The Designation and Oversight of Designated Settlement Systems

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This document explains Part 5C of the Reserve Bank of New Zealand Act 1989 and the roles and policies of the Reserve Bank and the Financial Markets Authority in relation to the designation and oversight of designated settlement systems.

1. Introduction

Settlement systems are at the core of the infrastructure that underpins financial markets and the wider financial system. Having sound and efficient settlement systems is a precondition to maintaining a sound and efficient financial system and instilling investor confidence. For these reasons, the Reserve Bank and the Financial Markets Authority each has an interest in the oversight of settlement systems.

More specifically, Part 5C of the Reserve Bank of New Zealand Act 1989 makes the Reserve Bank and the Financial Markets Authority joint regulators of designated settlement systems.[1] However, it also provides that the Reserve Bank is the sole regulator of designated settlement systems that are declared to be pure payment systems.

Designation under Part 5C is an opt-in regime, with settlement systems needing to apply for designation. This document explains the roles and policies of the Reserve Bank and the Financial Markets Authority in relation to the designation and oversight of designated settlement systems, including background to the matters that the Act allows the joint regulators to take into account in considering an application for designation.

The application process and information that should be submitted with an application for designation are set out in the joint regulators' separate *Application Guidelines for Designation under Part 5C of the Reserve Bank of New Zealand Act 1989* (DSS2).

The Reserve Bank's more general oversight role of financial market infrastructures is explained in the Reserve Bank's *Oversight of financial market infrastructures in New Zealand*.

[1] References in this document to the "Act" are references to the Reserve Bank of New Zealand Act 1989, and references to sections and Parts are references to sections and Parts of that Act unless otherwise specified.

2. Settlement Systems

A settlement system is defined in the Act as a system or arrangement for effecting settlements or processing settlement instructions, and includes a payment system.[2] A settlement is defined as the making of payment or the transfer of the title to, or an interest in, personal property. While these definitions potentially capture the settlement arrangements for a wide range of personal property transfers, the focus of the Reserve Bank and the Financial Markets Authority is on securities settlement systems (including settlement systems for futures and other derivatives) and, in the case of the Reserve Bank, payment systems as well.

Payment and securities settlement systems are a key component of the financial infrastructure. Disruptions in a payment or securities settlement system can have repercussions not only for the market directly served by the system, but for the wider financial system. A payment or securities settlement system may trigger, transmit or amplify shocks across domestic and international financial systems and markets because of:

- The size or nature of the payments or settlements that are processed through the system.
- The aggregate value of the settlements and their importance to the circulation of liquidity within the financial system.
- The number of individuals and institutions who directly or indirectly participate in payment and securities settlement systems or who are otherwise affected by or have an interest in the soundness and efficiency of payment and securities settlement systems.

It is therefore important for investor confidence, the soundness and efficiency of securities markets, and the soundness and efficiency of the financial system as a whole that payment and securities settlement systems operate smoothly and efficiently.

What is a designated settlement system?

A designated settlement system is a settlement system that has been designated under Part 5C of the Act. A settlement system becomes designated by an Order in Council being made, on the recommendation of the joint regulators, declaring that a settlement system is a designated settlement system.

However, it should be noted that while the joint regulators have a role in the designation and ongoing oversight of designated settlement systems, neither the joint regulators nor the Crown are responsible or liable for any losses, damages, costs, or expenses suffered or incurred by or in connection with a designated settlement system.

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[2] See section 156M.

Benefits of designation to a settlement system

The rules of a designated settlement system relating to the following matters are valid and enforceable despite any enactment or law to the contrary:[3]

- The basis on which settlement instructions are given or received.
- The basis on which settlement obligations are determined and calculated (either on a gross basis or using netting).
- The basis on which settlements are effected (either on a gross basis or using netting).
- Any action to be taken if a participant in the designated settlement system is unable, or likely to become unable, to meet the participant's obligations to any or all of the following:
  - the specified operator of the designated settlement system,
  - another participant in the designated settlement system, or
  - any other party to those rules.

Designation also gives legislative backing to the finality of settlements effected, netting done, and personal property transferred in accordance with the rules of the system.[4]

This provides a high degree of legal certainty to participants in a designated settlement system that they can rely on the settlements they receive.[5] In turn, this contributes to the ongoing flow of liquidity in the financial system, the overall soundness and efficiency of the financial system, and the confidence of investors and other market participants.

Designation may also give the operator of a designated settlement system a super-priority in any personal property held to effect a settlement or mitigate a loss relating to the default of a participant.[6] This is intended to provide a high degree of legal certainty that the particular designated settlement system will have recourse to the property it holds for those purposes. A designated settlement system will only have this benefit if it is specified in the designation Order in Council.

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3 See section 156Q.

4 See sections 156R, 156T and 156X.

5 Settlement systems, their participants, or other stakeholders should however seek legal advice, as necessary, to take into account their specific circumstances and how Part 5C, or the law more generally, affects them.

6 See section 156N(3)(c), and section 103A of the Personal Property Securities Act 1999.

3. The Joint Regulators of Designated Settlement Systems

Part 5C of the Act makes the Reserve Bank and the Financial Markets Authority joint regulators of designated settlement systems (other than those declared to be pure payment systems). The Reserve Bank alone is the regulator of designated settlement systems that have been declared to be pure payment systems.[7]

The Reserve Bank's purpose is to promote a sound and dynamic monetary and financial system. It must exercise its powers under Part 5C for the purposes of—

- Promoting the maintenance of a sound and efficient financial system.
- Avoiding significant damage to the financial system that could result from the failure of a participant in a settlement system.[8]

The Financial Markets Authority's main objective is to promote and facilitate the development of fair, efficient and transparent financial markets.[9] It must exercise its powers under Part 5C for the purposes of—

- Promoting the integrity and effectiveness of settlement systems and related markets in New Zealand.
- Enhancing the confidence of investors and other market participants in settlement systems and related markets in New Zealand.[10]

In considering applications for designation, variation, or revocation each of the joint regulators may have regard, or refer, to, and may rely upon, any relevant information, work, or matter held, or produced, by the other joint regulator.[11] This means that the joint regulators will work together in their analysis of the various matters they have to consider. The joint regulators will seek to optimise the use of overall regulatory resources in a way that takes into account their respective interests and which makes use of each regulator's comparative advantage and knowledge base.

The joint regulators may also share information obtained under or in connection with Part 5C with each other,[12] and each has a statutory obligation to notify the other if it receives an application for designation, variation or revocation, begins a review of a designation, or receives notice of a proposed rule change.[13]

The joint regulators have entered into and published a Memorandum of Understanding[14] in relation Part 5C of the Act to provide a transparent and readily

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7 See section 156P.

8 See section 156K(1).

9 See section 8 Financial Markets Authority Act 2011

10 See section 156K(2).

11 See sections 156Z(4) and 156ZI(2).

12 See section 156ZM.

13 See sections 156Y(2), 156ZB(2), 156ZG(2), and 156ZH(2).

14 http://rbnz.govt.nz/regulation_and_supervision/payment_system_oversight/4621382.pdf

available record of how the joint regulator framework operates in practice. Amongst other things, the MoU has established communication protocols between the joint regulators and between the joint regulators and designated settlement systems (or applicants for designation).

4. Considering an Application for Designation

The application process and information that should be submitted with an application for designation are set out in the joint regulators' separate *Application Guidelines for Designation under Part 5C of the Reserve Bank of New Zealand Act 1989 (DSS2)*. The Act protects the confidentiality of information required by the joint regulators for the purposes of an application by prescribing the circumstances in which such information may be published or disclosed.[15]

A fee is charged for an application for designation.[16] Fees are set on a cost recovery basis and take account of Treasury guidelines.

Each of the joint regulators must consider whether the settlement system should be specified to be a pure payment system. If the joint regulators recommend that a settlement system is to be specified as a pure payment system, then once the system has been designated, the Reserve Bank alone will be the regulator of that system under Part 5C. However, both joint regulators must consider an application for designation, even if the application is in respect of a pure payment system. In practice, once the joint regulators have agreed between themselves that a system applying for designation is a pure payment system then it is likely that in considering the application the Financial Markets Authority would rely on information, work, and matters held, or produced, by the Reserve Bank.[17]

In considering an application for designation, each of the joint regulators may have regard to any or all of the matters set out below.[18] The precise relevance and relative importance of each matter is likely to depend on the particular circumstances. Prospective applicants are encouraged to engage with the joint regulators before formally making an application to get an indication of the joint regulators' views on the relevance and relative importance of various matters in the particular circumstances.

The onus is on applicants to demonstrate in writing that particular matters are addressed, cross referencing relevant source material. The intention behind this policy is to ensure that the initial assessment is done by the party who best understands the system (i.e. the operator of the system) which should then expedite the joint regulators' consideration of the application. In some circumstances an applicant may need to provide third party verification in relation to matters of particular importance to support the application. In these circumstances the joint

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15 See section 156ZN.

16 See section 156Y(3)(d).

17 See sections 156P, 156Z(1), and 156Z(3) and (4).

18 See section 156Z(2).

regulators will take into account the third party advice provided, but will nonetheless make their own assessment on the matters at stake.

The purpose and scope of the settlement system

The system must be a settlement system, which is defined in the Act as a system or arrangement for effecting settlements or processing settlement instructions. A settlement is defined as the making of a payment or the transfer of title to, or an interest in, personal property.[19]

The purpose of the settlement system should be consistent with the purposes for which the joint regulators must exercise their powers under Part 5C.

The scope of the settlement system will include the markets it serves or proposes to serve and the basis for membership or participation in the settlement system.

Whether the system is a pure payment system

A pure payment system is a settlement system that provides solely for the transfer of funds.[20]

The rules of the settlement system

The rules of the settlement system should:

- Be identifiable, clear, comprehensive, up to date, understandable and consistent with relevant laws and regulations.
- Clearly, effectively, and unambiguously provide for the matters to which designation gives statutory backing.[21]
- Be readily available to all stakeholders and provide sufficient information to enable participants to clearly identify and have an accurate understanding of:
    - their rights and obligations in relation to transactions cleared or settled by the settlement system, and
    - the risks and costs associated with using the settlement system.
- Clearly allocate risks to those best placed to manage those risks and otherwise clearly provide for the management of risk.
- Contain mechanisms to deal with the insolvency of a participant in a way that will limit the operational and financial impact on the system and its participants.

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19 See the definitions of “property”, “settlement”, settlement instruction”, and “settlement system” in section 156M.

20 See section 156N.

21 See sections 156Q, 156R, 156T and 156X of the Reserve Bank Act and section 103A of the Personal Property Securities Act 1999.

- Contain notification requirements which apply to a participant when it, or a participant whose obligations it settles through the settlement system, becomes unable to meet its obligations.

- As applicable, otherwise address matters covered by any relevant international standards.

- Be legal, valid, binding, and enforceable in accordance with their terms in all relevant jurisdictions.

- Include effective mechanisms for monitoring and enforcing compliance with the rules by the operator of the settlement system.

While the joint regulators do not actually approve a system's rules as part of the designation process, the rules may need to be amended to address certain matters before the joint regulators recommend that a system be designated.

Laws and regulatory requirements

The settlement system should have a well-founded legal basis under all relevant jurisdictions. Relevant jurisdictions will include those in which the system and its direct participants are established, domiciled or have their principal office, and any jurisdiction whose laws affect the operation of the system as a result of the contractual choice of law. There may also be other relevant jurisdictions such as a jurisdiction in which a security handled by a settlement system is issued.

If the settlement system is subject to regulatory oversight in another jurisdiction, the joint regulators will need to understand the nature and extent of that oversight and be provided with the name and contact details of the relevant regulatory agencies.

The joint regulators will need to be satisfied that:

- The settlement system and its direct participants are each established, domiciled or have their principal office in a jurisdiction with a robust legal system.

- The jurisdiction whose law governs the rules of the settlement system has a robust legal system.

- All relevant jurisdictions have been identified, together with all regulatory requirements in those jurisdictions that specifically relate to the operation of the settlement system.

- The rules of the settlement system are legal, valid, binding, and enforceable in accordance with their terms in all relevant jurisdictions, including in particular in relation to netting and settlements.

- The settlement system complies with the laws and regulations relating to its operation in all relevant jurisdictions. In this regard the joint regulators may consider the settlement system's compliance with anti-money laundering laws that apply to the settlement system and its participants.

Relevant international standards concerning settlement systems

The joint regulators will need to be satisfied with the operator's self-assessment of the settlement system against relevant international standards, which may be amended or supplemented from time to time. The relevant international standards are the *Principles for financial market infrastructures (PFMI)* issued jointly by the Committee on Payment and Settlement Systems (CPSS – now CPMI Committee on Payment and Market Infrastructures) and the International Organisation of Securities Commissions (IOSCO) in April 2012 (available on the website of the Bank for International Settlements at http://www.bis.org/publ/cpss101a.pdf).

The PFMI replace, harmonise and strengthen various earlier standards for systemically important payment systems, central securities depositories, securities settlement systems and central counterparties. They also include guidelines for trade repositories.

The PFMI contain twenty-four principles. Principle 24 on disclosure of market data by trade repositories is not applicable for settlement systems[22]. The extent to which each of the other principles is relevant will depend on the circumstances. There is also a degree of overlap with the principles and some of the other matters which the Act allows the joint regulators to take into account. However, central themes across these principles that will generally be relevant include:

- Having a well-founded, transparent and enforceable legal framework.
- Clearly identifying and allocating risk, and having an appropriate risk management framework.
- Having appropriate and effective governance arrangements.
- Having sufficient financial resources to cover losses and to effect settlement of payment obligations in stress situations including the default of a participant.
- Having mechanisms in place to minimise disruptions associated with the failure of one or more of the settlement system's participants, and being able to provide critical services in all circumstances.

The capability and capacity of the operators of the settlement system

The operators of the settlement system must have the capability and capacity to operate the settlement system in accordance with the rules and procedures of the system and in a manner that is consistent with the purposes for which the joint regulators must exercise their powers under Part 5C.

The joint regulators will be interested in the operator's capacity and capability in relation to the monitoring and management of risk. The joint regulators expect the board of the operator of a designated settlement system (or the individual or body with ultimate responsibility for the management of the designated settlement system) to have direct oversight over the risk management framework for the designated

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[22] A table summarising the general applicability of principles to specific types of financial market infrastructures is available on page 14 of http://www.bis.org/publ/cpss101a.pdf

settlement system, including approving any policies in relation to risk management (such as a financial resources policy), and monitoring performance against those policies.

An applicant may need to provide an independent procedural audit to satisfy the joint regulators that a system performs as intended and with a high degree of operational reliability.

The financial resources of the settlement system

The settlement system must have sufficient financial resources to operate in a sound and efficient manner in the context of the markets it serves.

This consideration is particularly relevant for systemically important settlement systems and significant central counterparties. The joint regulators will have a conservative approach to determining such a system's capacity to withstand extreme but plausible market conditions.

The joint regulators expect a designated settlement system that includes a central counterparty to have a financial resources policy covering at least the following matters, taking into account the systemic significance of the settlement system, and to maintain financial resources in accordance with that policy:

- The performance of regular stress tests using relevant historical data and meaningful scenarios consistent with international best practice. Stress tests should include scenarios not only in relation to market conditions and the failure of participants, but also in relation to liquidity and the quality of collateral held and of the other assets and arrangements that the central counterparty may have recourse to (and the extent to which those matters may be correlated with market conditions and/or the failure of participants).

- The determination of sufficient financial resources (including a minimum level of capital) by reference to the results of stress testing and allowing for further unknown contingencies, and which is consistent with international standards and best practice.

- How further capital will be raised or what other arrangements will be put in place or extended if at any time stress testing indicates that its resources are inadequate.

- A policy in relation to the mix of financial resources and other arrangements which the central counterparty has recourse to in order to meet its settlement obligations.

- An investment policy designed to safeguard its own and its participants' assets.

- A policy in relation to eligible collateral that should generally limit the assets accepted as collateral to those with low credit, liquidity and market risks.

- A policy to set and enforce appropriately conservative haircuts and concentration limits for eligible collateral.

The settlement system operator should also have sufficient financial independence to operate, maintain, and develop the settlement system to the expectations of its participants and other stakeholders.

The joint regulators expect the board of the operator of a designated settlement system (or the individual or body with ultimate responsibility for the management of the designated settlement system) to have direct oversight over the financial resources of the designated settlement system, including approving any policies in relation to financial resources and monitoring performance against those policies.

The importance of the settlement system to the financial system

The joint regulators will need to be satisfied that the system is important in terms of the purposes for which the joint regulators must exercise their powers under Part 5C. Also in considering the level of compliance with matters they may consider in assessing a designation application, the joint regulators will consider the importance of the settlement system to the financial system.

Application of 103A of the Personal Property Securities Act 1999

Section 103A of the PPSA is the provision that gives the operator of a designated settlement system a super-priority in any personal property held to effect a settlement or mitigate a loss relating to the default of a participant. It will apply only if specified in the system's designation Order in Council. As such, this consideration will not always be relevant.

Where this consideration is relevant, the joint regulators will need to be satisfied that the impact of the super-priority on other creditors of participants in the settlement system is proportionate to the risks being managed, and warranted by the system-wide benefits in terms of the purposes for which the joint regulators must exercise their powers under Part 5C.

Other matters the joint regulators may consider

Standing and conduct

The operators of the settlement system must be of good standing and conduct business in a prudent manner. The joint regulators will be interested in the standing of the operators of a designated settlement system and the suitability of directors of the operators and senior management with responsibility for the operation of the designated settlement system. Matters the joint regulators may take into account include:

- The honesty, integrity, and reputation of directors and relevant senior managers.
- The individual skills and experience of directors and relevant senior managers.
- Whether any operator, or any director or relevant senior manager of any operator, has been subject to any previous regulatory action or been convicted of any relevant offence in New Zealand or elsewhere.
- Whether any operator of the settlement system would be disqualified from being registered as a financial service provider under section 14 of the Financial Service

Providers (Registration and Dispute Resolution) Act 2008 if that Act applied to that operator.

In the first instance applicants will need to satisfy the joint regulators in relation to those matters. Further requirements, if any, in particular circumstances will be discussed with applicants.

Electronic securities transfer systems

Part 5C of the Act, together with related provisions in the Companies Act 1993, give designated settlement systems the same status in relation to the transfer of securities as electronic securities transfer systems approved under section 376 of the Financial Markets Conduct Act 2013. The following matters, which are considered in deciding whether to recommend that an electronic settlement system be approved under section 376 of the Financial Markets Conduct Act 2013, are therefore relevant in deciding whether to recommend that a securities settlement system be designated under Part 5C of the Act:

- That the risks of unauthorised or mistaken transfer are appropriately allocated and adequately managed.
- That appropriate measures are in place to control automation risk, including:
  - security to prevent unauthorised access and misuse of data,
  - capacity planning to deal with sudden increases in demand,
  - contingency systems to ensure continuous service in the event of system failure, natural disaster or intentional malicious act, and
  - independent technical reviews to confirm that the system performs and continues to perform as intended.
- That there are appropriate controls around the setting and changing of relevant system rules.
- That any system that allows participants to control the transfer of the other people's securities has appropriate measures in place to protect those other people's interests, taking into account the nature of the participants and the nature of the people whose securities may be under the control of participants.

Other matters

The joint regulators may have regard to such other matters as they consider appropriate in the circumstances.[23] If any other such matters are identified the joint regulators will endeavour to raise these with the particular applicant as early in the process as practicable. For example, the nature or number of the markets served by the settlement system, or the structure of the settlement system may give rise to particular issues.

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[23] Section 156Z(2)(i).

5. Conditions of Designation

An Order in Council declaring a settlement system to be a designated settlement system may specify conditions to which the designation is subject.[24]

The Act expressly provides that the breach of a condition of designation does not affect the application of the provisions in the Act relating to the enforceability of the rules of the system, settlement finality, netting, the transfer of personal property, or section 103A of the Personal Property Securities Act.[25] However, the breach of a condition of designation could ultimately give rise to a review of the designation by the joint regulators.[26]

It is envisaged that the following standard conditions would apply in most cases:

- That the designated settlement system complies on an on-going basis with all laws and regulations relating to its operation.
- That the specified operator will notify the joint regulators of any change of operator of the designated settlement system or any change of contact person.
- That the specified operator will notify the joint regulators of any changes to any financial resources policy or risk management framework for the designated settlement system, as soon as is reasonably possible.
- That the specified operator will notify the joint regulators of any material non-compliance with laws or the financial resources policy or risk management framework for the designated settlement system, as soon as is reasonably possible.
- That the specified operator will notify the joint regulators of any event which materially increases risk to the designated settlement system, as soon as is reasonably possible.
- That the specified operator will notify the joint regulators of any outages or material incidents as soon as is reasonable possible.

For the purposes of conditions of designation, the joint regulators consider that material non-compliance or incidents include those that could compromise the integrity of the designated settlement system, undermine confidence in the system, or cause the financial resources of the system to be less than the minimum level set in accordance with the financial resources policy.

Reporting and disclosure by designated settlement systems

In recommending that a settlement system be designated, the joint regulators will also recommend, as standard conditions of designation, that the specified operator of the settlement system be required to regularly provide information on the settlement system, as specified or approved by the joint regulators and in accordance with timing

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24 See section 156N(3)(a).

25 See section 156N(6)(b).

26 See section 6 of this paper on the ongoing oversight of designated settlement systems.

and in a form specified or approved by joint regulators, to the joint regulators and other stakeholders as determined by the joint regulators.[27] Generally, the joint regulators would expect this periodic reporting and disclosure to be in three forms as follows:

- An annual report on the settlement system, to be delivered to the joint regulators and published within 3 months of the operator's balance date, and including the following:
  - Financial statements for the settlement system for the reporting period.
  - An assessment of financial resources of the settlement system over the reporting period and the extent to which financial resources have been maintained in accordance with any financial resources policy.
  - An assessment of risk management over the reporting period and the extent to which risks have been managed in accordance with any risk management policy.
  - An assessment of the operational performance of the settlement system over the reporting period.
  - An assessment of the governance of the settlement system over the reporting period.
  - A statement as to whether there have been any changes to any financial resources policy or risk management policy over the reporting period and the reasons for any such changes.
- Disclosure in accordance with international standards. The current relevant international standards are *the Disclosure Framework and Assessment Methodology,* published by CPSS (now CPMI) and IOSCO in December 2012, which sets out the form and content of the public disclosures expected of financial market infrastructures under Principle 23 on the disclosure of rules, key procedures and market data. Operators should publish disclosures based on *the Disclosure Framework,* at least every 3 years.
- A self-assessment against international standards to be provided to the joint regulators every three years or more frequently if there is a material change to the designated settlement system or its environment.

The purpose of the regular reporting requirement is to provide a systematic and transparent mechanism for providing relevant information to participants, the joint regulators, and other stakeholders (including the general public).

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[27] In the case of 'pure payment systems', all references to joint regulators in this sentence should be read as if they were references to the Reserve Bank of New Zealand.

System specific conditions

In addition to standard conditions, additional conditions may be imposed in relation to a specific settlement system to take into account particular issues relating to that system. For example, a designated settlement system that includes a central counterparty may be subject to a condition relating to regular stress testing and providing stress-testing related information to the joint regulators periodically.

6. Ongoing Oversight of Designated Settlement Systems[28]

Engagement with designated systems

The joint regulators will seek to meet with each designated settlement system regularly (e.g. six monthly). These meetings will be used to discuss the settlement system's most recent periodic report to the joint regulators and, more generally, matters relating to the ongoing operation of the settlement system, its designation, and any regulatory developments.

The joint regulators will generally endeavour to get the operators of designated settlement systems to voluntarily address particular concerns identified by the joint regulators. The joint regulators may also require the supply of further information and/or require particular information to be independently verified.[29]

If the joint regulators have significant concerns that are not voluntarily addressed by the operator of a designated settlement system to their satisfaction, the joint regulators are likely to then consider whether to review the designation with a view to imposing a condition requiring certain actions to be taken in accordance with a specified timetable to address those concerns.[30] In this way conditions may be used to escalate concerns and compel remedies.

The joint regulators' powers will be used in proportion to the seriousness of the concern and the likelihood of the concern being resolved without the use of such powers.

Commentary on matters relating to designated settlement systems

The joint regulators may also publish commentary on matters relating to designated settlement systems. For example, the Reserve Bank maintains an ongoing commentary on financial stability issues in its six-monthly Financial Stability Report; and the Financial Markets Authority may issue reports or make comments on any matters relating to financial markets in order to promote the confident and informed participation of businesses, investors and consumers in those markets.[31] Part 5C also anticipates publication of information subject to limitations in relation to information that was supplied pursuant to the Act.[32]

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28 In the case of 'pure payment systems', all references to joint regulators in this section should be read as if they were references to the Reserve Bank of New Zealand.

29 See section 156ZL and the text below on statutory information requests.

30 See section 156ZH and the text below on variations or revocation of designation.

31 See sections 9(1)(a)(ii) of the Financial Markets Authority Act 2011.

32 See section 156ZN.

Statutory information requests and related powers

The joint regulators may require the following persons to supply the joint regulators with any information relating to the designated settlement system:[33]

- The specified operator of the designated settlement system.
- A participant in the designated settlement system.
- The contact person of the designated settlement system.

The joint regulators may exercise the power to request information only if they consider the information is reasonably required to enable them to perform their functions and duties, or exercise their powers, under Part 5C. For example, the joint regulators may need further information to properly understand how market conditions are impacting on a designated system's risk controls, to consider amendments to rules, in relation to applications for variation or revocation of designation, or to properly consider a review of a designation.

The joint regulators can also specify the manner in which the information must be verified.

Failure to supply information formally requested pursuant to the joint regulators' statutory power, without lawful justification or excuse, is an offence.

The Act protects the confidentiality of information provided pursuant to a statutory information request by prescribing the circumstances in which such information may be published or disclosed.[34]

The Financial Markets Authority may also exercise its powers under the Financial Markets Authority Act 2011 for the purposes of:

- monitoring compliance with Part 5C of the Act
- investigating conduct that constitutes or may constitute a contravention of Part 5C of the Act; and
- enforcing Part 5C of the Act[35].

Those powers include:

- the power to obtain information documents and evidence; and
- the power to enter and search a place, vehicle, or other thing (but only with consent or after obtaining a search warrant).

Rule changes

For the purposes of Part 5C of the Act, the rules of a designated settlement system are the rules contained in documents specified in the designation Order in Council, and

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33 See section 156ZL.

34 See section 156ZN.

35 See section 9(1)(c)(ii) and Part 2 of Schedule 1 of the Financial Markets Authority Act 2011.

include any amendments to those rules that have been notified to and not disallowed by the joint regulators or which have been made pursuant to a variation of the designation.[36]

The specified operator of a designated settlement system must, as soon as practicable, notify either of the joint regulators of any amendment that is proposed to be made to the rules of the designated settlement system. The joint regulators may then disallow the proposed rule change within 20 working days.[37]

The joint regulators encourage the specified operators of designated settlement systems to engage with the joint regulators ahead of formally notifying proposed amendments. This is to reduce the likelihood of proposed rule changes being disallowed as a result of issues that cannot be resolved within the prescribed period. Part 5C is silent on the matters the joint regulators may take into account in considering whether to disallow rule changes. In considering whether to disallow rule changes the joint regulators will consider whether the rules of the designated system continue to adequately provide for the matters to which the Act gives statutory backing. More generally, the joint regulators may take into account any matter which may be relevant to the proposed rule change and which may be or may have been taken into account in considering an application for designation or an application to vary a designation.

In considering proposed amendments, the joint regulators will also consider whether the consultation requirements set out in the system's rules have been complied with and whether there has otherwise been appropriate consultation in the circumstances.

The joint regulators will also consider whether proposed rule changes are such that the system operator should more properly apply for a variation of the designation (for example, if the proposed rule changes would result in the joint regulators needing to review the designation with a view to imposing new conditions of designation).

Variations or revocation of designation[38]

A variation or revocation of designation is made by Order in Council on the recommendation of the joint regulators. A variation to a designation will be needed if the designation Order in Council needs to be amended, including if a new condition needs to be added.

A recommendation to vary or revoke a designation may be made either following an application for variation or revocation or following an independent review initiated by either of the joint regulators.

In determining whether to make a recommendation that any designation be varied or revoked, each of the joint regulators may have regard to any or all of the following matters:

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36 See section 156M.

37 See sections 156ZB and 156ZC.

38 See sections 156ZD to 156ZJ.

- Any or all of the matters it may take into account in considering an application for designation.

- Any failure to comply with any condition to which the designation is subject.

- Any failure to comply with the requirements of the Act.

- Any other matters that the joint regulator considers appropriate.

Before making a recommendation to vary or revoke a designation, the joint regulators must notify the contact person specifying the reasons for proposing to vary or revoke the designation, and advising that the contact person may make submissions to the joint regulators. This notice may be given either in writing or orally depending on the circumstances of the particular case. The contact person must be given an opportunity to make submissions within a time period that the joint regulators consider reasonable in the circumstances and they must consider any submissions made by that person during that time period. Although the Act only requires that notice be given to the contact person, the joint regulators may, if they consider it appropriate, advise other persons and give them the opportunity to make submissions.

Fees will be charged for an application to vary or revoke designation. Fees will be on a cost recovery basis and will take account of Treasury guidelines.