

House of Representatives

Supplementary Order Paper

Tuesday, 27 August 2013

Financial Markets Conduct Bill

Proposed amendments to SOP No 220

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

Clause 2

In *clause 2(1)*, after “**564(2) to (4)**,” (on page 68), insert “**618A**,”.

Clause 6

In *clause 6(1)*, after the definition of **civil liability provision** (on page 73), insert:
class, in relation to financial products, has the meaning set out
in **subsection (3)**

In *clause 6(1)*, delete the definition of **same class** (on page 88).

In *clause 6(1)*, replace the definition of **scheme participant** (on page 88) with:
scheme participant, in relation to a managed investment
scheme, means a product holder of a managed investment
product in the scheme

In *clause 6(1)*, definition of **special resolution**, after *paragraph (a)* (on page 90), insert:

- (ab) holders of managed investment products in a super-annuation scheme, a KiwiSaver scheme, a workplace savings scheme, or any other prescribed scheme, means a resolution approved by no less than 75% of the number of scheme participants who are entitled to vote and who vote on the question:

In *clause 6(3)* (on page 92), replace “**same class**” with “**same class**”.

In *clause 6(3)*, after “securities may,” (on page 92), insert “except”.

Clause 9

In *clause 9(1)*, definition of **managed investment scheme**, *paragraph (a)* (on page 97), delete “(scheme participants)”.

In *clause 9(1)*, definition of **managed investment scheme**, *paragraph (b)* (on page 97), replace “scheme participants” with “holders of those interests”.

In *clause 9(2)(a)* (on page 97), replace “scheme participant” with “participant” in each place.

In *clause 9(2)(a)(iii)* (on page 98), delete “scheme” in each place.

Clause 15A

In *clause 15A*, definition of **financial product**, *paragraph (b)* (on page 104), insert “or **section 450**” after “any provision of this Part”.

New clause 19CA

After *clause 19C* (on page 107), insert:

**19CA Section 19A does not apply to representations in PDSs,
register entries, or other disclosure documents**

Section 19A does not apply to a representation made in a disclosure document or a register entry.

Clause 64

In *clause 64(1)(c)(iii)*, after “financial products” (on page 133), insert “; or”.

After *clause 64(1)(c)* (on page 133), insert:

- (d) if permitted by the regulations, in the case of **section 63(4) or (5)**,—
 - (i) give the applicant the document or PDS referred to in **paragraph (b)(i)** or comply with **paragraph (c)(i) and (ii)** (as the case may be); and
 - (ii) give the applicant a prescribed period to withdraw their application and be repaid.

In *clause 64(2)*, after “**(c)(iii)**” (on page 133), insert “or an applicant withdraws an application under **subsection (1)(d)**”.

In *clause 64(3)*, after “period referred to in **subsection (2)**” (on page 134), insert “or from the date on which the application is withdrawn (as the case may be)”.

In *clause 64(4)*, after “section” (on page 134), insert “(including in respect of a withdrawal under **subsection (1)(d)**)”.

Clause 139

In *clause 139(2)* (on page 179), replace “**section 400**” with “the Financial Markets Supervisors Act 2011”.

Clause 147

After *clause 147(1)(b)* (on page 184), insert:

- (ba) in the case of a superannuation scheme, a KiwiSaver scheme, a workplace savings scheme, or any other prescribed scheme, no less than 5% of the number of scheme participants who hold managed investment products in that class; or

Clause 197

Replace *clause 197(3)* (on page 219) with:

- (3) A person that contravenes—
 - (a) **subsection (1)(a)** commits an offence:
 - (b) **subsection (1)(b)** commits an offence:
 - (c) **subsection (1)(c)** commits an offence.
- (3A) A person that commits an offence under **subsection (3)** is liable on conviction to a fine not exceeding \$50,000.

In *clause 197(4)* (on page 219), replace “The offence in this section” with “Each offence in **subsection (3)**”.

Clause 213A

In *clause 213A(1)(b)* (on page 226), replace “the prescribed fee (if any)” with “a reasonable printing and administration fee set by the issuer, offeror, or manager”.

Clause 301

In *clause 301(5)(b)* (on page 262), delete “(other than a market licensed under **section 315)**”.

Clause 394

In *clause 394(e)* (on page 310), replace “will not comply with” with “is likely to contravene”.

New cross-heading and clause 454B

After *clause 454A* (on page 349), insert:

Order to prohibit offer under recognition regime

454B FMA may order that offer may not be made under recognition regime

- (1) The FMA may make an order prohibiting a person (A) from making an offer under a recognition regime set out in regulations made under **section 546** if the FMA is satisfied that—
 - (a) 1 or more of the requirements of those regulations have been contravened in relation to a previous offer by A or an associated person of A; and
 - (b) the contravention was not minor or technical only.
- (2) The order must specify the period during which the prohibition applies (which must be no longer than 5 years from the day on which the order is made).
- (3) **Subsection (1)** does not limit any other power of the FMA by or under this Act.

Compare: Corporations Act 2001 s 1200P(1) (Aust); SR 2008/153 r 13(4)

Clause 517

After *clause 517(1)(a)(vii)* (on page 389), insert:

- (viiia) prescribing circumstances in which an offeror is permitted to act under **section 64(1)(d)** and a period for the purposes of that paragraph; and

After *clause 517(1)(m)* (on page 391), insert:

- (ma) prescribing circumstances for the purposes of **clause 30(1)(c)(ia) or (2)(d)(ii) or 33(1)(d)(ii) of Schedule 1**:

Clause 518

In *clause 518(1)(da)* (on page 392), replace “the Bill” with “this Act”.

Clause 522

In *clause 522(1)(ea)*, after “as received” (on page 404), insert “, or as having been given, provided, or served,”.

In *clause 522(1)(i)(vi)*, after “may determine” (on page 405), insert “or prescribe”.

After *clause 522(1)(ia)* (on page 405), insert:

- (ib) prescribing kinds of schemes for the purposes of **paragraph (ab)** of the definition of special resolution in **section 6(1)** and **section 147(1)(ba)**;
- (ic) prescribing a date or dates for the purposes of **clause 51(1)(a) of Schedule 5**;
- (id) prescribing clauses of **Schedule 1** for the purposes of **clause 53(1) of Schedule 5**;

After *clause 522(3)* (on page 405), insert:

- (4) Nothing in **sections 517 to 521**, or in any other provision that authorises regulations to be made under this Act, limits **subsection (1)(i)**.

Clause 543

In *clause 543(a)* (on page 418), replace “issuers” with “offerors”.

New clause 547A

After *clause 547* (on page 421), insert:

547A FMA may declare failure to meet preconditions of recognition regime to be non-material

- (1) If the FMA is satisfied, in relation to an offer, that a failure to meet a precondition referred to in **section 547(1)(d)** is minor or technical only, the FMA may declare in writing that the failure is non-material.

- (2) If the FMA makes a declaration, the precondition must be treated as having been met at the time it was required to be met by the regulations made under **section 546**.

Compare: Corporations Act 2001 s 1200B(3), (4) (Aust); SR 2008/153 r 8(3), (4)

Subpart 1 of Part 9

In *Part 9*, replace the *subpart 1* heading (on page 427) with:

Repeals and revocations

Subpart 2 of Part 9

In *Part 9*, replace the *subpart 2* heading (on page 429) with:

Amendments to Fair Trading Act 1986

Clause 566

In *clause 566*, replace “This **subpart** amends” (on page 429) with “**Sections 567 and 567A** amend”.

Clause 567A: new section 48QA

In *clause 567A*, after *new section 48Q* (on page 431), insert:

“48QA Unsubstantiated representations prohibition does not apply to financial markets disclosure

“(1) The provision of this Act that corresponds to **section 19A** of the Financial Markets Conduct Act **2011** does not apply to a representation made in a disclosure document or a register entry.

“(2) In this section, **disclosure document** and **register entry** have the same meanings as in **section 6(1)** of the Financial Markets Conduct Act **2011**.

Clause 567B

In *clause 567B(2)*, replace “this **subpart**” (on page 432) with “**sections 567 and 567A**”.

Subpart 3 of Part 9

In *Part 9*, replace the *subpart 3* heading (on page 432) with:

Amendments to Financial Advisers Act 2008

Clause 568

In *clause 568*, replace “This **subpart** amends” (on page 432) with “**Sections 568A to 594** amend”.

Clause 572

In *clause 572(2)*, replace *new section 14(1)(m)* (on page 438) with:

“(m) any form of communication made by or on behalf of an issuer or offeror to a person that is contained in, or given in connection with, an offer of FMCA financial

products to that person that does not require disclosure under **Part 3** of the Financial Markets Conduct Act **2011** because of any 1 or more of **clauses 3 to 5 of Schedule 1** of that Act.”.

Subpart 4 of Part 9

In *Part 9*, replace the *subpart 4* heading (on page 458) with:

Amendments to Financial Markets Authority Act 2011

Clause 595

In *clause 595*, replace “This **subpart** amends” (on page 458) with “**Sections 596 to 603** amend”.

Subpart 5 of Part 9

In *Part 9*, replace the *subpart 5* heading (on page 464) with:

Amendments to KiwiSaver Act 2006

Clause 604

In *clause 604*, replace “This subpart amends” (on page 464) with “**Sections 605 to 632** amend”.

New clause 618A

After *clause 618* (on page 472), insert:

618A Implied provision as to transfer of members, etc

Section 119C(2) is amended by inserting “and regulations made under section 230” after “section 119G”.

Clause 627

In *clause 627*, after *new section 228(1)(e)* (on page 504), insert:

“(ea) prescribing the maximum number of persons that the Minister may appoint under **section 131**:

Subpart 6 of Part 9

In *Part 9*, replace the *subpart 6* heading (on page 513) with:

Amendments to Securities Trustees and Statutory Supervisors Act 2011

Clause 633

In *clause 633*, replace “This **subpart** amends” (on page 513) with “**Sections 634 to 666A** amend”.

New clause 639A

After *clause 639* (on page 516), insert:

639A New section 7 substituted

Section 7 is repealed and the following section substituted:

“**7 Licensee must comply with conditions imposed on licence**
A licensee must comply with—

- “(a) every condition imposed on the licence by the FMA under section 11; and
- “(b) every condition imposed on the licence by regulations made under this Act (if any).”

Clause 644

In *clause 644* (on page 518), insert as *new subclause (2)*:

- (2) Section 13(d) is amended by inserting “by the FMA under section 11” after “licence”.

Clause 652

In *clause 652(2)*, *new subsection (2)(b)* (on page 521), after “months”, insert “; and”.

In *clause 652(2)*, after *new subsection (2)(b)* (on page 521), insert:

- “(c) if the FMA considers it necessary or desirable in the circumstances, reappoint the FMA appointee (as an FMA appointee) to the position of supervisor of the debt security, registered scheme, or retirement village for a further period that the FMA thinks fit (and a reappointment under this paragraph may be made on 1 or more occasions).”

After *clause 652(2)* (on page 521), insert:

- (2AA) Section 22(3) is amended by omitting “(2)(b)” and substituting “**(2)(b) or (c)**”.

In *clause 652(2A)*, replace *new subsection (3A)(b)* (on page 522) with:

- “(b) the FMA appointee’s costs and charges (including for any appointment on a continuing basis referred to in subsection (9)(b)), and any costs of the FMA in connection with the appointment, will be met by the issuer or operator, under **subsection (5)**, or by the existing appointee; and
- “(c) a suitable bond has been, or will be, paid to secure—
 - “(i) the performance of any indemnity or other obligation in connection with the costs or changes referred to in **paragraph (b)**;
 - “(ii) compliance with any other preconditions.”

After *clause 652(3)* (on page 522), insert:

- (3A) Section 22 is amended by repealing subsection (5) and substituting the following subsections:
 - “(5) The issuer or operator must reimburse the FMA for—
 - “(a) the FMA appointee’s costs and charges that are paid by the FMA; and
 - “(b) any costs of the FMA in connection with the appointment.
 - “(5A) An amount payable under **subsection (5)** must be paid by the date specified for payment in an invoice given to the issuer

or operator by the FMA and is recoverable as a debt due to the FMA.”

After *clause 652(5)* (on page 522), insert:

- (5A) Section 22(9) is amended by omitting “Before the end of the 6-month appointment” and substituting “Before the appointment of the FMA appointee under **subsection (2)** finally comes to an end (taking into account any reappointment under **subsection (2)(c)**”.

After *clause 652(6)* (on page 522), insert:

- (7) Section 22 is amended by adding the following subsection:
“(11) If the FMA appointee does not hold a licence, the FMA appointee must, for the purposes of the Financial Markets Conduct Act **2011** and the Retirement Villages Act 2003, be treated as holding a licence that covers supervision of the debt security, registered scheme, or retirement village (as the case may be).”

Clause 653

Before *clause 653(1)* (on page 522), insert:

- (1AA) The heading to section 23 is amended by omitting “**Expiry of licence: issuer**” and substituting “**Issuer**”.

After *clause 653(1)* (on page 523), insert:

- (1A) Section 23(3) is amended by omitting “22(2)(b)” and substituting “**22(2)(b) or (c)**”.

Clause 659

After *clause 659(1)* (on page 525), insert:

- (1A) Section 37 is amended by inserting the following subsection after subsection (1):
“(1A) If the FMA considers it necessary or desirable in the circumstances, the FMA may reappoint the FMA appointee (as an FMA appointee) to the position of supervisor for a further period that the FMA thinks fit (and a reappointment under this subsection may be made on 1 or more occasions).”
(1B) Section 37(2) is amended by omitting “subsection (1)” and substituting “subsection (1) or **(1A)**”.

After *clause 659(2)* (on page 525), insert:

- (2A) Section 37 is amend by repealing subsections (4) and (5) and substituting the following subsections:
“(4) The affected person must reimburse the FMA for—
“(a) the FMA appointee’s costs and charges that are paid by the FMA; and
“(b) any costs of the FMA in connection with the appointment.

“(4A) An amount payable under **subsection (4)** must be paid by the date specified for payment in an invoice given to the affected person by the FMA and is recoverable as a debt due to the FMA.

“(5) The FMA appointee is bound by the terms of the governing document under which the existing appointee was appointed (subject to subsection (6)).”

After *clause 659(3)* (on page 525), insert:

(3A) Section 37(8) is amended by omitting “Before the end of the 6-month appointment” and substituting “Before the appointment of the FMA appointee under this section finally comes to an end (taking into account any reappointment under **subsection (1A)**)”.

After *clause 659(4)* (on page 526), insert:

(5) Section 37 is amended by adding the following subsection:

“(10) If the FMA appointee does not hold a licence, the FMA appointee must, for the purposes of the Financial Markets Conduct Act **2011** and the Retirement Villages Act 2003, be treated as holding a licence that covers supervision of the debt security, registered scheme, or retirement village (as the case may be).”

Clause 660

In *clause 660* (on page 526), insert as *new subclause (2)*:

(2) Section 38(3) is amended by omitting “6-month”.

New clause 661A

After *clause 661* (on page 526), insert:

661A New heading and section 40A inserted

The following heading and section are inserted after section 40:

“FMA appointee’s powers and duties

“40A FMA appointee has powers and duties of supervisor

“(1) An FMA appointee (whether appointed under section 22 or 37) has all of the powers and duties of the supervisor of the debt security, registered scheme, or retirement village that are conferred or imposed by the governing document or by law.

“(2) This section is subject to sections 22(7) and 37(6).”

New clause 666A

After *clause 666* (on page 528), insert:

666A Regulations

Section 53(1) is amended by inserting the following paragraph before paragraph (a):

- “(aa) prescribing conditions that licences are subject to, including (without limitation) providing for conditions that require a licensee to accept an appointment as an FMA appointee under section 22 or 37:”.

Subpart 7 of Part 9

In *Part 9*, replace the *subpart 7* heading (on page 529) with:

Amendments to other enactments

Schedule 1

In *Schedule 1*, after *clause 30(1)(c)(i)* (on page 553), insert:

- (ia) under an offer made, in the prescribed circumstances, in reliance upon **clause 18A**; or

In *Schedule 1*, replace *clause 30(2)(d)* (on page 553) with:

- (d) the financial products have not previously been offered for issue or sale—
- (i) under a regulated offer; or
 - (ii) under an offer made, in the prescribed circumstances, in reliance upon **clause 18A**; or
 - (iii) under an offer outside New Zealand under an application regime under **subpart 6 of Part 8** of this Act.

In *Schedule 1*, replace *clause 33(1)(d)* (on page 555) with:

- (d) the controller sold the financial products otherwise than under—
- (i) a regulated offer; or
 - (ii) an offer made, in the prescribed circumstances, in reliance upon **clause 18A**.

Schedule 4

In *Schedule 4*, after the item relating to section 42E of the Trustee Act 1956 (on page 641), insert:

Section 46(4) to (7): repeal and substitute:

- “(4) If the court, on an application under subsection (2) by a trustee other than a supervisor, appoints Public Trust as the replacement trustee, Public Trust must accept the appointment.
- “(5) In **subsection (4)**, **supervisor** means a person appointed as a supervisor within the meaning of **section 6(1)** of the Financial Markets Conduct Act **2011**.”

Schedule 5

In *Schedule 5*, after *clause 12A* (on page 664), insert:

12B Unsubstantiated representations prohibitions do not apply to prospectuses and investment statements

- (1) **Section 19A** and the provision of the Fair Trading Act 1986 that corresponds to **section 19A** do not apply to a represen-

tation made in a registered prospectus or an investment statement (within the meaning of the 1978 Act).

- (2) **Subclause (1)** applies despite **clause 12A(1)**.

In *Schedule 5*, replace the cross-heading above *clause 50* (on page 695) with:

Miscellaneous matters relating to Schedule 1

In *Schedule 5*, after *clause 50* (on page 695), insert:

51 Transitional disclosure exclusion

- (1) An offer of financial products does not require disclosure under **Part 3** of this Act if the offer—
- (a) is made before the relevant prescribed date; and
 - (b) is of a kind that, had it been made under the Securities Act 1978,—
 - (i) nothing in Part 2 of the Securities Act 1978 (except sections 38B and 58) would have applied in respect of the financial products offered as a result of section 5(2CB) or (2CBA) of that Act; or
 - (ii) the offer would not have been an offer of securities to the public as a result of section 3(2)(a)(i) to (iii) of that Act.
- (2) For the purposes of **subclause (1)(a)**, different dates may be prescribed in relation to different kinds of offers or other circumstances.
- (3) **Subclause (1)** must be treated as being an exclusion under **Part 1 of Schedule 1**.

52 Exclusions for employee share purchase schemes and small offers can take into account offers under former law

The reference to a regulated offer in **clauses 8(3)(c) and 14(1)(c) of Schedule 1** (which require issues or sales that result from certain offers to be disregarded in making calculations) must be treated as including a reference to an offer of securities to the public in New Zealand that is made under the Securities Act 1978.

53 Additional Securities Act 1978 exemption

- (1) Section 5(1) of the Securities Act 1978 must be treated as including an exemption to the effect that nothing in Part 2 of the Securities Act 1978 applies in respect of a financial product if the offer of the financial product would not require disclosure under **Part 3** of this Act (if that Part were in force) as a result of an exclusion in any 1 or more of the clauses of **Schedule 1** of this Act that are prescribed for the purposes of this subclause.

- (2) If a person makes an offer in reliance upon **subclause (1)**, **clauses 26 to 27A of Schedule 1** apply to the person and the offer with all necessary modifications as if it were an offer made in reliance upon any of the clauses of **Schedule 1** referred to in **subclause (1)** (and, accordingly, a contravention of **clauses 26 to 27A** gives rise to civil liability under **Part 7** of this Act).
- (3) Conditions, requirements, and other matters may be prescribed under **section 517(1)(c)** that apply to the exemption referred to in **subclause (1)** regardless of whether or not those conditions, requirements, or other matters apply to any exclusion in **Schedule 1** of this Act.
- (4) Regulations may be made under section 70AAA of the Securities Act 1978 in respect of the exemption in **subclause (1)**.
- (5) **Subclause (1)** ceases to apply upon the repeal of the Securities Act 1978 and may not, after it ceases to apply, be relied upon in making an offer under **Part 1** of this schedule.

Recognition regime regulations

54 FMA may make order prohibiting recognition regime offer on basis of contravention of former regulations

The reference to regulations in **section 454B(1)(a)** must be treated as including a reference to regulations made under section 74 of the Securities Act 1978.

55 FMA may declare failure to meet preconditions of recognition regime under Securities Act 1978 to be non-material

- (1) The references to a precondition in **section 547A** must be treated as including references to a precondition referred to in section 75(1)(d) of the Securities Act 1978.
- (2) The reference to regulations in **section 547A(2)** must be treated as including a reference to regulations made under section 74 of the Securities Act 1978.

Amendment to section 46 of Trustee Act 1956

56 Amendment to section 46 of Trustee Act 1956 does not affect existing proceedings

Nothing in the amendment made to section 46 of the Trustee Act 1956 by **section 669 and Schedule 4** affects any proceeding commenced before that amendment comes into force, and any such proceeding must be decided as if the amendment had not been made.

Explanatory note

This Supplementary Order Paper makes adjustments to Supplementary Order Paper No 220 (which contains proposed amendments to the Financial Markets Conduct Bill). The adjustments include—

- replacing the definition of same class in *clause 6* (which concerns classes of financial products) with a definition of class. This will allow the definition to apply to other references in the Bill to a class of financial products. In addition, the definition in *clause 6(3)* has been adjusted so that debt securities with different redemption dates or interest rates, but otherwise with identical rights, will be of the same class unless regulations prescribe otherwise:
- clarifying the definition of scheme participant in *clause 6* to align it with the definition of product holder and to remove any possible circularity:
- clarifying, in relation to KiwiSaver schemes and certain other schemes, when a special resolution is approved and when scheme participants can require a meeting to be called (*see clause 147*):
- providing that *clause 19A* (which prohibits making unsubstantiated representations) does not apply to representations in PDSs, register entries, and other disclosure documents. Existing provisions of the Bill already set requirements for representations in these documents. A similar change has been made in relation to the corresponding provision that will be inserted into the Fair Trading Act 1986 by the Consumer Law Reform Bill (*see new clause 19CA, new section 48QA in clause 567A, and new clause 12B in Schedule 5*):
- amending *clause 64* (which specifies the choices open to an offeror for dealing with applications for financial products where disclosure for the offer is defective). The amendment allows an offeror, if permitted by the regulations, to give the applicant a period to withdraw their application (rather than requiring the offeror to give the applicant 1 month to confirm whether he or she still wants to acquire the products). *New clause 64(1)(d)* applies only if regulations are made for the purposes of that paragraph:
- amending *clause 197* (which relates to winding-up reports for schemes) to allow different levels of infringement fee to be prescribed in respect of each duty specified in the clause:
- amending *clause 213A* to provide for issuers to make documents available on payment of a reasonable printing and administration fee set by the issuer (rather than as prescribed in regulations):
- amending *clause 394* (which specifies the criteria for the issue of a licence under *Part 6*). *Clause 394(e)* requires the FMA to be satisfied that there is no reason to believe that the applicant will not comply with certain obligations. This has been amended to refer to the FMA being satisfied that there is no reason to believe that the applicant is likely to contravene the obligations. This amendment is the same as a change to the equivalent Australian licensing criteria (which was made to address problems

in using the previous test in relation to persons who had committed past breaches):

- inserting *new clause 454B* to allow the FMA to make an order prohibiting a person from making an offer under a recognition regime set out in regulations made under *clause 546*. The provision is similar to regulation 13(4) of the Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008. The provision has been inserted into the Bill (rather than being retained in regulations) to allow general provisions in the Bill relating to FMA orders to apply (including appeal rights) and because it is considered more appropriate that a provision of this kind is included in the Bill. A related transitional provision has been included in *clause 54 of Schedule 5*:
- clarifying that regulations may enable the FMA to prescribe the manner in which a thing is done (*see clause 522(1)(i)(vi)*). For example, the FMA may prescribe a form that must be used. However, fees or charges must still be prescribed by regulations:
- clarifying that regulations made under *clause 522(1)(ea)* may prescribe when information is treated as having been given, provided, or served under the Bill:
- inserting *new clause 547A* to allow the FMA to declare that a failure to meet a precondition of a recognition regime is non-material (with the effect that the precondition is treated as having been met). The provision is similar to regulation 8(3) and (4) of the Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008. It is considered more appropriate that a provision of this kind is included in the Bill (rather than being retained in regulations). A related transitional provision has been included in *clause 55 of Schedule 5*:
- amending *clause 627* (which replaces the regulation-making section in the KiwiSaver Act 2006 (*new section 228*)). The amendment re-inserts a paragraph from the current section 228, which allows regulations to prescribe the maximum number of persons that the Minister may appoint as default KiwiSaver providers:
- making various changes to the amendments to the Securities Trustees and Statutory Supervisors Act 2011 (the **Act**) in *subpart 6 of Part 9*. The changes include—
 - allowing regulations to prescribe conditions that are imposed on licences, consistent with the licensing framework applying to other licensees under the Bill. These conditions may require a licensee to accept a temporary appointment as a supervisor under section 22 or 37 of the Act (*see new section 7* substituted by *new clause 639A* and amendments to section 53 in *new clause 666A*):
 - improving and clarifying the provisions relating to the appointment of FMA appointees under sections 22 and 37 of the Act (*see the amendments to clauses 652 and 659*). These FMA appointees act as temporary supervisors of a debt security, managed investment

scheme, or retirement village where, for example, the existing appointee wishes to resign or is removed. The amendments allow the FMA to reappoint the FMA appointee for a further period that it thinks fit and clarify how the associated costs and charges are to be met. The amendments also clarify that if an FMA appointee does not hold a licence, the appointee must be treated as holding a licence for the purposes of the Financial Markets Conduct Bill. *New clause 661A* clarifies that an FMA appointee has the powers and duties of the supervisor that are conferred or imposed by the governing document or by law:

- amending *clauses 30 and 33 of Schedule 1* (which provide for when disclosure is required for sale offers) so that the provisions do not apply if the financial products have previously been offered, in prescribed circumstances, under an offer made in reliance upon the exclusion in *clause 18A of Schedule 1*:
- amending section 46 of the Trustee Act 1956 (*Schedule 4*) to remove the amendment inserted by the Trustee (Public Trust) Amendment Act 2013. That amendment clarified the circumstances in which Public Trust would be appointed as trustee of last resort in place of a securities trustee. That change was designed as an interim solution pending the implementation of the new supervisor replacement mechanism by this Bill. Supervisors will no longer be able to use the Trustee Act 1956 to require Public Trust to be appointed as trustee of last resort in their place:
- inserting a new transitional provision (*clause 51 of Schedule 5*) that, in effect, allows existing wholesale investor exclusions in the Securities Act 1978 to continue for a transitional period to allow new compliance processes to be put in place. The transitional exclusion will apply if the offer would not be an offer to the public as a result of section 3(2)(a)(i) to (iii) of the Securities Act 1978 or if an exemption under section 5(2CB) or (2CBA) of that Act would apply (exemption for wealthy and experienced investors). The exclusion will apply only if it is made before a prescribed date:
- inserting a new transitional provision (*clause 52 of Schedule 5*) that allows calculations made for the purposes of the employee share purchase scheme exclusion (*clause 8 of Schedule 1*) and the small offer exclusion (*clause 12 of Schedule 1*) to take into account offers made to the public under the Securities Act 1978:
- inserting a new transitional provision (*clause 53 of Schedule 5*) that creates a new exemption from Part 2 of the Securities Act 1978 where certain exclusions under *Schedule 1* would apply (transitional regulations will prescribe which exclusions apply for this purpose). In this situation, the offeror must comply with conditions and requirements prescribed for the purposes of *clause 26 of Schedule 1*. This new exemption will cease on the repeal of the Securities Act 1978:
- making other minor or technical drafting changes.

This Supplementary Order Paper also makes drafting changes to the Financial Markets Conduct Bill consequential on the division of the Financial Markets Conduct Bill into the Financial Markets Conduct Bill and the Financial Markets (Repeals and Amendments) Bill. When *Part 9 and Schedule 4* are divided into a separate Bill, the subpart headings and references to subparts will no longer be appropriate. This Supplementary Order Paper therefore changes the subpart headings into ordinary headings and replaces the references to subparts with references to the appropriate provisions.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.
