RESERVE BANK
OF NEW ZEALAND
TE PŪTEA MATUA

Financial Market Infrastructures Bill: Exposure Draft

August 2019

Ref #8155394 v1.3

Submission contact details

The Reserve Bank invites submissions on the exposure draft by 5pm on 26 September 2019. Please note the disclosure on the publication of submissions below.

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Publication of submissions

All information in submissions will be made public unless you indicate you would like all or part of your submission to remain confidential. Respondents who would like part of their submission to remain confidential should provide both a confidential and public version of their submission. Apart from redactions of the information to be withheld (i.e. blacking out of text) the two versions should be identical. Respondents should ensure that redacted information is not able to be recovered electronically from the document (the redacted version may be published as received).

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The Reserve Bank may also publish an anonymised summary of the submissions received in respect of this exposure draft.

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Introduction

1. Financial Market Infrastructures (FMIs) are multilateral systems that provide trading, clearing, settlement and reporting services in relation to payments, securities, derivatives and other financial transactions. FMIs include payment systems, securities settlement systems, central securities depositories, central counterparties, and trade repositories.

2. Well-managed and operated FMIs contribute to an efficient financial system by connecting intermediaries (such as banks) with various financial markets, providing essential services, connecting counterparties, reducing transaction costs through economies of scale, managing counterparty and systemic risks, and fostering transparency.

3. The Government has previously decided to adopt a new regulatory regime for FMIs, and supplementary policy decisions on aspects of this regime were made late last year.

4. These decisions are being given effect in the Financial Market Infrastructures Bill (the Bill). A draft of the Bill (the exposure draft) is now being released for public comment before being finalised. We note that as decisions on the overall structure of the new regulatory regime have already been made, the purpose of publishing the exposure draft is specifically to seek views on the more granular and technical detail reflected in the Bill.

5. The purpose of this document is to provide some additional context to aspects of the Bill. In particular, it aims to:

    - Highlight a number of matters which we particularly wish to seek submitters' views on; and

    - Help to inform stakeholders' consideration of the exposure draft.

6. The deadline for submissions on the exposure draft is 5pm on 26 September 2019. Following an analysis of submissions, and any consequent amendments to the Bill, Cabinet approval will be sought to introduce the Bill into Parliament sometime in the second half of 2019.

Why is the enhanced regulation of FMIs necessary?

7. The enhanced regulation of FMIs is necessary for a number of reasons. Most importantly, FMIs play a key role in the operation of the financial system as they provide the essential services needed to clear, settle, and report electronic payments and transactions involving financial products. The disruption or failure of an FMI could affect the financial system as a whole, and create major solvency and liquidity problems for market participants (as well as disruption for consumers and businesses).

8. In addition, FMIs can be subject to market failures resulting in, amongst other things, an insufficient focus on risk management or inadequate investment in underlying infrastructure. The existing legislative regime in New Zealand also has significant deficiencies and is not consistent with international best practice (for example, it is an opt-in rather than mandatory regime, does not cover all types of FMI, and lacks crisis management powers).

Outline of the regulatory regime reflected in the Bill

9. The Bill establishes a standalone Act that will replace the current regime, which is contained in Parts 5B and 5C of the Reserve Bank of New Zealand Act 1989.

10. The purposes of the new regulatory regime will be to:

- promote the maintenance of a sound and efficient financial system;
- avoid significant damage to the financial system that could result from problems with an FMI, an operator of an FMI, or a participant of an FMI;
- promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- promote and facilitate the development of fair, efficient, and transparent financial markets.

11. The regime will cover all types of FMI, including payment systems, settlement systems, central counterparties, central securities depositories, and trade repositories. The Reserve Bank and Financial Markets Authority (FMA) will be the joint regulators of FMIs (except payment systems, where the Reserve Bank would be the sole regulator).

12. Under the regime the regulators will have information gathering and investigative powers in respect of all FMIs, to enable monitoring of the wider sector. However, the focus of the Bill is on designated FMIs. These are FMIs that are either:

- Identified as systemically important by the regulators and brought into the designation regime;
- Apply to be designated in order to access legal protections around settlement finality, netting and the enforceability of their rules.

13. Designated FMIs will be subject to enhanced regulation by the joint regulators. In particular, designated FMIs will be subject to:

- Legally binding standards issued by the regulators;
- A requirement to have contingency plans for dealing with financial or operational failure;
- Enhanced oversight of their rules by the regulators; and
- Crisis management powers (i.e. direction powers and a tailored statutory management regime).

14. The regime also provides for a graduated range of investigative and enforcement tools (these include some new tools that are not currently provided for under existing prudential regimes for banks and insurers, such as the power to enter into enforceable undertakings).

Definitions of FMI and operator

15. FMIs can be structured in a very diverse range of ways, and different types of FMIs provide quite different types of services. To deal with this diversity, the Bill contains definitions of FMI and operator that are broad and focused on substance over form.

16. Specifically, clause 5 of the Bill defines an "FMI" and an "operator" as follows:

> **FMI**-
> (a) means a multilateral system for the clearing, settling, or recording of any of the following:
> (i) payments;
> (ii) personal property, or transactions involving personal property, within the financial system;
> (iii) other transactions within the financial system; and
> (b) includes (without limitation) a system that is commonly regarded, within financial systems that are in New Zealand or elsewhere, as a financial market infrastructure, including a financial market infrastructure of any of the following types:
> (i) a payment system;
> (ii) a central securities depository
> (iii) a securities settlement system;
> (iv) a central counterparty;
> (v) a trade repository;
> (vi) a combination of 2 or more of the types of financial market infrastructure listed in subparagraphs (i) to (v).
>
> **operator**, in relation to an FMI,-
> (a) means a person who is wholly or partly responsible to the FMI's participants (or any of them) for—
> (i) providing or managing services under the FMI; or
> (ii) maintaining or administering the FMI's rules; and
> (b) if the FMI is a designated FMI, includes any person who is specified as an operator in the FMI's designation notice…..

17. Because designated FMIs will be subject to significant and wide ranging powers under the Bill, the designation notice for each individual FMI will also clearly identify the specific arrangements that constitute the FMI, and who the operator(s) of the FMI are for the purposes of the Bill (this will provide greater clarity about how the definitions in paragraph 16 are being applied in respect of designated FMIs).

18. Crucially, all obligations under the Bill apply to the operator of the FMI, and either require the operator to comply with certain obligation themselves or ensure that the FMI complies with certain obligations.

Use of the standard setting power

19. Clause 30 of the Bill provides the regulators with the power to make legally binding standards that, in summary, can apply to all FMIs, a class of FMIs, or individual FMIs. Standards may only relate to one of the matters set out in clause 34. Before issuing a standard the regulators must consult with affected parties, and where the standard will relate to an overseas FMI take into account certain additional matters (see clause 31).

20. The matters to which standards may relate are:

- the governance of designated FMIs, and the governance of operators of designated FMIs;

- the relationship between operators and persons who provide services to operators for the purposes of designated FMIs (including imposing requirements relating to the terms and conditions of contracts between operators and those persons);

- how operators must provide access to services under designated FMIs, including how persons may become participants of designated FMIs;

- requirements for capital or liquidity;

- the management by operators of 1 or more of the following:

    - general business risk;
    - operational risk;
    - credit risk;
    - liquidity risk;
    - custody and investment risk;
    - legal risk;
    - cybersecurity risk;
    - risks arising out of interconnections (direct or indirect) between a designated FMI and other designated FMIs;
    - risks arising out of interconnections (direct or indirect) between a designated FMI and activities in the financial system that are not activities under designated FMI;

- FMI contingency plans, including (without limitation) 1 or more of the following matters:

    - the purposes for which designated FMIs must have FMI contingency plans:
    - the contents of those plans (for example, the scenarios the plans must cover and strategies and methods that must be included in the plans for dealing with those scenarios;
    - the interaction of those plans with the designated FMI's rules;
    - the persons responsible for maintaining, activating, or implementing those plans;
    - arrangements for obtaining the financial resources needed to activate and implement those plans; and
    - the reviewing or testing of those plans:

- monitoring by operators of activities under designated FMIs;

- rules and procedures for managing a participant defaulting on its obligations under the rules of the FMI;

- the public disclosure of information relating to operators or designated FMIs;

- restrictions or prohibitions on the activities that a person that is an operator of a designated FMI may carry out otherwise than in their capacity as the operator;

- requirements relating to 1 or more standards issued by international organisations that impose requirements or provide for recommended practices in relation to FMIs.

21. In addition, a standard may require operators to give to the regulator reports relating to any of the following matters:

    - disruption to activities under designated FMIs;

    - contraventions of requirements imposed by or under this Act;

    - any other matter prescribed in the regulations.

22. This list of matters is designed to provide the ability to cover international standards, including:

    - any of the requirements set out in the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs);

    - in respect of public disclosure, any of the relevant matters set out in the CPSS-IOSCO Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology (the PFMI disclosure framework); and

    - in respect of FMI contingency plans, any relevant parts of the Financial Stability Board's Key Attributes of Resolution Regimes for Systemically Important Financial Institutions (Key Attributes).

23. The content of standards is not expected to go beyond what is contained in the PFMIs, the relevant parts of the PFMI disclosure framework, the relevant parts of the Key Attributes, and any international guidance material relating to these documents (and may end up only covering some of the matters addressed in these documents).

24. The only two exceptions to this are that:

    - Standards may be made requiring information about disruptions to the FMIs services and breaches of regulatory requirements by operators to be reported to the regulators; and

    - Standards may be made to impose bespoke requirements on an individual FMIs if their operation raises unique risks (for example, if an FMI breached risk management requirements a standard may be made imposing additional risk management obligations on that FMI).

25. Within these parameters, the detailed content of the standards will be the subject of a separate project that will be undertaken over longer timeframes. Final decisions on the content of the standards will not be made until consultation with stakeholders has been undertaken and the Bill has been enacted.

Approval regime for rule changes

26. Part 5C of the Reserve Bank of New Zealand Act 1989 provides that the joint regulators may disallow rule changes proposed by a designated settlement system.

27. Clause 39 of the Bill has changed this approach so that rule changes for domestic FMIs that are designated must be approved by the regulator (as noted later in this document, overseas FMIs that are designated will only be required to notify the joint regulators of proposed rule changes, but joint regulators will not have any role in approving or disallowing those rule changes).

28. We consider that this better reflects how the existing disallowance regime actually operates in practice. In particular, designated settlement systems under Part 5C invariably seek joint regulators' views on proposed rule changes at present before formally notifying those changes and triggering the 20 working day period in which the joint regulators may disallow a rule change. Given this informal process, there have been no instances where a proposed rule change has been disallowed (i.e. if this informal process picks up any problems with the proposed rule change, these problems have always been addressed before the rule change is formally notified and the 20 working day period for disallowing the rule change commences).

29. We note that the Bill does not currently include a set time by which regulators must make a decision on whether or not to approve a rule change. Given the fact that rule changes may vary significantly in scale and complexity, we do not consider that it is feasible to set a specified period of time in which a decision has to be made on whether or not to approve any type of proposed rule changes. However, the joint regulators will aim to make decisions on approving rule changes as promptly as possible.

Application of settlement finality protections when a participant is subject to an insolvency event

30. The settlement finality protections in the Bill are carried across from Part 5C of the Reserve Bank of New Zealand Act 1989. When a participant is subject to an insolvency event (e.g. when a liquidator, administrator, or statutory manager is appointed in respect of the participant), the settlement finality protections cease to apply to settlements involving that participant that take place more than 24 hours after the insolvency event occurred.

31. The general principle underpinning this approach is that the an operator needs a short period (i.e. up to 24 hours) to identify that a participant has become subject to an insolvency event and to suspend that participant. However, for the sake of certainty settlement finality protections should apply up to the time the participant is suspended during that period.

32. Based on the current experience under Part 5C of the Reserve Bank of New Zealand Act 1989, 24 hours is a sufficient time period for the operator of a settlement system to identify that a participant has been subject to an insolvency event and to suspend that participant. However, in the context of a central counterparty the operator may wish to auction off the position of a participant who has been subject to an insolvency event. This may often take longer than 24 hours.

33. We would be interested in submitters views on:

- Whether the 24 hour period should be extended in certain circumstances (and if so, for how long); and

- Whether this is just an issue for central counterparties clearing derivatives (so the circumstances in which a period longer than 24 hours should be provided for should align with the circumstances in which the stay in clause 116 currently applies).

Regulation of overseas FMIs

34. We have previously noted that a number of overseas FMIs may be designated under the regime. Some of these are already designated under Part 5C of the Reserve Bank of New Zealand Act 1989 (e.g. the continuous linked settlement system operated by CLS Bank International), whereas others are not (e.g. LCH and ASXClear (Futures)).

35. In considering the approach taken to the regulation and oversight of these FMIs, we are conscious of the fact that:

    - These overseas FMIs are subject to effective regulation and oversight in their home jurisdictions (and in some of these cases are also overseen by international supervisory and/or resolution colleges comprising regulators from the FMI's home country and host countries);

    - These FMIs will often not have any meaningful physical presence in New Zealand; and

    - There are practical reasons for concluding that it is not generally feasible or desirable to impose bespoke New Zealand related requirements on these FMIs.

36. In light of this context, we anticipate that the regulation and oversight of overseas FMIs that are designated will be materially different from the approach taken to other designated FMIs. In particular, we expect that the regulatory requirements applying to these FMIs will largely seek to duplicate key obligations applying in their home jurisdictions and/or rely on obligations imposed by their home country regulators. Supervision of these FMIs is also likely to be heavily based on engagement with home country regulators and international supervisory and resolution colleges (although we would expect to also have bilateral discussions with these FMIs on a regular cycle as well). Crisis management powers would also be used only in relation to the New Zealand presence of an overseas FMI that is designated and/or to support the resolution of that FMI in its home jurisdiction.

37. The Bill reflects this difference in approach in a number of different ways. Specifically:

    - The joint regulators must be notified of changes to the rules of overseas FMIs that are designated, but will not have any role in approving or disallowing those rule changes (clause 44);

    - When making standards that would apply to an overseas FMI that is designated, the joint regulators are required to, in effect, have regard to equivalent regulatory requirements in the FMI's home jurisdiction (clause 31(1)(b));

    - One of the grounds for issuing a direction or recommending statutory management is, in summary, supporting the resolution in its home jurisdiction of an overseas FMI that is designated (clause 76(1)(d)); and

- In effect, the statutory management of an overseas FMI that is designated will only extend to its New Zealand business (clause 88).

Moratorium and stay provisions

38. The Bill contains a number of provisions that effectively restrict the ability of parties to exercise certain rights in respect of designated FMIs and their operators when crisis management powers are exercised. It is important to be clear about the limited nature of these stays, what their objectives are, and precisely how they interrelate.

39. In summary, we expect that the rules of the FMI will set out the rights of participants, and in appropriate cases, how losses incurred by the FMI or its operator will be allocated between the operator and participants. This provides ex ante certainty for participants, and upholds arrangements that they have voluntarily entered into with the FMI and its operator.

40. The fact that a direction has been issued to the operator of a designed FMI, or an Order in Council has been made placing the operator of a designated FMI into statutory management, does not place any person in breach of a legal requirement and cannot be used as a ground for exercising certain rights or denying certain obligations (clauses 79 and 113). Importantly, this does not prevent the exercise of rights or the denial of obligations on other grounds. It does however, ensure that the simple fact that crisis management powers have been exercised does not change the legal position of the operator vis-à-vis the FMI's participants or other third parties.

41. In the context of statutory management, there are also a number of more specific provisions:

    - It will be possible to not apply the rules of the FMI when it is in statutory management, but only for certain purposes and after the statutory manager has consulted with the joint regulator (clause 95). An example of the rare circumstances in which the ability might be exercised is when the allocation of losses under the rules might compound the already stressed financial position of participants, compromising financial stability;

    - A moratorium will apply to the claims of creditors of the operator, but this will not override the application of the FMIs rules or the application of settlement finality protections under subpart 5 of Part 3 of the Bill (clause 102). This provides time to resolve the failed operator without the claims of other creditors resulting in a further deterioration in the operator's financial position; and

    - The stay described above in paragraph 40 will apply in a slightly different way in respect of rights that may be exercised in relation to a derivative when the failed FMI is a central counterparty. Specifically, this stay will only apply until midnight at the end of the first complete calendar day after the operator was placed into statutory management, rather than applying indefinitely (clause 116). However, this period can be shortened or (subject to conditions) extended by the joint regulators (clause 117). The purpose of this approach is to ensure consistency with overseas regimes and maintain the confidence of derivatives counterparties (by limiting the duration of the stay), while at the same time providing sufficient opportunity to mitigate against a disorderly close out of defaulting participants' positions resulting in the central counterparty having an unmatched book of obligations (and being placed under additional financial stress as a result).

Offences and penalties

42. The Bill provides various types of criminal offences for breaches of requirements imposed directly by the Bill, and civil pecuniary penalties for breaches of standards made under clause 30. These offences and penalties are set out in the appendix to this document. Related provisions (including those dealing with defences, and when directors may be personally liable) are set out in Part 5 of the Bill.

43. We would be particularly interested in submitters' views on:

    - Whether any of the criminal offences in the Bill would be better replaced by pecuniary penalties; and

    - The structure of the criminal offences in the Bill (e.g. whether they have an appropriate mens rea element like intent or recklessness, and whether means rea and strict liability offences are used in the right places).

44. In this respect, we note that there may be a case for the greater use of pecuniary penalties in the context of this type of corporate offending where, for example:

    - The purpose of the penalty is primarily to incentive compliance rather than punish wrongdoing;

    - The conduct involved will normally be committed by a corporate entity and it is difficult to trace moral culpability back to an individual (or individuals);

    - The breach may relate to technical compliance rather than significant harm to individuals, property, or the economy;

    - The complex nature of the evidence may make it difficult to prove a breach to the criminal standard of proof;

    - The pecuniary penalties form part of a graduated range of penalties and offences.

45. However, these considerations also have to be balanced against counterveiling factors (such as the systemic importance of many FMIs, and the value of the greater procedural protections afforded to a party that is being prosecuted for a criminal offence).

46. In addition, we note that many offences in the Bill also require the contravening party to have acted recklessly or intentionally in order to have committed the offence.

47. An alternative approach would be for some of the offences to prescribe that a person has committed an offence only if they have acted recklessly, and others to prescribe that a person has committed an offence only if they have acted intentionally. Consequential changes could also be made to the penalty levels attaching to the offences to reflect the higher moral culpability associated with intentional rather than reckless behaviour.

Transitional arrangements

48. There are no specific transitional provisions in the Bill. Instead, we anticipate that transitional arrangements can be managed through the power to bring provisions of the Bill into force at different times via Orders in Council. We expect this process to operate as follows:

- Bill enacted, following powers come into force immediately:
  - powers to require information, reviews, and independent reports (Part 2);
  - power to designate FMIs for the purposes of the Bill (Clauses 20-29);
  - power to issue standards (Clauses 30-34);
- In the 12 months following the enactment of the Bill: analysis of which FMIs should be designated, consultation with potentially affected FMIs and final decisions on recommended designations completed. Design of proposed standards completed;
- 12 months after the Bill is enacted: Designation notices made, standards made,[1] remaining provisions in the Bill come into force, Part 5C of the Reserve Bank of New Zealand Act 1989 is revoked

49. There are two aspects of these transitional arrangements we would be particularly interested in submitters' views on.

50. Firstly, we would be interested views on whether settlement systems currently designated under Part 5C of the Reserve Bank of New Zealand Act 1989 should automatically be deemed to be designated under the Bill. It seems likely that currently designated systems would either be brought into the regime due to being systemically important, or opt-in to the regime to continue to access the legal protections around settlement finality, netting and the enforceability of rules that are being carried over into the Bill from Part 5C. This may support them being automatically deemed into the Bill. On the other hand, having these systems be re-designated under the Bill would ensure consistency in the approach taken to designating these systems and other FMIs that may be designated under the Bill.

51. On balance, we are currently of the view that re-designating these FMIs under the Bill is a preferable to automatically treating them as designated under the Bill. This view is based on the fact that designation notices under the Bill will have to consider new issues (e.g. whether the FMI is systemically important, what type of FMI the FMI is being classified as (e.g. payment system, CCP)). Importantly though, it also assumes that when re-designating these FMIs there will be no need to reconsider whether they are robust enough to access the legal protections around settlement finality, netting, and the enforceability of rules (i.e. that this can be assumed given the fact that these FMI are currently designated under Part 5C).

52. Secondly, the transitional arrangements set out above mean that currently designated systems will:

- cease to be designated under Part 5C at the end of the last calendar day of a 12 month period commencing on the day the Bill is enacted;
- be designated under the Bill from the beginning of the following calendar day.

53. We would be interested in views on whether this provides sufficient certainty around there being no gap in the application of the legal protections around settlement finality,

[1] We note that where it is not feasible for operators to comply with standards straightaway (due to a need to make changes to an FMI's systems or rules for example), the standards may not actually come into force until sometime after they are made.

netting and the enforceability of rules. In this respect, we are conscious of the fact that this may be more of an issue for overseas FMIs that may be designated (given the potential time difference in some of these cases).

Direction powers and continuous disclosure

54. The fact that a direction has been issued under the Bill is confidential unless the regulators allow it to be disclosed. This would have the effect of preventing the operator of a distressed FMI from disclosing the fact that a direction has been issued under stock exchange continuous disclosure rules.

55. We note that this issue needs to be seen in the context that:

- Few operators of designated FMIs will be listed entities (other than self listed stock exchange operators like NZX or ASX that may also act as the operator of FMIs); and

- This approach is consistent with the treatment of direction powers for banks and insurers, and is being reassessed in the banking context as part of phase 2 of the review of the Reserve Bank of New Zealand Act of 1989 (phase 2). Any resulting changes to the confidentiality of direction powers for banks could be reviewed for applicability to FMIs along with other areas noted in paragraph 58.

56. However, we would be interested in any perspectives stakeholders may have on this issue.

Linkages to phase 2 of the Review of the Reserve Bank of New Zealand Act 1989

57. We note that the Government has agreed that certain aspects of the Bill reflect interim positions that will be looked at again once the detailed conclusions of phase 2 have been determined. The purpose of this would be to ensure long term consistency of approach between banking and FMI related legislation where this is appropriate.

58. The three specific areas where the Government have identified the approaches in the Bill as interim are:

- Ministerial consent being required before the joint regulators may issue a direction to the operator of an FMI;

- The statutory management model in the Bill; and

- The statutory manager's power to act contrary to the interests of creditors on financial stability grounds (i.e. clause 105).

59. We anticipate that, subject to Cabinet approval, the FMI Bill will be introduced into Parliament in the second half of 2019. By contrast, the detailed conclusions of phase 2 will not be clear on all of these matters until at least the point at which legislation has been drafted and introduced into Parliament. This is not expected to be before the middle of 2020, by which time the FMI Bill is likely to be enacted (or close to being enacted).

60. Any changes to the approaches taken in the Bill as a consequence of phase 2 will therefore be given effect through a separate amendment Act made sometime after the Bill has been enacted.

Appendix : Description of Offences and Penalties in the FMI Bill

Description of offence	Clause Number		Offence or penalty		Penalty levels	
			Type	Level	Penalty levels for criminal offences	Pecuniary penalty level
Contravention of requirement to publish FMI rules	37(1)		Criminal – Strict liability. Defence where both of the following criteria are met: 1) the breach is due to the act or omission of another person or some other cause beyond the persons control; and 2) the person took reasonable precautions and exercised due diligence to avoid the breach.	Level 1	**Body corporate** fine not exceeding $200,000 **Individual** fine not exceeding $20,000	n/a
Contraventions of the regulator's power to require submitted information to be reviewed	17(1)		Criminal – Strict liability. Defence where both of the following criteria are met: 1) the breach is due to the act or omission of another person or some other cause beyond the persons control; and 2) the person took reasonable precautions and exercised due diligence to avoid the breach.	Level 1		
Contraventions of the requirement for designated overseas FMIs to submit rule changes	45(1)		Criminal - Strict liability. Defence where both of the following criteria are met: 1) the breach is due to the act or omission of another person or some other cause beyond the persons control; and 2) the person took reasonable precautions and exercised due diligence to avoid the breach.	Level 1		
Contraventions of restrictions on further disclosure information by the RBNZ and FMA	137(1)		Criminal - Strict liability. Defence where both of the following criteria are met: 1) the breach is due to the act or omission of another person or some other cause beyond the persons control; and 2) the person took reasonable precautions and exercised due diligence to avoid the breach.	Level 2	**Body corporate** fine not exceeding $500,000 **Individual** fine not exceeding $50,000	n/a
Contraventions of the regulator's power to require information	15(1)		Criminal - where breach occurs "without reasonable excuse"	Level 2		
When a person discloses that a direction notice has been given by the regulator	80(2)		Criminal - Strict liability. Defence where both of the following criteria are met: 1) the breach is due to the act or omission of another person or some other cause beyond the persons control; and 2) the person took reasonable precautions and exercised due diligence to avoid the breach.	Level 2		
Contraventions of regulator's power to require submission and publication of independent reports	19(1)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 3	**Body corporate** fine not exceeding $500,000 **Individual** (i) imprisonment for a term not exceeding 3 months; or (ii) a fine not exceeding $50,000; or (iii) both:	n/a
Contraventions of regulator's power to require a change to designated FMI's rules	43(1)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 3		
Contraventions of regulator's powers in relation to FMI contingency rules	52(1)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 3		
Contraventions of restrictions on the disclosure of information by RBNZ and FMA to other persons	134(1)		Criminal - mental element of intention or recklessness must be proven by the prosecuting agency	Level 3		
When an operator contravenes a standard	33(1)		Pecuniary penalty	n/a	n/a	**Body corporate** fine not exceeding $750,000 **Individual** fine not exceeding $75,000
When an operator contravenes their duties with regards to contingency plans	48(1)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 4	**Body corporate** fine not exceeding $1,000,000 **Individual** (i) imprisonment for a term not exceeding 12 months; or (ii) a fine not exceeding $100,000; or (iii) both:	n/a
Contraventions of regulator's power to appoint an investigator	64(1) and (2)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 4		
When an operator contravenes a remedial notice	68(1)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 4		
Providing false or misleading information	131(2) and (4)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 4		
Wrongly holding out system as designated FMI	29(2)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 5	**Body corporate** fine not exceeding $2,000,000 **Individual** (i) imprisonment for a term not exceeding 18 months; or (ii) a fine not exceeding $200,000; or (iii) both:	n/a
When an operator contravenes a direction notice	80(1)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 5		
When a participant contravenes a direction notice	82(1)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 5		
When a person who contravenes any provisions of the Corporations (Investigation and Management) Act 1989 that apply to the FMI regime	107(1) and (3)		Criminal – mental element of intention or recklessness must be proven by the prosecuting agency	Level 5		
*Clause 107(1) only creates an offence for a breach of section 43(1) of the Corporations (Investigation and Management) Act. Section 43(1) provides for a strict liability offence with lower penalties levels than we are proposing here. Clause 107(3) is based upon section 68 of the Corporations (Investigation and Management) Act. The offence in clause 107(3) has higher penalty levels than in section 68 of the Corporations (Investigation and Management) Act.						