

**Reprint
as at 1 December 2014**



**Securities Markets Amendment
Act 2011**

Public Act 2011 No 7
Date of assent 18 April 2011
Commencement see section 2

Securities Markets Amendment Act 2011: repealed, on 1 December 2014,
pursuant to section 4(1)(b) of the Financial Markets (Repeals and Amendments)
Act 2013 (2013 No 70).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Securities Markets Amendment Act 2011.

2 Commencement

This Act comes into force on 1 May 2011.

3 Principal Act amended

This Act amends the Securities Markets Act 1988.

4 Interpretation

(1) Section 2(1) is amended by repealing the definitions of **business rules**, **conduct rules**, **listing rules**, and **registered exchange**.

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

“**authorised futures market** has the meaning set out in section 37(1)

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

“**change**, in relation to the market rules for a registered market, has the meaning set out in section 36J(2)

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

“(a) a public issuer:

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

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

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

“**market rules** means the following rules for a registered market:

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

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

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

“(a) a person that holds a market registration under section 36F:

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

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

“**registered market** means any of the following:

“(a) a securities or futures market that is registered under section 36F:

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

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

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

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

- (5) Paragraph (a)(i) of the definition of **dealings in securities** in section 2(1) is amended by inserting “(and, in the case of a futures contract, these steps include acquiring or disposing of as defined in section 37(1))” after “securities”.
- (6) Paragraph (b) of the definition of **dealings in securities** in section 2(1) is amended by omitting “registered exchange” and substituting “registered market”.
- (7) The definition of **listed** in section 2(1) is amended by omitting “the relevant registered exchange’s securities market” and substituting “a registered market”.
- (8) Paragraph (a) of the definition of **public issuer** in section 2(1) is amended by adding “in relation to a registered market (and includes a registered exchange that is listed on its own registered market)”.
- (9) The definition of **public issuer** in section 2(1) is amended by repealing paragraph (b) and substituting the following paragraph:
 - “(b) a person to whom paragraph (a) previously applied, in respect of any action or event or circumstance to which this Act applied at that time”.
- (10) The definition of **registered exchange’s securities market** in section 2(1) is amended by omitting “operated by a registered exchange” and substituting “that is a registered market”.
- (11) Paragraph (b) of the definition of **security** in section 2(1) is amended by omitting “registered exchange’s securities market or approved for trading on an authorised futures exchange” and substituting “registered market or approved for trading on an authorised futures market”.
- (12) The definition of **trading day** in section 2(1) is amended by omitting “registered exchange’s securities market” and substituting “registered market”.
- (13) Section 2 is amended by adding the following subsection:
 - “(5) For the purposes of this Act and every other enactment, unless the context otherwise requires, a person is a party to a listing agreement with a registered exchange if the person is party to that listing agreement in respect of a registered market of the registered exchange (or, in the case of a registered exchange,

if the exchange is listed on its own registered market, whether or not under a listing agreement).”

5 What is material information in relation to futures contract

Section 3A is amended by omitting “authorised futures exchange” and substituting “authorised futures market”.

6 Situations not giving rise to relevant interests

Section 6(1)(b) is amended by omitting “registered exchange’s securities market” and substituting “registered market”.

7 Application of subpart 1 to insider conduct in relation to futures contract

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

8 Purpose of this subpart

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

“(a) promoting fair, orderly, and transparent listed markets:
“(b) providing an appropriate level of protection for investors:”.

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

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

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

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

10 Registered exchange must publish disclosures

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

11 New heading to Part 2B substituted

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

12 Heading to subpart 1 of Part 2B amended

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

13 No holding out as securities exchange unless registered under this subpart

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

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

“(a) a registered exchange; or

“(b) a subsidiary of a registered exchange.

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

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

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

14 Power to exempt securities markets and futures markets from this Part

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

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

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

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

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

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

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

15 New headings and sections 36F to 36FB substituted

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

“How to obtain registration of market

“36F Application for market registration

- “(1) A body corporate may apply for a market registration for—
 - “(a) 1 or more securities markets; or
 - “(b) 1 or more securities markets and 1 or more futures markets; or
 - “(c) 1 or more futures markets, if the body corporate already holds a market registration for a securities market.
- “(2) The applicant for a market registration must deliver to the FMA—
 - “(a) an application for registration in the form, and containing the information, required by the FMA, but which must—
 - “(i) include a copy of any proposed new market rules, or proposed changes to existing market rules, for the relevant market (the **proposed market rules**); and
 - “(ii) identify any existing market rules that it proposes to apply to the relevant market; and
 - “(b) any fees required to be paid to the FMA by regulations made under section 49D.
- “(3) The FMA must grant the applicant a market registration, by written notice to the applicant, after—
 - “(a) receipt of the documents referred to in subsection (2); and

- “(b) receipt of any fees, charges, and costs required to be paid to the FMA by regulations made under section 49D; and
- “(c) approval, under sections 36K and 36L, of the proposed market rules provided under subsection (2)(a)(i) for the market.

“36FA Notification of market registration

- “(1) A notice of market registration under section 36F(3)—
 - “(a) must identify the market registered and the person that holds the market registration under that section (the **registered exchange**); and
 - “(b) must identify the proposed market rules approved for the market (if any), and must identify the existing market rules that apply to the market (if any), but need not incorporate them; and
 - “(c) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 (but not for the purposes of the Acts and Regulations Publication Act 1989); and
 - “(d) must, as soon as practicable after it is given, be—
 - “(i) published on an Internet site maintained by or on behalf of the FMA; and
 - “(ii) notified in the *Gazette*.
- “(2) A notice of market registration may relate to more than 1 market.

“Restrictions on registered exchanges

“36FB No operation by registered exchange of unregistered market

- “(1) No registered exchange may operate in New Zealand a securities or futures market for which it does not hold a market registration under this Part or an authorisation under Part 3 (but *see* section 36E, under which a market may be exempted from this section).
- “(2) Every person who acts in contravention of subsection (1) commits an offence (*see* section 43B(2) for the maximum penalty of a \$10,000 fine per day).”

16 New subpart 1A of Part 2B inserted

Sections 36G to 36R and the heading above section 36G are repealed and the following subpart is substituted:

“Subpart 1A—Market rules

“36FC Purpose and criteria applying under this subpart

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

“Key requirements

“36G Registered markets must be operated under market rules that comply with this subpart

- “(1) A registered exchange must operate each of its registered markets in accordance with market rules for that market that—
- “(a) include the required matters set out in section 36H; and
 - “(b) have effect under section 36I.

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

“Compare: 1988 No 234 s 36G

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

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

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

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

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

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

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

“(v) relate to the monitoring and enforcement of those rules; and

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

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

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

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

“(iv) relate to the monitoring and enforcement of those rules.

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

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

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

“(c) govern the conduct of business on the futures market;
and

“(d) relate to the monitoring and enforcement of those rules.

“Compare: 1988 No 234 s 36H

“36I When market rules have effect

A market rule, or part of a market rule, for a registered market has no effect, either in contract or for the purposes of section 36G, until it has been approved by the FMA under section 36L.

*“Process for approving proposed market rules
and changes to market rules*

“36IA Application of process for approving proposed market rules and changes

Sections 36K and 36L apply to proposed market rules provided to the FMA by an applicant under section 36F and proposed changes to market rules provided to the FMA by a registered exchange under section 36J.

“36J Registered exchange must provide proposed changes to FMA

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

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

“Compare: 1988 No 234 s 36J

“36K Approval process for proposed market rules and changes

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

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

“(b) extend the approval period; or

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

- “(2) The approval period is 40 working days, or (if extended under subsection (1)(b)) 60 working days, after the FMA receives the proposed market rules or change.
- “(3) The revision by the applicant or registered exchange of the proposed market rules or change during the approval period in response to comments by the FMA, and the resubmittal of the revised proposed market rules or change, does not result in the commencement of a new approval period under this section.
- “(4) A notice under this section—
 - “(a) must identify the market rules, change, or changes to which it relates, but need not incorporate them; and
 - “(b) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 (but not for the purposes of the Acts and Regulations Publication Act 1989); and
 - “(c) must, as soon as practicable after it is given, be—
 - “(i) published on an Internet site maintained by or on behalf of the FMA; and
 - “(ii) notified in the *Gazette*.
- “(5) A separate notice under this section of the decision to approve rules is not needed if there is a notice of market registration under section 36FA that notifies approval of these rules.
- “(6) The FMA’s reasons for a decision under subsection (1)(b) or (c) must be published together with the decision.

“36L Approval of proposed market rules and changes

- “(1) The FMA must approve the proposed market rules or a change provided to it under this Part unless the FMA is satisfied that—
 - “(a) it is not in the public interest to do so after having had regard to—
 - “(i) the consistency of the rules or change with the obligations under section 36Y; and
 - “(ii) the criteria stated in section 36FC and any other matters that it considers relevant; or
 - “(b) (if the rules include listing rules or the change affects listing rules) the listing rules, or the listing rules as changed, for the market will not achieve the purpose of subpart 1 of Part 2, after having regard to—
 - “(i) that purpose; and
 - “(ii) the criteria stated in section 19A; and

“(iii) any other matters that the FMA considers relevant.

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

“Power to request changes to market rules

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

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

“(2) The FMA may make a request under subsection (1) only—
“(a) after carrying out a review under section 36YB(1) or (2); or
“(b) if it believes on reasonable grounds that it is urgent to do so at any other time.

“(3) The registered exchange must, as soon as practicable but, in any case, before the expiry of 60 working days after receiving the written notice (or any further time allowed by the FMA), do either or both of the following things:

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

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

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

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

“(iii) suggests alternative ways (if any) by which the matter or matters are being or may be dealt with; and

“(iv) sets out if, when, and how the registered exchange proposes to provide for the matter or matters (if at all).

“(4) This section does not allow the FMA to request a draft market rule or change on a matter that is not within the matters set out in section 36H.

“Miscellaneous provisions on market rules

“36N Market rules must be available for public inspection

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

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

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

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

“Compare: 1988 No 234 s 36Q

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

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

“Compare: 1988 No 234 s 36R”

17 Heading above section 36S substituted

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

“Subpart 1B—Control limits for registered exchanges”.

18 Heading above section 36X and sections 36X to 36Z repealed

The heading above section 36X and sections 36X to 36Z are repealed.

19 New subpart 2 heading substituted in Part 2B

The subpart 2 heading in Part 2B is repealed and the following heading substituted:

“Subpart 2—Obligations and oversight in respect of registered markets”.

20 New heading and sections 36Y to 36YF inserted

The following heading and sections are inserted before the heading above section 36ZD:

“General obligations in respect of registered markets

“36Y General obligations in respect of registered markets

A registered exchange must,—

- “(a) to the extent that it is reasonably practicable, do all things necessary to ensure that each of its registered markets is a fair, orderly, and transparent market; and
- “(b) have adequate arrangements for operating its registered markets, including arrangements—
 - “(i) for handling conflicts between the commercial interests of the registered exchange and the need for the registered exchange to ensure that the markets operate in the way referred to in paragraph (a); and
 - “(ii) for monitoring the conduct of exchange participants on or in relation to the markets; and
 - “(iii) for enforcing compliance with the relevant market rules; and
 - “(iv) that ensure there is a sufficiently independent adjudicative body to adjudicate on contraventions of market rules that are referred to it; and

- “(c) have sufficient resources (including financial, technological, and human resources) to operate its registered markets properly.

“36YA Registered exchange must give annual report to FMA

- “(1) A registered exchange must, within 3 months after the end of its financial year, give a report to the FMA and the Minister on the extent to which it has complied with its obligations under section 36Y in the preceding financial year.
- “(2) The annual report for a financial year must contain, or be accompanied by, the information (if any) in relation to the registered exchange’s performance against its obligations under section 36Y, specified by the FMA before the commencement of the relevant financial year.
- “(3) The FMA and the registered exchange may, on the terms and conditions that they think fit, agree that the first annual report and the first review under section 36YB relate to a period prior to the commencement of this section.

“36YB FMA may carry out general obligations review

- “(1) The FMA may, at any time, carry out a review of how well a registered exchange is meeting any or all of its obligations under section 36Y.
- “(2) The FMA must carry out a review of how well a registered exchange is meeting all of its obligations under section 36Y at least once in respect of each financial year of the registered exchange.
- “(3) The FMA—
 - “(a) may, in carrying out the review, take into account the most recent annual report and other information provided under section 36YA and any other information it considers appropriate; and
 - “(b) must, after carrying out the review, provide a draft written report on its review to the registered exchange and take into account any submissions made by the exchange within the reasonable period for submissions specified by the FMA.

- “(4) The FMA must not carry out a review of a designated settlement system (within the meaning of section 156M(1) of the Reserve Bank of New Zealand Act 1989) of a registered exchange under this section (but nothing in this subsection prevents a review under that Act being carried on in conjunction with a review under this section).
- “(5) The first review of a financial year under subsection (2) may relate to the period covered by the first annual report provided under section 36YA.

“36YC FMA must make written report on general obligations review

- “(1) The FMA must give a written report on a review under section 36YB to the Minister and the registered exchange—
- “(a) as soon as practicable after carrying out the review; and
 - “(b) in any case, within 3 months after the exchange has provided an annual report to the FMA under section 36YA.
- “(2) The FMA must also publish the written report on the review on an Internet site maintained by or on behalf of the FMA.
- “(3) However, the FMA may, in publishing the written report of its review, omit from the published report any information for which it considers there would be a good reason for withholding under the Official Information Act 1982 if a request for that information were made under that Act.

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

- “(1) If the FMA considers that the registered exchange has failed or is failing to meet any 1 or more of its obligations under section 36Y after carrying out a review under section 36YB(1) or (2), it may, by written notice, require the exchange to submit an action plan to the FMA.
- “(2) The notice must—
- “(a) set out the details of the failure; and
 - “(b) specify the date by which the action plan must be submitted to the FMA.

- “(3) The registered exchange must, as soon as practicable but in any case before the date specified by the FMA, do either or both of the following things:
 - “(a) provide an action plan that addresses the failure and specifies—
 - “(i) the actions that the registered exchange proposes to take to remedy the failure or avoid any further failure; and
 - “(ii) the timetable for taking those actions:
 - “(b) provide the FMA with a written report that—
 - “(i) identifies any matter that has not been addressed by an action plan; and
 - “(ii) explains why the registered exchange does not consider that matter to be a failure or gives any other reasons why the registered exchange has not provided an action plan on the matter.

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

- “(1) If a registered exchange submits an action plan, the FMA may—
 - “(a) approve the action plan; or
 - “(b) require the registered exchange to amend the action plan and resubmit it to the FMA by a specified date for approval or rejection; or
 - “(c) reject the action plan.
- “(2) If the FMA requires the registered exchange to amend an action plan provided to the FMA, the registered exchange must do either or both of the following things:
 - “(a) provide an amended action plan that addresses the matter required to be amended:
 - “(b) provide the FMA with a written report that—
 - “(i) identifies any matter that has not been addressed by an amendment to the action plan first provided; and
 - “(ii) explains why the registered exchange does not consider that the matter needs amending or gives any other reasons why the registered exchange has not provided an amendment addressing the matter.

- “(3) If the FMA approves the action plan (whether as first provided or after amendment), the registered exchange must comply with the action plan.
- “(4) An action plan that has been approved by the FMA may be varied at any time by agreement between the registered exchange and the FMA.

“36YF Minister may give general obligation direction to registered exchange

- “(1) The Minister may, on the recommendation of the FMA, give a written direction to a registered exchange if—
 - “(a) the Minister considers that the registered exchange has failed or is failing to meet any 1 or more of its obligations under section 36Y; and
 - “(b) any of the following has occurred:
 - “(i) the registered exchange has not provided an action plan when required under section 36YD; or
 - “(ii) the registered exchange has not provided an amended action plan when required under section 36YE; or
 - “(iii) the FMA has rejected a registered exchange’s action plan; or
 - “(iv) the registered exchange has not complied with an approved action plan.
- “(2) The direction may specify—
 - “(a) the actions that the registered exchange must take to remedy any failure or avoid any further failure to meet any 1 or more of its obligations under section 36Y; and
 - “(b) the timetable for taking those actions.
- “(3) The registered exchange must comply with the direction.”

21 Registered exchange must notify Commission of disciplinary actions and suspected contraventions

- (1) Section 36ZD is amended by omitting “conduct rules” in each place where it appears and substituting in each case “market rules”.
- (2) Section 36ZD is amended by adding the following subsection as subsection (2):

- “(2) The FMA must notify the registered exchange of its decision to take, or not to take, any action in relation to a notification under subsection (1)(b)(ii).”

22 New heading and section 36ZFA inserted

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

“Real-time surveillance information

“36ZFA Registered exchange must ensure FMA has access to real-time trading and other information

- “(1) A registered exchange must, if requested by the FMA, give to the FMA the information that is necessary to enable the FMA to carry out real-time surveillance of the operation of the exchange’s registered markets.
- “(2) The FMA must pay all reasonable costs of the registered exchange in providing the information under this section.”

23 Registered exchange must give Commission material information given to market participants

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

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

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

25 Commission may give directions to registered exchanges

- (1) Section 36ZO(1) is amended by inserting “to a registered exchange in relation to any of its registered markets” after “subsection (2)”.
- (2) Section 36ZO(2)(a)(ii) is amended by omitting “futures market operated by the registered exchange” and substituting “registered market”.
- (3) Section 36ZO(3) is amended by omitting “conduct rules” in each place where it appears and substituting in each case “market rules”.

26 Grounds for other directions

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

27 Offence

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

- “(1) A registered exchange commits an offence if it intentionally or recklessly—
- “(a) fails to give a notice, provide information, give assistance, or provide access as required under this subpart; or
 - “(b) contravenes section 36ZM; or
 - “(c) fails to comply with a direction under section 36YF or section 36ZO.”

28 New subpart 3 of Part 2B inserted

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

“Subpart 3—Overseas exchanges

“36ZY Overseas exchanges

- “(1) The FMA may (on the terms and conditions it thinks fit), by notice in the *Gazette*, authorise a body corporate to hold a market registration for—
- “(a) 1 or more securities markets; or
 - “(b) 1 or more securities markets and 1 or more futures markets; or
 - “(c) 1 or more futures markets, if the body corporate already holds a market registration for a securities market.
- “(2) The notice must—
- “(a) identify the market registered and the person that is authorised to hold the market registration under this section; and
 - “(b) state the terms and conditions that apply to the person under the authorisation (and may, in those terms (without limitation), add to, modify, or disapply any of the provisions of subparts 1A and 2).

- “(3) The FMA must not grant the authorisation unless it is satisfied that—
- “(a) the body corporate is authorised to operate the relevant market in another jurisdiction; and
 - “(b) the operation of the market by the body corporate will be subject to requirements and supervision under the proposed terms or conditions of the authorisation or the law and regulatory requirements of its home jurisdiction, or both; and
 - “(c) those requirements and that supervision are likely to have at least equivalent outcomes, in terms of the degree of integrity and effectiveness of the market and the confidence of investors in the market, to the likely outcomes for that market if the market were registered under section 36F.
- “(4) This Act (other than subpart 1B of this Part) and every other enactment, applies to a body corporate authorised to operate a market under this section as if the relevant market were a registered market and the body corporate were a registered exchange holding that market registration under section 36F (except as specified under subsection (2)).

“Compare: 1988 No 234 s 36X

“36ZYA Revocation or amendment of authorisation

- “(1) The FMA may, by notice in the *Gazette*, vary or revoke an authorisation granted under section 36ZY or vary, revoke, or suspend any term or condition of the authorisation.
- “(2) However, the FMA must not do so unless—
- “(a) it has consulted the body corporate concerned; and
 - “(b) it is satisfied that it is in the public interest to do so.

“36ZYB Offence for breach of terms or conditions of authorisation

Every person who acts in contravention of a term or condition of an authorisation granted under section 36ZY commits an offence (*see* section 43B for the maximum penalty of a \$10,000 fine per day).

“Compare: 1988 No 234 s 36Z”

29 Interpretation of terms used in this Part

- (1) Paragraph (a) of the definition of **authorised futures contract** in section 37(1) is amended by omitting “authorised futures exchange” and substituting “authorised futures market”.
- (2) Section 37(1) is amended by repealing the definition of **authorised futures exchange** and substituting the following definitions:
 - “**authorised futures exchange** means any of the following:
 - “(a) a person that is authorised to conduct a futures market under subsection (8):
 - “(b) a registered exchange that holds a market registration under Part 2B in respect of its futures market:
 - “(c) a subsidiary of a person to which paragraph (a) or (b) applies (if the subsidiary conducts the market to which the authorisation or market registration relates)
 - “**authorised futures market** means a futures market to which an authorisation under subsection (8) applies (but also includes a futures market that is registered under Part 2B)”.
- (3) Section 37(8) is amended by omitting “that conducts, or proposes to conduct, a market or exchange in New Zealand for trading in futures contracts to be an authorised futures exchange for the purposes of this Part of this Act” and substituting “to be authorised to conduct 1 or more futures markets in New Zealand”.
- (4) Section 37 is amended by inserting the following subsections after subsection (8):
 - “(8AA) A notice of an authorisation declaration under subsection (8) must—
 - “(a) identify the market to which the authorisation applies and the person that is authorised to conduct that market under this section; and
 - “(b) state the terms and conditions that apply to the person under the authorisation (and may, in those terms (without limitation), add to, modify, or disapply any of the provisions of subparts 1A and 2 of Part 2B).
 - “(8AB) The FMA must not grant the authorisation declaration under subsection (8) unless it is satisfied that—

- “(a) the operation of the futures market by the body corporate will be subject to requirements and supervision under the proposed terms and conditions of the authorisation or the law and regulatory requirements of another jurisdiction (if the body corporate is authorised to conduct the market in another jurisdiction), or both; and
- “(b) those requirements and that supervision are likely to have at least equivalent outcomes, in terms of the degree of integrity and effectiveness of the market and the confidence of investors in the market, to the likely outcomes for that market if it were registered under section 36F.”

30 No holding out as futures exchange unless authorised under this Part

- (1) Section 37A(1)(b)(ii) is amended by omitting “or exchange”.
- (2) Section 37A is amended by repealing subsection (2) and substituting the following subsections:
 - “(2) Subsection (1)(a) and (b)(i) do not apply to—
 - “(a) an authorised futures exchange; or
 - “(b) a subsidiary of an authorised futures exchange.
 - “(2A) Subsection (1)(b)(ii) does not apply to—
 - “(a) an authorised futures exchange in respect of its authorised futures market; or
 - “(b) a subsidiary of an authorised futures exchange in respect of the exchange’s authorised futures market.”

31 Power to apply and remove restriction on operating futures markets

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

32 New section 37E inserted

The following section is inserted after section 37D:

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

- “(1) No authorised futures exchange may operate in New Zealand a futures market for which it does not have an authorisation under this Part or a market registration under Part 2B.
- “(2) Every person who acts in contravention of subsection (1) commits an offence (*see* section 43C for the maximum penalty of a \$10,000 fine per day).”

33 Dealers in futures contracts to be authorised

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

34 New heading and sections 42EA and 42EB inserted

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

“Unsolicited offer orders

“42EA When FMA may make unsolicited offer orders

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

“42EB Terms of unsolicited offer orders

- “(1) An unsolicited offer order may—
- “(a) restrain a person from acquiring a security, a power to dispose of a security, or an interest in or right attaching to a security, as a result of the unsolicited offer:
 - “(b) restrain a person from taking any action that is, or that may reasonably be expected to constitute, a contravention of an unsolicited offer obligation or exemption:
 - “(c) restrain a person from taking specified steps to complete or perform a contract that has been, or may reasonably be expected to be, entered into in contravention of an unsolicited offer obligation or exemption:

- “(d) direct a person not to register the transfer of a security:
- “(e) direct a person to disclose information, make corrective statements, or take any other specified steps, at the person’s own expense and in the manner and at the times specified in the order, for the purpose of securing compliance with an unsolicited offer obligation or exemption.

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

35 Commission must follow steps before making orders

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

36 Commission may shorten steps for specified orders

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

- “(e) an unsolicited offer order.”

37 When Court may grant corrective orders

Section 42N is amended by adding the following paragraph:

- “(e) an unsolicited offer obligation or exemption.”

38 When Court may make disclosure orders

Section 42P is amended by adding the following paragraph:

- “(d) an unsolicited offer obligation or exemption.”

39 What are civil remedy provisions

Section 42S is amended by adding the following paragraph:

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

40 Maximum amount of pecuniary penalty

Section 42W(1) is amended by omitting “or market manipulation prohibition” and substituting “, market manipulation prohibition, or unsolicited offer prohibition”.

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

- (1) Section 42X(1)(a) and (b) are amended by omitting “in a public issuer”.
- (2) Section 42X is amended by adding the following subsection:
 - “(3) In the case of a contravention of an unsolicited offer prohibition, subsection (2) does not apply.”

42 Penalties for failing to comply with Part 2B

- (1) Section 43B(2) is amended by repealing paragraphs (c) and (d) and substituting the following paragraphs:
 - “(c) section 36FB(1) (no operation by registered exchange of unregistered market):
 - “(d) section 36G(1) (registered exchange must operate markets under market rules that comply with subpart 1A of Part 2B):”.
- (2) Section 43B(2)(e) is amended by omitting “section 36Z” and substituting “section 36ZYB”.
- (3) Section 43B(3) is amended by omitting “section 36Q(1) (conduct rules must be available for public inspection)” and substituting “section 36N (market rules must be available for public inspection)”.

43 Penalties for failing to comply with Part 3

- Section 43C(2) is amended by adding the following paragraph:
- “(c) section 37E(1) (no operation by authorised futures exchange of unauthorised futures market).”

44 Persons automatically banned from management

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

- “(2A) The court may give leave for the purposes of subsection (2)—
 - “(a) at the time of conviction or making of the order, or at any other time on the application of the relevant person:
 - “(b) in respect of a particular incorporated or unincorporated body, a class of incorporated or unincorporated bodies, or incorporated or unincorporated bodies generally.”

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

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

46 New heading and sections 47AA and 47A inserted

The following heading and sections are inserted after section 47:

“47AA Protection from liability in connection with unsolicited offer obligations

- “(1) This section applies to any person who—
- “(a) is stated by the regulations made under section 48DB to be a protected person for the purposes of this section; and
 - “(b) is not in contravention of an unsolicited offer obligation or exemption.
- “(2) A person to whom this section applies is not liable for any act done or omitted to be done by that person in good faith if the act or omission is—
- “(a) required by an unsolicited offer order made by the FMA; or
 - “(b) required by an order made by the Court under Part 5 in connection with a contravention of an unsolicited offer obligation or exemption; or
 - “(c) stated by the regulations made under section 48DB to be a protected act or omission for the purposes of this section.

“Appeals

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

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

- “(a) section 34 (which relates to requirements for persons to disclose relevant interests and powers to get relevant interests);
- “(b) section 36ZO (which relates to directions by the FMA to registered exchanges):

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

47 New sections 48 to 48B substituted

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

“48 Exemptions granted by FMA

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

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

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

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

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

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

“(a) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption; and

“(b) in the case of subsection (1)(d), there are adequate alternative safeguards for preserving client money and client property.

“48A Status and publication of exemptions

“(1) An exemption granted under section 48—

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

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

48 New sections 48DA to 48DC inserted

The following sections are inserted after the heading above section 48E:

“48DA Definitions relating to unsolicited offer regulations and related provisions

“(1) For the purposes of this Act, an **unsolicited offer** means an offer to which all of the following apply:

“(a) the offer is to acquire a security, to acquire a power to dispose of a security, or to acquire another interest in or right attaching to a security, made by a person (**A**) to another person (**B**) (whether the acquisition is by A or an associated person of A):

“(b) it is unsolicited by B:

“(c) it is not made on a registered market:

“(d) it is within the class or classes of unsolicited offers to which the regulations apply:

“(e) it is not a takeover offer for securities under the takeovers code or an acquisition or a redemption by a company of its shares under the Companies Act 1993.

“(2) For the purposes of this section, sections 47AA, 48DB, 48DC, and any regulations made under this section,—

“(a) **associated person** has the meaning set out in section 49(7)(b) of the Financial Markets Authority Act 2011:

“(b) an **offer** made by A includes an invitation or proposal for A (or an associated person of A) to make an offer:

“(c) regulations may define or clarify the meaning of **unsolicited**.

“48DB Regulations concerning unsolicited offer regulations

“(1) The Governor-General may, on the recommendation of the Minister in accordance with subsection (3), make regulations setting out the rules applying to unsolicited offers for any or all of the purposes set out in subsection (2).

“(2) The purposes are—

“(a) ensuring offerees are fully informed of—

“(i) the current market price of a listed security or, for a non-listed security, a fair estimate of the value of the security and the basis for making that estimate; and

- “(ii) the material terms of the offer and their effect;
and
 - “(iii) any warnings issued by the FMA (if ordered by the FMA to be contained in or to accompany offer documents); and
 - “(iv) their rights and remedies under the regulations:
- “(b) ensuring that notice of an unsolicited offer to security holders is given to the relevant public issuer or issuer and the FMA:
- “(c) ensuring that no agreement to transfer may bind offerees for a minimum period for the purpose of enabling offerees to consider, and reconsider, any decision to accept an offer:
- “(d) requiring there to be minimum or maximum offer periods or both:
- “(e) setting out any other rules applying to unsolicited offers.
- “(3) In formulating recommendations to make regulations under this section, the Minister must—
- “(a) have regard to the objective of preventing unfair practices in the making of unsolicited offers; and
 - “(b) consult with the FMA.

“48DC Specific provisions for regulations concerning unsolicited offers

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

- “(a) define the class or classes of unsolicited offers and securities to which the regulations apply:
- “(b) prescribe requirements in relation to unsolicited offers and the making of those offers, including requirements as to the form and content of those offers, variations of those offers, the updating and resending of offer documents or other corrective statements, and the implication of terms into the offer or any resulting agreement:
- “(c) prescribe the information, statements, certificates, or other documents that must be supplied to offerees, the relevant public issuer or issuer, and the FMA:
- “(d) provide for any duties or functions of the FMA in connection with the rules applying to unsolicited offers:

- “(e) state which obligations are unsolicited offer obligations for the purposes of this Act:
- “(f) provide for the exercise of a right to withdraw a notification of a decision to accept an unsolicited offer, a right to refuse to complete a transfer, or any other right or remedy of offerees, and any consequences and obligations that apply in those cases:
- “(g) provide for any powers of, and requirements on, public issuers, issuers, or their agents in connection with transfers under an unsolicited offer and provide for protections from liability for those persons, persons administering a register of securities, and other persons for the purposes of section 47AA:
- “(h) provide for the regulations to—
 - “(i) extend to, or in respect of, any conduct of an associated person of an offeror and any conduct that, in substance or effect, constitutes an unsolicited offer:
 - “(ii) prohibit contracting out of the regulations and include any other provision or provisions designed to prevent avoidance of the regulations (for example, prohibiting persons inviting others to make an offer to sell a security in circumstances in which, if the invitation were an offer to acquire the security, it would be an unsolicited offer to which the regulations applied):
- “(i) provide for transitional matters.”

Transitional provisions

- 49 Transitional provisions for conduct rules and registered exchanges**
- (1) Any conduct rules that had effect under section 36I of the principal Act immediately before the commencement of this section—
 - (a) continue to have effect under section 36I of the principal Act (as substituted by this Act); and
 - (b) must be treated as market rules that have been approved under section 36L of the principal Act (as substituted by this Act).

- (2) Any reference in an enactment, proceedings, or other thing (whether express or implied) to conduct rules must be read as a reference to market rules.
- (3) NZX Limited continues to be a registered exchange under the principal Act (as amended by this Act), holding a market registration for its NZSX, NZDX, and NZAX markets (without the need for any further notice of market registration).

50 Transitional provision for authorised futures exchanges

- (1) In this section,—
 - existing authorisation** means a declaration of authorisation that was in effect under section 37(8) of the principal Act immediately before the date on which this section comes into force
 - transitional period** means, in relation to each existing authorisation, the period commencing on the date on which this section comes into force and ending on the sooner of—
 - (a) the revocation or variation of the existing authorisation (whether or not following a review under this section);
 - (b) the date of publication of a notice confirming the existing authorisation under subsection (4).
- (2) During the transitional period for each existing authorisation,—
 - (a) the authorised futures exchange under the existing authorisation continues to be an authorised futures exchange under section 37(8) of the principal Act (as amended by this Act); and
 - (b) each futures market operated in New Zealand under the existing authorisation must be treated as being an authorised futures market for the purposes of the principal Act.
- (3) The FMA must carry out a review of each existing authorisation to—
 - (a) determine the futures market or markets to which the authorisation should apply; and
 - (b) ensure that it is satisfied that—
 - (i) the operation of each of those futures markets by the authorised futures exchange will be subject to

- requirements and supervision under the existing or proposed terms and conditions of the authorisation or the law and regulatory requirements of another jurisdiction (if the exchange is also authorised to conduct the market in another jurisdiction), or both; and
- (ii) those requirements and that supervision are likely to have at least equivalent outcomes, in terms of the degree of integrity and effectiveness of the market and the confidence of investors in the market, to the likely outcomes for that market if the market were registered under section 36F of the principal Act; and
 - (c) review any other matters it thinks fit.
- (4) The FMA must, after completing each review,—
- (a) vary, revoke, or revoke and replace the existing authorisation under section 37(10) of the principal Act; or
 - (b) publish a notice in the *Gazette* confirming the existing authorisation.
- (5) The FMA must use its best endeavours to complete the reviews no later than 9 months after the date on which this section comes into force.

51 Exemptions continue in force

- (1) This section applies to every exemption granted under section 48 of the principal Act that is in force immediately before the commencement of this section.
- (2) The exemption—
- (a) continues in force as if it were granted under section 48 of the principal Act (as substituted by this Act); and
 - (b) may be amended or revoked as if granted under that section.

52 Amendment to Securities Markets Amendment Act 2002

- (1) This section amends the Securities Markets Amendment Act 2002.

- (2) Section 33(4) and (5) (which contain transitional provisions relating to the New Zealand Stock Exchange) are repealed.
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Reprints notes

1 *General*

This is a reprint of the Securities Markets Amendment Act 2011 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 4(1)(b)
