

FMI STANDARD 23B: NOTIFYING THE REGULATOR

FS23B



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INTRODUCTION

Application

- i. This standard applies to every operator of a designated FMI that was specified in its designation notice under section 29(2)(f) of the Financial Market Infrastructures Act 2021 (the **Act**) as falling within one or more of the following classes of designated FMIs:
 - (a) a pure payment system; or
 - (b) a securities settlement system; or
 - (c) a central securities depository; or
 - (d) a central counterparty; or
 - (e) an overseas-equivalent FMI.

Legal powers

- ii. Under section 8 of the Act the regulator is defined as the RBNZ and the FMA acting jointly (or the RBNZ acting on its own in relation to pure payment systems).
- iii. Section 12 of the Act provides the regulator's functions include regulating designated FMIs, dealing with designated FMIs that are distressed, and other functions under the Act.
- iv. Subject to certain statutory prerequisites, section 31 of the Act empowers the regulator to make standards for designated FMIs.
- v. Section 34 sets out the matters that standards may deal with or otherwise relate to. Section 34(3) provides that the regulator may make standards that require operators to give to the regulator reports relating to the disruption to activities under designated FMIs, or contraventions of requirements imposed by or under the Act. Further, section 34(1)(e)(ii) provides that a standard may deal with, or otherwise relate to, operational risk, while section 34(1)(e)(vi) provides that a standard may deal with or otherwise relate to legal risk.

Interpretation

- vi. Words and phrases used in this standard have the same meaning as in the Act.
- vii. **Essential services** means services provided by the FMI:
 - (a) for designated FMIs which are assessed as systemically important by the regulator under section 24 of the Act, all services contributing to the assessment that an FMI is systemically important; and
 - (b) for designated FMIs that are not assessed as systemically important under section 24 of the Act, any services covered by the protections in subpart 5 of Part 3 of the Act.

- viii. **Overseas-equivalent FMI** means a designated FMI that is specified in its designation notice under section 29(2)(f) of the Act as falling within the class of an overseas-equivalent FMI.
- ix. **Material incident** means an event that:
- (a) causes the FMI:
 - A. a slowdown in the operation of the system; or
 - B. a restriction or partial availability of the system; or
 - C. a security threat to the system; or
 - D. an increase in the risk of an outage, slowdown, restriction, or security threat, or
 - E. a potential or actual adverse impact on the future operation of the system; and
 - (b) has a substantive adverse impact on the FMI's participants (or for an overseas-equivalent FMI, the FMI's New Zealand participants) or the New Zealand financial system.
- x. **Outage** means an event that causes the system to be unavailable for use by any or all participants (or for an overseas-equivalent FMI, the FMI's New Zealand participants), regardless of:
- (a) the cause; and
 - (b) the length of time of the outage.

Commencement

- xi. This standard comes into force on 1 March 2024.

REQUIREMENTS

- 1) An operator must report to the regulator material incidents or contraventions of obligations imposed on the operator by or under the Act, and other regulatory requirements imposed by or under the law of their home jurisdiction.
- 2) An operator must put in place effective methods for monitoring:
 - a) compliance with obligations imposed on the operator by or under the Act (and in respect of an overseas-equivalent FMI, compliance with requirements imposed under the regulatory regime for the FMI in the operator's home jurisdiction); and
 - b) material incidents or outages of essential services provided by the FMI (and in respect of an overseas-equivalent FMI, essential services provided directly or indirectly to New Zealand participants).
- 3) An operator must send a report to the regulator as soon as possible if the operator reasonably believes that it has, may have, or is likely to contravene, in a material respect, an obligation imposed on the operator by or under the Act (or in the case of an overseas-equivalent FMI, an obligation imposed by or under the regulatory regime for the FMI in the operator's home jurisdiction).
- 4) An operator must report to the regulator as soon as possible if the operator reasonably believes there has been, or there is likely to be, a material incident, or an outage of essential services provided by the FMI, and where an operator is the operator of an overseas-equivalent FMI, essential services provided directly or indirectly to New Zealand participants.
- 5) For an operator of an overseas-equivalent FMI, any report required to be sent to the regulator under this standard is treated to have been sent to the regulator if it has been provided to an international regulatory or supervisory college whose members include the RBNZ and/or the FMA.

(See Guidance for Standard 23B: 'Notifying the Regulator', in Guidance for the FMI Standards for more detail).