Version
as at 28 October 2021

Financial Markets Supervisors Act 2011

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Date of assent	18 April 2011
Commencement	see section 2

Act name: amended, on 1 December 2014, by section 111(1)(a) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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

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Title: amended, on 1 December 2014, by section 111(1)(a) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Markets Supervisors Act 2011.

Section 1: amended, on 1 December 2014, by section 111(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

2 Commencement

This Act comes into force on 1 October 2011.

Part 1
Preliminary provisions

3 Purpose

(1) The purpose of this Act is to protect the interests of product holders, and of residents of retirement villages, and to enhance investor confidence in financial markets and retirement villages, by—

(a) requiring persons who wish to be appointed as supervisors to be capable of effectively performing the functions of supervisors; and

(b) requiring supervisors to perform their functions effectively; and

(c) enabling supervisors to be held accountable for any failure to perform their functions effectively.

(2) That purpose is additional to the purposes of the Financial Markets Conduct Act 2013 set out in sections 3 and 4 of that Act (which apply to this Act also).

Section 3: replaced, on 1 December 2014, by section 112 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

4 Interpretation

(1) In this Act, unless the context otherwise requires,—

debt security has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

deed of supervision has the meaning given in section 5 of the Retirement Villages Act 2003 and includes every instrument that amends the deed of supervision

deposit taker means an NBDT as defined in section 5 of the Non-bank Deposit Takers Act 2013

financial product has the same meaning as in section 7 of the Financial Markets Conduct Act 2013

FMA means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

FMA appointee has the meaning given in section 37(1)

governing document means, as the context requires,—

(a) a governing document within the meaning of section 6(1) of the Financial Markets Conduct Act 2013:

(b) a deed of supervision

issuer,—

(a) in respect of a debt security, means the issuer of the debt security within the meaning of section 11 of the Financial Markets Conduct Act 2013:

(b) in respect of a registered scheme, means the manager of the scheme within the meaning of section 6(1) of the Financial Markets Conduct Act 2013

issuer obligation means an obligation imposed on the issuer of a financial product by or under any or all of the following:

(a) the governing document that relates to the product:

(b) the terms of any offer of the product:

(c) a court order relating to the product:

(d) this Act:

(e) the Financial Markets Conduct Act 2013:

(f) the KiwiSaver Act 2006:

(g) the Non-bank Deposit Takers Act 2013

licence means a licence issued under section 16, and includes a temporary licence

licensee—

(a) means a supervisor that holds a licence; and

(b) includes an FMA appointee, whether or not that appointee holds a licence

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 financial product:

(c) a court order relating to a supervised interest:

(d) this Act:

(e) the Financial Markets Conduct Act 2013:

(f) the KiwiSaver Act 2006:

(g) the Non-bank Deposit Takers Act 2013:

(h) the Retirement Villages Act 2003

material change of circumstances, in relation to a licensee, means—

(a) a change that adversely affects the licensee's capacity effectively to perform the functions of a supervisor in respect of a debt security or registered scheme, or of a statutory supervisor in respect of a retirement village, covered by the licence; or

(b) a change that means that the licensee no longer meets the requirements referred to in section 16(2)

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

operator has the meaning given in section 5 of the Retirement Villages Act 2003

operator obligation means an obligation imposed on the operator by or under any or all of the following:

(a) every deed of supervision that relates to the retirement village:

(b) a court order relating to the retirement village:

(c) this Act:

(d) the Retirement Villages Act 2003

prescribed means prescribed in regulations made under this Act

product holder has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

registered scheme has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

resident has the meaning given in section 5 of the Retirement Villages Act 2003

retirement village has the meaning given in section 6 of the Retirement Villages Act 2003

supervised interest means,—

(a) in relation to a supervisor of a debt security or registered scheme (**S**), a debt security or scheme in respect of which S is the supervisor:

(b) in relation to a statutory supervisor of a retirement village (**S**), a retirement village in respect of which S is the statutory supervisor

supervised issuer, in relation to a supervisor of a debt security or registered scheme, means the issuer of the debt security or managed investment products in the scheme

supervisor or **statutory supervisor** means,—

(a) in relation to a debt security or registered scheme, a supervisor within the meaning of section 6(1) of the Financial Markets Conduct Act 2013:

(b) in relation to a retirement village, a statutory supervisor as defined in section 5 of the Retirement Villages Act 2003

temporary licence has the meaning given in section 54

vary, in relation to a licence, includes—

(a) imposing a condition on the licence; and

(b) varying or removing a condition previously imposed on the licence.

(2) Unless the context otherwise requires, a term or expression that is defined in the Financial Markets Conduct Act 2013 (in relation to financial products) or the Retirement Villages Act 2003 (in relation to retirement villages) and used, but not defined, in this Act has the same meaning as in those Acts.

Section 4(1) **debt security**: inserted, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **deed of participation**: repealed, on 1 December 2014, by section 113(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **deposit taker**: replaced, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Section 4(1) **financial product**: inserted, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **governing document**: replaced, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **issuer**: replaced, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **issuer obligation**: replaced, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **issuer obligation** paragraph (g): replaced, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Section 4(1) **KiwiSaver scheme**: repealed, on 1 December 2014, by section 113(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **KiwiSaver trustee**: repealed, on 1 December 2014, by section 113(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **licensee**: replaced, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **licensee obligation**: replaced, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **licensee obligation** paragraph (g): replaced, on 1 May 2014, by section 102 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Section 4(1) **material change of circumstances** paragraph (a): amended, on 1 December 2014, by section 113(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **product holder**: inserted, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **registered scheme**: inserted, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **restricted scheme**: repealed, on 1 December 2014, by section 113(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **security**: repealed, on 1 December 2014, by section 113(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **statutory supervisor**: repealed, on 1 December 2014, by section 113(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **supervised interest** paragraph (a): replaced, on 1 December 2014, by section 113(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **supervised issuer**: replaced, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **supervisor** or **statutory supervisor**: inserted, on 1 December 2014, by section 113(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **trust deed**: repealed, on 1 December 2014, by section 113(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **trustee**: repealed, on 1 December 2014, by section 113(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(1) **unit trustee**: repealed, on 1 December 2014, by section 113(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 4(2): amended, on 1 December 2014, by section 113(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

5 Act binds the Crown

This Act binds the Crown.

Part 2
Regulation of supervisors

Part 2 heading: amended, on 1 December 2014, by section 114 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Subpart 1—Licensing of supervisors

Subpart 1 heading: amended, on 1 December 2014, by section 115 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Requirement to be licensed, etc

6 Supervisor must be licensed

(1) A supervisor in respect of a debt security must hold a licence that covers supervision of the security.

(2) A supervisor in respect of a registered scheme must hold a licence that covers supervision of the scheme.

(3) A statutory supervisor in respect of a retirement village must hold a licence that covers supervision of the retirement village.

(4) A contravention of this section may give rise to a pecuniary penalty under section 41.

Section 6: replaced, on 1 December 2014, by section 116 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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).

Section 7: replaced, on 1 December 2014, by section 117 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

8 Prohibition on holding out

(1) A person must not represent that the person is licensed to be a supervisor in respect of a debt security, registered scheme, or retirement village if the person does not hold a licence that covers supervision of the debt security, registered scheme, or retirement village.

(2) A contravention of this section may give rise to a pecuniary penalty under section 41.

Section 8: replaced, on 1 December 2014, by section 118 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

9 Requirement to be licensed: exception for certain FMA appointees

Section 6 does not apply to a person appointed as an FMA appointee under section 22 or 37.

Section 9: amended, on 1 December 2014, by section 119 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Licences: general

10 FMA may license supervisors

(1) The FMA may license a person to be 1 or more of the following:

(a) a supervisor in respect of debt securities:

(b) a supervisor in respect of registered schemes:

(c) a statutory supervisor in respect of retirement villages.

(2) A licence may cover supervision of all debt securities, all registered schemes, all retirement villages, or any 1 or more of the following:

(a) debt securities of 1 or more classes:

(b) 1 or more particular issues of debt securities:

(c) registered schemes of 1 or more classes:

(d) 1 or more particular registered schemes:

(e) retirement villages of 1 or more classes:

(f) 1 or more particular retirement villages.

(3) A class may be defined (to include or exclude supervision of a debt security, registered scheme, or retirement village) in any way, including, without limitation, by reference to—

(a) a particular issuer or operator; or

(b) a particular class of issuer or operator.

Section 10: replaced, on 1 December 2014, by section 120 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

11 FMA may impose conditions on licence

(1) The FMA may, on granting or varying a licence, impose conditions on the licence.

(2) The FMA may impose conditions that—

(a) limit a licence:

(b) apply only if the licensee is appointed as—

(i) supervisor in respect of a particular debt security or class of debt security; or

(ia) supervisor in respect of a particular registered scheme or class of registered scheme; or

(ii) statutory supervisor in respect of a particular retirement village or class of retirement village.

(3) Subsection (2) does not limit subsection (1).

(4) Examples of the conditions that the FMA may impose on a licence under subsection (2)(a) include, without limitation, conditions—

(a) limiting the number of appointments as supervisor that may be held by the licensee:

(b) setting a maximum value for supervised interests that are debt securities or registered schemes:

(c) limiting the number of retirement villages in respect of which the statutory supervisor may hold a licence:

(d) relating to the matters listed in section 16(3).

Section 11(2)(b)(i): replaced, on 1 December 2014, by section 121(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 11(2)(b)(ia): inserted, on 1 December 2014, by section 121(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 11(4)(a): replaced, on 1 December 2014, by section 121(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 11(4)(b): replaced, on 1 December 2014, by section 121(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

12 Duration of licence

(1) A licence must be issued for a fixed period of no more than 8 years.

(2) A licence takes effect on the date stated in the licence.

(3) Subject to section 19(2), a licence expires on the earlier of—

(a) the date on which the licence is cancelled under section 17 or 32(2)(d); and

(b) the date on which the fixed period ends.

13 Information to be stated in licence

A licence must state the following information:

(a) the name of the licensee:

(b) in the case of debt securities, the debt security or debt securities the supervision of which is covered by the licence:

(c) in the case of registered schemes, the scheme or schemes the supervision of which is covered by the licence:

(ca) in the case of retirement villages, the retirement village or villages the supervision of which is covered by the licence:

(d) the conditions (if any) imposed on the licence by the FMA under section 11:

(e) the date on which the licence takes effect:

(f) the date on which the fixed period for which the licence is issued ends:

(g) the date by which the first report under section 25 must be delivered.

Section 13(b): replaced, on 1 December 2014, by section 122(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 13(c): replaced, on 1 December 2014, by section 122(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 13(ca): inserted, on 1 December 2014, by section 122(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 13(d): amended, on 1 December 2014, by section 122(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

14 FMA must send licence and details to licensee and others

(1) If the FMA issues a licence, the FMA must send the licence to the licensee.

(2) If the FMA varies a licence, the FMA must send a replacement licence to the licensee.

(3) If the FMA cancels a licence, the FMA must notify the former licensee.

(4) In addition to the requirements of subsections (1) to (3), the FMA must send details of the licence or the replacement licence or notification of the cancellation (as the case may be) to—

(a) the Registrar of Financial Service Providers, if the licence relates to a debt security or registered scheme; and

(b) the Reserve Bank of New Zealand, if the licensee is, or was, the supervisor of a debt security issued by a deposit taker; and

(c) the Registrar of Retirement Villages, if the licensee is, or was, the statutory supervisor of a retirement village.

(5) The FMA may publicly notify any details about a licence (including the information referred to in section 13 and details relating to the variation or cancellation of a licence) as it thinks fit.

Section 14(4)(a): amended, on 1 December 2014, by section 123(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 14(4)(b): amended, on 1 December 2014, by section 123(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Applications for, to vary, or to cancel licences

15 Application for, or to vary, licence

(1) A person may apply to the FMA—

(a) for a licence; or

(b) to vary a licence.

(2) An application must be—

(a) made in the form required by the FMA; and

(b) accompanied by the fee prescribed under section 67 of the Financial Markets Authority Act 2011.

(3) For the purpose of making a decision on an application, the FMA may require the applicant to supply information in addition to that contained in the application and may, at any time, require the applicant to verify that 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.

16 Decision on application for, or to vary, licence

(1) The FMA may issue or vary a licence only if the FMA is satisfied that, having regard to any conditions imposed on the licence, the applicant is capable of effectively performing (or will, after the variation, be capable of effectively performing)—

(a) the functions of a supervisor in respect of debt securities or registered schemes the supervision of which is covered by the licence:

(b) the functions of a statutory supervisor in respect of retirement villages the supervision of which is covered by the licence.

(2) Despite subsection (1), the FMA may not issue a licence unless the FMA is satisfied that the applicant meets the following requirements:

(a) the applicant is—

(i) a body corporate that is incorporated in New Zealand; or

(ii) an overseas company (as defined in the Companies Act 1993) registered under that Act:

(b) every director and senior manager of the applicant is of good character:

(c) in the case of an applicant for a licence that covers supervision of a debt security or a registered scheme, the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute

Resolution) Act 2008 on and from commencing to perform the functions of a supervisor:

(d) in the case of an applicant for a licence that covers supervision of a retirement village, the applicant complies with section 13(1)(a) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

(3) Before making a decision under subsection (1), the FMA must assess the following matters:

(a) the experience, skills, and qualifications of the applicant (including, in particular, of the applicant's directors and senior managers):

(b) the financial resources available to the applicant:

(c) the other resources available to the applicant:

(d) the applicant's procedures for ensuring that the applicant complies with the licensee obligations:

(e) the applicant's procedures for ensuring that,—

(i) in the case of a licence relating to debt securities or registered schemes, issuers of those debt securities or of managed investment products in those schemes comply with the issuer obligations; and

(ii) in the case of a licence relating to retirement villages, operators of those retirement villages comply with the operator obligations:

(f) the applicant's independence from issuers, or from operators, covered by the licence:

(g) the applicant's governance structure:

(h) the applicant's professional indemnity insurance:

(i) other prescribed matters that relate to the applicant, to debt securities, registered schemes, or retirement villages the supervision of which is covered by the licence, and to issuers or operators covered by the licence:

(j) any other matter that the FMA considers is material.

(4) In this section,—

director has the meaning given in section 126 of the Companies Act 1993, but also includes, in the case of a body corporate that is not a company, a person (including a delegate) who occupies a position comparable to that of a director

senior manager, in relation to an applicant, means a person (including a delegate) who is not a director but occupies a position that allows the person to exercise significant influence over the management or administration of the applicant (for example, a chief executive or a chief financial officer).

Section 16(1): replaced, on 1 December 2014, by section 124(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 16(2)(c): replaced, on 1 December 2014, by section 124(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 16(2)(d): editorial change made by the PCO, on 29 October 2024, under sections 86(1) and 87(l)(iii) of the Legislation Act 2019 (2019 No 58).

Section 16(2)(d): amended, on 1 December 2014, by section 124(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 16(3)(e)(i): replaced, on 1 December 2014, by section 124(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 16(3)(i): replaced, on 1 December 2014, by section 124(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

17 Application to cancel licence

(1) The FMA may cancel a licence on the written application of the licensee.

(2) Before cancelling a licence under subsection (1), the FMA must be satisfied that the licensee does not hold an appointment as a supervisor.

Section 17(2): amended, on 1 December 2014, by section 125 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

18 Notice, consultation, and submissions concerning decision under section 16(1)

(1) Before making a decision under section 16(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 supervision of a debt security issued by a deposit taker:

(b) the Registrar of Retirement Villages, if the application relates to a licence that covers supervision of 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 16(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 16(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 26(2).

Section 18(1)(a): amended, on 1 December 2014, by section 126 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 18(1)(b): amended, on 1 December 2014, by section 126 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

19 Appeal to High Court against FMA's decision on application

(1) An applicant may appeal to the High Court no later than 20 working days, or such further period as the court may allow, after receiving written notice of the decision under section 18(3).

(2) If a supervisor in respect of a debt security, registered scheme, or retirement village lodges an appeal against a decision not to issue a new licence that covers supervision of the debt security, scheme, or retirement village, the court may extend the validity of the supervisor's current licence, to the extent that it covers supervision of the debt security, scheme, or retirement village, until the appeal has been determined or withdrawn.

(3) A decision against which an appeal is lodged remains valid pending the determination of the appeal unless the court orders otherwise.

(4) On appeal, the court may—

(a) confirm, cancel, or vary the decision; or

(b) refer the decision back to the FMA with a direction to reconsider the whole or a specified part of the decision.

Section 19(2): replaced, on 1 December 2014, by section 127 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Expiry of licences and temporary appointment powers for expiries and other vacancies

Heading: amended, on 1 December 2014, by section 128 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

20 Effect of expiry of licence

(1) The expiry of the licence of a person who holds an appointment as a supervisor does not, of itself, terminate the appointment (but, if the person continues to hold the appointment and does not obtain a new licence, the person breaches section 6).

(2) This section is for the avoidance of doubt.

Section 20(1): amended, on 1 December 2014, by section 129 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

21 Licensee must apply for new licence or notify issuer or operator before licence expires

(1) A licensee appointed as a supervisor in respect of a debt security, registered scheme, or retirement village must, between 9 and 12 months before the expiry date of the licence,—

(a) make an application under section 15 for a new licence that covers supervision of that debt security, scheme, or retirement village; or

(b) notify the issuer of the debt security or managed investment products in the scheme or the operator of that retirement village (as the case may be) and the FMA, in writing, that the licensee does not intend to make the application referred to in paragraph (a).

(2) If the licensee makes an application referred to in subsection (1)(a), the FMA must make a decision on the application no later than 3 months before the expiry date.

(3) In this section, **expiry date** means the date on which the fixed period for which a licence is issued under section 16 ends.

Section 21(1): replaced, on 1 December 2014, by section 130 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

22 FMA may make temporary appointment

(1) This section applies if—

(a) all of the following are satisfied in relation to a supervisor in respect of a debt security or registered scheme or a statutory supervisor in respect of a retirement village (the **existing appointee**):

(i) the FMA rejects an application by the existing appointee for a new licence that covers supervision of the debt security, scheme, or retirement village; and

(ii) the existing appointee no longer holds a licence that covers supervision of the debt security, registered scheme, or retirement village; and

(iii) the existing appointee has not been replaced; or

(b) the existing appointee wishes, at any time, to resign, ceases to carry on business, refuses to act as a supervisor, or is for any reason incapable of acting as a supervisor and the existing appointee has not been replaced; or

(c) a debt security, a registered scheme, or a retirement village does not, for any reason, have a supervisor.

(2) The FMA may,—

(a) in the case of subsection (1)(a) or (b), remove an existing appointee as supervisor in respect of the debt security or registered scheme, or as

statutory supervisor in respect of the retirement village, by written notice to the existing appointee; and

(b) in any case, appoint a person (the **FMA appointee**) to the position of supervisor of the debt security, registered scheme, or retirement village for a period of 6 months; and

(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).

(3) Before making an appointment under subsection (2)(b) or (c), the FMA must, if the FMA considers it practicable to do so, consult the relevant issuer or operator.

(3A) The FMA's ability to set preconditions on requests to it under subsection (1)(b) includes (without limitation) a discretion to set preconditions that satisfy the FMA that—

(a) it is appropriate for the replacement of the existing appointee to be done under this section rather than by means of another power or process; and

(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.

(4) The FMA must, as soon as practicable after making the appointment, notify the issuer or the operator of the appointment.

(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.

(6) Subject to subsection (7), the FMA appointee is bound by the terms of the governing document relating to the debt security, registered scheme, or retirement village.

(7) The FMA may approve a change to those terms (including a change that increases the charges payable to the FMA appointee) during the period of the FMA appointee's appointment if—

(a) the issuer or operator (as the case may be) and the FMA appointee agree that the change should be made; and

(b) the FMA is satisfied that the change will have no significant adverse effect on the interests of holders of the debt security or managed investment product or on the interests of residents of the retirement village.

(8) The power in subsection (7) may be exercised to approve a change to the terms of the governing document despite anything to the contrary in the document.

(9) Before the appointment of the FMA appointee under subsection (2) finally comes to an end (taking into account any reappointment under subsection (2)(c)), the issuer or the operator must either—

(a) appoint a licensee as a replacement for the FMA appointee; or

(b) appoint the FMA appointee as the supervisor on a continuing basis (provided that the FMA appointee holds a licence that covers supervision of the debt security, registered scheme, or retirement village).

(10) Despite sections 6 and 16(2), the FMA may appoint, as an FMA appointee, any person (including a natural person) that the FMA considers appropriate in the circumstances, whether or not that person holds a licence.

(11) If the FMA appointee does not hold a licence, the FMA appointee must, for the purposes of the Financial Markets Conduct Act 2013 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).

Section 22 heading: replaced, on 1 December 2014, by section 131(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(1): replaced, on 1 December 2014, by section 131(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(2): replaced, on 1 December 2014, by section 131(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(3): amended, on 1 December 2014, by section 131(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(3A): inserted, on 1 December 2014, by section 131(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(4): amended, on 1 December 2014, by section 131(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(5): replaced, on 1 December 2014, by section 131(6) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(5A): inserted, on 1 December 2014, by section 131(6) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(6): amended, on 1 December 2014, by section 131(7) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(7)(b): amended, on 1 December 2014, by section 131(8) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(9): amended, on 1 December 2014, by section 131(9) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(9)(b): replaced, on 1 December 2014, by section 131(10) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 22(11): inserted, on 1 December 2014, by section 131(11) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

23 Issuer or operator may replace existing appointee or FMA appointee

(1) This section applies if—

(a) the licence of a supervisor in respect of a debt security or registered scheme or of a statutory supervisor of a retirement village (the **existing appointee**) is due to expire; and

(b) the existing appointee will, on the expiry of the licence, no longer hold a licence that covers supervision of the debt security, registered scheme, or retirement village.

(2) For the purposes of subsection (1)(a), a licence is due to expire if—

(a) the licensee has given notice in accordance with section 21(1)(b) (notice that the licensee does not intend to apply for a new licence that covers supervision of the debt security, registered scheme, or retirement village); or

(b) the FMA has given notice in accordance with section 18(3)(b) (notice that the FMA will not be issuing a new licence as proposed in the application).

(3) This section also applies if an FMA appointee has been appointed by the FMA under section 22(2)(b) or (c).

(4) If the issuer of the debt security or managed investment products, or the operator of the retirement village, appoints a person (the **new appointee**) as the supervisor in place of the existing appointee or the FMA appointee, and the new appointee accepts the appointment, the issuer or operator may remove the existing appointee or the FMA appointee by written notice to the existing appointee or the FMA appointee.

(5) An appointment under subsection (4) must be made in accordance with the relevant governing document.

(6) The issuer or operator must, as soon as practicable after giving the written notice, give a copy of the notice to the FMA.

(7) The removal of the existing appointee takes effect on the date stated in, or calculated in accordance with, the notice.

(8) But if the notice is given to the FMA appointee, the removal of the FMA appointee cannot take effect until at least 15 working days have passed since the date on which the notice was given to the FMA appointee.

(9) Subsection (8) does not apply if the FMA appointee agrees in writing that the subsection does not apply.

(10) The power in subsection (4) may be exercised to remove the existing appointee or FMA appointee despite anything to the contrary in the governing document.

(11) Nothing in this section limits the issuer's or operator's power to remove the existing appointee apart from under this section.

Section 23 heading: amended, on 1 December 2014, by section 132(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 23(1): replaced, on 1 December 2014, by section 132(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 23(2): replaced, on 1 December 2014, by section 132(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 23(3): amended, on 1 December 2014, by section 132(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 23(4): replaced, on 1 December 2014, by section 132(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

24 Existing appointee must provide documents

(1) The FMA appointee may, by giving notice in writing to the existing appointee, require the existing appointee to provide the FMA appointee, at the existing appointee's expense, with all documents held by, or in the control of, the existing appointee that relate to the functions of the position to which the FMA appointee has been appointed.

(2) The new appointee may, by giving notice in writing to the existing appointee or FMA appointee (**person A**), require person A to provide the new appointee, at person A's expense, with all documents held by, or in the control of, person A that relate to the functions of the position to which the new appointee has been appointed.

(3) A notice under this section—

(a) must be given no later than 6 months after the date of the appointment of the person who gives the notice:

(b) ceases to be effective if the person who gives the notice ceases to hold the position referred to in subsection (1) or (2):

(c) must specify a reasonable time within which the documents must be provided.

(4) An existing appointee or an FMA appointee to whom a notice is given under subsection (1) or (2) must comply with the notice.

(5) A document provided pursuant to a notice under this section may be used only for the purpose of performing the functions of the position referred to in subsection (1) or (2).

(6) A contravention of subsection (4) or (5) may give rise to a pecuniary penalty under section 41.

(7) In this section,—

existing appointee—

(a) has the meaning given in section 22(1)(a) or 23(1)(a); and

(b) includes, in relation to an FMA appointee who is appointed in the circumstances referred to in section 22(1)(c), the person who held the position of supervisor of the debt security, registered scheme, or retirement village before the FMA appointee was appointed

FMA appointee has the meaning given in section 22(2)(b)

new appointee has the meaning given in section 23(4).

Section 24 heading: amended, on 1 December 2014, by section 133(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 24(4): replaced, on 1 December 2014, by section 133(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 24(6): replaced, on 1 December 2014, by section 133(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 24(7) **existing appointee**: replaced, on 1 December 2014, by section 133(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Subpart 2—Monitoring and enforcement

Reports and investigations

25 Licensee must deliver regular reports to FMA

(1) A licensee must deliver a report to the FMA—

(a) by a date determined by the FMA when a licence is issued, which must be between 6 and 12 months after the date on which the licence is issued; and

(b) at least once every 6 months after that date.

(2) The report must contain—

(a) prescribed information about the following:

(i) the requirements referred to in section 16(2):

(ii) the matters referred to in section 16(3):

(iii) the licensee's compliance with any conditions imposed on the licence:

(iv) the supervised interest:

(v) the licensee's compliance with the terms of every governing document that relates to a supervised interest:

(vi) other prescribed matters; and

(b) any information required by a condition imposed on the licence.

26 Licensee must report breach of licensee obligation, etc

(1) This section applies if a licensee believes that—

(a) the licensee has, or may have, breached a licensee obligation; or

(b) a material change of circumstances has occurred, may have occurred, or is likely to occur in relation to the licensee; or

(c) the information on which the FMA based the decision to issue or vary the licence was, or may have been, wrong, misleading, or incomplete.

(2) For the purposes of subsection (1)(b) and (c), the licensee must consider any matters notified by the FMA under sections 18(3)(c) and 30(5)(d).

(3) The licensee must, as soon as practicable after the licensee forms the belief referred to in subsection (1), deliver a report to the FMA containing details of the belief and the licensee's grounds for the belief.

Action plans

27 FMA may require licensee to submit action plan

(1) This section applies if the FMA is satisfied that—

(a) a licensee has breached, or is likely to breach, a licensee obligation; or

(b) a material change of circumstances has occurred, or is likely to occur, in relation to a licensee; or

(c) the information on which the decision to issue or vary a licensee's licence was based was wrong, misleading, or incomplete in a material respect.

(2) The FMA may, by written notice to the licensee, require the licensee to submit an action plan to the FMA.

(3) The notice must—

(a) give details of the breach or likely breach, material change of circumstances or likely material change of circumstances, or wrong, misleading, or incomplete information; and

(b) specify the date by which the action plan must be submitted to the FMA.

(4) The action plan must specify—

(a) the step or steps that will be taken—

(i) to remedy or avoid the breach or likely breach; or

(ii) to avoid any further breach; or

(iii) to mitigate or avoid any adverse effects or changes arising, or likely to arise, from the material change of circumstances; or

(iv) in light of the wrong, misleading, or incomplete information; and

(b) the date by which each step will be taken.

28 Approval or rejection of action plan

(1) If a licensee submits an action plan, the FMA may—

(a) approve the action plan; or

(b) require the licensee 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 approves the action plan or amended action plan, the licensee must comply with the plan.

(3) An action plan that has been approved by the FMA may be varied at any time by the licensee with the consent of the FMA.

29 FMA's powers if action plan rejected

(1) If the FMA rejects a licensee's action plan or amended action plan, the FMA may do either or both of the following:

(a) give a written direction to the licensee:

(b) vary the licensee's licence in accordance with section 30.

(2) A direction under subsection (1)(a) must specify—

(a) the step or steps that the licensee must take—

(i) to remedy or avoid any breach or likely breach of a licensee obligation; or

(ii) to avoid any further breach; or

(iii) to mitigate or avoid any adverse effects or changes arising, or likely to arise, from the material change of circumstances; or

(iv) in light of the wrong, misleading, or incomplete information; and

(b) the date by which each step must be taken.

(3) The licensee must comply with the direction.

Variation of licences

30 FMA may vary licence because of material change of circumstances, etc

(1) The FMA may, by written notice to a licensee, vary the licence—

(a) if the FMA is satisfied that—

(i) a material change of circumstances has occurred in relation to the licensee; or

(ii) the information on which the FMA based the decision to issue or vary the licence was wrong, misleading, or incomplete in a material respect; or

(b) if the FMA rejects the licensee's action plan or amended action plan; or

(c) if the licensee—

(i) fails to submit or amend an action plan by the date specified by the FMA; or

(ii) fails to comply with an action plan by the date specified in the plan; or

(iii) fails to comply with a direction of the FMA under section 29 or 36 by the date specified in the direction; or

(iiia) fails to comply with a direction of the FMA under section 205 of the Financial Markets Conduct Act 2013 by the date specified in the direction; or

(iv) is in administration, receivership, or liquidation, or is subject to statutory management, or enters any other process (whether in New Zealand or another country) under which the assets and affairs of the licensee are administered, or the assets of the licensee are realised, for the benefit of creditors of the licensee.

(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.

(3) Subject to subsection (4), the FMA must exercise the power to vary a licence so that (after the licence is varied) the FMA is satisfied that, having regard to any conditions imposed on the licence, the licensee is capable of effectively performing the functions of a supervisor in respect of debt securities or registered schemes, or of a statutory supervisor in respect of retirement villages, covered by the licence.

(4) The FMA may not vary a licence so that the licence ceases to cover a supervised interest.

(5) The notice under subsection (1) must state,—

(a) if subsection (1)(a) applies, the material change of circumstances or information that the FMA considers was wrong, misleading, or incomplete; and

(b) the FMA's reasons for varying the licence; and

(c) the date on which the variation takes effect; and

(d) any matters that the FMA wishes the licensee to consider for the purposes of section 26(2).

Section 30(1)(c)(iii): amended, on 1 December 2014, by section 134(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 30(1)(c)(iiia): inserted, on 1 December 2014, by section 134(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 30(3): amended, on 1 December 2014, by section 134(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

31 Appeal to High Court against FMA's decision to vary licence

(1) A licensee who is dissatisfied with the FMA's decision under section 30(1) may appeal to the High Court no later than 20 working days, or such further period as the court may allow, after receiving written notice of the decision.

(2) A decision against which an appeal is lodged remains valid pending the determination of the appeal unless the court orders otherwise.

(3) On appeal, the court may—

(a) confirm, cancel, or vary the decision; or

(b) refer the decision back to the FMA with a direction to reconsider the whole or a specified part of the decision.

Removal of licensee and variation and cancellation of licences

32 FMA's powers if action plan not submitted, etc

(1) This section applies if a licensee—

(a) fails to submit or amend an action plan by the date specified by the FMA; or

(b) fails to comply with an action plan by the date specified in the plan; or

(c) fails to comply with a direction of the FMA under section 29 or 36 by the date specified in the direction; or

(ca) fails to comply with a direction of the FMA under section 205 of the Financial Markets Conduct Act 2013 by the date specified in the direction; or

(d) is in administration, receivership, or liquidation, or is subject to statutory management, or enters any other process (whether in New Zealand or another country) under which the assets and affairs of the licensee are administered, or the assets of the licensee are realised, for the benefit of creditors of the licensee.

(2) The FMA may take 1 or more of the following steps:

(a) vary the licensee's licence in accordance with section 30:

(b) give a written notice (a **removal notice**) to the licensee that applies to 1 or more supervised interests:

(c) by written notice (a **variation notice**) to the licensee, vary the licensee's licence so that the licence ceases to cover 1 or more supervised interests:

(d) by written notice (a **cancellation notice**) to the licensee, cancel the licensee's licence.

(3) To avoid doubt, a removal notice may apply to any supervised interest, whether or not the action plan or direction referred to in subsection (1) relates to that interest.

(4) If the FMA varies a licence under subsection (2)(c) so that the licence ceases to cover a supervised interest, the FMA must give a removal notice under subsection (2)(b) that applies to the interest.

(5) If the FMA cancels a licence, the FMA must give a removal notice under subsection (2)(b) that applies to every supervised interest.

(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.

Section 32(1)(c): amended, on 1 December 2014, by section 135(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 32(1)(ca): inserted, on 1 December 2014, by section 135(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

33 Removal notice

(1) A removal notice must—

(a) state the FMA's reasons for giving the notice; and

(b) specify the latest date by which the existing appointee will be removed (the **final removal date**), which must not be more than 40 working days after the date on which the removal notice is given to the existing appointee; and

(c) specify the supervised interest or interests to which the removal notice applies.

(2) Despite subsection (1)(b), if the removal notice is given in relation to the cancellation of a licence, the final removal date must be no later than the date on which the cancellation takes effect.

(3) The FMA must give a copy of the removal notice to every affected person at the same time as the notice is given to the licensee.

(4) The removal of the existing appointee as supervisor in respect of an affected debt security or scheme, or as statutory supervisor of an affected retirement village, takes effect on the final removal date unless the existing appointee is removed from that appointment before that date (whether under section 38(1) or otherwise).

(5) For the purposes of this section and sections 36 to 40,—

affected debt security or scheme means a debt security or registered scheme to which a removal notice applies

affected person means—

(a) the issuer in respect of an affected debt security or scheme:

(b) the operator of an affected retirement village

affected retirement village means a retirement village to which a removal notice applies

existing appointee means the licensee to whom a removal notice is given

final removal date has the meaning given in subsection (1)(b)

FMA appointee has the meaning given in section 37(1)

new appointee has the meaning given in section 38(1)

replacement notice has the meaning given in section 38(1).

Section 33(4): replaced, on 1 December 2014, by section 136(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33(5) **affected debt security or scheme**: inserted, on 1 December 2014, by section 136(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33(5) **affected person**: replaced, on 1 December 2014, by section 136(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 33(5) **affected security**: repealed, on 1 December 2014, by section 136(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

34 Variation notice

A variation notice must—

(a) state the FMA's reasons for varying the licence; and

(b) specify the date on which the variation takes effect.

35 Cancellation notice

A cancellation notice must—

(a) state the FMA's reasons for cancelling the licence; and

(b) specify the date on which the cancellation takes effect.

36 Removal notice: FMA may give direction to existing appointee

(1) During the period beginning when a removal notice is given and ending when the existing appointee is removed from every appointment as supervisor in respect of an affected debt security or scheme, or as statutory supervisor in respect of an affected retirement village, the FMA may give a written direction to the existing appointee.

(2) The direction must specify—

(a) the step or steps that the existing appointee must take; and

(b) the date by which each step must be taken.

(3) The existing appointee must comply with the direction.

(4) To avoid doubt, a direction must not be inconsistent with the relevant governing document, but may require the appointee to seek specified amendments to the document.

(5) A person who refuses or fails, without reasonable excuse, to comply with a direction under subsection (1) commits an offence and is liable on conviction to a fine not exceeding $300,000.

Section 36(1): amended, on 1 December 2014, by section 137(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 36(5): replaced, on 1 December 2014, by section 137(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

37 Removal notice: FMA may replace existing appointee

(1) If an affected person does not remove the existing appointee by written notice under section 38(1) or otherwise appoint a person as the supervisor in place of the existing appointee before the final removal date, the FMA may appoint a person (the **FMA appointee**) to that position for a period of 6 months beginning on the final removal date.

(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).

(2) Before making an appointment under subsection (1) or (1A), the FMA must, if the FMA considers it practicable to do so, consult the affected person.

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

(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)).

(6) The FMA may approve a change to those terms (including a change that increases the charges payable to the FMA appointee) during the period of the FMA appointee's appointment if—

(a) the affected person and the FMA appointee agree that the change should be made; and

(b) the FMA is satisfied that the change will have no significant adverse effect on the interests of holders of the debt security or managed investment products or of residents of the retirement village.

(7) The power in subsection (6) may be exercised to approve a change to the terms of the governing document despite anything to the contrary in the document.

(8) Before the appointment of the FMA appointee under this section finally comes to an end (taking into account any reappointment under subsection (1A)), the affected person must either—

(a) appoint a licensee as a replacement for the FMA appointee; or

(b) appoint the FMA appointee as the supervisor on a continuing basis (provided that the FMA appointee holds a licence that covers supervision of the debt security, registered scheme, or retirement village).

(9) Despite sections 6 and 16(2), the FMA may appoint, as an FMA appointee, any person (including any natural person) that the FMA considers appropriate in the circumstances, whether or not that person holds a licence.

(10) If the FMA appointee does not hold a licence, the FMA appointee must, for the purposes of the Financial Markets Conduct Act 2013 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).

Section 37(1): amended, on 1 December 2014, by section 138(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 37(1A): inserted, on 1 December 2014, by section 138(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 37(2): amended, on 1 December 2014, by section 138(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 37(2): amended, on 1 December 2014, by section 138(4) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 37(4): replaced, on 1 December 2014, by section 138(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 37(4A): inserted, on 1 December 2014, by section 138(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 37(5): replaced, on 1 December 2014, by section 138(5) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 37(6)(b): amended, on 1 December 2014, by section 138(6) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 37(8): amended, on 1 December 2014, by section 138(7) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 37(8)(b): replaced, on 1 December 2014, by section 138(8) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 37(10): inserted, on 1 December 2014, by section 138(9) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

38 Replacement notice: affected person may replace existing appointee or FMA appointee

(1) If an affected person appoints a person (the **new appointee**) as the supervisor in place of the existing appointee or FMA appointee and the new appointee accepts the appointment, the affected person may remove the exist-

ing appointee or FMA appointee by written notice (the **replacement notice**) to the existing appointee or FMA appointee.

(2) An appointment under subsection (1) must be made in accordance with the relevant governing document.

(3) Despite subsections (1) and (2), if the affected person proposes to reappoint the existing appointee in place of the FMA appointee before the end of the period of the FMA appointee's appointment, the removal of the FMA appointee takes effect only if the FMA consents in writing.

(4) The affected person must, as soon as practicable after giving the replacement notice, give a copy of the notice to the FMA.

(5) The removal of the existing appointee or FMA appointee takes effect on the date stated in, or calculated in accordance with, the replacement notice.

(6) But if the replacement notice is given to the FMA appointee, the removal of the FMA appointee cannot take effect until at least 15 working days have passed since the date on which the notice was given to the FMA appointee.

(7) Subsection (6) does not apply if the FMA appointee agrees in writing that the subsection does not apply.

(8) The power in subsection (1) may be exercised to remove the existing appointee or FMA appointee despite anything to the contrary in the governing document.

(9) Nothing in this section limits the affected person's power to remove the existing appointee apart from under this section.

Section 38(1): amended, on 1 December 2014, by section 139(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 38(3): amended, on 1 December 2014, by section 139(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

39 Notice requiring documents: existing appointee, etc, must provide documents

(1) The FMA appointee may, by giving notice in writing to the existing appointee, require the existing appointee to provide the FMA appointee, at the existing appointee's expense, with all documents held by, or in the control of, the existing appointee that relate to the functions of the position to which the FMA appointee has been appointed.

(2) The new appointee may, by giving notice in writing to the existing appointee or FMA appointee (**person A**), require person A to provide the new appointee, at person A's expense, with all documents held by, or in the control of, person A that relate to the functions of the position to which the new appointee has been appointed.

(3) If the existing appointee is reinstated under section 40(4)(c), the existing appointee may, by giving notice in writing to the FMA appointee or new appointee (**person B**), require person B to provide the existing appointee, at

person B's expense, with all documents held by, or in the control of, person B that relate to the functions of the position.

(4) A notice under this section—

(a) must be given no later than 6 months after the date of the appointment of the person who gives the notice or, in the case of a notice under subsection (3), within 6 months after the existing appointee's reinstatement:

(b) ceases to be effective if the person who gives the notice ceases to be the supervisor in respect of the affected debt security or scheme or the statutory supervisor in respect of the affected retirement village:

(c) must specify a reasonable time within which the documents must be provided.

(5) An existing appointee, an FMA appointee, or a new appointee to whom a notice is given under any of subsections (1) to (3) must comply with the notice.

(6) A document provided pursuant to a notice under this section may be used only for the purpose of—

(a) performing the functions of the supervisor in respect of the affected debt security or scheme; or

(b) performing the functions of the statutory supervisor in respect of the affected retirement village.

(7) A contravention of subsection (5) or (6) may give rise to a pecuniary penalty under section 41.

Section 39(4)(b): amended, on 1 December 2014, by section 140(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 39(5): replaced, on 1 December 2014, by section 140(2) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 39(6)(a): amended, on 1 December 2014, by section 140(1) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 39(7): replaced, on 1 December 2014, by section 140(3) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

40 Appeal to High Court against removal notice, etc

(1) A licensee may appeal to the High Court against a decision to give a removal notice, variation notice, or cancellation notice under section 32(2)(b) to (d).

(2) The licensee must lodge an appeal no later than 20 working days, or such further period as the court may allow, after receiving the removal notice, variation notice, or cancellation notice.

(3) A decision against which an appeal is lodged remains valid pending the determination of the appeal unless the court orders otherwise.

(4) On appeal, the court may—

(a) confirm, cancel, or vary the decision; or

(b) refer the matter back to the FMA with a direction to reconsider the whole or a specified part of the decision; or

(c) if the licensee has been removed from an appointment, order that the licensee be reinstated on terms determined by the court.

FMA appointee's powers and duties

Heading: inserted, on 1 December 2014, by section 141 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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).

Section 40A: inserted, on 1 December 2014, by section 141 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Pecuniary penalty and compensation orders

41 Pecuniary penalty orders

(1) The High Court may, on application by the FMA, order a licensee or other person to pay a pecuniary penalty to the Crown if the court is satisfied that—

(a) the licensee or other person has contravened section 6, 8, 24(4) or (5), or 39(5) or (6); or

(b) the licensee has contravened a licensee obligation.

(2) In determining whether or not to make a pecuniary penalty order and (if an order is to be made) the amount of the penalty to be imposed, the court must have regard to all relevant matters, including—

(a) the nature and extent of the contravention:

(b) in the case of a contravention relating to a debt security or registered scheme, the likelihood, nature, and extent of any damage to the integrity or reputation of New Zealand's financial markets as a result of the contravention:

(c) the nature and extent of any loss or damage suffered by product holders or residents because of the contravention:

(d) the circumstances in which the contravention occurred:

(e) whether or not the licensee or other person has previously contravened this Act or a licensee obligation:

(f) the public benefit in encouraging prompt and honest self-reporting of breaches or possible breaches of licensee obligations:

(g) any other circumstances that the court considers relevant.

(3) The maximum amount of a pecuniary penalty under this section is $600,000.

(4) If conduct by a person constitutes a contravention of 2 or more provisions referred to in subsection (1) or licensee obligations, proceedings may be brought against that person for the contravention of any 1 or more of the provisions or obligations, but a person is not liable to more than 1 pecuniary penalty order for the same conduct.

Section 41: replaced, on 1 December 2014, by section 142 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

42 Compensation orders

(1) The High Court may, on application by the FMA, a product holder, or a resident, order a licensee to pay compensation to any product holder or resident (the **aggrieved person**) if the court is satisfied that—

(a) the licensee has contravened a licensee obligation; and

(b) the aggrieved person has suffered, or is likely to suffer, loss or damage because of the contravention.

(2) The court may make a compensation order whether or not any aggrieved person is a party to the proceeding.

(3) The court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage.

Section 42(1): replaced, on 1 December 2014, by section 143 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

43 Further provisions relating to pecuniary penalty orders and compensation orders

(1) A licensee may be liable for both a pecuniary penalty order and a compensation order in respect of the same contravention of a licensee obligation.

(2) Once criminal proceedings against a licensee for an offence relating to the contravention of a licensee obligation are determined, the High Court may not make a pecuniary penalty order against the licensee in respect of that contravention.

(3) Once civil proceedings against a licensee for a pecuniary penalty order in respect of the contravention of a licensee obligation are determined, the licensee may not be convicted of an offence in respect of that contravention.

(4) Proceedings under sections 41 and 42 are civil proceedings and the usual rules of the court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

(5) In this section and in sections 41 and 42,—

compensation order means an order made under section 42

licensee includes a former licensee

pecuniary penalty order means an order made under section 41.

Part 3
FMA's functions in relation to issuers and operators

[Repealed]

Part 3: repealed, on 1 December 2014, by section 144 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Duties of trustees and statutory supervisors to FMA in relation to issuers

[Repealed]

Heading: repealed, on 1 December 2014, by section 144 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

44 Application of Part 3 to statutory supervisors of retirement villages

[Repealed]

Section 44: repealed, on 1 December 2014, by section 144 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

45 FMA may require trustee or statutory supervisor to attest as to issuer's compliance with issuer obligations

[Repealed]

Section 45: repealed, on 1 December 2014, by section 144 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

46 Trustee or statutory supervisor must report breach or possible breach of issuer obligation

[Repealed]

Section 46: repealed, on 1 December 2014, by section 144 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

47 Trustee or statutory supervisor must disclose information to FMA in certain circumstances

[Repealed]

Section 47: repealed, on 1 December 2014, by section 144 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

48 Protection for trustee or statutory supervisor in respect of disclosure

[Repealed]

Section 48: repealed, on 1 December 2014, by section 144 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

FMA's powers in relation to issuers

[Repealed]

Heading: repealed, on 1 December 2014, by section 144 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

49 FMA may give direction to trustee or statutory supervisor to avoid material prejudice

[Repealed]

Section 49: repealed, on 1 December 2014, by section 144 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

50 FMA may apply to High Court for orders relating to securities

[Repealed]

Section 50: repealed, on 1 December 2014, by section 144 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Part 4
Miscellaneous and amendments to other Acts

Subpart 1—Miscellaneous

Directions

51 FMA may vary or cancel direction

(1) The FMA may vary or cancel a direction given under section 29 or 36 if the FMA is satisfied that—

(a) circumstances have changed since the direction was given; and

(b) the change is such that the direction should be varied or cancelled.

(2) The FMA may vary or cancel the direction by giving written notice to the person to whom the direction is addressed.

Section 51(1): amended, on 1 December 2014, by section 145 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

52 Protection for supervisor who complies with FMA's direction

(1) No civil, criminal, or disciplinary proceedings may be brought against a supervisor in respect of a protected act.

(2) No person may terminate the appointment of a supervisor by reason of a protected act.

(3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of a supervisor may make an order against, or do any act in relation to, the supervisor in respect of a protected act.

(4) In this section, **protected act**, in relation to a supervisor, means an act of, or omission to act on the part of, the supervisor in compliance in good faith with a direction under section 29 or 36.

Compare: 1989 No 157 s 157ZH

Section 52: replaced, on 1 December 2014, by section 146 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Regulations

53 Regulations

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for the following purposes:

(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:

(a) prescribing the matters that the FMA must consider in satisfying itself that every director and senior manager of the applicant is of good character for the purposes of section 16(2)(b), including the methods of assessment and things to be taken into, or left out of, account in making an assessment:

(b) prescribing matters that the FMA must assess under section 16(3)(i):

(c) prescribing the manner in which the FMA must assess the matters referred to in section 16(3), including the methods of assessment and things to be taken into, or left out of, account in making an assessment:

(d) prescribing matters and information about matters to be contained in reports under section 25:

(e) prescribing forms for the purposes of this Act:

(f) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Before making a recommendation under subsection (1), the Minister must consult the FMA.

(3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 53(1)(aa): inserted, on 1 December 2014, by section 147 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 53(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Transitional provisions

54 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 18.

(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 15 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 19(2), a temporary licence expires on the earliest of the following:

(a) the date on which the temporary licence is cancelled under section 17 or 32(2)(d):

(b) the date on which a licence issued to the holder of a temporary licence under section 16 takes effect:

(c) the date on which the FMA notifies the holder (under section 18) that an application for a licence under section 15 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 16, except that a person who holds a temporary licence does not, during the currency of the temporary licence, have to comply with section 25.

(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 15.

(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 55, **effective date** has the meaning given in section 57 of the KiwiSaver Amendment Act 2011.

55 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 57 of the KiwiSaver Amendment Act 2011.

56 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 disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012; and

(b) must be presented to the House of Representatives under section 41 of that Act; 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 (2) if that person has been granted an exemption from section 6.

(8) To avoid doubt, section 54 does not apply to a person if that person has been granted an exemption from section 6.

Section 56(3)(a): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 56(3)(b): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Subpart 2—Amendments to other Acts

Amendments to Corporations (Investigation and Management) Act 1989

57 Amendments to Corporations (Investigation and Management) Act 1989

Sections 58 and 59 amend the Corporations (Investigation and Management) Act 1989.

58 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.

59 Section 12 repealed

Section 12 is repealed.

60 Amendments to Financial Markets Authority Act 2011

(1) This section amends the Financial Markets Authority Act 2011.

(2) Part 1 of Schedule 1 is amended by inserting the following item in its appropriate alphabetical order: "Securities Trustees and Statutory Supervisors Act 2011".

Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008

61 Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008

(1) This section amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

(2) Section 5(ia) is amended by inserting the following subparagraph after paragraph (ia)(i):

(ia) as a statutory supervisor:

(3) Schedule 2 is amended by adding the following item:

Financial Markets Authority	Licensed trustees in respect of debt securities, licensed statutory supervisors in respect of participatory securities, and licensed unit trustees	Securities Trustees and Statutory Supervisors Act 2011

Amendments to KiwiSaver Act 2006

62 Amendments to KiwiSaver Act 2006

(1) This section amends the KiwiSaver Act 2006.

(2) Section 116D 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 2011 that covers interests in the scheme.

(3) Section 116E(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 2011 that covers interests in the scheme, and that person has accepted the appointment; or

(4) Section 116E 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 23 or 38 of the Securities Trustees and Statutory Supervisors Act 2011; or

(b) with the approval of the High Court.

Amendments to Retirement Villages Act 2003

63 Amendments to Retirement Villages Act 2003

Sections 64 to 66 amend the Retirement Villages Act 2003.

64 Section 37 repealed

Section 37 is repealed.

65 Operator must appoint statutory supervisor

(1) Section 38(1) is amended by omitting "for the village" and substituting "who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers the village".

(2) Section 38(4) is repealed.

66 Registrar's consent required for termination or non-renewal of appointment

Section 39 is amended by adding the following subsection:

(3) This section does not apply to the termination of the appointment of a statutory supervisor by the operator under section 23 or 38 of the Securities Trustees and Statutory Supervisors Act 2011.

Amendments to Securities Act 1978

67 Amendments to Securities Act 1978

Sections 68 to 73 amend the Securities Act 1978.

68 Restrictions on offer of securities to the public

(1) Section 33(2)(a) is amended by inserting "who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers the security" after "a person".

(2) Section 33(3)(a) is amended by inserting "who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers the security" after "a person".

69 New section 48 substituted

Section 48 is repealed and the following section substituted:

48 Removal of trustees and statutory supervisors

(1) A trustee or statutory supervisor (**T**) in respect of a security may not resign, be discharged, or be removed as trustee or statutory supervisor unless—

(a) all functions and duties of the position have been performed; or

(b) the issuer has appointed another person who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers the

security to the position in place of T and the other person has accepted the appointment; or

(c) the court consents.

(2) This section does not apply to the removal of a trustee or statutory supervisor by the FMA under Part 2 of the Securities Trustees and Statutory Supervisors Act 2011.

70 Trustees and statutory supervisors may apply to court for orders relating to securities

(1) Section 49(1) is amended by repealing paragraph (a) and substituting the following paragraph:

(a) there is a significant risk that the interests of the security holders will be materially prejudiced; or

(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):

71 New section 50C inserted

The following section is inserted after section 50B:

50C Protection for auditors

(1) No civil, criminal, or disciplinary proceedings may be brought against an auditor in respect of a protected disclosure.

(2) No person may terminate the appointment of an auditor by reason of a protected disclosure.

(3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of an auditor may make an order against, or do any act in relation to, an auditor in respect of a protected disclosure.

(4) In this section, **protected disclosure**, in relation to an auditor, means a disclosure of information in good faith by the auditor under any of the following provisions:

(a) section 50(2):

(b) section 50(3):

(c) section 50A(2):

(d) section 50A(3):

(e) section 50B(3):

(f) section 50B(4).

Compare: 1989 No 157 s 157ZH

72 When court may make management banning orders

Section 60A(1)(b)(i) is amended by inserting "the Securities Trustees and Statutory Supervisors Act 2011," after "the Securities Markets Act 1988,".

73 Regulations and Orders in Council

(1) Section 70(1)(g) is amended by omitting "; and, without limiting the generality of the foregoing, clauses specifying the duties and powers of trustees or statutory supervisors, as the case may be, and the obligations of issuers may be prescribed as clauses that are deemed to be contained in such deeds".

(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.

Amendment to Securities Markets Act 1988

74 Amendment to Securities Markets Act 1988

(1) This section amends the Securities Markets Act 1988.

(2) Section 43F(1)(b)(i) is amended by inserting "the Securities Trustees and Statutory Supervisors Act 2011," after "the Securities Act 1978,".

Amendment to Takeovers Act 1993

75 Amendment to Takeovers Act 1993

(1) This section amends the Takeovers Act 1993.

(2) Section 44F(b)(i) is amended by inserting "the Securities Trustees and Statutory Supervisors Act 2011," after "the Securities Act 1978,".

Amendments to Trustee Companies Act 1967

76 Amendments to Trustee Companies Act 1967

(1) This section amends the Trustee Companies Act 1967.

(2) Section 7(2) is amended by repealing paragraph (m) and substituting the following paragraph:

(m) statutory supervisor (as defined in the Retirement Villages Act 2003) in respect of a retirement village covered by the trustee company's licence under the Securities Trustees and Statutory Supervisors Act 2011:

(3) Section 7(2) is amended by repealing paragraph (p) and substituting the following paragraph:

(p) trustee or statutory supervisor (as defined in the Securities Trustees and Statutory Supervisors Act 2011) in respect of a security covered by the trustee company's licence under that Act:

Amendments to Unit Trusts Act 1960

77 Amendments to Unit Trusts Act 1960

Sections 78 to 84 amend the Unit Trusts Act 1960.

78 Section 5 repealed

Section 5 is repealed.

79 Appointment of trustee

Section 8(b) is amended by omitting "eligible in accordance with section 5 of this Act" and substituting "who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers the unit trust".

80 New section 10 substituted

Section 10 is repealed and the following section substituted:

10 Removal of trustees

(1) A trustee may not resign as trustee of a unit trust unless—

(a) all functions and duties of the position have been performed; or

(b) the manager has appointed another person who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers the unit trust to the position, and the new trustee has accepted the appointment; or

(c) the High Court consents.

(2) Despite anything to the contrary in the trust deed, a manager may not discharge or remove a trustee except with the approval of the High Court.

(3) Subsection (2) does not apply to the removal of a trustee by the manager under Part 2 of the Securities Trustees and Statutory Supervisors Act 2011.

81 Implied provisions in trust deed

(1) Section 12 is amended by inserting the following subsection after subsection (1):

(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.

(2) Section 12(2) is amended by inserting ", the manager," after "the trustee".

82 Meeting of unit holders

(1) Section 18(2) is amended by adding "and any directions given by the Financial Markets Authority under the Securities Trustees and Statutory Supervisors Act 2011".

(2) Section 18(4) is amended by omitting "the trusts or any rule of law" and inserting "the trusts, a direction of the Financial Markets Authority, any rule of law,".

83 New section 19A inserted

The following section is inserted after section 19:

19A Trustee may apply to High Court for orders relating to unit trust

(1) This section applies if a trustee is satisfied that—

(a) there is a significant risk that the interests of unit holders will be materially prejudiced; or

(b) the provisions of the trust deed are no longer adequate to give proper protection to unit holders.

(2) The trustee may apply to the High Court for an order under this section.

(3) The court may direct that an application be served on any person that the court thinks fit.

(4) On an application, the court may, after giving the manager and any other persons that the court thinks fit the opportunity to be heard, by order—

(a) amend the provisions of the trust deed:

(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:

(c) direct the manager or trustee to convene a meeting of unit holders for the purpose of—

(i) having placed before them by the trustee any information relating to their interests, and any proposals for the protection of their interests, that the court or the trustee considers necessary or appropriate; and

(ii) obtaining their opinions or directions in relation to the information and proposals referred to in subparagraph (i):

(d) give directions in relation to the conduct of any meeting convened in accordance with paragraph (c):

(e) stay all civil proceedings before any court by or against the trustee or the manager:

(f) restrain the payment of money by the trustee or the manager to unit holders or a class of unit holders:

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

(h) give any other directions that the court considers necessary to protect the interests of unit holders, or the public.

(5) The court may vary or cancel an order made under this section.

(6) In exercising its powers under this section, the court must have regard to the interests of all creditors in respect of the unit trust.

Compare: 1978 No 103 s 49

84 Regulations

(1) Section 28(2) is amended by adding the following paragraphs:

(d) prescribing information and other matters that must be included in a trust deed:

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

(2) Section 28 is amended by adding the following subsection:

(3) A provision prescribed for the purposes of subsection (2)(e) may, without limitation, do any of the following:

(a) specify the duties and powers of the trustee:

(b) specify the duties of the manager:

(c) provide for the trustee to have the power, exercisable with the consent of the manager (but without requiring the consent of unit holders), to make amendments to the trust deed that do not adversely affect the interests of unit holders.

Financial Markets (Repeals and Amendments) Act 2013

Public Act	2013 No 70
Date of assent	13 September 2013
Commencement	see section 2

1 Title

This Act is the Financial Markets (Repeals and Amendments) Act 2013.

2 Commencement

(1) Sections 4(2) to (4), 91, 101(3), (6), and (7), 105, and 107 come into force on the day after the date on which this Act receives the Royal assent.

(2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made appointing different dates for different provisions and for different purposes.

(3) To the extent that it is not previously brought into force under subsection (1) or (2), the rest of this Act comes into force on 1 April 2017.

(4) In this section, **provision** includes any item, or any part of an item, in the Schedule.

Section 2(2): sections 6–9, 10, 11, 13, 35, 37–39, 41, 42(1)–(3), 43–47, 49, 52, 53, 58, 61(2)–(10), 42(4) (other than as far as it relates to new subsection (1A)), 62, 64, 65, 66(1), 67–69, 70(1), (4), and (6), 71, 150 (but only for the purpose of the items that are coming into force under paragraph (f)), and items in the Schedule brought into force, on 1 April 2014, by clause 3 of the Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51).

Section 2(2): the remaining provisions that have not earlier been brought into force, except the amendment in Part 1 of the Schedule inserting, by substitution, a new section 3(1)(h) of the Financial Transactions Reporting Act 1996, brought into force, on 1 December 2014, by clause 3 of the Financial Markets Legislation (Phase 2) Commencement Order 2014 (LI 2014/325).

Amendments to Securities Trustees and Statutory Supervisors Act 2011

Transitional provisions

148 FMA may vary licences under Financial Markets Supervisors Act 2011

(1) The FMA may, by written notice to a licensee, vary a licence if the FMA is satisfied that the variation is necessary or desirable in connection with the orderly implementation of the Financial Markets Conduct Act 2013 or this Act (for example, to change the matters referred to in section 10 of the principal Act or impose further conditions as referred to in section 11 of the principal Act).

(2) A power under subsection (1) may be exercised—

(a) only on or before the date that is 2 years after the commencement of this section:

(b) despite anything to the contrary in the principal Act.

(3) The FMA may vary a licence under this section only if the FMA gives the licensee—

(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.

(4) The notice under subsection (3) must state—

(a) the FMA's reasons for varying the licence; and

(b) the date on which the variation takes effect.

(5) In this section and section 149,—

licence means a licence issued under the principal Act before the commencement of this section

licensee means a person who holds a licence.

149 Appeal against licence decision

(1) A licensee who is dissatisfied with the FMA's decision under section 148 may appeal to the High Court no later than 20 working days, or such further period as the court may allow, after receiving written notice of the decision.

(2) A decision against which an appeal is lodged remains valid pending the determination of the appeal unless the court orders otherwise.

Notes

1 General

This is a consolidation of the Financial Markets Supervisors Act 2011 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Secondary Legislation Act 2021 (2021 No 7): section 3

Non-bank Deposit Takers Act 2013 (2013 No 104): section 92(2)

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): sections 111–147

Legislation Act 2012 (2012 No 119): section 77(3)

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