CHAPMAN TRIPP

SUBMISSIONS ON REGULATORY SYSTEMS AMENDMENT BILL

26 JANUARY 2016, UPDATED ON 5 FEBRUARY 2016

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1 The Ministry of Business, Innovation and Employment (the *Ministry*) has sought feedback on the drafting of provisions of the exposure draft of the Regulatory Systems Amendment Bill (the *Bill*).

2 We note the Ministry's comment that the exposure draft process is not intended to be a consultation on the merits of the policy decisions that have been made by the Government.

3 We strongly support the Bill's objective of maintaining the effectiveness and efficiency of the regulatory systems established by the Acts amended by the Bill and generally support all of the changes to the Companies Act 1993 and the Financial Markets Conduct Act 2013.

4 We have limited our detailed submissions to those clauses on which we have comments.

5 We have also identified a number of other areas for legislative improvement that should not be controversial or disputed and that we believe are appropriate to address through the Bill, although we recognise that the Ministry may consider some of them may be more appropriately considered through the Select Committee process.

6 We intend to appear before the Select Committee but would be happy to discuss our thinking directly with officials in the meantime. Please contact us if you see value in this.

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Clause in the Bill / Section in the principal Act	**Submission/Comments**
Companies Act 1993 – Part A – Amendments in the Bill	
Clause 58 / Section 80	We strongly support the principle behind the proposed amendments. We believe proposed section 80(1B)(c) would be more effective were it made consistent with existing sections 79(a) and (b) rather than with existing section 80(1)(b). 80(1)(b) requires the disclosure of: *"the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner"* Sections 79(a) and (b) by contrast require the disclosure only of: *"the nature and terms of the financial assistance to be given, and to whom it will be given; and* *if the financial assistance is to be given to a nominee for another person, the name of that other person"* We have seen a range of approaches taken to each section, but consider that the appropriate approach is that section 80 requires the precise identity of each individual receiving financial assistance to be disclosed (i.e. "John Smith and Jane Doe received financial assistance"), while section 79 allows for the persons receiving financial assistance to be described as a class (i.e. "Selected senior managers of the Company will receive financial assistance").

Clause in the Bill / Section in the principal Act	**Submission/Comments**
Clause 58 / Section 80 (continued)	This distinction is likely to be particularly important in two circumstances: (a) *where financial assistance is provided to a wide cross section of employees* as part of an employee share purchase scheme, it is not appropriate that each employee is named and identified. This may cause employment issues as the information could be sensitive (e.g. competitors could identify employees who are not part of the offer and try to entice them away, or employees could become dissatisfied if they others are receiving a benefit which they are not). In this case, we do not believe that the exact identity of the individuals is likely to be material information for investors (b) *Where financial assistance is provided to a large class of shareholders* it may not be practicable to name and identify each recipient – for example, in situations where an issuer with a large shareholder base offers shareholders with less than a certain shareholding the opportunity to purchase more shares, with brokerage being paid on their behalf. Neither is this information likely to be material for investors. We do not believe changing section 80(1B)(c) to reflect the current section 79(a) and (b) would erode the important shareholder protections under the financial assistance regime. Listed companies are already subject to additional restrictions under the Listing Rules on providing financial assistance (see, for example, NZX Main Board Listing Rule 7.6.4), which mitigates against any risk of abuse by not naming each individual receiving financial assistance.

Clause in the Bill / Section in the principal Act	Submission/Comments
Companies Act 1993 – Part B – Amendments consistent with the purpose of the Bill	
Section 120 and 122	Currently, section 120(1) requires the board of a company to **call** an annual meeting and section 122(4) provides that the company need not **hold** an annual meeting if everything required to be done at that meeting is done by written resolution. This means that, even if nothing has to be done at an annual meeting, the board still has to **call** the meeting. It is also ambiguous as to what action, if any, the shareholders need to take if nothing is required to be done at the meeting (which will be the case for companies that are no longer required to appoint an auditor as a result of the recent financial reporting amendments). We suggest two amendments to address these issues: *(a)* amending section 122(4) so that it reads "*It shall not be necessary for the board to call, or a company to hold, an annual meeting of shareholders under section 120 if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subsections (2) and (3)*", and (b) adding a new subsection to section 120 to the effect that "*However, this section does not apply to a company if there is nothing required to be done (by resolution or otherwise) at an annual meeting of shareholders*". A meeting still has to be called by the board on a written request by shareholders holding shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue, so there is still the opportunity for shareholders to require the board to hold meetings.

Clause in the Bill / Section in the principal Act	Submission/Comments
Sections 146 and 147	We have previously noted to the Ministry that there is a difference between the Financial Markets Conduct Act 2013 (sections 235 to 238) and the Companies Act 1993 ((sections 146 and 147) as to how "relevant interest" is defined. This means that directors of listed issuers have to consider whether a transaction requires disclosure under the Financial Markets Conduct Act 2013 or the Companies Act 1993 separately, and may end up being in a situation where disclosure is required under one Act but not the other. This can result in inconsistent disclosure in annual reports because one section of the annual report requires disclosure using the Financial Markets Conduct Act 2013 test (being the list of relevant interests of directors at the balance date under NZX Main Board Listing Rule 10.4.5(c)), while another section requires disclosure using the Companies Act 1993 test (the list of entries made in the interests register in the period under section 211(e) of the Companies Act1993). The test in the Companies Act 1993 is still the test which applied under the repealed Securities Markets Act prior to its amendment in 2008. Some of the differences are fairly subtle but others are substantive. For example, the carve out in section 238(1)(f) of the Financial Markets Conduct Act 2013 for those who are merely a director of a body corporate that has a relevant interest is not in the Companies Act 1993. Another example is the carve out in section 238(1)(g) of the Financial Markets Conduct Act 2013 for pre-emptive rights under a body corporate's constitution, which also does not appear in the Companies Act 1993. We propose that the Companies Act 1993 be amended to use the same test for "relevant interest" in sections 146 and 147 as is set out in sections 235 to 238 of the Financial Markets Conduct Act 2013.
Section 206	Currently, a large company that is a subsidiary, but not a wholly-owned subsidiary, in respect of which group financial statements are prepared by its parent and has a subsidiary itself is not required to prepare financial statements or group financial statements or to register any financial statements if it is 25% or more overseas owned (see sections 200(2), 202(2) and 207D(2)). However, it is not expressly exempt from having to have its accounts audited as section 206(2)(b) only applies to wholly-owned subsidiaries. Although the example under section 207I makes it clear that there is no requirement to appoint an auditor if there are no financial statements or group financial statements that are required to be prepared, we believe it would be better if section 206(2)(b)(i) was made consistent with sections 202(2)(a) and 207D(2)(a) by deleting the words "wholly-owned".

Clause in the Bill / Section in the principal Act	Submission/Comments
Section 208	Currently, a large company which is a wholly owned subsidiary in respect of which group financial statements are prepared by its parent and which has a subsidiary itself is not required to prepare or register any financial statements or group financial statements or to appoint an auditor if it is 25% or more overseas owned (see sections 200(2), 202(2), 206(2)(b) and 207D(2)). However, the large company is not exempt from having to prepare an annual report under section 208(1)(a). But, assuming the shareholders agree to the non-inclusion of information under section 211(3), the annual report need only be in writing, dated and signed by two directors of the company (as it is not required to include financial statements or group financial statements as none exist, and the shareholders can agree that none of the other information is required to be included). This is obviously a nonsense as it results in the large company still technically having to prepare an annual report that says nothing. Our proposed amendment would address this by adding a new subsection to section 208 to the effect that: *(4) However, this section does not apply to a company if—* *(a) the company is not required to prepare financial statements or to prepare group financial statements; and* *(b) if shareholders who together hold at least 95% of the voting shares (within the meaning of section 198) have agreed that the report need not be prepared.*
Section 209	A major administrative inefficiency within the financial reporting and information disclosure regime is the requirement under section 209 of the Companies Act 1993 to send an annual notice to shareholders, even where those shareholders have previously indicated that they wish to receive all communications, including the annual report, electronically. Given the more widespread use of electronic communications and more highly developed investor information pages on issuers' websites, we suggest that the requirement be limited to sending a notice once to each shareholder advising how the annual report can be obtained by electronic means and that a hard copy is available upon request rather than requiring this to be sent each year.

Clause in the Bill / Section in the principal Act	**Submission/Comments**
Clause 7(4), Schedule 1 Clause 6(5), Schedule 1	Since the law changes in August 2012, an increasing number of our clients are seeing their shareholders opting to exercise votes at shareholder meetings using electronic means – on average, more than 60% for a recent sample of selected NZX listed company clients. However, clause 7(4) of Schedule 1 requires companies to cut-off the time for accepting electronic votes 48 hours prior to start of the meeting. Likewise, clause 6(5) of Schedule 1 allows constitutions to impose a cut-off time for (electronic) appointment of a proxy 48 hours prior to a meeting, and constitutions commonly do so. The 48-hour cut-off can disenfranchise shareholders that would otherwise cast a direct vote or appoint a proxy electronically – many wish to be able to do so right until the start of a meeting. Accordingly, we propose the following amendments to Schedule 1: • by changing the title to clause 7, to read "**Postal votes <u>and electronic votes</u>**" • by adding a new sub-clause 6(6) *(6) Notwithstanding sub clause (5), and a constitution, the board may fix an earlier time for a proxy to be produced and be effective.* • by adding a new sub-clause 7(4A) *(4A) Notwithstanding sub clause (4), the board may fix an earlier time for a postal vote to be received.*

Clause in the Bill / Section in the principal Act	**Submission/Comments**
Financial Markets Conduct Act 2013 – Part A – Amendments in the Bill	
Proposed amendments in relation to the limited disclosure document regime, in particular the new Part 3 offer provisions concept (clause 78) and the amendments to clauses 26 and 27 to Schedule 1 of the Financial Markets Conduct Act (clause 114)	We understand the purpose of the amendments is to resolve a number of issues in respect of the limited disclosure document (*LDD*) regime for banks and the Crown given the intention that the LDD regime be analogous to the regulated offer regime in Part 3 of the Financial Markets Conduct Act (*FMCA*). Generally we do not have any issues with the amendments proposed at a technical level. But we consider that the LDD regime as a whole has become highly complex and difficult to understand without expert knowledge of the background to the drafting and that the practical effect of the proposed amendments may be to compound this. We also are concerned that the alignment of the limited disclosure document provisions with the regulated offer provisions in Part 3 of the FMCA, through a "reverse engineering" mechanism, runs a significant risk of creating some unintended consequences or leaving residual technical gaps. In light of this, we recommend a fundamental restructuring of the LDD regime so that offers by banks and the Crown are treated as regulated offers under Part 3 with appropriate exemptions (for example, disapplying the Part 4 (*Governance*) provisions) to reflect the nature of the Crown and banks as issuers. The form of the disclosure document would still follow the limited disclosure document approach set out in Schedule 9 of the Financial Markets Conduct Regulations (*FMC Regulations*), but it would be a Schedule 2 product disclosure statement with certain differences to the standard product disclosure statement. We note the FMC Regulations have adopted this approach already through the introduction of a separate set of requirements for simplified disclosure PDSs in Part 1A of Schedule 2 of the FMC Regulations. We consider this approach would be beneficial for a number of reasons. It would: (a) be simpler to draft and avoid the risk of unintended consequences; (b) make it easier for non-specialist readers of the legislation to identify the differences between standard regulated offers of debt securities and those by the Crown or banks; (c) avoid some conceptual difficulties which currently exist, namely that an offer by the Crown or banks is an unregulated offer which is essentially turned into a regulated offer through Schedules 8 and 9 of the FMC Regulations.

Clause in the Bill / Section in the principal Act	Submission/Comments
	We would be happy to discuss with the Ministry in more detail our thoughts on this approach. With regard to the proposed amendments themselves, as they generally just set out a framework for changes to the FMC Regulations relating to Crown and bank LDDs, we can provide only limited comments on them. The FMC Regulations, in particular Schedule 8, will need to be substantially re-written in light of the proposed amendments. Without seeing the revisions to the FMC Regulations, it is difficult for us to provide meaningful comments on the changes being proposed. This is particularly relevant in the context of the new concept of Part 3 offer provisions and the new clause 26(6) of Schedule 1 of the FMCA which provides a mechanism to impose obligations on the issuer rather than the non-issuer offeror.
Clause 78 Amendment to section 101 of the FMCA	Subject to the overriding comments above, we support the proposal to specifically identify which of the sections of the FMCA referred to in the FMC Regulations will give rise to civil liability. The current position where, pursuant to section 101(3)(l) of the FMCA, it appears that any of the Part 3 sections referred to in the FMC Regulations give rise to civil liability (even if those provisions are not civil liability provisions under Part 3 of the FMCA in respect of regulated offers), needs to be clarified. We will need to see the amendments to the FMC Regulations before we can comment in any further detail on the practical effect of this change. However, we assume the intention is to not prescribe, as Part 3 offer provisions, sections of the FMCA referred to in the FMC Regulations which are not civil liability provisions in relation to regulated offers (for example, sections 61 and 62 of the FMCA).

Clause in the Bill / Section in the principal Act	Submission/Comments
Clause 101 Amendment to section 511(4) of the FMCA	We note the proposed change to the existing section 511(4)(c) of the FMCA to refer to the "limited disclosure document" rather than the "disclosure document". We understand the change is intended to be a consequential one arising out of the change to the reference to "disclosure document" in clause 27 of Schedule 1 of the FMCA. Section 511 of the FMCA imposes criminal liability in relation to defective disclosure in the LDD or initial register entry (i.e. it is analogous to section 510 of the FMCA in relation to regulated offers). In relation to offers by the Crown or banks, as there is no obligation that is analogous to section 99 of the FMCA in relation to regulated offers, currently there is no criminal liability for defective ongoing disclosure by the Crown or banks. Our understanding is that the current position is to remain. However, given the nature of the changes proposed, it is perhaps not as clear as it could be that this is the case.
Clause 114(6) (and clause 110(2)) Amendment to section 543(1)(c)(iiic) of the FMCA	We query why it is proposed that there be specific regulation making powers to prescribe limits or restrictions in connection with offers by the Crown or banks. We note that there are no corresponding regulation making powers for product disclosure statements in section 543(1)(a) of the FMCA, and we question why, if there is an issue, the Financial Markets Authority (*FMA*) could not rely on its existing enforcement powers under Part 8 of the FMCA.

Clause in the Bill / Section in the principal Act	Submission/Comments
Clause 114(9) (and clause 110(4)) Replacement of clause 26(6) of Schedule 1 of the FMCA	We understand the purpose of the proposed change is to provide the FMA with regulation making powers to allocate, as between an issuer and a non-issuer offeror, responsibility (and corresponding liability) for compliance with the various disclosure and other obligations in Schedule 8 of the FMC Regulations in relation to Crown/bank offers. We note there are concerns that the current regime does not allocate obligations and liability appropriately. Subject to our earlier comments, we agree in principal with the proposed change. We assume the intention is that the regulation making power will enable the FMA to allocate obligations to either the issuer or non-issuer offeror. It is not intended to just impose obligations on the issuer in addition to the pre-existing obligations imposed on the non-issuer offeror. On this basis it will be important to ensure that there are no residual issues in relation to the application of this provision in the context of the remainder of clause 26 of Schedule 1, particularly given that paragraphs (2) and (3) of clause 26 of Schedule 1 impose the obligations on "A", who may not be the issuer. Those paragraphs will need to be amended to make it clear that they are to be read subject to the new paragraph (6). Again, our ability to comment on the practical effect of these changes is limited without being able to see the changes to the FMC Regulations themselves.
	It will also be important to ensure that the imposition of responsibility on the issuer does not have unintended consequences. For example, in the case where the issuer issues debt securities to wholesale investors only (i.e. relying on the exemption in clause 3 of Schedule 1 of the FMCA) and a subscriber (irrespective of whether it is in breach of a selling restriction) offers the debt security to a retail investor, contrary to the issuer's intentions, the issuer should not have liability if the non-issuer offeror does not comply with the appropriate disclosure requirements. This would otherwise seem to be a situation where the application of the new clause 26(6) could result in the issuer having liability. There will need to be some very careful drafting of the revised FMC Regulations to ensure that the changes achieve only the proposed outcomes.

Clause in the Bill / Section in the principal Act	Submission/Comments
Clause 114 / Clause 8(2) of Schedule 1	The FMA recently consulted on a class exemption notice* to allow employee share schemes to be extended to family trusts and relatives associated with an employee. Presently, the definition of **eligible person** in sub clause 8(2) is limited to individuals and, by clause 9 of Schedule 1, companies or trusts than an individual employee *controls*. Commonly, an employee will be a beneficiary of a family trust but cannot control the trustees. We submit the FMA class exemption for family trusts and relatives associated with an employee should be directly reflected in clause 8 of Schedule 1. The FMA also consulted on extending the employee exclusion to recognise a new class of non-voting product created specifically for an employee share scheme – most usually restricted shares. Again, we recommend the FMA exemption by recognised directly in clause 8 of Schedule 1. * http://fma.govt.nz/assets/Consultations/150916-consultation-Paper-Employee-Share-Schemes-updated-150930.pdf
Clause 114(5) / Clause 19(1A) of Schedule 1	In line with our submission on the Supplementary Financial Markets Conduct Regulations, we strongly support the proposed amendment to allow for the issue of options under the same class exclusion.

Clause in the Bill / Section in the principal Act	**Submission/Comments**
Financial Markets Conduct Act 2013 – Part B – Amendments consistent with the purpose of the Bill	
Section 6	We have a concern that a technical change to the definition of "officer" recommended by the Select Committee in the Health and Safety at Work Act 2015 could undermine the meaning of "**senior manager**" in the Financial Markets Conduct Act 2013 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008. The Health and Safety at Work Act 2015 definition of para (b) of "officer" is in near identical terms to the definition of "senior manager" in both the Financial Markets Conduct Act 2013 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (which is deliberate, as reflected in the officials' advice on the Health and Safety at Work Act 2015). However, the Select Committee also recommended adding a para (d). We are concerned that if the same para (d) change is not also made to the Financial Markets Conduct Act 2013 and Financial Service Providers (Registration and Dispute Resolution) Act 2008, a court might discern some difference was intended. Accordingly, we suggest the definition of "senior manager" is amended in the Financial Markets Conduct Act 2013 as follows: **senior manager**, in relation to a person (**A**), means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of A (for example, a chief executive or a chief financial officer) and to avoid doubt, does not include a person who merely advises or makes recommendations to such a person. The definition in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 should also be amended in due course to reflect this change, but this could be done through the wider review process being undertaken on this Act.

Clause in the Bill / Section in the principal Act	Submission/Comments
Section 288	Section 288 of the Financial Markets Conduct Act 2013 provides an extended time for disclosure for substantial product holders who are trustees, executors and administrators. We support the principle behind this section, which reflects that an executor or proposed administrator may have certain rights in respect of shares, pending probate being granted, and therefore has a relevant interest. However, as a practical matter, the usual disclosure obligations would be difficult to comply with because a person may not be aware they are the executor until some time after the death of the relevant person and there may be a reluctance to disclose until probate has actually been granted. In practice, an executor is unlikely to exercise any powers prior to probate being granted and therefore there is no mischief in allowing for an extended time for disclosure (unless the amount paid up on shares is less than $15,000 and therefore the shares fall under section 64A of the Administration Act 1969). We suggest two minor amendments in this area to improve the application of this section. (a) Deleting the word "merely" from the section. This would make it clearer that the section still applies if, for example, a person holds 4% of the voting products in their own right, but then becomes executor of an estate that includes an additional 1.5% of the voting products. In this case, it is open to interpretation whether they have a disclosure obligation "merely" because they are the executor. Arguably, they do not, as there is another relevant interest. However, the policy rationale behind allowing for an extended time for disclosure still applies, so the section should also apply to such a person.

Clause in the Bill / Section in the principal Act	Submission/Comments
Section 288 (continued)	(b) Extending the application of the section to the director and senior manager regime under subpart 6, part 5 of the Financial Markets Conduct Act 2013 as well. In our view, it is more likely for a director or senior manager to become a trustee, executor or administrator in relation to the estate of deceased persons than a substantial product holder (given such holders are often companies or other body corporates, rather than natural persons). In this case, the existence of section 288 implies that such a person is required to file under section 297 within the standard five trading day timeframe. The other difficulty is that even if the view is taken that no relevant interest arises until probate has actually been granted, section 24(2) of the Administration Act 1969 deems the title to the estate to have vested in the administrator upon the death of the relevant person. Typically, there will be a delay between the death of the person and the granting of probate, which could mean that the director or senior manager is immediately in breach of the timeframe for filing, as their relevant interest is deemed to have arisen upon the death of the person in question (by virtue of the Administration Act 1969). This would be addressed by extending section 288 of the Financial Markets Conduct Act 2013, as it makes clear the time at which disclosure is required and therefore stops this issue from arising.
Section 297(2)(a)	Section 297(2)(a) should be amended to refer to "trading days" rather than "working days". This would make it consistent with section 297(1) and section 297(2)(b). This reflects that these sections relate to making disclosures to the a licensed market operator and therefore a timeframe based on when the market is open for trading is the more appropriate (as there are some trading days that are not working days).

SUPPLEMENTARY SUBMISSION ON REGULATORY SYSTEMS AMENDMENT BILL

5 FEBRUARY 2016

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2 We provided a submission on 26 January 2016. Following a discussion with officials, we have prepared this further submission on a couple of other technical aspects.

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Clause in the Bill / Section in the principal Act	Submission/Comments
Companies Act 1993	
Clause 59 / Section 200	We believe the introduction of section 200(3) of the Companies Act 1993 (the *Act*) fixes a clear gap in the Act and should be made available to as many companies as possible as soon as possible. Our interpretation is that if a company has had its balance date less than 5 months before enactment of the Bill, it could rely upon section 200(3) and cease to be subject to section 201 (even if it were required to comply up until enactment of the Bill). If this is not correct and such a company would not be entitled to rely upon section 200(3), we suggest inclusion of a transitional provision in the Bill to remove the requirement to comply with section 201 if a company meets the requirements of section 200(3).
Clause 59 / Section 200	Section 200(3) of the Act, as proposed in the Regulatory Systems Amendment Bill, and section 202(2) of the Act, as enacted, are not available where company B (as described in those sections) is an overseas company. These sections should be amended so that company A can rely upon those sections where company B is an overseas company. This does not offend the policy behind the sections as overseas companies are subject to the financial reporting regime under the Companies Act 1993 and those sections are only available where company B prepares New Zealand group financial statements. We suggest the following drafting to achieve this: • section 200(3)(a) be changed to "on the balance date, A has no subsidiaries but is a subsidiary of a body corporate that is incorporated in New Zealand (**B**) or of a body corporate incorporated outside New Zealand that carries on business in New Zealand within the meaning of section 332 (**B**)", and • section 202(2)(a) be changed to "on the balance date, A is a subsidiary of a body corporate that is incorporated in New Zealand (**B**) or of a body corporate incorporated outside New Zealand that carries on business in New Zealand within the meaning of section 332 (**B**)". This mirrors the drafting used in the definition of "large overseas company" that applies to the subpart without requiring such an overseas body corporate to be large. This drafting is appropriate, as these sections only apply where group financial statements are prepared by B.

Clause in the Bill / Section in the principal Act	Submission/Comments
Sections 206(2)(b)(i) and 207D(2)(a)	We suggest these sections be changed so that the drafting is consistent with sections 200(3)(a) and 202(2)(a) as outlined above. Currently, sections 206(2)(b)(i) and 207D(2)(a) only apply where company A (as described in those sections) is a subsidiary of a New Zealand incorporated **company**, but section 200(3)(a) and 202(2)(a) are available to a subsidiary of a New Zealand incorporated **body corporate**. There are many situations where this distinction could arise, but the most likely would be in relation to building societies, credit unions and other such non-company FMC reporting entities. An FMC reporting entity with subsidiaries is still required to prepare group financial statements under section 461 of the Financial Markets Conduct Act 2013. By way of example, Building Society ABC and Building Society DEF might each have a number of subsidiaries. Those subsidiaries would be unable to rely upon section 206(2)(b) or 207D(2), simply because their parent happens to be incorporated as a building society, rather than a company. As a consequential change, sections 206(2)(b)(ii) and 207D(2)(b) should be amended to refer to the group financial statements being "completed and signed within the time specified in section 202 or under another Act". This is consistent with the drafting of sections 206(2)(b)(iii) and 207D(2)(c).
Sections 209 and 212	Our submission of 26 January 2016 commented on the unnecessary cost in having to send shareholders each year an opt-in notice under s 209 Companies Act 1993. A number of our clients, and shareholders in companies, have queried why they have to keep sending/receiving these notices. The equivalent regime in Australia allows the notice to be provided to shareholders only once. To give effect to our submission, sections 212(2) and 212(3) should be repealed
Section 209(3)(d) and 212	Section 209(3)(d) requires a notice under s 209(1)(b) to state *whether* the company has prepared a concise annual report. Concise annual reports are only sparingly used in New Zealand, including because the s 209 regime means relatively few annual reports are printed and/or are freely made available by electronic means. However, the use of the word "whether" in s 209(3)(d) means that s 209 notices need to say something to the effect that "the company has not prepared a concise annual report this year". Accordingly, we suggest section 209(3)(d) be recast to say "*If* the board of a company has prepared….".

Takeovers Act 1993	
Application of Subpart 12 of Part 2 to offers and takeover notices prior to commencement of the new Part 2AA Takeovers Act 1993	We assume the intention is that new part 2AA of the Takeovers Act 1993, to be inserted by sub-part 12 of the Bill, will apply to offers and takeover notices made, or received, prior to commencement of the amendments. We say this because s 196 will, at the same time, repeal rule 49 of the Code. However, to put the position beyond doubt, we suggest inclusion of a transitional provision making it clear the new part applies to offers and notices prior to commencement of the new part. We also assume that the Panel would be able to charge its costs for making determinations against the party whose position is found to be incorrect. The Bill could usefully also amend the Takeovers (Fees) Regulations 2001, rather than requiring a separate legislative instrument.