

# THE INTERNATIONAL CAPITAL MARKETS REVIEW

NINTH EDITION

**Editor**

Jeffrey Golden

THE LAW REVIEWS

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NINTH EDITION

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# PREFACE

This book serves two purposes – one obvious, but the other possibly less so.

Quite obviously, and one reason for its continuing popularity, *The International Capital Markets Review* addresses the comparative law aspect of our readers' international capital markets (ICM) workload and equips them with a reference source. Globalisation and technological change mean that the transactional practice of a capital markets lawyer, wherever based, no longer enjoys the luxury – if ever it did – of focusing solely at home within the confines of a single jurisdiction. Globalisation means that fewer and fewer opportunities or challenges are truly local, and technology more and more permits a practitioner to tackle international issues.

Moreover, clients certainly may have multi-jurisdictional ambitions or, even if unintended, their activities often may risk multi-jurisdictional impact. In such cases, it would be a brave but possibly foolish counsel who assumed: 'The only law, regulation and jurisdiction that matter are my own!'

Ironically, the second purpose this book aims to serve is to equip its readers to do a better job as practitioners at home. In other words, reading the summaries of foreign lawyers, who can describe relevant foreign laws and practices, is perfectly consistent with and helpful when interpreting and giving advice about one's own law and practice.

As well as giving guidance for navigating a particular local but, from the standpoint of the reader, foreign scene, the comparative perspectives presented by our authors present an agenda for thought, analysis and response about home jurisdiction laws and regulatory frameworks, thereby also giving lawyers, in-house compliance officers, regulators, law students and law teachers an opportunity to create a checklist of relevant considerations both in light of what is or may currently be required in their own jurisdiction but also as to where things there could, or should, best be headed (based on best practices of another jurisdiction) for the future.

Thus, an unfamiliar and still-changing legal jurisdiction abroad may raise awareness and stimulate discussion, which in turn may assist practitioners to revise concepts, practices and advice in both our domestic and international work. Why is this so important? The simple answer is that it cannot be avoided in today's ICM practice. Just as importantly, an ICM practitioner's clients would not wish us to have a more blinkered perspective.

Not long ago, I had the honour of sharing the platform with a United Kingdom Supreme Court Justice, a distinguished Queen's Counsel and three American academics. Our topic was 'Comparative Law as an Appropriate Topic for Courts'. The others concentrated their remarks, as might have been expected, on the context of matters of constitutional law, and that gave rise to a spirited debate. I attempted to take some of the more theoretical

aspects of our discussion and ground them in the specific example of capital markets, and particularly the over-the-counter derivatives market.

Activity in that market, I said, could be characterised as truly global. More to the point, I posited, that, whereas you might get varied answers if you asked a country's citizens whether they considered it appropriate for a court to take account of the experiences of other jurisdictions when considering issues of constitutional law, in my view derivatives market participants would uniformly wish courts to at least be aware of and consider relevant financial market practice beyond their jurisdictional borders and comparative jurisprudence (especially from English and New York courts, which are most often called upon to adjudicate disputes about derivatives), even when traditional approaches to contract construction as between courts in different jurisdictions may have differed.

In such cases, with so much at stake given the volumes of financial market trading on standard terms, and given the complexity and technicality of many of the products and the way in which they are traded and valued, there appears to me to be a growing interest in comparative law analysis and an almost insatiable appetite among judges to know at least how experienced courts have answered similar questions.

There is no reason to think that ICM practitioners are any differently situated in this regard, or less in need of or less benefited by a comparative view when facing up to the often technical and complex problems confronting them, than are judges. After all, it is only human nature to wish not to be embarrassed or disadvantaged by what you do not know.

Of course, it must be recognised that there is no substitute for actual and direct exchanges of information between lawyers from different jurisdictions. Ours should be an interdependent professional world. A world of shared issues and challenges, such as those posed by market regulation. A world of instant communication. A world of legal practices less constrained by jurisdictional borders. In that sense and to that end, the directory of experts and their law firms in the appendices to this book may help to identify local counterparts in potentially relevant jurisdictions. And, in that case, I hope that reading the content of this book may facilitate discussions with a relevant author.

In conclusion, let me add that our authors are indeed the heroes of the stories told in the pages that follow. My admiration for our contributing experts, as I wrote in the preface to the last edition, continues. It remains, too, a distinct privilege to serve as their editor, and once again I shall be glad if their collective effort proves helpful to our readers when facing the challenges of their ICM practices amid the growing interdependence of our professional world.

**Jeffrey Golden**

Joint Head of Chambers

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London

October 2019

## Chapter 13

# NEW ZEALAND

*Deemple Budhia and Ling Yan Pang<sup>1</sup>*

## I INTRODUCTION

New Zealand's capital markets are primarily regulated under the Financial Markets Conduct Act 2013 (FMC Act). All offers of financial products must be made under the FMC Act. The Financial Markets Authority (FMA) is the principal regulator in respect of financial products and financial services, and is responsible for enforcing the FMC Act and other financial markets legislation.

### i Structure and regulation

New Zealand has a legal system based on English common law. New Zealand's laws include legislation made by Parliament, rules made by local authorities and the common law, which is developed by judges. Legislation made by Parliament overrides common law. The court system is a hierarchy that includes two appeal courts (the highest of which is the Supreme Court) whose decisions are binding on courts below them in the hierarchy.

Offers of financial products are regulated by the FMC Act and regulations made under the FMC Act (Regulations). The FMC Act and the Regulations:

- a impose fair-dealing obligations on conduct in both the retail and wholesale financial markets;
- b set out the disclosure requirements for offers of financial products;
- c set out a regime of exclusions and wholesale investor categories in connection with the disclosure requirements;
- d set out the governance rules that apply to financial products; and
- e impose a licensing regime.

A summary of the FMC Act provisions applicable to offers of financial products in New Zealand is provided in this chapter.

### *The FMC Act*

#### *Financial products*

Under the FMC Act, an offer of financial products for issue requires disclosure to investors unless an exclusion applies to all persons to whom the offer is made. Certain specified offers of financial products for sale will also require disclosure to investors.

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<sup>1</sup> Deemple Budhia is a partner and Ling Yan Pang is a senior associate at Russell McVeagh. The authors would like to thank and gratefully acknowledge the assistance of Victoria Jones.

There are four categories of financial products: debt securities, equity securities, managed investment products and derivatives, each of which is separately defined. A managed investment product refers to an interest in a managed investment scheme, which is broadly defined to include any scheme:

- a the purpose or effect of which is to enable participating investors to contribute money to the scheme to acquire an interest in the scheme;
- b where the interests are rights to participate in or receive financial benefits produced principally by the efforts of others; and
- c where participating investors do not have day-to-day control over the operation of the scheme.

The definition of derivatives is wide and explicitly includes transactions that are commonly referred to in New Zealand or overseas financial markets as futures contracts, forwards, options (other than options to acquire by way of issue equity securities, debt securities or managed investment products), swap agreements, contracts for difference, margin contracts, rolling spot contracts, caps, collars, floors and spreads.

The FMA has the power to declare that a security that would not otherwise be a financial product is a financial product of a particular kind.

#### *Regulated offers*

An offer of financial products that requires disclosure is a regulated offer. An offer that is not a regulated offer will still be subject to the general fair dealing provisions in the FMC Act.

The disclosure required in relation to each financial product is set out in the Regulations and is tailored according to the characteristics of the particular product being offered.

#### *Other legislation and legislative bodies*

Other key statutes regulating New Zealand's financial sector include the Financial Reporting Act 2013, the Companies Act 1993 (Companies Act), the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPA), the Financial Markets Authority Act 2011, the Financial Advisers Act 2008 (FAA), the Reserve Bank of New Zealand Act 1989 (RBNZ Act), the Insurance (Prudential Supervision) Act 2010 (IPS Act), the Non-bank Deposit Takers Act 2013 (NBDT Act), the Financial Markets Supervisors Act 2011 and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AMLA). The recently enacted Financial Services Legislation Amendment Act 2019 (FSLA Act) will repeal the FAA and introduce a new financial adviser regime in New Zealand.

The principal regulatory bodies for New Zealand's financial sector are:

- a the FMA, whose principal objective is to promote and facilitate the development of fair, efficient and transparent financial markets. The FMA's functions include monitoring compliance with, and investigating conduct that constitutes or may constitute breaches of, financial markets legislation, and licensing and supervising authorised financial advisers, qualifying financial entities, licensed independent trustees and licensed supervisors; and
- b the Reserve Bank of New Zealand, which is responsible for the prudential regulation of banks, non-bank deposit takers and insurance providers.

Under the FMC Act, a person making a regulated offer of debt securities is required to appoint a licensed supervisor and enter into a trust deed with that supervisor, and issuers of regulated managed investment products under the FMC Act are required to register the managed

investment scheme, appoint a licensed supervisor and licensed manager, and enter into a governing document. The licensing regime in respect of supervisors is set out in the Financial Markets Supervisors Act 2011, which includes compliance and reporting obligations for licensed supervisors and permits the FMA to remove a supervisor in certain circumstances.

## **ii Authorisation and licensing**

There are no direct government controls on the issuing of financial products in New Zealand, either by domestic or foreign companies. However, market participants may need to obtain registrations or authorisations when participating in New Zealand's capital markets, depending on the type of activity an entity is proposing to conduct in New Zealand.

### ***Overseas company registration***

The Companies Act requires any company incorporated outside New Zealand that is carrying on business in New Zealand to register as an overseas company. Whether a particular activity or activities constitute carrying on business will be a question of fact and degree. Registration as an overseas company is a relatively simple process, although there are continuing compliance obligations for overseas companies, including the requirement to lodge annual returns with the Registrar of Companies and (for entities of a certain size) to prepare and file financial statements.

### ***Financial service provider registration***

Subject to certain limited exceptions, the FSPA requires any person who carries on the business of providing a financial service and is ordinarily resident in New Zealand, has a place of business in New Zealand or is required to be a licensed provider under a licensing enactment (which includes registered banks, authorised financial advisers, certain licensed supervisors and others) to be registered for that service on the publicly available Financial Service Providers Register (FSP Register). Financial service providers that provide financial services to retail clients must also join an approved dispute resolution scheme, subject to certain limited exceptions.

The definition of financial services is broad and includes, *inter alia*:

- a* a financial adviser, broker, licensed non-bank deposit taker or registered bank;
- b* any person participating in a regulated offer as the issuer or offeror of financial products;
- c* any person acting in the capacity of an issuer, supervisor or investment manager in respect of a regulated product;
- d* any person acting as a custodian or offering a licensed market service;
- e* an operator of a financial products market; and
- f* any person that trades financial products or foreign exchange on behalf of another person.

Most participants in the financial services industry in New Zealand will be required to register under the FSPA. Registration is a simple process, and registered entities are required to pay annual fees depending on the nature of the financial services being provided. Pursuant to incoming amendments to be made by the FSLA Act, businesses will be required to have a stronger connection to New Zealand to register on the FSP Register. For example, the FSPA will not apply merely because a business' financial services are accessible by persons in New Zealand; and the FSPA will not apply if the financial services provider does not have a place of business in New Zealand and is not providing its services to any retail client in New Zealand.

### **Financial advisers**

A person who provides financial adviser services (or broking services) in the ordinary course of his or her business to clients in New Zealand is currently required to comply with certain disclosure, conduct and registration requirements under the FAA. The requirements apply regardless of where the person providing the financial adviser service is resident, is incorporated or carries on business.

A person is deemed to provide a financial adviser service if he or she gives financial advice, provides an investment planning service or provides a discretionary investment management service. Financial advice is given when a person makes a recommendation or gives an opinion in relation to acquiring or disposing of a financial product (which would include equity securities and debt securities).

Financial adviser services exclude, inter alia:

- a any form of communication made by or on behalf of an issuer of financial products that is not a regulated offer because of a relevant exclusion (which includes offers to wholesale investors);
- b providing or making available a product disclosure statement, other limited disclosure document or information from a register entry or advertisement under the FMC Act; and
- c financial adviser services covered by a market services licence for discretionary investment management services.

The FAA imposes different requirements depending on the types of products being advised on, the intended audience (whether wholesale or retail) and the type of advice (personalised or generic class advice). For example, the requirements for a financial adviser providing personalised financial advice to a retail client will be more onerous than the requirements for a provider of class advice to wholesale clients.

Once the relevant provisions of the FSLA Act come into force, the FAA will be repealed and a new regulatory regime for the provision of financial advice established through amendments to the FMC Act. The key elements of the new regulatory regime are that:

- a all persons who provide financial advice services (known as financial advice providers) must be licensed by the FMA. The licensing requirement does not apply if the service is not provided to any retail client. Financial advice providers may be entities or individuals that give regulated financial advice to their clients on their own account or engage other persons to give regulated financial advice to their clients on their behalf;
- b persons who may be engaged by a financial advice provider to give regulated financial advice are financial advisers, nominated representatives or other persons engaged through interposed persons;
- c a Code of Conduct will apply to all persons who give regulated financial advice to retail clients. The Code of Conduct was approved in May 2019, and sets standards of ethical behaviour, conduct, client care and competence, knowledge and skill; and
- d in addition to the Code of Conduct, duties also apply to all persons who give regulated financial advice, whether to retail or wholesale clients, including the duty to give priority to clients' interests and disclose certain information to clients (although the required information is likely to vary for wholesale and retail clients).

The new regime (including the Code of Conduct) is expected to come into force in June 2020, with a transitional period expected to end in June 2022. During the transitional

period, financial advice providers will need to hold, and all persons giving regulated financial advice will need to be covered by, a transitional licence. The FMA has announced that it will begin accepting transitional licence applications from 4 November 2019.

### ***Bank or insurance company registration***

Registration as a New Zealand registered bank is not required to provide banking or financial services, or to offer or sell financial products in New Zealand. However, pursuant to the RBNZ Act, no person can carry on any activity (directly or indirectly) in New Zealand using a name or title that includes a restricted word, which are bank, banker and banking, or any derivatives thereof (including any translation of those words into another language). The IPS Act contains a similar prohibition in relation to the use of insurance, assurance, underwriter and reinsurance (and terms with the same or a similar meaning). The prohibitions do not apply under the RBNZ Act if an entity is a registered bank, or under the IPS Act if an entity carries on insurance business in New Zealand (which would require the entity to hold an insurance business licence). If a potential issuer wishes to use a restricted word in its name but not register as a bank or obtain an insurance business licence, an application can be made to the Reserve Bank for an authorisation or exemption.

The Reserve Bank recently undertook a public consultation on its approval of authorisations and exemptions under the RBNZ Act, and in late August 2019, it announced the outcome of that consultation. This included guidance on the interpretation of the relevant legislative provisions and a class authorisation for overseas banks (that are not registered in New Zealand) to carry on limited wholesale activities in New Zealand without the need for registration, subject to certain requirements. The class authorisation came into force on 23 September 2019.

### ***Non-bank deposit-takers***

A non-bank deposit taker (NBDT) is a person who makes a regulated offer of debt securities in New Zealand and carries on the business of borrowing and lending money, providing financial services, or both. The definition is broad, and captures entities beyond the traditional finance companies at which the regime was originally targeted. The NBDT Act requires NBDTs to be licensed by the Reserve Bank. NBDTs are subject to prudential supervision by the Reserve Bank with the relevant supervisor (trustee) tasked with monitoring an NBDT's compliance with the relevant prudential requirements. The prudential supervision of NBDTs is currently under consideration as part of a wider review of the RBNZ Act.

### **iii Offers of financial products**

New Zealand has a disclosure-based approach to the offer of financial products to the public. An offer of financial products for issue will require full disclosure to investors under Part 3 of the FMC Act, unless an exclusion applies (and limited disclosure is required for offers made in reliance on some FMC Act exclusions).

In addition, certain offers of financial products for sale (secondary sales) also require disclosure. For example, if financial products are issued (but not, *inter alia*, under a regulated offer) with a view to the original holder selling the products, and the offer for sale is made within 12 months of the original issue date, that secondary offer will require disclosure.

The FMC Act applies to any offer of financial products in New Zealand regardless of where the resulting issue or transfer occurs, or where the issuer is resident, incorporated or carries on business.

For a regulated offer of financial products, a product disclosure statement (PDS) must be prepared, and certain information relating to the offer must be contained in a publicly available register entry for the offer. The PDS must be lodged with the Registrar of Financial Service Providers, and the register entry must contain all material information not contained in the PDS. Material information means information that a reasonable person would expect to, or that would be likely to, influence persons who commonly invest in financial products in deciding whether to acquire the financial products on offer, and is specific to the particular issuer or the particular financial product. Investors to whom disclosure is required must (subject to certain exceptions) be given a PDS before an application to acquire the relevant financial products under a regulated offer is accepted.

The Regulations set out detailed requirements for the timing, form and content of initial and continuing disclosure for financial products, including limited disclosure for products offered under certain FMC Act exclusions. The content requirements for a PDS are prescriptive, and include prescribed statements and page or word limits. The Regulations impose different disclosure requirements for different types of financial products.

Under the FMC Act, there is an exclusion for offers to wholesale investors, which includes:

- a investment businesses;
- b people who meet specified investment activity criteria;
- c large entities (those with net assets of at least NZ\$5 million or consolidated turnover over NZ\$5 million in each of the two most recently completed financial years);
- d government agencies;
- e eligible investors;
- f persons paying a minimum of NZ\$750,000 for the financial products on offer;
- g persons acquiring derivatives with a minimum notional value of NZ\$5 million; and
- h *bona fide* underwriters or sub-underwriters.

Even where an exclusion applies, certain disclosure requirements may still apply.

The FMC Act also contains an exclusion for quoted financial products (QFP). This exclusion allows issuers to offer equity securities, debt securities and managed investment products of the same class as financial products that are quoted on an appropriate licensed market without a PDS. The QFP exclusion can also be used for offers of options to acquire financial products where the underlying financial products are of the same class as QFPs. The issuer must issue a ‘cleansing notice’ to the market (which includes a confirmation that the issuer is complying with its continuous disclosure and financial reporting obligations), as well as a document setting out the terms and conditions applicable to the financial product (commonly a short term sheet). The QFP exclusion is popular among issuers, and has quickly become the norm in the debt and equity markets.

### ***Liability***

If a PDS, any application form that accompanies that PDS or the register entry relating to a financial product omits information required by the FMC Act or the Regulations, or contains a statement that is false or misleading or is likely to mislead, and that matter is materially adverse from the point of view of an investor, there is potential civil liability under the FMC Act. If a person acquires a financial product that declines in value after defective disclosure is made, that person is treated as having suffered loss or damage because of that defective disclosure unless it is proved that the decline in value was caused by a matter other

than the relevant statement. This reverses the usual onus of proof, and means that investors do not need to show the link between the defective disclosure and the loss they have suffered to obtain an order for compensation.

Every director of the offeror at the time of the contravention will be treated as also having contravened that provision of the FMC Act, and can be ordered to pay a pecuniary penalty or compensation. A number of defences are available to that director, including if he or she can prove that he or she took all reasonable and proper steps to ensure that the entity complied with the relevant provision.

Criminal liability can also attach if the offeror knows that, or is reckless as to whether, a statement is false or misleading or is likely to mislead. In such circumstances, a director of an offeror may also commit an offence if the director knows or is reckless as to whether the statement is false or misleading or likely to mislead.

#### **iv Some other features of New Zealand's capital markets**

##### ***Regulation of derivatives***

Offers of derivatives are regulated by the FMC Act, and issuers are required to prepare and lodge a PDS in respect of a regulated offer of derivative products.

A derivatives issuer (meaning a person in the business of entering into derivatives) who makes regulated offers of derivatives is required to hold a market services licence (unless an exemption applies). In addition to the exclusions discussed above, there are exclusions under the FMC Act that apply specifically to offers of derivatives, including:

- a* offers of derivatives made by a person who is not a derivatives issuer;
- b* offers of quoted derivatives on a licensed market;
- c* offers of derivatives approved for trading on a prescribed overseas market; and
- d* offers of currency forwards by registered banks (or their subsidiaries) where settlement is, broadly, within 12 months of issue.

If a derivatives issuer makes a regulated offer of derivatives, it will also be required to ensure that a client agreement is in place with the counterparty prior to the issue of the derivative and provide confirmations to the counterparty.

##### ***Exchanges and markets***

###### ***The FMC Act***

A person who wishes to operate a financial product market in New Zealand will be required to obtain a licence to operate that market from the FMA or the responsible minister under the FMC Act. NZX Limited (NZX) is currently a licensed market operator in New Zealand and is licensed to operate, *inter alia*, the NZX Main Board (NZSX, NZX's original equities market) and the NZX Debt Market (NZDX). Effective 1 July 2019, the NXT Market and NZX Alternative Market (for small to medium-sized businesses) were consolidated with the NZSX into a single equity board, being the NZX Main Board.

###### ***NZX***

Listed issuers whose securities are quoted on one of NZX's licensed markets will be subject to the Listing Rules applicable to that market and the FMC Act. The Listing Rules set out a number of obligations for issuers, including obligations to prepare and deliver annual reports to NZX that contain certain prescribed information, and to make a preliminary

announcement to the market after the end of each financial year or half year. Listed entities must also describe their corporate governance practices in detail in their annual reports (to the extent that these are not described on its website).

In addition, listed entities must comply with the continuous disclosure requirements of the Listing Rules, and disclose price-sensitive information to the market (by means of an announcement to NZX) immediately once they become aware of the information. There are limited exceptions to this disclosure obligation.

In certain circumstances, listed entities must also release material information to the market to prevent the development or subsistence of a market for its securities based on false or misleading information.

### ***Clearing***

There are two principal settlement and clearing systems operating in the New Zealand financial markets: the NZClear system operated by the Reserve Bank (formerly known as Austraclear) and the clearing and settlement system operated by New Zealand Clearing and Depository Corporation Limited (a wholly owned subsidiary of NZX) (NZCDC). NZCDC clears and settles all trades conducted on NZX's markets.

NZClear and the NZCDC have each been declared to be a designated settlement system for the purposes of the RBNZ Act. As a result, those systems are subject to statutory protections in relation to, *inter alia*, the enforceability of the rules, the finality of settlements and the validity of netting in respect of those systems.

New Zealand is not a member of the G20, and has not introduced legislation to require standardised over-the-counter (OTC) derivatives contracts to be cleared through central counterparties. However, in August 2019 the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (FMRA Act) was enacted. The FMRA Act amends several pieces of legislation, including the RBNZ Act, to address aspects of New Zealand law to allow compliance with the G20 margin requirements for OTC derivatives.

### ***Corporate governance***

Directors' duties in New Zealand are prescribed by legislation, in particular the Companies Act, and common law. As fiduciaries, directors owe a duty:

- a to act honestly;
- b to exercise care and diligence;
- c to act in good faith in the best interests of the company and for a proper purpose;
- d not to improperly use their position or company information; and
- e to disclose their material personal interests and avoid conflicts of interest.

Directors have duties regarding financial and other reporting and disclosure, solvency matters and reckless trading.

The Companies Act permits directors to rely on information or advice supplied by employees, professional advisers or experts, and other directors or directors' committees, provided that a director acts in good faith, makes proper enquiries where warranted by the circumstances, has no knowledge that such reliance is unwarranted, and has reasonable grounds to believe that his or her reliance on another person was warranted. Breaches of certain directors' duties under the Companies Act attract criminal liability.

At least one director of a company incorporated in New Zealand must live in New Zealand, or in an 'enforcement country' where that director is also a director of a company

registered (not as an overseas company) in that enforcement country. Similar requirements apply to limited partnerships under the Limited Partnerships Act 2008. At present, Australia is the only country prescribed as an enforcement country.

### ***Anti-money laundering***

New Zealand's anti-money laundering regime is set out in the AMLA.

The AMLA applies to reporting entities, which include, *inter alia*:

- a* a financial institution (a wide definition that includes a person who participates in securities issues and provides financial services related to those issues in the ordinary course of business);
- b* a designated non-financial business or profession; and
- c* any other person or class of persons deemed to be a reporting entity under the regulations or any other enactment.

The AMLA includes customer due diligence, reporting and record-keeping requirements, and in addition requires reporting entities to develop and maintain a risk assessment and a risk-based anti-money laundering and countering financing of terrorism programme. The AMLA provides for external supervision of entities subject to the AMLA to monitor the level of risk of money laundering and the financing of terrorism involved in an entity's activities, and to ensure programmes are appropriately tailored to address those risks.

## **II THE YEAR IN REVIEW**

### **i Continued green bond issuance and the emergence of sustainability bonds**

Following the inaugural retail (regulated offer) of green bonds in New Zealand by Auckland Council (New Zealand's largest local authority) in June 2018, a number of other New Zealand issuers have successfully raised financing through such offers. For example, Argosy Property Limited raised NZ\$100 million in March 2019 in the first regulated offer of green bonds by a New Zealand corporate, and Housing New Zealand Limited raised NZ\$500 million in April 2019 through its wholesale offer of sustainability bonds.

### **ii Capital Markets 2029**

In January 2019, NZX and the FMA initiated an industry-led review of New Zealand's capital markets framework. In collaboration with EY, the industry working group delivered its 10-year vision and growth agenda to promote stronger capital markets for all New Zealanders, entitled 'Growing New Zealand's Capital Markets 2029', in September 2019. The report identified key trends in New Zealand's capital markets and set out a number of recommendations intended to, among other things, raise the level of participation and engagement, promote the use of capital markets to fund infrastructure, grow the base of companies that can access the public capital markets and offer more choice of investment for individuals.

### **iii Revised NZX Listing Rules and listing of wholesale debt**

Following substantial consultation, NZX released its revised Listing Rules on 1 January 2019, with all issuers required to have transitioned to these by 1 July 2019. Key changes effected by the revised Listing Rules included revised eligibility for listing requirements, the introduction

of the concept of constructive knowledge in respect of continuous disclosure and the introduction of tailored rules for funds to be listed. The revised Listing Rules also introduce the listing of wholesale debt, which is subject to only limited requirements. Among other things, the stated aim of these changes is to make it easier for companies to list on NZX, make it simpler and faster for listed companies to raise additional capital, and generally enhance investor protections.

#### **iv Benchmarking reforms**

In addition to the OTC reforms discussed above, the FMRA Act will introduce a voluntary licensing regime for administrators of financial benchmarks to be supervised and enforced by the FMA. The regime will be brought into force by order in council no later than 30 August 2020. Implementation of this regime is intended to ensure that a New Zealand financial benchmark can continue to be referenced within the EU when Regulation (EU) No. 2016/1011, commonly referred to as the Benchmarks Regulation, fully comes into force.

### **III OUTLOOK AND CONCLUSIONS**

The government is undertaking a review of the RBNZ Act to ensure the Reserve Bank's monetary and financial policy frameworks still provide the most efficient and effective model for New Zealand. In particular, the focus is to ensure that the RBNZ Act is fit for purpose and aligned with what the government considers will provide a strong, flexible and enduring regulatory framework that enjoys broad public and industry support. Public consultation began in November 2018, and the review is ongoing.

In August 2019, the Reserve Bank published and sought submissions on an exposure draft of the Financial Market Infrastructures Bill. The Bill will establish a new framework for regulation and supervision of operators and participants in the financial market infrastructure, being systems used for payment, clearing, settling or recording of financial transactions. Under the proposed regime, the regulators will be looking to monitor the sector with a range of information-gathering and investigative powers, with enhanced regulation in certain circumstances. It is anticipated that the Bill will be introduced to Parliament in late 2019.

## **Appendix 1**

# **ABOUT THE AUTHORS**

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Deemple Budhia is a specialist in securitisation, covered bonds, debt capital markets, derivatives and financial services regulation. Prior to joining Russell McVeagh, she spent several years in London working in Allen & Overy's securitisation team and Citibank's European commercial property and securitisation team.

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