Reprint
as at 14 March 2021

Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

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Commencement	see section 2

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

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

This Act is administered by the Ministry of Business, Innovation, and Employment and the Reserve Bank of New Zealand.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019.

2 Commencement

(1) Part 1 comes into force on the day after the date of Royal assent.

(2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council.

(3) One or more orders may be made under subsection (2) bringing different provisions into force on different dates.

(4) Any provision that has not earlier been brought into force comes into force on 30 August 2021.

Section 2(2): the rest of this Act brought into force, on 14 March 2021, by clause 2 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act Commencement Order 2020 (LI 2020/314).

Section 2(4): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Part 1
Amendments relating to derivative margins

Subpart 1—Amendments to Reserve Bank of New Zealand Act 1989

3 Principal Act

This subpart amends the Reserve Bank of New Zealand Act 1989 (the **principal Act**).

4 Section 122 amended (Moratorium)

After section 122(9), insert:

(9A) Nothing in subsection (1) limits or prevents the exercise of any rights to enforce a security interest over collateral to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative if—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before the exercise of the rights, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the enforcing counterparty; or

(ii) another person (who is not the grantor) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing; and

(c) the rights are exercised after the specified time.

(9B) *See* sections 122A to 122E for definitions and other matters relating to subsection (9A).

5 New sections 122A to 122E inserted

After section 122, insert:

122A Definitions of terms relating to qualifying derivatives

(1) For the purposes of sections 122(9A), 122B, 122C, 122D, and 122E,—

collateral means any 1 or more of the following:

(a) a financial product:

(b) gold, silver, or platinum:

(c) a document of title, a chattel paper, an investment security, money, a negotiable instrument, or an intangible (with terms and expressions used in this paragraph having the same meanings as in section 16(1) of the Personal Property Securities Act 1999):

(d) if a person (an **intermediary**) maintains an account to which interests in property, or rights to payment or delivery of property, of a kind specified in any of paragraphs (a) to (c) may be credited or debited, the rights of a person in whose name the intermediary maintains the account, to the extent that those rights relate to the interests in that property or the rights to payment or delivery of that property:

(e) the proceeds of property of a kind specified in any of paragraphs (a) to (d)

default time means the close of the day after the date on which the statutory management commenced

derivative means a derivative within the meaning of section 8(4) of the Financial Markets Conduct Act 2013 (but disregarding any declaration referred to in section 8(5)(b) of that Act)

intermediated collateral means collateral of the kind referred to in paragraph (d) of the definition of collateral in this subsection

overseas person means—

(a) a natural person who is not ordinarily resident in New Zealand; or

(b) an entity (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) that is incorporated or established outside New Zealand

possession includes possession within the meaning of section 18 of the Personal Property Securities Act 1999 (subject to section 122B and regulations made under section 173(1)(fc) and (fd))

proceeds has the same meaning as in section 16(1) of the Personal Property Securities Act 1999 but applied with all necessary modifications, including treating references to collateral in the definition in that section as references to property of a kind specified in any of paragraphs (a) to (d) of the definition of collateral in this subsection

qualifying counterparty means—

(a) a registered bank; or

(b) the Accident Compensation Corporation (as continued by section 259 of the Accident Compensation Act 2001); or

(c) the Guardians of New Zealand Superannuation established under section 48 of the New Zealand Superannuation and Retirement Income Act 2001; or

(d) a specified operator; or

(e) any prescribed entity; or

(f) any other entity of a prescribed class

qualifying derivative, in relation to enforcing a security interest over collateral, means a derivative to which both of the following apply:

(a) the derivative is subject to—

(i) a netting agreement to which sections 310A to 310O of the Companies Act 1993 or sections 255 to 263 of the Insolvency Act 2006 apply; or

(ii) netting under the rules of a designated settlement system; and

(b) the enforcing counterparty's interest in the collateral is evidenced in writing

security interest has the same meaning as in section 17 of the Personal Property Securities Act 1999

specified time means—

(a) the default time; or

(b) an earlier or a later time specified by the Bank in a notice issued under section 122C.

(2) For the purposes of the definition of overseas person, a natural person is **ordinarily resident in New Zealand** if that person—

(a) is domiciled in New Zealand; or

(b) is living in New Zealand and the place where that person usually lives, and has been living for the immediately preceding 12 months, is in New

Zealand, whether or not that person has on occasions been away from New Zealand during that 12-month period.

122B Matters relating to possession or control of collateral

(1) For the purposes of section 122(9A)(b),—

(a) collateral must be taken not to be in the possession or under the control of the enforcing counterparty if,—

(i) under the security interest, the grantor is free to deal with the collateral in the ordinary course of business until the enforcing counterparty's interest in the collateral becomes fixed and enforceable; or

(ii) regulations made under section 173(1)(fc) so provide:

(b) intermediated collateral must be taken to be in the possession of the enforcing counterparty if that counterparty is the person in whose name the intermediary maintains the account:

(c) intermediated collateral must be taken to be under the control of the enforcing counterparty if subsection (3) applies:

(d) collateral must be taken to be in the possession or under the control of the enforcing counterparty if regulations made under section 173(1)(fc) so provide.

(2) Subsection (1)(a)(i) applies even if the enforcing counterparty's interest in the collateral becomes fixed and enforceable before the enforcement of the security interest over that collateral.

(3) For the purposes of subsection (1)(c), this subsection applies if—

(a) the intermediary is not the grantor (but may be the enforcing counterparty or any other person); and

(b) there is an agreement in force between the intermediary and 1 or more other persons, 1 of which is the enforcing counterparty or the grantor; and

(c) the agreement has 1 or more of the following effects:

(i) the person in whose name the intermediary maintains the account is not able to transfer or otherwise deal with the collateral:

(ii) the intermediary must not comply with instructions given by the grantor in relation to the collateral without seeking the consent of the enforcing counterparty (or a person who has agreed to act on the instructions of the enforcing counterparty):

(iii) the intermediary must comply, or must comply in 1 or more specified circumstances, with instructions (including instructions to debit the account) given by the enforcing counterparty in relation

to the collateral without seeking the consent of the grantor (or any person who has agreed to act on the instructions of the grantor).

(4) Subsections (1)(a)(i), (b), and (c), (2), and (3) and the definition of possession in section 122A(1) are subject to regulations made under section 173(1)(fc) and (fd).

(5) The fact that a grantor retains a right of 1 or more of the following kinds does not by itself stop section 122(9A)(b) from being satisfied:

(a) a right to receive and withdraw income in relation to the collateral:

(b) a right to receive notices in relation to the collateral:

(c) a right to vote in relation to the collateral:

(d) a right to substitute other collateral that the parties agree is of equivalent value for the collateral:

(e) a right to withdraw excess collateral:

(f) a right to determine the value of collateral.

122C Bank may reduce or extend stay on exercise of rights to enforce security interest over collateral

(1) This section and section 122D apply for the purposes of section 122(9A) in respect of a registered bank that is in statutory management (**A**).

(2) The Reserve Bank may, before the default time, issue a notice that states that the rights referred to in section 122(9A) may only be exercised on and after a time specified in the notice.

(3) The time that is specified may be—

(a) before the default time; or

(b) after the default time if the Bank is satisfied of all of the matters set out in section 122D.

(4) The notice may relate to all rights referred to in section 122(9A) in respect of A's property or to a class or classes of those rights.

(5) Despite section 140(2)(b), this section applies to an associated person or a subsidiary of a registered bank only if the associated person or subsidiary is itself a registered bank.

122D Matters Bank must be satisfied of under section 122C(3)(b)

The matters referred to in section 122C(3)(b) are that—

(a) A is able to meet all of the following liabilities as and when those liabilities become due and payable:

(i) A's liabilities under all netting agreements to which sections 310A to 310O of the Companies Act 1993 or sections 255 to 263 of the Insolvency Act 2006 apply:

(ii) A's liabilities in respect of security interests over collateral to the extent that the security interests secure payment or performance of obligations under or in relation to qualifying derivatives:

(iii) A's liabilities that are subject to netting under the rules of a designated settlement system; and

(b) A is able to pay its debts as they become due in the normal course of business; and

(c) either—

(i) A complies with the minimum capital requirements (if any) to which it is subject under conditions imposed under section 74; or

(ii) there are satisfactory arrangements in place to ensure that A meets all of its liabilities referred to in paragraph (a) as and when those liabilities become due and payable and those arrangements will remain in place until A complies with the requirements referred to in subparagraph (i) or the statutory management is terminated, whichever occurs first.

122E Publication and status of notice under section 122C

(1) The Bank must, as soon as practicable,—

(a) publish any notice issued under section 122C on an Internet site maintained by, or on behalf of, the Bank; and

(b) notify the issue of the notice in the *Gazette*.

(2) The notice may take effect at any time after it is published under subsection (1)(a).

(3) The notice is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

(4) The notice cannot be varied or revoked.

6 Section 134 amended (Sale of property or assets subject to a security)

(1) After section 134(6)(c), insert:

(d) is not a security interest referred to in subsection (8).

(2) After section 134(7), insert:

(8) For the purposes of subsection (6)(d), the security interest is a security interest over accounts receivable, inventory, or both to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative and—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before the exercise of rights to enforce the security interest, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the enforcing counterparty; or

(ii) another person (who is not the grantor) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.

(9) Terms and expressions defined in section 122A and used in subsection (8) have in that subsection the same meanings as in that section.

(10) Section 122B applies with all necessary modifications for the purposes of subsection (8)(b) (and those modifications include treating references to section 122(9A)(b) as references to subsection (8)(b) of this section).

7 Section 173 amended (Regulations)

(1) After section 173(fa), insert:

(fb) prescribing entities and classes of entities for the purposes of the definition of qualifying counterparty in section 122A:

(fc) providing for when collateral must or must not be taken to be in the possession or under the control of a person for the purposes of section 122(9A)(b) or any enactment that applies section 122B (and those matters may be specified with reference to different kinds of collateral or any other circumstances):

(fd) providing that section 122B(1)(a)(i), (b), or (c) does not apply to specified kinds of collateral or in any other specified circumstances:

(2) In section 173, insert as subsections (2) to (4):

(2) Regulations under subsection (1)(fb) to (fd) must be made on the recommendation of—

(a) the Minister; and

(b) the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the Companies Act 1993.

(3) The Ministers may make a recommendation under subsection (2) only if the Ministers have—

(a) had regard to the matters set out in subsection (4); and

(b) consulted the persons (or representatives of the persons) that the Ministers consider will be substantially affected by the regulations, and those persons have had the opportunity to comment to the Ministers.

(4) The Ministers must have regard to the following under subsection (3)(a):

(a) the purposes of this Act, the Companies Act 1993, the Corporations (Investigation and Management) Act 1989, the Personal Property Secur-

ities Act 1999, the Property Law Act 2007, and the Receiverships Act 1993:

(b) the effect of the regulations on—

(i) the maintenance of a sound and efficient financial system; and

(ii) the creditors of qualifying counterparties; and

(iii) the integrity of statutory management, corporate insolvency, and personal property securities law.

8 Schedule 1 amended

In Schedule 1, after Part 1, insert the Part 2 set out in Schedule 1 of this Act.

Subpart 2—Amendments to Companies Act 1993

9 Principal Act

This subpart amends the Companies Act 1993 (the **principal Act**).

10 New section 239ABMA inserted (Enforcement of security interest over collateral for qualifying derivative)

After section 239ABM, insert:

239ABMA Enforcement of security interest over collateral for qualifying derivative

(1) Nothing in sections 239ABC, 239ABD, 239ABE, and 239ABG limits or prevents any person referred to in subsection (2) from enforcing a security interest over collateral to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative if—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before enforcement, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the secured creditor; or

(ii) another person (who is not the company that granted the security interest) on behalf of the secured creditor, under the terms of an arrangement evidenced in writing.

(2) The persons are—

(a) the secured creditor:

(b) a receiver or person appointed as mentioned in paragraph (a), (b), or (d) of the definition of enforce in section 239ABK as that definition applies in relation to the security interest, or any of the security interests (even if appointed after the decision period).

(3) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in subsection (1) have in that subsection the same meanings as in that section.

(4) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of subsection (1)(b), and those modifications include—

(a) treating references to section 122(9A)(b) of that Act as references to subsection (1)(b) of this section; and

(b) treating references to the enforcing counterparty as references to the secured creditor; and

(c) treating references to the grantor as references to the company that granted the security interest.

11 Schedule 1AA amended

In Schedule 1AA, after Part 1, insert the Part 2 set out in Schedule 2 of this Act.

12 Consequential amendment to Insolvency Practitioners Regulation (Amendments) Act 2019

(1) This section amends the Insolvency Practitioners Regulation (Amendments) Act 2019.

(2) Replace section 57 with:

57 New Part added to Schedule 1AA

In Schedule 1AA,—

(a) insert the Part set out in Schedule 1 of this Act as the last part in Schedule 1AA; and

(b) make all necessary consequential amendments.

13 Schedule 7 amended

(1) In Schedule 7, after clause 2(1)(b)(i)(C), insert:

(D) is not a security interest referred to in subclause (3A); and

(2) In Schedule 7, clause 2(2), replace "subclause (1)(b)" with "subclauses (1)(b) and (3A)".

(3) In Schedule 7, after clause 2(3), insert:

(3A) For the purposes of subclause (1)(b)(i)(D), the security interest is a security interest over accounts receivable, inventory, or both to the extent that that security interest secures payment or performance of an obligation under or in relation to a qualifying derivative and—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before enforcement of the interest, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the enforcing counterparty; or

(ii) another person (who is not the company that granted the security interest) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.

(3B) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in subclause (3A) have in that subclause the same meanings as in that section.

(3C) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of subclause (3A)(b) (and those modifications include treating references to section 122(9A)(b) of that Act as references to subclause (3A)(b) of this clause and treating references to the grantor as references to the company that granted the security interest).

Subpart 3—Amendments to Corporations (Investigation and Management) Act 1989

14 Principal Act

This subpart amends the Corporations (Investigation and Management) Act 1989 (the **principal Act**).

15 New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert:

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

16 Section 42 amended (Moratorium)

After section 42(9), insert:

(10) Nothing in subsection (1) limits or prevents the exercise of any rights to enforce a security interest over collateral to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative if—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before the exercise of the rights, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the enforcing counterparty; or

(ii) another person (who is not the corporation that granted the security interest) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.

(11) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in subsection (10) have in that subsection the same meanings as in that section.

(12) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of subsection (10)(b) (and those modifications include treating references to section 122(9A)(b) of that Act as references to subsection (10)(b) of this section and treating references to the grantor as references to the corporation that granted the security interest).

17 Section 51 amended (Sale of property or assets subject to a security)

(1) After section 51(2)(b)(i)(A), insert:

(AB) is not a security interest referred to in subsection (8); and

(2) Replace section 51(2)(b)(ii) with:

(ii) proceeds of inventory that are subject to a security interest that—

(A) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and

(B) is not a security interest referred to in subsection (8).

(3) After section 51(6)(c), insert:

(d) is not a security interest referred to in subsection (8).

(4) After section 51(7), insert:

(8) For the purposes of subsections (2)(b)(i)(AB) and (ii)(B) and (6)(d), the security interest is a security interest over accounts receivable, inventory, or both to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative and—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before the exercise of rights to enforce the security interest, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the enforcing counterparty; or

(ii) another person (who is not the corporation that granted the security interest) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.

(9) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in subsection (8) have in that subsection the same meanings as in that section.

(10) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of subsection (8)(b) (and those modifications include treating references to section 122(9A)(b) of that Act as references to subsection (8)(b) of this section and treating references to the grantor as references to the corporation that granted the security interest).

18 Schedule replaced

(1) Replace the Schedule with the Schedule 1 set out in Schedule 3 of this Act.

(2) Section 73 is consequentially repealed.

Subpart 4—Amendments to Personal Property Securities Act 1999

19 Principal Act

This subpart amends the Personal Property Securities Act 1999 (the **principal Act**).

20 New section 21A inserted (Transitional, savings, and related provisions)

Before section 22, insert:

21A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

21 New section 103B and cross-heading inserted

After section 103A, insert:

Priority of interests under qualifying derivatives

103B Priority of interests under qualifying derivatives

(1) The security interest of a person (the **enforcing counterparty**) in collateral that is personal property, to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative, has priority over any security interest (including a purchase money security interest) in the same personal property if—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before the enforcement of the security interest, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the enforcing counterparty; or

(ii) another person (who is not the debtor that granted the security interest) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.

(2) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in this section (including the definitions of collateral and possession) have in this section the same meanings as in section 122A.

(3) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of this section (and those modifications include treating references to section 122(9A)(b) of that Act as references to subsection (1)(b) of this section and treating references to the grantor as references to the debtor that granted the security interest).

(4) This section overrides anything in this Act to the contrary (other than section 103A).

22 New Schedule 1AA inserted

Insert the Schedule 1AA set out in Schedule 4 of this Act as the first schedule to appear after the last section of the principal Act.

Subpart 5—Amendments to Property Law Act 2007

23 Principal Act

This subpart amends the Property Law Act 2007 (the **principal Act**).

24 New section 6A inserted (Transitional, savings, and related provisions)

After section 6, insert:

6A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

25 Section 153 amended (Preferential claims)

(1) After section 153(1)(a)(iii), insert:

(iv) is not a security interest referred to in subsection (7); and

(2) Replace section 153(2)(b) with:

(b) secondly, to the payment of amounts secured by—

(i) any perfected purchase money security interest over the accounts receivable or inventory concerned, or any perfected security interest arising from a transfer of accounts receivable for new value over the accounts receivable concerned, to the extent that it has priority over the mortgagee's mortgage and, in the case of the application of income, so far as payment is then due; or

(ii) any security interest referred to in subsection (7) that is over the accounts receivable or inventory concerned:

(3) After section 153(6), insert:

(7) For the purposes of subsections (1)(a)(iv) and (2)(b)(ii), the security interest is a security interest over accounts receivable, inventory, or both to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative and—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before enforcement of the security interest, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the enforcing counterparty; or

(ii) another person (who is not the person who granted the security interest) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.

(8) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in subsection (7) have in that subsection the same meanings as in that section.

(9) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of subsection (7)(b) (and those modifications include treating references to section 122(9A)(b) of that Act as references to subsection (7)(b) of this section and treating references to the grantor as references to the person who granted the security interest).

26 New Schedule 1AA inserted

Insert the Schedule 1AA set out in Schedule 5 of this Act as the first schedule to appear after the last section of the principal Act.

Subpart 6—Amendments to Receiverships Act 1993

27 Principal Act

This subpart amends the Receiverships Act 1993 (the **principal Act**).

28 New section 3A inserted (Transitional, savings, and related provisions)

After section 3, insert:

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

29 Section 30 amended (Preferential claims)

(1) After section 30(1)(c), insert:

(d) is not a security interest referred to in subsection (6).

(2) After section 30(2)(b)(ii), insert:

(iii) a security interest referred to in subsection (6) that is over all or any of those assets; and

(3) After section 30(5), insert:

(6) For the purposes of subsections (1)(d) and (2)(b)(iii), the security interest is a security interest over accounts receivable, inventory, or both to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative and—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before enforcement of the security interest, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the enforcing counterparty; or

(ii) another person (who is not the company that granted the security interest) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.

(7) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in subsection (6) have in that subsection the same meanings as in that section.

(8) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of subsection (6)(b) (and those modifications include treating references to section 122(9A)(b) of that Act as references to subsection (6)(b) of this section and treating references to the grantor as references to the company that granted the security interest).

30 New Schedule 1AA inserted

Insert the Schedule 1AA set out in Schedule 6 of this Act as the first schedule to appear after the last section of the principal Act.

31 Consequential amendments to Insolvency Practitioners Regulation (Amendments) Act 2019

(1) This section amends the Insolvency Practitioners Regulation (Amendments) Act 2019.

(2) In the heading to section 61, replace "**sections 3A and**" with "**section**".

(3) In section 61, replace "sections are inserted after section 3" with "section is inserted after section 3A".

(4) In section 61, repeal new section 3A.

(5) Replace section 76 with:

76 New Part inserted in Schedule 1AA

In Schedule 1AA,—

(a) insert the Part set out in Schedule 3 of this Act as the last part in Schedule 1AA; and

(b) make all necessary consequential amendments.

(6) Replace the Schedule 3 heading with:

Schedule 3
New Part inserted in Schedule 1AA

s 76

(7) In Schedule 3, repeal the new Schedule 1AA heading.

Part 2
Amendments relating to financial benchmarks

32 Principal Act

This Part amends the Financial Markets Conduct Act 2013 (the **principal Act**).

33 Section 6 amended (Interpretation)

(1) In section 6(1), definition of **market service**, after paragraph (f), insert:

(g) acting as an administrator of a financial benchmark

(2) In section 6(1), insert in their appropriate alphabetical order:

administrator of a financial benchmark means a person that controls the generation and operation of a financial benchmark, including administering and applying the rules or procedures by which a financial benchmark is generated

contributor, in relation to a financial benchmark, has the meaning set out in section 448C(4)

financial benchmark has the meaning set out subsections (6) and (7)

(3) After section 6(5), insert:

(6) In this Act, a **financial benchmark** is a price, estimate, rate, index, or value that is—

(a) referenced or otherwise used for purposes that include 1 or more of the following:

(i) calculating the interest, or other amounts, payable under financial products or other securities:

(ii) calculating the price at which a financial product or other security may be traded, redeemed, or dealt in:

(iii) calculating the value of a financial product or other security:

(iv) measuring the performance of a financial product or other security; and

(b) made available to users (whether or not for a fee); and

(c) generated periodically from 1 or more—

(i) transactions, instruments, currencies, prices, estimates, rates (including an interest rate or exchange rate), indices, values, financial products or other securities; or

(ii) other interests or property (whether tangible or intangible).

(7) A **financial benchmark** does not include any price, estimate, rate, index, or value that is excluded (whether by class or in a particular case) by the regulations.

34 Section 18 amended (Interpretation in this Part)

In section 18, definition of **financial product**, replace paragraph (b) with:

(b) includes, for the purposes of any provision of this Part or section 464,—

(i) any class or classes of financial product (within the meaning of section 5 of the Financial Advisers Act 2008) declared by the regulations to be a financial product for the purposes of that provision; and

(ii) any security of a kind referred to in section 6(6)(c) (being a security that is used to generate a financial benchmark)

35 Section 351 amended (Regulations modifying this Part or Part 7 for licensed markets)

In section 351(1)(ab), replace "451(d)" with "451(1)(d)".

36 Section 386 amended (Overview)

After section 386(1)(g), insert:

(ga) subpart 7A provides for additional purposes relating to licences to act as an administrator of a financial benchmark, and additional powers in respect of licensees, authorised bodies, or contributors to financial benchmarks:

37 Section 390 amended (When providers of other market services may be licensed)

Replace section 390(1) with:

(1) In addition, a person may hold a market services licence—

(a) to act as a provider of prescribed intermediary services (for example, a person-to-person lending intermediary or a crowd funding intermediary if prescribed by regulations); or

(b) to act as an administrator of a financial benchmark.

38 Section 393 amended (Principles guiding the exercise of FMA powers)

Replace section 393(a) with:

(a) exercising the power must be necessary or desirable in order to promote 1 or more of the following:

(i) either or both of the main purposes specified in section 3:

(ii) any of the additional purposes specified in section 4:

(iii) in the case of a market services licence to act as an administrator of a financial benchmark, either or both of the additional purposes specified in section 448B; and

39 Section 396 amended (When licence must be issued)

After section 396(f), insert:

(g) in the case of an application for a licence to act as an administrator of a financial benchmark, the issue of a licence is necessary or desirable in order to promote either or both of the additional purposes set out in section 448B.

40 Section 403 amended (When FMA may impose permitted conditions)

(1) In section 403(2), replace "subsection (3)" with "subsections (3) to (5)".

(2) After section 403(3), insert:

(5) In the case of a licence to act as an administrator of a financial benchmark, a condition referred to in subsection (1) may also impose conditions to achieve the purposes set out in section 448B (for example, to ensure that the benchmark complies with applicable international requirements).

41 Section 410 amended (Meaning of material change of circumstances)

In section 410(b), replace "(f)" with "(g)".

42 Section 414 amended (FMA's powers in case of contravention of market services licensee obligation, material change, etc)

In section 414(3)(b), replace "(f)" with "(g)".

43 New subpart 7A of Part 6 inserted

After section 448, insert:

Subpart 7A—Additional regulation of licences relating to financial benchmarks

448A Application of subpart

This subpart applies to market services licences to act as an administrator of a financial benchmark.

448B Additional purposes for licences relating to financial benchmarks

(1) In relation to market services licences to act as an administrator of a financial benchmark, this Part has the purposes (in addition to those set out in sections 3 and 4) of—

(a) ensuring the accuracy, integrity, and reliability of financial benchmarks, and providing for their continued availability, to support the purposes set out in sections 3 and 4; and

(b) promoting the recognition of New Zealand financial benchmarks in overseas jurisdictions by ensuring that—

(i) those benchmarks comply with applicable international requirements; and

(ii) an administrator of a financial benchmark is subject to effective regulation when generating and operating those benchmarks; and

(iii) those benchmarks may be referenced or otherwise used in international instruments.

(2) This section does not limit section 3 or 4.

448C FMA's powers to direct contributor to provide information or data

(1) The FMA may exercise a power under subsection (2) if it is satisfied that—

(a) a contributor has ceased or is likely to cease providing or making available information or data relevant to the generation or operation of the financial benchmark specified in a licence; and

(b) it is necessary or desirable in order to promote any of the purposes set out in section 448B.

(2) The FMA may, by written notice and otherwise in the prescribed manner, give a direction to a contributor requiring the contributor to provide information or data to a licensee, an authorised body, or another entity, where the provision of that information or data is necessary or desirable for the generation or operation of the financial benchmark specified in a licence.

(3) A direction may (without limitation) specify either or both of the following:

(a) requirements relating to the manner and form in which the information or data must be provided:

(b) the entity to which the information or data must be provided.

(4) In this subpart, **contributor** means a person whose activities have previously resulted in information or data being provided or made available to a licensee or an authorised body for the generation or operation of the financial benchmark specified in a licence (regardless of whether the information or data is provided or made available directly or indirectly to the licensee or authorised body).

(5) Subsection (4) applies regardless of where a contributor is resident, is incorporated, or carries on business.

(6) The contributor must comply with the direction (*see* subpart 3 of Part 8, which provides for civil liability for a contravention of this section).

448D FMA's powers to direct administration of financial benchmark

(1) The FMA may exercise a power under subsection (2) if it is satisfied that—

(a) a licensee or an authorised body has ceased or is likely to cease generating or operating a financial benchmark specified in a licence; and

(b) it is necessary or desirable in order to promote any of the purposes set out in section 448B.

(2) The FMA may, by written notice and otherwise in the prescribed manner, give a direction to a licensee or an authorised body—

(a) to continue to generate or operate the financial benchmark in a particular way; or

(b) to transfer or cease the generation or operation of the financial benchmark in a particular way.

(3) A direction may (without limitation) specify 1 or more requirements relating to the following:

(a) changes to the rules or procedures by which the financial benchmark is generated:

(b) changes to the documents under which the financial benchmark is generated or operated (for example, any compliance documents required by a condition of the licence):

(c) the orderly transfer of the generation or operation of the financial benchmark to another person:

(d) the orderly cessation of the generation or operation of the financial benchmark:

(e) the provision of material (including information, data, computer software, instructions, methodologies, formulas, or algorithms) to another person, where the provision of that material is necessary or desirable for the generation, operation, or transfer of that financial benchmark.

(4) The licensee or authorised body must—

(a) give the FMA all reasonable assistance to facilitate the continued generation and operation of the financial benchmark (or the orderly cessation of the financial benchmark); and

(b) comply with the direction.

(5) *See* subpart 3 of Part 8, which provides for civil liability for a contravention of this section.

448E Duration of direction

(1) A direction under section 448C or 448D must specify the period (not exceeding 12 months) during which the contributor, licensee, or authorised body must comply with the direction.

(2) The FMA may, by written notice, extend the period referred to in subsection (1) by a further period of not more than 12 months.

448F FMA must follow steps for giving direction

Sections 475 to 477 apply to a direction under section 448C or 448D as if the direction were an order under Part 8.

448G FMA may give interim direction pending exercise of power

(1) The FMA may give an interim direction (an **interim direction**) of the kind referred to in section 448C or 448D that is in force for the period referred to in subsection (2) if—

(a) the FMA is considering, at any time, whether it may exercise a power under section 448C or 448D; and

(b) the FMA considers that making an interim direction is necessary or desirable in the public interest.

(2) An interim direction is in force from the time at which it is given until the close of—

(a) the date that is 15 working days after the day on which it is given; or

(b) a later date specified by the FMA by notice to the person to whom the interim direction relates.

(3) For the purposes of subsection (2)(b),—

(a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to complete its consideration as referred to in subsection (1)(a) within the 15-working-day period referred to in subsection (2)(a); and

(b) the later date must be a date that is no more than 30 working days after the day on which the interim direction is given.

(4) The FMA—

(a) may act under subsection (1) or (2)(b) without giving the person to whom the interim direction relates an opportunity to make submissions to, or be heard before, the FMA in respect of the matter; but

(b) must, after acting under subsection (1) or (2)(b), give that person or that person's representative an opportunity to make written submissions and to be heard on the matter.

(5) The person to whom the interim direction relates must comply with the direction (*see* subpart 3 of Part 8, which provides for civil liability for a contravention of this section).

448H FMA must give notice after giving interim direction

If the FMA gives an interim direction, the FMA—

(a) must, as soon as is reasonably practicable, give written notice to the person to whom the interim direction relates of—

(i) the terms and conditions of the interim direction; and

(ii) the reasons for the interim direction; and

(iii) any other information the FMA thinks relevant in the circumstances; and

(b) in the case of an interim direction to a contributor, must also give the written notice referred to in paragraph (a) to the relevant licensee in respect of the financial benchmark; and

(c) may also make the direction available on its Internet site; and

(d) may also give notice to any other person of those matters.

448I General provisions on FMA's directions

(1) The FMA may give a direction under this subpart on the terms and conditions that the FMA thinks fit.

(2) The FMA may vary a direction in the same way as it may give the direction under this subpart.

(3) The FMA may revoke a direction or suspend a direction on the terms and conditions it thinks fit.

448J Protection for persons in respect of provision of material, information, or data under this subpart

No civil or criminal proceedings may be brought against a person by reason of the person having provided material, information, or data in good faith and in accordance with a direction under this subpart.

44 Section 449 amended (Part 6 services provisions)

After section 449(4)(k), insert:

(ka) section 448C, 448D, or 448G (directions to a contributor or an administrator of a financial benchmark):

45 Section 451 amended (Meaning of FMC reporting entity)

(1) In section 451(b), after "scheme", insert "or a person referred to in subsection (2)".

(2) In section 451, insert as subsection (2):

(2) Despite subsection (1)(b), a person who holds a licence under Part 6 is not an FMC reporting entity if—

(a) the licence only covers acting as an administrator of a financial benchmark; and

(b) the person is not a person referred to in subsection (1)(a) or (c) to (k).

46 Section 452 amended (Company that issues equity securities not FMC reporting entity if fewer than 50 shareholders)

In section 452(1), replace "451(a)" with "451(1)(a)".

47 Section 532 amended (Appeals against other decisions of FMA on questions of law only)

After section 532(f), insert:

(fa) a decision under section 448C, 448D, or 448G (directions to a contributor or an administrator of a financial benchmark):

48 Section 546 amended (Regulations for purposes of Part 6 (market services))

After section 546(1)(d)(iv), insert:

(v) in the case of a licence to act as an administrator of a financial benchmark, conditions of a kind described in section 403(5):

49 Section 548 amended (Other regulations)

(1) After section 548(1)(d)(vii), insert:

(viii) excluding (whether by class or in a particular case) a price, estimate, rate, index, or value from being a financial benchmark for the purposes of section 6(7):

(2) In section 548(2), replace "and (v)" with "(v), and (viii)".

50 Section 550 amended (Procedural requirements for regulations relating to exemptions, exclusions, and definitions)

In section 550(2)(f), replace "and (v)" with "(v), and (viii)".

51 Schedule 4 amended

In Schedule 4, clause 20(2A), replace "451(a)" with "451(1)(a)".

52 Consequential amendments

Amend the enactments specified in Schedule 7 as indicated in that schedule.

Schedule 1
Transitional, savings, and related provisions for amendments to Reserve Bank of New Zealand Act 1989

s 8

Part 2
Provision relating to Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

13 Provision relating to enforcing security interest over collateral for qualifying derivative

The amendments made by subpart 1 of Part 1 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 apply to—

(a) a qualifying derivative entered into before the commencement of this clause if, on that commencement, any obligations remain under or in relation to the derivative (whether the obligations are contingent or otherwise); and

(b) a qualifying derivative entered into on or after the commencement of this clause.

Schedule 2
Transitional, savings, and related provisions for amendments to Companies Act 1993

s 11

Part 2
Provision relating to Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

5 Provision relating to enforcing security interest over collateral for qualifying derivative

The amendments made by subpart 2 of Part 1 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 apply to—

(a) a qualifying derivative entered into before the commencement of this clause if, on that commencement, any obligations remain under or in relation to the derivative (whether the obligations are contingent or otherwise); and

(b) a qualifying derivative entered into on or after the commencement of this clause.

Schedule 3
Schedule of Corporations (Investigation and Management) Act 1989 replaced

s 18

Schedule 1
Transitional, savings, and related provisions

s 2A

Part 1
Provision relating to Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

1 Provision relating to enforcing security interest over collateral for qualifying derivative

The amendments made by subpart 3 of Part 1 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 apply to—

(a) a qualifying derivative entered into before the commencement of this clause if, on that commencement, any obligations remain under or in relation to the derivative (whether the obligations are contingent or otherwise); and

(b) a qualifying derivative entered into on or after the commencement of this clause.

Schedule 4
Transitional, savings, and related provisions for amendments to Personal Property Securities Act 1999

s 22

Schedule 1AA
Transitional, savings, and related provisions

s 21A

Part 1
Provision relating to Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

1 Provision relating to security interest over collateral for qualifying derivative

The amendments made by subpart 4 of Part 1 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 apply to—

(a) a qualifying derivative entered into before the commencement of this clause if, on that commencement, any obligations remain under or in relation to the derivative (whether the obligations are contingent or otherwise); and

(b) a qualifying derivative entered into on or after the commencement of this clause.

Schedule 5
Transitional, savings, and related provisions for amendments to Property Law Act 2007

s 26

Schedule 1AA
Transitional, savings, and related provisions

s 6A

Part 1
Provision relating to Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

1 Provision relating to security interest over collateral for qualifying derivative

The amendments made by subpart 5 of Part 1 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 apply to—

(a) a qualifying derivative entered into before the commencement of this clause if, on that commencement, any obligations remain under or in relation to the derivative (whether the obligations are contingent or otherwise); and

(b) a qualifying derivative entered into on or after the commencement of this clause.

Schedule 6
Transitional, savings, and related provisions for amendments to Receiverships Act 1993

s 30

Schedule 1AA
Transitional, savings, and related provisions

s 3A

Part 1
Provision relating to Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

1 Provision relating to security interest over collateral for qualifying derivative

The amendments made by subpart 6 of Part 1 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 apply to—

(a) a qualifying derivative entered into before the commencement of this clause if, on that commencement, any obligations remain under or in relation to the derivative (whether the obligations are contingent or otherwise); and

(b) a qualifying derivative entered into on or after the commencement of this clause.

Schedule 7
Consequential amendments

s 52

Fair Trading Act 1986 (1986 No 121)

In section 48P(6), definition of **financial product**, replace paragraph (b) with:

(b) includes, in relation to any provision of sections 9 to 13,—

(i) any class or classes of financial advice product declared by regulations made under section 548(1)(a) of that Act to be a financial product for the purposes of the provision of Part 2 of that Act that corresponds to that provision of this Act; and

(ii) any security of a kind referred to in section 6(6)(c) of that Act (being a security that is used to generate a financial benchmark)

Financial Services Legislation Amendment Act 2019 (2019 No 8)

In section 9, replace "paragraph (b)" with "paragraph (b)(i)".

Repeal section 12.

Replace section 19 with:

19 Section 393 amended (Principles guiding the exercise of FMA powers)

After section 393(a)(iii), insert:

(iv) in the case of financial advice services, the additional purpose in section 431B; and

Repeal section 24(1).

In section 26, new section 410(b), replace "396(a) to (f)" with "396(a) to (g)".

In section 27, new section 414(3)(b), replace "396(a) to (f)" with "396(a) to (g)".

Repeal section 33(1).

Replace section 33(2) with:

(2) In section 451(2)(a), after "financial benchmark", insert "or a financial advice service (or both)".

Repeal section 34.

Repeal section 59(4).

In section 63(4), after new section 5(1)(ib)(v), insert:

(vi) acting as an administrator of a financial benchmark:

Reprints notes

1 General

This is a reprint of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

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

3 Editorial and format changes

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

4 Amendments incorporated in this reprint

Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act Commencement Order 2020 (LI 2020/314)

COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13): section 3

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