

House of Representatives
Supplementary Order Paper

Tuesday, 31 July 2012

Financial Reporting Bill

Proposed amendments

Hon Craig Foss, in Committee, to move the following amendments:

Clause 5

In *clause 5(1)* (on page 15), insert in its appropriate alphabetical order:

FMC reporting entity has the same meaning as in **section 446B** of the Financial Markets Conduct Act **2011**

Clause 31

After *clause 31(1)(a)(ii)* (after line 18 on page 27), insert:

- (iii) which FMC reporting entities are considered to have a higher level of public accountability under **section 446W** of the Financial Markets Conduct Act **2011**; and

Clause 35

In *clause 35(2)(a)*, replace “a person to whom **section 57** applies” (line 30 on page 29) with “an FMC reporting entity”.

Clause 36

In *clause 36(1)(a)*, replace “a person to whom **section 57** applies” (lines 17 and 18 on page 30) with “an FMC reporting entity”.

In *clause 36(2)(a)*, replace “a person to whom **section 57** applies” (lines 26 and 27 on page 30) with “an FMC reporting entity”.

New clause 56A

After *clause 56* (after line 2 on page 39), insert:

56A Amendments to Auditor Regulation Act 2011 consequential on changes to issuer audits

- (1) In the provisions of the Auditor Regulation Act 2011 specified in **Part 1 of Schedule 3**, replace “issuers” with “FMC reporting entities” in each place.
- (2) In the provisions of the Auditor Regulation Act 2011 specified in **Part 2 of Schedule 3**, replace “issuer audit” with “FMC audit” in each place.
- (3) In the provisions of the Auditor Regulation Act 2011 specified in **Part 3 of Schedule 3**, replace “issuer audits” with “FMC audits” in each place.

Clause 57

After *clause 57(3)* (after line 36 on page 39), insert:

- (4) Despite **subsections (1) to (3)**, nothing in Part 2 of the Financial Reporting Act 1993 applies to an FMC reporting entity in relation to an accounting period if financial statements or group financial statements of the FMC reporting entity are required to be prepared for that period under **Part 6A** of the Financial Markets Conduct Act **2012**.

Clause 63: new sections 90 and 91

Replace *new sections 90 and 91* (line 31 on page 41 to line 22 on page 42) with:

“90 Accounting records must be kept

Every society must comply with **subpart 2 of Part 6A** of the Financial Markets Conduct Act **2011** (which relates to accounting records).

“91 Financial reporting

- “(1) Every society must comply with **subpart 3 of Part 6A** of the Financial Markets Conduct Act **2011** (which relates to the preparation, audit, and lodgement of financial statements).
- “(2) The directors of every society must ensure that the financial statements of the society are laid before the society at the annual general meeting.

Clause 86: new section 197

In *new section 197*, replace “any other Act that provides for the company or overseas company to prepare financial statements in accordance with generally accepted accounting practice” (lines 13 to 15 on page 52) with “**subpart 3 of Part 6A** of the Financial Markets Conduct Act **2011** (which relates to the preparation, audit, and lodgement of financial statements by FMC reporting entities)”.

Clause 87: new section 208

After *new section 208(1)(a)* (after line 32 on page 68), insert:

“(ab) every company that is required to prepare financial statements or group financial statements under **subpart 3 of Part 6A** of the Financial Markets Conduct Act **2011**; and

New subpart 3A of Part 4

After *subpart 3 of Part 4* (after line 10 on page 73), insert:

Subpart 3A—Amendments to Financial Markets
Conduct Act 2011

99A Principal Act

This subpart amends the Financial Markets Conduct Act **2011** (the **principal Act**).

99B Section 6 amended (Interpretation)

(1) In **section 6(1)**, insert in their appropriate alphabetical order:

“**accounting period** has the same meaning as in **section 5** of the Financial Reporting Act **2012**

“**applicable auditing and assurance standard** has the same meaning as in **section 5** of the Financial Reporting Act **2012**

“**applicable financial reporting standard** has the same meaning as in **section 5** of the Financial Reporting Act **2012**

“**balance date** has the same meaning as in **section 40** of the Financial Reporting Act **2012**

“**financial statements** has the same meaning as in **section 6** of the Financial Reporting Act **2012**

“**FMC reporting entity** has the meaning set out in **section 446B**

“**generally accepted accounting practice** has the same meaning as in **section 8** of the Financial Reporting Act **2012**

“**group**, in **Part 6A**, means a group comprising an FMC reporting entity and its subsidiaries

“**group financial statements** has the same meaning as in **section 7** of the Financial Reporting Act **2012**

“**licensed insurer**—

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

“(b) does not include a Lloyd’s underwriter (within the meaning of that Act) or an insurer that is included in a class of insurers that is the subject of an exemption under section 238(1)(b) of that Act

“**Part 6A financial reporting provision** means any of the provisions specified in **section 446Y(3) or (4)**”.

- (2) In **section 6(1)**, definition of **infringement offence**, delete “**216, 218, 219,**”.
- (3) In **section 6(1)**, definition of **infringement offence**, after “**334,**”, insert “**446H, 446J, 446T,**”.
- (4) In **section 6(1)**, replace the definition of **subsidiary** with:
“**subsidiary**—
“(a) has the meaning set out in section 5 of the Companies Act 1993; and
“(b) in **Part 6A**, includes any entity that is classified as a subsidiary in any applicable financial reporting standard”.

99C Subpart 6 of Part 4 repealed
Repeal **subpart 6 of Part 4**.

99D Section 223 amended (Part 4 governance provisions)

- (1) Repeal **section 223(3)(e) and (f)**.
- (2) Repeal **section 223(4)(x)**.

99E Section 350 amended (Regulations modifying subpart for licensed markets)

- (1) In the heading to **section 350**, replace “**subpart**” with “**this Part or Part 6A**”.
- (2) After **section 350(1)(a)**, insert:
“(ab) providing that **section 446B(d)** does not apply in respect of persons that are listed issuers only in respect of a licensed market or class of licensed markets, and providing for replacement or modified requirements to apply relating to accounting records and financial reporting.”.

99F New Part 6A inserted

After **section 446**, insert:

“Part 6A
“Financial reporting

“Subpart 1—Overview, application, and interpretation

“446A Overview

- “(1) This Part provides for FMC reporting entities to—
 - “(a) keep proper accounting records; and
 - “(b) prepare financial statements, to have those financial statements audited, and to lodge those financial statements.

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

“**446B Meaning of FMC reporting entity**

In this Act, **FMC reporting entity** means—

- “(a) every person who is an issuer of a regulated product (but *see* **section 446C**):
- “(b) every person who holds a licence under **Part 6** (other than an independent trustee of a restricted scheme):
- “(c) every licensed supervisor:
- “(d) every listed issuer (but *see* **section 350(1)(ab)**):
- “(e) every operator of a licensed market (other than a market licensed under **section 315** (overseas-regulated markets)):
- “(f) every recipient of money from a conduit issuer (*see* **section 446D**):
- “(g) every registered bank:
- “(h) every licensed insurer:
- “(i) every credit union:
- “(j) every building society:
- “(k) every person that is an FMC reporting entity under **clause 27A of Schedule 1**.

“**446C Company that issues equity securities not FMC reporting entity if fewer than 50 shareholders**

“(1) A company within the meaning of section 2(1) of the Companies Act 1993 is not an FMC reporting entity under **section 446B(a)** if it—

- “(a) has fewer than 50 shareholders or fewer than 50 parcels of shares that are voting products; and
- “(b) would, but for this section, be an FMC reporting entity by reason only of being an issuer of equity securities that are both voting products and regulated products.

“(2) In this section, **shareholder** means a shareholder holding a voting product.

“Compare: 1993 No 106 s 6(g); 1993 No 107 s 2A

“**446D Recipients of money from conduit issuers**

In **section 446B**, a person (A) is a **recipient of money from a conduit issuer** if—

- “(a) A is an associated person of another person (the **conduit issuer**); and
- “(b) the conduit issuer raises an amount of money by the issue of financial products under a regulated offer; and

- “(c) that money is raised as part of an agreement under which 75% or more of that money is provided, directly or indirectly and whether by 1 transaction or a series of transactions, for the use of—
 - “(i) A; or
 - “(ii) A and 1 or more third persons that are associated persons of A; and
- “(d) the money that is provided to A under **paragraph (c)** is 10% or more of the money that is raised under **paragraph (b)**; and
- “(e) all or part of the money that is provided under **paragraph (c)** has not yet been repaid or returned to the conduit issuer.

“Compare: 1993 No 106 s 4A

“446E Miscellaneous provisions relating to application

- “(1) If a person ceases to be an FMC reporting entity during an accounting period, that person must be treated as continuing to be an FMC reporting entity in relation to that accounting period for the purposes of this Act.
- “(2) Nothing in this Part nor **section 713** requires an FMC reporting entity to ensure the completion of financial statements or group financial statements and the lodgement of those financial statements in relation to an accounting period that ended before the accounting period in which that person became an FMC reporting entity.

“Compare: 1993 No 106 ss 5, 21

“Subpart 2—Accounting records

“446F FMC reporting entities must keep proper accounting records

- “(1) Every FMC reporting entity must ensure that there are kept at all times accounting records that—
 - “(a) correctly record the transactions of the FMC reporting entity; and
 - “(b) in the case of a manager of a registered scheme, correctly record the transactions of the scheme; and
 - “(c) will enable the FMC reporting entity to ensure that the financial statements of the FMC reporting entity and of any such scheme comply with generally accepted accounting practice and any prescribed requirements; and
 - “(d) will enable the financial statements of the FMC reporting entity and of any such scheme to be readily and properly audited.

- “(2) Every FMC reporting entity must establish and maintain a satisfactory system of control of its accounting records.
- “(3) In this subpart, **financial statements** means the financial statements or group financial statements that are required to be prepared for the purposes of this Act or the regulations.
“Compare: 1978 No 103 s 53

“**446G Place where accounting records to be kept**

- “(1) Accounting records required to be kept by this subpart must be kept—
 - “(a) at the registered office of the FMC reporting entity (if any); or
 - “(b) at another place that the directors of the FMC reporting entity think fit.
- “(2) The accounting records may be kept at a place outside New Zealand only if there are sent to, and kept at a place in, New Zealand documents in respect of the business dealt with in those accounting records that will enable the preparation in accordance with this Act of—
 - “(a) the financial statements of the FMC reporting entity and any registered scheme referred to in **section 446F**; and
 - “(b) any other document annexed to any of those statements that gives information that is required by any enactment.

“Compare: 1978 No 103 s 53A

“**446H Accounting records to be in English**

- “(1) Accounting records required to be kept by this subpart and the documents referred to in **section 446G(2)** must be kept—
 - “(a) in written form and in English; or
 - “(b) in a form or manner in which they are easily accessible and convertible into written form in English.
- “(2) An FMC reporting entity that contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.
- “(3) The offence in this section is an infringement offence (*see subpart 5 of Part 7*).

“Compare: 1978 No 103 s 53B

“**446I Period for which accounting records to be kept**

Accounting records kept under this subpart, or copies of them, must be retained by the FMC reporting entity for a period of at least 7 years after the later of—

- “(a) the date the records are made; and

“(b) the date of completion of the transaction to which the records relate.

“Compare: 1978 No 103 s 53C

“446J Inspection of accounting records

“(1) Every FMC reporting entity must make the accounting records required to be kept under this subpart and the documents referred to in **section 446G(2)** available, in written form in English at all reasonable times for inspection without charge, to—

“(a) the directors of the FMC reporting entity; and

“(b) any supervisor (if the FMC reporting entity is an issuer of debt securities or the manager of a registered scheme); and

“(c) the FMA; and

“(d) any other persons authorised or permitted by an enactment to inspect the accounting records of the FMC reporting entity or scheme.

“(2) An FMC reporting entity that contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.

“(3) The offence in this section is an infringement offence (*see subpart 5 of Part 7*).

“Compare: 1978 No 103 s 53D

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

“Preparation of financial statements

“446K Financial statements must be prepared

“(1) Every FMC reporting entity must ensure that, within 3 months after the balance date of the entity, financial statements that comply with generally accepted accounting practice are—

“(a) completed in relation to the entity and that balance date; and

“(b) dated and signed on behalf of the entity by 2 directors of the entity, or, if the entity has only 1 director, by that director.

“(2) **Subsection (1)** is subject to **sections 446L(2) and 446M(4)**.

“Compare: 1993 No 106 ss 10(1), 11(1)

“446L Group financial statements must be prepared

“(1) Every FMC reporting entity that has, on the balance date of the entity, 1 or more subsidiaries must ensure that, within 3

months after that balance date, group financial statements that comply with generally accepted accounting practice are—

“(a) completed in relation to that group and that balance date; and

“(b) dated and signed on behalf of the entity by 2 directors of the entity, or, if the entity has only 1 director, by that director.

“(2) **Section 446K** does not apply to an FMC reporting entity in relation to a balance date if the entity has, on that date, 1 or more subsidiaries (and is, accordingly, required to prepare group financial statements under **subsection (1)**).

“(3) The board of an FMC reporting entity must ensure that the balance date of the FMC reporting entity is the same as the balance date of its subsidiaries.

“(4) This section is subject to **section 446M(4)**.

“Compare: 1993 No 106 ss 7(8), 13(1)

“**446M Financial statements for registered schemes and funds**

“(1) This section applies to every manager of a registered scheme.

“(2) If the liabilities of the manager and the scheme are not limited to a particular group of assets (a **separate fund**), the manager must ensure that, within 3 months after the balance date of the manager, financial statements that comply with generally accepted accounting practice are—

“(a) completed in relation to the scheme and that balance date; and

“(b) dated and signed on behalf of the manager by 2 directors of the manager, or, if the manager has only 1 director, by that director.

“(3) If the liabilities of the manager or the scheme are limited to a separate fund, the manager must ensure that, within 3 months after the balance date of the manager, financial statements that comply with generally accepted accounting practice are—

“(a) completed in relation to the scheme and that balance date; and

“(b) completed in relation to the separate fund and that balance date; and

“(c) dated and signed on behalf of the manager by 2 directors of the manager, or, if the manager has only 1 director, by that director.

“(4) If the manager is an FMC reporting entity by reason only of being a manager of a restricted scheme,—

“(a) the manager is required to comply with this section; but

“(b) is not required to comply with **sections 446K and 446L**.

“Compare: 1993 No 106 s 9A(1), (2)

“446N Financial statements for overseas FMC reporting entity to include financial statements for New Zealand business

- “(1) If an FMC reporting entity that is an overseas company is required to prepare financial statements under **section 446K**, the financial statements that are prepared must include, in addition to the financial statements of the entity, financial statements for its New Zealand business prepared as if that business were conducted by a company formed and registered in New Zealand.
- “(2) If an FMC reporting entity that is an overseas company is required to prepare group financial statements under **section 446L**, the group financial statements that are prepared must include, in addition to the financial statements of the group, financial statements for the group’s New Zealand business prepared as if the members of the group were companies formed and registered in New Zealand.
- “(3) In this section, **overseas company** means a body corporate that is incorporated outside New Zealand.

“Compare: 1993 No 106 ss 8(2), 9(2)

“446O Failure to comply with authoritative notice does not give rise to pecuniary penalty

- “(1) This section applies if financial statements or group financial statements referred to in this subpart fail to comply with generally accepted accounting practice as a result of a failure to comply with an authoritative notice.
- “(2) A pecuniary penalty order may not be made under **section 471** in relation to the failure to comply with the authoritative notice.
- “(3) In this section, **authoritative notice** has the same meaning as in **section 5** of the Financial Reporting Act **2012**.

“Audit of financial statements

“446P Financial statements must be audited

Every FMC reporting entity must ensure that the financial statements or group financial statements that are required to be prepared under this subpart are audited by a qualified auditor.

“Compare: 1978 No 103 s 53E

“446Q Meaning of qualified auditor

- “(1) For the purposes of this Act, **qualified auditor** means—
- “(a) a licensed auditor; or
 - “(b) a registered audit firm; or

- “(c) in the case of an FMC reporting entity that is a public entity under the Public Audit Act 2001, the Auditor-General or any other person who may act as the auditor under that Act.
- “(2) In this section, **licensed auditor** and **registered audit firm** have the same meanings as in section 6(1) of the Auditor Regulation Act 2011.
- “(3) The appointment of a registered audit firm by the firm name to be the qualified auditor for the purposes of this Act is deemed to be the appointment of all the partners in the firm, from time to time, who are licensed auditors.
- “(4) None of the following persons is qualified for appointment as the qualified auditor of an FMC reporting entity:
- “(a) the FMC reporting entity, or a director, an officer, or an employee of the FMC reporting entity:
 - “(b) a person who is a partner, or in the employment, of a person specified in **paragraph (a)**:
 - “(c) a body corporate.
- “(5) A person is not qualified for appointment as the qualified auditor of an FMC reporting entity if the person is, by virtue of **subsection (4)**, disqualified for appointment as auditor of a related body corporate.
- “Compare: 1978 No 103 s 2C

“**446R Audit must be carried out in accordance with auditing and assurance standards**

An auditor must, in carrying out an audit for the purposes of **section 446P**, comply with all applicable auditing and assurance standards.

“**446S Auditor’s report**

- “(1) The auditor’s report on the financial statements or group financial statements that are required to be audited under this subpart must comply with the requirements of all applicable auditing and assurance standards.
- “(2) If the auditor’s report indicates that the requirements of this Act have not been complied with, the auditor must, within 7 working days after signing the report, send a copy of the report, and a copy of the financial statements or group financial statements to which it relates, to—
- “(a) the FMA; and
 - “(b) the External Reporting Board; and
 - “(c) in the case of an issuer of debt securities or a manager of a registered scheme, the supervisor.

“Compare: 1993 No 106 s 16(1), (2)

*“Lodgement of financial statements***“446T Lodgement of financial statements**

- “(1) Every FMC reporting entity must ensure that, within 20 working days after the financial statements or group financial statements are required to be signed under this subpart, copies of those statements together with a copy of the auditor’s report on those statements are delivered to the Registrar for lodgement.
- “(2) An FMC reporting entity that contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.
- “(3) The offence in this section is an infringement offence (*see subpart 5 of Part 7*).

“Compare: 1993 No 106 s 18(1)–(2)

*“Offences***“446U Offence to knowingly fail to comply with standards**

- “(1) An FMC reporting entity and every director of the entity commit an offence if—
- “(a) any of the following fail to comply with an applicable financial reporting standard:
- “(i) the financial statements of the entity prepared under **section 446K**:
- “(ii) group financial statements in relation to a group comprising the entity and its subsidiaries prepared under **section 446L**:
- “(iii) in the case of a manager of a registered scheme, financial statements for the scheme or a fund referred to in **section 446M**:
- “(iv) the financial statements prepared by the entity under **section 446N**; and
- “(b) the entity or the director (as the case may be) knows that the financial statements or group financial statements (as the case may be) fail to so comply when those statements are lodged.
- “(2) A person who commits an offence under **subsection (1)** is liable on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$500,000, or both; and
- “(b) in any other case, to a fine not exceeding \$2.5 million.

*“FMC reporting entities with higher level of public
accountability*

**“446V External Reporting Board must have regard to
indication of level of public accountability**

- “(1) **Subsection (2)** applies when the External Reporting Board is preparing a proposal to vary or replace the strategy for establishing different tiers of financial reporting (*see sections 28 to 32* of the Financial Reporting Act 2012).
- “(2) The External Reporting Board must have regard to which FMC reporting entities are considered to have a higher level of public accountability under **section 446W**.
- “(3) Nothing in this section or **section 446W** requires any particular class of FMC reporting entity to be included within a particular tier of financial reporting (for example, some entities referred to in **section 446W(1)** could be included in one tier while other entities referred to in that subsection are included in another tier).

**“446W FMA reporting entities considered to have higher level
of public accountability**

- “(1) The following FMC reporting entities are considered to have a higher level of public accountability than other FMC reporting entities:
 - “(a) issuers of equity securities or debt securities under a regulated offer:
 - “(b) managers of registered schemes, but only in respect of financial statements of a scheme or fund prepared under **section 446M**:
 - “(c) listed issuers:
 - “(d) registered banks:
 - “(e) licensed insurers:
 - “(f) credit unions:
 - “(g) building societies:
 - “(h) an FMC reporting entity, or a class of FMC reporting entities, specified for the purposes of this paragraph by a notice issued under **section 446X(1)(a)**.
- “(2) However, an FMC reporting entity, or a class of FMC reporting entities, is not considered to have a higher level of public accountability than other FMC reporting entities if the entity or class is specified for the purposes of this subsection by a notice issued under **section 446X(1)(b)**.
- “(3) **Subsection (1)(b)** does not limit **subsection (1)(h)**.

“446X FMA may issue notice relating to level of public accountability

- “(1) The FMA may issue a notice that specifies an FMC reporting entity, or a class of FMC reporting entities, for the purposes of—
- “(a) **section 446W(1)(h)**; or
- “(b) **section 446W(2)**.
- “(2) The FMA must, before issuing a notice under **subsection (1)**, be satisfied that the notice is necessary or desirable in order to promote the main purposes of this Act as specified in **section 3** or any of the additional purposes specified in **section 4**.
- “(3) **Subpart 5 of Part 8** (general provisions relating to certain FMA instruments) applies to a notice under this section.

“Subpart 4—Civil liability for certain contraventions of this Part

“446Y Part 6A financial reporting provisions

- “(1) All of the provisions specified in **subsections (3) and (4)** are **Part 6A** financial reporting provisions.
- “(2) A contravention of any of the provisions listed in **subsection (3)** may give rise to a civil remedy (*see subpart 3 of Part 7*), including a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and \$1 million in the case of an individual or \$5 million in any other case.
- “(3) The provisions are the following:
- “(a) **section 446F** (FMC reporting entity must keep proper accounting records):
- “(b) **sections 446K, 446L, 446M, and 446N** (financial statements and group financial statements must be prepared):
- “(c) **section 446P** (financial statements must be audited):
- “(d) **section 446T** (financial statements must be lodged).
- “(4) A contravention of **section 446G or 446I** (place where, and period for which, accounting records to be kept) may give rise to a civil remedy (*see subpart 3 of Part 7*), including a pecuniary penalty not exceeding \$200,000 in the case of an individual or \$600,000 in any other case.”

99G Section 448 amended (When FMA may make stop orders)

After **section 448(g)**, insert:

- “(ga) an issuer of financial products, or a person that provides a licensed market service, has contravened any provision of **Part 6A**; or”.

99H Section 453 amended (When FMA may make direction orders)

After **section 453(1)(e)**, insert:

“(ea) a **Part 6A** financial reporting provision.”.

99I Section 471 amended (When court may make pecuniary penalty orders)

Replace **section 471(4)** with:

“(4) However, a pecuniary penalty order may not be made—

“(a) for a contravention of **section 16 or 256**:

“(b) in the circumstances referred to in **section 446O**.”

99J Section 472 amended (Directors treated as having contravened in case of defective disclosure and may be ordered to pay pecuniary penalty)

(1) In the heading to **section 472**, replace “**case of defective disclosure**” with “**certain cases**”.

(2) After **section 472(1)(c)**, insert:

“(ca) an FMC reporting entity has contravened any of **sections 446K to 446N, 446P, and 446T** (financial reporting obligations); or”.

(3) In **section 472(2)(a)**, after “**issuer**,”, insert “**FMC reporting entity**,”.

(4) In **section 472(2)(a)**, after “**(c)**,”, insert “**(ca)**,”.

(5) In **section 472(2)(b)(i)**, after “**issuer**,”, insert “**FMC reporting entity**,”.

99K Section 473 amended (Maximum amount of pecuniary penalty)

After **section 473(2)(e)**, insert:

“(ea) a **Part 6A** financial reporting provision (other than a provision specified in **section 446Y(4)**.”.

99L Section 517 amended (Regulations for purposes of Part 3 (disclosure of offers of financial products))

After **section 517(1)(m)**, insert:

“(ma) prescribing circumstances for the purposes of **clause 27A of Schedule 1**.”.

99M Section 521 amended (Transitionals, savings, and orderly implementation of Act)

(1) In the heading to **section 521**, replace “**Act**” with “**this Act and Financial Reporting Act 2012**”.

- (2) In **section 521(1)(a) and (b) and (2)(a) and (b)**, after “this Act”, insert “or the Financial Reporting Act **2012**” in each place.
- (3) In **section 521(1)(a)**, replace “**Part 9**” with “those enactments”.

99N Section 528 amended (FMA may grant exemptions)

In **section 528(1)(a)**, replace “**6**” with “**6A**”.

99O New section 532A inserted

After **section 532**, insert:

“532A Financial reporting exemptions

- “(1) An exemption granted under this subpart in relation to any provision of **Part 6A** may, if the FMA thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period are required to be lodged under that Part.
- “(2) In deciding whether or not to grant, amend, or revoke an exemption under this subpart in relation to any provision of **Part 6A**, the FMA must consult the Reserve Bank of New Zealand if the exemption concerns any of the following:
 - “(a) a registered bank:
 - “(b) a licensed insurer:
 - “(c) a deposit taker (within the meaning of section 157C of the Reserve Bank of New Zealand Act 1989).”

99P Section 540 amended (Application of subpart)

After **section 540(a)**, insert:

“(ab) notices issued under **section 446X**.”.

99Q Section 541 amended (Status and publication of instruments)

After **section 541(2)(a)**, insert:

“(ab) notices issued under **section 446X**.”.

99R Cross-heading above section 712 amended

Replace the cross-heading above **section 712** with:

“Financial reporting”.

99S Section 712 amended (Issuers continue to be issuers under Financial Reporting Act 1993)

After section 712(2), insert:

- “(3) The Financial Reporting Act 1993 continues to apply to a person to which **subsection (1)** applies as if that Act had not been repealed by the Financial Reporting Act **2012** in accordance with **section 57** of the Financial Reporting Act **2012**.
- “(4) This section is subject to **sections 713 and 714**.”

99T Section 713 replaced

Replace **section 713** with:

- “**713 Issuers become FMC reporting entities on effective date**
- “(1) This section applies to a security to which **subpart 9** applies (*see* **section 681**).
- “(2) On and after the effective date for a security to which this section applies, the security must be treated as being a regulated product under **section 446B(a)** and, accordingly, the issuer must be treated as being an FMC reporting entity.
- “(3) However, **subsection (2)**—
- “(a) does not apply if,—
- “(i) before the effective date, the security is cancelled, redeemed, or forfeited, or all of the obligations owing under the security have been discharged; or
- “(ii) on the effective date, the security is not a financial product within the meaning of **section 7**:
- “(b) is subject to **section 446C**.
- “(4) In this section, **effective date**, in relation to a security, means the earlier of the dates set out in **section 685(1)**.”

“**714 Financial Reporting Act 1993 ceases to apply if Part 6A applies**

Despite **section 712** of this Act and **section 57** of the Financial Reporting Act **2012**, nothing in Part 2 of the Financial Reporting Act 1993 applies to an FMC reporting entity in relation to an accounting period if financial statements or group financial statements of the FMC reporting entity are required to be prepared for that period under **Part 6A**.”

99U Schedule 1 amended

In Schedule 1, after clause 27, insert:

“**27A Offeror is FMC reporting entity in prescribed circumstances**

A person to whom **clause 26** applies is an FMC reporting entity in the prescribed circumstances.”

99V Schedule 4 amended

- (1) In **Schedule 4**, item relating the Auditor Regulation Act 2011, delete the item relating to paragraph (b) of the definition of issuer audit in section 6(1).
- (2) In **Schedule 4**, repeal the item relating to the Financial Reporting Act 1993.

Clause 106: new section 61

In *new section 61*, replace “any other Act that provides for the society or branch to prepare financial statements in accordance with generally accepted accounting practice” (lines 6 to 8 on page 75) with “**subpart 3 of Part 6A** of the Financial Markets Conduct Act **2011** (which relates to the preparation, audit, and lodgement of financial statements by FMC reporting entities)”.

Clause 117: new sections 121 and 122

Replace *new sections 121 and 122* (lines 12 to 34 on page 80) with:

“121 Accounting records must be kept

Every credit union must comply with **subpart 2 of Part 6A** of the Financial Markets Conduct Act **2011** (which relates to accounting records).

“122 Financial reporting

Every credit union must comply with **subpart 3 of Part 6A** of the Financial Markets Conduct Act **2011** (which relates to the preparation, audit, and lodgement of financial statements).”

Clause 138: new section 8B

In *new section 8B*, replace “any other Act that provides for the society to prepare financial statements in accordance with generally accepted accounting practice” (lines 5 to 7 on page 92) with “**subpart 3 of Part 6A** of the Financial Markets Conduct Act **2011** (which relates to the preparation, audit, and lodgement of financial statements by FMC reporting entities)”.

Clause 145: new section 75E

In *new section 75E*, replace “any other Act that provides for the partnership to prepare financial statements in accordance with generally accepted accounting practice” (lines 17 to 19 on page 99) with “**subpart 3 of Part 6A** of the Financial Markets Conduct Act **2011** (which relates to the preparation, audit, and lodgement of financial statements by FMC reporting entities)”.

Clause 148: new section 34A

In *new section 34A*, replace “any other enactment that provides for the partnership to prepare financial statements in accordance with generally accepted accounting practice” (lines 22 to 25 on page 100) with “**subpart 3 of Part 6A** of the Financial Markets Conduct Act **2011** (which relates to the preparation, audit, and lodgement of financial statements by FMC reporting entities)”.

Clause 153: new section 35E

In *new section 35E*, replace “any other Act that provides for the operator to prepare financial statements in accordance with generally accepted accounting practice” (lines 1 to 3 on page 106) with “**subpart 3 of Part 6A** of the Financial Markets Conduct Act **2011** (which relates to the preparation, audit, and lodgement of financial statements by FMC reporting entities)”.

Schedule 2

In **Schedule 2**, item relating to the Auditor Regulation Act 2011, after the item relating to the definition of group financial statements in section 6(1) (after line 14 on page 139), insert:

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

“**FMC audit**—

“(a) means the audit of—

“(i) the financial statements or group financial statements of an FMC reporting entity that are prepared under the Financial Markets Conduct Act **2011**; or

“(ii) the financial statements of a scheme or a fund prepared under **section 446M** of the Financial Markets Conduct Act **2011**; or

“(iii) the financial statements referred to in **section 446N** of the Financial Markets Conduct Act **2011**; and

“(b) includes any audit or review required to be carried out under the regulations made, or exemptions granted, under the Financial Markets Conduct Act **2011** by a qualified auditor (within the meaning of that Act); and

“(c) includes financial statements or group financial statements prepared under the Financial Reporting Act 1993 in accordance with **section 57** of the Financial Reporting Act **2012**; but

“(d) does not include any audit carried out under the Public Audit Act 2001 (whether the Auditor-General or any other person is acting as the auditor)

“**FMC reporting entity**—

“(a) has the same meaning as in **section 6(1)** of the Financial Markets Conduct Act **2011**; and

“(b) includes a person to which **section 57** of the Financial Reporting Act **2012** applies”.

In section 6(1), repeal the definitions of **issuer** and **issuer audit**.

In section 23(4)(a), replace “issuer in respect of the issuer audit” with “FMC reporting entity in respect of the FMC audit”.

In section 69(1)(c) and (2)(d), replace “every issuer” with “every FMC reporting entity”.

In **Schedule 2**, item relating to Financial Markets Authority Act 2011, insert before the item relating to Schedule 1 of that Act (before line 2 on page 145):

In section 4, definition of **financial markets participant**, replace paragraph (b)(iv) with:

“(iv) an FMC reporting entity (within the meaning of **section 446B** of the Financial Markets Conduct Act **2011**); and”.

In **Schedule 2**, item relating to the Insurance (Prudential Supervision) Act 2010, after the item relating to *new section 192(1A)* (after line 33 on page 148), insert:

Replace section 238(1)(b) with:

“(b) exempting a class of specified persons that have an annual gross premium income (as determined in the manner specified in the regulations) that is less than a specified amount from being—

“(i) an FMC reporting entity for the purposes of the Financial Markets Conduct Act **2011** by virtue of **section 446B(h)** of that Act:

“(ii) an issuer for the purposes of the Financial Reporting Act 1993 by virtue of section 4(1)(da) of that Act.”.

In **Schedule 2**, item relating to Public Audit Act 2001, after the item relating to the definition of financial reporting standard in section 4 (after line 17 on page 153), insert:

In section 4, repeal the definition of **issuer**.

In section 4, insert in its appropriate alphabetical order:

“**FMC reporting entity** has the same meaning as in **section 446B** of the Financial Markets Conduct Act **2011**”.

In section 15(3), replace “issuer” with “FMC reporting entity”.

In **Schedule 2**, item relating to Public Audit Act 2001, after the item relating to section 32(1)(b) and (c) (after line 25 on page 153), insert:

In section 32(1A) and (1B), replace “issuer” with “FMC reporting entity”.

New Schedule 3

After *Schedule 2* (after line 7 on page 157), insert:

Schedule 3 **s 56A**
Amendments to Auditor Regulation Act 2011
consequential on changes to issuer audits

Part 1

Replacing references to “issuers” with “FMC reporting entities”

Section 3

Section 4(1)(a)(i)

Part 1—*continued*

Section 35(c)

Part 2

Replacing references to “issuer audit” with “FMC
audit”

Definition of **engagement partner** in section 6(1)

Section 8(1) and (2)

Section 9(1) and (2)

Heading to section 10

Section 10(1) and (2)

Section 20(1)(c)(i)

Section 21(1)(b)(i)

Heading to section 23

Section 23(1)(b), (2) to (4), and (6)

Section 40(a)(iii)

Section 46(2)(d)

Section 61(4)

Section 68(3)

Section 69(1)(c) and (2)(d)

Section 70(3) and (4)

Section 75(2)

Section 78(2)(d)

Part 3

Replacing references to “issuer audits” with “FMC
audits”

Section 3(a)

Section 6(2)(a)

Heading to section 8

Heading to section 9

Section 12(1)(e)(i) and (iii)

Section 15(1)(c) and (2)

Section 20(1)(c)

Section 21(1)(b)

Section 26(1)(c)

Section 34(1)(a)(i) and (b)

Section 35(a)(i)

Section 36(1)(a)

Section 41(1)(f)

Part 3—*continued*

Section 65(2)(a)(i) and (b)
Section 68(1)(b) and (c)(i) and (3)(a)(i)
Section 70(1)(a)(i) and (b) and (3)(a)(i)
Section 75(3)
Section 78(1)
Section 85(2)(b)
Section 86(2)(b)

Explanatory note

This Supplementary Order Paper amends the Financial Reporting Bill to include amendments to the Financial Markets Conduct Bill and other related changes.

The amendments could not be included in the Financial Reporting Bill on introduction because the Financial Markets Conduct Bill has not yet been enacted.

These amendments are an integral part of the policy of the Financial Reporting Bill. The Financial Reporting Bill moves substantive reporting requirements and related enforcement provisions into sector, industry, and entity-specific Acts. Consistent with this model, the substantive reporting requirements for issuers and other financial markets participants need to be moved to the Financial Markets Conduct Bill.

The amendments to the Financial Markets Conduct Bill will insert *new Part 6A* and make a number of consequential changes. Other consequential changes will need to be made after the Financial Markets Conduct Bill is enacted.

New Part 6A—

- applies to entities defined as FMC reporting entities. This includes issuers of debt securities, equity securities, and derivatives, managers of registered schemes, licence holders under *Part 6* of the Financial Markets Conduct Bill (other than an independent trustee of a restricted scheme), licensed market operators (other than overseas operators), licensed supervisors, listed issuers, registered banks, and licensed insurers:
- includes building societies and credit unions as FMC reporting entities. Many building societies and credit unions are issuers under the Financial Reporting Act 1993 (the **1993 Act**). The amendments will require all building societies and credit unions to comply with financial reporting obligations as FMC reporting entities:
- requires FMC reporting entities to keep proper accounting records, to prepare financial statements or group financial statements, to have these financial statements audited, and to lodge these financial statements with the Registrar of Financial Service Providers.

The 1993 Act currently requires financial statements in relation to issuers to be prepared, audited, and registered. The financial reporting obligations moving

into the Financial Markets Conduct Bill are broadly similar to those in the 1993 Act. The main changes for FMC reporting entities are as follows:

- the financial reporting requirements will be subject to the enforcement and liability regime in the Financial Markets Conduct Bill. A contravention may give rise to a civil remedy under *subpart 3 of Part 7*, including a pecuniary penalty. In addition, both the FMC reporting entity and its directors may be liable for an offence for knowingly failing to comply with financial reporting standards. This offence has a maximum penalty of imprisonment for a term not exceeding 5 years and a fine not exceeding \$500,000 (in the case of an individual) or \$2.5 million (in the case of a body corporate). Currently, the offences in the 1993 Act are strict liability offences with a maximum fine of \$100,000:
- the FMA can impose a stop order, or make a direction order, in the case of a contravention of the new requirements:
- the FMA can grant exemptions under the Financial Markets Conduct Bill in respect of the new requirements:
- the time frame for preparing financial statements has been reduced from 5 months after the balance date to 3 months to ensure more timely reporting:
- an FMC reporting entity that is a parent will only be required to prepare group financial statements (rather than both parent financial statements and group financial statements, as is currently the case). The External Reporting Board will determine what (if any) parent entity information will need to be disclosed in the notes to the group financial statements.

The transitional provisions relating to the new financial reporting requirements may be summarised as follows:

- under *clause 712* of the Financial Markets Conduct Bill, the 1993 Act continues to apply to issuers until the effective date of the relevant security. This includes persons who become issuers as a result of an offer made under the Securities Act 1978 in accordance with the transitional provisions under the Bill. *See also clause 57* of the Financial Reporting Bill:
- *new clause 713* provides for issuers to become FMC reporting entities on the effective date under *subpart 9 of Part 9* of the Financial Markets Conduct Bill:
- *new clause 714* provides for the requirements under the 1993 Act to cease to apply when the new requirements under *new Part 6A* begin to apply.