

Financial Market Infrastructures Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Financial Market Infrastructures Bill and recommends that it be passed with the amendments shown.

Introduction

The bill would establish a regulatory regime for financial market infrastructures (FMIs), which include payment systems, settlement systems, central counterparties, central securities depositories, and trade repositories.

The services provided by FMIs enable non-cash payments to occur, and help to facilitate transactions in financial markets. FMIs are therefore critical for the successful day-to-day operation of the economy. Were problems to arise with an FMI, it could have a serious negative effect on the functioning of the financial system, and the wider economy.

The bill's purposes include promoting the maintenance of a sound and efficient financial system, and avoiding significant damage to the financial system that could result from problems with an FMI, its operator, or its participants.

The operation of the regime

The Reserve Bank of New Zealand and the Financial Markets Authority (FMA) would act jointly as the regulator of FMIs except in relation to designated payment systems (where the Reserve Bank would be the sole regulator) or where the Reserve Bank and the FMA agree that one of them is to carry out the regulator's functions under Part 4 of the bill (which deals with the treatment of distressed FMIs).

A key feature of the bill is that it would distinguish between designated and non-designated FMIs. FMIs that are identified as systemically important would be designated on the recommendation of the regulators, and be subject to more intensive regulation

under the bill. The operators of FMIs that were not systemically important would be able to opt-in to this designation regime by applying to the regulators (an FMI may wish to opt-in to the designation regime in order to access legal protections in the bill relating to settlement finality, netting, and the enforceability of FMI rules). By contrast, non-designated FMIs would only be subject to the regulators' powers to require information to be provided or an independent report to be obtained.

The bill provides for the regulation of designated FMIs in the following ways:

- The regulator would have the power to make legally binding standards that would apply to designated FMIs.
- The regulator would have the power to monitor, and if necessary appoint a person to investigate, designated FMIs. An investigator could require FMIs to provide information, and an investigator could seek a search warrant to obtain evidence relevant to an investigation.
- The regulator would also have oversight of the rules of designated FMIs (other than overseas FMIs). Any amendments to these rules would need to be approved by the regulator.
- Finally, the regime would give the regulator various crisis management powers. In particular, designated FMIs would be required to have contingency plans for how they would deal with operational disruption or financial failure. The bill would also enable the regulator to issue directions to FMI operators and participants of FMIs. This power could only be used if a threshold set out in the bill had been met. This could include an FMI operating in a manner that was prejudicial to the soundness of the financial system. The regulator may also remove or appoint the directors of an FMI, or recommend that the operator of a designated FMI be placed into a tailored statutory management regime established by the bill.

Regulations

As a part of our consideration of this bill, we received advice from the Regulations Review Committee. The Regulations Review Committee asked us to consider whether designation notices issued under clause 20 of the bill should be disallowable instruments.

We do not recommend that designation notices be disallowable instruments. When making a decision whether to recommend that an FMI be designated, the regulators are applying a test set out in the bill (albeit a fairly high level one). This test is then applied to a particular person (the FMI), rather than a class of persons. The designation notice would not determine or alter the content of the law, rather it would apply the law already set out in the bill (and any relevant standards made under the bill). Therefore, we consider the power to designate an FMI would be administrative in nature, and not legislative.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Ensuring that the regime is sufficiently flexible to manage different types of FMIs

The bill would create a regime that regulates all types of designated FMIs. In particular, payment systems would be subject to the same regulatory framework as other types of settlement systems similar to FMIs. Internationally, FMIs are often subject to a different regime depending on the type of FMI that is being regulated. This partially reflects the fact that these regimes have evolved from different historical starting points, and involve different regulatory institutions.

We consider that the basic regulatory framework would be necessary across all types of FMI. This includes the issuing of standards, the oversight of system rules, the power to issue remedial notices, investigation and enforcement powers, and crisis management powers.

However, in order for this regime to effectively regulate all types of designated FMIs, the regulatory framework needs to be flexible. In particular, when exercising their powers under this regime, the regulator needs to be able to take into account the diverse characteristics of differing FMIs.

To help ensure this, we recommend inserting clause 13(2)(da). This change would require the regulator to recognise the diversity of FMIs and take into account the circumstances of particular FMIs, when they are exercising their powers, or considering doing so. It would also require the regulator to recognise the importance of consistency in the treatment of similar FMIs. Our amendment would help ensure that the regulator takes the specific circumstances of particular FMIs into account. This would provide reassurance that the regime would be applied in an appropriately tailored manner given the different characteristics of different FMIs.

Stability and confidence

Clause 3(1)(a), states that a purpose of the bill is to promote the maintenance of a sound and efficient financial system. The bill elsewhere refers to threats to the stability of, or confidence in, the financial system.

Stability and confidence is not currently referred to in clause 3(1), the bill's purpose clause. We think it is not sufficiently clear that stability and confidence are aspects of the purpose of promoting the maintenance of a sound and efficient financial system (or for the purpose of avoiding significant damage to the financial system). Therefore, it is unclear how the purposes of the bill relate to the stability of, or confidence in, the financial system.

We propose amending clause 3(1)(a) and (b) so that responding to threats to the stability of, or confidence in, the financial system is clearly part of the bill's purposes.

Broadening the circumstances in which the regulators may agree that either of them should act as a sole regulator in a particular case

The default position in the bill is that the Reserve Bank and the FMA would act as joint regulators of FMIs other than for designated payment systems. However, in certain circumstances it may be more efficient for only one entity to act as the regulator.

If both the Reserve Bank and the FMA agree, clause 10(3) of the bill would enable them to decide that only one entity would act as the regulator in specific cases or class of cases.

However, the bill as introduced would make this provision subject to ministerial approval, and only allow a sole regulator to be agreed in relation to the regulators functions under Part 4 (which deals with the treatment of distressed FMIs).

We consider that the power for the regulators to agree that one of them act as a sole regulator should not be constrained to just the regulators' functions under Part 4, and recommend instead that it be available in relation to the regulators' functions under the bill more broadly.

We also consider that ministerial consent should not be necessary for what is primarily an operational decision. It should be a requirement only for issues of significant policy (and possibly in certain circumstances for the exercise of significant powers). For example, ministerial consent should not be required when the regulators are merely considering which specific entity should be acting as a regulator in a specific case.

Therefore, we recommend amending clause 10(3) so that the approval of Ministers would not be required for the regulators to reach an agreement under this provision. The bill would still require the regulators to publish a statement indicating where they have agreed that just one of them will be carrying out the regulators' functions in certain situations. Therefore, there would still be a mechanism to ensure transparency in relation to these decisions.

We also recommend deleting clause 10(4), which would not be required if the power granted under clause 10(3) was not subject to ministerial approval.

More flexibility for ministerial approval or consent of decisions of the regulator

The bill as introduced specifies certain thresholds for when the Ministers must grant approval or consent to decisions made by the regulator. These thresholds are included in clauses 20(2), 79(5), and 108(2). The provisions had been included in the bill to provide some clarity about the role of the joint Ministers in various decision-making processes. However, we consider these requirements are overly prescriptive and over-complicate decision-making processes under the bill. A Minister may have a good reason to decline approval or consent, but under these provisions may be required to grant approval. We also note that some similar regimes do not include such a requirement. We therefore recommend deleting clauses 20(2), 79(5), and 108(2).

Commencement of Part 1 of the bill

The bill as introduced provides for preliminary provisions in Part 1 to come into force by Order in Council.

We propose that all of Part 1 be brought into force the day after Royal assent. This would help the joint regulators to commence their work on, for example, assessments about systemic importance, and the design of standards. More broadly, our change would help support the initial implementation work that would be required of the joint regulators.

The transition process for settlement systems that have been designated under the Reserve Bank Act

The bill as introduced does not provide for existing designated settlement systems to automatically transition to the new regime. These systems are currently designated by the regime established by the Reserve Bank of New Zealand Act 1989, and would have to be re-designated under the bill. This would create some uncertainty regarding the long term status of designation of these settlement systems, and is likely to result in additional costs due to the need for them to be re-designated under the bill.

We propose inserting clauses 4 to 9 in Schedule 1 to establish a process for settlement systems that have been designated under the Reserve Bank Act regime.

All existing designation orders would be revoked. However, under these provisions the regulator would have to issue a designation notice that would preserve certain aspects of those orders as necessary. The regulator would then carry out further analysis as to which of those FMIs are systemically important, and would therefore be identified as systemically important under the new regime. If the FMI is identified as systemically important, this information would also be included in the designation notice issued by the regulator. This designation notice would be treated as if it had been issued under subpart 1 of Part 3 of the bill.

The requirement of ministerial consent for notices requiring a rule change

Clause 43(4) and (5) of the bill requires the regulator to have ministerial consent before issuing a notice that would require a rule change. To trigger the process which may lead to such a notice being issued requires a certain threshold to be met. The assessment required to tell whether this threshold has been met is highly technical. This power would also be subject to other robust safeguards which are already in the bill.

We recommend deleting clause 43(4) and (5) which require ministerial consent before a notice requiring a rule change may be issued.

Statutory management

The right of derivatives counterparties to enforce security

Clauses 122 and 123 would establish the right of counterparties to exercise certain “close out” rights under a derivative after the default time (which is often, but not necessarily always, the end of the first full calendar day after the operator of the FMI has been placed into statutory management). The bill as introduced grants the ability to enforce this right when a direction is issued. We recommend a change to the bill that removes the right of derivatives counterparties to exercise these “close out” rights beyond the default time when directions are issued. Our change would ensure that this right only applies when statutory management is triggered. Generally, these rights would not be exercisable when a direction order is given, but would be exercisable when statutory management is triggered.

We recommend amending clauses 122 and 123 so that the right is only exercisable once an order under clause 89 is made.

Security interests continue despite the transfer of property to a new operator

As introduced, the bill does not expressly provide for what would happen to the security interest of a secured creditor when the property of an operator in statutory management is transferred to a new operator under a new operator scheme.

We recommend inserting clause 104A to provide for the treatment of property that is subject to a security interest under a new operator scheme. This would clarify that the interests of secured creditors in property of an operator under statutory management are retained, and would still apply once that property has been transferred to a new operator.

Statutory manager indemnity

The bill as introduced does not include an indemnity for statutory managers of operators of FMIs that are in statutory management, or for the regulators in relation to their functions under statutory management. This is inconsistent with the statutory management regimes in both the Corporations (Investigation and Management) Act 1989 (CIMA), and the Reserve Bank Act. Both of these statutory management regimes include provisions that indemnify statutory managers and the relevant regulators.

Without an indemnity provision, this bill would create a liability risk for potential statutory managers and the regulators when resolving a distressed FMI. This may make it difficult to find parties willing to take on the role of statutory manager, and adversely influence how the regulators carry out their role in statutory management.

Therefore, we recommend amending the bill by inserting clause 121A. Clause 121A(1)(a) would create a Crown indemnity for statutory managers from liabilities incurred in the good faith exercise of a statutory manager’s functions. Clause 121A(1)(b) would create a similar indemnity that would apply to any acts or omis-

sions by the regulator, provided that the act or omission occurred in good faith. Clause 121A(3) would also clarify that the indemnity extends to legal costs.

Purposes and principles relating to the exercise of powers under Part 4

Part 4 of the bill deals with the treatment of systemically important FMIs that are distressed. Clause 78 sets out the purposes for which the powers established by Part 4 could be exercised.

We note that clause 13(1) of the bill also requires the regulators to exercise their functions under the bill for one of the purposes set out in clause 3 and clause 13(2) establishes principles that the regulator should take into account when exercising powers under the regime to be established by the bill.

Therefore, clauses 13(1) and 78 fulfil similar purposes; with clause 13(1) applying to the powers established by the whole bill, and clause 78 applying only to powers established by Part 4 of the bill. However, the bill does not make it clear what the relationship is between the two clauses. For example, when the regulator is considering exercising a power regarding a distressed FMI, a requirement to act for the purposes required by clauses 13(1) and 78 would add significant complexity to decision-making.

We recommend amending the bill so that clause 13 expressly states that it does not apply to Part 4. We also recommend inserting clause 78A to list a set of principles that the regulator would need to take into account when exercising powers just under Part 4 of the bill. The principles in clause 78A are broadly similar to those in clause 13(2), but the principles in clause 78A have been tailored to fit the circumstances of Part 4.

We believe this change would simplify and clarify the legal test for making decisions under Part 4.

Confidentiality notices

Clause 83(2) would make it an offence for someone to intentionally or recklessly contravene a confidentiality notice that had been issued by the regulator under this regime. Clause 83(3) specifies various exemptions to clause 83(2).

We recommend deleting clause 83(3) and replacing it with provisions that are largely aligned with sections 44 and 45 of the Financial Markets Authority Act 2011 (FMA Act). These provisions would allow someone to disclose information that would otherwise be confidential if they had the express consent of the regulator.

We believe this change would provide a clearer and more effective set of provisions relating to the issuance of confidentiality notices.

Consent to make a new operator scheme

Clause 103(2) and (3) as introduced would require an operator to gain ministerial consent before making a new operator scheme.

The adoption of a new operator scheme would be done as a part of a crisis management process. A new operator scheme would likely only be adopted to ensure that the essential services provided by an FMI can continue.

Because of the limited circumstances in which this provision would be used, it is unlikely to raise any fiscal or broader economic risks. We therefore consider it unnecessary for ministerial consent to be a requirement, and recommend deleting sub-clauses (2) and (3).

We do not propose removing the requirement for the consent of the regulator, but note that this would be a technical and operational decision, for which no further oversight would be required.

We believe this change would simplify the legal test for triggering new operator schemes under the bill.

Rules about disclosure of confidential information by the regulator

Clauses 139 to 143 would establish rules for the disclosure of information by both the Reserve Bank and the FMA. We recommend narrowing these clauses by removing some references to the FMA, so that the provisions would only apply to the disclosure of information by the Reserve Bank.

The FMA's ability to disclose confidential information is regulated by the FMA Act. We consider it unnecessary to duplicate the rules that govern its disclosure of confidential information. Our recommended change would ensure that the FMA operates under a single set of provisions governing the use of the confidential information that it holds.

The rules around confidentiality in sections 59 and 60 of the FMA Act are very similar to clauses 139 to 143 of the bill. Therefore, our recommended change would not limit the level of protection that this bill would provide for confidential or sensitive information.

Ensuring that the FMA may also use its powers under the FMA Act when carrying out its functions under the bill

We recommend that this bill be listed in Part 1 of Schedule 1 of the FMA Act. This is necessary to ensure that all of the FMA's relevant powers under the FMA Act are available to it when carrying out its joint regulatory role under this bill.

We believe that this would help improve the efficiency of the joint regulator model by allowing the FMA to also use powers under the FMA Act in respect of the operators of designated FMIs (other than pure payment systems, where the Reserve Bank is the sole regulator).

Appendix

Committee process

The Financial Market Infrastructures Bill was referred to us on 12 February 2020. The closing date for submissions was 30 April 2020. We received and considered nine submissions from interested groups and individuals. We heard oral evidence from four submitters.

We received advice from the Reserve Bank of New Zealand and the Financial Markets Authority. The Regulations Review Committee reported to us on the powers contained in clause 20.

Committee membership

Dr Deborah Russell (Chairperson)

Kiritapu Allan

Andrew Bayly

Rt Hon David Carter

Tamati Coffey

Hon Judith Collins (until 22 July 2020)

Hon Paul Goldsmith

Hon Todd McClay (from 22 July 2020)

Ian McKelvie (until 22 July 2020)

Greg O'Connor

David Seymour

Jamie Strange

Fletcher Tabuteau

Dr Duncan Webb

Hon Michael Woodhouse (from 22 July 2020)

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Grant Robertson

Financial Market Infrastructures Bill

Government Bill

Contents

	Page
1 Title	8
2 Commencement	8
Part 1	
Preliminary provisions and regulator	
Subpart 1—Preliminary provisions	
3 Purposes	8
4 Overview of this Act	9
5 Interpretation	11
6 Transitional, savings, and related provisions	17
7 Act binds the Crown	17
Subpart 2—Regulator	
8 Regulator	17
9 Requirement to act jointly	18
10 Cases where requirement to act jointly does not apply	18
11 RBNZ and FMA working together	18
12 General provisions about regulator’s functions and Ministers’ functions	19
13 Purposes and principles of exercising powers <u>under this Act (other than Part 4)</u>	19
Part 2	
Regulator’s powers to require information, reviews, and independent reports	
14 Regulator’s power to require information	20
15 Offence for failure to give information	21

Financial Market Infrastructures Bill

16	Regulator's power to require information to be reviewed	21
17	Offence for failure to obtain review	21
18	Regulator's power to require independent report	21
19	Offence for failure to give <u>or publish</u> report	22

Part 3
Designated FMIs

Subpart 1—Making, revoking, and amending designations

Designations by Minister

20	Designation of FMIs by Minister	22
----	---------------------------------	----

Recommendation for designation by regulator

21	Recommendations by regulator	23
22	Restrictions on recommendations	23
23	Matters to which regulator may have regard for purposes of recommendations	23
24	Matters that regulator must take into account for purposes of deciding if FMI is systemically important	24

Process for applications or recommendations on own initiative

25	Application for issue, revocation, or amendment of designation notice	24
26	Process where regulator makes recommendation on own initiative	24
27	Pecuniary penalty for failure to publish proposal	25

General provisions relating to designation notices

28	Meaning of systemically important	25
29	Content and publication of designation notice	25

Offence

30	Offence for wrongly holding out system as designated FMI, etc	26
----	---	----

Subpart 2—Standards for designated FMIs

31	Regulator may issue standards for designated FMIs	27
32	Procedure for issuing standards	27
33	Publication of standards	28
34	Pecuniary penalty for contravention of standard	28
35	Subject matter of standards	28

Subpart 3—Rules of designated FMIs

Rules of designated FMIs

36	Designated FMI's rules	29
37	Operators must publish copy of rules of designated FMI	30
38	Pecuniary penalty for failure to publish copy of rules	30

Rule changes of designated FMIs (other than overseas FMIs)

39	Time rule change comes into effect	30
----	------------------------------------	----

Financial Market Infrastructures Bill

40	Operator of designated FMI may apply for approval of rule change	30
41	Regulator may require change to designated FMI's rules	31
42	Regulator's decision to approve rule change required under section 41	31
43	Regulator's decision not to approve rule change required under section 41	32
44	Offence for contravention of section 41 or 43	32
	<i>Rule changes of overseas FMIs</i>	
45	Changes to rules of designated FMIs that are overseas FMIs	33
46	Pecuniary penalty for failure to give rule change instrument to regulator	33
	<i>Publication requirements relating to rule changes</i>	
47	Publication of rule changes	33
	Subpart 4—FMI contingency plans	
48	Designated FMIs to have FMI contingency plans	34
49	Operator must notify activation of FMI contingency plan	34
50	Regulator's power to review FMI contingency plans, etc	34
51	Regulator's powers in relation to FMI contingency plans	34
52	Regulator's decision on change submitted by operator	35
53	Offence for contravention of sections 50 to 52	35
	Subpart 5—Validity and enforceability of settlements under designated FMIs, etc	
54	Application of this subpart	36
	<i>Settlements and netting</i>	
55	Designated FMI's rules relating to settlements, etc, are valid and enforceable	36
56	Settlements must not be reversed, etc	36
57	Effect of insolvency event on settlement	37
58	Netting	38
59	Underlying transactions, etc	38
60	Interrelationships with other enactments	39
	<i>Other provisions</i>	
61	Transfer of personal property in accordance with designated FMI's rules effective	39
62	Operators to be notified of insolvency event	40
	Subpart 6—Investigations, remedial notices, and voluntary undertakings	
	<i>Investigations</i>	
63	Regulator may appoint investigator	40
64	Investigator's powers	40

Financial Market Infrastructures Bill

65	Application for warrant	41
66	Offences relating to investigations	41
	<i>Remedial notices and plans</i>	
67	Regulator may require operator to take action in relation to contravention of this Act	42
68	Approval, amendment, or rejection of remedial plan	42
69	Other provisions relating to remedial notices and plans	43
70	Offence for contravention of remedial notice, failure to give amended remedial plan, or failure to take steps to comply with remedial plan	43
	<i>Voluntary undertakings</i>	
71	Regulator may accept voluntary undertaking	43
72	Consequences of accepting undertaking	43
73	Undertakings that include payment of money	44
74	Operator may withdraw or amend undertaking	44
75	Enforcement of voluntary undertakings	44
76	Court must take into account certain matters	44
	Part 4	
	Dealing with systemically important FMIs that are distressed, etc	
	Subpart 1—Application and purposes	
77	Application of this Part	45
78	Purposes for which powers under this Part may be exercised	45
<u>78A</u>	<u>Principles for exercising powers under this Part</u>	<u>46</u>
	Subpart 2—Directions to operators or participants and removal of directors	
79	Application of this subpart	46
80	Directions to operator	47
81	Giving and complying with direction does not place person in contravention, etc	48
82	Power to make direction notice confidential	48
<u>82A</u>	<u>Disclosure with regulator’s consent</u>	<u>48</u>
83	Offences for contravention of direction notice or confidentiality notice	49
84	Direction to participant to comply with FMI’s rules	49
85	Offence for contravention of direction notice	49
86	Removal of director	49
87	Process if regulator proposes to exercise power to remove director	50
88	How power to remove director is exercised	50

Financial Market Infrastructures Bill

Subpart 3—Statutory management

Making FMI operator subject to statutory management

89	Power to make operator subject to statutory management	50
90	Regulator’s recommendation under section 89	51
91	Statutory management of operator whose home jurisdiction is not New Zealand	51

Conduct of statutory management: purposes, duties, and principles

92	Purposes of statutory management	51
93	General duties of statutory manager	51
94	Principles for statutory management	52
95	Other duties of statutory manager	52
96	Advisory committee	53
97	Terminating appointment, or resignation, of member of advisory committee	53

Conduct of statutory management: application of FMI’s rules

98	Application of FMI’s rules	54
99	Statutory manager may decide that provision of rules is not to apply	54
100	Statutory manager must pay calls, debts, and claims arising under FMI’s rules	55

Conduct of statutory management: new operator schemes

101	Purpose of new operator schemes	55
102	Making of new operator scheme	55
103	Consent required to make new operating scheme	56
104	Effect of new operating scheme	57
<u>104A</u>	<u>Transfer of property subject to security</u>	<u>57</u>
105	Registers	57

Application of provisions of Corporations (Investigation and Management) Act 1989

106	Moratorium	58
107	Power of statutory manager to sell business undertaking of operator under statutory management, etc	58
108	Ministers’ approval	59
109	Body corporate formed and registered also subject to statutory management	60
110	Applicable provisions of Corporations (Investigation and Management) Act 1989	60
111	Modifications relating to power to pay creditors and compromise claims	61
112	Other modifications to Corporations (Investigation and Management) Act 1989	62
113	Offences relating to statutory management	62

Financial Market Infrastructures Bill

Termination of statutory management or of statutory manager's appointment

114	Termination of statutory management	63
115	Effect of termination of statutory management	63
116	Termination or resignation of statutory manager's appointment	64
117	Appointment of new statutory manager	64

Other provisions

118	Obligations incurred by statutory manager	65
119	Statutory management does not place any person in contravention of enactment, etc	65
120	Continuation of statutory management of company restored to New Zealand register	65
121	Person who exercises powers under subpart not director of operator under statutory management	66
<u>121A</u>	<u>Indemnity</u>	<u>66</u>

Subpart 4—Supplementary provisions

122	Certain rights relating to derivatives may be exercised after stay	66
123	Regulator may reduce or extend stay on exercise of rights	67

Part 5

Offences and pecuniary penalties

Subpart 1—Offences

124	Penalties for offences	68
125	Defence for certain offences	69
126	Time for filing charging documents	70

Subpart 2—Pecuniary penalties

127	Pecuniary penalty orders	70
128	Maximum amount of penalty	71
129	Considerations for court	71
130	Defences in pecuniary penalty proceeding for operator that contravenes standard	71
131	Defence for other operator that is involved in contravention	72
132	Rules of civil procedure and civil standard of proof apply to civil liability	72
133	Court must order that recovery from pecuniary penalty be applied to regulator's actual costs	72

Subpart 3—Supplementary provisions

134	Liability of directors	72
135	State of mind of directors, employees, or agents attributed to body corporate or other principal	73
136	Person not liable for fine and pecuniary penalty for same conduct	73

Part 6

Regulations, amendments, and other miscellaneous provisions

Subpart 1—Supplementary provisions relating to information

137	False or misleading information given for purposes of Act	73
-----	---	----

Disclosure of information, etc

138	Disclosure of information between RBNZ and FMA	74
-----	--	----

139	Disclosure of information by RBNZ or FMA to other persons	74
-----	---	----

140	Offence for unauthorised disclosure	76
-----	-------------------------------------	----

141	Conditions relating to disclosure of information	76
-----	--	----

142	Restrictions on further disclosure of information	76
-----	---	----

143	Offence for unauthorised disclosure or use	76
-----	--	----

144	Effect of proceedings on exercise of powers to require information, etc	77
-----	---	----

145	Decision that exercise of powers is unlawful	77
-----	--	----

Subpart 2—Supplementary provisions relating to regulator’s powers

146	Applications, submissions, and other information given to regulator or other person in accordance with regulator’s requirement	78
-----	--	----

147	Revocation or amendment of requirements imposed, or directions given, by notice	79
-----	---	----

148	Publication requirements	79
-----	--------------------------	----

149	Interaction with Legislation Act 2012	80
-----	---------------------------------------	----

Subpart 3—Regulations

150	Power to make regulations by Order in Council	80
-----	---	----

Subpart 4—Other miscellaneous provisions

151	Directions to regulator	81
-----	-------------------------	----

152	Limit on FMA’s powers under other enactments	81
-----	--	----

153	Protection from liability	81
-----	---------------------------	----

154	Conduct of directors, employees, or agents attributed to body corporate or other principal	82
-----	--	----

155	Prohibition on indemnities or insurance for directors or employees of operators that are not New Zealand companies	82
-----	--	----

156	Exception to prohibition	83
-----	--------------------------	----

157	Giving of notices by regulator or investigator	84
-----	--	----

158	Giving notices to agent	84
-----	-------------------------	----

Subpart 5—Consequential amendments

159	Consequential amendments to Acts and instruments	85
-----	--	----

	Schedule 1	86
--	-------------------	----

Transitional, savings, and related provisions

Schedule 2 Consequential amendments

89

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Market Infrastructures Act **2019**.

2 Commencement

- (1) The following provisions of this Act come into force on the day after the date of Royal assent: 5
- (aa) **Part 1** (preliminary provisions and the regulator):
- (a) **Part 2** (regulator's powers to require information, reviews, and independent reports):
- (b) **sections 20 to 29** (making, revoking, and amending designations): 10
- (c) **subpart 2 of Part 3** (standards for designated FMIs) and **section 149** (interaction with the Legislation Act 2012):
- (d) **sections 124(1) to (3) and (4)(a), (b)(i), and (c)(i), 125, and 126, subpart 2 of Part 5** (other than **section 127(1)(a), (b), and (d) to (f) and (2)**), and **section 137** (certain offences and penalties): 15
- (e) **Schedule 1** (transitional, savings, and related provisions).
- (2) This rest of this Act comes into force on the 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 and appointing different dates for different purposes. 20
- (3) To the extent that this Act is not previously brought into force under **subsection (2)**, this Act comes into force on the third anniversary of the date of Royal assent.

Part 1

Preliminary provisions and regulator

25

Subpart 1—Preliminary provisions

3 Purposes

- (1) The purposes of this Act are to—
- (a) promote the maintenance of a sound and efficient financial system (including by responding to threats to the stability of, or confidence in, the whole or a significant part of the financial system); and 30
- (b) avoid significant damage to the financial system that could result from problems with an FMI, an operator of an FMI, or a participant of an FMI

- that threaten the stability of, or confidence in, the whole or a significant part of the financial system; and
- (c) promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- (d) promote and facilitate the development of fair, efficient, and transparent financial markets. 5
- (2) Those purposes are to be achieved by—
- (a) establishing a system for designating systemically important FMIs and FMIs that apply for designation; and
- (b) imposing regulatory requirements on designated FMIs; and 10
- (c) providing for the supervision of compliance with those requirements by the Reserve Bank of New Zealand and the Financial Markets Authority (acting as the **regulator**); and
- (d) conferring certain powers on the regulator to gather information; and
- (e) conferring certain powers on the regulator to act in respect of distressed FMIs. 15
- (3) See also **section 78** (which sets out the purposes for which the regulator’s powers under **Part 4** may be exercised).
- 4 Overview of this Act**
- General* 20
- (1) This Act is about the regulation of financial market infrastructures, which, in this Act, are called FMIs.
- (2) The regulator of FMIs is the Reserve Bank of New Zealand and the Financial Markets Authority.
- (3) This Act is divided into 6 Parts. 25
- Part 1*
- (4) This Part (**Part 1**) covers the following preliminary matters:
- (a) definitions of terms used in this Act, including the definition of FMI (**section 5**):
- (b) transitional, savings, and related provisions (**section 6 and Schedule 1**): 30
- (c) the application of this Act to the Crown (**section 7**):
- (d) an explanation of the regulator of FMIs (**subpart 2**).
- Part 2*
- (5) **Part 2** gives the regulator powers to require the following: 35
- (a) the submission and review of information about FMIs (**sections 14 to 17**):

- (b) the submission and publication of independent reports about FMIs (**sections 18 and 19**).

Part 3

- (6) **Part 3** is about FMIs that are designated FMIs for the purposes of this Act and covers the following matters: 5
- (a) how an FMI becomes a designated FMI (**subpart 1**):
- (b) standards applying to designated FMIs (**subpart 2**):
- (c) the rules of designated FMIs (**subpart 3**):
- (d) contingency plans of designated FMIs (**subpart 4**):
- (e) provisions to ensure that settlements effected, and certain other things done, under certain designated FMIs are valid and enforceable (**subpart 5**): 10
- (f) investigations, remedial notices, and voluntary undertakings for dealing with contraventions, by operators of designated FMIs, of requirements imposed by or under this Act (**subpart 6**). 15

Part 4

- (7) **Part 4** is about designated FMIs that are systemically important and, where such an FMI becomes distressed,—
- (a) gives the regulator power to do the following (**subpart 2**): 20
- (i) give directions to an operator or a participant of the FMI:
- (ii) remove or appoint a director of an operator of the FMI:
- (b) enables an operator of the FMI to be made subject to statutory management (**subpart 3**).

Part 5

- (8) **Part 5** is about offences and pecuniary penalties under this Act and covers the following matters: 25
- (a) penalties for offences and the time for filing charging documents (**subpart 1**):
- (b) the process for requiring the payment of pecuniary penalties, the amounts of pecuniary penalties, and the liabilities of operators of FMIs to pecuniary penalties (**subpart 2**): 30
- (c) supplementary provisions relating to directors' liabilities (**subpart 3**).

Part 6

- (9) **Part 6** covers the following final matters:
- (a) supplementary provisions relating to information (**subpart 1**): 35
- (b) supplementary provisions relating to the regulator's powers (**subpart 2**):
- (c) regulations (**subpart 3**):

- (d) other final provisions (**subpart 4**):
- (e) consequential amendments of enactments (**subpart 5**).

5 Interpretation

In this Act, unless the context otherwise requires,—

advisory committee means the committee appointed under **section 96** 5

clearing means the process of transmitting and reconciling transactions that are intended to result in settlements, which may include 1 or more of the following:

- (a) the confirming of the transactions (that is, verifying their terms with the parties or other relevant persons): 10
- (b) the netting of obligations under the transactions and the establishing of final positions for the purpose of effecting the settlements:
- (c) in the case of transactions involving futures or options, the daily balancing of profits and losses and the daily calculation of collateral requirements 15

conduct includes an act or omission or a contravention

designated FMI means an FMI that is declared to be a designated FMI under **section 20**

designation notice is defined in **section 20(1)**

director, in relation to a body corporate or an unincorporated body, means— 20

- (a) a person occupying the position of director of the body, by whatever name called:
- (b) if the body does not have directors as such, any trustee, manager, or other person who acts, in relation to the body, in the same way as, or in a way that is similar to the way in which, a director would act if the body were a company incorporated under the Companies Act 1993 25

disruption includes delay

distressed, in relation to an FMI, means 1 or more of the following apply:

- (a) an operator of the FMI is insolvent or is likely to become insolvent:
- (b) without limiting **paragraph (a)**, an insolvency event has occurred, or is likely to occur, for an operator: 30
- (c) an operator has acted (or is acting) fraudulently or recklessly:
- (d) an operator has persistently or seriously contravened a requirement imposed by or under this Act:
- (e) the FMI is being operated, or activities under the FMI are otherwise being carried out, in a way that is undermining the soundness or efficiency of 1 or both of the following: 35
 - (i) the FMI:

- (ii) the whole or a significant part of the financial system:
- (f) there has been (or is) disruption to activities under the FMI and that disruption—
- (i) has caused (or is causing) problems for 1 or more of the FMI’s participants or indirect participants that threaten (directly or indirectly) the stability of, or confidence in, the whole or a significant part of the financial system; or 5
- (ii) is likely to cause problems for 1 or more of the FMI’s participants or indirect participants that would threaten (directly or indirectly) the stability of, or confidence in, the whole or a significant part of the financial system: 10
- (g) there have been (or are) problems with 1 or more of the FMI’s participants or indirect participants and, because of the transactions or other interconnections (direct or indirect) under the FMI between participants or indirect participants, those problems— 15
- (i) have caused (or are causing) problems for 1 or more other participants or indirect participants that threaten (directly or indirectly) the stability of, or confidence in, the whole or a significant part of the financial system; or
- (ii) are likely to cause problems for 1 or more other participants or indirect participants that would threaten (directly or indirectly) the stability of, or confidence in, the whole or a significant part of the financial system 20
- document** has the same meaning as in section 4(1) of the Evidence Act 2006
- financial markets** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013 25
- financial system**—
- (a) means the financial system in New Zealand; and
- (b) includes the financial markets
- FMA** means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011 30
- FMA Minister** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Financial Markets Authority Act 2011
- FMI**— 35
- (a) means a multilateral system for the clearing, settling, or recording of any of the following:
- (i) payments:
- (ii) personal property, or transactions involving personal property, within the financial system: 40

- (iii) other transactions within the financial system; and
- (b) includes (without limitation) a system that is commonly regarded, within the financial system in New Zealand or elsewhere, as a financial market infrastructure, including a financial market infrastructure of any of the following types: 5
 - (i) a payment system:
 - (ii) a central securities depository:
 - (iii) a securities settlement system:
 - (iv) a central counterparty:
 - (v) a trade repository: 10
 - (vi) a combination of 2 or more of the types of financial market infrastructure listed in **subparagraphs (i) to (v)**

FMI contingency plan, in relation to an FMI, means a plan for 1 or more of the following purposes:

- (a) doing 1 or more of the following in relation to activities under the FMI: 15
 - (i) maintaining their continuity where events that could result in their disruption occur:
 - (ii) mitigating, or otherwise managing, disruption to them:
 - (iii) restoring their continuity following their disruption:
- (b) restoring the FMI's financial resources following events that cause them to be depleted: 20
- (c) applying the provisions of the FMI's rules relating to 1 or more of the following:
 - (i) participant default:
 - (ii) indirect participant default: 25
 - (iii) the allocation of losses among operators, participants, or other persons:
- (d) if the FMI were to be wound down, ensuring that the winding-down is orderly

function, as in a function of a person (for example, the regulator), includes a power or duty 30

home jurisdiction, in relation to an operator of an FMI, means the jurisdiction under whose law the operator is incorporated or otherwise established

indirect participant means any person who—

- (a) is not bound by the FMI's rules; but 35
- (b) participates, or has agreed to participate, in the FMI through an agency or other arrangement that the person has (directly or indirectly) with—

- (i) an operator of the FMI who acts on the person's behalf in relation to the FMI; or
- (ii) a participant of the FMI who acts on the person's behalf in relation to the FMI

indirect participant default, in relation to an FMI, means 1 or more of the following applies to an indirect participant of the FMI: 5

- (a) the indirect participant is insolvent or is likely to become insolvent:
- (b) without limiting **paragraph (a)**, an insolvency event has occurred, or is likely to occur, in relation to the indirect participant:
- (c) any default (however described) under the FMI's rules has occurred in relation to the indirect participant 10

insolvency event, in relation to a person (**P**), means—

- (a) an insolvency manager is appointed for P; or
- (b) a process that is similar to a process for which an insolvency manager may be appointed starts in relation to P in New Zealand or in the jurisdiction under whose law P is incorporated or otherwise established; or 15
- (c) P is adjudicated bankrupt under the Insolvency Act 2006 or is given, or determined to have, a similar status in New Zealand or in the jurisdiction in which P is ordinarily resident; or
- (d) P is admitted to the no asset procedure under subpart 4 of Part 5 of the Insolvency Act 2006 or becomes subject to a similar process in New Zealand or in the jurisdiction in which P is ordinarily resident 20

insolvency manager means any of the following:

- (a) a liquidator under Part 16 of the Companies Act 1993 or any other enactment: 25
- (b) an administrator under Part 15A of the Companies Act 1993:
- (c) a statutory manager under any of the following:
 - (i) Part 3 of the Corporations (Investigation and Management) Act 1989:
 - (ii) Part 5 of the Reserve Bank of New Zealand Act 1989: 30
 - (iii) subpart 4 of Part 4 of the Insurance (Prudential Supervision) Act 2010:
 - (iv) **subpart 3 of Part 4**:
- (d) a receiver appointed in New Zealand for the whole, or substantially the whole, of the assets and undertaking of a person: 35
- (e) a receiver appointed for the whole, or substantially the whole, of the assets and undertaking of an operator, a participant, or an indirect participant, where the appointment is made in the jurisdiction under whose

law the operator, participant, or indirect participant is incorporated or otherwise established:

- (f) a person appointed in New Zealand, or in the jurisdiction under whose law the operator, participant, or indirect participant is incorporated or otherwise established, who is similar to a person listed in **paragraphs (a) to (e)** 5

investigator is defined in **section 63(2)**

Minister, in relation to something that may be done in accordance with a recommendation of the regulator, means—

- (a) the RBNZ Minister and the FMA Minister acting jointly, if the recommendation is made by the RBNZ and the FMA acting jointly; or 10
 (b) the RBNZ Minister, if the recommendation is made by the RBNZ; or
 (c) the FMA Minister, if the recommendation is made by the FMA

netting means the conversion into 1 net obligation, or the set-off, of different obligations between participants of an FMI,— 15

- (a) whether on a bilateral or multilateral basis; and
 (b) whether or not through the interposition of an operator of the FMI (whether by novation or otherwise); and
 (c) whether or not the obligations constitute mutual credits, mutual debts, or other mutual dealings; and 20
 (d) whether or not the obligations are denominated in New Zealand currency

obligation includes a claim or liability

operator, in relation to an FMI,—

- (a) means a person who is wholly or partly responsible to the FMI's participants (or any of them) for— 25
 (i) providing or managing services under the FMI; or
 (ii) maintaining or administering the FMI's rules; and
 (b) if the FMI is a designated FMI, must be read in accordance with **section 29(3)**

operator under statutory management is defined in **section 89(4)** 30

overseas, in relation to an FMI, means none of the FMI's operators has New Zealand as its home jurisdiction

overseas standard means—

- (a) a standard, framework, code of practice, or requirement issued under the law of a jurisdiction other than New Zealand; or 35
 (b) a recommended practice issued in a jurisdiction other than New Zealand; or

- (c) a requirement or recommended practice of an international organisation or an overseas national organisation

participant, in relation to an FMI,—

- (a) means any person who—
- (i) is bound by the FMI’s rules; and 5
 - (ii) participates, or has agreed to participate, in the FMI; and
- (b) includes, if the FMI is a designated FMI, an operator specified in the FMI’s designation notice under **section 29(2)(a)**

participant default, in relation to an FMI, means 1 or more of the following applies to a participant of the FMI: 10

- (a) the participant is insolvent or is likely to become insolvent:
- (b) without limiting **paragraph (a)**, an insolvency event has occurred, or is likely to occur, in relation to the participant:
- (c) the participant has failed, or is likely to fail, to meet an obligation to 1 or more of the following: 15
- (i) an operator of the FMI:
 - (ii) another participant of the FMI:
 - (iii) any other person who is bound by the FMI’s rules:
- (d) any default (however described) under the FMI’s rules has occurred in relation to the participant 20

pure payment system is defined in **section 10(2)**

RBNZ means the Reserve Bank of New Zealand (*see* Part 1 of the Reserve Bank of New Zealand Act 1989)

RBNZ Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Reserve Bank of New Zealand Act 1989 25

regulation includes supervision

regulator is defined in **section 8**

requirement, as in a requirement imposed by or under this Act, includes (without limitation) a duty or a standard issued under **section 31** 30

rules, in relation to an FMI,—

- (a) means the rules of the FMI—
- (i) that are evidenced in writing,—
 - (A) whatever they may be called; and
 - (B) whether contained in, or made under, a body’s constitution, 35
an agreement, a procedure, a contract, or any other document; and

<ul style="list-style-type: none"> (ii) that set out (among other things) the following: <ul style="list-style-type: none"> (A) how the FMI is to be constituted (for example, as a set of arrangements between its participants or as a legal person with whom its participants are to interact): (B) how activities under the FMI are to be carried out: 5 (C) the rights and obligations under the FMI of its operators and participants; and (b) if the FMI is a designated FMI, must be read in accordance with section 36 	<p>settlement means— 10</p> <ul style="list-style-type: none"> (a) the making of a payment, or the transfer of the title to, or an interest in, personal property,— <ul style="list-style-type: none"> (i) that is done in accordance with, or to give effect to, a settlement instruction; and (ii) that is on a gross basis or that uses netting; and 15 (iii) that is by way of a book entry or otherwise; or (b) any other act that, in accordance with an FMI’s rules, discharges an obligation to make a payment or to transfer the title to, or an interest in, personal property
<p>settlement instruction means an instruction by a participant, or to an operator, of an FMI—</p> <ul style="list-style-type: none"> (a) that is made in accordance with the FMI’s rules; and (b) that results, or is intended to result, in 1 or more settlements being effected 	<p>20</p>
<p>specified operator, in relation to a designated FMI, is defined in section 29(1)(c)</p>	<p>25</p>
<p>system includes an arrangement</p>	
<p>systemically important, in relation to an FMI, is defined in section 28.</p>	
<p>6 Transitional, savings, and related provisions</p> <p>The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.</p>	<p>30</p>
<p>7 Act binds the Crown</p> <p>This Act binds the Crown.</p>	
<p>Subpart 2—Regulator</p>	
<p>8 Regulator</p> <p>For the purposes of this Act, regulator means—</p>	<p>35</p>

- (a) the RBNZ and the FMA acting jointly (*see* **section 9**); or
- (b) the RBNZ acting on its own in accordance with **section 10(1) or (3)**;
or
- (c) the FMA acting on its own in accordance with **section 10(3)**.
- 9 Requirement to act jointly** 5
- (1) The RBNZ and the FMA must carry out the regulator’s functions acting jointly.
- (2) The requirement to act jointly is subject to **section 10(1) and (3)**.
- 10 Cases where requirement to act jointly does not apply**
- (1) If a designated FMI is a pure payment system, the regulator’s functions must be carried out by the RBNZ. 10
- (2) For the purposes of **subsection (1)**, a designated FMI is a **pure payment system** if the FMI’s designation notice specifies under **section 29(2)(c)** that the FMI is a pure payment system.
- (3) The RBNZ and the FMA may, ~~with the approval of the RBNZ Minister and the FMA Minister acting jointly,~~ agree that one of them is to carry out the regulator’s functions under **Part 4** this Act in relation to— 15
- (a) a particular operator of an FMI, or a class of operators;
- (b) a particular FMI, or a class of FMIs;
- (c) particular circumstances, or a class of circumstances.
- (4) ~~The approval must be given if the Ministers consider that the agreement is reasonable in the circumstances.~~ 20
- (5) The publication requirements in **section 148(2)** apply to an agreement under **subsection (3)**.
- (6) A contravention of an agreement under **subsection (3)** does not invalidate the exercise or performance of a power or duty of the regulator or a decision not to exercise a power of the regulator. 25
- 11 RBNZ and FMA working together**
- (1) When acting under this Act (whether jointly in accordance with **section 9(1)** or on its own in accordance with **section 10(1) or (3)**),— 30
- (a) the RBNZ may have regard to, refer to, or rely on any information, work, or matter held or produced by the FMA in the performance or exercise of its functions under this Act or any other enactment; and
- (b) the FMA may have regard to, refer to, or rely on any information, work, or matter held or produced by the RBNZ in the performance or exercise of its functions under this Act or any other enactment. 35
- (2) The RBNZ and the FMA may enter into a memorandum of understanding setting out—

- (a) how they intend to work together for the purposes of this Act; and
- (b) without limiting **paragraph (a)**, how they intend to do the following:
- (i) make decisions about whether an FMI's designation notice should specify under **section 29(2)(c)** that the FMI is a pure payment system: 5
- (ii) make decisions about entering into agreements under **section 10(3)**:
- (iii) give effect to **subsection (1)**.
- (3) However, a memorandum of understanding does not limit **subsection (1), section 10(3), or section 29(2)(c)** or any other provision made by or under this Act. 10
- (4) The publication requirements in **section 148(2)** apply to a memorandum of understanding under **subsection (2)**.
- 12 General provisions about regulator's functions and Ministers' functions**
- (1) The regulator's functions are as follows: 15
- (a) to recommend the designation of FMIs (*see subpart 1 of Part 3*):
- (b) to regulate designated FMIs (*see subparts 2 to 4 and 6 of Part 3*):
- (c) to deal with designated FMIs that are distressed (*see Part 4*):
- (d) the other functions of the regulator under this Act.
- (2) The functions of the FMA Minister and the RBNZ Minister (whether acting jointly or of their own account) are as follows: 20
- (a) on the recommendation of the regulator, to declare an FMI to be a designated FMI (*see subpart 1 of Part 3, section 20* in particular):
- (b) ~~to approve the exercise of powers of the regulator in respect of rule changes of designated FMIs (*see subpart 3 of Part 3*):~~ 25
- (c) to approve the exercise of powers of the regulator in respect of systemically important FMIs (*see subpart 2 of Part 4*):
- (d) to provide advice on declaring an operator of an FMI to be subject to statutory management and on the termination of statutory management, ~~to and~~ approve the exercise of powers in respect of an operator of an FMI that is subject to statutory management, ~~and~~ to appoint an advisory committee, and to perform or exercise other functions in respect of that statutory management (*see subpart 3 of Part 4*): 30
- (e) the other functions of the Minister or Ministers under this Act.
- 13 Purposes and principles of exercising powers under this Act (other than Part 4)** 35
- (1) The powers of the regulator, the FMA Minister, and the RBNZ Minister must be exercised for 1 or more of the purposes set out in **section 3**.

- (2) In deciding whether to exercise its powers, and in exercising them, the regulator must take into account the following principles that are relevant:
- (a) the importance of recognising that FMIs can have a key role in maintaining a sound and efficient financial system:
 - (b) the importance of recognising that primary responsibility for ensuring that an FMI is sound and efficient rests with its operators, participants, and indirect participants and those who own or control its operators, participants, and indirect participants: 5
 - (c) the need for an FMI's rules to provide, to the extent possible, certainty and predictability about the rights and obligations of the FMI's participants and indirect participants, especially in the event of a participant default or an indirect participant default: 10
 - (d) the importance of regulating FMIs in a way that is consistent with international standards for their regulation where those standards are appropriate for conditions in New Zealand: 15
 - (da) the importance of recognising the diversity of FMIs and of taking into account the circumstances of particular FMIs (while recognising the importance of consistency in the treatment of similar FMIs):
 - (e) the need to avoid unnecessary compliance costs and unnecessary constraints on innovation: 20
 - (f) the importance of timely, accurate, and understandable information being available to participants, indirect participants, and potential participants or indirect participants, of an FMI to assist them in making informed decisions about their interaction, or potential interaction, with the FMI: 25
 - ~~(g) the importance of avoiding financial risk to the Crown resulting from a distressed FMI, other than financial risk associated with the Crown being a participant or an indirect participant of the FMI.~~
- (3) This section does not apply to powers under **Part 4** (see instead **sections 78 and 78A**). 30

Part 2

Regulator's powers to require information, reviews, and independent reports

14 Regulator's power to require information

- (1) The regulator may, by notice, require an operator, a participant, or an indirect participant of an FMI to give to the regulator any information relating to the FMI that the regulator reasonably requires for the purposes of, or in connection with, its functions. 35

- (2) *See* **section 146** for supplementary provisions about giving the information to the regulator.

15 Offence for failure to give information

- (1) An operator, a participant, or an indirect participant who, without reasonable excuse, contravenes a requirement under **section 14** (including any applicable requirement under **section 146**) commits an offence. 5
- (2) *See* **Part 5** for further provisions about offences.

16 Regulator's power to require information to be reviewed

- (1) This section applies if—
- (a) information is given to the regulator under **section 14** in relation to an FMI; and 10
 - (b) the regulator has reasonable grounds to believe that the information is inadequate or inaccurate.
- (2) The regulator may, by notice, require an operator, a participant, or an indirect participant of the FMI— 15
- (a) to obtain a review of the information; and
 - (b) to give the results of the review to the regulator.
- (3) The review must be carried out by a suitably qualified independent person approved by the regulator.
- (4) *See* **section 146** for supplementary provisions about giving the results of the review to the regulator. 20

17 Offence for failure to obtain review

- (1) An operator, a participant, or an indirect participant who contravenes a requirement under **section 16** (including any applicable requirement under **section 146**) commits an offence. 25
- (2) *See* **Part 5** for further provisions about offences.

18 Regulator's power to require independent report

- (1) The regulator may, by notice, require an operator of an FMI to give to the regulator a report on a matter relating to the FMI if the regulator reasonably requires the report for the purposes of, or in connection with, its functions. 30
- (2) The report must be prepared by a suitably qualified independent person approved by the regulator.
- (3) *See* **section 146** for supplementary provisions about giving the report to the regulator.
- (4) The regulator may, by notice, require the operator to publish the report or part of the report. 35

- (5) The notice may specify any of the following:
- (a) the way in which the report or part of the report must be published:
 - (b) when the report or part of the report must be published and for how long it must remain published:
 - (c) where only part of the report is to be published, which parts must be published or which parts may be withheld from publication. 5

19 Offence for failure to give or publish report

- (1) An operator who intentionally or recklessly contravenes a requirement under **section 18** (including any applicable requirement under **section 146**) commits an offence. 10
- (2) See **Part 5** for further provisions about offences.

Part 3 Designated FMIs

Subpart 1—Making, revoking, and amending designations

Designations by Minister 15

20 Designation of FMIs by Minister

- (1) The Minister may, in accordance with a recommendation made by the regulator under this subpart,—
- (a) by notice (a **designation notice**) declare an FMI to be a designated FMI:
 - (b) by notice (a **further notice**), revoke or amend a designation notice. 20
- (2) ~~After receiving a recommendation made by the regulator under this subpart, the Minister must act under **subsection (1)** unless the Minister considers that the regulator has not adequately—~~
- ~~(a) taken into account the matters in **section 13**; or~~
 - ~~(b) had regard to the matters in **section 23**; or~~ 25
 - ~~(c) taken into account the matters in **section 24** (in the case of a recommendation that proposes that a designation notice specify that an FMI is systemically important); or~~
 - ~~(d) followed the process in **section 26** (in the case of a recommendation made on the regulator's own initiative). 30~~

*Recommendation for designation by regulator***21 Recommendations by regulator**

- (1) The regulator may recommend that the Minister issue, revoke, or amend a designation notice for an FMI on receiving an application under **section 25** or on its own initiative under **section 26**. 5
- (2) This section is subject to **section 22**.

22 Restrictions on recommendations

- (1) The regulator may only make a recommendation to issue a designation notice on receipt of an application—
- (a) if the regulator considers that it is appropriate for **subpart 5 of Part 3** to apply to the FMI; and 10
- (b) in the case of a recommendation that proposes that the designation notice specify that the FMI is systemically important, if the regulator is satisfied that the FMI is systemically important.
- (2) The regulator may only make a recommendation to issue a designation notice on its own initiative if the regulator is satisfied that the FMI is systemically important. 15
- (3) The regulator may only make a recommendation to amend a designation notice so that it specifies that the FMI is systemically important if the regulator is satisfied that the FMI is systemically important. 20

23 Matters to which regulator may have regard for purposes of recommendations

In deciding whether to make a recommendation, and in deciding on the terms of the recommendation, the regulator may have regard to the following matters (without limitation): 25

- (a) the purpose and scope of the FMI:
- (b) the FMI's rules (including whether the rules are appropriate to support settlements that must not be reversed, repaid, recovered, or set aside (*see section 56*):
- (c) any laws or regulatory requirements in New Zealand or elsewhere that relate to activities under the FMI and the extent to which the FMI complies with those laws or regulatory requirements: 30
- (d) the capability and capacity of the FMI's operators and the FMI:
- (e) the financial resources of the operators of the FMI:
- (f) the importance of the FMI to the financial system: 35
- (g) the impact on creditors of participants or indirect participants of the FMI of specifying under **section 29(2)(b)** that the specified operator is an

operator to whom section 103A of the Personal Property Securities Act 1999 applies.

24 Matters that regulator must take into account for purposes of deciding if FMI is systemically important

In deciding whether an FMI is systemically important, the regulator must take into account the following matters: 5

- (a) the FMI's size, including the number of participants and the number of indirect participants:
- (b) the types of persons who are participants and indirect participants:
- (c) the nature and scope of the activities under the FMI, including the way in which, and the extent to which,— 10
 - (i) the FMI interconnects (directly or indirectly) with other FMIs or other activities within the financial system:
 - (ii) participants and indirect participants transact or otherwise interconnect with each other (directly or indirectly) under the FMI: 15
- (d) the way in which, and the extent to which, financial risks are concentrated within the FMI:
- (e) were activities under the FMI to be disrupted, whether another FMI could promptly and effectively take them over.

Process for applications or recommendations on own initiative 20

25 Application for issue, revocation, or amendment of designation notice

- (1) An operator of an FMI may apply to the regulator for the issue, revocation, or amendment of a designation notice for the FMI.
- (2) A person who will be an operator of a proposed FMI may apply to the regulator for the issue of a designation notice for the FMI that will come into force once the FMI is established. 25
- (3) The regulator must consider an application that is made.
- (4) If the regulator decides to accept the application, the regulator must—
 - (a) notify the applicant of the decision; and
 - (b) make a recommendation under **section 21**. 30
- (5) If the regulator decides not to accept the application, the regulator must notify the applicant of the decision, and of the reasons for the decision.
- (6) See **section 146** for supplementary provisions about applications.

26 Process where regulator makes recommendation on own initiative

- (1) If the regulator proposes to make a recommendation on its own initiative, the regulator must do the following: 35

-
- (a) notify the operator of the FMI of the proposal, and of the reasons for the proposal:
- (b) require the operator to publish the proposal, and the reasons for the proposal, on an Internet site that—
- (i) is maintained by, or on behalf of, the operator; and 5
- (ii) is publicly available free of charge:
- (c) allow the operator and any participants or indirect participants of the FMI to make submissions to the regulator about the proposal:
- (d) consider any submissions that are made by the operator or those participants or indirect participants: 10
- (e) decide whether to go ahead with the recommendation:
- (f) notify the operator of the decision.
- (2) An operator must, as soon as practicable, comply with a requirement under **subsection (1)(b)**.
- (3) *See section 146* for supplementary provisions about submissions. 15
- 27 Pecuniary penalty for failure to publish proposal**
- (1) An operator who contravenes **section 26(2)** is liable to a pecuniary penalty.
- (2) *See Part 5* for further provisions about pecuniary penalties.
- General provisions relating to designation notices*
- 28 Meaning of systemically important** 20
- (1) In this Act, an FMI is **systemically important** if 1 or both of the following apply:
- (a) disruption to activities under the FMI could cause problems for 1 or more relevant persons that would threaten the stability of, or confidence in, the whole or a significant part of the financial system: 25
- (b) problems with 1 or more relevant persons could, because of the transactions or other interconnections under the FMI between relevant persons, cause problems for 1 or more other relevant persons that would threaten the stability of, or confidence in, the whole or a significant part of the financial system. 30
- (2) In this section,—
- (a) **relevant person** means a participant or an indirect participant of the FMI:
- (b) threats or interconnections may be direct or indirect.
- 29 Content and publication of designation notice** 35
- (1) A designation notice must specify the following:

- (a) the FMI and its operators:
 - (b) the documents that set out the FMI's rules (whether the documents are referred to by name or description):
 - (c) if the notice specifies that section 103A of the Personal Property Securities Act 1999 applies to an operator as a specified operator (*see **subsection (2)(b)***), which operator of the FMI is the **specified operator**: 5
 - (d) that the FMI is systemically important if the Minister acts on a recommendation by the regulator that the FMI is systemically important.
- (2) A designation notice may specify 1 or more of the following:
- (a) that a particular operator of the FMI is also a participant of the FMI: 10
 - (b) that the specified operator is an operator to whom section 103A of the Personal Property Securities Act 1999 applies:
 - (c) that the FMI is a pure payment system:
 - (d) that the FMI is a central counterparty:
 - (e) that **subpart 5** applies to the FMI: 15
 - (f) the class or classes within which the FMI falls for the purposes of any standards issued under **section 31** that apply to a class or classes of FMI.
- (3) In this Act, the operators of a designated FMI are the operators that are specified in its designation notice under **subsection (1)(a)** (as amended by any further notice). 20
- (4) The publication requirements in **section 148(2)** apply to a designation notice.

Offence

30 Offence for wrongly holding out system as designated FMI, etc

- (1) This section applies if a person does any of the following: 25
- (a) holds out that a system is a designated FMI when that is not the case:
 - (b) holds out that the person is an operator of a designated FMI when that is not the case:
 - (c) holds out that another person is an operator of a designated FMI when that is not the case. 30
- (2) The person commits an offence if the person knows that, or is reckless as to whether, what the person is holding out is not the case.
- (3) *See **Part 5*** for further provisions about offences.

Subpart 2—Standards for designated FMIs

- 31 Regulator may issue standards for designated FMIs**
- (1) The regulator may, in accordance with **section 35**, issue standards if the regulator is satisfied that the standards are necessary or desirable for 1 or more of the purposes of this Act set out in **section 3**. 5
- (2) A standard may do 1 or both of the following:
- (a) impose requirements on operators of designated FMIs;
- (b) set out requirements applying to designated FMIs with which their operators must ensure compliance.
- (3) A standard may— 10
- (a) apply to all operators of designated FMIs, a particular operator, or a class of operators;
- (b) apply to all designated FMIs, a particular designated FMI, or a class of designated FMIs;
- (c) apply in all circumstances, particular circumstances, or a class of circumstances. 15
- 32 Procedure for issuing standards**
- (1) Before issuing a standard (the **proposed standard**), the regulator must—
- (a) consult the persons, or representatives of the persons, that the regulator considers will be substantially affected by the issue of the proposed standard; and 20
- (b) have regard to any relevant overseas standards for the purpose of ensuring that the proposed standard will not apply to a particular operator or designated FMI in an unreasonable way (as compared with other operators or designated FMIs) as a result of the particular operator or designated FMI— 25
- (i) being subject to a relevant overseas standard; or
- (ii) not being subject to a relevant overseas standard.
- (2) In **subsection (1)(b)**, **relevant overseas standard** means an overseas standard where— 30
- (a) an operator or a designated FMI that is subject to the overseas standard will also be subject to the proposed standard; and
- (b) the overseas standard covers matters that are the same as, or similar to, those that are covered by the proposed standard.
- (3) **Subsection (1)** does not apply to a standard that amends another standard if the regulator is satisfied that the amendment— 35
- (a) is only correcting a minor error; or

- (b) is otherwise of a minor nature only.

33 Publication of standards

The publication requirements in **section 148(2)** apply to a standard.

34 Pecuniary penalty for contravention of standard

- (1) An operator who contravenes a standard is liable to a pecuniary penalty. 5
- (2) See **Part 5** for further provisions about pecuniary penalties.

35 Subject matter of standards

- (1) A standard may deal with, or otherwise relate to, 1 or more of the following matters:
- (a) the governance of operators or of designated FMIs: 10
- (b) the relationship between operators and persons who provide services to operators for the purposes of designated FMIs (including imposing requirements relating to the terms and conditions of contracts between operators and those persons):
- (c) how operators must provide access to services under designated FMIs, including how persons may become participants of designated FMIs: 15
- (d) requirements for capital or liquidity:
- (e) the management by operators of 1 or more of the following:
- (i) general business risk:
- (ii) operational risk: 20
- (iii) credit risk:
- (iv) liquidity risk:
- (v) custody and investment risk:
- (vi) legal risk:
- (vii) cybersecurity risk: 25
- (viii) risks arising out of interconnections (direct or indirect) between a designated FMI and other designated FMIs:
- (ix) risks arising out of interconnections (direct or indirect) between a designated FMI and activities in the financial system that are not activities under designated FMIs: 30
- (f) FMI contingency plans, including (without limitation) 1 or more of the following matters:
- (i) the purposes for which designated FMIs must have FMI contingency plans:
- (ii) the contents of those plans, for example,— 35
- (A) the scenarios the plans must cover; and

- (B) strategies and methods that must be included in the plans for dealing with those scenarios:
 - (iii) the interaction of those plans with the designated FMI's rules:
 - (iv) the persons responsible for maintaining, activating, or implementing those plans: 5
 - (v) arrangements for obtaining the financial resources needed to activate and implement those plans:
 - (vi) the reviewing, updating, or testing of those plans:
 - (g) monitoring by operators of activities under designated FMIs:
 - (h) rules and procedures for managing a participant defaulting on its obligations under the rules of the FMI: 10
 - (i) the public disclosure of information relating to operators or designated FMIs:
 - (j) restrictions or prohibitions on the activities that a person that is an operator of a designated FMI may carry out otherwise than in their capacity as the operator: 15
 - (k) requirements relating to 1 or more standards issued by international organisations that impose requirements or provide for recommended practices in relation to FMIs.
- (2) A standard may specify types of provisions that must, or must not, be included in a designated FMI's rules. 20
- (3) A standard may require operators to give to the regulator reports relating to any of the following matters:
- (a) disruption to activities under designated FMIs:
 - (b) contraventions of requirements imposed by or under this Act: 25
 - (c) any other matter prescribed in the regulations.
- (4) *See section 146* for supplementary provisions about reports given to the regulator.

Subpart 3—Rules of designated FMIs

Rules of designated FMIs 30

36 Designated FMI's rules

In this Act, a designated FMI's rules are the rules that are contained in documents specified in its designation notice under **section 29(1)(b)** (as amended by any rule change that comes into effect under this subpart).

- 37 Operators must publish copy of rules of designated FMI**
- (1) The operator of a designated FMI must publish a copy of the FMI's rules (as amended by any rule change that comes into effect under this subpart) on an Internet site that—
- (a) is maintained by, or on behalf of, the operator; and 5
- (b) is publicly available free of charge.
- (2) However, the regulator may, by notice, authorise the operator to redact information from the published version of the FMI's rules.
- (3) This section does not apply to an overseas FMI.
- 38 Pecuniary penalty for failure to publish copy of rules** 10
- (1) An operator who contravenes **section 37** is liable to a pecuniary penalty.
- (2) See **Part 5** for further provisions about pecuniary penalties.
- Rule changes of designated FMIs (other than overseas FMIs)*
- 39 Time rule change comes into effect**
- (1) A change to the rules of a designated FMI may come into effect only if the rule change is approved under **sections 40 to 43**. 15
- (2) The rule change comes into effect at the time specified in the regulator's notice of approval of the rule change.
- (3) The specified time must not be earlier than the time at which the regulator decides to approve the rule change. 20
- (4) In specifying the time, the regulator must have regard to—
- (a) the time requested in the application under **section 40(1)(c)**; and
- (b) the nature of the rule change; and
- (c) the circumstances of the FMI.
- (5) This section and **sections 40 to 43** do not apply to an overseas FMI (*see section 45* instead). 25
- 40 Operator of designated FMI may apply for approval of rule change**
- (1) An operator of a designated FMI may apply to the regulator for approval of a change to the designated FMI's rules. The application must include—
- (a) a copy of the proposed rule change; and 30
- (b) a description of the rule change and the reasons for the change; and
- (c) the time at which the operator would like the change to come into effect.
- (2) The regulator must, within a reasonable time, consider the application.
- (3) If the regulator decides to approve the rule change, the regulator must send to the applicant a notice of approval of the rule change that— 35

- (a) states that the regulator has approved the rule change; and
- (b) states the time at which the rule change takes effect; and
- (c) states the reason for deciding on that time (if that time is different from the time requested under **subsection (1)(c)**); and
- (d) includes a description of the rule change. 5
- (4) If the regulator decides not to approve the rule change, the regulator must notify the applicant of the decision, and of the reasons for the decision.
- (5) *See* **section 146** for supplementary provisions about applications.
- 41 Regulator may require change to designated FMI's rules**
- (1) This section and **sections 42 and 43** apply if the regulator has reasonable grounds to believe that a change to the rules of a designated FMI— 10
- (a) is required to ensure that the rules comply with any applicable standard issued under **section 31**; or
- (b) is appropriate for the purpose of applying **subpart 5** of this Part to the designated FMI. 15
- (2) The regulator may, by notice,—
- (a) inform an operator of the designated FMI that the regulator requires a change to the designated FMI's rules to address the matter concerned, and of the reasons for the requirement; and
- (b) require the operator to apply under **section 40(1)** for approval of changes to the designated FMI's rules to address the matter concerned; and 20
- (c) specify the period within which the application must be made (which must be no less than 40 working days after the date of the notice).
- (3) The operator must apply for approval of the rule change within the specified period. 25
- (4) *See* **section 146** for supplementary provisions about applications.
- 42 Regulator's decision to approve rule change required under section 41**
- (1) If the regulator decides to approve the rule change set out in the application made under **section 41(3)**, the regulator must act under **section 40(3)**. 30
- (2) To the extent that a rule change approved under this section involves a rule contained in a body's constitution, the regulator may give a direction concerning the process for amending the constitution (for example, the direction may provide for an amendment to be approved by the body's board without seeking any further approval from its members). 35
- (3) An amendment to the constitution that is made in accordance with the direction must be treated as being effective and binding despite anything to the contrary in the constitution or any enactment, other instrument, trust, or other rule of

law, including anything relating to the consent of any person to the making of the amendment.

43 Regulator’s decision not to approve rule change required under section 41

- (1) If the regulator decides not to approve the rule change set out in the application made under **section 41(3)**, the regulator— 5
- (a) must notify the operator of the decision, and of the reasons for the decision; and
 - (b) for the purpose of addressing the matter concerned, may, by notice,—
 - (i) require the operator to apply under **section 40(1)** for approval of changes to the designated FMI’s rules in terms specified in the notice; and 10
 - (ii) specify the period within which the application must be made (which must be no less than 20 working days after the date of the notice). 15
- (2) The application—
- (a) must be made within the specified period; and
 - (b) must be treated as if it were an application made under **section 41(3)**, to which **section 42 or subsection (1)** applies.
- (3) *See section 146* for supplementary provisions about applications. 20
- (4) ~~The regulator may give the notice under **subsection (1)(b)** only with the approval of—~~
- ~~(a) the RBNZ Minister and the FMA Minister acting jointly, if the notice is to be given by the RBNZ and the FMA acting jointly; or~~
 - ~~(b) the RBNZ Minister, if the notice is to be given by the RBNZ.~~ 25
- (5) ~~The approval must be given if the Minister or Ministers consider that the regulator—~~
- ~~(a) has adequately taken into account the matters in **section 13**; and~~
 - ~~(b) has reasonable grounds for giving the notice under **subsection (1)(b)**.~~

44 Offence for contravention of section 41 or 43

- (1) An operator who intentionally or recklessly contravenes **section 41 or 43** (including any applicable requirement under **section 146**) commits an offence.
- (2) *See Part 5* for further provisions about offences. 30

*Rule changes of overseas FMIs***45 Changes to rules of designated FMIs that are overseas FMIs**

- (1) This section applies if there is a change to the rules of a designated FMI that is an overseas FMI.
- (2) ~~Each operator of the designated FMI must ensure that an instrument setting out the rule change is given to the regulator before the rule change comes into effect.~~ 5
- (2) Each operator of the designated FMI must ensure that—
- (a) an instrument setting out the rule change is given to the regulator before the rule change comes into effect; and 10
- (b) an instrument that specifies the date on which the rule change comes into effect is given to the regulator before, or as soon as practicable after, the rule change comes into effect.
- (3) ~~The rule change to the rules of an overseas FMI comes into effect on the date that is specified in the instrument, whether or not that instrument is given to the regulator under **subsection (2)**.~~ 15
- (3) The change to the rules of an overseas FMI comes into effect on the date that is specified in the instrument referred to in **subsection (2)(b)**, even if the operator fails to comply with that paragraph within the required time frame.
- (4) *See **section 146** for supplementary provisions about giving information to the regulator.* 20

46 Pecuniary penalty for failure to give rule change instrument to regulator

- (1) An operator who contravenes **section 45** is liable to a pecuniary penalty.
- (2) *See **Part 5** for further provisions about pecuniary penalties.*

Publication requirements relating to rule changes 25**47 Publication of rule changes**

- (1) This section applies to a rule change that is approved by the regulator under this subpart ~~or that is set out in an instrument given under **section 45**.~~
- (2) The notice of approval of the rule change under **section 40(3)** ~~or the instrument given under **section 45**~~ must be published on an Internet site that— 30
- (a) is maintained by, or on behalf of, the RBNZ; and
- (b) is publicly available free of charge.
- (3) The notice of approval of the rule change under **section 40(3)** ~~or the instrument given under **section 45**~~ must be published on an Internet site that—
- (a) is maintained by, or on behalf of, the FMA; and 35
- (b) is publicly available free of charge.

- (4) **Subsection (3)** does not apply if the rule change relates to a designated FMI that is a pure payment system.

Subpart 4—FMI contingency plans

48 Designated FMIs to have FMI contingency plans

- (1) Each operator of a designated FMI must ensure that the designated FMI has FMI contingency plans— 5
- (a) that are comprehensive, adequate, and credible, taking into account the type of FMI concerned and the activities carried out under it; and
 - (b) that are capable of being activated and implemented effectively when appropriate. 10
- (2) An operator who contravenes this section is liable to a pecuniary penalty.
- (3) See **Part 5** for further provisions about pecuniary penalties.

49 Operator must notify activation of FMI contingency plan

- (1) When an FMI contingency plan is activated, each operator of a designated FMI must, as soon as practicable, give details of the activation to the regulator. 15
- (2) See **section 146** for supplementary provisions about giving information to the regulator.
- (3) An operator who intentionally or recklessly contravenes this section (including any applicable requirement under **section 146**) commits an offence.
- (4) See **Part 5** for further provisions about offences. 20

50 Regulator’s power to review FMI contingency plans, etc

The regulator may,—

- (a) by notice, require an operator of a designated FMI to give to the regulator 1 or more of the FMI contingency plans of the designated FMI; and
- (b) review any plan that is given to the regulator; and 25
- (c) by notice, require the operator to meet the regulator’s costs of engaging a suitably qualified person to carry out on the regulator’s behalf, or otherwise to assist with, a review under **paragraph (b)**.

51 Regulator’s powers in relation to FMI contingency plans

- (1) **Subsection (2)** applies if the regulator has reasonable grounds to believe that a change to an FMI contingency plan of a designated FMI, other than an overseas FMI, is required to ensure compliance with— 30
- (a) any applicable standard issued under **section 31**; or
 - (b) the requirements of **section 48(1)**.
- (2) The regulator may, by notice,— 35

-
- (a) inform an operator of the designated FMI that the regulator requires a change to the FMI contingency plan to address the matter concerned, and of the reasons for the requirement; and
- (b) require the operator to give to the regulator for approval a change to the FMI contingency plan to address the matter concerned. 5
- (3) In this section and **section 52**, references to a change to an FMI contingency plan of a designated FMI include a new FMI contingency plan for a designated FMI.
- (4) *See* **section 146** for supplementary provisions about giving information to the regulator. 10
- 52 Regulator’s decision on change submitted by operator**
- (1) If the regulator decides to approve the change given under **section 51(2)(b)**,—
- (a) the regulator must notify the operator of the decision; and
- (b) the operator must ensure that the change is made promptly. 15
- (2) If the regulator decides not to approve the change given under **section 51(2)(b)**, the regulator—
- (a) must notify the operator of the decision, and of the reasons for the decision; and
- (b) for the purpose of addressing the matter concerned, may, by notice to the operator, require a change to the FMI contingency plan in terms specified in the notice. 20
- (3) A change under **subsection (2)(b)**—
- (a) must be given to the regulator within 20 working days after the date of the notice under **subsection (2)(b)**; and 25
- (b) must be treated as if it were a change given under **section 51(2)(b)**, to which **subsections (1) and (2)** apply.
- (4) *See* **section 146** for supplementary provisions about giving information to the regulator.
- 53 Offence for contravention of sections 50 to 52** 30
- (1) An operator who intentionally or recklessly contravenes **sections 50 to 52** (including any applicable requirement under **section 146**) commits an offence.
- (2) *See* **Part 5** for further provisions about offences.

Subpart 5—Validity and enforceability of settlements under designated FMIs, etc

54 Application of this subpart

This subpart applies to a designated FMI only if its designation notice specifies under **section 29(2)(e)** that this subpart applies to it. 5

Settlements and netting

55 Designated FMI's rules relating to settlements, etc, are valid and enforceable

- (1) To the extent that they provide for the matters listed in **subsection (2)**, a designated FMI's rules are valid and enforceable despite any enactment, instrument, trust, or other rule of law to the contrary. 10
- (2) The matters are as follows:
 - (a) the basis on which settlement instructions are given or received:
 - (b) the basis on which settlement obligations are determined and calculated (either on a gross basis or by using netting): 15
 - (c) the basis on which settlements are effected (either on a gross basis or by using netting):
 - (d) the novation of obligations of a participant:
 - (e) any action to be taken if there is a participant default or an indirect participant default. 20

Compare: 1989 No 157 s 156Q

56 Settlements must not be reversed, etc

- (1) This section applies to a settlement that is effected in accordance with a designated FMI's rules.
- (2) The settlement must not be (wholly or partly) reversed, repaid, recovered, or set aside despite any enactment, instrument, trust, or other rule of law to the contrary. 25
- (3) **Subsection (2)** extends to any application made to a court in New Zealand by a foreign court, foreign representative, or foreign creditor to reverse, repay, recover, or set aside the settlement (wholly or partly) that relates to an insolvency (in any form, whether personal or corporate) that is within the jurisdiction of the foreign court, foreign representative, or foreign creditor. 30
- (4) In **subsection (3)** and this subsection,—

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding 35

foreign proceeding means a collective judicial or administrative proceeding in a foreign jurisdiction, including an interim proceeding, under a law relating to

insolvency (in any form, whether personal or corporate), in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation

foreign representative means a person, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding. 5

Compare: 1989 No 157 s 156R; 2006 No 57 Schedule 1 Article 2

57 Effect of insolvency event on settlement

- (1) If, before a settlement is effected in accordance with a designated FMI's rules, an insolvency event occurs in relation to a participant of the designated FMI (other than an operator of the FMI) who is bound to the settlement (the **insolvent participant**), **section 56(2)** applies only if— 10
- (a) the settlement is effected within 24 hours after the time at which the insolvency event occurs (subject to **subsection (3)**); or 15
- (b) any of the following persons, acting on behalf of the insolvent participant, authorised the settlement instruction that gave rise to the settlement (either individually or as part of a broader authorisation):
- (i) an insolvency manager appointed for the insolvent participant;
- (ii) a person who had the authority to authorise the settlement instruction as part of a process in relation to the insolvent participant in New Zealand or elsewhere that is similar to a process for which an insolvency manager may be appointed: 20
- (iii) the Assignee nominated under section 59 of the Insolvency Act 2006 to be the Assignee of the insolvent participant's property or a person who has a similar role as part of a process in relation to the insolvent participant, in New Zealand or elsewhere, that is similar to bankruptcy. 25
- (2) **Subsection (1)** does not apply if the FMI's designation notice specifies under **section 29(2)(d)** that the FMI is a central counterparty. 30
- (3) If the FMI is an overseas FMI, the period that applies under **subsection (1)(a)** ends at the close of 7 days after the time at which the insolvency event occurs.
- (4) In this section, **insolvency event** does not include—
- (a) the appointment of an insolvency manager in an overseas jurisdiction; or 35
- (b) a process in an overseas jurisdiction.

Compare: 1989 No 157 s 156S

58 Netting

- (1) This section applies to any netting that is done in accordance with a designated FMI's rules.
- (2) The netting is valid and enforceable despite any enactment, instrument, trust, or other rule of law to the contrary. 5
- (3) The following enactments do not apply to the netting:
- (a) subpart 20 of Part 15A and sections 310 to 310O of the Companies Act 1993:
- (b) sections 254 to 262 of the Insolvency Act 2006.
- (4) However, the following enactments may apply to a net amount that is payable by a participant of the designated FMI to another participant of the designated FMI and that results from the netting: 10
- (a) section 239AEG or 310(1) of the Companies Act 1993:
- (b) section 254(1) of the Insolvency Act 2006.
- Compare: 1989 No 157 ss 156T, 156U 15

59 Underlying transactions, etc

- (1) **Sections 55 to 58** do not prevent the following:
- (a) the application of any enactment or rule of law to an underlying transaction:
- (b) a person from taking a proceeding against another person for fraud or dishonesty if the remedy sought or obtained does not affect the application of **sections 55 to 58**. 20
- (2) If a person brings a proceeding under any enactment or rule of law about an underlying transaction, that person may produce evidence of a settlement before the court for the purpose of proving that— 25
- (a) a participant of a designated FMI received value by means of that settlement; and
- (b) the value received was an element of the underlying transaction.
- (3) Neither section 292(4A) of the Companies Act 1993 nor section 196 of the Insolvency Act 2006 applies to the following: 30
- (a) an underlying transaction:
- (b) a settlement that is effected in accordance with a designated FMI's rules.
- (4) In this section,—
- enactment** includes the following (for example):
- (a) sections 56, 292, 297, and 298 of the Companies Act 1993: 35
- (b) section 194 of the Insolvency Act 2006

underlying transaction—

- (a) means a transaction that gives rise to a settlement or a settlement obligation; but
- (b) does not include the following:
 - (i) a settlement instruction: 5
 - (ii) a settlement that is effected in accordance with a designated FMI's rules:
 - (iii) any novation of obligations of a participant of a designated FMI that is completed in accordance with the designated FMI's rules.

Compare: 1989 No 157 s 156V 10

60 Interrelationships with other enactments

- (1) The following enactments prevail over **sections 55 to 58**:
 - (a) sections 122(8) and 127(4) of the Reserve Bank of New Zealand Act 1989:
 - (b) sections 42(8) and 44(4) of the Corporations (Investigation and Management) Act 1989. 15
- (2) This subpart prevails over the Insolvency (Cross-border) Act 2006.

Compare: 1989 No 157 s 156W

*Other provisions***61 Transfer of personal property in accordance with designated FMI's rules effective** 20

- (1) If the title to, or an interest in, personal property is transferred in accordance with a designated FMI's rules, a person may not refuse to take an action on the ground that the transfer is not effective.
- (2) This section does not affect— 25
 - (a) a right that a person has to refuse to take an action on any other ground; or
 - (b) section 45G(3) of the Reserve Bank of New Zealand Act 1964 (as it continues to apply under section 84 of the Public Finance Act 1989).
- (3) Section 45I of the Reserve Bank of New Zealand Act 1964 (as it continues to apply under section 84 of the Public Finance Act 1989) must be read subject to this section. 30
- (4) Except as provided in this section, this section applies despite anything to the contrary in any enactment, instrument, trust, or other rule of law.

Compare: 1989 No 157 s 156X 35

62 Operators to be notified of insolvency event

- (1) This section applies if an insolvency event occurs in relation to a participant of a designated FMI (the **insolvent participant**).
- (2) Each of the following participants of the designated FMI must notify each operator of the designated FMI of the insolvency event unless the operator is already aware of it: 5
- (a) the insolvent participant:
 - (b) any other participant who is a party to settlements with the insolvent participant under the designated FMI.
- (3) The notification must be given as soon as practicable after the participant concerned becomes aware of the insolvency event. 10
- (4) It is sufficient compliance with the requirement of **subsection (2)** if the participant concerned takes all reasonable steps to comply with it.
- (5) A participant who contravenes **subsection (2)** is liable to a pecuniary penalty.
- (6) *See Part 5* for further provisions about pecuniary penalties. 15
- Compare: 1989 No 157 s 156ZK

Subpart 6—Investigations, remedial notices, and voluntary undertakings

*Investigations***63 Regulator may appoint investigator**

- (1) This section applies if the regulator has reasonable grounds to suspect that an operator of a designated FMI— 20
- (a) has contravened (or is contravening), or is likely to contravene, a requirement imposed by or under this Act; or
 - (b) has committed (or is committing), or is likely to commit, an offence under this Act. 25
- (2) The regulator may appoint a person (an **investigator**) to investigate the matter concerned if satisfied that the appointment is reasonably necessary for the purpose of determining what action (if any) should be taken.
- (3) The investigator must be an employee of the regulator or any other person that the regulator is satisfied is suitably qualified. 30

64 Investigator's powers

- (1) For the purposes of an investigation, an investigator may,—
- (a) by notice, require any person to do 1 or more of the following within the period, and in the way, specified in the notice: 35
 - (i) submit to the investigator any information relating to the operator or the designated FMI:

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- (ii) produce for inspection by the investigator any documents relating to the operator or the designated FMI that are in the custody or under the control of the person:
 - (iii) if necessary, reproduce in usable form any information recorded or stored on those documents: 5
 - (b) take copies of documents produced for inspection under **paragraph (a)**:
 - (c) enter and search any place, vehicle, or thing if—
 - (i) the occupier of the place consents or the person in charge of the vehicle or thing consents; or
 - (ii) the investigator obtains a warrant under **section 65**. 10
 - (2) An investigator who exercises powers under this section must, if requested, produce the instrument of the investigator’s appointment.
 - (3) Part 4 of the Search and Surveillance Act 2012 applies to an investigator’s powers under **subsection (1)(c)**.
 - 65 Application for warrant** 15
 - (1) An investigator may apply to an issuing officer for a warrant in accordance with subpart 3 of Part 4 of the Search and Surveillance Act 2012.
 - (2) The issuing officer may issue a warrant to the investigator if satisfied that there are reasonable grounds to—
 - (a) suspect that a person— 20
 - (i) has contravened (or is contravening), or is likely to contravene, a requirement imposed by or under this Act; or
 - (ii) has committed (or is committing), or is likely to commit, an offence under this Act; and
 - (b) believe that the search will find evidential material in or on or part of the place, vehicle, or thing. 25
 - 66 Offences relating to investigations**
 - (1) A person who intentionally or recklessly contravenes a requirement imposed under **section 64(1)(a)** commits an offence.
 - (2) A person who hinders, obstructs, or delays an investigator in carrying out an investigation commits an offence if the person— 30
 - (a) intends to hinder, obstruct, or delay the investigator; or
 - (b) is reckless as to whether the person hinders, obstructs, or delays the investigator.
 - (3) See **Part 5** for further provisions about offences. 35

*Remedial notices and plans***67 Regulator may require operator to take action in relation to contravention of this Act**

- (1) This section applies if the regulator has reasonable grounds to believe that an operator of a designated FMI has contravened (or is contravening), or is likely to contravene, a requirement imposed by or under this Act. 5
- (2) The regulator may, by notice (a **remedial notice**), require the operator—
- (a) to take specified actions within a specified period—
 - (i) to address the cause, or to remedy or mitigate the consequences, of the contravention; or 10
 - (ii) to ensure that the contravention does not occur or recur; or
 - (b) to give to the regulator a plan (a **remedial plan**).
- (3) The remedial plan must set out the following:
- (a) actions that the operator will take—
 - (i) to address the cause, or to remedy or mitigate the consequences, of the contravention; or 15
 - (ii) to ensure that the contravention does not occur or recur:
 - (b) an appropriate timetable for taking the proposed actions to ensure that they are taken as soon as practicable:
 - (c) steps that the operator will take to keep the plan current: 20
 - (d) any other matters required by the remedial notice.

68 Approval, amendment, or rejection of remedial plan

- (1) If an operator gives a remedial plan to the regulator, the regulator may—
- (a) approve the remedial plan; or
 - (b) require the operator to amend the remedial plan and resubmit it to the regulator by a specified date for approval or rejection; or 25
 - (c) reject the remedial plan.
- (2) If the regulator requires the operator to amend a remedial plan given to the regulator, the operator must, within the time specified by the regulator, give to the regulator an amended remedial plan that addresses the matter required to be amended. 30
- (3) If the regulator approves the remedial plan (whether as first provided or after amendment), the operator must take all practicable steps to comply with the remedial plan.
- (4) A remedial plan that has been approved by the regulator may be varied at any time by agreement between the operator and the regulator. 35

- (5) Nothing in this section limits the regulator’s power to issue a further remedial notice under **section 67(2)(a)**.
- 69 Other provisions relating to remedial notices and plans**
- (1) Neither a remedial notice nor a remedial plan may require the operator to pay compensation. 5
- (2) A remedial notice must set out the reasons for which it is given.
- (3) *See* **section 146** for supplementary provisions about remedial plans given to the regulator.
- 70 Offence for contravention of remedial notice, failure to give amended remedial plan, or failure to take steps to comply with remedial plan** 10
- (1) An operator who intentionally or recklessly contravenes a remedial notice (including any applicable requirement under **section 146**) or **section 68(2) or (3)** commits an offence.
- (2) *See* **Part 5** for further provisions about offences.
- Voluntary undertakings* 15
- 71 Regulator may accept voluntary undertaking**
- (1) The regulator may accept a written undertaking from an operator of a designated FMI about a matter in relation to which the regulator is performing or exercising any of its functions under this Act.
- (2) An undertaking may include (without limitation) an undertaking from the operator to— 20
- (a) pay compensation to any person; or
- (b) take specified action to address the cause, or to remedy or mitigate the consequences of, a contravention (or likely contravention) of a requirement imposed by or under this Act, or to ensure that the contravention does not occur or recur; or 25
- (c) pay an amount to the regulator in lieu of a pecuniary penalty.
- 72 Consequences of accepting undertaking**
- (1) If the regulator accepts an undertaking,—
- (a) no criminal proceedings may be brought or continued by the regulator against the operator, or any other person, in relation to a contravention to which the undertaking relates: 30
- (b) no application under **section 127** may be made or continued against the operator, or any other person, in relation to the contravention.
- (2) **Subsection (1)** stops applying if the undertaking is withdrawn. 35

73 Undertakings that include payment of money

- (1) If the undertaking includes the payment of an amount in lieu of a pecuniary penalty,—
- (a) the amount must be paid into a Crown Bank Account (after deducting the regulator's costs incurred in connection with the matter); and 5
 - (b) the regulator must give notice of the payment, including—
 - (i) a statement of the amount to be paid; and
 - (ii) a brief description of the contravention.
- (2) The publication requirements in **section 148(2)** apply to the notice.
- (3) However, **section 148(2)(a)** does not apply to the notice. 10

74 Operator may withdraw or amend undertaking

The operator may withdraw or amend the undertaking only with the regulator's consent.

75 Enforcement of voluntary undertakings

- (1) The regulator may apply to the High Court for an order under this section if the regulator— 15
- (a) has accepted an undertaking under **section 71**; and
 - (b) is satisfied that the operator has contravened the undertaking.
- (2) The court may make an order directing the operator to do 1 or more of the following: 20
- (a) comply with the undertaking:
 - (b) pay to the Crown an amount representing (wholly or partly) any financial benefit that the operator has received because of the contravention of the undertaking:
 - (c) pay compensation to any person. 25
- (3) The order may include consequential directions.

76 Court must take into account certain matters

The court must, before making the order, take into account the following:

- (a) the nature and extent of the contravention of the undertaking:
- (b) the nature and extent of any loss or damage incurred by any person as a result of the contravention: 30
- (c) the circumstances in which the contravention occurred (including whether it was intentional, inadvertent, or caused by negligence):
- (d) any other matters the court considers relevant.

Part 4

Dealing with systemically important FMIs that are distressed, etc

Subpart 1—Application and purposes

77 Application of this Part

This Part applies to an FMI only if— 5

- (a) it is a designated FMI; and
- (b) its designation notice specifies that it is systemically important.

78 Purposes for which powers under this Part may be exercised

(1) The regulator’s powers under this Part may be exercised for 1 or more of the following purposes: 10

- (a) maintaining the continuity of activities under systemically important FMIs, including the following:
 - (i) mitigating, or otherwise managing, disruption to activities:
 - (ii) restoring the continuity of activities following disruption to them:
 - (iii) moving activities from one FMI to another FMI following disruption to them or a threat of disruption to them: 15

- (b) otherwise avoiding threats to the stability of, or confidence in, the financial system as described in **section 28(1)(a) and (b)** and, if threats arise,—
 - (i) removing, mitigating, or otherwise managing the threats: 20
 - (ii) restoring, mitigating, or otherwise managing any resulting loss of stability of, or confidence in, the financial system:

(c) without limiting **paragraphs (a) and (b)**, ensuring that the winding-down of any systemically important FMI is orderly:

(d) in the case of a systemically important overseas FMI, furthering the objective of any of the following: 25

- (i) any process or action related to an insolvency event that is being carried out (or has been carried out) in relation to any operator of the FMI in its home jurisdiction:
- (ii) any other judicial or regulatory process or action that is being carried out (or has been carried out) in relation to any operator of the FMI in its home jurisdiction. 30

(2) ~~This section does not affect the requirement of **section 13(1)** that the regulator’s powers be exercised for 1 or more of the purposes of this Act.~~

78A Principles for exercising powers under this Part

- (1) In deciding whether to exercise its powers under this Part, and in exercising them, the regulator must take into account the following principles that are relevant:
- (a) the importance of recognising that primary responsibility for ensuring that an FMI is sound and efficient rests with its operators, participants, and indirect participants and those who own or control its operators, participants, and indirect participants: 5
 - (b) the need for an FMI's rules to provide, to the extent possible, certainty and predictability about the rights and obligations of the FMI's participants and indirect participants, especially in the event of a participant default or an indirect participant default: 10
 - (c) the importance of minimising costs and uncertainty for an FMI's participants and indirect participants, and the creditors of an operator of the FMI, where this is consistent with the purposes set out in **section 78**: 15
 - (d) the need to protect the interests of an FMI's participants and indirect participants, and the creditors of an operator of the FMI, where this is consistent with the purposes set out in **section 78**:
 - (e) the importance of timely, accurate, and understandable information being available to an FMI's participants and indirect participants, and the creditors of the operator of the FMI, to keep them informed about progress in acting in relation to an FMI or operator under this Part and how they may be affected by the exercise of powers under this Part: 20
 - (f) in the case of a systemically important overseas FMI, the importance of co-operating with regulators or other authorities that are carrying out (or have carried out) a process or an action referred to in **section 78(d)**: 25
 - (g) the importance of avoiding financial risk to the Crown resulting from a distressed FMI, other than financial risk associated with the Crown being a participant or an indirect participant of the FMI.
- (2) **Subsection (1)(b)** does not limit **section 99**. 30

Subpart 2—Directions to operators or participants and removal of directors

79 Application of this subpart

- (1) This subpart applies if the regulator has reasonable grounds to believe that—
- (a) an FMI is distressed; or 35
 - (b) it is appropriate for the regulator to exercise any of its powers under this subpart in relation to an operator of an overseas FMI for the purpose of furthering the objective of any process or action referred to in **section 78(1)(d)**.

- (2) The regulator must not exercise a power under this subpart in relation to an operator or a participant of the FMI unless the regulator has reasonable grounds to believe that any FMI contingency plans or rules of the FMI of which the regulator is aware—
- (a) are inapplicable to, or insufficient for addressing, the matter that the exercise of the power is intended to address; or
 - (b) have not been implemented appropriately, or at all, for addressing that matter.
- (3) Before exercising a power under this subpart, the regulator must consider whether it would be more appropriate to exercise its powers under **sections 67 and 68**.
- (4) The regulator may exercise a power under ~~this subpart~~ **section 80, 84, or 86** only with the approval of—
- (a) the RBNZ Minister and the FMA Minister acting jointly, if the power is exercised by the RBNZ and the FMA acting jointly; or
 - (b) the RBNZ Minister, if the power is exercised by the RBNZ; or
 - (c) the FMA Minister, if the power is exercised by the FMA.
- (5) ~~The approval must be given if the Minister or Ministers consider that the regulator—~~
- (a) ~~has adequately—~~
 - (i) ~~taken into account the matters in **section 13**; and~~
 - (ii) ~~had regard to the purposes in **section 78**; and~~
 - (b) ~~has reasonable grounds for exercising the power.~~

80 Directions to operator

- (1) The regulator may, by notice (a **direction notice**), direct an operator of the FMI to take specified action in accordance with the direction.
- (2) A direction may (without limitation) require the operator to do 1 or more of the following in accordance with the direction:
- (a) consult the regulator;
 - (b) ensure that a specified person does not take part in activities, or the management of activities, under the FMI except with the permission of the regulator and only so far as that permission extends;
 - (c) take action to remedy, or mitigate the consequences of, any of the following:
 - (i) any fraudulent or reckless act of the operator;
 - (ii) any contravention of a requirement imposed by or under this Act that has been committed by the operator;
 - (d) act, or not act, under any FMI contingency plan of the FMI:

- (e) otherwise carry out, or stop carrying out, any activities.
- (3) A direction may not require the operator to pay compensation.
- (4) A direction notice may not require the operator to act, or not act, if that would result in the operator breaching the rules of the FMI.
- (5) A direction notice must state the reasons for which it is given. 5
- 81 Giving and complying with direction does not place person in contravention, etc**
- (1) The giving of a direction notice under **section 80** to an operator of an FMI, and anything that the operator does, or does not do, in compliance with the direction notice, does not of itself— 10
- (a) place any person in contravention of any enactment, instrument, trust, or other rule of law, or make any person liable for a civil wrong; or
- (b) entitle any person—
- (i) to require the payment or performance of a liability or an obligation that does not otherwise arise for payment or performance; or 15
- (ii) to exercise a right that does not otherwise become exercisable; or
- (iii) to deny a liability or an obligation that the person is not otherwise entitled to deny; or
- (c) invalidate or discharge an instrument or any provision of an instrument.
- (2) ~~However, this section is subject to **section 122** (which allows the rights referred to in **subsection (1)(b)** to be exercised after a stay).~~ 20
- (3) In this section, **instrument** includes an agreement or any other document.
- 82 Power to make direction notice confidential**
- (1) The regulator may, by notice (a **confidentiality notice**), prohibit the disclosure of any information that discloses, or is reasonably likely to disclose, the existence of a direction notice under **section 80**. 25
- (1A) The regulator may issue a confidentiality notice on its own initiative or on the application of any person.
- (2) The regulator may issue a confidentiality notice on the terms and conditions (if any) that it thinks fit. 30
- (3) The prohibition in a confidentiality notice has effect for the period specified in the notice (which must not exceed 3 years).
- 82A Disclosure with regulator’s consent**
- (1) A confidentiality notice does not prohibit the disclosure of any information by a person if the disclosure is with the regulator’s consent. 35
- (2) For the purposes of **subsection (1)**, the regulator’s consent must not be unreasonably withheld.

- (3) It is reasonable for the regulator to withhold its consent if it considers that the disclosure of the information would be likely to—
- (a) prejudice the maintenance of the law, including the prevention, investigation, and detection of contraventions of this Act; or
 - (b) unreasonably prejudice the commercial position of an operator. 5
- (4) **Subsection (3)** does not limit the circumstances in which it may be reasonable for the regulator to withhold the regulator’s consent.
- 83 Offences for contravention of direction notice or confidentiality notice**
- (1) An operator who intentionally or recklessly contravenes a direction notice under **section 80** commits an offence. 10
 - (2) A person who intentionally or recklessly contravenes a confidentiality notice commits an offence.
 - (3) ~~**Subsection (2)** does not apply if the disclosure—~~
 - (a) ~~is to any professional or financial adviser of the operator to whom the direction notice is given; or~~ 15
 - (b) ~~is necessary or appropriate for the purpose of complying with the direction notice; or~~
 - (c) ~~is of information that has already been lawfully made available to the public.~~
 - (4) *See Part 5* for further provisions about offences. 20
- 84 Direction to participant to comply with FMI’s rules**
- (1) The regulator may, by notice (a **direction notice**), direct a participant of the FMI to comply with the FMI’s rules in accordance with the direction.
 - (2) The direction notice must state the reasons for which it is given.
- 85 Offence for contravention of direction notice** 25
- (1) A participant who intentionally or recklessly contravenes a direction notice under **section 84** commits an offence.
 - (2) *See Part 5* for further provisions about offences.
- 86 Removal of director**
- (1) The regulator may do 1 or both of the following in relation to an operator of an FMI whose home jurisdiction is New Zealand: 30
 - (a) remove a director of the operator;
 - (b) appoint a person (with that person’s agreement) as a director of the operator.
 - (2) This section and **sections 87 and 88** have effect despite any enactment, 35
instrument, or other rule of law.

- 87 Process if regulator proposes to exercise power to remove director**
- (1) The regulator must do the following if it proposes to exercise a power under **section 86**:
- (a) notify each relevant person of the proposal, and of the reasons for the proposal: 5
 - (b) allow each relevant person to make submissions to the regulator about the proposal:
 - (c) consider any submissions that are made:
 - (d) decide whether to go ahead with the proposal.
- (2) In this section, each of the following is a **relevant person**: 10
- (a) in relation to the power under **section 86(1)(a)**, the director and the operator:
 - (b) in relation to the power under **section 86(1)(b)**, the operator.
- (3) *See section 146* for supplementary provisions about submissions.
- 88 How power to remove director is exercised** 15
- (1) A power under **section 86(1)** must be exercised by giving notice to—
- (a) the director or the person to be appointed (as the case may be); and
 - (b) if applicable, the Registrar of Companies.
- (2) A notice given under **subsection (1)(b)** is sufficient compliance with section 159 of the Companies Act 1993 if the notice is accompanied by the form of consent and certificate required under section 152 of that Act. 20

Subpart 3—Statutory management

Making FMI operator subject to statutory management

- 89 Power to make operator subject to statutory management**
- (1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the regulator,— 25
- (a) declare that an operator of an FMI is subject to statutory management; and
 - (b) appoint 1 or more persons as statutory manager or statutory managers of the operator for a specified period. 30
- (2) The order must specify the date on which, and the time at which, it comes into force.
- (3) If the order appoints 2 or more persons as statutory managers,—
- (a) the order must state whether the powers of a statutory manager are to be exercised by those persons acting jointly or may be exercised individually; and 35

- (b) references in this Act to a statutory manager include references to the statutory managers.
- (4) In this Act, **operator under statutory management** means an operator declared by an order to be subject to statutory management.
- 90 Regulator’s recommendation under section 89** 5
- (1) The regulator may make a recommendation under **section 89** in relation to an operator of an FMI only if the regulator has reasonable grounds to believe that—
- (a) the FMI is distressed; or
- (b) the operator has contravened a direction given to the operator under **section 80**; or 10
- (c) if the FMI is an overseas FMI, it is appropriate for the regulator to make the recommendation for the purpose of furthering the objective of any process or action referred to in **section 78(1)(d)**.
- (2) The regulator must not make the recommendation unless the regulator has reasonable grounds to believe that any FMI contingency plans or rules of the FMI of which the regulator is aware— 15
- (a) are inapplicable to, or insufficient for addressing, the matter that is intended to be addressed by making the operator subject to statutory management; or 20
- (b) have not been implemented appropriately, or at all, for addressing that matter.
- (3) The definition of distressed in **section 5**, except **paragraph (d)**, applies for the purposes of this section.
- 91 Statutory management of operator whose home jurisdiction is not New Zealand** 25
- If the home jurisdiction of an operator under statutory management is not New Zealand, this subpart applies only to the operator’s property, rights, assets, and liabilities relating to its New Zealand business or, if the operator has business undertakings unrelated to the FMI, that part of its New Zealand business that relates to the FMI. 30
- Conduct of statutory management: purposes, duties, and principles*
- 92 Purposes of statutory management**
- The purposes of a statutory management are those listed in **section 78**.
- 93 General duties of statutory manager** 35
- (1) A statutory manager must,—
- (a) as quickly and efficiently as is reasonably practicable,—

- (i) identify the problems relating to the FMI, or to the operator under statutory management, that need to be dealt with if the purposes of the statutory management are to be achieved; and
 - (ii) deal with those problems to achieve those purposes; and
- (b) where consistent with the purposes of the statutory management, conduct the statutory management in the way that best protects the interests of the FMI's participants and indirect participants and of the creditors of the operator under statutory management. 5
- (2) The statutory manager may, under **subsection (1)(b)**, make 1 or more schemes under **section 102** if they consider that it is not reasonably practicable for the purposes of the statutory management to be achieved without the operator under statutory management being replaced (wholly or partly) as an operator of the FMI. 10

94 Principles for statutory management

A statutory manager must, in conducting the statutory management, have regard to— 15

- (a) the following principles:
 - (i) the importance of minimising costs and uncertainty for the FMI's participants and indirect participants and the creditors of the operator under statutory management: 20
 - (ii) the importance of ensuring that any losses arising from the problems referred to in **section 93(1)(a)** are allocated fairly and efficiently as between the operator under statutory management, its owners, its creditors, and the FMI's participants and indirect participants: 25
 - (iii) the importance of consulting the FMI's participants and indirect participants whenever reasonably practicable:
- (b) the advice of the regulator:
- (c) the advice of any advisory committee.

95 Other duties of statutory manager 30

- (1) A statutory manager must do the following in relation to the conduct of the statutory management:
 - (a) consult the regulator as and when required by the regulator:
 - (b) comply with any directions given to the statutory manager by the regulator. 35
- (2) The regulator may require a statutory manager to give to the regulator, or to other persons specified by the regulator, reports about—
 - (a) the conduct of the statutory management; or

- (b) otherwise the state of the affairs or business of the operator under statutory management.
- (3) *See section 146* for supplementary provisions about giving reports to the regulator or another person.
- (4) A statutory manager must provide any information that an advisory committee reasonably requires about—
 - (a) the conduct of the statutory management; or
 - (b) otherwise the state of the affairs or business of the operator under statutory management.
- (5) *See also section 100*, which requires the statutory manager to pay calls, debts, or claims that arise under the FMI's rules. 10

96 Advisory committee

- (1) The Minister may, in accordance with a recommendation of the regulator, by notice to a statutory manager (the **appointment notice**), appoint an advisory committee. 15
- (2) The role of the advisory committee is as follows:
 - (a) to advise the statutory manager on the conduct of the statutory management;
 - (b) to do any other things specified by the Minister, from time to time, by notice to the committee. 20
- (3) The appointment notice must specify the members of the advisory committee and the periods of their appointments.
- (4) The Minister may, in accordance with a recommendation of the regulator, by notice to the statutory manager, revoke or modify the appointment notice (including for the purpose of adding a new member to the advisory committee or extending the period of a member's appointment). 25
- (5) The publication requirements in **section 148(2)** apply to the appointment notice and any notice under **subsection (2)(b) or (4)**.

97 Terminating appointment, or resignation, of member of advisory committee 30

- (1) The Minister may, in accordance with a recommendation of the regulator, terminate the appointment of a member of the advisory committee.
- (2) The regulator may make a recommendation only if satisfied of 1 or more of the following:
 - (a) the member is unable to perform the role of the office: 35
 - (b) the member is bankrupt;
 - (c) there has been neglect of duty, or other misconduct, by the member.
- (3) A member may resign from the advisory committee by notice to—

- (a) the RBNZ Minister and the FMA Minister, if the member was appointed by those Ministers acting jointly; or
- (b) the RBNZ Minister, if the member was appointed by the RBNZ Minister; or
- (c) the FMA Minister, if the member was appointed by the FMA Minister. 5

Conduct of statutory management: application of FMI's rules

98 Application of FMI's rules

- (1) The FMI's rules continue to apply, and activities may continue to be carried out in accordance with those rules, while an operator is subject to statutory management. 10
- (2) Without limiting **subsection (1)**, the following may be cleared, settled, or recorded in accordance with the rules:
 - (a) payments:
 - (b) personal property, or transactions involving personal property, within the financial system: 15
 - (c) other transactions within the financial system.
- (3) *See also **subpart 5 of Part 3***, which provides for the validity and enforceability of settlements under those rules.

99 Statutory manager may decide that provision of rules is not to apply

- (1) Despite **section 98**, the statutory manager may decide that a provision of the rules is not to apply— 20
 - (a) generally; or
 - (b) in relation to a particular transaction, circumstance, or other matter; or
 - (c) in relation to a particular description of a transaction, circumstance, or other matter. 25
- (2) Before making that decision, the statutory manager must—
 - (a) consult the regulator; and
 - (b) be satisfied that making the decision is for 1 or more of the purposes set out in **section 78**.
- (3) The statutory manager is not required to consult the FMI's participants about that decision, but the statutory manager must,— 30
 - (a) if reasonably practicable, give reasonable notice to the FMI's participants of the proposed decision and the reasons for that decision before the decision is made; or
 - (b) give notice to the FMI's participants of the decision and the reasons for the decision as soon as practicable after the decision is made. 35

- (4) If the home jurisdiction of an operator under statutory management is not New Zealand, a decision that a provision of the rules is not to apply may apply only in relation to the operator's New Zealand business.

100 Statutory manager must pay calls, debts, and claims arising under FMI's rules 5

- (1) The statutory manager must continue to pay creditors of the operator under statutory management who have calls, debts, or claims arising under the FMI's rules (subject to any loss allocation rules that apply under the FMI's rules).
- (2) This section applies subject to a decision made under **section 99**.
- (3) See **section 111**, which relates to other calls, debts, and claims. 10

Conduct of statutory management: new operator schemes

101 Purpose of new operator schemes

The powers of a statutory manager under **sections 102, 103, and 104** may be exercised for the purpose of replacing (wholly or partly) the operator under statutory management as an operator of the FMI. 15

102 Making of new operator scheme

- (1) A statutory manager may make a scheme (a **new operator scheme**) that transfers the following to a person (the **new operator**):
- (a) property, rights, powers, and privileges of the operator under statutory management: 20
- (b) obligations and liabilities of the operator under statutory management.
- (2) A new operator scheme may set out the things to be transferred in 1 or more of the following ways:
- (a) by specifying or describing them in particular:
- (b) by identifying them generally by reference to, or by reference to a specified part of, the business undertaking of the operator under statutory management: 25
- (c) by specifying the way in which they are to be determined.
- (3) A new operator scheme may make incidental, supplemental, consequential, or transitional provisions in connection with the transfers provided for by the scheme. 30
- (4) A new operator scheme may include 1 or more of the following types of provisions in relation to a transfer:
- (a) provision for the new operator to be treated as the same person in law as the operator under statutory management for specified purposes: 35

- (b) provision for instruments made, transactions effected, or other things done by or in relation to the operator under statutory management to be treated as made, effected, or done by or in relation to the new operator:
- (c) provision for references in instruments to the operator under statutory management, or to an employee or office holder of the operator under statutory management, to have effect with the modifications specified in the scheme: 5
- (d) if the transfer relates to contracts of employment with the operator under statutory management, provision that the transfer does not terminate any of those contracts and that periods of employment with the operator under statutory management are to count for all purposes as periods of employment with the new operator: 10
- (e) provision for proceedings commenced by or against the operator under statutory management to be continued by or against the new operator:
- (f) provision for a conviction, ruling, order, or judgment in favour of, or against, the operator under statutory management to be enforced by, or against, the new operator. 15
- (5) **Subsection (4)** does not limit **subsection (3)**.
- (6) If the operator under statutory management is a party to 2 or more contracts with a particular participant (**P**), the statutory manager must ensure that— 20
- (a) all of the contracts with P are transferred under the new operator scheme; or
- (b) none of the contracts with P are transferred.
- 103 Consent required to make new operating scheme**
- (1) A new operator scheme may be made only with— 25
- (a) the consent of the new operator; and
- (b) the consent of the regulator.
- (2) ~~The consent of the regulator may be given only with the approval of—~~
- (a) ~~the RBNZ Minister and the FMA Minister acting jointly, if the consent is to be given by the RBNZ and the FMA acting jointly; or~~ 30
- (b) ~~the RBNZ Minister, if the consent is to be given by the RBNZ; or~~
- (c) ~~the FMA Minister, if the consent is to be given by the FMA.~~
- (3) ~~The approval must be given if the Minister or Ministers consider that the regulator—~~
- (a) ~~has adequately—~~ 35
- (i) ~~taken into account the matters in **section 13**; and~~
- (ii) ~~had regard to the purposes in **section 78**; and~~
- (b) ~~has reasonable grounds for giving the consent.~~

- (4) The provisions of any enactment (apart from **subsection (1)**), or of any instrument, that would otherwise require a consent for anything effected by a new operator scheme do not apply.
- (5) In **subsection (4)**, **consent** includes licence, permission, clearance, or other authority. 5
- 104 Effect of new operating scheme**
- (1) A new operator scheme takes effect at the date and time specified in the consent of the regulator under **section 103(1)(b)**.
- (2) The provisions of a new operating scheme made and consented to in accordance with **sections 102 and 103** are valid and enforceable despite anything to the contrary in any enactment, instrument, trust, or other rule of law. 10
- (3) The making, implementation, and operation of a new operating scheme does not of itself—
- (a) place any person in contravention of any enactment, instrument, trust, or other rule of law, or make any person liable for a civil wrong; or 15
- (b) unless the rules of the FMI specify otherwise, entitle any person—
- (i) to require the payment or performance of a liability or an obligation that does not otherwise arise for payment or performance; or
- (ii) to exercise a right that does not otherwise become exercisable; or
- (iii) to deny a liability or an obligation that the person is not otherwise entitled to deny; or 20
- (c) invalidate or discharge an instrument or any provision of an instrument.
- (4) In **subsection (3)**, **instrument** includes an agreement or any other document.
- 104A Transfer of property subject to security**
- (1) A statutory manager may make a new operator scheme that transfers any property despite the existence, or the terms and conditions, of any security over the property in favour of any other person. 25
- (2) However, any property that is transferred under a new operator scheme that is subject to a security in favour of any other person continues to be subject to the security. 30
- (3) **Sections 102 and 104** are subject to this section.
- 105 Registers**
- (1) The Registrar-General of Land or any other person charged with keeping records or registers is not required to change the name of the operator under statutory management to the new operator in the records or registers, or in a document, just because of a transfer effected by a new operator scheme. 35
- (2) If the new operator presents an instrument that meets the following requirements to a Registrar or another person, the presentation of that instrument is, in

the absence of proof to the contrary, sufficient evidence that the property has been transferred to the new operator:

- (a) the instrument is executed, or purported to be executed, by the new operator:
 - (b) the instrument relates to property held by the operator under statutory management immediately before the new operator scheme took effect: 5
 - (c) the instrument is accompanied by a certificate by the new operator that the property was transferred to the new operator under this section.
- (3) In this section, **instrument** includes the following:
- (a) an instrument made under an enactment: 10
 - (b) the FMI's rules:
 - (c) an agreement or any other document.

Application of provisions of Corporations (Investigation and Management) Act 1989

106 Moratorium 15

- (1) Section 42 of the Corporations (Investigation and Management) Act 1989 (moratorium) applies with any necessary modifications in relation to a statutory management under this subpart as if it were a statutory management under that Act.
- (2) Section 42(1)(a), (b), and (d) to (h) of the Corporations (Investigation and Management) Act 1989, as applied by **subsection (1)**, does not do any of the following: 20
 - (a) affect the application of **section 98 or 99** of this Act:
 - (b) affect the application of **subpart 5 of Part 3** of this Act to settlements effected, or other things done, in accordance with the FMI's rules: 25
 - (c) prevent a person from taking any action specified in section 42(1)(a), (b), or (d) to (h) in relation to an obligation arising under the FMI's rules (including any settlement effected in accordance with those rules).
- (3) *See also sections 122 and 123*, which provide for certain rights relating to derivatives to be exercised after a stay despite this section. 30

107 Power of statutory manager to sell business undertaking of operator under statutory management, etc

- (1) Section 50(1) and (2) of the Corporations (Investigation and Management) Act 1989 (power of statutory manager to sell business undertaking of corporation) applies with any necessary modifications in relation to a statutory management under this subpart as if it were a statutory management under that Act. 35
- (2) A statutory manager may do the following only with the consent of the regulator:

- (a) sell or otherwise dispose of the whole or any part of the business undertaking of the operator under statutory management under section 50(1) of the Corporations (Investigation and Management) Act 1989, as applied by **subsection (1)**:
- (b) sell or otherwise dispose of any shares of a body corporate formed and registered under section 50(2)(a) of the Corporations (Investigation and Management) Act 1989, as applied by **subsection (1)**: 5
- (c) sell or otherwise dispose of the whole or any part of the business undertaking of a body corporate formed and registered under section 50(2)(a) of the Corporations (Investigation and Management) Act 1989, as applied by **subsection (1)**. 10
- (3) The provisions of any enactment (apart from this Act), or of any agreement, that require a consent for a sale or other disposition referred to in **subsection (2)** do not apply.
- (4) In **subsection (3)**, **consent** includes licence, permission, clearance, or other authority. 15
- (5) If the operator under statutory management is a party to 2 or more contracts with a particular participant (**P**), the statutory manager must ensure that a sale or other disposal of the whole or any part of the business undertaking of the operator under this section— 20
- (a) includes all of the contracts with **P**; or
- (b) does not include any of the contracts with **P**.

108 Ministers' approval

- (1) The consent of the regulator under **section 107** may be given only with the approval of— 25
- (a) the RBNZ Minister and the FMA Minister acting jointly, if the consent is to be given by the RBNZ and the FMA acting jointly; or
- (b) the RBNZ Minister, if the consent is to be given by the RBNZ; or
- (c) the FMA Minister, if the consent is to be given by the FMA.
- (2) ~~The approval must be given if the Minister or Ministers consider that the regulator—~~ 30
- (a) ~~has adequately—~~
- (i) ~~taken into account the matters in **section 13**; and~~
- (ii) ~~had regard to the purposes in **section 78**; and~~
- (b) ~~has reasonable grounds for giving the consent.~~ 35

109 Body corporate formed and registered also subject to statutory management

If a body corporate is formed and registered under section 50(2)(a) of the Corporations (Investigation and Management) Act 1989, as applied by **section 107(1)**,—

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- (a) the body corporate is subject to statutory management under this subpart as if it had been declared to be so by an order under **section 89**; and
- (b) the body corporate has the same statutory manager as the operator under statutory management; and
- (c) this subpart applies (with any necessary modifications) as if the body corporate were an operator under statutory management.

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110 Applicable provisions of Corporations (Investigation and Management) Act 1989

The following provisions of the Corporations (Investigation and Management) Act 1989 apply with any necessary modifications in relation to a statutory management under this subpart as if it were a statutory management under that Act:

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- (a) section 43(1) and (4) (prohibition against removal of assets from New Zealand):
- (b) section 44 (statutory manager may suspend payment of money owing), subject to **section 112(1)**:
- (c) section 45 (management of corporation to vest in statutory manager):
- (d) section 46 (powers of statutory manager):
- (e) section 47 (statutory manager may carry on business of corporation), subject to **section 112(2)**:
- (f) section 48 (statutory manager may pay creditors and compromise claims), subject to **section 111**:
- (g) section 49 (termination of contract of agency or service):
- (h) section 51 (sale of property or assets subject to a security):
- (i) section 52 (liquidation of corporations), subject to **section 112(3)**:
- (j) section 53 (liabilities included in the sale of a business):
- (k) section 54 (power to trace property improperly disposed of):
- (l) section 55 (application of certain provisions of Companies Act 1993):
- (m) section 58 (statutory manager may apply to court for directions):
- (n) section 59 (court may confer additional powers on statutory manager):
- (o) section 61 (prior winding up, liquidation, or receivership to cease):
- (p) section 64 (corporation not entitled to be consulted about exercise of powers):

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- (q) section 65 (expenses of statutory management):
 - (r) section 66 (advances to statutory managers and members of advisory committees):
 - (s) section 67 (duty to deliver books and property to statutory manager):
 - (t) section 69 (duty to report offences), subject to **section 112(4)**: 5
 - (u) sections 71 and 71A (application of other Acts):
 - (v) section 72 (proof of transactions).
- 111 Modifications relating to power to pay creditors and compromise claims**
- (1) Section 48 of the Corporations (Investigation and Management) Act 1989, as applied by **section 110(f)**, and this section do not apply to any call, debt, or claim arising under the FMI's rules (*see instead section 100*). 10
 - (2) In exercising a power under section 48 of the Corporations (Investigation and Management) Act 1989 (as applied by **section 110(f)**) and otherwise in exercising a power in the conduct of the statutory management, the statutory manager must take into account the desirability of consistency in the treatment of all creditors with the same ranking except to the extent (if any) approved by the regulator. 15
 - (3) *See section 78*, which sets out the purposes for which the regulator may exercise its approval power.
 - (4) If the regulator gives approval,— 20
 - (a) the regulator must provide a report, setting out the reasons for giving the approval (including why giving the approval is appropriate), to—
 - (i) the RBNZ Minister and the FMA Minister, if the approval is given by the RBNZ and the FMA acting jointly; or
 - (ii) the RBNZ Minister, if the approval is given by the RBNZ; or 25
 - (iii) the FMA Minister, if the approval is given by the FMA; and
 - (b) the Minister who receives a report (or, in the case of a report provided to the Ministers under **paragraph (a)(i)**, one of those Ministers) must present a copy of that report to the House of Representatives as soon as practicable after receiving it. 30
 - (5) An approval—
 - (a) may relate to a particular call, debt, or claim, or to a class of calls, debts, or claims; and
 - (b) may apply to a particular operator of an FMI under statutory management or to statutory managements under this subpart generally. 35
 - (6) Nothing in this section prevents the statutory manager from making any payment in the ordinary course of business of the operator under statutory management.

- 112 Other modifications to Corporations (Investigation and Management) Act 1989**
- (1) Section 44 of the Corporations (Investigation and Management) Act 1989, as applied by **section 110(b)**, does not apply to any deposit held, or to any debt or other obligation arising, under the FMI’s rules. 5
- (2) The power under section 47 of the Corporations (Investigation and Management) Act 1989, as applied by **section 110(e)**, includes (without limitation) the power to activate and implement any FMI contingency plans of the FMI.
- (3) Section 52 of the Corporations (Investigation and Management) Act 1989, as applied by **section 110(i)**, applies with the following modifications: 10
- (a) the statutory manager’s power to apply, take steps, or make a recommendation under section 52(1) or (2) of that Act may be exercised only with the approval of the regulator:
- (b) in section 52(2) and (3) of that Act, references to the Minister are to—
- (i) the RBNZ Minister and the FMA Minister acting jointly, if the approval referred to in **paragraph (a)** is given by the RBNZ and the FMA acting jointly; or 15
- (ii) the RBNZ Minister, if the approval is given by the RBNZ; or
- (iii) the FMA Minister, if the approval is given by the FMA.
- (4) Section 69 of the Corporations (Investigation and Management) Act 1989, as applied by **section 110(t)**, applies with the following modifications: 20
- (a) the reference to a person being guilty of an offence includes a person being liable to a pecuniary penalty under this Act:
- (b) in relation to an offence, or to a liability to a pecuniary penalty, under this Act, the duty to report the matter to the Solicitor-General includes a duty also to report the matter to the regulator. 25
- 113 Offences relating to statutory management**
- (1) A person who contravenes section 43(1) of the Corporations (Investigation and Management) Act 1989, as applied by **section 110(a)**, commits an offence if the person knows that, or is reckless as to whether, the operator is subject to statutory management. 30
- (2) **Subsection (1)** does not prevent the issue of an injunction, or the making of any order, to prevent property or assets from being removed from New Zealand.
- (3) A person commits an offence if the person,— 35
- (a) with intent to defeat the purposes of this Act, or the Corporations (Investigation and Management) Act 1989 as applied by this Act,—
- (i) destroys, alters, or conceals any document relating to an operator under statutory management; or

- (ii) sends or attempts to send out of New Zealand any document relating to an operator under statutory management; or
 - (b) fails or refuses to answer, to the best of the person's knowledge and ability, any question that the person is asked by a statutory manager about—
 - (i) any document relating to the operator under statutory management; or
 - (ii) any property; or
 - (c) intentionally or recklessly gives a false answer to any question referred to in **paragraph (b)**.
- (4) If, in a proceeding under **subsection (3)(a)**, it is proved that the person destroyed, altered, or concealed any document relating to an operator under statutory management, or sent or attempted to send out of New Zealand any such document, the onus is on the person to prove that the person did not do so with intent to defeat the purposes of this Act or the Corporations (Investigation and Management) Act 1989 as applied by this Act.
- (5) See **Part 5** for further provisions about offences.

Termination of statutory management or of statutory manager's appointment

114 Termination of statutory management

- (1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the regulator, declare that an operator under statutory management is to cease to be subject to statutory management.
- (2) The order must specify the date on which, and the time at which, it comes into force.
- (3) An operator under statutory management ceases to be subject to statutory management if the operator is put into liquidation on the application of the statutory manager.

115 Effect of termination of statutory management

- (1) If an order is made under **section 114(1)**, or an operator under statutory management is put into liquidation as referred to in **section 114(3)**, the following happens at the specified time:
 - (a) the operator under statutory management ceases to be subject to statutory management;
 - (b) the appointment of the statutory manager terminates;
 - (c) the appointment of a person as a member of an advisory committee terminates.
- (2) In **subsection (1)**, **specified time** means, as the case requires,—
 - (a) the date and time specified in the order; or

- (b) the date and time of the liquidator's appointment.

116 Termination or resignation of statutory manager's appointment

- (1) The Minister may, in accordance with a recommendation of the regulator, terminate the appointment of a statutory manager by notice to the statutory manager. 5
- (2) The regulator may make a recommendation only if satisfied of 1 or both of the following:
- (a) the statutory manager is unable to perform the role of the office;
- (b) the statutory manager is bankrupt.
- (3) The Minister may terminate the appointment of a statutory manager by notice to the statutory manager if satisfied that there has been neglect of duty, or other misconduct, by the statutory manager. 10
- (4) A statutory manager—
- (a) may resign by notice to the Minister; but
- (b) if the statutory manager does so, must continue in office until a replacement is appointed under **section 117(2)**. 15
- (5) In **subsections (3) and (4)**, **Minister** means—
- (a) the RBNZ Minister and the FMA Minister acting jointly; or
- (b) the RBNZ Minister, if the FMI is a pure payment system.

117 Appointment of new statutory manager 20

- (1) **Subsection (2)** applies if—
- (a) the period of a statutory manager's appointment expires; or
- (b) the appointment of a statutory manager is terminated under **section 116(1) or (3)**; or
- (c) a statutory manager dies or resigns. 25
- (2) The Minister may, in accordance with a recommendation of the regulator, by notice (the **appointment notice**), appoint 1 or more persons to replace the statutory manager for a specified period.
- (3) If, following the appointment notice, 2 or more persons will be statutory managers,— 30
- (a) the notice must state whether the powers of a statutory manager are to be exercised by those persons acting jointly or may be exercised individually; and
- (b) references in this subpart to a statutory manager include references to the statutory managers. 35
- (4) The publication requirements in **section 148(2)** apply to the appointment notice.

Other provisions

- 118 Obligations incurred by statutory manager**
- (1) This section applies if a statutory manager, in the course of the statutory manager's duties, incurs obligations.
- (2) The obligations are incurred on behalf of the operator under statutory management, and the statutory manager does not incur personal liability for the obligations. 5
- (3) In the winding up or liquidation of the operator under statutory management, all amounts required to meet the obligations must be paid in priority to all other debts, except costs, charges, and fees payable out of the property of the operator under statutory management in accordance with section 65 of the Corporations (Investigation and Management) Act 1989, as applied by **section 110(q)**. 10
- 119 Statutory management does not place any person in contravention of enactment, etc** 15
- (1) The making of an order under **section 89** in relation to an operator of an FMI does not of itself—
- (a) place any person in contravention of any enactment, instrument, trust, or other rule of law, or make any person liable for a civil wrong; or
- (b) unless the rules of the FMI specify otherwise, entitle any person— 20
- (i) to require the payment or performance of a liability or an obligation that does not otherwise arise for payment or performance; or
- (ii) to exercise a right that does not otherwise become exercisable; or
- (iii) to deny a liability or an obligation that the person is not otherwise entitled to deny; or 25
- (c) invalidate or discharge an instrument or any provision of an instrument.
- (2) This section does not apply to a right to which **section 122** applies.
- (3) In **subsection (1)**, **instrument** includes an agreement or any other document.
- 120 Continuation of statutory management of company restored to New Zealand register** 30
- (1) This section applies if a company—
- (a) is removed from the New Zealand register under section 317 of the Companies Act 1993 while subject to statutory management under this subpart; but
- (b) is then restored to the New Zealand register under section 328 of the Companies Act 1993. 35
- (2) The company continues to be subject to statutory management from when it is restored.

121 Person who exercises powers under subpart not director of operator under statutory management

Neither the regulator nor any other person is a director of an operator under statutory management just because the regulator or other person exercises a power under this subpart in relation to the operator.

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121A Indemnity**(1) The Crown indemnifies—**

(a) each statutory manager of an operator under statutory management for any liability that arises from any act or omission that is done or omitted to be done in good faith and in the performance or exercise, or intended performance or exercise, of the statutory manager’s functions; and

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(b) the regulator for any liability that arises from any act or omission that is done or omitted to be done in good faith and in the performance or exercise, or intended performance or exercise, of the regulator’s functions in connection with a statutory management of an operator under statutory management.

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(2) Any money paid by the Crown under the indemnity under this section and any expenses incurred by the Crown in relation to that indemnity may be incurred without further appropriation, and must be paid without further authority, than this section.

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(3) The indemnities conferred by this section extend to legal costs incurred in defending a proceeding.

Subpart 4—Supplementary provisions**122 Certain rights relating to derivatives may be exercised after stay****(1) This section applies to a right if—**

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(a) ~~the right becomes exercisable because—~~

(i) ~~a direction notice under **section 80 is given or an operator of an FMI does, or does not do, anything in compliance with the direction notice; or~~**

(ii) ~~an order under **section 89 in relation to an operator of an FMI is made; and~~**

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(a) the right becomes exercisable because an order under **section 89 in relation to an operator of an FMI is made; and**

(b) the right entitles a person to do 1 or more of the things specified in ~~section 81(1)(b)** or **119(1)(b)**~~ **section 119(1)(b)** in relation to a derivative.**

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- (2) Nothing in ~~section 81~~ of this Act or section 42 of the Corporations (Investigation and Management) Act 1989, as applied by **section 106**, limits or prevents the exercise of the right if the right is exercised after—
- (a) the default time; or
 - (b) an earlier or a later time specified by the regulator in a notice issued under **section 123**. 5
- (3) If a right to which this section applies is not subject to section 42(1) of the Corporations (Investigation and Management) Act 1989, the right must be treated as being subject to that provision (with the effect that the right may be exercised only after the time referred to in **subsection (2)(a) or (b)**). 10
- (4) In this section and **section 123**,—
- default time** means,—
- (a) ~~in the case of **subsection (1)(a)(i)**, the close of the day after the date on which the direction notice under **section 80** is given;~~
 - (b) ~~in the case of **subsection (1)(a)(ii)**, the close of the day after the date on which the order under **section 89** comes into force~~ 15
- default time** means the close of the day after the date on which the order under **section 89** comes into force
- derivative** means a derivative within the meaning of section 8(4) of the Financial Markets Conduct Act 2013 (but disregarding any declaration under subpart 3 of Part 9 of that Act). 20
- 123 Regulator may reduce or extend stay on exercise of rights**
- (1) ~~This section applies for the purposes of **section 122** in respect of an operator of an FMI (A) if—~~
- (a) ~~a direction notice under **section 80** has been given to A; or~~ 25
 - (b) ~~A is in statutory management.~~
- (1) This section applies for the purposes of **section 122** in respect of an operator of an FMI (A) if A is in statutory management.
- (2) The regulator may, before the default time, issue a notice that states that the rights referred to in **section 122** may only be exercised on and after a time specified in the notice. 30
- (3) The time that is specified may be—
- (a) before the default time; or
 - (b) after the default time if the regulator is satisfied of all of the matters set out in **subsection (4)**. 35
- (4) The matters referred to in **subsection (3)(b)** are that—
- (a) A is able to meet all of its liabilities under the rules of the FMI; and
 - (b) either—

- (i) A complies with the minimum capital requirements (if any) set by a standard issued under **section 31**; or
 - (ii) there are satisfactory arrangements in place to ensure that A meets all of its liabilities referred to in **paragraph (a)** as and when those liabilities become due and payable and those arrangements will remain in place until A complies with the requirements referred to in **subparagraph (i)** or the relevant event ends statutory management is terminated, whichever occurs first. 5
- (5) ~~In **subsection (4)(b)(ii)**, the relevant event ends,—~~
- (a) ~~in the case of **section 122(1)(a)(i)**, when the direction notice is fully complied with or is revoked:~~ 10
 - (b) ~~in the case of **section 122(1)(a)(ii)**, when the statutory management is terminated.~~
- (6) The notice may relate to all rights referred to in **section 122** or to a class or classes of those rights. 15

Part 5

Offences and pecuniary penalties

Subpart 1—Offences

124 Penalties for offences

- (1) This section sets out penalties for which a person is liable on conviction for an offence under this Act. 20
- (2) If the person who is convicted is a body corporate, the person is liable as follows:
 - (a) for a level 1 offence, to a fine not exceeding \$200,000:
 - (b) for a level 2 offence or a level 3 offence, to a fine not exceeding \$500,000: 25
 - (c) for a level 4 offence, to a fine not exceeding \$1,000,000:
 - (d) for a level 5 offence, to a fine not exceeding \$2,000,000.
- (3) If the person who is convicted is an individual, the person is liable as follows:
 - (a) for a level 1 offence, to a fine not exceeding \$20,000: 30
 - (b) for a level 2 offence, to a fine not exceeding \$50,000:
 - (c) for a level 3 offence, to—
 - (i) imprisonment for a term not exceeding 3 months; or
 - (ii) a fine not exceeding \$50,000; or
 - (iii) both: 35
 - (d) for a level 4 offence, to—

- (i) imprisonment for a term not exceeding 12 months; or
 - (ii) a fine not exceeding \$100,000; or
 - (iii) both:
- (e) for a level 5 offence, to—
 - (i) imprisonment for a term not exceeding 18 months; or 5
 - (ii) a fine not exceeding \$200,000; or
 - (iii) both.
- (4) For the purposes of **subsections (2) and (3)**,—
 - (a) an offence under **section 17(1)** is a level 1 offence:
 - (b) the following are level 2 offences: 10
 - (i) an offence under **section 15(1)**:
 - (ii) an offence under **section 83(2)**:
 - (iii) an offence under **section 143(1)**:
 - (c) the following are level 3 offences:
 - (i) an offence under **section 19(1)**: 15
 - (ii) an offence under **section 44(1)**:
 - (iii) an offence under **section 53(1)**:
 - (iv) an offence under **section 140(1)**:
 - (d) the following are level 4 offences:
 - (i) an offence under **section 49**: 20
 - (ii) an offence under **section 66(1) or (2)**:
 - (iii) an offence under **section 70(1)**:
 - (iv) an offence under **section 137(2) or (4)**:
 - (e) the following are level 5 offences:
 - (i) an offence under **section 30(2)**: 25
 - (ii) an offence under **section 83(1)**:
 - (iii) an offence under **section 85(1)**:
 - (iv) an offence under **section 113(1) or (3)**.
- 125 Defence for certain offences**
- (1) This section applies to offences under the following: 30
 - (a) **section 15(1)** (requirement to give information):
 - (b) **section 17(1)** (requirement to obtain and give results of review of information):
 - (c) **section 143(1)** (unauthorised disclosure or use of information).

- (2) It is a defence for the person (A) who is charged with the offence to prove that both of the following apply:
- (a) the contravention was due to—
 - (i) the conduct of another person, other than a director, an employee, or an agent of A; or 5
 - (ii) an accident or some other cause beyond the control of A and A's directors, employees, and agents; and
 - (b) A took reasonable precautions and exercised due diligence to avoid the contravention.

126 Time for filing charging documents 10

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period for an offence under this Act ends on the date that is 5 years after the date on which the offence was committed.

Subpart 2—Pecuniary penalties

127 Pecuniary penalty orders 15

- (1) The High Court may, on the regulator's application, order an operator of an FMI (A) to pay a pecuniary penalty to the Crown if the court is satisfied that A has—
- (a) contravened a standard issued under **section 31** (a **standard**); or
 - (b) been involved in a contravention of a standard by another operator of an FMI; or 20
 - (c) contravened **section 26(2)** (publication of proposal); or
 - (d) contravened **section 37** (publication of copy of rules of designated FMI); or
 - (e) contravened **section 45(2)** (giving instruments setting out a rule change and the effective date of the change to the regulator); or 25
 - (f) contravened **section 48(1)** (designated FMIs to have FMI contingency plans).
- (2) The High Court may, on the regulator's application, order a participant of an FMI (A) to pay a pecuniary penalty to the Crown if the court is satisfied that A has contravened **section 62(2)** (notification of insolvency event). 30
- (3) In this subpart,—
- (a) **A's conduct** means the conduct of A for which A is liable to the pecuniary penalty:
 - (b) an operator of an FMI is **involved in a contravention** of a standard if the operator— 35
 - (i) has aided, abetted, counselled, or procured the contravention; or

- (ii) has induced, whether by threats or promises or otherwise, the contravention; or
- (iii) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (iv) has conspired with others to effect the contravention. 5

128 Maximum amount of penalty

- (1) The maximum amount of the pecuniary penalty for a contravention, or involvement in a contravention, referred to in **section 127(1)(a), (b), or (f)** is as follows:
 - (a) in the case of a body corporate, \$750,000: 10
 - (b) in the case of an individual, \$75,000.
- (2) The maximum amount of the pecuniary penalty for a contravention referred to in **section 127(1)(c) to (e) or (2)** is as follows:
 - (a) in the case of a body corporate, \$150,000:
 - (b) in the case of an individual, \$15,000. 15

129 Considerations for court

In determining whether to make an order, and the amount of any pecuniary penalty to be paid, the court must have regard to the following matters:

- (a) the extent to which A's conduct undermines the purposes of this Act:
- (b) any loss or damage caused by A's conduct: 20
- (c) whether A has taken steps to avoid or mitigate any adverse effects arising from A's conduct:
- (d) whether A's conduct was intentional or reckless:
- (e) the circumstances of A's conduct:
- (f) whether A has previously engaged in similar conduct: 25
- (g) any other matters the court considers relevant.

130 Defences in pecuniary penalty proceeding for operator that contravenes standard

- (1) This section applies to a proceeding under this subpart against A for a contravention of a standard. 30
- (2) It is a defence for A to prove that the contravention was due to reasonable reliance on information provided by another person, other than a director, an employee, or an agent of A.
- (3) It is also a defence for A to prove that—
 - (a) the contravention was due to— 35

- (i) the conduct of another person, other than a director, an employee, or an agent of A; or
- (ii) an accident or some other cause beyond the control of A and A's directors, employees, and agents; and
- (b) A took reasonable precautions and exercised due diligence to avoid the contravention. 5
- (4) A's conduct must still be treated as contravening a standard even if the conduct does not lead to any liability under this subpart because of the availability of a defence.
- 131 Defence for other operator that is involved in contravention** 10
- (1) This section applies if—
- (a) an operator of an FMI (**B**) has contravened a standard; and
- (b) another operator of the FMI (**C**) is involved in the contravention.
- (2) In any proceeding under this subpart against C for involvement in the contravention of the standard, it is a defence if C proves that— 15
- (a) C's involvement in the contravention was due to reasonable reliance on information supplied by another person, other than a director, an employee, or an agent of C; or
- (b) C took all reasonable and proper steps to ensure that B complied with the standard. 20
- 132 Rules of civil procedure and civil standard of proof apply to civil liability**
- A proceeding under this subpart is a civil proceeding and the usual rules of court and rules of evidence and procedure for a civil proceeding apply (including the standard of proof).
- 133 Court must order that recovery from pecuniary penalty be applied to regulator's actual costs** 25
- If the court orders A to pay a pecuniary penalty, the court must also order that the penalty be applied first to pay the regulator's actual costs in making and continuing the regulator's application for an order.
- Subpart 3—Supplementary provisions** 30
- 134 Liability of directors**
- (1) This section applies if—
- (a) a body corporate (**D**) or an unincorporated body (**D**) commits an offence under this Act or is liable to a pecuniary penalty; and
- (b) D's conduct occurred with the authority, permission, or consent of a director of D; and 35

- (c) the director—
- (i) knew, or could reasonably be expected to have known, D’s conduct was to occur or was occurring; and
 - (ii) failed to take reasonable steps to prevent or stop D’s conduct.
- (2) The director also commits the offence or is liable to a pecuniary penalty. 5
- (3) The director may be convicted of the offence, or ordered to pay a pecuniary penalty, even if D is not convicted of the offence or ordered to pay a pecuniary penalty.
- (4) In this section, **D’s conduct** means the conduct of D that constitutes the offence or for which D is liable to the pecuniary penalty. 10
- 135 State of mind of directors, employees, or agents attributed to body corporate or other principal**
- (1) **Subsection (2)** applies if, in a proceeding under this Act, it is necessary to establish the state of mind of a body corporate.
 - (2) It is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of the actual or apparent authority of the director, employee, or agent, had that state of mind. 15
 - (3) **Subsection (4)** applies if, in a proceeding under this Act, it is necessary to establish the state of mind of a person who is not a body corporate.
 - (4) It is sufficient to show that an employee or agent of the person, acting within the scope of the actual or apparent authority of the employee or agent, had that state of mind. 20
 - (5) In this section, **state of mind**, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person’s reasons for that knowledge, intention, opinion, belief, or purpose. 25
- 136 Person not liable for fine and pecuniary penalty for same conduct**
- A person must not, for the same conduct,—
- (a) be convicted of an offence under this Act; and
 - (b) be ordered to pay a pecuniary penalty under this Act.

Part 6 30

Regulations, amendments, and other miscellaneous provisions

Subpart 1—Supplementary provisions relating to information

- 137 False or misleading information given for purposes of Act**
- (1) This section applies if a person, in an application or any other information given under this Act, or otherwise for the purposes of this Act,— 35

- (a) gives to the regulator, or an investigator, information that is false or misleading in a material particular; or
 - (b) makes to the regulator, or to an investigator, a declaration or representation that is false or misleading in a material particular.
- (2) The person commits an offence if the person gives the information, or makes the declaration or representation, knowing that, or being reckless as to whether, the information, or the declaration or representation, is false or misleading in a material particular. 5
- (3) If the person subsequently becomes aware that the information, or the declaration or representation, is false or misleading in a material particular, the person must, within 7 days,— 10
- (a) notify the regulator or investigator; and
 - (b) correct the information, or the declaration or representation, as appropriate.
- (4) If the person intentionally or recklessly contravenes **subsection (3)**, the person commits an offence. 15
- (5) See **Part 5** for further provisions about offences.

Disclosure of information, etc

138 Disclosure of information between RBNZ and FMA

- (1) The RBNZ and the FMA may, for the purposes of, or in connection with, the regulator's functions, disclose to each other any specified information that they hold. 20
- (2) **Subsection (1)** overrides any duty as to secrecy or any other restriction on the disclosure of information, whether imposed by an enactment or otherwise.
- (3) In this section, **specified information** means information that— 25
- (a) is given to the RBNZ or the FMA under this Act; or
 - (b) is otherwise obtained or generated by the RBNZ or the FMA for the purposes of, or in connection with, the regulator's functions; or
 - (c) is otherwise obtained or held by the RBNZ or the FMA in the performance or exercise of their functions under any other enactment. 30

Compare: 1989 No 157 s 156ZM

139 Disclosure of information by RBNZ or FMA to other persons

- (1) This section applies to the following:
- (a) information provided to the RBNZ, the FMA, or both of them, under this Act: 35
 - (b) information derived from or based on information referred to in **paragraph (a)**:

- (c) information relating to the exercise, or possible exercise, of the powers conferred by this Act.
- (2) The RBNZ ~~or the FMA~~ may publish or disclose any information to which this section applies only if—
- (a) the information is available to the public under an enactment or is otherwise publicly available information; or 5
- (b) the information is in a statistical or summary form; or
- (c) the disclosure is for the purposes of, or in connection with, a person's functions under this Act or the functions of the RBNZ or the FMA under any other enactment; or 10
- (d) the disclosure is to a central bank, authority, or body in any jurisdiction whose functions correspond with, or are similar to, the regulator's functions under this Act, and the RBNZ ~~or the FMA~~ is satisfied that the information will be used by that central bank, authority, or body for the purposes of, or in connection with, those corresponding or similar functions; or 15
- (e) the disclosure is to a person who the RBNZ ~~or the FMA~~ is satisfied has a proper interest in receiving the information; or
- (f) the disclosure is with the consent of the person to whom the information relates or of the person to whom the information is confidential; ~~or~~ 20
- (g) ~~in the case of the FMA, the disclosure is made in accordance with section 59 of the Financial Markets Authority Act 2011.~~
- (3) ~~Neither the RBNZ nor the FMA may~~The RBNZ must not disclose information under **subsection (2)(d) or (e)** unless satisfied that satisfactory provision exists to protect the confidentiality of the information (in particular, information that is personal information as defined in section 2(1) of the Privacy Act 1993). 25
- (4) A director, an officer, a member, or an employee of the RBNZ ~~or the FMA~~ must not disclose any information to which this section applies except for the purposes of, or in connection with, a person's functions under this Act or the functions of the RBNZ or the FMA under any other enactment. 30
- (5) Nothing in any enactment, other than this Act or the Official Information Act 1982 ~~or the Financial Markets Authority Act 2011~~, requires the RBNZ, ~~the FMA~~, or any person to whom information has been disclosed under this section to make that information available to any other person. 35
- (6) See sections 59 and 60 of the Financial Markets Authority Act 2011, which relate to the confidentiality of information supplied or disclosed to, or obtained by, the FMA.

140 Offence for unauthorised disclosure

- (1) A director, an officer, a member, or an employee of the RBNZ ~~or the FMA~~ who knowingly discloses information in contravention of **section 139** commits an offence.
- (2) *See Part 5* for further provisions about offences. 5

141 Conditions relating to disclosure of information

- (1) The ~~regulator~~ RBNZ may, by written notice to a person to whom any information or document is disclosed under **section 139(2)(c), (e), or (f)**, impose any conditions in relation to the disclosure or use of the information by the person. 10
- (2) The ~~regulator~~ RBNZ 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 may include, without limitation, conditions relating to—
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993): 15
 - (b) the storing of, the use of, or access to anything provided:
 - (c) the copying, returning, or disposing of copies of documents provided.

142 Restrictions on further disclosure of information 20

- (1) If information is disclosed to a person under **section 139(2)(c)**, the person may disclose or use the information only—
- (a) for the purposes of, or in connection with, functions referred to in **section 139(2)(c)**; and
 - (b) in accordance with any conditions imposed by the RBNZ ~~or the FMA~~. 25
- (2) If information is disclosed to a person under **section 139(2)(e)**, the person may disclose or use the information only if the disclosure or use—
- (a) is authorised by the RBNZ ~~or the FMA~~ and is in accordance with any conditions imposed by the RBNZ ~~or the FMA~~; or
 - (b) is for the purposes of, or in connection with, functions of a person under any enactment. 30
- (3) If information is disclosed to a person under **section 139(2)(f)**, the person may disclose or use the information only in accordance with the conditions of the consent (if any).

143 Offence for unauthorised disclosure or use 35

- (1) A person who discloses or uses information in contravention of **section 142** commits an offence.

- (2) See **Part 5** for further provisions about offences.

144 Effect of proceedings on exercise of powers to require information, etc

- (1) This section applies if a person commences a proceeding in any court in respect of the exercise of any powers under **Part 2 or section 64** (the **information powers**). 5
- (2) Until a final decision in relation to the proceeding is given,—
- (a) the information powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and
- (b) no person is excused from performing the person's duties under **Part 2 or section 64** because of the proceeding. 10
- (3) However, an interim order may be made by the High Court overriding the effect of **subsection (2)** if the court is satisfied that—
- (a) the applicant has established a prima facie case that the exercise of the information powers is unlawful; and
- (b) the applicant would suffer substantial harm from the exercise of the information powers or the performance of any duties referred to in **subsection (2)(b)**; and 15
- (c) if those powers or duties are exercised or performed before a final decision is given in the proceeding, none of the remedies listed in **subsection (4)**, or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and 20
- (d) the terms of the order do not—
- (i) hinder or restrict the carrying out of any functions of a person under **Part 4**; or
- (ii) unduly hinder or restrict the carrying out of any other functions of a person under this Act. 25
- (4) The remedies are as follows:
- (a) any remedy that the High Court may grant in making a final decision in the proceeding (for example, a declaration):
- (b) any damages that the applicant may be able to claim in a concurrent or subsequent proceeding: 30
- (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 of the information powers or the performance of any duty referred to in **subsection (2)(b)**. 35

145 Decision that exercise of powers is unlawful

- (1) This section applies if the final decision in a proceeding referred to in **section 144** is that the exercise of the information powers is unlawful to any extent.

- (2) The regulator or investigator must ensure that, immediately after the decision of the court is given,—
- (a) any information obtained as a result of the unlawful exercise of the information powers, and any record of the information, is destroyed; and
 - (b) any documents, or extracts from documents, obtained as a result of the unlawful exercise of the information powers are returned to the person who had possession of them, or under whose control they were, and any copies of those documents or extracts are destroyed; and 5
 - (c) any information derived from or based on such information, documents, or extracts is destroyed. 10
- (3) However, the court may order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the regulator or investigator, subject to any terms or conditions that the court imposes.
- (4) No information, and no documents or extracts from documents, obtained as a result of the unlawful exercise of the information powers, and no record of any such information or documents,— 15
- (a) are admissible as evidence in any civil proceedings unless the court hearing the proceedings in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence: 20
 - (b) are admissible as evidence in any criminal proceedings if the evidence is excluded under section 30 of the Evidence Act 2006:
 - (c) may otherwise be used in connection with the carrying out of any function of a person under this Act or any other enactment unless the court that decided that the exercise of the information powers was unlawful is satisfied that there was no unfairness in obtaining the information or document. 25

Subpart 2—Supplementary provisions relating to regulator’s powers

- 146 Applications, submissions, and other information given to regulator or other person in accordance with regulator’s requirement** 30
- (1) An application or a submission made, or any other information given, to the regulator, or to be made or given to another person in accordance with a requirement of the regulator, must be made or given in the way required by the regulator.
- (2) The regulator’s requirements may include (without limitation) requirements about 1 or more of the following: 35
- (a) the form in which the application, submission, or information must be made or given:

- (b) the information that must be given with the application, submission, or information:
- (c) the way in which any information referred to in this section must be verified.
- (3) Information to be given to the regulator or other person must be given within the period determined by the regulator. 5
- 147 Revocation or amendment of requirements imposed, or directions given, by notice**
- A power of the regulator to impose a requirement on, or to give a direction to, a person by notice includes the power to revoke or amend the requirement or direction by a subsequent notice, and the provisions of this Act relating to the exercise of the power apply with any appropriate modifications. 10
- 148 Publication requirements**
- (1) **Subsection (2)** sets out the publication requirements that apply to the instruments referred to in **sections 10(5), 11(4), 29(4), 33, 73(2), 96(5), and 117(4)**. 15
- (2) The **publication requirements** are as follows:
- (a) notice must be given in the *Gazette* that the instrument has been made:
- (b) the instrument must be published on an Internet site that—
- (i) is maintained by, or on behalf of, the RBNZ; and 20
- (ii) is publicly available free of charge:
- (c) the instrument must be published on an Internet site that—
- (i) is maintained by, or on behalf of, the FMA; and
- (ii) is publicly available free of charge:
- (d) hard copies of the instrument must be made available as follows: 25
- (i) for inspection by members of the public free of charge:
- (ii) for purchase by members of the public at a reasonable price.
- (3) **Subsection (2)(c)** does not apply if the instrument relates only to a pure payment system.
- (4) If an instrument to which the publication requirements apply is amended, the publication requirements apply to the instrument as amended. 30
- (5) The following policies of the regulator must also be published in accordance with **subsection (2)(b) and (c)**:
- (a) any policies for determining whether an FMI should be declared to be a designated FMI under **section 20**: 35
- (b) any policies relating to the carrying out of the regulator's functions in relation to designated FMIs.

- (6) A contravention of this section does not invalidate an instrument or a policy.

149 Interaction with Legislation Act 2012

- (1) A standard issued under **section 31**—
- (a) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012; and 5
 - (b) must be presented to the House of Representatives under section 41 of that Act.
- (2) Any other instrument that is made under this Act and that is not an Order in Council—
- (a) is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012; and 10
 - (b) does not have to be presented to the House of Representatives under section 41 of that Act.

Subpart 3—Regulations

150 Power to make regulations by Order in Council 15

- (1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the regulator, make regulations for 1 or more of the following purposes:
- (a) prescribing forms:
 - (b) requiring the payment to the regulator of fees and charges— 20
 - (i) by operators in connection with the carrying out by the regulator of any function under this Act:
 - (ii) on an application or a request to the regulator to carry out any function under this Act:
 - (c) prescribing the amounts of the fees and charges or the way in which the amounts are to be calculated: 25
 - (d) authorising the regulator to require payment of any costs incurred by the regulator in connection with those applications or requests:
 - (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 30
- (2) Any Order in Council may authorise the regulator to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee, charge, or cost payable in relation to any person or class of persons.
- (3) The regulator may refuse to carry out a function until a fee, charge, or cost is paid. 35
- (4) Any fee, charge, or cost payable to the regulator is recoverable by the regulator in any court of competent jurisdiction as a debt due to the regulator.

Subpart 4—Other miscellaneous provisions

151 Directions to regulator

- (1) The RBNZ Minister and the FMA Minister, acting jointly, may direct the regulator to have regard to a Government policy that relates to the regulator's functions under this Act, and the regulator must have regard to the direction. 5
- (2) The RBNZ Minister may on the Minister's own initiative direct the RBNZ to have regard to a Government policy that relates to the RBNZ's functions under this Act as they apply to designated FMIs that are pure payment systems, and the RBNZ must have regard to that direction.
- (3) The Ministers must consult the regulator before giving a direction. 10
- (4) A direction must—
- (a) be set out in a written statement signed by—
 - (i) both Ministers (in the case of a direction under **subsection (1)**):
 - (ii) the RBNZ Minister (in the case of a direction under **subsection (2)**); and 15
 - (b) as soon as practicable after it is given, be—
 - (i) presented to the House of Representatives; and
 - (ii) published in the *Gazette*.
- (5) The Ministers may not give a direction that requires particular conduct by the regulator, or any director, officer, or employee of the regulator, or the bringing about of a particular result in relation to a particular person. 20
- (6) The power of the Ministers to give a direction includes the power to revoke or amend the direction by a subsequent direction, and the provisions of this section relating to the exercise of the power apply with any appropriate modifications. 25

152 Limit on FMA's powers under other enactments

For the purposes of this Act, the FMA may exercise its powers under Part 3 of the Financial Markets Authority Act 2011 in relation to the RBNZ only if, and to the extent that, the RBNZ is an operator or a participant of an FMI.

Compare: 1989 No 157 s 156L

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153 Protection from liability

- (1) None of the following persons is personally liable for an act or omission by that person in good faith in the carrying out, or the purported carrying out, of a function of a person under this Act:
- (a) the RBNZ: 35
 - (b) a director, an officer, or an employee of the RBNZ:
 - (c) an investigator:

- (d) a statutory manager:
- (e) a member of an advisory committee.
- (2) *See also* section 22 of the Financial Markets Authority Act 2011, which provides protections from liability for the FMA and its members and employees.
- 154 Conduct of directors, employees, or agents attributed to body corporate or other principal** 5
- (1) Conduct engaged in on behalf of a body corporate by any of the following must be treated, for the purposes of this Act, as having also been engaged in by the body corporate:
- (a) a director, an employee, or an agent of the body corporate, if acting within the scope of the actual or apparent authority of the director, employee, or agent: 10
- (b) any other person, if acting at the direction, or with the consent or agreement (expressed or implied), of a director, an employee, or an agent of the body corporate given within the scope of the actual or apparent authority of the director, employee, or agent. 15
- (2) Conduct engaged in on behalf of a person (**P**) who is not a body corporate by any of the following must be treated, for the purposes of this Act, as having also been engaged in by P:
- (a) an employee or agent of P, if acting within the scope of the actual or apparent authority of the employee or agent: 20
- (b) any other person, if acting at the direction, or with the consent or agreement (expressed or implied), of—
- (i) P; or
- (ii) an employee or agent of P given within the scope of the actual or apparent authority of the employee or agent. 25
- 155 Prohibition on indemnities or insurance for directors or employees of operators that are not New Zealand companies**
- (1) This section applies to the following:
- (a) an operator of a designated FMI, if section 162 of the Companies Act 1993 does not apply to the operator: 30
- (b) a body corporate that is related to an operator of a designated FMI (as determined in accordance with section 12(2) of the Financial Markets Conduct Act 2013), if section 162 of the Companies Act 1993 does not apply to the related body corporate. 35
- (2) An operator, or a related body corporate, must not indemnify, or directly or indirectly effect insurance for, a director or an employee of the operator for—
- (a) liability, in connection with any matter regulated by this Act, for any conduct in the person's capacity as a director or an employee; or

- (b) costs incurred by the director or employee in defending or settling any claim or proceeding relating to that liability.
- (3) An indemnity given in contravention of this section is void.

156 Exception to prohibition

- (1) **Section 155(2)** does not prohibit an operator, or a related body corporate, from doing any of the following if expressly authorised by its constitution:
 - (a) indemnifying a director or an employee for any costs incurred in defending or settling a proceeding if—
 - (i) judgment is given in favour of the director or employee or the director or employee is acquitted; or
 - (ii) the proceeding is discontinued:
 - (b) subject to **subsection (2)**, indemnifying a director or an employee for—
 - (i) any liability covered by **section 155(2)(a)** to a person other than the operator; or
 - (ii) costs incurred in defending or settling any claim or proceeding relating to any liability covered by **section 155(2)(a)** to a person other than the operator:
 - (c) with the prior approval of its board of directors, effecting insurance for a director or an employee in relation to—
 - (i) any liability covered by **section 155(2)(a)** that is not criminal liability:
 - (ii) costs incurred in defending or settling any claim or proceeding relating to any liability covered by **section 155(2)(a)** that is not criminal liability:
 - (iii) costs incurred in defending any criminal proceedings relating to any liability covered by **section 155(2)(a)** in which the director or employee is acquitted.
- (2) **Subsection (1)(b)** does not apply to the following:
 - (a) criminal liability;
 - (b) liability arising out of a failure to act in good faith.
- (3) The directors who vote in favour of authorising insurance as referred to in **subsection (1)(c)** must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the operator or related body corporate (as the case may be).
- (4) The insured director or employee is personally liable to the operator or related body corporate for the cost of effecting the insurance if—
 - (a) **subsection (3)** is not complied with; or

- (b) reasonable grounds did not exist for the opinion set out in the certificate given under **subsection (3)**.
- (5) However, **subsection (4)** does not apply to the extent that the insurance is fair to the operator or related body corporate at the time the insurance is effected.
- 157 Giving of notices by regulator or investigator** 5
- (1) The regulator or an investigator may give notice to another person as follows:
- (a) an individual,—
- (i) by delivering it, or having it delivered, to the individual:
- (ii) by sending it by post addressed to the individual at the individual's usual or last known place of residence or business: 10
- (iii) by sending it by email to the individual's email address provided to the regulator or investigator for the purpose:
- (b) a company, as provided for in section 387(1) or 388 of the Companies Act 1993:
- (c) an overseas company, as provided for in section 389(1) or 390 of the Companies Act 1993: 15
- (d) any other body corporate, as provided for in section 387(1) or 388 of the Companies Act 1993, as if the body corporate were a company.
- (2) Unless otherwise shown, the following provisions apply:
- (a) notice given by post to an individual is treated as given at the time it would be delivered in the ordinary course of the post: 20
- (b) notice given by email to an individual is treated as given on the second working day after the day on which it is sent.
- (3) If notice is given by post to an individual, it is sufficient for the purpose of showing that delivery occurred to show that the letter was properly addressed and posted. 25
- (4) Section 392 of the Companies Act 1993 applies for the purposes of **subsection (1)(b) to (d)**.
- (5) For the purposes of this section, **company** and **overseas company** are defined in section 2(1) of the Companies Act 1993. 30
- 158 Giving notices to agent**
- (1) If an individual is absent from New Zealand, notice may be given to the individual's agent in accordance with **section 157(1)**.
- (2) **Subsections (3) and (4)** apply to an operator of a designated FMI if—
- (a) the operator's home jurisdiction is not New Zealand; and 35
- (b) the operator is not registered under Part 18 of the Companies Act 1993.
- (3) The operator must—

-
- (a) have an agent in New Zealand for the purposes of this section; and
 - (b) give details of the agent to the regulator.
- (4) Notice may be given to the agent in accordance with **section 157(1)**.
 - (5) *See* **section 146** for supplementary provisions about giving information to the regulator.

5

Subpart 5—Consequential amendments

159 Consequential amendments to Acts and instruments

- (1) Amend the Acts specified in **Part 1 of Schedule 2** as set out in that Part.
- (2) Amend the instrument specified in **Part 2 of Schedule 2** as set out in that Part.
- (3) Revoke the instruments specified in **Part 3 of Schedule 2** and all other instruments in force under section 156N of the Reserve Bank of New Zealand Act 1989.

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Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to this Act as enacted

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1 Definitions

In this Part,—

RBNZ Act 1989 means the Reserve Bank of New Zealand Act 1989

repeal date means the date on which the repeal of Parts 5B and 5C of the RBNZ Act 1989 comes into force (*see section 159(1) and Part 1 of Schedule 2*). 10

2 Continuation of provisions of Part 5C of RBNZ Act 1989 relating to settlements, etc

- (1) Section 156Q of the RBNZ Act 1989 continues to apply to any of the following that occur before the repeal date: 15
- (a) the giving or receiving of a settlement instruction:
 - (b) the determination or calculation of a settlement obligation:
 - (c) the effecting of a settlement:
 - (d) any action falling within section 156Q(2)(d).
- (2) Sections 156R and 156S of the RBNZ Act 1989 continue to apply to settlements that are effected before the repeal date. 20
- (3) Sections 156T and 156U of the RBNZ Act 1989 continue to apply to any netting that is done before the repeal date.
- (4) Sections 156V and 156W of the RBNZ Act 1989 continue to apply in consequence of **subclauses (1) to (3)**. 25
- (5) Section 156X of the RBNZ Act 1989 continues to apply to transfers of property made before the repeal date.

3 Supplementary provisions relating to information

- (1) For the purposes of **section 138, specified information** includes any information that is obtained by the RBNZ or the FMA before the repeal date for the purposes of the administration of Part 5C of the RBNZ Act 1989, whether under section 156Z(4), 156ZI(2), or 156ZL of that Act or otherwise. 30
- (2) Sections 156G to 156I and 156ZN to 156ZQ of the RBNZ Act 1989 continue to apply in relation to information or data supplied before the repeal date in accordance with section 156C, 156Y(3)(b), or 156ZL of that Act. 35

4 Transition process for existing designated settlement systems

- (1) Every existing system must, on and after the repeal date, be treated as being a designated FMI.
- (2) The regulator must, before the repeal date, issue a designation notice for each existing system and, in doing so, must— 5
- (a) specify the existing system as being the FMI (see **section 29(1)(a)**); and
- (b) specify the operators of the existing system as being the operators of the FMI (see **section 29(1)(a)**); and
- (c) specify the documents that evidence the rules of the existing system under the designation order as being the documents that set out the FMI's rules (see **section 29(1)(b)**); and 10
- (d) if an operator of the existing system is the specified operator under the designation order, specify that operator as being the specified operator to whom section 103A of the Personal Property Securities Act 1999 applies (see **section 29(1)(c) and (2)(b)**); and 15
- (e) if a particular operator is specified as a participant in the existing system under the designation order, specify that operator as being a participant of the FMI (see **section 29(2)(a)**); and
- (f) if the existing system is specified as a pure payment system under the designation order, specify the FMI as a pure payment system (see **section 29(2)(c)**); and 20
- (g) specify that **subpart 5 of Part 3** of this Act applies to the FMI (see **section 29(2)(e)**).
- (3) The designation notice issued under **subclause (2)** takes effect on the repeal date. 25
- (4) This clause and **clauses 5 to 8** apply without any involvement of the Minister.
- (5) In this clause,—
- designation order**, in relation to an existing system, means the order under the RBNZ Act 1989 that declared the existing system to be a designated settlement system 30
- existing system** means a settlement system that, immediately before the repeal date, is a designated settlement system within the meaning of section 156M of the RBNZ Act 1989. 35

5 Regulator must decide whether an FMI is systemically important

- (1) The regulator must decide whether an FMI that is treated as being a designated FMI under **clause 4** is systemically important.
- (2) **Section 24** applies for that purpose with all necessary modifications.

- (3) If the regulator decides that the FMI is systemically important, the regulator must specify that the FMI is systemically important in the designation notice issued under **clause 4** (see **section 29(1)(d)**).
- (4) See also **clause 4(4)**, which provides for the regulator to act without any involvement from the Minister. 5
- 6** **Regulator must decide class or classes within which FMI falls for purposes of standards**
- (1) The regulator must decide, in relation to an FMI that is treated as being a designated FMI under **clause 4**, the class or classes within which the FMI falls for the purposes of any standards issued under **section 31** that apply to a class or classes of FMI. 10
- (2) The regulator must specify the class or classes in the designation notice issued under **clause 4** (see **section 29(2)(f)**).
- 7** **Regulator must consult operator about decisions**
- The regulator must, before making a decision under **clause 5 or 6**, consult each operator of the existing system about the proposed decision. 15
- 8** **Designation notice treated as issued under subpart 1 of Part 3**
- A designation notice issued under **clause 4** must be treated as being a designation notice issued under **subpart 1 of Part 3** of this Act.
- 9** **Exercise of powers** 20
- (1) Nothing in this schedule prevents—
- (a) the Minister from exercising a power under this Act to revoke or amend a designation notice issued under this schedule; or
- (b) the rules of a designated FMI referred to in **clause 4** from being changed in accordance with **subpart 3 of Part 3** of this Act; or 25
- (c) the performance or exercise, in connection with a designated FMI referred to in **clause 4**, of any other function that may, under this Act or any other enactment, be performed or exercised in connection with a designated FMI.
- (2) **Clause 4(1)** ceases to apply to an FMI if the designation notice issued under this schedule for the FMI is revoked. 30

Schedule 2

Consequential amendments

s 159

Part 1

Consequential amendments to Acts 5

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35)

In section 137(2), after “Reserve Bank of New Zealand Act 1989,”, insert “the Financial Market Infrastructures Act **2019**,”.

In section 137(3), after “Reserve Bank of New Zealand Act 1989,”, insert “the Financial Market Infrastructures Act **2019**,”. 10

In section 137(4), after “Financial Markets Conduct Act 2013,”, insert “the Financial Market Infrastructures Act **2019**,”.

In section 137(5), after “Financial Markets Conduct Act 2013,”, insert “the Financial Market Infrastructures Act **2019**,”. 15

Companies Act 1993 (1993 No 105)

In section 2(1), replace the definition of **designated settlement system** with:

designated FMI means a designated FMI as defined in **section 5** of the Financial Market Infrastructures Act **2019** and to which **subpart 5 of Part 3** of that Act applies 20

In section 2(1), insert in its appropriate alphabetical order:

rules, in relation to a designated FMI, is to be read in accordance with **section 36** of the Financial Market Infrastructures Act **2019**

In section 85(1A) and (2), replace “settlement system” with “FMI”.

In section 95(2), replace “settlement system” with “FMI”. 25

Replace section 269(2)(b)(iii) with:

(iii) a settlement instruction or a settlement under the rules of a designated FMI.

Corporations (Investigation and Management) Act 1989 (1989 No 11)

In section 8(1), insert in their appropriate alphabetical order: 30

designated FMI means a designated FMI within the meaning of the Financial Market Infrastructures Act **2019**

operator means an operator within the meaning of the Financial Market Infrastructures Act **2019**

Corporations (Investigation and Management) Act 1989 (1989 No 11)—continued

In section 8(2)(a) to (c), replace “or registered bank” with “, registered bank, or operator of a designated FMI”.

After section 38(5), insert:

- (6) The FMA must consult the Reserve Bank of New Zealand before making a recommendation under this section that would lead to an operator of a designated FMI being subject to statutory management. 5
- (7) In **subsection (6)**, **designated FMI** and **operator** have the meanings given in **section 5** of the Financial Market Infrastructures Act **2019**.

In section 42(8), replace “settlement system that is declared to be a designated settlement system under Part 5C of the Reserve Bank of New Zealand Act 1989” with “designated FMI to which **subpart 5 of Part 3** of the Financial Market Infrastructures Act **2019** applies”. 10

In section 42(8)(b)(i), replace “settlement system” with “FMI”.

Replace section 42(9) with:

- (9) In subsection (8) and this subsection,— 15
- (a) **designated FMI**, **netting**, and **participant** have the meanings given in **section 5** of the Financial Market Infrastructures Act **2019**; and
- (b) **netted balance** means any amount calculated in accordance with the rules of a designated FMI as the net debit payable by, or on behalf of, a participant of the designated FMI to, or on behalf of, another participant of that designated FMI for all or any claims or obligations to which those rules apply; and 20
- (c) **rules** is to be read in accordance with **section 36** of the Financial Market Infrastructures Act **2019**.

Financial Advisers Act 2008 (2008 No 91) 25

Replace section 77C(1)(c) with:

- (c) an operator of a designated FMI providing a relevant service by the receipt, holding, payment, or transfer of money or property in accordance with the designated FMI’s rules:

After section 77C(2), insert: 30

- (2A) In **subsection (1)(c)**,—
- designated FMI** and **operator** have the meanings given in **section 5** of the Financial Market Infrastructures Act **2019**
- rules** is to be read in accordance with **section 36** of that Act.

Financial Markets Authority Act 2011 (2011 No 5) 35

In section 4, definition of **financial markets participant**, after paragraph (b)(iiia), insert:

Financial Markets Authority Act 2011 (2011 No 5)—continued

(iiib) an operator of a designated FMI within the meaning of **section 5** of the Financial Market Infrastructures Act 2019 (other than a pure payment system within the meaning of that section):

In Schedule 1, Part 2 1, insert in its appropriate alphabetical order:

Financial Market Infrastructures Act **2019** 5

In Schedule 1, Part 2, repeal the item relating to Part 5C of the Reserve Bank of New Zealand Act 1989.

Financial Markets Conduct Act 2013 (2013 No 69)

Replace section 238(1)(h) with:

(h) A is an operator of a designated FMI and is acting in the ordinary course of that business. 10

After section 238(3), insert:

(4) In **subsection (1)(h)**, **designated FMI** and **operator** have the meanings given in **section 5** of the Financial Market Infrastructures Act **2019**.

In section 338(4), replace “settlement system (within the meaning of section 156M(1) of the Reserve Bank of New Zealand Act 1989)” with “FMI (as defined in **section 5** of the Financial Market Infrastructures Act **2019**)”.

Replace section 389(1)(b) with:

(b) acts as an operator of a designated FMI:

After section 389(1), insert: 20

(1A) In **subsection (1)(b)**, **designated FMI** and **operator** have the meanings given in **section 5** of the Financial Market Infrastructures Act **2019**.

In Schedule 5, replace clause 21(a) with:

(a) the person giving the service is an operator of a designated FMI and the service is provided by the receipt, holding, payment, or transfer of money or property in accordance with the designated FMI’s rules; or 25

In Schedule 5, clause 21, insert as subclause (2):

(2) In **subclause (1)(a)**,—
designated FMI and **operator** have the meanings given in **section 5** of the Financial Market Infrastructures Act **2019**
rules is to be read in accordance with **section 36** of that Act. 30

Income Tax Act 2007 (2007 No 97)

In section RE 10C(2), replace “designated settlement system under the Reserve Bank of New Zealand Act 1989” with “designated FMI under the Financial Market Infrastructures Act **2019**”.

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Personal Property Securities Act 1999 (1999 No 126)

In the cross-heading above section 103A, replace “*settlement system*” with “*FMI*”.

In the heading to section 103A, replace “**settlement system**” with “**FMI**”.

In section 103A(1), (3), and (4), replace “settlement system” with “FMI” in each place. 5

In section 103A(1)(a)(ii), replace “the operator’s interest” with “the participant’s interest”.

Replace section 103A(6) and (7) with:

- (6) In this section,—
- (a) **designated FMI** means a designated FMI (as defined in **section 5** of the Financial Market Infrastructures Act **2019**)—
 - (i) to which **subpart 5 of Part 3** of that Act applies; and
 - (ii) whose designation notice specifies under **section 29(2)(b)** of that Act that the specified operator is an operator to whom this section applies; and 15
 - (b) **operator** means an operator of a designated FMI who is (and at the time in question remains) the specified operator in relation to the designated FMI; and
 - (c) **rules** is to be read in accordance with **section 36** of the Financial Market Infrastructures Act **2019**; and 20
 - (d) other terms used that are defined in **section 5** of the Financial Market Infrastructures Act **2019** have the meanings given in that section.

Reserve Bank of New Zealand Act 1989 (1989 No 157)

In section 2(1), repeal the definitions of **designated settlement system**, **operator**, **participant**, **payment system**, **settlement system**, and **specified operator**. 25

In section 39, after “2013,”, insert “the Financial Market Infrastructures Act **2019**,”.

In section 41(1)(d), replace “2013.” with “2013; and”.

After section 41(1)(d), insert:

- (e) the Financial Market Infrastructures Act **2019**.

In section 46(1)(b), after “insurer”, insert “or of a relevant operator of an FMI”. 30

After section 46(3), insert:

- (4) In subsection (1)(b), **relevant operator of an FMI**—
- (a) means an operator of an FMI within the meaning of those terms in **section 5** of the Financial Market Infrastructures Act **2019**; but
 - (b) does not include an operator that is the Bank or a subsidiary of the Bank. 35

In section 47(1) and (4), after “2010,”, insert “the Financial Market Infrastructures Act **2019**,”.

Reserve Bank of New Zealand Act 1989 (1989 No 157)—*continued*

In section 49(2)(h)(iii), after “insurer”, insert “or a relevant operator of an FMI as defined in **section 46(4)**”.

In section 50(2)(d)(iii), after “insurer”, insert “or a relevant operator of an FMI as defined in **section 46(4)**”.

After section 51(5)(c), insert:

(d) the Financial Market Infrastructures Act **2019**.

After section 51(9)(c), insert:

(d) the Financial Market Infrastructures Act **2019**.

In section 53(3)(f)(iii) and (4)(d)(iii), after “insurer”, insert “or a relevant operator of an FMI as defined in **section 46(4)**”.

In section 58(b), after “2013”, insert “or a relevant operator of an FMI (as defined in **section 46(4)**)”.

In section 68A(1), after “2010”, insert “or the Financial Market Infrastructures Act **2019**”.

In section 68B(1), delete “and Parts 5B and 5C”.

In section 122(8), replace “a designated settlement system” with “a designated FMI to which **subpart 5 of Part 3** of the Financial Market Infrastructures Act **2019** applies”.

In section 122(8)(b)(i), replace “settlement system” with “FMI”.

Replace section 122(9) with:

(9) In subsection (8) and this subsection,—

(a) **designated FMI**, **netting**, and **participant** have the meanings given in **section 5** of the Financial Market Infrastructures Act **2019**; and

(b) **netted balance** means any amount calculated in accordance with the rules of a designated FMI as the net debit payable by, or on behalf of, a participant of the designated FMI to, or on behalf of, another participant of that designated FMI for all or any claims or obligations to which those rules apply; and

(c) **rules** is to be read in accordance with **section 36** of the Financial Market Infrastructures Act **2019**.

In section 122A(1), definition of **qualifying counterparty**, replace paragraph (d) with:

(d) a specified operator within the meaning of **section 5** of the Financial Market Infrastructures Act **2019**; or

In section 122A(1), definition of **qualifying derivative**, replace paragraph (a)(ii) with:

Reserve Bank of New Zealand Act 1989 (1989 No 157)—continued

- (ii) netting under the rules of a designated FMI to which **subpart 5 of Part 3** of the Financial Market Infrastructures Act **2019** applies; and

Replace section 122D(a)(iii) with:

- (iii) A's liabilities that are subject to netting under the rules of a designated FMI to which **subpart 5 of Part 3** of the Financial Market Infrastructures Act **2019** applies; and

Repeal Parts 5B and 5C.

Repeal section 159(1)(c) and (d).

After section 159(1)(ea), insert:

- (eb) the Financial Market Infrastructures Act **2019**:

Replace section 162AB(1)(a) and (b) with:

- (a) assess the expected regulatory impacts of any policy that it intends to adopt under any of the following:
 - (i) Part 5:
 - (ii) the Insurance (Prudential Supervision) Act 2010:
 - (iii) the Non-bank Deposit Takers Act 2013:
 - (iv) the Financial Market Infrastructures Act **2019**; and
- (b) assess the regulatory impacts of the policies adopted under the enactments listed in **paragraph (a)(i) to (iv)** at intervals appropriate to the nature of the policy being assessed; and

In Schedule 2, after clause 11(2)(b)(iii), insert:

- (iv) a relevant operator of an FMI as defined in **section 46(4)**; or

Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, after the item relating to the Films, Videos, and Publications Classification Act 1993, insert:

Financial Market Infrastructures Act 2019	64(3) and 65	Investigator of designated FMI may exercise search powers	All
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Tax Administration Act 1994 (1994 No 166)

In section 25MB, heading above subsection (2), replace “designated settlement systems” with “designated FMIs”.

In section 25MB(2), replace “designated settlement system under the Reserve Bank of New Zealand Act 1989” with “designated FMI under the Financial Market Infrastructures Act **2019**”.

Part 2

Consequential amendments to instrument

Financial Markets Conduct Regulations 2014 (LI 2014/326)

In regulation 238(1), definition of **hedging counterparty**, replace paragraph (c) with:

- (c) an operator of a designated FMI: 5

Replace regulation 238(2) with:

- (2) Regulations 239 to 250 do not apply to a person to the extent that the person is acting as—
- (a) an operator of a designated FMI; or
- (b) an operator of a clearing house of a licensed market. 10
- (3) In this regulation,—
- designated FMI** has the meaning given in **section 5** of the Financial Market Infrastructures Act **2019**
- operator**, in relation to a designated FMI, has the meaning given in that section. 15

Part 3

Consequential revocations of instruments

Reserve Bank of New Zealand (Designated Settlement Systems) Order 2004 (SR 2004/376)

Reserve Bank of New Zealand (Designated Settlement System—NZCDC) Order 2010 (SR 2010/277) 20

Reserve Bank of New Zealand (Designated Settlement System—NZClear) Order 2012 (SR 2012/258)

Legislative history

17 December 2019
12 February 2020

Introduction (Bill 212–1)
First reading and referral to Finance and Expenditure Committee