies despite anything to the contrary in any contract, deed, or document.

“(4) Nothing in this section limits the Privacy Act 1993.

“15B Sharing of information and documents with Commerce Commission

30

“(1) The Panel may provide to the Commerce Commission any information, or a copy of any document, that the Panel—

Part 1—*continued*

Takeovers Act 1993 (1993 No 107)—*continued*

“(a) holds in relation to the exercise of the Panel’s powers,
or the performance of its functions and duties; and

“(b) considers may assist the Commerce Commission in the
exercise of the Commerce Commission’s powers, or the
performance of its functions and duties, in respect of the 5
Fair Trading Act 1986.

“(2) The Panel may use any information, or a copy of any docu-
ment, provided to it by the Commerce Commission under sec-
tion 48A of the Fair Trading Act 1986 in the Panel’s exercise
of its powers, or the performance of its functions and duties. 10

“(3) This section applies despite anything to the contrary in any
contract, deed, or document.

“(4) Nothing in this section limits the Privacy Act 1993.”

Section 31C(1)(a): repeal and substitute:

“(a) this Act, **Parts 1 to 4 of the Financial Markets
(Regulators and KiwiSaver) Act 2010**, or any of the 15
Acts listed in **Schedule 1** of that Act.”.

Section 31C(1)(b): omit “other Act” and substitute “enactments
other than those referred to in **paragraph (a)**”.

Section 31C(4): omit “section 69N of the Securities Act 1978” and 20
substitute “**section 42** of the **Financial Markets (Regulators and
KiwiSaver) Act 2010**”.

Section 31E(b): repeal and substitute:

“(b) for the purposes of this Act, **Parts 1 to 4 of the Fi-
nancial Markets (Regulators and KiwiSaver) Act 25
2010**, or any of the Acts listed in **Schedule 1** of that
Act.”.

Tax Administration Act 1994 (1994 No 166)

Section 3(1): insert in its appropriate alphabetical order:

“**FMA** means the Financial Markets Authority established 30
under **Part 2** of the **Financial Markets (Regulators and
KiwiSaver) Act 2010**”.

Part 1—*continued***Tax Administration Act 1994 (1994 No 166)**—*continued*

Section 81(4)(r): repeal and substitute:

- “(r) ~~communicating to the FMA any information that the Commissioner considers is not undesirable to disclose and is reasonably necessary to enable the FMA to perform any duty or function, or exercise any power, under the KiwiSaver Act 2006 or in connection with 1 or more KiwiSaver schemes under that Act or any other enactment:~~ 5
- “(r) communicating to the FMA the following information, provided that the Commissioner considers it not undesirable to disclose the information and the information is reasonably necessary to enable the FMA to perform its duties or functions or exercise its powers: 10
- “(i) individual or aggregate information relating to a member of a KiwiSaver scheme or a complying superannuation fund (as those terms are defined in section 4(1) of the KiwiSaver Act 2006): 15
- “(ii) individual or aggregate information relating to a KiwiSaver scheme or a complying superannuation fund: 20
- “(iii) information arising from the performance of the Commissioner’s duties or functions, or the exercise of the Commissioner’s powers, in relation to the KiwiSaver Act 2006 or a provision of an Inland Revenue Act that is relevant to the Kiwi-Saver Act 2006:”. 25

Sections 85GB and 85GC: repeal.

Unit Trusts Act 1960 (1960 No 99)

Section 2(1): insert in its appropriate alphabetical order:

- “**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

Section 4(2): omit “Minister” and substitute “FMA”.

Section 4(5): omit “Registrar of Companies” and substitute “FMA”.

Part 1—*continued*

Unit Trusts Act 1960 (1960 No 99)—*continued*

Section 19(1): omit “Minister” and substitute “FMA”.

Section 21(1)(a): repeal.

Section 21(2): omit “report of every such inspector who is appointed by the Minister shall be made to the Minister; and the”.

Section 25(3): omit “Minister” and substitute “FMA”. 5

Part 2

Consequential amendments to regulations

Financial Reporting (Fees and Forms) Regulations 2007 (SR 2007/109)

Regulation 5: revoke and substitute: 10

“5 Charges payable to Financial Markets Authority for section 4B or 35A applications

The Financial Markets Authority may require payment to it of a charge or charges for the costs incurred by it in—

“(a) obtaining expert advice or expert assistance in connection with a section 4B or 35A application; and 15

“(b) the printing and publication in the Statutory Regulations series of a notice under section 4B of the Act or a class notice under **section 35A** of the Act; and

“(c) the publication in the *Gazette* of a notice in respect of a notice under section 4B or 35A of the Act.” 20

Futures Industry (Client Funds) Regulations 1990 (SR 1990/227)

Definition of **dealer** in regulation 2(1): revoke and substitute:

“**dealer**—

“(a) means a person who is authorised under section 38(1)(a) of the Act, or approved under section 38(1)(b) of the Act, to carry on the business of dealing in futures contracts; but 25

“(b) does not include—

“(i) a person who deals in futures contracts solely on the person’s own behalf; or 30

“(ii) a recognised clearing house”.

Part 2—*continued***Futures Industry (Client Funds) Regulations 1990 (SR
1990/227)—*continued***

Regulation 21(6)(c): omit “Chairman of the Securities Commission” and substitute “chairperson of the board of the FMA”.

Form 5 of the Schedule: omit “Securities Commission” and substitute “Financial Markets Authority”.

Government Superannuation Fund (Ceasing Contributions) Regulations 1995 (SR 1995/172) 5

Regulation 36(4)(a): omit “Government Actuary” and substitute “the Authority”.

Regulation 38(4)(a): omit “Government Actuary” and substitute “the Authority”.

 10
Government Superannuation Fund Regulations 1995 (SR 1995/173)

Heading to regulation 11: omit “**required by Government Actuary**”.

Regulation 11: omit “Government Actuary” and substitute “Authority”.

 15
KiwiSaver Regulations 2006 (SR 2006/358)

Regulation 10(1): omit “Government Actuary’s” and substitute “FMA’s”.

Regulation 10(2): omit “Government Actuary’s” and substitute “FMA’s”.

 20
Securities Act (Contributory Mortgage) Regulations 1988 (SR 1988/143)

Definition of **Commission** in regulation 2(1): revoke.

Regulation 15: revoke and substitute:

 25
“15 Exercise of FMA’s powers under Securities Act 1978

“(1) If the FMA makes an order under section 44B(2)(a) or (b) of the Act, the Registrar must, upon receiving a copy of that order, place the order on the register of documents maintained under regulation 8.

 30

Part 2—*continued*

Securities Act (Contributory Mortgage) Regulations 1988 (SR 1988/143)—*continued*

- “(2) If the FMA makes an order under section 44B(2)(c) of the Act that the broker cease to act as a broker in respect of all contributory mortgages previously allotted, the Registrar must, upon receiving a copy of that order, place the order on the register of documents maintained under regulation 8, and the registration of the broker named in the order is cancelled for the period specified in the order. 5
- “(3) If a broker fails to comply with the requirements of regulation 12 or 14, the Registrar may notify the FMA of the failure.”

Securities (Fees) Regulations 1998 (SR 1998/461) 10

Heading to regulation 3: omit “**Commission**” and substitute “**Financial Markets Authority**”.

Regulation 3(1): omit “**Commission**” in each place where it appears and substitute in each case “**FMA**”.

Regulation 3(2)(a): omit “section 5(5)” and substitute “**section 70B**”. 15

Regulation 4: revoke and substitute:

“4 **Costs payable to Financial Markets Authority**

The FMA is authorised to require payment to it of the costs incurred by the FMA in— 20

- “(a) the printing and publication in the Statutory Regulations series of ~~a class~~ an exemption notice under **section 70B** of the Securities Act 1978:
- “(b) the publication in the *Gazette* of a notice of an exemption notice under **section 70B** of the Securities Act 1978: 25
- “(c) the publication in the *Gazette* of a notice approving a person to act as a trustee or statutory supervisor under section 48(3) of the Securities Act 1978:
- “(d) the publication in the *Gazette* of a notice declaring a body corporate to be an authorised futures exchange under section 37(8) of the Securities Markets Act 1988: 30
- “(e) the publication in the *Gazette* of a notice authorising a person or a class of persons to carry on the business of

Part 2—*continued***Securities (Fees) Regulations 1998 (SR 1998/461)**—*continued*

dealing in futures contracts under section 38(1) of the Securities Markets Act 1988:

- “(f) the obtaining of expert advice or expert assistance in respect of an application referred to in regulation 3(2).”

Securities Markets (Fees) Regulations 2003 (SR 2003/383) 5

Regulation 4: revoke and substitute:

“4 Fees and costs payable to FMA for advice or decision on approval or new market rules and changes

- “(1) A person (A) must pay the fees set out in regulation 6 and the costs set out in regulation 7 on each occasion that advice is sought from the FMA in respect of— 10

“(a) an application by A for an exemption under section 36E of the Act:

“(b) an application by A for an exemption under section 37C(1)(c) of the Act. 15

- “(2) A person who submits a proposed market rule or a proposed change to an existing market rule to the FMA under **section 36J** must pay the fees set out in regulation 6 and the costs set out in regulation 7.”

Regulation 8: revoke and substitute: 20

“8 Cost of printing and publication

For the purposes of regulation 5, the FMA may require a person who is granted an exemption under **section 48** of the Act to pay the costs incurred by the FMA in—

“(a) the printing and publication of the relevant exemption notice in the Statutory Regulations series; and 25

“(b) the publication in the *Gazette* of a notice of the exemption.”

Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (SR 2008/153) 30

Definition of **Commission** in regulation 4(1): revoke.

Part 2—*continued*

Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (SR 2008/153)—*continued*

Definition of **Registrar** in regulation 4(1): revoke and substitute:

“**Registrar** has the same meaning as in section 2(1) of the Act”.

Regulation 4(1): insert in its appropriate alphabetical order:

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

Regulation 14(2): omit “section 5(5) of the Act” and substitute “section **70B** of the Act”.

Securities Regulations 2009 (SR 2009/230) 10

Regulation 31: insert after paragraph (a):

“(ab) in respect of a document, information, or other matter required to be made publicly available under **section 54C** of the Act that is an advertisement only by reason of **section 2A(2)(c)** of the Act.”.

15

Takeovers (Fees) Regulations 2001 (SR 2001/160)

Regulation 4(1)(b)(ii): omit “or of the Securities Commission”.

Regulation 5(1)(b)(ii): omit “or of the Securities Commission”.

Schedule 4	ss 77, 78
Amendments to replace references to Securities Commission or Government Actuary	
Part 1	5
Replacing “Securities Commission” with “Financial Markets Authority” in Acts	
Financial Service Providers (Registration and Dispute Resolution) Act 2008 (2008 No 97)	
Section 67(d)	10
Section 76(d)	
Schedule 2	
Securities Transfer Act 1991 (1991 No 119)	
Section 7(1)	
Part 2	15
Replacing “Securities Commission” with “Financial Markets Authority” in regulations	
Financial Reporting (Fees and Forms) Regulations 2007 (SR 2007/109)	
Definition of section 4B or 35A application in regulation 3	20
Heading above regulation 4	
Heading to regulation 4 and regulation 4	
Regulation 6(b)	
Securities Act (Contributory Mortgage) Regulations 1988 (SR 1988/143)	
Schedule 2A	25
Securities Markets (Market Manipulation) Regulations 2007 (SR 2007/373)	
Regulation 10(2)	
Heading to regulation 11 and regulation 11(1)	30

Part 2—*continued*

**Securities Markets (Substantial Security Holders) Regulations
2007 (SR 2007/372)**

Forms 1 and 2 in of Schedule 1

**Securities (Mutual Recognition of Securities Offerings—Aus-
tralia) Regulations 2008 (SR 2008/153)**

5

Regulation 13(1)

Part 3

Replacing “Commission” with “FMA” in
Acts

Financial Advisers Act 2008 (2008 No 91)

10

Definition of **authorised** in section 5

Definition of **overseas regulator** in section 5

Definition of **standard conditions** in section 5

Section 23(2)(k)

Heading to section 45A and section 45A(1), (2)(d), (3)

15

Heading to section 49 and section 49(1) to (6)

Section 50(2) and (3)

Section 52

Section 54

Heading to section 55 and section 55(1) and (3) to (5)

20

Section 55A(1) to (8)

Heading to section 56 and section 56(1) and (2)

Section 57(1)(b) and (d) and (2)

Section 58(4)

Section 59(1) to (5)

25

Section 60

Heading to section 61 and section 61(1) to (6)

Section 62(2)

Section 64

Section 66(1) and (2)

30

Heading to section 67 and section 67(1) and (3) to (6)

Part 3—*continued***Financial Advisers Act 2008 (2008 No 91)**—*continued*

Section 67A(1) to (4)	
Section 68(1) and (2)	
Section 69(1) and (3)	
Heading to section 70 and section 70(1) and (2)	
Section 71(1) and (5)	5
Section 72(b)	
Section 73(1)	
Section 74(3)	
Section 75(1) to (7)	
Section 75A(1) and (2)	10
Heading to section 75B and section 75B(1), (3), (4), and (6)	
Section 75D(1) to (3) and (5) to (7)	
Section 75E	
Heading to section 75F and section 75F(1) to (6)	
Section 75G(1) and (3)	15
Section 76(1)(f) to (h)	
Heading to section 77 and section 77(1)	
Section 77F(1)(f)(iii)	
Heading to section 77V and section 77V(1) to (6)	
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2	Qualifications of members	
(1)	A natural person who is not disqualified by this clause may be a member of the Rulings Panel.	15
(2)	The following persons are disqualified from being members:	
(a)	a person who is an undischarged bankrupt.	
(b)	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, the Companies Act 1993, the Securities Act 1978, or the Takeovers Act 1993.	20
(c)	a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988.	
(d)	a person in respect of whom a personal order has been made under that Act that reflects adversely on the person's—	25
(i)	competence to manage his or her own affairs in relation to his or her property; or	
(ii)	capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare.	30

Schedule—*continued*

- (e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person: 5
 - (f) a member of Parliament.
- Compare: 2004 No 115 s 30

3 Requirements before appointment

Before a person is appointed as a member of the Rulings Panel, the person must— 10

- (a) consent in writing to being a member; and
- (b) certify that he or she is not disqualified from being a member; and
- (c) disclose to the Minister the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the Rulings Panel. 15

Compare: 2004 No 115 s 31

4 Term of office of members 20

- (1) A member of the Rulings Panel holds office for 5 years or any shorter period stated in the notice of appointment.
- (2) A member may be reappointed.
- (3) A member continues in office despite the expiry of his or her term of office until— 25
 - (a) the member is reappointed; or
 - (b) the member's successor is appointed; or
 - (c) the Governor-General, on the recommendation of the Minister given after the Minister has consulted with the Minister of Justice and the FMA, informs the member by written notice (with a copy to the Rulings Panel) that the member is not to be reappointed and no successor is to be appointed at that time. 30

- (4) This clause is subject to **clause 12**: 35

Compare: 2004 No 115 s 32

Schedule—*continued*

- 5 Validity of members' acts**
- The acts of a person as a member, chairperson, or deputy chairperson of the Rulings Panel are valid even though—
- (a) a defect existed in the appointment of the person; or
 - (b) the person is or was disqualified from being a member; 5
or
 - (c) the occasion for the person acting, or for his or her appointment, had not arisen or had ended.
- Compare: 2004 No 115 s 34
- 6 Validity of appointments** 10
- (1) The appointment of a person as a member, chairperson, or deputy chairperson of the Rulings Panel is not invalid only because a defect existed in the appointment of the person.
 - (2) This clause does not apply to a defect in the qualifications for appointment of a member, chairperson, or deputy chairperson. 15
- Compare: 2004 No 115 s 35
- 7 Removal of members of Rulings Panel**
- (1) The Governor-General may, at any time for just cause, on the advice of the Minister given after consultation with the Minister of Justice and the FMA, remove a member of the Rulings Panel from office. 20
 - (2) The removal must be made by written notice to the member (with a copy to the Rulings Panel).
 - (3) The notice must—
 - (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and
 - (b) state the reasons for the removal.
 - (4) The Minister must notify the removal in the *Gazette* as soon as practicable after the notice is given. 30
- Compare: 2004 No 115 s 39

Schedule—*continued*

- 8 Just cause**
 In **clause 7**, **just cause** includes misconduct, inability to perform the functions of office, and neglect of duty.
 Compare: 2004 No 115 s 40
- 9 Process for removal** 5
 The Minister may remove, or advise the removal of, a member, as the case may be, with as little formality and technicality, and as much expedition, as is permitted by—
 (a) the principles of natural justice; and
 (b) a proper consideration of the matter; and 10
 (c) the requirements of this Act.
 Compare: 2004 No 115 s 41
- 10 No compensation for loss of office** 15
 A member of the Rulings Panel is not entitled to any compensation or other payment or benefit relating to his or her ceasing, for any reason, to hold office as a member.
 Compare: 2004 No 115 s 43
- 11 Resignation of members**
 (1) A member of the Rulings Panel may resign from office by written notice to the Minister (with a copy to the Rulings Panel and the FMA) signed by the member. 20
 (2) The resignation is effective on receipt by the Minister of the notice or at any later time specified in the notice.
 Compare: 2004 No 115 s 44
- 12 Members ceasing to hold office** 25
 A member of the Rulings Panel ceases to hold office if he or she—
 (a) resigns in accordance with **clause 11**; or
 (b) is removed from office in accordance with **clause 7**; or
 (c) becomes disqualified from being a member under any 30
 of **paragraphs (a) to (f) of clause 2(2)**.
 Compare: 2004 No 115 s 45

Schedule—*continued***13 Vacancies in membership of Rulings Panel**

The powers and functions of the Rulings Panel are not affected by any vacancy in the membership of the Rulings Panel.

Compare: 2004 No 115 s 77

Conflict of interest disclosure rules 5

14 When interests must be disclosed

(1) In this clause, **matter** means—

(a) the Rulings Panel's performance of its functions or exercise of its powers; or

(b) an arrangement, agreement, or contract made or entered into; or proposed to be entered into; by the Rulings Panel. 10

(2) A person is **interested** in a matter if he or she—

(a) may derive a financial benefit from the matter; or

(b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or 15

(c) may have a financial interest in a person to whom the matter relates; or

(d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or 20

(e) is otherwise directly or indirectly interested in the matter.

(3) However, a person is not interested in a matter— 25

(a) because he or she receives an indemnity, insurance cover, remuneration, or other benefits authorised under this Act or another Act; or

(b) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities under this Act or another Act. 30

Compare: 2004 No 115 s 62

Schedule—*continued*

- 15 Obligation to disclose interest**
- (1) A member who is interested in a matter relating to the Rulings Panel must disclose details of the interest in accordance with **clause 16** as soon as practicable after the member becomes aware that he or she is interested. 5
- (2) A general notice of an interest in a matter relating to the Rulings Panel; or in a matter that may in future relate to the Rulings Panel; that is disclosed in accordance with **clause 16** is a standing disclosure of that interest for the purposes of this clause. 10
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.
Compare: 2004 No 115 s 63
- 16 Whom disclosure of interests must be made to** 15
- The member must disclose details of the interest in an interests register kept by the Rulings Panel and to—
- (a) the chairperson or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson; or 20
- (b) the Minister, if there is neither a chairperson nor a deputy chairperson, or if both the chairperson and the deputy chairperson are unavailable or interested.
Compare: 2004 No 115 s 64
- 17 What must be disclosed** 25
- The details that must be disclosed under **clause 16** are—
- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
- (b) the nature and extent of the interest (if the monetary value cannot be quantified). 30
- Compare: 2004 No 115 s 65
- 18 Consequences of being interested in matter**
- A member who is interested in a matter relating to the Rulings Panel—

Schedule—*continued*

- (a) must not vote or take part in any discussion or decision of the Rulings Panel relating to the matter; or otherwise participate in any activity of the Rulings Panel that relates to the matter; and
- (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; and 5
- (c) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the Rulings Panel during which a discussion or decision relating to the matter occurs or is made. 10

Compare: 2004 No 115 s 66

19 Consequences of failing to disclose interest

- (1) The Rulings Panel must notify the Minister of a failure to comply with **clause 15 or 18**; and of the acts affected; as soon as practicable after becoming aware of the failure. 15
- (2) A failure to comply with **clause 15 or 18** does not affect the validity of an act or matter.
- (3) However, **subclause (2)** does not limit the right of any person to apply, in accordance with law, for judicial review. 20

Compare: 2004 No 115 s 67

20 Permission to act despite being interested in matter

- (1) The chairperson of the Rulings Panel may, by prior written notice to the Rulings Panel, permit 1 or more members; or members with a specified class of interest, to do anything otherwise prohibited by **clause 18**, if the chairperson is satisfied that it is in the public interest to do so. 25
- (2) The permission may state conditions that the member must comply with.
- (3) The deputy chairperson may give the permission if there is no chairperson; or if the chairperson is unavailable or interested. 30
- (4) The Minister may give the permission if there is neither a chairperson nor a deputy chairperson; or if both the chairperson and the deputy chairperson are unavailable or interested.

Schedule—*continued*

- (5) The permission may be amended or revoked in the same way as it may be given.
- (6) The Rulings Panel must disclose an interest to which a permission relates in its annual report, together with a statement of who gave the permission and any conditions or amendments to, or revocation of, the permission. 5
Compare: 2004 No 115 s 68

Miscellaneous provisions

21 Members are officials

- (1) A member of the Rulings Panel is an official for the purposes of sections 105 and 105A of the Crimes Act 1961. 10
- (2) This clause does not limit the meaning of official in section 99 of the Crimes Act 1961 (corruption and bribery of official and corrupt use of official information).

22 Protection from liability for Rulings Panel and members 15

- (1) The Rulings Panel is not liable for anything it may do or fail to do in the course of the performance or exercise, or intended performance or exercise, of its functions, powers, or duties, unless it is shown that it acted in bad faith.
- (2) No member of the Rulings Panel is liable for anything that person may do or say or fail to do or say in the course of the operations of the Rulings Panel, unless it is shown that the person acted in bad faith. 20

Schedule 6**s 208****Amendments consequential on
amendments to KiwiSaver Act 2006****Part 1****Acts amended**

5

Financial Reporting Act 1993 (1993 No 106)

Section 4(1)(a)(i): insert “or an interest in a KiwiSaver scheme other than a restricted scheme” after “unit trust”.

Section 4(1): insert after paragraph (a):

“(ab) every manager of a KiwiSaver scheme other than a restricted scheme (within the meaning of the KiwiSaver Act 2006) in which securities have been allotted, whether before or after the commencement of this paragraph, pursuant to an offer of securities to the public within the meaning of the Securities Act 1978:”.

15

Section 9A(2): insert “, including a restricted KiwiSaver scheme (within the meaning of the KiwiSaver Act 2006) but not any other KiwiSaver scheme,” after “Superannuation Schemes Act 1989”.

Financial Transactions Reporting Act 1996 (1996 No 9)

Section 3(1)(h): add “, including a KiwiSaver scheme within the meaning of the KiwiSaver Act 2006”.

20

Section 3(1): insert after paragraph (h):

“(ha) a manager of a KiwiSaver scheme other than a restricted scheme within the meaning of the KiwiSaver Act 2006:”.

25

Income Tax Act 2007 (2007 No 97)

Heading above section DV 4(2): repeal.

Section DV 4(2): repeal.

Securities Act 1978 (1978 No 103)

Paragraph (f) of the definition of **issuer** in section 2(1): insert “(including a restricted KiwiSaver scheme but not any other KiwiSaver scheme)” after “superannuation scheme”.

30

Part 1—*continued*

Securities Act 1978 (1978 No 103)—*continued*

Definition of **issuer** in section 2(1): add:

- “(g) in relation to an interest in a KiwiSaver scheme other than a restricted KiwiSaver scheme, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to such an interest, the manager of the scheme”.

Definition of **manager** in section 2(1): add:

- “(c) in relation to an interest in a KiwiSaver scheme (~~but not other than a restricted KiwiSaver scheme~~), has the same meaning as in section 4(1) of the KiwiSaver Act 2006”.

Section 2(1): insert in their appropriate alphabetical order:

“**KiwiSaver scheme** has the same meaning as in section 4(1) of the KiwiSaver Act 2006

“**KiwiSaver trustee** means a person who is designated or appointed as trustee of a KiwiSaver scheme other than a restricted scheme, or the successor of that person

“**restricted KiwiSaver scheme** ~~has~~ and restricted scheme have the same meaning as ~~restricted scheme~~ in section 4(1) of the KiwiSaver Act 2006”.

Definition of **manager** in section 5C: ~~omit~~ repeal and substitute: 20

“**manager**,—

- “(a) in relation to a KiwiSaver scheme (~~but not a restricted KiwiSaver scheme~~) other than a restricted scheme, has the same meaning as in section 4(1) of the KiwiSaver Act 2006; and

- “(b) in relation to any other scheme, means an administration manager or an investment manager (as those terms are defined in section 2(1) of the Superannuation Schemes Act 1989)”.

Section 37AF(1)(d): insert after subparagraph (ii): 30

“(ia) in the case of an interest in a KiwiSaver scheme other than a restricted scheme, the KiwiSaver trustee; and”.

Part 1—*continued***Securities Act 1978 (1978 No 103)**—*continued*

Section 37AK(3): insert after paragraph (f):

“(fa) in the case of an interest in a KiwiSaver scheme other than a restricted scheme, the KiwiSaver trustee:”.

Section 37AK(5): insert after paragraph (c):

“(ca) in the case of an interest in a KiwiSaver scheme other than a restricted scheme, the KiwiSaver trustee:”. 5

Section 37F(1): insert after paragraph (e):

“(ea) in the case of an interest in a KiwiSaver scheme other than a restricted scheme, the KiwiSaver trustee:”.

Insert after section 50A: 10

“50B Duty of auditor to report to KiwiSaver trustee

“(1) This section applies to the auditor of an issuer of interests in a KiwiSaver scheme other than a restricted scheme.

“(2) If the auditor provides the issuer with any report, financial statement, certificate, or other document required by an Act or a trust deed relating to the scheme, the auditor must, as soon as practicable, send a copy to the KiwiSaver trustee. 15

“(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 KiwiSaver trustee, the auditor must, within 7 working days of becoming aware of the matter, send— 20

“(a) a written report on the matter to the issuer of interests in the scheme; and

“(b) a copy of the report to the KiwiSaver trustee. 25

“(4) The auditor must, from time to time, at the request of the KiwiSaver trustee, provide the KiwiSaver trustee with any information relating to the issuer—

“(a) that the KiwiSaver trustee requests; and

“(b) that is within the auditor’s knowledge; and 30

“(c) that is, in the auditor’s opinion, relevant to the exercise or performance of the powers or duties of the KiwiSaver trustee.

Part 1—*continued*

Securities Act 1978 (1978 No 103)—*continued*

“(5) This section does not limit the duties or liability of a KiwiSaver trustee or an issuer of interests in a KiwiSaver scheme other than a restricted scheme.”

Section 51(8): insert after paragraph (c):

“(ca) in the case of interests in a KiwiSaver scheme other than a restricted scheme, the KiwiSaver trustee:” 5

Section 53D: insert “KiwiSaver trustee,” after “statutory supervisor,”.

Section 56(3)(a): insert “KiwiSaver trustee or” after “statutory supervisor or”. 10

Section 56(3)(b): insert “KiwiSaver trustee or” after “statutory supervisor or”.

Section 57(2)(b): insert “KiwiSaver trustee or” after “statutory supervisor or”.

Superannuation Schemes Act 1989 (1989 No 10) 15

Section 14(4): repeal.

Part 2

Regulations amended

KiwiSaver Regulations 2006 (SR 2006/358)

Definition of **administration manager** in regulation 3: revoke. 20

Regulation 9(2): insert “, the manager,” after “trustees” in each place where it appears.

Schedule 2: omit “section 9BAA of the Superannuation Schemes Act 1989 (as applied by section 120 of the Act)” and substitute “**section 119G** of the Act”. 25

Schedule 2: omit “regulation 7” and substitute “**section 123** of the Act”.

Schedule 2: omit “in accordance with section 10 of the Superannuation Schemes Act 1989 (as applied by sections 120 and 130 of the Act)” and substitute “for the purposes of **section 129B** or 130 of the Act”. 30

Schedule 7**s 227****Amendments to replace references to
Commissioner for Financial Advisers****Part 1**

Replacing “Commissioner” with “FMA”

	5
Section 82(a) and (c)	
Section 83(1), (3), (4), and (5)	
Section 88(1) and (2)	
Heading to section 89 and section 89(1) and (2)	
Section 90(1) and (2)	10
Section 91	
Section 92(1) and (4)	
Section 94(1)	
Section 95(1)(b)	
Section 96(2)	15

Part 2

Replacing “Commissioner’s” with “FMA’s”

Section 83(4)(a) and (b)	
Heading to section 88	
Section 89(1)(b)	20
Heading to section 90	
Section 90(2)(a)	
Heading to section 91	

Legislative history

14 September 2010	Introduction (Bill 211–1)
23 September 2010	First reading and referral to Commerce Committee