



# The Financial Market Infrastructures Act Implementation Plan

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CONSULTATION  
PAPER



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## Purpose

1. The Financial Market Infrastructures Act (the Act) became law on 10 May 2021.
2. This document briefly explains what the Act is about and outlines how the Reserve Bank of New Zealand (the Reserve Bank) and Financial Markets Authority (the FMA) (together, the Regulator) plan to implement the new law over an approximately 18 month transition period, which is expected to be completed at the end of 2022.
3. Industry and other stakeholders have an opportunity to provide their input on key elements of how the Act is implemented. This includes how financial market infrastructures (FMIs) will be subject to oversight by the Regulator and the approach to developing regulatory requirements that FMIs will face. We are publishing this implementation paper alongside the following consultation papers:
  - A framework for identifying systematically important financial markets infrastructures; and
  - Approach to developing standards for financial market infrastructures.
4. We invite your feedback on these 2 consultation papers by **20 September 2021**.
5. Other aspects of the implementation plan, such as the Regulator's supervisory approach, how we will work together as the Regulator, the use of information gathering and monitoring powers, and drafting commencement orders and fees, will be discussed briefly in this document. A timeline of the implementation plan is provided at the end of this document, which shows how the various pieces of work line up with each other over the transition period.

## Introduction

### What are FMIs and why are they important?

6. FMIs are often described as the plumbing of the financial system. Comparisons with other important infrastructure, such as the electricity grid or the road system, are equally relevant. The common theme among these comparisons is that they are all essential for the wellbeing of New Zealanders; the same is true for FMIs.
7. FMIs are systems that facilitate non-cash payments and financial market transactions and are therefore essential for the day-to-day operation of the economy. More precisely, FMIs are multilateral systems that provide clearing, settlement, and reporting services in relation to payments, securities, derivatives and other financial transactions. There are several types of FMIs, including payment systems, securities settlement systems, central securities depositories, central counterparties, and trade repositories.
8. New Zealanders depend on FMIs in their daily economic lives, although in most cases they will not be directly aware of this because FMIs typically operate behind the scenes with banks and other financial sector institutions providing the interface to their customers. The inter-bank payment system operated by the Reserve Bank– the Exchange Settlement Account System (ESAS) – is one example of an FMI operating in New Zealand.
9. Well-managed FMIs support well-functioning financial markets and promote a sound and efficient financial system. It is also true, however, that problems or disruptions at an FMI could lead to severe adverse impacts to financial markets, the wider financial system and the economy as whole. The enhanced regulatory framework established by the Act aims to

promote the maintenance of a sound and efficient financial system and avoid significant damage to the financial system that could result from problems with an FMI, its operator, or its participants.

## About the FMI Act

10. The Act establishes a new and enhanced regulatory regime for FMIs that brings New Zealand in line with our peer jurisdictions and reflects international best practice. Further, the basic framework of the new regime was supported by the International Monetary Fund in its 2016/17 Financial Sector Assessment Programme (FSAP) review of New Zealand.
11. The Act has 3 main components:
  - a set of information gathering and investigative powers to support ongoing oversight and monitoring of all FMIs;
  - the power to set regulatory requirements for designated FMIs, such as issuing standards, reviewing contingency plans, and overseeing system rules (including rules regarding netting and settlements); and
  - a set of powers to manage systemically important FMIs that are facing distress (i.e. crisis management powers).
12. Note that there are 2 ways that an FMI can become designated. First, the Regulator can determine that an FMI is systemically important and therefore must be designated. Second, an FMI can apply for designation status on their own accord to access certain legal protections around netting and settlement finality. We anticipate that a number of FMIs, for example some payment systems that are primarily used to facilitate retail transactions, will be less likely to meet the systemic importance threshold or will otherwise not be interested in voluntarily seeking designation status.
13. For payment systems, the Reserve Bank is the sole regulator. For all other types of FMIs, the Reserve Bank and the FMA will act jointly as the regulator.
14. When exercising legal powers in the Act, the Regulator must do so for particular purposes and is guided by a set of principles. These purposes include promoting a sound and efficient financial system and promoting fair, efficient and transparent financial markets. The principles that guide the Regulator include for example, regulating in a way that is consistent with international standards and recognising the need to avoid unnecessary compliance costs and unnecessary constraints on innovation.

## Key implementation work streams and indicative timeline

15. Considerable work will be required to implement the Act. This section briefly describes some of the key work streams that are involved and sets out indicative timelines for each work stream. The aim is to provide readers with an overall picture of how the new regulatory regime for FMIs will be implemented.

16. The key implementation work streams are:

- identifying and designating systemically important FMIs;
- developing standards for designated FMIs;
- defining the approach to supervision by the Regulator and how the Reserve Bank and the FMA will work together;
- planing the use of information gathering and investigative powers; and
- drafting commencement orders and fees.

### Transition of FMIs that are currently designated

17. Schedule 1 of the Act outlines a streamlined process to transition FMIs that are currently designated under the Reserve Bank of New Zealand Act 1989 (RBNZ Act). This process includes a systemic importance assessment and determining which standards apply but, importantly, does not include other considerations for designation (outlined in section 23 of the Act) that will only be relevant for other FMIs that are determined to be systemically important by the Regulator or that seek designation status on their own accord.

### Indicative timeline for FMI Act implementation

	Transition period (18 months following enactment of the Act)					
	Q3: 2021	Q4:2021	Q1:2022	Q2:2022	Q3: 2022	Q4:2022
<b>Systemic Importance</b>						
• Develop assessment framework	Includes consultation period					
• Run assessment and designation process						
<b>FMI standards</b>						
• Consultation on approach to setting standards	Includes consultation period					
• Exposure draft of standards			Includes consultation period			
• Finalised standards published						
<b>Supervisory approach and MoU</b>						
• Prepare and publish						
<b>Information gathering powers</b>						
• Plan and develop				Includes consultation period		
<b>Commencement order and fees</b>						
• Draft order and regulations						

## Identifying systematically important FMIs

18. The Act requires the Regulator to establish a system for designating systemically important FMIs and FMIs that apply for designation (section 3(2)(a)).
19. Details of a proposed framework to identify systemically important FMIs is set out in our [consultation paper](#) on this topic. The framework aims to balance the importance of ensuring transparency and clarity in the Regulator's decision-making with the need for flexibility to accommodate the diversity of the sector. To foster transparency, the framework elaborates on the meaning of the 5 factors (identified in section 24 of the Act) that the Regulator must consider when deciding on the systemic status of an FMI. To preserve flexibility, the framework is deliberately not prescriptive and does not include a systemic importance score or a threshold. Rather, systemic importance assessments will reflect the judgement of the Regulator supported by relevant information that is specified in law.

## Developing standards for FMIs

20. The Regulator has the power to issue standards for designated FMIs (section 31) dealing with a range of matters (section 34).

Details of the proposed approach to develop standards are set out in our [consultation paper](#) on this topic. A key aspect of this approach is our intention to closely follow international practice as detailed in the Principles for Financial Market Infrastructures (the PFMI). This is consistent with the approach taken by regulators in peer jurisdictions. The consultation paper also covers:

- a. how the existing regulatory requirements for FMIs that are designated under the RBNZ Act will be transitioned into standards under the Act; and
- b. the planned approach to developing standards for matters that are not covered in sufficient detail by international standards.

## Regulators' supervisory approach and MOU

21. The Reserve Bank and the FMA will prepare and publish our approach to supervision and a memorandum of understanding (MOU) to support the efficient and transparent supervision of designated FMIs under the Act. These will replace the existing documents related to the supervision of FMIs under the RBNZ Act such as the [approach to oversight of designated settlement systems](#) (DSS1) and the [MOU between the Reserve Bank and the FMA on the designation and oversight of settlement systems](#). The new MOU will likely be added to the principal [memorandum of understanding](#) between the Reserve Bank and the FMA as an additional schedule and should be read in conjunction with the principal MOU.

## Information gathering and monitoring

22. The Act provides information gathering and investigative powers in relation to all FMIs, including those that are not designated (section 14). For designated FMIs, information requirements will be closely aligned with the need to monitor compliance with regulatory requirements.
23. The Regulator will also seek information from all FMIs to monitor the sector for threats to confidence and stability of the financial system, and to ensure that financial markets are functioning well. Detailed plans will be developed and affected stakeholders will be consulted on these plans in due course.

## Commencement order and fees

24. Several aspects of the Act came into effect the day after the Bill was enacted (section 2) to help us begin our work to implement the new regime. This includes information gathering, designation, and standards making powers. Remaining provisions in the Act will need to be brought into force by way of a commencement Order in Council or will automatically come into effect 3 years after enactment. The Regulator intends to draft a commencement order that is consistent with the planned 18-month transition period.
25. The Regulator can charge fees for various purposes (section 153), including processing the application of an FMI who wishes to opt-in for designation status. We will make regulations regarding the amount and form of such fees. No fees will be charged to FMIs that meet the threshold for designation by the Regulator on account that they are systemically important.