

# House of Representatives

# Supplementary Order Paper

Tuesday, 5 April 2011

## Securities Trustees and Statutory Supervisors Bill

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### *Proposed amendments*

Hon Simon Power, in Committee, to move the following amendments:

#### *Clause 2*

To omit “at the end of the period of 9 months beginning with the day on which it receives the Royal assent unless it is earlier brought into force on a date appointed by Order in Council” (lines 5 to 8 on page 6) and substitute “on 1 October 2011”.

#### *Clause 4(1)*

Definition of **Commission**: to omit this definition (lines 1 to 3 on page 7).

To insert the following definitions after the definition of **deposit taker** (after line 12 on page 7):

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

**FMA appointee** has the meaning given in **section 38(1)**

To insert the following paragraph after paragraph (d) of the definition of **issuer obligation** (after line 25 on page 7):

(da) the KiwiSaver Act 2006:

To insert the following definitions after the definition of **issuer obligation** (after line 28 on page 7):

**KiwiSaver scheme** means a KiwiSaver scheme other than a restricted KiwiSaver scheme (within the meanings given to those terms in section 4(1) of the KiwiSaver Act 2006)

**KiwiSaver trustee** means a person who is designated or appointed as trustee of a KiwiSaver scheme or the successor of that person

Paragraph (b) of the definition of **licensee**: to omit “a Commission” (line 34 on page 7) and substitute “an FMA”.

Definition of **licensee obligation**: to omit this definition (line 36 on page 7 to line 6 on page 8) and substitute the following definition:

**licensee obligation** means an obligation imposed on a licensee by or under any or all of the following:

- (a) every governing document:
- (b) the terms of the offer of the security:
- (c) a court order relating to a supervised interest:
- (d) this Act:
- (e) the KiwiSaver Act 2006:
- (f) Part 5D of the Reserve Bank of New Zealand Act 1989:
- (g) the Retirement Villages Act 2003:
- (h) the Securities Act 1978:
- (i) the Unit Trusts Act 1960

Definition of **operator obligation**: to omit “of a retirement village” (line 24 on page 8).

Paragraphs (b) and (c) of the definition of **operator obligation**: to omit these paragraphs (lines 28 and 29 on page 8) and substitute the following paragraphs:

- (b) a court order relating to the retirement village:
- (c) this Act:

To insert the following definition after the definition of **resident** (after line 34 on page 8):

**restricted scheme** has the meaning given in section 4(1) of the KiwiSaver Act 2006

Paragraph (c) of the definition of **security**: to omit this paragraph (line 2 on page 9) and substitute the following paragraphs:

- (c) a unit in a unit trust:
- (d) an interest in a KiwiSaver scheme

To insert the following paragraph after paragraph (a) of the definition of **trust deed** (after line 29 on page 9):

- (ab) in relation to a KiwiSaver scheme, has the meaning given in section 4(1) of the KiwiSaver Act 2006:

Definition of **trust deed**: to omit “a trustee of” in each place where it appears (lines 27 and 30 on page 9).

Paragraph (b) of the definition of **trustee**: to omit this paragraph (line 37 on page 9) and substitute the following paragraphs:

- (b) a unit trustee; and
- (c) a KiwiSaver trustee

#### *Heading to clause 8A*

To omit “**Commission**” (line 31 on page 11) and substitute “**FMA**”.

#### *Clause 8A*

To omit “**7,**” (line 32 on page 11).

To omit “a Commission” (line 33 on page 11) and substitute “an FMA”.

*Heading to clause 9*

To omit “**Commission**” (line 2 on page 12) and substitute “**FMA**”.

*Clause 9(1)*

To omit “Commission” (line 3 on page 12) and substitute “FMA”.

To insert the following paragraph after *paragraph (c)* (after line 8 on page 12):

(ca) a KiwiSaver trustee:

*Heading to clause 10*

To omit “**Commission**” (line 24 on page 12) and substitute “**FMA**”.

*Clause 10*

To omit “Commission” in each place where it appears (lines 25 and 27 on page 12 and line 4 on page 13) and substitute in each case “FMA”.

*Heading to clause 13*

To omit “**Commission**” (line 1 on page 14) and substitute “**FMA**”.

*Clause 13*

To omit “Commission” in each place where it appears (lines 4, 7, 11, and 15 on page 14) and substitute in each case “FMA”.

To add the following subclause (after line 23 on page 14):

- (5) The FMA may publicly notify any details about a licence (including the information referred to in **section 12** and details relating to the variation or cancellation of a licence) as it thinks fit.

*Clause 14*

To omit “Commission” in each place where it appears (lines 26, 30, and 33 on page 14) and substitute in each case “FMA”.

*Clause 14(2)(b)*

To omit “prescribed fee” (line 31 on page 14) and substitute “fee prescribed under **section 62** of the **Financial Markets (Regulators and KiwiSaver) Act 2010**”.

*Clause 14(3)*

To omit “the information provided remains accurate at that time” (lines 35 and 36 on page 14) and substitute “all, or any specified part, of the information provided in relation to the application (whether at the time of the application or at any later date) remains accurate at the time that verification is required under this subsection”.

*Clause 15*

To omit “Commission” in each place where it appears (lines 7, 8, 16, 17, 36, and 37 on page 15 and line 27 on page 16) and substitute in each case “FMA”.

*Clause 15(5)*

To omit this subclause (lines 33 to 37 on page 16).

*Clause 15(5A)*

To omit this subclause (lines 1 to 3 on page 17).

*Clause 15(6)*

To omit this subclause (lines 4 to 14 on page 17).

*Clause 16*

To omit “Commission” in each place where it appears (lines 26, 28, and 29 on page 17) and substitute in each case “FMA”.

*Clause 17*

To omit this clause (line 32 on page 17 to line 36 on page 18) and substitute the following clause:

**17 Notice, consultation, and submissions concerning decision under section 15(1)**

- (1) Before making a decision under **section 15(1)**, the FMA must consult with, and take into account the views of,—
  - (a) the Reserve Bank of New Zealand, if the application relates to a licence that covers a debt security issued by a deposit taker;
  - (b) the Registrar of Retirement Villages, if the application relates to a licence that covers a retirement village.
- (2) The FMA may decline to issue a licence, or may issue a licence other than as proposed in the application, only if the FMA gives the applicant—
  - (a) at least 10 working days’ written notice of the following matters before the FMA makes a decision under **section 15(1)**:
    - (i) that the FMA may decline to issue a licence, or may issue a licence other than as proposed in the application; and
    - (ii) the reasons why it is considering taking that action; and
  - (b) an opportunity to make written submissions and to be heard on the matter within that notice period.
- (3) After making a decision on the application under **section 15(1)**, the FMA must notify the applicant, and any person supervised by the applicant, in writing of—
  - (a) the decision; and
  - (b) if the FMA declines to issue the licence, or does not issue or vary the licence as proposed in the application, the FMA’s reasons for the decision; and
  - (c) if the FMA issues or varies the licence (whether as proposed in the application or not), any matters that the

FMA wishes the licensee to consider for the purposes of **section 25(2)**.

*Heading to clause 18*

To omit “**Commission’s**” (line 1 on page 19) and substitute “**FMA’s**”.

*Clause 18(1)*

To omit “A person who is dissatisfied with a decision under **section 17(5)** may” (lines 3 and 4 on page 19) and substitute “An applicant may”.

To insert after “the decision” (line 6 on page 19) “under **section 17(3)**”.

*Clause 18(4)*

To omit “Commission” (line 19 on page 19) and substitute “FMA”.

*Clause 20*

To omit “Commission” in each place where it appears (lines 5 and 10 on page 20) and substitute in each case “FMA”.

*Clause 20(3)*

To omit this subclause (lines 14 to 24 on page 20).

*Heading to clause 21*

To omit “**Commission**” (line 27 on page 20) and substitute “**FMA**”.

*Clause 21*

To omit “the Commission” in each place where it appears (lines 30 and 38 on page 20, lines 8, 9, 11, 14, 15, 16, 17, 18, 22, 24, 25, 26, 27, and 29 on page 21, and lines 1, 3, 5, 7, and 9 on page 22) and substitute in each case “the FMA”.

To omit “**Commission**” (line 6 on page 21) and substitute “**FMA**”.

*Clause 21(7)(b)*

To omit “is a licensee” (lines 5 and 6 on page 22) and substitute “holds a licence that covers the security or retirement village”.

*Clause 21(8)*

To omit “a Commission” (line 8 on page 22) and substitute “an FMA”.

*Heading to clause 22*

To omit “**Commission**” (line 12 on page 22) and substitute “**FMA**”.

*Clause 22*

To omit “the Commission” in each place where it appears (lines 27, 28, and 31 on page 22 and lines 6, 9, 10, 12, and 14 on page 23) and substitute in each case “the FMA”.

To omit “or Commission” in each place where it appears (lines 35 and 38 on page 22 and lines 1 and 17 on page 23) and substitute in each case “or FMA”.

*Clause 22(1A)(b)*

To omit “**section 15(6)(b)**” (line 28 on page 22) and substitute “**section 17(3)(b)**”.

*Clause 22(2)*

To omit “a Commission” (line 30 on page 22) and substitute “an FMA”.

*Clause 23*

To omit “Commission” in each place where it appears (lines 25, 27, 31, and 33 on page 23 and line 21 on page 24) and substitute in each case “FMA”.

*Clause 23(7)*

To omit “**Commission**” (line 25 on page 24) and substitute “**FMA**”.

*Heading to clause 24*

To omit “**Commission**” (line 34 on page 24) and substitute “**FMA**”.

*Clause 24*

To omit “Commission” in each place where it appears (lines 35 and 36 on page 24 and line 1 on page 25) and substitute in each case “FMA”.

*Clause 24(2)(a)(iv)*

To omit “a description of” (line 11 on page 25).

*Clause 25*

To omit “Commission” in each place where it appears (lines 28, 32, 33, and 36 on page 25) and substitute in each case “FMA”.

*Clause 25(2)*

To omit “**sections 15(6)(c) and 30(5)(d)**” (line 33 on page 25) and substitute “**sections 17(3)(c) and 30(5)(d)**”.

*Clause 26*

To omit this clause (lines 1 to 27 on page 26).

*Heading to clause 27*

To omit “**Commission**” (line 29 on page 26) and substitute “**FMA**”.

*Clause 27*

To omit “Commission” in each place where it appears (line 31 on page 26 and lines 4, 6, and 13 on page 27) and substitute in each case “FMA”.

*Clause 27(4)(a)*

To omit “to” (line 21 on page 27).

To omit “remedy” (line 22 on page 27) and substitute “to remedy”.

To insert the following subparagraph after *paragraph (a)(i)* (after line 22 on page 27):

(ia) to avoid any further breach; or

To omit “mitigate” (line 23 on page 27) and substitute “to mitigate”.

To omit “correct” (line 26 on page 27) and substitute “in light of”.

*Clause 28*

To omit “Commission” in each place where it appears (lines 30, 31, and 34 on page 27 and lines 1, 3, and 5 on page 28) and substitute in each case “FMA”.

*Heading to clause 29*

To omit “**Commission’s**” (line 6 on page 28) and substitute “**FMA’s**”.

*Clause 29*

To omit “Commission” in each place where it appears (lines 7 and 8 on page 28) and substitute in each case “FMA”.

*Clause 29(2)(a)*

To omit “to” (line 20 on page 28).

To omit “remedy” (line 21 on page 28) and substitute “to remedy”.

To insert the following subparagraph after *paragraph (a)(i)* (after line 22 on page 28):

- (ia) avoid any further breach; or

To omit “mitigate” (line 23 on page 28) and substitute “to mitigate”.

To omit “correct” (line 26 on page 28) and substitute “in light of”.

*Heading to clause 30*

To omit “**Commission**” (line 31 on page 28) and substitute “**FMA**”.

*Clause 30*

To omit “Commission” in each place where it appears (lines 33 and 35 on page 28, lines 3, 7, 11, 14, 15, 27, 29, and 35 on page 29, and lines 2 and 6 on page 30) and substitute in each case “FMA”.

*Clause 30(2)*

To omit this subclause (lines 25 and 26 on page 29) and substitute the following subclause:

- (2) The FMA may vary a licence only if the FMA gives the applicant—
  - (a) at least 10 working days’ written notice of the following matters before the FMA varies the licence:
    - (i) that the FMA may vary the licence; and
    - (ii) the reasons why it is considering taking that action; and
  - (b) an opportunity to make written submissions and to be heard on the matter within that notice period.

*Clause 30(5)(b)*

To omit “Commission’s” (line 4 on page 30) and substitute “FMA’s”.

*Clause 31*

To omit this clause (line 9 on page 30 to line 14 on page 31).

*Heading to clause 32*

To omit “**Commission’s**” (line 15 on page 31) and substitute “**FMA’s**”.

*Clause 32(1)*

To omit “Commission’s” (lines 17 and 18 on page 31) and substitute “FMA’s”.

To omit “**section 31(5)**” (line 18 on page 31) and substitute “**section 30(1)**”.

*Clause 32(3)(b)*

To omit “Commission” (line 27 on page 31) and substitute “FMA”.

*Heading to clause 33*

To omit “**Commission’s**” (line 32 on page 31) and substitute “**FMA’s**”.

*Clause 33*

To omit “Commission” in each place where it appears (line 35 on page 31 and lines 3, 13, 29, 31, and 33 on page 32) and substitute in each case “FMA”.

*Clause 33(6)*

To omit this subclause (line 36 on page 32 to line 5 on page 33) and substitute the following subclause:

- (6) The FMA may take 1 or more of the steps referred to in **subsection (2)(b) to (d)** only if the FMA gives the licensee—
  - (a) at least 5 working days’ written notice of the following matters before the FMA takes the action:
    - (i) that the FMA may take 1 or more of the steps referred to in **subsection (2)(b) to (d)**; and
    - (ii) the reasons why it is considering taking that action; and
  - (b) an opportunity to make written submissions and to be heard on the matter within that notice period.

*Clause 34(1)(a)*

To omit “Commission’s” (line 8 on page 33) and substitute “FMA’s”.

*Clause 34(2)*

To omit “Commission” (line 21 on page 33) and substitute “FMA”.

*Clause 34(4)*

To omit “**Commission**” (line 3 on page 34) and substitute “**FMA**”.

*Clause 35(a)*

To omit “Commission’s” (line 14 on page 34) and substitute “FMA’s”.

*Clause 36(a)*

To omit “Commission’s” (line 19 on page 34) and substitute “FMA’s”.

*Heading to clause 37*

To omit “**Commission**” (line 22 on page 34) and substitute “**FMA**”.



*Clause 37(1)*

To omit “Commission” (line 29 on page 34) and substitute “FMA”.

*Clause 37(5)*

To omit this subclause (lines 7 and 8 on page 35).

*Heading to clause 38*

To omit “**Commission**” (line 9 on page 35) and substitute “**FMA**”.

*Clause 38*

To omit “the Commission” in each place where it appears (lines 15, 19, 20, 25, 26, 27, 29, and 33 on page 35 and lines 1, 2, 3, 4, 5, 6, 8, 17, 19, 21, 23, and 25 on page 36) and substitute in each case “the FMA”.

*Clause 38(1)*

To omit “**Commission**” (line 16 on page 35) and substitute “**FMA**”.

*Clause 38(2)*

To omit this subclause (lines 22 to 24 on page 35) and substitute the following subclause:

- (2) The FMA must, as soon as practicable after making the appointment, notify the affected person of the appointment.

*Clause 38(6)(b)*

To omit “is a licensee” (lines 21 and 22 on page 36) and substitute “holds a licence that covers the security or retirement village”.

*Clause 38(7)*

To omit “a Commission” (line 24 on page 36) and substitute “an FMA”.

*Heading to clause 39*

To omit “**Commission**” (line 29 on page 36) and substitute “**FMA**”.

*Clause 39*

To omit “Commission” in each place where it appears (lines 33, 36, 37, and 38 on page 36 and lines 5, 6, 7, 8, 12, 15, 16, 19, 20, and 23 on page 37) and substitute in each case “FMA”.

*Clause 39(3)*

To omit “must give a copy of the replacement notice to the Commission” (lines 10 and 11 on page 37) and substitute “must, as soon as practicable after giving the replacement notice, give a copy of the notice to the FMA”.

*Clause 40*

To omit “Commission” in each place where it appears (lines 31, 33, and 37 on page 37 and lines 2 and 10 on page 38) and substitute in each case “FMA”.

*Clause 40(4)(c)*

To omit “the time by which” (line 25 on page 38) and substitute “a reasonable time within which”.

*Clause 41(4)(b)*

To omit “Commission” (line 19 on page 39) and substitute “FMA”.

*Clause 42(1)*

To omit “Commission” (line 15 on page 41) and substitute “FMA”.

*Clause 43(1)*

To omit “Commission” (line 12 on page 42) and substitute “FMA”.

*Clause 43A(2)*

To omit “court” (line 30 on page 42) and substitute “High Court”.

*Part 3 heading*

To omit “**Commission’s**” (line 11 on page 43) and substitute “**FMA’s**”.

*Heading above clause 43B*

To omit “*Commission in relation to issuers and operators*” (lines 14 and 15 on page 43) and substitute “*FMA in relation to issuers*”.

*Clause 43B*

To omit “(other than **sections 47 and 48**)” (line 18 on page 43).

*Heading to clause 44*

To omit “**Commission**” (line 20 on page 43) and substitute “**FMA**”.

*Clause 44*

To omit “Commission” in each place where it appears (lines 23, 24, 25, 28, 29, and 32 on page 43) and substitute in each case “FMA”.

*Clause 45*

To omit “Commission” in each place where it appears (lines 8 and 10 page 44) and substitute in each case “FMA”.

*Heading to clause 46*

To omit “**Commission**” (line 16 on page 44) and substitute “**FMA**”.

*Clause 46(1A)*

To omit this subclause (line 34 on page 44 to line 13 on page 45) and substitute the following subclauses:

- (1A) This section also applies if, in the case of a scheme, a trustee or statutory supervisor becomes aware, in the course of or in connection with the performance of functions as trustee or statutory supervisor, of information on the basis of which the trustee or statutory supervisor could reasonably form the opinion that—

- (a) the funds in the scheme are not sufficient to enable debts in respect of the scheme to be paid as they become due in the normal course of business; or
  - (b) the value of the assets in the scheme is less than the value of the liabilities in respect of the scheme, including contingent liabilities; or
  - (c) it is likely that—
    - (i) the funds in the scheme will not be sufficient to enable debts in respect of the scheme to be paid as they become due in the normal course of business; or
    - (ii) the value of the assets in the scheme will be less than the value of the liabilities in respect of the scheme, including contingent liabilities.
- (1B) In **subsection (1A)**, **scheme** has the meaning given in section 2(1) of the Securities Act 1978.

*Clause 46(2)*

To omit “Commission” in each place where it appears (lines 16 and 22 on page 45) and substitute in each case “FMA”.

*Clause 47*

To omit this clause (line 27 on page 45 to line 12 on page 46).

*Clause 48(4)*

To omit this subclause (line 30 on page 46 to line 3 on page 47) and substitute the following subclause:

- (4) In this section, **protected disclosure** means a disclosure of information to the FMA in good faith by the trustee or statutory supervisor under any of **sections 44 to 46** of this Act.

*Heading above clause 49*

To omit “*Commission’s*” (line 4 on page 47) and substitute “*FMA’s*”.

*Heading to clause 49*

To omit “**Commission may give direction to trustee, etc,**” (line 5 on page 47) and substitute “**FMA may give direction to trustee or statutory supervisor**”.

*Clause 49*

To omit “Commission” in each place where it appears (lines 7, 20, and 32 on page 47) and substitute in each case “FMA”.

*Clause 49(6)*

To omit “Commission’s” (line 33 on page 47) and substitute “FMA’s”.

*Heading to clause 50*

To omit “**Commission**” (line 1 on page 48) and substitute “**FMA**”.

*Clause 50*

To omit “Commission” in each place where it appears (lines 3, 14, 15, 21, 31, 32, and 38 on page 48) and substitute in each case “FMA”.

To omit “section 49 of the Securities Act 1978 or” in each place where it appears (lines 10, 11, 18, 19, 28, 29, 35, and 36 on page 48) and substitute in each case “section **116L** of the KiwiSaver Act 2006, section 49 of the Securities Act 1978, or”.

To omit *subclause (5)* (lines 3 to 36 on page 49) and substitute the following subclause:

- (5) On an application, the court may, after giving the issuer, trustee, or statutory supervisor and any other persons that the court thinks fit the opportunity to be heard, make any order that the court may make under section **116L(4)** of the KiwiSaver Act 2006, section 49(3) of the Securities Act 1978, or **section 19A(4)** of the Unit Trusts Act 1960.

*Heading above clause 51*

To omit this heading (line 8 on page 50).

*Clause 51*

To omit this clause (lines 9 to 16 on page 50).

*Heading above clause 52*

To omit this heading (line 17 on page 50).

*Clause 52*

To omit this clause (lines 18 to 27 on page 50).

*Clause 53*

To omit this clause (lines 28 to 32 on page 50).

*Clause 54*

To omit this clause (lines 1 to 31 on page 51).

*Clause 55*

To omit this clause (line 32 on page 51 to line 17 on page 52).

*Heading to clause 56*

To omit “**Commission**” (line 19 on page 52) and substitute “**FMA**”.

*Clause 56*

To omit “Commission” in each place where it appears (lines 20, 21, and 26 on page 52) and substitute in each case “FMA”.

*Heading to clause 57*

To omit “**Commission’s**” (line 29 on page 52) and substitute “**FMA’s**”.

*Heading above clause 58*

To omit this heading (line 10 on page 53).

*Clause 58*

To omit this clause (lines 11 to 26 on page 53).

*Clause 59*

To omit “Commission” in each place where it appears (line 32 on page 53 and lines 3, 5, and 20 on page 54) and substitute in each case “FMA”.

*Clause 59(1)(e)*

To omit this paragraph (lines 13 and 14 on page 54).

*Clause 59(1)(f)*

To omit this paragraph (line 15 on page 54).

*Clause 59(4)*

To omit this subclause (lines 23 to 26 on page 54).

*Clause 59(5)*

To omit this subclause (lines 27 and 28 on page 54).

*Clause 60*

To omit clause 60 (line 30 on page 54 to line 24 on page 55) and substitute the following clauses:

**60 Temporary licences**

- (1) This section applies to—
  - (a) a person who, immediately before the commencement of this Act, was a trustee or statutory supervisor in respect of a security or statutory supervisor in respect of a retirement village and either—
    - (i) was approved to be appointed under section 48 of the Securities Act 1978, section 5 of the Unit Trusts Act 1960, or section 38 of the Retirement Villages Act 2003, whether unconditionally or subject to conditions; or
    - (ii) did not need to be approved or is otherwise lawfully appointed; and
  - (b) in the case of a KiwiSaver scheme that has an effective date that occurs on or after the commencement of this Act, the person who is the KiwiSaver trustee on that date.
- (2) However, this section does not apply to a person referred to in **subsection (1)(b)** if the FMA has—
  - (a) determined an application by that person for a licence; and
  - (b) notified the person of that determination under **section 17**.
- (3) A person to whom this section applies is deemed to hold a licence (a **temporary licence**) under this Act that—

- (a) covers the security or the retirement village referred to in **subsection (1)**; and
  - (b) includes cover for any security or retirement village to which that person is subsequently appointed (but only if the person would, in relation to that subsequent appointment, have met the requirements for appointment referred to in **subsection (1)(a)** if this Act had not been passed); and
  - (c) is subject to any conditions referred to in **subsection (1)(a)(i)**.
- (4) A person who holds a temporary licence must, no later than 1 month after the commencement of this Act or (in the case of a KiwiSaver trustee referred to in **subsection (1)(b)**) no later than 1 month after the effective date of the relevant scheme, either—
  - (a) make an application under **section 14** for a licence that covers the security or retirement village; or
  - (b) notify the issuer of the security or the operator of the retirement village, and the FMA, in writing, that the person does not intend to make the application referred to in **paragraph (a)**.
- (5) Subject to **section 18(2)**, a temporary licence expires on the earliest of the following:
  - (a) the date on which the temporary licence is cancelled under **section 16 or 33(2)(d)**;
  - (b) the date on which a licence issued to the holder of a temporary licence under **section 15** takes effect;
  - (c) the date on which the FMA notifies the holder (under **section 17**) that an application for a licence under **section 14** has been rejected;
  - (d) the close of 30 September 2012.
- (6) This Act applies in relation to a temporary licence in the same way as it applies in relation to a licence issued under **section 15**, except that a person who holds a temporary licence does not, during the currency of the temporary licence, have to comply with **section 24**.
- (7) To avoid doubt, nothing in **subsection (4)(a)** requires a trustee or statutory supervisor to make more than one application for a licence under **section 14**.
- (8) In this section, **appointed**—
  - (a) means appointed as a trustee or statutory supervisor; and
  - (b) in relation to a KiwiSaver trustee, includes designated.

- (9) In this section and in **section 60A**, **effective date** has the meaning given in **section 209 of the Financial Markets (Regulators and KiwiSaver) Act 2010**.

**60A Limitation of Act in relation to existing KiwiSaver schemes**

- (1) This Act (including, to avoid doubt, the amendments to the KiwiSaver Act 2006 made under this Act) applies in relation to an existing KiwiSaver scheme only on and from the effective date for that scheme.
- (2) In this section, **existing KiwiSaver scheme** has the meaning given in **section 209 of the Financial Markets (Regulators and KiwiSaver) Act 2010**.

**60B FMA may grant exemptions**

- (1) The FMA may, at any time before 1 October 2012,—
- (a) exempt any person, on any terms and conditions it thinks fit, from compliance with any provision of this Act or any provision of any other enactment that requires a person to be licensed under this Act;
  - (b) vary or revoke any exemption granted, or any terms and conditions imposed, under **paragraph (a)** (in which case, **subsections (2) to (6)** apply, with necessary modifications, in all respects to such a variation or revocation).
- (2) The FMA must be satisfied, before it grants an exemption under **subsection (1)(a)**, that—
- (a) the action is necessary or desirable to facilitate or ensure an orderly transition to the requirements under this Act; 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) An exemption granted under **subsection (1)(a)**—
- (a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989; and
  - (b) must be presented to the House of Representatives under section 4 of the Regulations (Disallowance) Act 1989; and
  - (c) must, as soon as practicable after it is granted, be—
    - (i) published on an Internet site maintained by or on behalf of the FMA; and
    - (ii) notified in the *Gazette*; and

- (iii) made available in printed form for purchase on request by members of the public.
- (4) A notification in the *Gazette* does not have to include the text of the exemption.
- (5) The FMA's reasons for granting an exemption under **subsection (1)(a)** (including why the exemption is appropriate) must be published together with the exemption.
- (6) An exemption granted under **subsection (1)(a)** expires on the earliest of the following:
  - (a) the expiry date stated in the exemption;
  - (b) the date on which the exemption is revoked under **subsection (1)(b)**;
  - (c) the close of 30 September 2012.
- (7) A person does not commit an offence under **section 8(1) or 8(1A)** if that person has been granted an exemption from **section 6**.
- (8) To avoid doubt, **section 60** does not apply to a person if that person has been granted an exemption from **section 6**.

*Clause 62*

To omit this clause (line 32 on page 55 to line 4 on page 57) and substitute the following clause:

**62 New section 11 substituted**

Section 11 is repealed and the following section substituted:

**“11 Disclosure of information to Registrar by statutory supervisor of retirement village**

“(1) This section applies if a statutory supervisor (under the Retirement Villages Act 2003) of a retirement village operated by a corporation becomes aware, in the course of or in connection with the performance of the statutory supervisor's functions, of information on the basis of which the statutory supervisor could reasonably form the opinion that—

“(a) the corporation is unable to pay the corporation's debts as they become due in the normal course of business; or

“(b) the value of the corporation's assets is less than the value of the corporation's liabilities, including contingent liabilities; or

“(c) it is likely that—

“(i) the corporation will be unable to pay the corporation's debts as they become due in the normal course of business; or

“(ii) the value of the corporation's assets will be less than the value of the corporation's liabilities, including contingent liabilities; or



- “(d) the corporation has breached, or is likely to breach, in a material respect, the terms of the deed of supervision relating to the retirement village.
- “(2) The statutory supervisor must, as soon as practicable, disclose to the Registrar all information relevant to the matter referred to in **subsection (1)** that is in the possession or control of the statutory supervisor and was obtained in the course of, or in connection with, the performance of functions as statutory supervisor.”

*New clause 63A*

To insert the following clause after *clause 63* (after line 6 on page 57):

**63A Amendment to Financial Markets (Regulators and KiwiSaver) Act 2010**

- (1) This section amends the **Financial Markets (Regulators and KiwiSaver) Act 2010**.
- (2) **Part 1 of Schedule 1** is amended by inserting the following item in its appropriate alphabetical order:
- “Securities Trustees and Statutory Supervisors Act **2009**”.

*New heading and clause 64A*

To insert the following heading and clause after *clause 64* (after line 16 and the item under that line on page 57):

*Amendments to KiwiSaver Act 2006*

**64A Amendments to KiwiSaver Act 2006**

- (1) This section amends the KiwiSaver Act 2006.
- (2) **Section 116F** is amended by repealing **subsection (2)** and substituting the following subsection:
- “(2) The trustee must hold a licence under the **Securities Trustees and Statutory Supervisors Act 2009** that covers interests in the scheme.”
- (3) **Section 116FA(1)** is amended by inserting the following paragraph after **paragraph (a)**:
- “(ab) another person has been appointed to the position who holds a licence under the **Securities Trustees and Statutory Supervisors Act 2009** that covers interests in the scheme, and that person has accepted the appointment; or”.
- (4) **Section 116FA** is amended by repealing **subsection (2)** and substituting the following subsection:
- “(2) Despite anything to the contrary in the trust deed, a manager must not discharge or remove a trustee unless the manager does so—
- “(a) under **section 22 or 39 of the Securities Trustees and Statutory Supervisors Act 2009**; or

“(b) with the approval of the High Court.”

*Clause 64(2): first column of table*

To omit “Securities Commission” (after line 16 on page 57) and substitute “Financial Markets Authority”.

*Clause 64(2): second column of table*

To omit “licensed unit trustees, and licensed statutory supervisors of retirement villages” (after line 16 on page 57) and substitute “and licensed unit trustees”.

*Clause 64(2): third column of table*

To omit “(as applied, in the case of statutory supervisors of retirement villages, by **section 37** of the Retirement Villages Act 2003)” (after line 16 on page 57).

*Clause 68: new section 39(3)*

To omit “**Part 2**” (line 8 on page 59) and substitute “**section 22 or 39**”.

*Clause 71*

To omit this clause (lines 21 to 33 on page 59).

*Clause 72*

To omit “Commission” (line 16 on page 60) and substitute “FMA”.

*Clause 73*

To add the following subclause as subclause (2) (after line 23 on page 60):

- (2) Section 49(3) is amended by inserting the following paragraph after paragraph (f):
  - “(fa) remove a person as manager and appoint another person as manager (with any powers that the court orders):”.

*Heading to clause 74*

To omit “**50B**” (line 24 on page 60) and substitute “**50C**”.

*Clause 74*

To omit “50A” (line 25 on page 60) and substitute “50B”.

*Clause 74: new section 50B*

Heading to *new section 50B*: to omit “**50B**” (line 26 on page 60) and substitute “**50C**”.

To omit *new subsection (4)(d)* (line 7 on page 61) and substitute the following paragraphs:

- “(d) section 50A(3):
- “(e) section **50B(3)**:
- “(f) section **50B(4)**.

*Clause 76*

To omit this clause (lines 13 to 15 on page 61).

*Clause 77*

To omit this clause (lines 16 to 20 on page 61).

*Clause 78*

To add the following subclause as subclause (2) (after line 26 on page 61):

- (2) Section 70 is amended by inserting the following subsection after subsection (1):
- “(1A) Regulations made for the purposes of subsection (1)(g) may, without limitation, do all or any of the following:
- “(a) specify the duties and powers of the trustee or statutory supervisor:
  - “(b) specify the duties of the issuer:
  - “(c) provide for the trustee or statutory supervisor to have the power, exercisable with the consent of the issuer (but without the consent of security holders having to be obtained), to make amendments to the trust deed or deed of participation that do not adversely affect the interests of security holders.”

*Clause 79*

To omit this clause (lines 27 to 30 on page 61).

*Clause 82(3)*

To omit “trustee, statutory supervisor, or unit trustee” from *new section 7(2)(p)* (line 24 on page 62) and substitute “trustee or statutory supervisor”.

*Clause 87: new section 12(1A)*

To omit *new section 12(1A)* (lines 27 to 30 on page 63) and substitute the following subsection:

- “(1A) A provision implied in a trust deed by regulations made under **section 28(2)(e)**—
- “(a) does not apply to the extent that it is inconsistent with provisions implied in the trust deed by section 12(1); but
  - “(b) applies despite anything else to the contrary in the trust deed.”

*Clause 87*

To add the following subclause (after line 30 on page 63):

- (2) Section 12(2) is amended by inserting “, the manager,” after “the trustee”.

*Clause 88*

To omit “Securities Commission” in each place where it appears (line 33 on page 63 and lines 2 and 3 on page 64) and substitute in each case “Financial Markets Authority”.

*Clause 89: new section 19A*

*New section 19A(4)(b)*: to omit this paragraph (lines 21 to 24 on page 64) and substitute the following paragraph:

- “(b) impose restrictions on the activities of the trustee or the manager (including, in the case of the manager, restrictions on advertising) that the court thinks are necessary for the protection of the interests of unit holders:

*New section 19A(4)(e)*: to omit “the manager” (line 38 on page 64) and substitute “the trustee or the manager”.

*New section 19A(4)(f)*: to omit “the manager” (line 1 on page 65) and substitute “the trustee or the manager”.

*New section 19A(4)*: to insert the following paragraph after *new paragraph (f)* (after line 2 on page 65):

- “(fa) remove a person as manager and appoint another person as manager (with any powers that the court orders):

*New section 19A(6)*: to omit “of the manager” (line 7 on page 65) and substitute “in respect of the unit trust”.

*Clause 90*

*New section 28(2)(e)*: to omit this paragraph (lines 13 and 14 on page 65) and substitute the following paragraph:

- “(e) subject to **subsection (3)**, prescribing provisions to be implied into a trust deed.”

*New section 28(4)*: to omit this subsection (lines 25 and 26 on page 65).

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### Explanatory note

This Supplementary Order Paper amends the Securities Trustees and Statutory Supervisors Bill to—

- include a specific commencement date (*clause 2*); and
- remove a reference to *clause 7*, to ensure that an FMA appointee that holds a licence must comply with any conditions on the licence (*clause 8A*); and
- omit *subclause 37(5)*, because that subclause is unnecessary; and
- replace the existing *clause 60* with a *new clause 60*, to both clarify the temporary licence regime and include KiwiSaver trustees; and
- insert *new clause 60A* (which will limit the application of the Bill in relation to existing KiwiSaver schemes) and *new clause 60B* (which will enable the FMA to grant exemptions); and
- change references to “Commission” to “FMA”, to take account of the new Financial Markets Authority regime; and
- include KiwiSaver schemes and the trustees of those schemes in this Bill; and

- make minor drafting changes to improve consistency throughout the Bill and ensure consistency with the **Financial Markets (Regulators and KiwiSaver) Act 2010**, including the removal of *clauses 51 to 55*, which are unnecessary, given that the provisions in that Act will cover the matters currently dealt with in those clauses.
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