

**Reprint
as at 1 December 2014**



**Securities Trustees and Statutory
Supervisors Regulations 2011**

(SR 2011/282)

Securities Trustees and Statutory Supervisors Regulations 2011: revoked,
on 1 December 2014, by regulation 14 of the Financial Markets Supervisors
Regulations 2014 (LI 2014/335).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 22nd day of August 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 53(1) of the Securities Trustees and Statutory Supervisors Act 2011, the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce made after consulting the Financial Markets Authority, makes the following regulations.

Note

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

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

These regulations are administered by the Ministry of Business, Innovation, and Employment

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Regulations

- 1 Title**
These regulations are the Securities Trustees and Statutory Supervisors Regulations 2011.

- 2 Commencement**
These regulations come into force on 1 October 2011.

- 3 Interpretation**
 - (1) In these regulations, unless the context otherwise requires,—
Act means the Securities Trustees and Statutory Supervisors Act 2011

applicant means a person who applies for, or to vary, a licence under section 15 of the Act

financial markets legislation means the Acts listed in Schedule 1 of the Financial Markets Authority Act 2011 and the enactments made under those Acts

offence of dishonesty means—

- (a) a crime described in any of sections 104, 105B, 108 to 117, and 217 to 266 of the Crimes Act 1961; and
- (b) an offence described in any of sections 15 to 20 of the Summary Offences Act 1981

proposed supervised entity means the issuer of any security, and the operator of any retirement village, proposed to be covered by an applicant's licence

reporting period, in relation to a report delivered by a licensee to the FMA under section 25 of the Act, means—

- (a) the period since the period covered by the licensee's previous report to the FMA under that section; or
- (b) in the case of the licensee's first regular report under that section, the period since the licence was issued

supervised entity means a supervised issuer and the operator of a supervised retirement village

supervised retirement village means a supervised interest that is a retirement village.

- (2) In these regulations, unless the context otherwise requires, a person is **associated with** another person if—
- (a) they are acting jointly or in concert; or
 - (b) either person acts, or is accustomed to act, in accordance with the wishes of the other person; or
 - (c) they are related companies within the meaning of section 2(3) of the Companies Act 1993; or
 - (d) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
 - (e) they are both, directly or indirectly, under the control of the same person; or
 - (f) one person is a director of the other person (being a company or other body corporate).

*Licensing criteria***4 Matters that FMA must consider in satisfying itself that directors and senior managers are of good character**

- (1) The matters that the FMA must consider in satisfying itself that every director and senior manager of an applicant is of good character for the purposes of section 16(2)(b) of the Act are whether any of those persons has been—
 - (a) convicted of any offence of dishonesty; or
 - (b) convicted of any offence under financial markets legislation; or
 - (c) refused registration or other entry into, or restricted from the right to carry on, any profession or occupation that is relevant to the role of a director or senior manager; or
 - (d) the subject of any disciplinary action taken by a disciplinary body in respect of any profession or occupation.
- (2) To avoid doubt, the matters referred to in this regulation do not limit the matters that the FMA may consider in satisfying itself that every director and senior manager of an applicant is of good character for the purposes of section 16(2)(b) of the Act.

5 Things that FMA must take into account in assessing matters referred to in section 16(3) of Act

- (1) The FMA must, in assessing the matters referred to in section 16(3)(a) of the Act, take into account—
 - (a) the number of years of experience that the applicant's directors and senior managers have—
 - (i) in the roles that they hold in the applicant; and
 - (ii) in the financial or retirement village industry; and
 - (iii) in business generally; and
 - (b) the extent to which the applicant's directors and senior managers are members of relevant professional bodies (for example, the New Zealand Institute of Chartered Accountants, the New Zealand Law Society, and the Institute of Directors in New Zealand (Inc)).
- (2) The FMA must, in assessing the matters referred to in section 16(3)(b) of the Act, take into account—

- (a) the assets of the applicant, the form the assets take, and the ratio of liquid to illiquid assets; and
 - (b) whether the applicant would be able to absorb the cost if 1 or more of the proposed supervised entities were to fail and if the applicant were not to be paid for its services; and
 - (c) any bank overdraft resources available to the applicant; and
 - (d) the financial strength of the applicant's shareholders or owners; and
 - (e) any arrangements or guarantees that the applicant has with any associated persons; and
 - (f) the estimated assets and liabilities of the proposed supervised entities.
- (3) The FMA must, in assessing the matters referred to in section 16(3)(c) of the Act, take into account—
 - (a) the number of staff employed by the applicant who are involved in trustee or statutory supervisor work, and the training those staff have received; and
 - (b) the number of support staff employed by the applicant; and
 - (c) the applicant's access to legal and other professional services; and
 - (d) the applicant's office facilities and infrastructure.
- (4) The FMA must, in assessing the matters referred to in section 16(3)(d) of the Act, take into account the applicant's practices of peer review and oversight of junior staff.
- (5) The FMA must, in assessing the matters referred to in section 16(3)(e) of the Act, take into account—
 - (a) the reporting obligations that the applicant proposes to require of different types or classes of proposed supervised entities in relevant governing documents; and
 - (b) the applicant's systems to track whether it has received on time all required documentation from proposed supervised entities; and
 - (c) the applicant's systems to record its consideration of reports received from proposed supervised entities and any action taken as a result.

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- (6) The FMA must, in assessing the matters referred to in section 16(3)(f) of the Act, take into account—
- (a) the ownership of the applicant; and
 - (b) any relationships that the applicant has, or its directors and senior managers have, with the proposed supervised entities; and
 - (c) any other businesses carried out by the applicant, or any associated persons of the applicant, that may compromise the applicant's independence from the proposed supervised entities; and
 - (d) any other relationships that the applicant has, or its directors and senior managers have, that have the potential to compromise the applicant's independence from the proposed supervised entities.
- (7) The FMA must, in assessing the matters referred to in section 16(3)(g) of the Act, take into account—
- (a) the balance of independent and executive directors on the applicant's board; and
 - (b) the nature, composition, powers, and functions of the applicant's board committees; and
 - (c) the applicant's succession plans, disaster recovery plans, and risk management policies; and
 - (d) whether the applicant has an internal auditor.
- (8) The FMA must, in assessing the matters referred to in section 16(3)(h) of the Act, to the extent that the applicant is reasonably able to provide such information in accordance with the terms of the relevant insurance contract, take into account—
- (a) the amount for which the applicant is insured, and how it compares with the applicant's overall risk of exposure to liability; and
 - (b) the coverage of the applicant's insurance policy and its exclusions; and
 - (c) how often the insurance is reviewed.
- (9) To avoid doubt, this regulation does not limit the things that the FMA may take into account in assessing the matters referred to in section 16(3) of the Act or the way in which those matters may be assessed.

6 Matters that FMA must assess under section 16(3)(i) of Act

The matters that the FMA must assess under section 16(3)(i) of the Act are as follows:

- (a) whether the applicant previously had a licence and, if so, the applicant's record under the licence, including any contravention of the terms of the licence or financial markets legislation; and
- (b) the applicant's due diligence processes when deciding whether to accept new appointments as a trustee or statutory supervisor; and
- (c) whether the applicant delegates any of its functions to another entity and, if so, how the applicant ensures that the function is effectively performed.

7 Method of assessment of matters in section 16(3) of Act

- (1) The FMA may, when assessing the matters referred to in section 16(3) of the Act (including the matters referred to in regulation 6), give to each matter the weight that the case suggests is suitable.
- (2) The FMA must assess the matters referred to in section 16(3) of the Act, the things to take into account in assessing those matters under regulation 5, and the matters referred to in regulation 6 as follows:
 - (a) the matters in section 16(3)(a), (d), and (e) of the Act, the things to take into account in assessing those matters under regulation 5(1), (4), and (5), and the matters in regulation 6 must be assessed only against the part of the applicant's business that is actually involved in the work of performing the functions of a trustee or statutory supervisor:
 - (b) the matters set out in section 16(3)(b), (c), (f), (g), and (h) of the Act and the things to take into account in assessing those matters under regulation 5(2), (3), (6), (7), and (8) must be assessed against the applicant's business as a whole.

*Contents of regular reports that are required to
be delivered by licensees to FMA*

**8 Matters and information that must be contained in all
regular reports**

Every report delivered by a licensee to the FMA under section 25 of the Act must contain, for the reporting period, all of the following:

- (a) details of any changes in circumstances relating to the requirements referred to in section 16(2), the matters referred to in section 16(3), or any other matters reported to the FMA under section 26(3) of the Act;
- (b) a statement that either—
 - (i) confirms the licensee's compliance with any conditions imposed on the licence; or
 - (ii) sets out the details of the licensee's non-compliance with those conditions;
- (c) a summary of the licensee's interactions with its supervised entities, including a broad description of how regularly the licensee received reports from, and met with, those supervised entities;
- (d) a description of how any investigations by the licensee into concerns about any of its supervised entities were initiated and carried out;
- (e) a description of what steps the licensee took in response to any actual or potential insolvency of any of its supervised entities;
- (f) a statement that either—
 - (i) confirms the licensee's compliance with the terms of every governing document that relates to a supervised interest; or
 - (ii) sets out the details of the licensee's non-compliance with the terms of any governing document that relates to a supervised interest.

9 Additional matters and information that must be contained in regular reports of trustees and statutory supervisors of 1 or more supervised issuers

- (1) This regulation applies to a report delivered to the FMA under section 25 of the Act by a licensee that is a trustee or a statutory supervisor of 1 or more supervised issuers.
- (2) In addition to the matters and information referred to in regulation 8, the report must contain, for the reporting period, all of the following:
 - (a) the number of supervised issuers:
 - (b) the number and type of issues of supervised interests:
 - (c) the number of appointments as a trustee or statutory supervisor that the licensee has gained or lost:
 - (d) the value of supervised interests that are securities on issue, calculated as near as possible to the reporting date:
 - (e) the number of supervised issuers that have committed a material breach of the terms of their trust deed or deed of participation, or of a term of any offer of securities:
 - (f) a description of what steps the licensee took in response to any actual or potential material breach of a trust deed or deed of participation, or of the terms of any offer of securities, by any of its supervised issuers.

10 Additional matters and information that must be contained in regular reports of statutory supervisors of 1 or more supervised retirement villages

- (1) This regulation applies to a report delivered to the FMA under section 25 of the Act by a licensee that is a statutory supervisor of 1 or more retirement villages.
- (2) In addition to the matters and information referred to in regulation 8, the report must contain, for the reporting period, all of the following:
 - (a) the number of supervised retirement villages:
 - (b) the number and type of operators of those supervised retirement villages:
 - (c) the number of appointments as a statutory supervisor that the licensee has gained or lost:

- (d) a statement of whether or not those supervised retirement villages have full replacement insurance cover:
 - (e) the total amount, as at the date of the most recent audited financial statements prepared in accordance with generally accepted accounting practice, that the operators of those supervised retirement villages would be required to pay to residents under occupation right agreements in the event of the termination of all residents' occupation right agreements:
 - (f) the number of instances (if any) where the operator of a supervised retirement village has failed to pay any amount due to a resident under, or in relation to, an occupation right agreement, where that amount becomes due for any reason:
 - (g) a summary of the licensee's interactions with residents of the retirement village.
- (3) In this regulation, **resident** and **occupation right agreement** have the meanings given in section 5 of the Retirement Villages Act 2003.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 October 2011, prescribe—

- the matters that the Financial Markets Authority (the **FMA**) must consider when processing applications for licences under the Securities Trustees and Statutory Supervisors Act 2011 (the **Act**), and the method of making certain assessments:
- the content of the regular reports that licensees must provide to the FMA under section 25 of the Act.

Reprinted as at
1 December 2014

**Securities Trustees and Statutory
Supervisors Regulations 2011**

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 25 August 2011.

Reprints notes

1 *General*

This is a reprint of the Securities Trustees and Statutory Supervisors Regulations 2011 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

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

3 *Editorial and format changes*

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

4 *Amendments incorporated in this reprint*

Financial Markets Supervisors Regulations 2014 (LI 2014/335): regulation 14
