

## **Securities Amendment Bill (No 3)**

Government Bill

As reported from the committee of the whole  
House

This bill was formerly part of the Financial Markets (Regulators and KiwiSaver) Bill as reported from the Commerce Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- Financial Markets Authority Bill comprising clauses 1 and 2, Parts 1 to 4, and Schedules 1 to 4
  - This bill comprising Part 5
  - Securities Markets Amendment Bill (No 2) comprising Part 6
  - KiwiSaver Amendment Bill comprising Part 7 and Schedule 6
  - Financial Advisers Amendment Bill (No 3) comprising Part 8 and Schedule 7
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Securities Amendment Bill (No 3)

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**Key to symbols used in reprinted bill**

**As reported from the committee of the whole  
House**

text inserted

~~text deleted~~

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*Hon Simon Power*

## **Securities Amendment Bill (No 3)**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Securities Amendment Act **2011**.

**2 Commencement**

(1) This Act (apart from **sections 81(3), 92(3), 98, 114, 117(2), and 123(3) to (6)**) comes into force on 1 May 2011.

(2) **Sections 81(3), 92(3), 98, 114, 117(2), and 123(3) to (6)** come into force on a date appointed by the Governor-General



by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

- (3) To the extent that the provisions referred to in **subsection (2)** are not previously brought into force under that subsection, those provisions come into force on 1 July 2013. 5

. . . . .

**79 Principal Act amended**  
This **Part** amends the Securities Act 1978.

**80 Long Title amended**  
The Long Title is amended by omitting “**to establish a Securities Commission; and**”. 10

**81 Interpretation**  
(1) Section 2(1) is amended by repealing the definitions of **Commission, overseas regulator, registered prospectus, Registrar, and Takeovers Panel**.

(2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order: 15

“**FMA** means the Financial Markets Authority established under **Part 2** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**

“~~**register**~~ means, except in respect of a register kept under section 51, the register of securities offers kept under **sections 43N to 43S** 20

“**registered prospectus** means,—

“(a) except if **paragraph (b)** applies,— 25  
    “(i) a prospectus that has been registered under **section 42** and the registration of which has not been cancelled under **section 43G(2)(b)**; or

    “(ii) a document that, except in the matters specified in **section 41(1)**, is identical to such a prospectus:

“(b) if an instrument that amends a prospectus of the kind specified in **paragraph (a)(i)** has been registered under **section 43**, and the registration of that prospectus 30

- as so amended has not been cancelled under **section 43G(2)(b)**,—
- “(i) that prospectus as so amended; or
- “(ii) a document that, except for the matters specified in **section 41(1)**, is identical to that prospectus as so amended 5
- “**Registrar** means the Registrar of Financial Service Providers under the Financial Service Providers (Registration and Dispute Resolution) Act 2008”.
- (3) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order: 10
- “**register** means, except in respect of a register kept under section 51, the register of securities offers kept under **sections 43N to 43S**”.
- 82 Meaning of advertisement** 15
- Section 2A(2) is amended by adding the following paragraph:
- “(c) documents, information, and other matters required to be made publicly available under **section 54C**.”
- 83 Exemptions from this Act**
- (1) Section 5 is amended by inserting the following subsection after subsection (1): 20
- “(2) An exemption under subsection (1) does not apply—
- “(a) in the circumstances prescribed by regulations made under **section 70AB 70AAA**; or
- “(b) if any additional requirements prescribed by regulations made under **section 70AB 70AAA** are not satisfied.” 25
- (2) Section 5(2C), (3), (3A), and (4) are amended by omitting “44” and substituting “**43B**”.
- (3) Section 5(2D) is amended by omitting “38F” and substituting “38E and **43F**”. 30
- (4) Section 5(3) is amended by omitting “69” and substituting “65F”.
- (5) Section 5(4) is amended by omitting “38F” and substituting “38E”.
- (6) Section 5(5) to (6) are repealed. 35

- 84 Exemption for employer superannuation schemes**  
 Section 5A is amended by omitting “44” and substituting “**43B**”.
- 85 Previously allotted securities**  
 Section 6(1) is amended by omitting “44” and substituting “**43B**”.
- 86 Term implied in certain offers of previously allotted securities**  
 Section 6A(1)(a) is amended by omitting “44” and substituting “**43B**”.
- 87 Part 1 repealed**  
 Part 1 is repealed.
- 88 Restrictions on offer of securities to public**  
 (1) Section 33(2) is amended by inserting the following paragraph after paragraph (a):  
 “(ab) the trust deed complies with this Act and the regulations; and”.
- (2) Section 33(3) is amended by inserting the following paragraph after paragraph (a):  
 “(ab) the deed of participation complies with this Act and the regulations; and”.
- 89 Restrictions on distribution of prospectuses**  
 Section 34(1)(a) is amended by omitting “memorandum” and substituting “an instrument”.
- 90 Void irregular allotments**  
 Section 37 is amended by inserting the following subsection after subsection (1A):  
 “(1B) No allotment of a security offered to the public for subscription may be made in contravention of **section 43D(1), 43I(4), or 43K(5)(b)**.”

**91 Court must make relief order in certain circumstances**

Section 37AC(1)(e) is amended by repealing subparagraph (i) and substituting the following subparagraph:

- “(i) the contravention of section 37 was caused by a failure to comply with a condition of an exemption granted under section 5(5) (as in force before its repeal) or under **section 70B** or of an exemption provided under section 5(3A) or 5A; and”.

**92 Consent for purposes of section 37AC(1)(c) or (d)**

- (1) Section 37AD(1)(b)(iii) is amended by omitting “granted under section 5(5) or provided under section 5(3A) or 5A” and substituting “of a kind referred to in **section 37AC(1)(e)(i)**”.

- (2) Section 37AD(1)(b)(iv) is amended by omitting “section 5” and substituting “this Act”.

- (3) Section 37AD(1)(b) is amended by repealing subparagraph (vi) and substituting the following subparagraph:

“(vi) a statement that information concerning that prospectus can be obtained from the register.”.

- (4) Section 37AD(2) is amended by omitting “section 5 or section 5A” and substituting “this Act”.

**93 Voidable irregular allotments**

Section 37A(1)(ab)(i) is amended by repealing subsubparagraph (B) and substituting the following subsubparagraph:

- “(B) every instrument that amends that prospectus that is registered under **section 43** before the time of allotment; or”.

**94 Prohibition of advertisements**

Section 38B is amended by repealing subsection (7) and substituting the following subsection:

- “(7) The FMA must, after an order has been made under this section, give the issuer or the issuer’s representative an opportunity to make written submissions and to be heard on the matter.”

**95 Section 38F repealed**

Section 38F is repealed.

**96 Requirements relating to prospectuses delivered to Registrar for registration**

Section 41 is amended by adding the following subsection as subsection (2):

- “(2) The prescribed information and documents (if any) must be 5  
supplied to the Registrar, when the prospectus is delivered to the Registrar for registration, in the manner specified by the Registrar.”

**97 New sections 42 to 43M substituted**

Sections 42 to 44 are repealed and the following sections substituted: 10

**“42 Registration of prospectus**

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

- “(2) However, the Registrar must refuse to register a prospectus 15  
if,—

“(a) in his or her opinion,—

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

“(ii) it contains any material matter that is not clearly 20  
legible; or

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

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

“(c) the date of registration would be earlier than the date of 25  
the prospectus.

- “(3) The Registrar must, on the registration of a prospectus under this section, give a certificate of the registration (and the certificate is conclusive evidence that the prospectus has been registered under this section). 30

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

**“43 Amendment of registered prospectus**

- “(1) A registered prospectus may be amended by an instrument to amend the prospectus that is delivered to the Registrar and registered under this section. 35

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

**“43B Publication of registration**

- “(1) If a prospectus, or an instrument to amend a prospectus, is registered under **section 42 or 43**, the issuer must, within 5 working days after it receives the certificate of the registration, ensure that an Internet site maintained by or on behalf of the issuer— 5
- “(a) contains a reasonably prominent statement—
- “ (i) to the effect that the prospectus or instrument has been registered; and
- “ (ii) describing where a copy of the prospectus or instrument can be obtained; or 10
- “(b) contains a reasonably prominent link to such a statement.
- “(2) The statement or link referred to in **subsection (1)** may be removed from the Internet site maintained by or on behalf of the issuer if the period within which allotments of securities may be made under the prospectus in accordance with this Act has finally ended (for example, as a result of section 37A(1)(c)). 15
- “(3) If a prospectus, or an instrument to amend a prospectus, is registered under **section 42 or 43**, the Registrar may, in any manner that the Registrar thinks fit, give notice of the registration to any person or class of persons or to the public generally. 20
- “(4) The Registrar may, in any manner that the Registrar thinks fit, give notice to any person or class of persons or to the public generally of any changes in the information referred to in **section 43P** in respect of a registered prospectus. 25

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

- “43C FMA’s consideration of prospectuses, amendments, trust deeds, and deeds of participation** 30
- “(1) The Registrar must, immediately after a prospectus or an instrument to amend a prospectus is registered under this Act, notify the FMA of the registration for the purpose of allowing the FMA an opportunity to consider whether the prospectus, or the prospectus as amended,— 35
- “(a) complies with this Act and the regulations; or

- “(ab) contains any material misdescription or error or any material matter that is not clearly legible; or
- “(b) is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus or instrument was registered). 5
- “(2) The Registrar must, immediately after a trust deed, a deed of participation, or an instrument to amend a deed of that kind is registered under this Act, notify the FMA of the registration for the purpose of allowing the FMA an opportunity to consider whether the trust deed or deed of participation, or the trust deed or deed of participation as amended,— 10
- “(a) complies with this Act and the regulations; or
- “(b) contains any material misdescription or error or any material matter that is not clearly legible. 15
- “(3) The nature and extent of the consideration (if any) that the FMA gives to a prospectus, trust deed, or deed of participation or an instrument to amend a prospectus or deed is at the FMA’s discretion.
- “(4) Nothing in this section or any other provision of this Act limits the FMA’s power to consider or reconsider at any time whether— 20
- “(a) a registered prospectus—
- “(i) complies with this Act and the regulations; or
- “(ia) contains any material misdescription or error or any material matter that is not clearly legible; or 25
- “(ii) is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus or instrument was registered): 30
- “(b) a trust deed or deed of participation—
- “(i) complies with this Act and the regulations; or
- “(ii) contains any material misdescription or error or any material matter that is not clearly legible. 35



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

- “(4) If a person contravenes **subsection (1)**, **section 37(1B)** and (4) to (7) apply (which provide that an allotment of a security in contravention of **subsection (1)** is invalid and of no effect).
- “**43E FMA may remove restrictions if its consideration is complete or consideration or further consideration is unnecessary** 5
- “(1) This section applies if the FMA is satisfied that—
- “(a) its consideration of a prospectus is complete; or
- “(b) consideration or further consideration of a prospectus is, in the circumstances, unnecessary. 10
- “(2) The FMA may give notice to the issuer that—
- “(a) the period that applies under **section 43D** ends at a particular time specified by the FMA (being an earlier time than that provided for under **section 43D**); or
- “(b) **section 43D(1)** does not apply in respect of the prospectus. 15
- “(3) **Section 43D** is subject to this section.
- “(4) Nothing in this section limits **section 70B** (which also allows the FMA to grant exemptions in respect of compliance with **section 43D**). 20
- “**43EA FMA may prescribe classes of continuous issue prospectuses to which section 43D(1) applies**
- “(1) The FMA may issue a notice that prescribes the class or classes of continuous issue prospectuses to which **section 43D(1)** applies. 25
- “(2) The FMA must, before issuing a notice under **subsection (1)** in respect of a class of continuous issue prospectuses, be satisfied that it is in the public interest for the FMA to have an opportunity to act under **section 43C(1)** in respect of those prospectuses before the allotment of securities in reliance upon those prospectuses (for example, where in the circumstances a particular risk relates to a particular class of issuers or securities). 30
- “(3) A notice issued by the FMA—
- “(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the 35

House of Representatives under section 4 of that Act;  
and

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

“(4) The FMA may vary or revoke a notice issued under this section, and **subsections (2) and (3)** apply, with necessary modifications, in all respects to the variation or revocation. 5

*“FMA’s powers to prohibit distribution of investment statements, prohibit allotments, or cancel registration of prospectuses”* 10

**“43F Prohibition of distribution of investment statement**

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

“(a) is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities to which it relates; or 15

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

“(c) does not comply with this Act or the regulations. 20

“(2) If an order is made under **subsection (1)** in respect of an investment statement,—

“(a) no allotment may be made of any securities subscribed for whether before or after the order is made (being securities to which the investment statement relates): 25

“(b) all subscriptions received for securities to which the investment statement relates, not being subscriptions for securities that were allotted before the order is made or subscriptions received after the order is revoked, must be immediately repaid to the subscribers. 30

“(3) An allotment made in contravention of **subsection (2)(a)** is invalid and of no effect.

**“43G FMA may prohibit allotment or cancel registration**

“(1) This section applies if, at any time, the FMA is of the opinion that— 35

- “(a) a registered prospectus does not comply with this Act or the regulations; or
- “(ab) a registered prospectus contains any material misdescription or error or any material matter that is not clearly legible; or 5
- “(b) a registered prospectus is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus was registered); or 10
- “(c) section 41 has not been complied with in respect of a registered prospectus; or
- “(d) a trust deed or deed of participation in respect of the securities offered in a registered prospectus—
- “(i) does not comply with this Act or the regulations; 15  
or
- “(ii) contains any material misdescription or error or any material matter that is not clearly legible.
- “(2) The FMA may exercise either or both of the following powers in respect of the registered prospectus if it considers that it is desirable in the public interest: 20
- “(a) make an order prohibiting the allotment of securities under the registered prospectus for a period not exceeding 18 months:
- “(b) cancel the registration of the registered prospectus (with effect from the time that the Registrar is notified of the cancellation). 25
- “(3) If an order is made under **subsection (2)(a)** in respect of a registered prospectus,—
- “(a) during the period in which the order is in force, no allotment may be made of any securities subscribed for whether before or after the order is made (being securities to which the prospectus relates); and 30
- “(b) all subscriptions received for securities to which the prospectus relates, not being subscriptions for securities that were allotted before the order is made or subscriptions received after the order ceases to be in force, must be immediately repaid to the subscribers. 35
- “(4) If the registration of a registered prospectus is cancelled,—

- “(a) no allotment may be made of any securities subscribed for whether before or after the cancellation (being securities to which the prospectus relates); and
- “(b) all subscriptions received for securities to which the prospectus relates, not being subscriptions for securities that were allotted before the cancellation, must be immediately repaid to the subscribers. 5
- “(5) An allotment made in contravention of **subsection (3)(a) or (4)(a)** is invalid and of no effect.
- “**43H Repayment of subscriptions** 10
- “(1) If any subscriptions that are required under **section 43F or 43G** to be repaid to the subscribers entitled to those subscriptions are not repaid within 1 month after the relevant date, the issuer and all the directors of the issuer are jointly and severally liable to repay the subscriptions with interest at the prescribed rate from the date the subscriptions were received by or on behalf of the issuer. 15
- “(2) A director of an issuer is not liable to repay any subscriptions and interest on the subscriptions under **subsection (1)** if the director proves that the default in the repayment of the subscriptions was not due to any misconduct or negligence on his or her part. 20
- “(3) In this section, **relevant date** means,—
- “(a) in the case of subscriptions received before the order is made under **section 43F or 43G** or before the registration of the prospectus is cancelled, the date that the order is made or the registration is cancelled; or 25
- “(b) in any other case, the date that the subscriptions are received by or on behalf of the issuer.
- “**43I Order may be made on terms and conditions and may be varied or revoked** 30
- “(1) The FMA may make an order under **section 43F or 43G** on the terms and conditions that the FMA thinks fit.
- “(2) The FMA may vary an order under **section 43F or 43G** in the same way as it may make the order. 35

- “(3) The FMA may, either of its own volition or on the application of the person concerned, revoke an order under **section 43F or 43G**, on the terms and conditions it thinks fit, if it is satisfied that it should not continue in force.
- “(4) No allotment may be made of a security— 5
- “(a) to which an investment statement relates in contravention of the terms or conditions of an order under **section 43F** or of the revocation of an order made under that section; or
- “(b) that is offered under a prospectus to which an order 10 under **section 43G** has been made in contravention of the terms or conditions of the order or of the revocation of the order.
- “(5) If a person contravenes **subsection (4), section 37(1B)** and (4) to (7) apply (which provide that an allotment of a security 15 in contravention of that subsection is invalid and of no effect).
- “**43J Notices and submissions concerning exercise of power under section 43F, 43G, or 43I(2) or (3)**
- “(1) The FMA may exercise a power under **section 43F, 43G, or 43I(2) or (3)** only if— 20
- “(a) the FMA gives the issuer at least 5 working days’ written notice of the following matters before the FMA exercises the power:
- “(i) that the FMA may make an order under **section 43F or 43G**, vary or revoke an order under **section 43I(2) or (3)**, or cancel the registration of the prospectus under **section 43G** (as the case may be); and 25
- “(ii) the reasons why it is considering exercising that power; and 30
- “(b) the FMA gives the issuer or the issuer’s representative an opportunity to make written submissions and to be heard on the matter within that notice period.
- “(2) If the FMA exercises a power under **section 43F or 43G**,—
- “(a) it must, immediately after exercising the power, notify 35 the issuer of—
- “(i) the reasons for making the order or for the cancellation; and

- “(ii) the terms and conditions of the order (if any); and
  - “(b) it must, immediately after exercising the power, give notice to the Registrar and on its Internet site of—
    - “(i) the reasons for making the order or for the cancellation; and 5
    - “(ii) the terms and conditions of the order (if any); and
    - “(iii) any other information the FMA thinks relevant in the circumstances; and
  - “(c) it may give public notice by any other means of the matters in **paragraph (b)**; and 10
  - “(d) it may notify any other person of the matters in **paragraph (b)**.
- “(3) If the FMA varies or revokes an order under **section 43I**,—
  - “(a) it must, immediately after exercising the power, notify the Registrar and the issuer of— 15
    - “(i) the terms and conditions of the variation or revocation; and
    - “(ii) the reasons for the variation or revocation; and
    - “(iii) any other information the FMA thinks relevant in the circumstances; and 20
  - “(b) it may give notice on its Internet site or give public notice by any other means of those matters; and
  - “(c) it may notify any other person of those matters.
- “**43K FMA may make interim orders pending exercise of powers** 25
- “(1) The FMA may make an interim order that prohibits the allotment of securities—
  - “(a) to which an investment statement relates while the interim order is in force if—
    - “(i) the FMA is considering, at any time, whether 30 it may exercise a power under **section 43F** in respect of the investment statement; and
    - “(ii) the FMA considers that making an interim order is desirable in the public interest:
  - “(b) under a registered prospectus while the interim order is in force if— 35

- “(i) the FMA is considering, at any time, whether it may exercise a power under **section 43G** in respect of the prospectus; and
- “(ii) the FMA considers that making an interim order is desirable in the public interest. 5
- “(2) An interim order under **subsection (1)** is in force from the time at which it is made until the close of—
- “(a) the date that is 15 working days after the day on which it is made; or
- “(b) a later date specified by the FMA by notice to the issuer. 10
- “(3) For the purposes of **subsection (2)(b)**,—
- “(a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to complete its consideration as referred to in **subsection (1)(a)(i) or (b)(i)** within the 15-working-day period referred to in **subsection (2)(a)**: 15
- “(b) the later date must be a date that is no more than 30 working days after the day on which the interim order is made.
- “(4) The FMA— 20
- “(a) may act under **subsection (1) or (2)(b)** without giving the issuer an opportunity to make submissions to, or be heard before, the FMA in respect of the matter; but
- “(b) must, after acting under **subsection (1) or (2)(b)**, give the issuer or the issuer’s representative an opportunity to make written submissions and to be heard on the matter. 25
- “(5) If an interim order is made in respect of an investment statement or a registered prospectus,—
- “(a) the FMA must immediately after making the order notify the issuer and the Registrar that the order has been made and the reasons for the order; and 30
- “(b) during the period in which the order is in force, no allotment may be made of any securities subscribed for whether before or after the order is made (being securities to which the investment statement or prospectus relates); and 35
- “(c) **section 37(1B)** and (4) to (7) apply (which provide that an allotment of a security in contravention of **paragraph (b)** is invalid and of no effect).



**“43L FMA may revoke interim order**

“(1) The FMA may revoke an interim order made under **section 43K** if it is satisfied that the order should not continue in force.

“(2) If an interim order is revoked, the FMA must immediately notify the issuer and the Registrar of the revocation. 5

**“43M Nothing done or omitted to be done by Registrar or FMA guarantees or represents that prospectus complies with Act and regulations**

“(1) Nothing done or omitted to be done under this Act by the Registrar or the FMA guarantees or represents that— 10

“(a) a prospectus—

“(i) complies with this Act and the regulations:

“(ia) does not contain any material misdescription or error or any material matter that is not clearly legible: 15

“(ii) is not false or misleading as to a material particular:

“(iii) does not omit any material particular; or

“(b) the FMA has considered a prospectus with a view to determining whether it— 20

“(i) complies with this Act and the regulations:

“(ia) contains any material misdescription or error or any material matter that is not clearly legible:

“(ii) is false or misleading as to a material particular:

“(iii) omits any material particular. 25

“(2) This section does not limit **section 22** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** (which provides protection from liability for the FMA and its members and employees).”

**98 New heading and sections 43N to 43S inserted 30**

The following heading and sections are inserted after **section 43M** (as inserted by **section 97**):

*“Register of securities offers*

**“43N Register of securities offers**

“(1) A register called the register of securities offers is established. 35

“(2) The register must be kept by the Registrar.

- “(3) The register may be—
- “(a) an electronic register; or
  - “(b) kept in any other manner that the Registrar thinks fit.
- “(4) The register must be operated at all times unless—
- “(a) the Registrar suspends the operation of the register, in whole or in part, in accordance with **subsection (5)**; or 5
  - “(b) otherwise provided in regulations.
- “(5) The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practical to provide access to the register. 10

“**430 Purpose of register**

The purpose of the register is—

- “(a) to give public notice of offers of securities made under registered prospectuses; and 15
- “(b) to enable any person to—
  - “(i) obtain information contained in, or concerning, registered prospectuses; and
  - “(ii) obtain other information about, or copies of documents relating to, offers of securities made under registered prospectuses; and 20
  - “(iii) compare information about offers of securities made under registered prospectuses; and
- “(c) to assist any person to decide whether or not to subscribe for securities offered to the public; and 25
- “(d) to assist any person to perform a financial adviser service (within the meaning of the Financial Advisers Act 2008) or to otherwise comment on an offer of securities to the public; and
- “(e) to assist any person— 30
  - “(i) in the exercise of the person’s powers under this Act or any other enactment; or
  - “(ii) in the performance of the person’s functions or duties under this Act or any other enactment.

**“43P Contents of register**

- “(1) The register must contain all of the following information and documents, to the extent that the information or documents are relevant, for each registered prospectus:
- “(a) the name of the issuer and the issuer’s financial service provider number (if any): 5
  - “(b) the name of every promoter in relation to the offer and the promoter’s financial service provider number, if any (subject to **subsection (2)**):
  - “(c) the name of every relevant trustee or supervisor and the relevant trustee or supervisor’s financial service provider number (if any): 10
  - “(d) the name of the offer that is specified in the prospectus and the registration number for the prospectus (as specified in the certificate given under **section 42**): 15
  - “(e) the type of security or securities being offered (for example, an equity security, a debt security, a participatory security, a unit in a unit trust, an interest in a superannuation scheme, or a life insurance policy):
  - “(f) the date of the prospectus: 20
  - “(h) the date specified in the prospectus as the last day on which the offer is able to be accepted or, if there is no such date, a statement to that effect:
  - “(i) if there is any minimum or maximum number or amount of the securities being offered, the number or amount: 25
  - “(j) the status of the prospectus (being a status that is determined and described in the prescribed manner):
  - “(ja) the date of registration of the prospectus and of every instrument that amends the prospectus:
  - “(k) a copy of the prospectus and of every instrument that amends the prospectus: 30
  - “(l) a copy of each investment statement distributed ~~by the issuer, a promoter, or both,~~ by or on behalf of the issuer in respect of the offer:
  - “(m) a copy of any relevant deed (incorporating or together with all amendments to the deed): 35
  - “(n) a copy of all documents that are required by the regulations to be attached to, or to accompany, the prospectus when it is delivered to the Registrar for registration:

- “(o) a copy of any certificate registered under section 37A(1A) and any financial statements that accompany that certificate:
- “(p) any notice or information provided by the FMA in respect of the prospectus or an investment statement for the offer under **section 43J or 43K**: 5
- “(q) a copy of the most recent financial statements of, or relating to, the issuer (and, if there is a scheme, the scheme) that have been registered under section 18 of the Financial Reporting Act 1993, together with a copy of the auditor’s report on those statements: 10
- “(r) any documents, information, and other matters made publicly available under **section 54C**:
- “(s) any other prescribed matters.
- “(1A) However, the register is not required to contain information or documents that are prescribed as being information or documents that are not required to be contained in the register. 15
- “(2) **Subsection (1)(b)** does not apply in respect of a director who is a promoter merely as a result of paragraph (b) of the definition of promoter in section 2. 20
- “(3) The register must also contain—
- “(a) all other documents required to be registered by the Registrar under this Act; and
- “(b) any other prescribed information or documents.
- “(4) In this section and **section 43S**,— 25
- “**financial service provider number**, in relation to a person, is the number given to the person on the person’s registration under the Financial Service Providers (Registration and Dispute Resolution) Act 2008
- “**relevant deed** means, in the case of an offer of— 30
- “(a) debt securities, the trust deed:
- “(b) participatory securities, the deed of participation:
- “(c) units in a unit trust, the trust deed for the unit trust:
- “(d) interests in a superannuation scheme, the trust deed for the superannuation scheme 35
- “**relevant trustee or supervisor** means, in the case of an offer of—
- “(a) debt securities, the trustee:

- “(b) participatory securities, the statutory supervisor:
- “(c) units in a unit trust, the unit trustee:
- “(d) interests in a superannuation scheme, the superannuation trustee.

“**43Q Duty to notify relevant matters and provide certain documents and information to Registrar** 5

- “(1) An issuer must, in the prescribed manner,—
  - “(a) notify the Registrar of any relevant changes in respect of a registered prospectus within 5 working days of becoming aware of the change; and 10
  - “(b) provide to the Registrar a copy of any documents, information, and other matters made, or to be made, publicly available under **section 54C** before the date that is 5 working days after that material is made available under that section; and 15
  - “(c) provide to the Registrar, before the date that is 5 working days after it is first distributed, a copy of each investment statement that is, or is to be, distributed by or on behalf of the issuer in respect of the offer.
- “(2) In this section, **relevant changes**, in respect of a registered prospectus,— 20
  - “(a) means—
    - “(i) any change in the information referred to in **section 43P(1)(a) to (i)** in respect of the prospectus; or 25
    - “(ii) any change in circumstances that would result in a change to the status of the prospectus as referred to in **section 43P(1)(j)**; or
    - “(iii) any other prescribed change that is relevant to the issuer, the scheme (if any), or the prospectus; but 30
  - “(b) does not include—
    - “(i) any change in respect of which the FMA is required to notify the Registrar (for example, an order made under **section 43G**); or
    - “(ii) any change that occurs after the period within 35 which allotments of securities may be made under the prospectus has ended as a result of section 37A(1)(c); or

- “(iii) any other change that is prescribed.
- “(3) An issuer commits an offence and is liable on summary conviction to a fine not exceeding \$300,000 if the issuer,—
- “(a) without reasonable excuse, contravenes **subsection (1) or (2)**; or 5
- “(b) in purported compliance with **subsection (1) or (2)**, supplies a document, information, or other matter knowing it to be false or misleading.
- “(4) This section does not apply to changes that occur, or investment statements that are distributed, before the commencement of this section. 10

“**43R Amendments to register**

- “(1) The Registrar may amend the register if—
- “(a) an issuer or the FMA informs the Registrar of information that is different from the information entered on the register; or 15
- “(b) the Registrar is satisfied at any time that the register contains a typographical error or a mistake, or omits information supplied to the Registrar.
- “(2) The Registrar must amend the register if the regulations require the Registrar to do so in circumstances specified by the regulations. 20

“**43S Search of register**

- “(1) A person may search the register in accordance with this Act or the regulations. 25
- “(2) The register may be searched only by reference to the following criteria:
- “(a) the name of an offer as specified in a prospectus:
- “(b) the registration number of a prospectus:
- “(c) the name of an issuer: 30
- “(d) the name of a promoter:
- “(e) the name of a relevant trustee or supervisor:
- “(f) the financial service provider number of an issuer, a promoter, or a relevant trustee or supervisor:
- “(g) the status of a prospectus (being a status that is determined and described in the prescribed manner): 35

- “(h) prospectuses that have a particular date or have a date within a range of dates:
- “(i) prospectuses that were registered on a particular date or at any time during a range of dates:
- “(j) prospectuses under which offers are open for acceptance on a particular date or at any time during a range of dates: 5
- “(k) orders made by the FMA in respect of prospectuses that are in force on a particular date or at any time during a range of dates: 10
- “(l) the type of security being offered:
- “(m) any other prescribed criteria:
- “(n) any combination of the criteria in **paragraphs (a) to (m)**.
- “(3) A search of the register may be carried out only by the following persons for the following purposes: 15
- “(a) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual:
- “(b) a person, for a purpose referred to in **section 430**: 20
- “(c) a person, for the purpose of advising another person in connection with any of the purposes referred to in this section.
- “(4) A person who searches the register for personal information in breach of this section must be treated, for the purposes of Part 8 of the Privacy Act 1993, as having breached an information privacy principle under section 66(1)(a)(i) of that Act.” 25

## 99 Notices and submissions concerning delayed allotment orders

Section 44AB is amended by repealing subsection (1) and substituting the following subsection: 30

- “(1) The FMA may make a delayed allotment order only if—
- “(a) the FMA gives the issuer at least 3 working days’ written notice of the following matters before the FMA makes the delayed allotment order: 35
- “(i) that the FMA is considering making a delayed allotment order; and

- “(ii) the paragraph of section 44A(1) that is alleged to apply to the issuer; and
- “(iii) the reasons why the FMA is considering making a delayed allotment order; and
- “(b) the FMA gives the issuer or the issuer’s representative an opportunity to make written submissions and to be heard on the matter within that notice period.” 5

**100 Limited notice and submissions for urgent delayed allotment orders**

Section 44AC is amended by repealing paragraph (a) and substituting the following paragraph: 10

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

**101 Notices and submissions concerning prohibition orders** 15

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

- “(1) The FMA may make a prohibition order only if—
  - “(a) the FMA gives the person concerned (**person A**) at least 10 working days’ written notice of the following matters before the FMA makes the prohibition order: 20
    - “(i) that the FMA is considering making a prohibition order; and
    - “(ii) the nature of person A’s failure to comply with his, her, or its disclosure obligations; and 25
    - “(iii) the reasons why the FMA is considering making the prohibition order; and
  - “(b) the FMA gives person A or person A’s representative an opportunity to make written submissions and to be heard on the matter within that notice period.” 30

**102 Commission’s powers in respect of contributory mortgages**

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



- “(2) The FMA may, either on the receipt of that report or for any other reason, if it is satisfied that a contributory mortgage broker is contravening, or has contravened, any of the provisions of this Act or the regulations, and that it is desirable in the public interest to do so, exercise any 1 or more of the following powers: 5
- “(a) make an order prohibiting the contributory mortgage broker from offering interests in contributory mortgages to the public for subscription for a period not exceeding 10 working days; or 10
- “(b) make an order prohibiting the contributory mortgage broker from offering interests in contributory mortgages to the public for subscription for the period that the FMA thinks fit; or
- “(c) make an order that the contributory mortgage broker must promptly cease to act as contributory mortgage broker in respect of all or any contributory mortgages that have previously been allotted by him, her, or it, and make an order appointing another person to act as contributory mortgage broker in his, her, or its place with respect to those contributory mortgages; or 15 20
- “(d) make an order removing any of the directors of any nominee company of the contributory mortgage broker and make an order appointing any person as a director in his or her place. 25
- “(2AA) The FMA—
- “(a) may act under **subsection (2)(a)** without giving the contributory mortgage broker an opportunity to make submissions to, and be heard before, the FMA in respect of the matter; but 30
- “(b) must, after acting under **subsection (2)(a)**, give the contributory mortgage broker or the contributory mortgage broker’s representative an opportunity to make written submissions and to be heard on the matter.
- “(2A) The FMA may make an order under **subsection (2)(b) to (d)** only if— 35
- “(a) the FMA gives the relevant person or persons at least 5 working days’ written notice of the following matters before the FMA makes the order:

- “(i) that the FMA is considering making an order under **subsection (2)(b), (c), or (d)** (as the case may be); and
- “(ii) the reasons why it is considering making the order; and 5
- “(b) the FMA gives the relevant person or persons or a representative of the relevant person or persons an opportunity to make written submissions and to be heard on the matter within that notice period.
- “(2B) In **subsection (2A)**, **relevant person or persons** means,— 10
- “(a) in the case of **subsection (2)(b) or (c)**, the contributory mortgage broker:
- “(b) in the case of **subsection (2)(d)**, the contributory mortgage broker and every director of the broker’s nominee company.” 15
- 103 Sections 46 to 47A substituted**  
Sections 46 and 47 are repealed and the following sections substituted:
- “46 Registration of trust deeds and deeds of participation**
- “(1) The Registrar must promptly register every copy of a trust deed or deed of participation delivered to him or her for registration under this Act. 20
- “(2) However, the Registrar must refuse to register a copy of a trust deed or deed of participation if,—
- “(a) in his or her opinion, it contains any material matter that is not clearly legible; or 25
- “(b) the prescribed amount payable on registration is not paid.
- “(3) The Registrar must, on the registration of a copy of a trust deed or deed of participation under this section, give a certificate of that registration (and the certificate is conclusive evidence that the deed has been registered under this section). 30
- “47 Amendment of registered deed**
- “(1) If a trust deed or deed of participation that has been registered under this Act has been lawfully amended, the issuer must ensure that there is delivered to the Registrar, as soon as practic- 35

able after the amendment, a copy of the instrument by which the amendment to the deed was made.

- “(2) The Registrar must promptly register every copy of an instrument amending a deed that—
- “(a) is delivered to him or her for registration under this section; and
- “(b) if the Registrar so requires, is accompanied by a copy of the deed as amended.
- “(3) However, the Registrar must refuse to register a copy of an instrument amending a deed if,—
- “(a) in his or her opinion, the deed as amended contains any material matter that is not clearly legible; or
- “(b) the prescribed amount payable on registration is not paid.
- “(4) The Registrar must, on the registration of a copy of an instrument of amendment under this section, give a certificate of that registration (and the certificate is conclusive evidence that the instrument has been registered under this section).
- “**47A Registrar not required to consider certain matters**
- It is not the function of the Registrar, when acting under **section 46 or 47**, to consider whether a trust deed or deed of participation—
- “(a) complies with this Act or the regulations; or
- “(b) contains any misdescription or error.”
- 104 New sections 54C to 54F inserted**
- The following sections are inserted after section 54B:
- “**54C Documents, information, and other matters to be made publicly available**
- “(1) Every issuer of securities offered to the public for subscription must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, make publicly available the documents, information, and other matters that are required to be made publicly available by the regulations.
- “(2) The documents, information, and other matters must, if required by the regulations, be presented, calculated, or prepared

in accordance with the frameworks or methodologies specified in a notice issued by the FMA under **section 54D**.

**“54D FMA may specify frameworks or methodologies**

- “(1) The FMA may issue a notice that specifies frameworks or methodologies relating to the manner in which documents, information, or other matters that are to be made publicly available under **section 54C** are to be presented, calculated, or prepared. 5
- “(2) A notice issued by the FMA—
- “*(a)* may specify different matters and requirements in respect of different kinds of securities or different classes of issuers: 10
- “*(b)* must not specify matters and requirements that are inconsistent with regulations made under **section 70(1)(cb)**. 15
- “(3) A notice issued by the FMA—
- “*(a)* is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the House of Representatives under section 4 of that Act; but 20
- “*(b)* is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- “(4) A notice issued by the FMA must, as soon as practicable after it is issued, be—
- “*(a)* published on an Internet site maintained by or on behalf of the FMA; and 25
- “*(b)* notified in the *Gazette*; and
- “*(c)* made available in printed form for purchase on request by members of the public.
- “(5) A notification in the *Gazette* for the purpose of **subsection (4)(b)** does not have to include the text of the notice. 30

**“54E Consultation**

- “(1) The FMA must not issue a notice under **section 54D** unless the FMA has consulted the persons or representatives of the persons that the FMA considers will be substantially affected by the issue of the notice. 35

“(2) A failure to comply with **subsection (1)** does not affect the validity of the notice.

**“54F FMA may vary or revoke notice**

“(1) The FMA may vary or revoke a notice issued under **section 54D**. 5

“(2) **Sections 54D(2) to (5) and 54E** apply, with necessary modifications, in all respects to a variation or revocation under this section.”

**105 Which persons are liable for misstatements**

Section 56(3) is amended by repealing paragraphs (a) and (b) 10 and substituting the following paragraphs:

“(a) the advertisement was distributed or the prospectus was registered, as the case may be, without his or her knowledge or consent, and on becoming aware of its distribution or registration he or she promptly gave notice to the trustee, statutory supervisor, unit trustee, or superannuation trustee (if any) and the FMA that it was distributed or registered without his or her knowledge or consent; 15 or

“(b) after the distribution of the advertisement or the registration of the prospectus, as the case may be, and before the securities were subscribed for, he or she, on becoming aware of any untrue statement in the advertisement or the prospectus, withdrew his or her consent to the distribution or the registration and promptly gave notice to the trustee, statutory supervisor, unit trustee, or superannuation trustee (if any) and the FMA of the withdrawal and of the reason for the withdrawal; or” 20 25

**106 Which experts are liable for misstatements**

Section 57(2) is amended by repealing paragraph (b) and substituting the following paragraph: 30

“(b) after distribution of the advertisement or registered prospectus and before the securities were subscribed for, he or she, on becoming aware of the untrue statement or omission, withdrew his or her consent in 35

writing and gave notice to the trustee, statutory supervisor, unit trustee, or superannuation trustee (if any) and the FMA of the withdrawal and of the reason for the withdrawal; or”.

- 106A Time limit for applying for civil remedies** 5
- (1) Section 57E(1) is amended by omitting “2 years” and substituting “3 years”.
- (2) Nothing in **subsection (1)**—
- (a) enables an application for a pecuniary penalty order to be made that was barred before the commencement of this section; or 10
- (b) affects any proceedings commenced before the commencement of this section.
- 107 Criminal liability for misstatement in advertisement or registered prospectus** 15
- Section 58(3) is amended by omitting “41(b)” and substituting “**41(1)(b)**”.
- 108 Section 59A substituted**
- Section 59A is repealed and the following section substituted:
- “59A Criminal liability for delivering prospectus or amendment for registration that does not comply with various requirements** 20
- “(1) The issuer of securities to which a prospectus relates commits an offence if, when the prospectus is delivered to the Registrar for registration under this Act,— 25
- “(a) any of sections 39(1), 40, or **41(1)** are not complied with in respect of the prospectus; and
- “(b) the issuer knows, or ought reasonably to know, that any of sections 39(1), 40, or **41(1)** have not been complied with in respect of the prospectus. 30
- “(2) The issuer of securities to which a registered prospectus relates commits an offence if—
- “(a) an instrument to amend the prospectus is delivered to the Registrar for registration under this Act that would

- result, if the amendment were made, in the prospectus failing to comply with section 39(1) or 40; and
- “(b) when the instrument is delivered for registration under this Act, the issuer knows, or ought reasonably to know, that if the amendment in the instrument were made it would result in the prospectus failing to comply with section 39(1) or 40. 5
- “(3) An issuer that commits an offence under **subsection (1) or (2)** is liable, on summary conviction, to a fine not exceeding \$30,000. 10
- “(4) This section applies in respect of prospectuses and instruments of amendment delivered to the Registrar for registration under this Act on or after the commencement of this section.”
- 109 Other offences**
- (1) Section 60(1)(c) is repealed. 15
- (2) Section 60(1)(d) is amended by inserting “**43B(1)**,” after “35,”.
- (3) Section 60(2) is amended by—
- (a) inserting “**43D(1)**,” after “37(4),”; and
- (b) omitting “54A, and 54B” and substituting “and 54A to **54C**”. 20
- 110 When Court may make management banning orders**
- (1) Section 60A(1)(a) is amended by omitting “any of sections 58, 59, or 59A” and substituting “section 58 or 59”.
- (2) Section 60A(1) is amended by inserting the following paragraph after paragraph (a): 25
- “(ab) A has been convicted of an offence against **section 47B or 56** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**; or”.
- 111 Persons automatically banned from management** 30
- (1) Section 60E is amended by repealing subsection (1) and substituting the following subsection:
- “(1) This section applies to a person if—
- “(a) the person has been convicted of an offence against **either** section 58 of this Act or **section 47B or 56** of 35

the **Financial Markets (Regulators and KiwiSaver) Act 2010**; or

“(b) a pecuniary penalty order has been made against the person under this Act.”

(2) Section 60E is amended by inserting the following subsection after subsection (2):

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

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

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

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

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

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

(1) Section 60G is amended by repealing subsection (1) and substituting the following subsection:

“(1) This section applies if—

“(a) an investigation is being carried out under **Parts 1 to 4** of the **Financial Markets (Regulators and KiwiSaver) Act 2010** in relation to an act or omission by a person that—

“(i) constitutes or may constitute a contravention of this Act; or

“(ii) constitutes or may constitute a contravention of any other financial markets legislation in connection with an offer of securities to the public or securities offered to the public; or

“(iii) may result in a prosecution or civil proceedings of the kind referred to in any of **paragraphs (b) to (d)** being begun against the person; or

“(b) a prosecution has begun against a person for a contravention of—



- “(i) this Act; or  
“(ii) any other financial markets legislation in connection with an offer of securities to the public or securities offered to the public; or  
“(c) civil proceedings have begun against a person under, or in respect of,— 5  
“(i) this Act; or  
“(ii) any other financial markets legislation in connection with an offer of securities to the public or securities offered to the public; or 10  
“(d) civil proceedings have begun against a person, being proceedings that, in connection with an offer of securities to the public or securities offered to the public, seek damages or other relief for fraud, negligence, default, breach of duty, or other misconduct.” 15
- (2) Section 60G(3) is amended by inserting the following definitions in their appropriate alphabetical order:  
“civil proceedings means proceedings in a court (other than criminal proceedings)  
“financial markets legislation has the same meaning as in section 4 of the Financial Markets (Regulators and Kiwi-Saver) Act 2010”. 20
- (3) Section 60G(1) of the principal Act (as substituted by this section) applies in respect of—  
 (a) a contravention, fraud, negligence, default, breach of duty, or other misconduct regardless of whether it was committed before or after the commencement of this section; and 25  
 (b) a prosecution or proceeding regardless of whether it begins before or after the commencement of this section. 30

### **112A What orders may be made**

- (1) Section 60H(1) is amended by inserting the following paragraph after paragraph (g):  
“(ga) an order—  
“(i) removing a person from being a manager of a scheme to which the investigation, prosecution, 35

- or proceedings referred to in **section 60G(1)** re-  
lates; and
- “(ii) appointing another person as the manager of the  
scheme (with any powers that the court orders):”.
- (2) **Section 60H(1)(ga)** of the principal Act (as inserted by this section) applies in respect of— 5
- (a) a contravention, fraud, negligence, default, breach of  
duty, or other misconduct regardless of whether it was  
committed before or after the commencement of this  
section; and 10
- (b) a prosecution or proceeding regardless of whether it be-  
gins before or after the commencement of this section.
- 113 New sections 65G and 65H inserted**
- The following sections are inserted after section 65F:
- “65G Appeals against decisions of FMA on questions of law only** 15
- A person that considers that a decision of the FMA under any of the following provisions is wrong in law may appeal against the decision to the High Court on a question of law only:
- “(a) section 38B (which relates to the prohibition of adver- 20  
tisements):
- “(b) **section 43F** (which relates to the prohibition of the  
distribution of investment statements):
- “(c) **section 43G** (which relates to orders to prohibit allot- 25  
ments or the cancellation of the registration of prospec-  
tuses):
- “(d) section 44A (which relates to delayed allotment orders):
- “(e) section 44AE (which relates to prohibition orders):
- “(f) section 44B (which relates to the FMA’s powers in re- 30  
spect of contributory mortgages).
- “65H Power of Registrar to delegate**
- “(1) The Registrar may delegate to any person, either generally or particularly, any of the Registrar’s functions, duties, and powers under this Act except the power of delegation.
- “(2) A delegation— 35
- “(a) must be in writing; and

- “(b) may be made subject to any restrictions and conditions the Registrar thinks fit; and
- “(c) is revocable at any time, in writing; and
- “(d) does not prevent the performance or exercise of a function, duty, or power by the Registrar. 5
- “(3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- “(4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.” 10
- 114 Section 66 repealed**
- Section 66 is repealed.
- 115 Part 3 repealed** 15
- Part 3 is repealed.
- (2) ~~Despite the repeal of sections 69P to 69R of the principal Act (which relate to appeals), those provisions continue to apply as if references to the Commission were references to the FMA for the following purposes:~~ 20
- (a) ~~until the commencement of **section 113**, for the purposes of the Securities Act 1978;~~
- (b) ~~until the commencement of **section 156**, for the purposes of the Securities Markets Act 1988.~~
- 116 Heading to Part 4 amended** 25
- The heading to Part 4 is amended by adding “**and exemptions**”.
- 117 Regulations and Orders in Council**
- (1) Section 70(1) is amended by inserting the following paragraph after paragraph (ca): 30
- “(cb) prescribing, in respect of securities offered to the public, the documents, information, and other matters that must be made publicly available under **section 54C**, the times or events referred to in that section, and the

- manner of making the documents, information, and other matters publicly available (including prescribing the manner in which the documents, information, or matters are to be presented, calculated, or prepared); and different matters and requirements may be prescribed in respect of different kinds of securities or different classes of issuers or offerees.” 5
- (2) Section 70(1) is amended by inserting the following paragraphs after paragraph (h):
- “(ha) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for the register, including matters that relate to— 10
- “(i) the operation of the register:
- “(ii) the form of the register:
- “(iii) the information or documents to be contained in the register: 15
- “(iiiia) prescribing information and documents for the purposes of **section 43P(1A)**:
- “(iv) the information and documents to be supplied under **sections 41(2) and 43(2)**: 20
- “(v) access to the register:
- “(vi) search criteria for the register:
- “(vii) circumstances in which amendments must be made to the register:
- “(viii) the manner in which the status of a registered prospectus is determined and manner in which that status is described in the register: 25
- “(hb) prescribing matters for the purposes of **section 43Q**, including—
- “(i) the manner in which information, documents, or other matters are notified or provided: 30
- “(ii) changes for the purposes of **section 43Q(2)(a)(iii) and (b)(iii)**.”.
- 118 New section ~~70AB~~ 70AAA inserted**
- The following section is inserted after section 70: 35

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

- “(1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with **subsection (2)**, make regulations— 5
  - “(a) prescribing circumstances in which any exemption under section 5(1) does not apply:
  - “(b) prescribing additional requirements that must be satisfied before any exemption under section 5(1) may apply: 10
  - “(c) prescribing transitional and savings provisions in connection with any regulations made under **paragraph (a) or (b)**.
- “(2) The Minister must, before making a recommendation under **subsection (1)**,— 15
  - “(a) consult with the FMA; and
  - “(b) be satisfied that the regulations are needed in order to prevent an exemption in section 5(1) from applying in inappropriate circumstances, having regard to whether the exemption may, in relation to securities of a particular kind, cause significant detriment to subscribers for those securities who are members of the public in New Zealand.” 20

**119 Fees and charges**

- (1) Section 70A(1)(b) is amended by omitting “a memorandum of amendments to” and substituting “an instrument that amends”. 25
- (2) Section 70A(1) is amended by adding “; and” and also by adding the following paragraphs:
  - “(c) prescribing the amount to be paid on the registration of any other information or document under this Act and different amounts may be prescribed in respect of different amounts of securities being offered, different kinds of securities, or different classes of issuers or offerees: 30
  - “(d) requiring the Registrar to provide to the FMA a portion of any amounts paid on the registration of a prospectus, trust deed, deed of participation, or an instrument that amends any of those kinds of documents.” 35

(3) Section 70A is amended by inserting the following subsection after subsection (1):

“(1A) Regulations made under subsection (1) may prescribe amounts to be paid on the registration of a prospectus, trust deed, deed of participation, or an instrument that amends any of those kinds of documents on the basis that those amounts recover (in whole or in part) the costs of the FMA in performing or exercising functions, powers, or duties under **sections 43C to 43L** (in addition to recovering (in whole or in part) the costs of the Registrar in performing or exercising functions, powers, or duties in connection with the registration of those documents).”

#### **120 New sections 70B to 70D inserted**

The following sections are inserted after section 70A:

##### **“70B FMA may grant exemptions**

“(1) The FMA may, on the terms and conditions (if any) that it thinks fit, exempt any person or class of persons or any transaction or class of transactions from compliance with any provision or provisions of—

“(a) Part 2; or

“(b) any regulations made under section 70(1).

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

“(a) the exemption would not cause significant detriment to subscribers for the securities to which the exemption relates who are members of the public in New Zealand; and

“(b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

“(3) Nothing in Part 5 limits **subsection (1)**.

##### **“70C Status and publication of exemptions**

“(1) An exemption granted under **section 70B**—

“(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and

- “(b) must be presented to the House of Representatives under section 4 of that Act.
- “(2) A class exemption (but not any other exemption granted under **section 70B**) is a regulation for the purposes of the Acts and Regulations Publication Act 1989. 5
- “(3) An exemption granted under **section 70B** that is not a class exemption must, as soon as practicable after it is granted, be—
- “(a) published on an Internet site maintained by or on behalf of the FMA; and
- “(b) notified in the *Gazette*; and 10
- “(c) made available in printed form for purchase on request by members of the public.
- “(4) A notification in the *Gazette* for the purpose of **subsection (3)(b)** does not have to include the text of the exemption.
- “(5) The FMA’s reasons for granting an exemption under **section 70B** (including why the exemption is appropriate) must be published together with the exemption. 15
- “(6) In this section, **class exemption**—
- “(a) means an exemption granted under **section 70B** that is of general application and that applies to a class of persons or a class of transactions; but 20
- “(b) does not include an exemption granted under **section 70B** in relation to—
- “(i) a particular person or transaction; or
- “(ii) persons associated with, or transactions involving, a particular entity. 25

**“70D Variation or revocation of exemptions**

- “(1) The FMA may vary or revoke an exemption granted under **section 70B**.
- “(2) **Sections 70B(2) and 70C** apply, with necessary modifications, in all respects to a variation or revocation under this section.” 30

**121 Matters that must be stated in regulations implementing application regime**

Section 79(1) is amended by repealing paragraph (d) and substituting the following paragraph: 35

“(d) whether or not, or the extent to which, exemptions from those provisions granted by the FMA under **section 70B** may also apply for those securities; and”.

**122 Schedule 1 repealed** 5  
Schedule 1 is repealed.

*Transitional provisions*

**123 Registration of prospectus continues**

(1) If a prospectus was registered under the principal Act before the commencement of this subsection (or is registered in accordance with **section 126**),— 10

(a) the prospectus must continue to be treated as being a registered prospectus under the principal Act; and

(b) the principal Act (as amended by this Act) continues to apply to the prospectus as if it had been registered under **section 42** of the principal Act (as substituted by this Act); and 15

(c) every memorandum of amendments to the prospectus registered under the principal Act before the commencement of this subsection (or in accordance with **section 126**) must continue to be treated as registered. 20

(2) However,—

(a) **subsection (1)** does not apply if, before the commencement of this subsection, the registration of the prospectus has been cancelled; and

(b) **sections 43B to 43E** of the principal Act (as substituted by this Act) do not apply to a prospectus referred to in **subsection (1)** (except as referred to in **paragraph (c)**); and 25

(c) **sections 43B to 43E and 43C** of the principal Act (as substituted by this Act) apply to an instrument to amend a prospectus referred to in **subsection (1)** only if the instrument is registered after the commencement of this subsection. 30

(3) For the purpose of including information and documents in the register for a current prospectus, the issuer of the securities to which the prospectus relates must, within 40 working 35



days after the commencement of this subsection, supply the prescribed information and documents to the Registrar in the prescribed manner.

- (4) The Registrar is not required to include in the register information and documents for a prospectus referred to in ~~subsection (1)~~ registered before the commencement of this subsection if— 5
- (a) the period within which allotments of securities may be made under the prospectus in accordance with the principal Act finally ended before the commencement of this subsection (for example, as a result of section 37A(1)(c) of the principal Act); or 10
- (b) that information or those documents are of a kind that is prescribed as being information or documents that are not required to be included in the register. 15
- (5) In **subsection (3), current prospectus**—
- (a) means a prospectus that was registered before the commencement of ~~subsection (1)~~ (or is registered in accordance with ~~section 126~~) this subsection and under which allotments may still be made in accordance with the principal Act after that commencement; but 20
- (b) does not include a prospectus if no allotments of securities will be made under the prospectus after the date that is 40 working days after the commencement of this subsection. 25
- (6) An issuer commits an offence and is liable on summary conviction to a fine not exceeding \$30,000 if the issuer,—
- (a) without reasonable excuse, fails to comply with **subsection (3)**; or
- (b) in purported compliance with that subsection, supplies information or a document knowing it to be false or misleading. 30

#### 124 Regulations for purposes of section 123

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with **subsection (2)**, make regulations prescribing— 35
- (a) information and documents for the purposes of **section 123(3)**; and

- (b) the manner of supplying that information and those documents to the Registrar; and
- (c) information and documents for the purposes of **section 123(4)(b)**.
- (2) The Minister must consult with the FMA before making a recommendation under **subsection (1)**. 5
- (3) Different matters may be prescribed under **subsection (1)** in respect of different kinds of securities or different classes of issuers.
- 124A FMA may perform functions formerly performed by Registrar of Companies in relation to registration of prospectuses** 10
- For the purpose of effectively managing the transition relating to the amendments in **sections 96 and 97** of this Act (which include changes to the process for registering prospectuses), the FMA may, in the manner that it thinks fit and on a temporary basis, perform the same, or substantially similar, functions as the Registrar of Companies performed, before the commencement of this section, in relation to the registration of prospectuses under the principal Act (whether those functions were performed on a formal or an informal basis). 15 20
- 125 Registration of deeds continues**
- If a trust deed or deed of participation was registered under the principal Act before the commencement of this section (or is registered in accordance with **section 126**),— 25
- (a) the deed must continue to be treated as being a deed that is registered under the principal Act; and
- (b) the principal Act (as amended by this Act) continues to apply to the deed as if it had been registered under **section 46** of the principal Act (as substituted by this Act); and 30
- (c) every instrument of amendments to the deed registered under the principal Act before the commencement of this section (or in accordance with **section 126**) must continue to be treated as registered. 35

- 126 Prospectuses, amendments, and deeds delivered but not yet registered must be dealt with under old law**
- (1) If, before the commencement of this section,—
- (a) a prospectus is delivered for registration under the principal Act but the Registrar has not yet decided whether or not to register it, the prospectus must be dealt with in accordance with section 42 of the principal Act as in force before the commencement of **section 97**: 5
  - (b) a memorandum of amendments is delivered for registration under section 43 of the principal Act but the Registrar has not yet decided whether or not to register it, the memorandum must be dealt with in accordance with section 43 of the principal Act as in force before the commencement of **section 97**: 10
  - (c) a copy of a trust deed or deed of participation is delivered for registration under section 46 of the principal Act but the Registrar has not yet decided whether or not to register it, the deed must be dealt with in accordance with section 46 of the principal Act as in force before the commencement of **section 103**: 15 20
  - (d) an instrument of amendments is delivered for registration under section 47 of the principal Act but the Registrar has not yet decided whether or not to register it, the instrument must be dealt with in accordance with section 47 of the principal Act as in force before the commencement of **section 103**. 25
- (2) In **subsection (1), Registrar** has the same meaning as in section 2(1) of the principal Act (as in force before the commencement of **section 81**).
- 127 Exemptions continue in force** 30
- (1) This section applies to every exemption granted under section 5(5) of the principal Act that is in force immediately before the commencement of this section.
- (2) The exemption—
- (a) continues in force as if it were granted under **section 70B** of the principal Act (as inserted by this Act); and 35
  - (b) may be amended or revoked as if granted under that section.

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**Securities Amendment Bill (No 3)**

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**Legislative history**

5 April 2011

Divided from Financial Markets (Regulators and  
KiwiSaver) Bill (Bill 211–2) by committee of the  
whole House as Bill 211–3B

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