



Corporations Act 1989

No. 109, 1989

Compilation No. 4

Compilation date: 27 June 1991

Includes amendments: Act No. 110, 1991

This compilation is in 5 volumes

Volume 1: sections 1-82, Corporations Law sections 1-111H
Volume 2: section 82, Corporations Law sections 112-458
Volume 3: section 82, Corporations Law sections 460-864
Volume 4: section 82, Corporations Law sections 865-1273
Volume 5: section 82, Corporations Law sections 1274-1364,
Schedules 1-3, Endnotes

Each volume has its own contents

**Section 82 of the *Corporations Act 1989* includes the Corporations Law.
The Corporations Law appears in this compilation as part of the Act.**

**This compilation was rectified to take into account retrospective
amendments made by Act No. 43, 1996. The original compilation is
available in the replacement history on the Federal Register of Legislation.**

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This is a compilation of the *Corporations Act 1989* that shows the text of the law as amended and in force on 27 June 1991 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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NOTE: Section 82 of the Corporations Act 1989 contains the Corporations Law. The material in this volume is a continuation of section 82 of the Corporations Act 1989 and the Corporations Law from the previous volume.

Chapter 7—Securities

Part 7.6—Money and scrip of dealers' clients

865 Interpretation

In this Part, unless the contrary intention appears:

- (a) a reference to a licence is a reference to a dealers licence; and
- (b) a reference to a licensee is a reference to a person who holds a dealers licence; and
- (c) a reference to a book, security, trust account or business of or in relation to a dealer who carries on business in partnership is a reference to such a book, security, trust account or business of or in relation to the partnership.

865A Application of Part

This Part (other than section 872) applies in relation to a licensee in relation to his, her or its securities business, whether carried on in this jurisdiction or elsewhere.

866 Dealer to keep trust account

- (1) A licensee must open and maintain:
 - (a) an account, designated as a trust account, with an Australian bank; or
 - (b) 2 or more such accounts.
- (2) Where a condition of a licence prohibits the licensee from holding money in trust for the licensee's clients, subsection (1) does not

The Corporations Law—Section 867

apply in relation to the licensee unless and until the licensee receives money that section 867 requires the licensee to pay into a trust account.

- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) A person who, with intent to defraud, contravenes subsection (1) is guilty of an offence.

867 What is to be paid into dealer's trust account

- (1) A licensee must pay into a trust account:
 - (a) money held by the licensee in trust for a client; and
 - (b) without limiting the generality of paragraph (a), money received by the licensee from a client, other than:
 - (i) money received in respect of brokerage or any other proper charge;
 - (ii) money received in payment or part payment for securities delivered to the licensee before the money is received; or
 - (iii) money in relation to which the licensee is required to comply with section 872.
- (2) Subsection (1) does not apply in relation to a payment order that:
 - (a) is payable to, or to the order of, a specified person or bearer; and
 - (b) the licensee receives from, or on behalf of, a client with express or implied instructions that it is to be delivered to the person to whom it is payable;unless the payee in the payment order is the licensee, a partner of the licensee or a firm in which the licensee is a partner.
- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) A person who, with intent to defraud, contravenes subsection (1) is guilty of an offence.

The Corporations Law—Section 868

868 When money to be paid into trust account

- (1) Where section 867 requires a licensee to pay money into a trust account, the licensee must pay the money into a trust account on or before the next day after the licensee receives it on which it can be so paid.
- (2) A person who contravenes subsection (1) is guilty of an offence.
- (3) A person who, with intent to defraud, contravenes subsection (1) is guilty of an offence.

869 Withdrawals from trust account

- (1) A licensee must not withdraw money from a trust account except:
 - (a) to make a payment to, or in accordance with the written directions of, a person entitled to the money;
 - (b) to make a payment under section 889 to a stock exchange;
 - (c) to defray brokerage or any other proper charge;
 - (d) to pay to the licensee money to which the licensee is entitled, being money that was paid into the trust account but need not have been so paid; or
 - (e) to make a payment that is otherwise authorised by any law of the Commonwealth or of this or any other jurisdiction.
- (2) Nothing in this Part affects a lawful claim or lien that a person:
 - (a) has against or on money held in a trust account of a person; or
 - (b) has, before money received for the purchase of securities or from the sale of securities is paid into a trust account of a person, against or on that money.
- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) A person who, with intent to defraud, contravenes subsection (1) is guilty of an offence.

The Corporations Law—Section 870

870 Withdrawal against uncleared cheque

- (1) This section applies where the holder of a licence withdraws from a trust account of the holder some or all of the amount of a cheque:
 - (a) that has been paid into the account; and
 - (b) that has not been paid, and payment of which has not been refused, by the banker on which it is drawn.
- (2) The holder does not, merely because of the withdrawal, contravene section 869.
- (3) If the banker later refuses payment of the cheque, the holder shall, within one business day after being notified of the refusal, pay into the trust account by cash or bank cheque an amount equal to the amount of the withdrawal.

871 Trust money not available in respect of dealer's own debts

- (1) Subject to this Part, money in a trust account of the holder of a licence is not available for the payment of a debt or liability of the licensee.
- (2) Subject to this Part, money in a trust account of the holder of a licence (including a licence within the meaning of a law corresponding to this section) is not liable to be attached, or taken in execution, under the order or process of a court at the instance of a person suing in respect of such a debt or liability.

872 Money lent to dealer

- (1) This section applies where a person (in this section called the *client*) lends money to a dealer in connection with a securities business carried on by the dealer.
- (2) The dealer shall pay the money into an account that:
 - (a) the dealer maintains with an Australian bank; and
 - (b) contains no money other than money lent to the dealer;and shall so pay the money on or before the next day after the dealer receives it on which it can be paid into that account.

The Corporations Law—Section 873

- (3) The dealer shall give to the client a document (in this section called the ***disclosure document***), in the prescribed form, setting out:
 - (a) the terms and conditions on which the loan is made and accepted; and
 - (b) the purpose for which, and the manner in which, the dealer is to use the money.
- (4) The dealer shall keep the money in the account until the client gives the dealer a written acknowledgment that the client has received the disclosure document.
- (5) The dealer shall not use the money except:
 - (a) for the purpose, and in the manner, set out in the disclosure document; or
 - (b) for any other purpose, or in any other manner, agreed on in writing by the dealer and the client after the dealer gives the disclosure document to the client.

873 Scrip in dealer's custody

- (1) This section applies where the holder of a licence (in this section called the ***dealer***) receives for safe custody scrip that is the property of another person (in this section called the ***client***) and for which the dealer, or a nominee controlled by the dealer, is accountable.
- (2) If the client requests that the body corporate that issued or made available the securities underlying the scrip register the scrip in the name of such a nominee, the dealer must cause the body corporate so to register them.
- (3) If the client requests that the scrip be deposited in safe custody with an Australian bank with which the dealer maintains an account, the dealer must cause the scrip to be so deposited.
- (4) If:
 - (a) neither of subsections (2) and (3) applies; and

The Corporations Law—Section 874

- (b) the scrip is not registered in the client's name by the body corporate that issued or made available the securities underlying the scrip;
the dealer must cause the scrip to be so registered.
- (5) A dealer must not deposit the scrip as security for a loan or advance to the dealer unless:
 - (a) the client owes the dealer an amount in connection with a transaction entered into by the dealer on the client's behalf;
 - (b) the dealer gives the client a written notice that identifies the scrip and states that the dealer proposes so to deposit it; and
 - (c) the amount, or the total of the amounts, that the client so owes on the day of the deposit is not less than the amount of the loan or advance.
- (6) If the dealer deposits the scrip as permitted by subsection (5), the dealer:
 - (a) shall, within one business day after the amount or amounts first referred to in paragraph (5)(c) are repaid, withdraw the scrip from that deposit; and
 - (b) if, at the end of 3 months after the day of that deposit, or at the end of any subsequent interval of 3 months, the scrip has not been withdrawn from that deposit—give the client written notice of that fact.

874 Court may freeze certain bank accounts of dealers and former dealers

- (1) Subsection (3) of this section applies where, on application by the Commission, the Court is satisfied that a person holds, or has at any time held, a licence and that:
 - (a) there are reasonable grounds for believing that there is a deficiency in:
 - (i) a trust account of the person; or
 - (ii) an account maintained by the person under subsection 872(2);

The Corporations Law—Section 875

- whether the account is maintained in this jurisdiction or elsewhere; or
- (b) there has been undue delay, or unreasonable refusal, on the person's part in paying, applying or accounting for trust money as provided for by this Part, by a condition of the licence or by the business rules of a securities exchange of which the person is or has been a member; or
 - (c) without limiting the generality of paragraph (b) of this subsection, the person has contravened:
 - (i) section 868; or
 - (ii) subsection 872(2).
- (2) Subsection (3) also applies where, on application by the Commission, the Court is satisfied that a person holds, or has at any time held, a licence and is carrying on, or last carried on, a securities business otherwise than in partnership and that:
- (a) the licence has been revoked or suspended;
 - (b) the person is incapable, through mental or physical incapacity, of managing his or her affairs;
 - (c) the person no longer carries on a securities business; or
 - (d) the person has died.
- (3) The Court may by order restrain dealings in respect of specified bank accounts that the person holds or maintains in Australia (whether in this jurisdiction or not), subject to such terms and conditions as the Court imposes.

875 Interim order freezing bank accounts

- (1) Before considering an application under section 874, the Court may, if it considers it desirable to do so, grant an interim order that is an order of the kind applied for and is expressed to apply until the application is determined.
- (2) The Court shall not require the Commission or any other person, as a condition of granting an order under subsection (1), to give an undertaking as to damages.

The Corporations Law—Section 876

876 Duty of banker to make full disclosure

Where an order made under section 874 is directed to a banker, the banker shall:

- (a) disclose to the Commission every account kept at the bank in the name of the person to whom the order relates, and any account that the banker reasonably suspects is held or kept at the bank for the benefit of that person; and
- (b) permit the Commission to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker's books relating to that person.

877 Further orders and directions

- (1) Where an order is made under section 874 or 875, the Court may, on application by the Commission or a person whom the order affects, make a further order that does one or more of the following:
 - (a) deals with such ancillary matters as the Court thinks necessary or desirable;
 - (b) directs that specified amounts in a bank account affected by the first-mentioned order be paid to the Commission or a person nominated by the Commission;
 - (c) varies or discharges the first-mentioned order or an order under this section.
- (2) An order under this section may be made subject to such terms and conditions as the Court imposes.

878 Power of Court to make order relating to payment of money

- (1) An order made under section 877 may include directions to the person to whom the money is paid directing that the person:
 - (a) shall pay the money into a separate trust account;
 - (b) is authorised to prepare a scheme for distributing the money to persons who claim, within 6 months after the person receives the money, to be entitled to the money and satisfy the person that they are so entitled; or

The Corporations Law—Section 878

- (c) where the money received is insufficient to pay all proved claims, may, notwithstanding any rule of law or equity to the contrary, apportion the money among the claimants in proportion to their proved claims and show in the scheme how the money is so apportioned.
- (2) Where a person prepares a scheme for a distribution of money under subsection (1), the person shall apply to the Court for approval of the scheme and for directions in respect of it.
- (3) The Court may give such directions as to the money held in a separate trust account under subsection (1), as to the persons to whom and in what amounts the whole or any portion of that money shall be paid, and as to the payment of the balance of the money (if any) remaining in the account, as the Court thinks fit.

Part 7.7—Registers of interests in securities

879 Interpretation

(1) In this Part:

financial journalist means a person who is not a licensee and, in the course of the person's business or employment contributes advice, or prepares analyses or reports, about securities for publication:

- (a) in a newspaper or periodical;
- (b) in the course of, or by means of, transmissions made by means of an information service; or
- (c) in sound recordings, video recordings or data recordings;

Register, in relation to a person to whom this Part applies, means the Register required to be kept by the person under subsection 881(1).

securities means securities of:

- (a) a public company; or
- (b) a body corporate or other person included in the official list of a securities exchange.

(2) If:

- (a) there is in force a written certificate issued by or on behalf of a securities exchange certifying that a member of that securities exchange is recognised by that securities exchange as specialising in transactions relating to odd lots of securities; and
- (b) the member concerned enters into a transaction in relation to an odd lot of securities;

this Part does not apply in relation to any relevant interest in securities acquired by the member as a result of that transaction or in relation to any change effected by that transaction in the member's relevant interest in any securities.

880 Application of Part

- (1) This Part applies to a person who:
 - (a) holds a licence;
 - (b) holds a proper authority from a person who holds a licence;
or
 - (c) is a financial journalist.

881 Register to be maintained

- (1) A person to whom this Part applies shall keep a Register, in accordance with the prescribed form or in the prescribed manner, at a place in Australia for the purposes of this Part.
- (2) Where:
 - (a) a person is at the commencement of this Part, or becomes after that commencement, a person to whom this Part applies; and
 - (b) the person is aware at that commencement or upon becoming such a person, as the case may be, that the person has a relevant interest in securities;the person shall, within 7 days after the date of commencement of this Part or the day on which the person becomes such a person, as the case may be, if the person has not already done so, enter, as prescribed, in the Register particulars of those securities and of the nature of the person's relevant interest in those securities.
- (3) Where a person to whom this Part applies becomes aware that the person has a relevant interest in securities, the person shall, within 7 days after the day on which the person becomes so aware, enter, as prescribed, in the Register particulars of those securities and of the nature of the person's relevant interest in those securities.
- (4) Where there is a change in the relevant interest of a person to whom this Part applies in securities, the person shall, within 7 days after the day on which the person becomes aware of the change, enter particulars of the change in the Register.

The Corporations Law—Section 882

- (5) For the purposes of this section, where a person to whom this Part applies begins or ceases to have a relevant interest in securities, there shall be deemed to be a change in the relevant interest of that person in those securities.
- (6) Where a person to whom this Part applies is required by this section to enter in the Register particulars of any securities and of the nature of the person's relevant interest in those securities, or particulars of a change in the person's relevant interest in any securities, the particulars to be entered include:
 - (a) the date on which the person began or ceased to have the relevant interest or on which the change occurred;
 - (b) the number of securities to which the relevant interest relates or related;
 - (c) if the relevant interest was acquired or disposed of or the change occurred for valuable consideration—the amount of the consideration and, if the consideration did not consist wholly of money, the nature of the part of the consideration that did not consist of money; and
 - (d) if the securities are not registered in the name of the person—the name of the person who is registered as the holder of the securities or, if any other person is entitled to become registered as the holder of the securities, the name of that other person.
- (7) The Register may include particulars of matters relating to securities in relation to which this Part does not apply.

882 Commission to be notified of certain matters on establishment of Register

- (1) An applicant for a licence shall include in the application written notice of where the applicant intends to keep the Register under subsection 881(1).
- (2) Within 14 days after beginning to keep the Register, a person who holds a proper authority from a licensee shall lodge written notice of:

The Corporations Law—Section 883

- (a) where the Register is kept; and
 - (b) the name and business address of each licensee from whom the first-mentioned person holds a proper authority.
- (3) Within 14 days after beginning to keep the Register, a financial journalist shall lodge written notice of:
- (a) where the Register is kept;
 - (b) the name and business address of the financial journalist's employer (if any); and
 - (c) the newspapers and periodicals to which the financial journalist contributes.

883 Commission to be notified of changes in certain matters

- (1) As soon as practicable after changing the place where the Register is kept, a person to whom this Part applies shall lodge written notice of the new place where the Register is kept.
- (2) Where, at a particular time during the period beginning when a person complies with subsection 882(2) and ending immediately after the person next ceases to be a person to whom this Part applies, the person begins or ceases to hold a proper authority from a particular licensee, the person shall, as soon as practicable after that time, lodge written notice of that fact and of the licensee's name and business address.
- (3) Where, at a particular time during the period beginning when a person complies with subsection 882(3) and ending immediately after the person next ceases to be a person to whom this Part applies, the person:
 - (a) begins or ceases to be employed as a financial journalist by a particular employer; or
 - (b) begins or ceases to contribute as a financial journalist to a particular newspaper or periodical;the person shall, as soon as practicable after that time, lodge written notice of that fact and of:
 - (c) the employer's name and business address; or
 - (d) the name of the newspaper or periodical;

The Corporations Law—Section 884

as the case may be.

- (4) As soon as practicable after:
- (a) the name or business address of a licensee from whom a person to whom this Part applies holds a proper authority;
 - (b) the name or business address of an employer who employs a person to whom this Part applies as a financial journalist; or
 - (c) the name of a newspaper or periodical to which a person to whom this Part applies contributes as a financial journalist;
- ceases to be the name or business address of the licensee or employer, or the name of the newspaper or periodical, as the case may be, as last notified by the person under section 882 or this section, the person shall lodge written notice of the new name or business address.

884 Defences

- (1) It is a defence to a prosecution for contravening section 881, 882 or 883 if it is proved that the contravention was due to the defendant not being aware of a fact or occurrence the existence of which was necessary to constitute the contravention and that:
- (a) the defendant was not so aware on the date of the information;
 - (b) the defendant became so aware less than 14 days before the date of the information; or
 - (c) the defendant became so aware not less than 14 days before the date of the information and complied with the relevant section within 14 days after becoming so aware.
- (2) For the purposes of this Part, a person shall, unless the contrary is proved, be presumed to have been aware at a particular time of a fact or occurrence relating to securities if an employee or agent of the person, being an employee or agent having duties or acting in relation to the employer's or principal's interest in the relevant securities, was aware of that fact or occurrence at that time.

The Corporations Law—Section 885

885 Power of Commission to require production of Register

- (1) The Commission may require a person to whom this Part applies to produce the Register for inspection by a person authorised by the Commission at such place and within such period as the Commission specifies and the authorised person may make a copy of, or take extracts from, the Register.
- (2) A person to whom this Part applies shall comply with any requirement made of the person under subsection (1).

886 Power of Commission to require certain information

The Commission may, by written notice, require a person (in this section called the *principal*) to supply the Commission with:

- (a) the name and address of the person who contributed or prepared specified advice or a specified analysis or report; or
- (b) the names and addresses of all persons who, during a specified period, contributed or prepared any advice, analysis or report;

being advice, or an analysis or report, about securities that was published:

- (c) in a newspaper or periodical owned or published by the principal;
- (d) in the course of, or by means of, transmissions that:
 - (i) the principal makes by means of an information service; or
 - (ii) are made by means of an information service that the principal owns, operates or makes available; or
- (e) in sound recordings, video recordings, or data recordings, that the principal makes available as mentioned in paragraph 77(6)(c).

887 Power of Commission to supply copy of Register

The Commission may supply a copy of a Register or an extract from a Register to any person who, in the opinion of the

The Corporations Law—Section 887

Commission, should in the public interest be informed of the matters disclosed in the Register or extract.

Part 7.8—Deposits with stock exchanges

888 Interpretation

In this Part, unless the contrary intention appears:

stock exchange does not include an Exchange subsidiary.

889 Deposits to be lodged by member organisations

- (1) This section applies where a licensee is, or is a partner in a partnership that is, a member organisation of a stock exchange.
- (2) Subject to this section, the licensee or partnership, as the case may be, shall, as provided in this section, lodge and keep a deposit with:
 - (a) if the licensee or partnership is a member organisation of each of 2 or more stock exchanges—the nominated stock exchange; or
 - (b) otherwise—the stock exchange referred to in subsection (1).
- (3) If:
 - (a) while the licensee or partnership, as the case may be, is a member organisation of at least one stock exchange, he, she or it becomes a member organisation of another stock exchange; or
 - (b) the licensee or partnership ceases to be a member organisation of a particular stock exchange but remains a member organisation of each of 2 or more other stock exchanges;the licensee or partnership shall as soon as practicable inform in writing each stock exchange of which he, she or it is a member organisation of the name of the stock exchange with which he, she or it proposes to lodge and keep a deposit.
- (4) In subsection (2):

The Corporations Law—Section 890

nominated stock exchange means the stock exchange named in notices given as required by subsection (3) or, if notices have been so given on 2 or more occasions, in the most recent notices so given.

- (5) The deposit is payable out of money in a trust account of the licensee or partnership, as the case may be.
- (6) An amount paid from such a trust account as, or as part of, the deposit continues to be money in the trust account even though it has been lodged with a stock exchange.
- (7) A contravention of subsection (2) shall be disregarded if it was attributable to the making, out of a trust account of the licensee or partnership, as the case may be, of a payment that:
 - (a) paragraph 869(1)(a), (c), (d) or (e) authorised the licensee or partnership to make out of that trust account; and
 - (b) the licensee or partnership was unable to make without committing the contravention.

890 Deposit to be proportion of trust account balance

- (1) The deposit to be lodged and kept for the purposes of section 889 shall be an amount equal to two-thirds (or, where a lesser proportion is prescribed, that proportion) of:
 - (a) if the licensee or partnership, as the case may be, keeps 2 or more trust accounts—the lowest aggregate of the balances in those trust accounts; or
 - (b) otherwise—the lowest balance in the trust account of the licensee or partnership;during the 3 months ending on the quarter day last past.
- (2) A deposit need not be lodged or kept for the purposes of this Part if, but for this subsection, the amount of the deposit would be less than \$3,000.
- (3) If, because of subsection (1), the amount of a deposit to be lodged and kept with a stock exchange increases, the licensee or partnership, as the case may be, shall so lodge the amount of the

The Corporations Law—Section 891

increase within 5 trading days of that stock exchange after the relevant quarter day that is the last day of the period by reference to which the amount required to be so lodged is calculated.

891 Deposits to be invested by stock exchange

- (1) Where a stock exchange receives a deposit from a person or partnership under section 889, the stock exchange holds the deposit in trust for the person or partnership and shall invest the deposit:
 - (a) on interest-bearing term deposit with an Australian bank; or
 - (b) on deposit with an eligible money market dealer.
- (2) A participating exchange shall pay into the Fund money received by way of interest in respect of amounts invested by it under subsection (1).
- (3) A stock exchange (other than a participating exchange) shall pay money received by way of interest in respect of amounts invested by it under subsection (1) into its fidelity fund.
- (4) A stock exchange shall, on demand being made by a person or partnership who has lodged a deposit with the stock exchange, pay to the person or partnership an amount on deposit with the stock exchange under section 889.
- (5) Nothing in subsection (4) affects section 889.
- (6) Where the licensee, or a partnership in which the licensee is a partner, receives an amount under subsection (4) from a stock exchange, the licensee or partnership, as the case may be, shall pay the amount into a trust account of the licensee or partnership, as the case may be.
- (7) The Fund shall guarantee the repayment by a participating exchange of the amount of a deposit received by the participating exchange from a person or partnership.
- (8) The fidelity fund of a stock exchange (other than a participating exchange) shall guarantee the repayment by the stock exchange of

The Corporations Law—Section 892

the amount of a deposit received by the stock exchange from a person or partnership.

892 Accounts in respect of deposits

- (1) A stock exchange shall establish and keep proper accounts of deposits received by the stock exchange under this Part or a corresponding previous law and shall, within 1 month after each quarter day, cause a balance-sheet to be made out as at that day.
- (2) A stock exchange shall appoint a registered company auditor to audit its accounts relating to deposits.
- (3) An auditor appointed by a stock exchange shall audit the accounts relating to deposits received by the stock exchange and each balance sheet and shall cause a report on the accounts and balance-sheet to be given to the board of the stock exchange within one month after the balance-sheet is made out.
- (4) A stock exchange shall lodge a copy of each report given to the board of the stock exchange under this section and of the balance-sheet to which the report relates within 14 days after the report was given to the board.

893 Claims not affected by this Part

Nothing done under this Part or under a condition existing by virtue of this Part affects:

- (a) a claim or lien that a member organisation of a stock exchange has in relation to a deposit; or
- (b) the rights or remedies of a person other than a member organisation of a stock exchange.

Part 7.9—Fidelity funds

894 Interpretation

In this Part:

participating exchange means:

- (a) a participating exchange for the purposes of Part 7.10; or
- (b) an Exchange subsidiary.

895 Fidelity funds

- (1) A securities exchange (other than a participating exchange) shall keep a fidelity fund, which shall be administered by the board on behalf of the securities exchange.
- (2) The assets of a fidelity fund of a securities exchange are the property of the securities exchange but shall be kept separate from all other property and shall be held in trust for the purposes set out in this Part.
- (3) A securities exchange that, immediately before the commencement of this section, kept a fidelity fund under a previous law corresponding to this Part shall, after that commencement, keep that fidelity fund in accordance with, and for the purposes of, this Part.

896 Money constituting fidelity fund

The fidelity fund of a securities exchange shall consist of:

- (a) in the case of a fidelity fund established after the commencement of this Part, any amount that is paid to the credit of the fund by the securities exchange on the establishment of the fund;
- (b) money paid into the fidelity fund under subsection 902(5) or 904(5);

The Corporations Law—Section 897

- (c) the interest on money invested by the securities exchange under Part 7.8;
- (d) the interest and profits from time to time accruing from the investment of the fidelity fund;
- (e) money paid into the fidelity fund by the securities exchange;
- (f) money recovered by or on behalf of the securities exchange in the exercise of a right of action conferred by this Part;
- (g) money paid by an insurer under a contract of insurance or indemnity entered into by the securities exchange under section 917; and
- (h) any other money lawfully paid into the fund.

897 Fund to be kept in separate bank account

The money in a fidelity fund, until invested or applied in accordance with this Part, shall be kept in a separate account in an Australian bank.

898 Payments out of fund

Subject to this Part, there shall be paid out of the fidelity fund of a securities exchange in such order as the board of the securities exchange considers proper:

- (a) the amounts of all claims, including costs, allowed by the board or established against the securities exchange under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the securities exchange or the board of the securities exchange of the rights, powers and authorities vested in it by this Part in relation to the fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the securities exchange under section 917;
- (d) the expenses incurred in the administration of the fund, including the salaries and wages of persons employed by the securities exchange or the board in relation to the fund; and

The Corporations Law—Section 899

- (e) all other moneys payable out of the fund in accordance with the provisions of this Chapter.

899 Payment to the credit of the fidelity fund of a futures exchange or futures association

- (1) Where a body corporate that is a securities exchange, or that is related to a securities exchange, becomes a futures organisation for the purposes of Part 8.6:
 - (a) the Minister may approve in writing, on such conditions (if any) as are specified in the approval:
 - (i) the payment of an amount specified in the approval out of the fidelity fund kept under this Part by the body corporate, or by the securities exchange, as the case may be; and
 - (ii) the payment of that amount to the credit of the fidelity fund established or to be established by the body corporate under that Part; and
 - (b) if the Minister does so, that amount shall, in accordance with the conditions (if any) so specified:
 - (i) be paid out of the fidelity fund referred to in subparagraph (a)(i); and
 - (ii) be paid to the credit of the fidelity fund referred to in subparagraph (a)(ii).
- (2) An approval given by the Ministerial Council before the commencement of this section under a previous law corresponding to subsection (1) shall be deemed to be an approval given by the Minister under that subsection and any reference in the approval to a fidelity fund established or to be established under a previous law corresponding to Part 8.6 shall be deemed to be a reference to a fidelity fund established or to be established under that Part.

900 Accounts of fund

- (1) A securities exchange shall establish and keep proper accounts of its fidelity fund and shall, before 31 August in each year, cause a

The Corporations Law—Section 901

balance sheet in respect of those accounts to be made out as at the preceding 30 June.

- (2) A securities exchange shall appoint a registered company auditor to audit the accounts of the fidelity fund.
- (3) The auditor appointed by a securities exchange shall audit the accounts of the fidelity fund and shall audit each balance sheet and give a report on the accounts and balance sheet to the board of the securities exchange not later than one month after the balance sheet is made out.
- (4) A securities exchange shall lodge a copy of each report given to the board of the securities exchange under this section and of the balance sheet to which the report relates within 14 days after the report was given to the board.

901 Management sub-committee

- (1) The board of a securities exchange may, by resolution, appoint a management sub-committee of not fewer than 3 nor more than 5 members of the securities exchange, at least one of whom is also a member of the board.
- (2) The board may, by resolution, delegate to a sub-committee all or any of its powers, authorities and discretions under a provision of this Part (other than this section, section 904, subsection 907(8), (10) or (11) or section 909).
- (3) A power, authority or discretion delegated under subsection (2) may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred by this Part on a majority of the members of the sub-committee.
- (4) A delegation under this section may at any time, by resolution of the board, be varied or revoked.

The Corporations Law—Section 902

- (5) The board may at any time, by resolution, remove a member of a sub-committee and may, by resolution, fill a vacancy arising in the membership of the sub-committee.
- (6) A management sub-committee appointed by the board of a securities exchange before the commencement of this Part under a corresponding previous law and in existence immediately before that commencement shall be deemed to have been appointed by the board of the securities exchange on that commencement under this section.
- (7) If the board of a securities exchange referred to in subsection (6) had before the commencement of this Part delegated to a management sub-committee referred to in that subsection any powers, authorities or discretions under the corresponding previous law so referred to and had not revoked the delegation before that commencement, the board shall be deemed to have, on that commencement, delegated to the management sub-committee its corresponding powers, authorities and discretions under this Part.

902 Contributions to fund

- (1) A person is not to be admitted to:
 - (a) membership of a securities exchange; or
 - (b) a partnership in a member firm recognised by a securities exchange;unless the person has paid to the securities exchange, as a contribution to its fidelity fund, such amount, being not less than \$500, as is determined by the securities exchange in relation to that person or in relation to a class of persons that includes that person.
- (2) A person who is a member of a securities exchange must, on or before 31 March in each year, pay to the securities exchange, as a contribution to its fidelity fund, such amount, being not less than \$100, as is determined by the securities exchange in relation to that person or in relation to a class of persons that includes that person.
- (3) This section has effect subject to section 919.

The Corporations Law—Section 903

903 Provisions where fund exceeds \$2,000,000

- (1) In this section:

relevant person, in relation to a securities exchange, means a member of the securities exchange:

- (a) who has made 20 or more annual payments of the contribution referred to in subsection 902(2); and
 - (b) in respect of whom a payment from the fund has not been made or, if such a payment has been made, has been repaid to the fund.
- (2) Where the amount in a fidelity fund of a securities exchange exceeds \$2,000,000 or such lesser amount as is prescribed, a relevant person is, subject to this section, exempt from making further annual payments of the contribution referred to in subsection 902(2).
- (3) Where the amount in a fidelity fund of a securities exchange exceeds \$2,000,000 or such lesser amount as is prescribed, the following paragraphs apply in relation to relevant persons who are natural persons:
- (a) on the retirement from business of such a relevant person, the board may, in its discretion, pay to that person an amount determined in accordance with subsection (5);
 - (b) on the death of such a relevant person without any payment having been made to that person under paragraph (a), the board may, in its discretion, pay an amount determined in accordance with subsection (5) to his or her personal representative or to any person who was wholly or partly dependent on the relevant person at the time of his or her death.
- (4) Where the amount in a fidelity fund of a securities exchange exceeds \$2,000,000 or such lesser amount as is prescribed, the board may, in its discretion, pay to a relevant person, being a body corporate, that ceases to be a member of the securities exchange an amount determined in accordance with subsection (5).

The Corporations Law—Section 904

- (5) The amount that may, under subsection (3) or (4), be paid out of a fidelity fund to or in respect of a relevant person is the total amount of the annual payments made by the relevant person of the contribution referred to in subsection 902(2) or such proportion of that amount as is for the time being determined by the board either generally or in relation to the particular relevant person, either with or without simple interest at a rate not exceeding 3% per annum.
- (6) A determination of the board under subsection (5) shall be in writing and may be in respect of any person or any class of persons.
- (7) The securities exchange may, by written notice published in the *Gazette*:
 - (a) suspend the operation of paragraph (3)(a) or (b); or
 - (b) revoke any such suspension;but, where the operation of one of those paragraphs is for the time being suspended, the securities exchange shall not suspend the operation of the other paragraph.
- (8) Where the amount in a fidelity fund is, because of payments made out of the fund, less than \$1,000,000 or such lesser amount as is prescribed and the securities exchange determines that a person who because of subsection (2) is exempt from making annual payments of the contribution referred to in subsection 902(2) should again be required to make annual payments of that contribution, the person is liable to make payments of that contribution accordingly.

904 Levy in addition to annual contributions

- (1) If at any time the amount of a fidelity fund is insufficient to pay all amounts that, at that time, are required to be paid under section 898, the securities exchange may determine that a levy of a specified amount must be paid by each member of the exchange who is liable to make annual payments of the contribution referred to in subsection 902(2).

The Corporations Law—Section 905

- (2) The amount of the levy must be paid within the time and in the manner specified by the securities exchange either generally or in relation to a particular case.
- (3) A person is not required to pay by way of levy under this section more than \$5,000 in total or more than \$1,000 in any period of 12 months.
- (4) An amount of levy paid under this section must be paid into the securities exchange's fidelity fund.
- (5) This section has effect subject to section 919.

905 Power of securities exchange to make advances to fund

- (1) A securities exchange may, from its general funds, give or advance, on such terms as the board thinks fit, any sums of money to its fidelity fund.
- (2) Money that is advanced under subsection (1) may at any time be repaid from the fidelity fund to the general funds of the securities exchange.

906 Investment of fund

Money in a fidelity fund that is not immediately required for its purposes may be invested by the securities exchange in any way in which trustees are for the time being authorised by a law in force in a State or Territory to invest trust funds or on deposit with an eligible money market dealer.

907 Application of fund

- (1) Subject to this Part, a securities exchange shall hold and apply its fidelity fund for the purpose of compensating persons who have, whether before or after the commencement of this Part, suffered pecuniary loss because of a defalcation, or fraudulent misuse of securities or documents of title to securities or of other property, by:

The Corporations Law—Section 907

- (a) a member of the securities exchange who, when the loss was suffered, was a sole trader;
 - (b) a person who, when the loss was suffered, was a partner in a member firm; or
 - (c) an employee of such a member or firm;
in respect of money, securities, documents of title to securities or other property that, in the course of or in connection with that member's or firm's business of dealing in securities, was or were entrusted to or received by the member, a partner in the firm, or an employee of the member or firm (whether before or after the commencement of this Part):
 - (d) on behalf of another person; or
 - (e) because the member, or the firm or a partner in the firm, was a trustee of the money, securities, documents of title or other property.
- (2) Where a right to compensation does not arise under subsection (1), a fidelity fund may, subject to this Part, be applied for the purpose of paying to an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* an amount not greater than the amount that the official receiver or trustee certifies is required to make up or reduce the total deficiency arising because the available assets of a bankrupt, being a member of a securities exchange who is a sole trader or being a partner in a member firm recognised by a securities exchange, are insufficient to satisfy the debts arising from dealings in securities that have been proved in the bankruptcy by creditors of the bankrupt.
- (3) Subsection (2) applies in the case of a member of a securities exchange or a partner in a member firm recognised by a securities exchange who has made a composition with creditors, or has executed a deed of assignment or a deed of arrangement, under Part X of the *Bankruptcy Act 1966* in the same way as that subsection applies in the case of such a member or partner who has become bankrupt.
- (4) For the purposes of subsection (2) as applying by virtue of subsection (3):
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The Corporations Law—Section 907

- (a) the reference in subsection (2) to a trustee is a reference to a controlling trustee within the meaning of Part X of the *Bankruptcy Act 1966*;
 - (b) the reference to debts proved in the bankruptcy is a reference to provable debts in relation to the composition or deed within the meaning of that Part; and
 - (c) references to the bankrupt are references to the person who made the composition or executed the deed.
- (5) Where a right to compensation does not arise under subsection (1), a fidelity fund may, subject to this Part, be applied for the purpose of paying to a liquidator of a body corporate that is being wound up (being a body corporate that is a member of a securities exchange) an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the body corporate are insufficient to satisfy the debts arising from dealings in securities that have been proved in the winding up by creditors of the body corporate.
- (6) Except as otherwise provided in the following provisions of this section, the amount or the sum of the amounts that may be paid under this Part:
 - (a) for the purpose of compensating pecuniary loss as referred to in subsection (1); or
 - (b) for the purpose of making payments under subsection (2) or (5);shall not exceed, in respect of a member of a securities exchange who is a sole trader or in respect of a member firm recognised by a securities exchange, \$500,000.
- (7) For the purpose of calculating the amount or sum referred to in subsection (6), an amount that is paid from a fidelity fund shall, to the extent to which that amount is repaid to the fund, be disregarded.
- (8) If a securities exchange considers, having regard to the ascertained or contingent liabilities of the fidelity fund, that the assets of the

The Corporations Law—Section 907

fund so permit, the securities exchange may, by notice published in the *Gazette*, increase the total amount that may be applied from the fund under subsection (6), and from the date of the publication of the notice until the notice is revoked or varied the amount specified in the notice is the total amount that may be applied as provided by this section.

- (9) A notice that was published by a securities exchange before the commencement of this Part under a previous law corresponding to subsection (8) and had not been revoked before that commencement shall be deemed to have been published under that subsection and to relate to the total amount that may be applied from the fidelity fund of the securities exchange under subsection (6).
- (10) A notice under subsection (8) may be revoked or varied by the securities exchange by notice published in the *Gazette*.
- (11) If a securities exchange, having regard to the ascertained or contingent liabilities of the fidelity fund, considers that the assets of the fund so permit, the securities exchange may apply out of the fund such sums in excess of the amount limited by or under this section as the securities exchange, in its discretion, thinks fit in or towards the compensation of persons who have suffered pecuniary loss as referred to in subsection (1) or making a payment under subsection (2) or (5).
- (12) If:
 - (a) any money, securities, documents of title to securities or other property has been entrusted to or received by, a former member of securities exchange or an employee of such a former member;
 - (b) because of a defalcation, or the fraudulent misuse of the securities, documents of title or other property, by the former member or employee, the person by or from whom the securities, documents of title or other property was so entrusted or received suffered pecuniary loss; and
 - (c) when the money, securities, documents of title or other property was so entrusted or received, the person suffering

The Corporations Law—Section 908

the pecuniary loss had reasonable grounds for believing and did believe that the former member was a member of the securities exchange concerned;

a reference in this section to a member of a securities exchange includes a reference to that former member.

- (13) A reference in this section to an employee of a member or former member of a securities exchange includes, in the case of a member or former member that is a body corporate, a reference to an officer of the body corporate.
- (14) A reference in this section to a defalcation, or to a fraudulent misuse of securities or documents of title to securities or of other property, is a reference to a defalcation, or to such a fraudulent misuse, wherever occurring.

908 Claims against the fund

- (1) Subject to this Part, a person who has, whether before or after the commencement of this Part, suffered pecuniary loss as referred to in subsection 907(1) is entitled to claim compensation from the fidelity fund of the relevant securities exchange and to take proceedings in the Court as provided in this Part against the securities exchange to establish that claim.
- (2) A person does not have a claim against a fidelity fund of a securities exchange in respect of:
 - (a) pecuniary loss suffered before 1 July 1981 or on a day on which the securities exchange was a participating exchange; or
 - (b) pecuniary loss in respect of money or other property suffered after the money or property had, in due course of the administration of a trust, ceased to be under the sole control of a member of the securities exchange or of a partner or partners in a member firm recognised by the securities exchange.
- (3) Subject to this Part, the amount that a claimant is entitled to claim as compensation from a fidelity fund of a securities exchange is the

The Corporations Law—Section 909

amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of, and disbursements incidental to, the making and proof of the claim) less the amount or value of all money or other benefits received or receivable by the claimant from a source other than the fund in reduction of the loss.

- (4) In addition to any compensation that is payable under this Part, interest is payable out of the fidelity fund on the amount of the compensation less any amount attributable to costs and disbursements, at the rate of 5% per annum (or, if another rate is prescribed, that other rate) calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.
- (5) A claim duly made before the commencement of this Part against the fidelity fund of a securities exchange under a previous law corresponding to this section shall be deemed to have been duly made against that fidelity fund under this section.

909 Rights of innocent partner in relation to fund

- (1) Where all persons who have submitted claims under section 908 have been fully compensated in accordance with the provisions of this Part for pecuniary loss as referred to in subsection 907(1) suffered in relation to money or other property entrusted to or received by a partner in a member firm recognised by a securities exchange, any other partner in that firm who has made payment to a person in compensation for loss suffered by that person in relation to that money or property is subrogated to the extent of that payment to all the rights and remedies of that person against the fidelity fund if the board, having regard to all the circumstances, determines that the partner was in no way a party to the loss and acted honestly and reasonably in the matter.
- (2) If a partner in a member firm feels aggrieved by the determination of a board under subsection (1), the partner may, within 28 days after receiving notice of the determination, appeal to the Court against the determination by lodging a notice of appeal in the prescribed form.

The Corporations Law—Section 910

- (3) The appellant shall, on the day on which notice of appeal is lodged with the Court, lodge a copy of the notice with the securities exchange.
- (4) The Court shall inquire into and decide upon the appeal and, for that purpose, may do all such matters and things, and may do those matters and things in the same way and to the same extent, as it is empowered to do in the exercise of its ordinary jurisdiction.
- (5) Without limiting the generality of subsection (4), if the Court is of opinion having regard to all the circumstances that the appellant was not a party to the defalcation or fraudulent misuse of securities or documents of title to the securities or of other property from which the pecuniary loss arose and acted honestly and reasonably in the matter, it may order that the appellant shall, to the extent of any payment made by the appellant, be subrogated to the rights and remedies, in relation to the fidelity fund of the relevant securities exchange, of the person to whom the appellant made such a payment.

910 Notice calling for claims against fund

- (1) A securities exchange may publish, in each State and Territory, in a daily newspaper circulating generally in the State or Territory, a notice in the prescribed form specifying a date, not being earlier than 3 months after the publication of the notice, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.
- (2) A claim for compensation from a fidelity fund of a securities exchange in respect of a pecuniary loss shall be made in writing to the securities exchange:
 - (a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or
 - (b) where no such notice has been published, within 6 months after the claimant became aware of the pecuniary loss;and a claim that is not so made is barred unless the securities exchange otherwise determines.

The Corporations Law—Section 911

- (3) A securities exchange, a member of a board of a securities exchange or a member or employee of a securities exchange has qualified privilege in respect of the publication of a notice under subsection (1).
- (4) A notice duly published by a securities exchange before the commencement of this Part under a previous law corresponding to subsection (1) shall be deemed to have been duly published under that subsection.

911 Power of board to settle claims

- (1) Subject to this Part, a board may allow and settle a proper claim for compensation from a fidelity fund of a securities exchange at any time after the occurrence of the pecuniary loss in respect of which the claim arose.
- (2) Subject to subsection (3), a person shall not bring proceedings under this Part against a securities exchange without leave of the board unless:
 - (a) the board has disallowed the claim; and
 - (b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money, securities, documents of title to securities or other property in respect of which the pecuniary loss occurred, being rights and remedies that are available against:
 - (i) the member of the securities exchange in relation to whom the claim arose; and
 - (ii) all other persons who are liable in respect of the loss suffered by the claimant;other than any right or remedy that the claimant may have under section 908 or a corresponding previous law against another securities exchange.
- (3) A person who has been refused leave by the board of a securities exchange under subsection (2) may apply to the Court for leave to bring proceedings against the securities exchange and the Court may make such order in the matter as it thinks just.

The Corporations Law—Section 912

- (4) A board, after disallowing, whether wholly or partly, a claim for compensation from a fidelity fund of a securities exchange, shall serve notice of the disallowance in the prescribed form on the claimant or the claimant's solicitor.
- (5) Proceedings against a securities exchange in respect of a claim that has been disallowed by a board shall not be brought after 3 months after the service of the notice of disallowance referred to in subsection (4).
- (6) In proceedings brought to establish a claim, evidence of an admission or confession by, or other evidence that would be admissible against, the person against whom a defalcation or fraudulent misuse of property is alleged is admissible to prove the defalcation or fraudulent misuse even if the person is not the defendant in or a party to those proceedings, and all defences that would have been available to that person are available to the securities exchange.
- (7) The board or, where proceedings are brought to establish a claim, the Court, if satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim, may allow the claim and act accordingly, even if:
 - (a) the person against whom the defalcation or fraudulent misuse of property is alleged has not been convicted or prosecuted; or
 - (b) the evidence on which the board or Court, as the case may be, acts would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse of property.

912 Form of order of Court establishing claim

- (1) Where in proceedings brought to establish a claim the Court is satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim and that otherwise the claimant has a valid claim, the Court shall, by order:

The Corporations Law—Section 913

- (a) declare the fact and the date of the defalcation or fraudulent misuse of property and the amount of the claim; and
 - (b) direct the board to allow the claim as so declared and deal with it in accordance with this Part.
- (2) In any such proceedings all questions of costs are in the discretion of the Court.

913 Power of securities exchange to require production of securities

A securities exchange may at any time require a person to produce and deliver any securities, documents or statements of evidence necessary to support a claim made or necessary for the purpose either of:

- (a) exercising its rights against a member of the securities exchange or a partner or the partners in a member firm recognised by the securities exchange or any other person; or
- (b) enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property;

and in default of delivery of any such securities, documents or statements of evidence by the first-mentioned person, the board of the securities exchange may disallow any claim by that person under this Part.

914 Subrogation of securities exchange to rights etc. of claimant on payment from fund

On payment out of a fidelity fund of a securities exchange of any money in respect of a claim under this Part, the securities exchange is subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant from the defalcation or fraudulent misuse of property.

915 Payment of claims only from fund

Money or other property belonging to a securities exchange, other than the fidelity fund, is not available for the payment of a claim

The Corporations Law—Section 916

under this Part, whether the claim is allowed by the board or is made the subject of an order of the Court.

916 Provision where fund insufficient to meet claims or where claims exceed total amount payable

- (1) Where the amount in a fidelity fund of a securities exchange is insufficient to pay the whole of the amount of all claims against it that have been allowed or in respect of which orders of the Court have been made:
 - (a) the amount in the fund shall, subject to subsection (2), be apportioned among the claimants in such manner as the board thinks equitable; and
 - (b) such a claim so far as it then remains unpaid shall be deemed to be charged against future receipts of the fund and paid out of the fund when moneys are available in the fund.
- (2) Where the total of all claims that have been allowed or in respect of which orders of the Court have been made in relation to defalcation or fraudulent misuses of property by or in connection with a sole trader or partner in a member firm recognised by a securities exchange exceeds the total amount that may, under section 907, be paid under this Part in respect of that sole trader or member firm:
 - (a) the total amount shall be apportioned among the claimants in such manner as the board thinks equitable; and
 - (b) on payment out of the fund of that total amount in accordance with that apportionment all such claims and any orders relating to those claims and all other claims against the fund that may subsequently arise or be made in respect of defalcations or fraudulent misuses of property by or in connection with that sole trader or member firm are discharged.

The Corporations Law—Section 917

917 Power of securities exchange to enter into contracts of insurance or indemnity

- (1) A securities exchange may enter into a contract with a person carrying on fidelity insurance business under which the securities exchange will be insured or indemnified to the extent and in the manner provided by the contract against liability in respect of claims under this Part.
- (2) Such a contract may be entered into in relation to members of the securities exchange generally, in relation to particular members named in the contract, or in relation to members generally excluding particular members named in the contract.
- (3) Each of the following persons, namely, a securities exchange, a member or employee of a securities exchange or board and a member of a management sub-committee has qualified privilege in respect of the publication of a statement that a contract entered into under this section does or does not apply with respect to a particular member of the securities exchange.

918 Application of insurance money

A claimant against a fidelity fund of a securities exchange does not have a right of action against a person with whom a contract of insurance or indemnity is made under this Part in respect of such a contract or a right or claim with respect to any money paid by the insurer in accordance with such a contract.

919 Contribution or levy not payable unless imposed by an Act

A person need not pay a contribution under subsection 902(1) or (2) or a levy under section 904 unless a provision of an Act of this jurisdiction imposes the contribution or levy.

Part 7.10—The National Guarantee Fund

Division 1—Interpretation

920 Interpretation

- (1) In this Part, unless the contrary intention appears:

claim means a claim under Division 6, 7 or 8;

eligible exchange means:

- (a) the Exchange; or
- (b) a securities exchange that is neither the Exchange nor an Exchange subsidiary;

excluded person has the meaning given by section 921;

Fund provisions means all of the following:

- (a) the provisions of this Part;
- (b) the provisions of Part 7.10 of the Corporations Law of each jurisdiction other than this jurisdiction;

minimum amount means:

- (a) if a determination is in force under section 936—the amount specified in the determination as the minimum amount of the Fund for the purposes of the Fund provisions; or
- (b) in any other case—\$15,000,000;

obligations, in relation to a member or member organisation of a participating exchange, in relation to a person, includes obligations arising under a law, under the participating exchange's business rules or under an agreement between:

- (a) in any case—the member or member organisation and the person; or
- (b) if the member is a partner in a member organisation of the participating exchange—the last-mentioned member organisation and the person;

The Corporations Law—Section 920

orderly market means an orderly market on a stock market of a participating exchange or of an Exchange subsidiary;

participating exchange means an eligible exchange that is a member of SEGC;

previous Board means the board of NSEGC;

property includes money and scrip;

quoted securities, in relation to a transaction, means securities that, when the agreement for the transaction is made, are quoted on a stock market of a participating exchange or of an Exchange subsidiary;

relative, in relation to a person, means a parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister, of the person;

relevant Act means the *Australian Stock Exchange and National Guarantee Fund Act 1987*;

relevant commencement means 1 April 1987;

reportable transaction means a sale or purchase, by a member organisation (in this definition called the **first dealer**) of a participating exchange, of quoted securities, where:

- (a) in any case—the participating exchange’s business rules, as in force when the agreement for the sale or purchase is made, require the first dealer to report the sale or purchase to the participating exchange; or
- (b) if the sale or purchase is to or from, as the case may be, a member organisation (in this definition called the **second dealer**) of a participating exchange—the last-mentioned participating exchange’s business rules, as in force when the agreement for the sale or purchase is made, require the second dealer to report to the last-mentioned participating exchange the purchase or sale of the securities by the second dealer from or to, as the case may be, the first dealer;

The Corporations Law—Section 921

settlement documents, in relation to a transaction, means documents the supply of which in accordance with the agreement for the transaction:

- (a) if the agreement has not been discharged—is sufficient; or
- (b) if the agreement has been discharged, whether by performance or otherwise—would, if the agreement had not been discharged, be sufficient;

to discharge the obligations of the seller under the agreement, in so far as those obligations relate to the supply of documents in connection with the transaction;

transaction means a sale or purchase of securities.

- (2) For the purposes of this Part, a sale and purchase of securities shall be taken to consist of 2 distinct transactions, namely, the sale of the securities by the seller to the buyer and the purchase of the securities by the buyer from the seller.
- (3) Except so far as the contrary intention appears, a reference in this Part to a sale, or to a purchase, includes a reference to a sale or purchase the agreement for which is made outside this jurisdiction, whether in Australia or not.
- (5) A reference in this Part to a business being carried on in this jurisdiction includes a reference to the business being carried on both in this jurisdiction and outside it, whether in Australia or not.
- (6) A person who, or a partner in a partnership that, contravenes a provision of this Part is not guilty of an offence.

921 Excluded persons

- (1) In this Part, **excluded person**, in relation to a member of a participating exchange, means:
 - (a) in any case—the member;
 - (b) if the member is a member organisation of the participating exchange and is not a body corporate:
 - (i) a person who is the spouse, or who is a relative, of the member;

The Corporations Law—Section 921

- (ii) a trustee of a trust in relation to which the member or a person of a kind referred to in subparagraph (i) is capable of benefiting; or
- (iii) a body corporate of which the member is an officer, or in which the member or a person of a kind referred to in subparagraph (i) has, or the member and such a person, the member and 2 or more such persons, or 2 or more such persons, together have, a controlling interest;
- (c) if the member is a member organisation of the participating exchange and is a body corporate:
 - (i) a person who is an officer of the body corporate;
 - (ii) a body corporate that is related to the first-mentioned body corporate;
 - (iii) a person who is the spouse, or who is a relative, of a person of a kind referred to in subparagraph (i);
 - (iv) a trustee of a trust in relation to which a person of a kind referred to in subparagraph (i) or (iii) is capable of benefiting; or
 - (v) a body corporate in which a person of a kind referred to in subparagraph (i) or (iii) has, or 2 or more such persons together have, a controlling interest;
- (d) if the member is a partner in a member organisation of the participating exchange and is not a body corporate:
 - (i) a person who is a partner in the member organisation;
 - (ii) a person who is the spouse, or who is a relative, of a partner (not being a body corporate) in the member organisation;
 - (iii) a trustee of a trust in relation to which a person of a kind referred to in subparagraph (i) or (ii) is capable of benefiting;
 - (iv) a person who is an officer of a body corporate that is a partner in the member organisation; or
 - (v) a body corporate of which a person of a kind referred to in subparagraph (i), (ii) or (iii) is an officer, or in which such a person has, or 2 or more such persons together have, a controlling interest; or

The Corporations Law—Section 922

- (e) if the member is a partner in a member organisation of the participating exchange and is a body corporate:
 - (i) a person who is an officer of a body corporate that is a partner in the member organisation;
 - (ii) a body corporate that is related to the first-mentioned body corporate;
 - (iii) a person who is a partner in the member organisation;
 - (iv) a person who is the spouse, or who is a relative, of a person (other than a body corporate) of a kind referred to in subparagraph (i) or (iii);
 - (v) a trustee of a trust in relation to which a person of a kind referred to in subparagraph (i), (iii) or (iv) is capable of benefiting; or
 - (vi) a body corporate in which a person of a kind referred to in subparagraph (i), (iii) or (iv) has, or 2 or more such persons together have, a controlling interest.
- (2) A reference in subsection (1) to a relative of a person includes a reference to a relative of the spouse (if any) of the person.
- (3) A reference in subsection (1) to an officer of a body corporate is a reference to:
 - (a) a director, secretary or executive officer of the body corporate; or
 - (b) a person who is an officer of the body corporate by virtue of paragraph (b), (c), (d) or (e) of the definition of *officer* in section 9.

922 Becoming insolvent

- (1) For the purposes of this Part, a body corporate becomes insolvent at a particular time if, and only if, at that time:
 - (a) the body corporate commences to be wound up, comes under official management or ceases to carry on business;
 - (b) a receiver, or a receiver and manager, of property of the body corporate is appointed, whether by a court or otherwise; or

The Corporations Law—Section 923

- (c) the body corporate enters into a compromise or arrangement with its creditors.
- (3) For the purposes of this Part, a natural person becomes insolvent at a particular time if, and only if, at that time:
 - (a) a creditor's petition or a debtor's petition is presented under Division 2 or 3, as the case may be, of Part IV of the *Bankruptcy Act 1966* against:
 - (i) the person;
 - (ii) a partnership in which the person is a partner; or
 - (iii) 2 or more joint debtors who include the person;
 - (b) the person's property becomes subject to control under Division 2 of Part X of the *Bankruptcy Act 1966*;
 - (c) the person executes a deed of assignment or deed of arrangement under Part X of the *Bankruptcy Act 1966*; or
 - (d) the person's creditors accept a composition under Part X of the *Bankruptcy Act 1966*.
- (4) A reference in subsection (3) to a Division or Part of the *Bankruptcy Act 1966* includes a reference to provisions of a law of an external Territory, or a country other than Australia or an external Territory, that correspond to that Division or Part.

923 Permitted investments

For the purposes of this Part, money shall be taken to be invested in a permitted manner if, and only if, it is invested:

- (a) in a way in which trustees are for the time being authorised by a law in force in a State or Territory to invest trust funds; or
- (b) on deposit with an eligible money market dealer.

Division 2—Securities Exchanges Guarantee Corporation

926 Functions and powers

SEGC shall perform the functions, and may exercise the powers, that are conferred, or expressed to be conferred, on it by or under this Part.

927 Management sub-committee

- (1) The Board may, by resolution, appoint a management sub-committee of not fewer than 3 nor more than 5 persons, at least one of whom is a member of the Board.
- (2) The Board may, by resolution, delegate to a sub-committee appointed by it under this section all or any of its powers, authorities and discretions under a provision of this Part (other than this section, section 944, and subsections 954(5) and 969(3)).
- (3) A power, authority or discretion delegated under subsection (2) may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred by this Part on a majority of the members of the sub-committee.
- (4) A delegation by the Board under this section may, at any time, by resolution of the Board, be varied or revoked.
- (5) The Board may at any time, by resolution, remove a member of a sub-committee appointed by it under this section and may, by resolution, fill a vacancy arising in the membership of the sub-committee.
- (6) Any power, authority or discretion exercised under this section by, or by a majority of, a sub-committee shall be deemed to have been exercised by the Board.

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- (7) Any remuneration or expenses paid to a member of a sub-committee appointed under this section shall be deemed to be expenses incurred in the administration of the Fund.

928 Commission to be notified of amendments to business rules

- (1) Where an amendment is made, by way of rescission, alteration or addition, to its business rules, SEGC shall, as soon as practicable after the making of the amendment, give written notice of the amendment to the Commission.
- (2) A notice under subsection (1) shall:
- (a) set out the text of the amendment;
 - (b) specify the date on which the amendment was made; and
 - (c) contain an explanation of the purpose of the amendment.
- (3) If the notice required to be given by subsection (1) is not given within 21 days after the making of the amendment, the amendment ceases to have effect.
- (4) Where the Commission receives a notice under this section, it shall as soon as practicable send a copy of the notice to the Minister.
- (5) The Minister may, within 28 days after the receipt by the Commission of a notice under this section, disallow the whole or a specified part of the amendment to which the notice relates.
- (6) Where the Minister disallows the whole or a part of an amendment to which a notice under this section relates, the Commission shall as soon as practicable give notice of the disallowance to SEGC and, upon receipt by SEGC of the notice of disallowance, the amendment, to the extent of the disallowance, ceases to have effect.
- (7) If:
- (a) a notice of an amendment to the business rules of NSEGC was given by NSEGC to the NCSC before the commencement of this Part under a corresponding previous law;

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- (b) the amendment had not ceased to have effect before that commencement;
- (c) a period of 28 days after the receipt of the notice by the NCSC had not elapsed before that commencement; and
- (d) the Ministerial Council had not before that commencement disallowed the whole or a part of the amendment to which the notice related;

this section (other than paragraph (2)(b)) applies as if the amendment had been an amendment to the business rules of SEGC made on the date of commencement of this Part.

Division 3—The National Guarantee Fund

929 SEGC to keep fund

- (1) SEGC must keep the Fund and the Board must administer it on SEGC's behalf.
- (2) The assets of the Fund are the property of SEGC, but shall be kept separate from all other property and shall be held in trust for the purposes set out in the Fund provisions.
- (3) The assets of the previous Fund immediately before the commencement of this Part are assets of the Fund kept under this Part.

930 Property constituting Fund

The Fund shall consist of:

- (a) money and property that, immediately before the commencement of this Part, formed part of the previous Fund;
- (b) money paid into the Fund under subsection 985(1);
- (c) property that has vested in SEGC, and become part of the Fund by virtue of subsection 985(2);
- (d) money paid into the Fund under subsection 891(2);
- (e) money paid into the Fund under subsection 938(9), 940(6) or 941(5);
- (f) the interest and profits from time to time accruing from the investment of the Fund and paid into the Fund under subsection 935(2);
- (g) money recovered by or on behalf of SEGC in the exercise of a right of action that SEGC has by virtue of the Fund provisions;
- (h) money paid by an insurer under a contract of insurance or indemnity entered into by SEGC under section 982;

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- (j) money paid to SEGC by a person making a claim under section 950 in respect of a purchase of securities; and
- (k) all other money or other property lawfully paid into, or forming part of, the Fund.

931 Fund to be kept in separate bank account

The money in the Fund shall, until invested or applied in accordance with the Fund provisions, be kept in an account, or, at the discretion of the Board, in 2 accounts, in an Australian bank separate from any account or accounts in which money not forming part of the Fund is kept.

932 Payments out of Fund

- (1) Subject to this Part, there shall be paid out of the Fund, in such order as the Board considers appropriate:
 - (a) amounts, including costs, disbursements and interest, that the Fund provisions require to be paid in connection with claims;
 - (b) all legal and other expenses incurred in investigating or defending claims or incurred in relation to the Fund or in the exercise by SEGC or the Board of the rights and powers vested in it by the Fund provisions in relation to the Fund;
 - (c) money payable to a participating exchange under section 944;
 - (d) to the extent that the money referred to in section 935 is insufficient for the purpose, premiums payable in respect of contracts of insurance or indemnity entered into by SEGC under section 982;
 - (e) to the extent that the money referred to in section 935 is insufficient for the purpose, the expenses incurred in the administration of the Fund, including the salaries and wages of persons employed by SEGC or the Board in relation to the Fund; and
 - (f) any other money payable out of the Fund in accordance with this Chapter.

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- (2) In paragraphs (1)(a) and (b), **claim** means a claim under Division 6, 7 or 8 or a claim that, for the purposes of Division 10, is a transferred claim in relation to a joining exchange.
- (3) Where:
- (a) an amount is payable out of the Fund in connection with a claim by a person against SEGC under Division 6 or 7 that has been allowed; and
 - (b) an amount is payable out of the Fund in connection with a claim by a person against SEGC under Division 8 that has been allowed;
- then, regardless of the order in which those persons became respectively entitled to make those claims, the amount referred to in paragraph (a) shall be paid out of the Fund in priority to the amount referred to in paragraph (b).

933 Accounts of Fund

- (1) SEGC shall establish and keep proper accounts of the Fund and shall, before 31 August in each year, cause a balance sheet in respect of those accounts to be made out as at the preceding 30 June.
- (2) SEGC shall appoint a registered company auditor to audit the accounts of the Fund.
- (3) The auditor shall audit the accounts of the Fund and each balance sheet and shall give a report on the accounts and balance sheet to the Board within one month after the balance sheet is made out.
- (4) SEGC shall, within 14 days after a report is given to the Board, give to the Commission a copy of the report and a copy of the balance sheet.
- (5) SEGC shall cause a copy of each report, and a copy of the balance sheet to which it relates, to be laid before the annual general meeting of each participating exchange next following the making of that report.

The Corporations Law—Section 934

- (6) A person appointed by NSEGC before the commencement of this Part under a corresponding previous law whose appointment was in force immediately before that commencement shall be deemed to have been appointed by SEGC under subsection (2).

934 Investment of Fund

- (1) Money in the Fund that, in the opinion of the Board, is not immediately required for the purposes of SEGC may be invested by SEGC in a permitted manner.
- (2) Property in which money is invested under subsection (1) forms part of the Fund.
- (3) Subject to subsection (4), the Board may, with the approval of the Commission, appoint a person to invest on behalf of SEGC money to which subsection (1) applies.
- (4) The Commission shall not grant approval to the appointment of a person under subsection (3) unless it is satisfied that:
 - (a) the person has appropriate qualifications and expertise to perform the duties of the appointment; and
 - (b) SEGC has adequate indemnity insurance in respect of its liabilities for any negligence, or any defalcation or fraudulent misuse of property, by the person in the performance of those duties or has made other satisfactory provisions for meeting those liabilities.
- (5) A person appointed under subsection (3) shall perform the duties of the appointment in accordance with the directions of the Board and subject to such conditions (if any) as the Board imposes.

935 Interest and profits from investment of Fund

- (1) The interest and profits from time to time accruing from the investment of the Fund shall be applied by SEGC to pay:
 - (a) the expenses incurred in the administration of the Fund, including the salaries and wages of persons employed by SEGC or the Board in relation to the Fund; and

The Corporations Law—Section 936

- (b) all premiums payable in respect of contracts of insurance or indemnity entered into by SEGC under section 982.
- (2) An amount of interest or profit that accrues from the investment of the Fund and is not immediately required for the purposes referred to in subsection (1) shall be paid into the Fund.

936 Minimum amount of Fund

- (1) SEGC may, with the written approval of the Minister, determine, by notice published in the *Gazette*, an amount (whether greater than, or less than, \$15,000,000) to be the minimum amount of the Fund for the purposes of the Fund provisions.
- (2) A written approval given by the Ministerial Council before the commencement of this Part under a corresponding previous law in relation to the previous Fund shall be deemed to be an approval duly given by the Minister under this section in relation to the Fund.

Division 4—Levies where Fund less than minimum amount

937 Definition

In this Division:

dealer means a member organisation of a participating exchange.

938 Levy on reportable transactions

(1) In this section:

leviable dealer, in relation to a transaction, means:

- (a) if, when the transaction is entered into, a determination under subsection (6) is in force in relation to a class of transactions that includes the first-mentioned transaction—the dealer prescribed by the determination; or
- (b) otherwise:
 - (i) in the case of a sale of securities—the dealer selling the securities; or
 - (ii) in the case of a purchase of securities—the dealer buying the securities.

reportable transaction means a sale or purchase of securities by a person or partnership, where, as at the time when the agreement for the sale or purchase is made:

- (a) the sale or purchase is a reportable transaction as defined in subsection 920(1); and
 - (b) the person or partnership is a member organisation of a participating exchange and carries on in this jurisdiction a securities business.
- (2) Where the amount in the Fund is less than the minimum amount, SEGC may, whether or not it also makes a determination under section 940, determine in writing that a levy is payable on reportable transactions.

The Corporations Law—Section 938

- (3) A levy under subsection (2) is payable in respect of a reportable transaction included in a class of transactions, or in any of 2 or more classes of transactions, determined in writing by SEGC for the purposes of the levy.
- (3A) A levy under subsection (2) is payable at a rate or rates determined in writing by SEGC for the purposes of the levy.
- (3B) SEGC may determine under subsection (2) different rates of levy in respect of:
 - (a) transactions in different kinds of securities; or
 - (b) transactions by dealers included in different classes of dealers.
- (4) Where SEGC makes or varies a determination under subsection (3) or (3A), it shall give to each participating exchange a copy of the determination, or of the variation and of the determination as varied, as the case may be.
- (4A) Despite subsection (3), where an amount of a levy imposed under section 938 of the Corporations Law of another jurisdiction was payable in respect of a transaction and has been paid, an amount of levy imposed under this section is not payable in respect of the transaction.
- (5) Where an amount of a levy is payable under this section in respect of a reportable transaction, the leviable dealer in relation to the transaction shall:
 - (a) pay the amount of the levy to a participating exchange of which the dealer is a member organisation; and
 - (b) if, but for this subsection, the dealer would not be required by a provision of a law or by the participating exchange's business rules to give to the participating exchange particulars of the transaction sufficient to enable the participating exchange to ascertain the amount of levy—so give such particulars;within the period, and in the manner, specified by the participating exchange in writing either generally or in relation to a class of transactions that includes the first-mentioned transaction.

The Corporations Law—Section 939

- (6) SEGC may make a written determination prescribing, in relation to a class or classes of transactions, the dealer who is to be the leviable dealer in relation to a transaction in that class or in any of those classes.
- (7) A securities exchange must, within the period and in the manner specified in writing by SEGC, pay to SEGC an amount equal to the amount of levy paid to the securities exchange under subsection (5).
- (9) An amount paid to SEGC under subsection (7) shall be paid into the Fund.
- (10) This section has effect subject to section 942.

939 Revocation of levy on reportable transactions

If SEGC revokes a determination made under subsection 938(2), the revocation does not affect a liability to pay an amount of levy that became payable before the revocation.

940 Levy on participating exchanges

- (1) Where the amount in the Fund is less than the minimum amount, SEGC may, whether or not it also makes a determination under subsection 938(2), determine in writing:
 - (a) if there are 2 or more participating exchanges that are securities exchanges:
 - (i) that a specified participating exchange that is a securities exchange must pay a levy of a specified amount; or
 - (ii) that each of 2 or more specified participating exchanges that are securities exchanges must pay a levy of an amount specified in relation to that exchange; or
 - (b) otherwise—that the Exchange must pay a levy of a specified amount.

The Corporations Law—Section 941

- (2) A levy payable under this section by a securities exchange must be paid within the period and in the manner determined in writing by SEGC for the purposes of the levy.
- (3) Where a levy is payable under this section, SEGC must give to each participating exchange a notice setting out the name of the participating exchange that must pay the levy and the amount of the levy.
- (4) For the purpose of paying the whole or a part of a levy under this section, a participating exchange may borrow money on such terms as the board of the participating exchange thinks fit.
- (5) An amount paid to SEGC under this section must be paid into the Fund.
- (6) This section has effect subject to section 942.

941 Levy by participating exchange on members or member organisations

- (1) A participating exchange by which a levy is payable under section 940 may determine that members, or member organisations, of the participating exchange must pay a levy for payment towards the first-mentioned levy.
- (2) Where a determination is made under subsection (1), a levy is payable by a member, or member organisation, as the case requires, of the participating exchange who or that, when the determination is made:
 - (a) carries on in this jurisdiction a securities business; and
 - (b) is included in a class, or in any of 2 or more classes, of members, or of member organisations, of the participating exchange determined in writing by the participating exchange for the purposes of the levy.
- (3) A levy payable under this section is payable at a rate or rates determined in writing by the participating exchange for the purposes of the levy.

The Corporations Law—Section 941

- (4) A participating exchange may determine under subsection (2) different rates of levy in respect of different classes of its members or member organisations.
- (5) The amount of a levy imposed by a participating exchange under this section must be paid to the participating exchange within the period and in the manner specified in writing by the participating exchange either generally or in relation to:
 - (a) particular members; or
 - (b) particular classes of members; or
 - (c) particular member organisations; or
 - (d) particular classes of member organisations;of the participating exchange.
- (6) Despite subsections (1), (2), (3) and (5), where:
 - (a) a participating exchange makes a determination that members, or member organisations, of the exchange must pay a levy for payment towards a levy payable under section 940; and
 - (b) because of the determination, an amount of levy is payable under subsection 941(2) of the Corporations Law of another jurisdiction by a member, or member organisation, of the exchange; and
 - (c) the amount of levy is paid;the member or member organisation need not pay an amount of levy under subsection (2) of this section because of such a determination made by the exchange in relation to the levy payable under section 940.
- (7) A participating exchange must pay an amount equal to an amount paid to it by way of levy under this section in payment of the levy imposed under section 940.
- (8) Subsection 8(1) does not apply in relation to a reference in this section to this section or to a provision of it.
- (9) This section has effect subject to section 942.

The Corporations Law—Section 942

942 Levy not payable unless imposed by an Act

A person or partnership need not pay a levy under section 938, 940 or 941 unless the levy is imposed by a provision of an Act of this jurisdiction.

Division 5—Securities industry development accounts

943 Interpretation

In this Division:

development account means an account kept for the purposes of subsection 945(1).

944 Payments where Fund exceeds minimum amount

- (1) Where the amount in the Fund exceeds the minimum amount, the Board may, in its discretion, determine in writing that a specified amount equal to the whole or a part of the excess be paid out of the Fund:
 - (a) if the Exchange is the only participating exchange—to the Exchange; or
 - (b) if there are 2 or more participating exchanges;
 - (i) to a specified participating exchange; or
 - (ii) to 2 or more specified participating exchanges in specified proportions.
- (2) Where there are 2 or more participating exchanges, a determination under subsection (1) shall be fair and equitable having regard, in relation to each participating exchange, to:
 - (a) the amounts that have been paid into the Fund and that are attributable to, or to members or member organisations of, that participating exchange; and
 - (b) the amounts that have been paid out of the Fund and that are so attributable.
- (3) Where a determination is made in accordance with this section, the amount specified in the determination shall be paid out of the Fund in accordance with the determination.
- (4) For the purposes of subsection (2), where:

The Corporations Law—Section 945

- (a) money in the fidelity fund of a securities exchange has been paid into the Fund under subsection 985(1); or
- (b) property of the fidelity fund of a securities exchange (other than money in that fidelity fund) has vested in SEGC, and become part of the Fund, by virtue of subsection 985(2);
the amount of that money shall be taken, or an amount equal to the value of that property shall be deemed, as the case may be, to have been paid into the Fund and to be attributable to:
 - (c) in the case of an Exchange subsidiary—the Exchange; or
 - (d) otherwise—that securities exchange.
- (5) For the purposes of subsection (2), where an amount is paid out of the Fund in connection with a claim that is, for the purposes of Division 10, a transferred claim in relation to a securities exchange, the amount shall be taken to be attributable to:
 - (a) in the case of an Exchange subsidiary—the Exchange; or
 - (b) otherwise—that securities exchange.

945 Payments into and out of development account

- (1) Subject to this section, a participating exchange shall keep money paid to it under section 944 in a separate account designated as a securities industry development account.
- (2) A participating exchange shall not make a payment out of a development account unless the payment is made:
 - (a) for a purpose in relation to which an approval is in force under subsection (3) in relation to the payment; or
 - (b) into the Fund.
- (3) The Minister may approve in writing, in relation to payments to be made out of development accounts, purposes that are permitted purposes when the approval is given.
- (4) An approval under subsection (3) may include conditions relating to the payments to which the approval relates.

The Corporations Law—Section 946

- (5) A participating exchange that makes, in contravention of subsection (2), a payment out of a development account shall pay into the account, from its general funds, an amount equal to the amount of the first-mentioned payment.
- (6) A participating exchange that:
- (a) makes as permitted by virtue of paragraph (2)(a) a payment out of a development account; and
 - (b) contravenes a condition that, when the payment was made, was included in an approval in force under subsection (3) in relation to the payment;
- shall pay into the account, from its general funds, an amount equal to the amount of the first-mentioned payment.
- (7) In this section:
- permitted purpose* means:
- (a) a purpose relating to the development of the securities industry in Australia or in a part of Australia;
 - (b) a prescribed purpose; or
 - (c) without limiting the generality of paragraph (a) or (b), a purpose of reimbursing a person in respect of money that the person spent, before the relevant commencement, for a purpose of a kind referred to in paragraph (a) or (b).

946 Investment

- (1) Money that is in a development account kept by a participating exchange and is not immediately required for the purpose of making payments as permitted by subsection 945(2) may be invested by the participating exchange in a permitted manner.
- (2) The interest and profits from time to time accruing from the investment of money in a development account shall be paid into the account.

The Corporations Law—Section 947

947 Accounts

A participating exchange that is a securities exchange shall, in respect of each financial year at any time during which there is money in a development account kept by the participating exchange, lodge with the Commission, within 3 months after the end of that financial year, a statement containing, in relation to payments out of such an account during that year, such information as is prescribed.

Division 6—Contract guarantees

948 Definitions

In this Division, unless the contrary intention appears:

claim means a claim under this Division against SEGC;

completion period, in relation to a sale or purchase of securities by a dealer, means:

- (a) if the business rules of a participating exchange of which the dealer is a member organisation, being those business rules as in force when the agreement for the sale or purchase is made, prescribe a period, for the purposes of this paragraph, in relation to a class of sales or purchases that includes the sale or purchase—that period; or
- (b) otherwise—a period that is reasonable, having regard to all the circumstances relating to the sale or purchase;

dealer means a person who, or a partnership that, is or has at any time been a member organisation of a participating exchange;

prescribed period, in relation to a sale or purchase of securities by a dealer, means:

- (a) if the business rules of a participating exchange of which the dealer is a member organisation, being those business rules as in force when the agreement for the sale or purchase is made, prescribe a period, for the purposes of this paragraph, in relation to a class of sales or purchases that includes the sale or purchase—that period; or
- (b) otherwise—a period that is reasonable, having regard to all the circumstances relating to the sale or purchase;

purchase price, in relation to a purchase of securities by a dealer on behalf of a person, means the total of:

- (a) the amount of the consideration for the purchase; and

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- (b) any brokerage fees and other charges, and any stamp duty and other duties and taxes, payable by the person to the dealer in connection with the purchase;

reportable transaction means a transaction, entered into before or after the commencement of this Part in relation to securities, that is or has at any time been a reportable transaction as defined in subsection 920(1).

949 Claim by selling dealer in respect of default by buying dealer

- (1) Where, as at the end of the completion period in relation to a reportable transaction that is a sale by a dealer to another dealer:
 - (a) the first-mentioned dealer has supplied, or is ready, willing and able to supply, to the other dealer, under the agreement for the sale, settlement documents in relation to the sale; and
 - (b) the other dealer has not paid to the first-mentioned dealer, under that agreement, the consideration for the sale;the first-mentioned dealer may make a claim in respect of the sale.
- (2) A dealer may make a single claim under this section in respect of the total amount of the unpaid consideration in respect of 2 or more sales.
- (3) If the business rules of an Exchange subsidiary purport to authorise that subsidiary to make under this section on behalf of a dealer a claim that the dealer is entitled to make, that subsidiary is entitled to make that claim on behalf of that dealer.
- (4) If an Exchange subsidiary is entitled under subsection (3) to make claims under this section on behalf of 2 or more dealers, that subsidiary is entitled to make a single claim under this section on behalf of both or all of those dealers in respect of the sum of the amounts in respect of which it is entitled to make separate claims on behalf of each of those dealers.
- (5) Where a dealer, or an Exchange subsidiary on behalf of a dealer, makes a claim in respect of a sale of securities by the dealer to another dealer and the Board is satisfied that:

The Corporations Law—Section 950

- (a) subsection (1) or (3) entitles the claimant to make the claim;
 - (b) the dealer has:
 - (i) for the purposes of the claim, supplied to SEGC; or
 - (ii) under the agreement for the sale, supplied to the other dealer;settlement documents in relation to the sale;
 - (c) the consideration for the sale has not been paid to the dealer under the agreement for the sale; and
 - (d) the agreement has not been discharged or otherwise terminated;
- SEGC shall allow the claim and pay to the claimant an amount equal to the amount of the consideration.
- (6) A claim made under subsection (2) or (4) shall be treated for the purposes of subsection (5) as if it consisted of a separate claim in respect of each of the sales to which it relates.

950 Claim by buying dealer in respect of default by selling dealer

- (1) Where, as at the end of the completion period in relation to a reportable transaction that is a purchase by a dealer from another dealer:
- (a) the first-mentioned dealer has supplied, or is ready, willing and able to supply, to the other dealer, under the agreement for the purchase, the consideration for the purchase; and
 - (b) the other dealer has not supplied to the first-mentioned dealer, under that agreement, settlement documents in relation to the purchase;
- the first-mentioned dealer may make a claim in respect of the purchase.
- (2) Where a dealer makes a claim in respect of a purchase of securities by the claimant from another dealer and the Board is satisfied that:
- (a) subsection (1) entitles the claimant to make the claim;
 - (b) the claimant has:
 - (i) for the purposes of the claim, paid to SEGC; or

The Corporations Law—Section 951

- (ii) under the agreement for the purchase, paid to the other dealer;
the amount of the consideration for the purchase;
- (c) settlement documents in relation to the purchase have not been supplied to the claimant under the agreement for the purchase; and
- (d) the agreement has not been discharged or otherwise terminated;

SEGC shall allow the claim and, subject to section 953, supply to the claimant settlement documents in relation to the purchase.

951 Claim by selling client in respect of default by selling dealer

- (1) Where, as at the end of the prescribed period in relation to a reportable transaction that is a sale by a dealer on behalf of a person:
 - (a) the person:
 - (i) in a case to which subparagraph (ii) does not apply—has supplied to the dealer settlement documents for the purposes of the sale; or
 - (ii) if the dealer has been suspended by the participating exchange concerned and the suspension has not been removed—has supplied, or is ready, willing and able to supply, to the dealer settlement documents for the purposes of the sale; and
 - (b) the dealer's obligations to the person in respect of the sale, in so far as they relate to the consideration for the sale, have not been discharged;the person may make a claim in respect of the sale.
- (2) Where a person is entitled to make claims under subsection (1) in respect of 2 or more sales by the one dealer, the person may make a single claim in respect of 2 or more of those sales but a claim so made shall be treated for the purposes of subsection (3) as if it consisted of a separate claim in respect of each of those sales.

The Corporations Law—Section 952

- (3) Where a person makes a claim in respect of a sale of securities by a dealer on behalf of the claimant and the Board is satisfied that:
- (a) subsection (1) entitles the claimant to make the claim;
 - (b) the claimant has:
 - (i) under the agreement for the sale, supplied to the dealer;
or
 - (ii) for the purposes of the claim, supplied to SEGC;
settlement documents in relation to the sale; and
 - (c) the dealer's obligations to the claimant in respect of the sale, in so far as they relate to the consideration for the sale, have not been discharged;

SEGC shall allow the claim and pay to the claimant the amount of that consideration less so much (if any) of the total of any brokerage fees and other charges, and any stamp duty and other duties and taxes, payable by the claimant in connection with the sale as has not already been paid by the claimant.

952 Claim by buying client in respect of default by buying dealer

- (1) Where, as at the end of the prescribed period in relation to a reportable transaction that is a purchase by a dealer on behalf of a person:
- (a) the person:
 - (i) in a case to which subparagraph (ii) does not apply—has paid to the dealer the purchase price in relation to the purchase; or
 - (ii) if the dealer has been suspended by the participating exchange concerned and the suspension has not been removed—has paid, or is ready, willing and able to pay, to the dealer the purchase price in relation to the purchase; and
 - (b) the dealer's obligations to the person in respect of the purchase, in so far as they relate to settlement documents in relation to the purchase, have not been discharged;
- the person may make a claim in respect of the purchase.

The Corporations Law—Section 953

- (2) Where a person is entitled to make claims under subsection (1) in respect of 2 or more purchases by the one dealer, the person may make a single claim in respect of 2 or more of those purchases but a claim so made shall be treated for the purposes of subsection (3) as if it consisted of a separate claim in respect of each of those purchases.
- (3) Where a person makes a claim in respect of a purchase of securities by a dealer on behalf of the claimant and the Board is satisfied that:
 - (a) subsection (1) entitles the claimant to make the claim;
 - (b) the claimant has:
 - (i) under the agreement for the purchase, paid to the dealer;
or
 - (ii) for the purposes of the claim, paid to SEGC;
 - (c) the dealer's obligations to the claimant in respect of the purchase, in so far as they relate to settlement documents in relation to the purchase, have not been discharged;SEGC shall allow the claim and, subject to section 953, supply to the claimant settlement documents in relation to the purchase.

953 Cash settlement of claim where settlement documents unobtainable

Where:

- (a) SEGC:
 - (i) allows under subsection 950(2) a claim in respect of a purchase of securities by the claimant from a dealer; or
 - (ii) allows under subsection 952(3) a claim in respect of a purchase of securities by a dealer on behalf of the claimant;
- (b) it is not reasonably practicable for SEGC to obtain from the dealer, before the end of:
 - (i) if the business rules of a participating exchange of which the dealer is a member organisation, being those business rules as in force when the Board allows the

The Corporations Law—Section 954

claim, prescribe a period, for the purposes of this section, in relation to a class of claims that includes the claim—that period; or

- (ii) otherwise—such period as the Board, having regard to all the circumstances relating to the claim, considers reasonable;

settlement documents in relation to the purchase; and

- (c) because:

- (i) whether by reason that dealing in those securities is suspended or for any other reason, there exists at no time during that period an orderly market in those securities; or

- (ii) the total number of those securities offered for sale on stock markets of participating exchanges or Exchange subsidiaries at times during that period when there exists an orderly market in those securities is insufficient;

it is not reasonably practicable for SEGC to obtain before the end of that period, otherwise than from the dealer, settlement documents in relation to the purchase;

the Board may decide to pay to the claimant the amount that, when the claimant became entitled to make the claim, was the amount of the actual pecuniary loss suffered by the claimant in respect of the purchase, and if the Board does so, SEGC shall pay that amount to the claimant.

954 Making of claims

- (1) Neither subsection 949(1) nor 950(1) entitles a person to make a claim in respect of:

- (a) a sale of securities by the person to another person; or

- (b) a purchase of securities by the person from another person;

as the case may be, unless, on the day on which the agreement for the sale or purchase was entered into:

The Corporations Law—Section 954

- (c) the first-mentioned person was a member organisation of a participating exchange and carried on in this jurisdiction a securities business; and
 - (d) the other person was a member organisation of a participating exchange.
- (2) Neither subsection 951(1) nor 952(1) entitles a person to make a claim in respect of:
 - (a) a sale of securities by another person on behalf of the first-mentioned person; or
 - (b) a purchase of securities by another person on behalf of the first-mentioned person;as the case may be, unless, on the day on which the agreement for the sale or purchase was entered into, the other person was a member organisation of a participating exchange and carried on in this jurisdiction a securities business.
- (2A) Where:
 - (a) subsection 949(1), 950(1), 951(1) or 952(1) of the Corporations Law of another jurisdiction entitles a person to make a claim in respect of a transaction; and
 - (b) SEGC allows the claim;SEGC must not allow a claim that the corresponding subsection of the Corporations Law of this jurisdiction entitles a person to make in respect of the transaction.
- (3) In subsections (1), (2) and (2A):

person includes a partnership.
- (4) A claim shall be in writing and shall be served on SEGC within 6 months after the day on which the claimant became entitled to make the claim.
- (5) A claim that is not made within the period prescribed by subsection (4) is barred unless the Board otherwise determines.

Division 7—Unauthorised transfer

955 Interpretation

- (1) In this Division, unless the contrary intention appears:
- claim* means a claim under this Division against SEGC;
- dealer* means a member of a participating exchange;
- securities* means marketable securities or marketable rights within the meaning of Division 3 of Part 7.13.
- (2) A dealer shall be deemed to have executed a document of transfer in relation to securities on behalf of a person as transferor of the securities if the document states that the person is the transferor of the securities and purports to have been stamped with the dealer's stamp as the transferor's broker.

956 Unauthorised execution of transfer of securities

Where:

- (a) a dealer executes a document of transfer of securities (in this Division called the *transferred securities*) on behalf of a person (in this Division called the *transferor*) as transferor of the securities; and
- (b) apart from the effect of paragraph 1105(3)(a), the transferor did not authorise the execution (in this Division called the *unauthorised execution*) of the document;
- the following provisions of this Division apply.

957 Claim by transferor

If, as a result of the unauthorised execution, the transferor suffers loss in respect of any of the transferred securities, the transferor may make a claim in respect of the loss.

The Corporations Law—Section 958

958 Claim by transferee or sub-transferee

- (1) If, as a result of the unauthorised execution, a person (in this section called the *claimant*), being:
 - (a) in any case—the person stated in the document as the transferee of the transferred securities; or
 - (b) if the person so stated has disposed of any of the transferred securities—a successor in title of that person to any of the transferred securities;suffers loss in respect of any of the transferred securities, the claimant may make a claim in respect of that loss.
- (2) A person is not entitled to make a claim under this section if the person:
 - (a) had actual knowledge that the transferor did not in fact authorise the execution of the document; or
 - (b) is an excluded person in relation to the dealer.

959 How and when claim may be made

- (1) A claim shall be in writing and shall be served on SEGC within 6 months after the day on which the claimant first became aware that the claimant had suffered loss as a result of the unauthorised execution.
- (2) A claim that is not made within the period referred to in subsection (1) is barred unless the Board otherwise determines.

960 How claim is to be satisfied

- (1) Where the Board is satisfied that a claimant under section 957 or 958 is entitled to make the claim, SEGC shall allow the claim.
- (2) If SEGC allows the claim and the claimant has, as a result of the unauthorised execution, ceased to hold some or all of the transferred securities, SEGC shall:

The Corporations Law—Section 961

- (a) subject to paragraph (b), supply to the claimant securities of the same kind and number as those of the transferred securities that the claimant has so ceased to hold; or
 - (b) if the Board is satisfied that it is not practicable for SEGC to obtain such securities, or to obtain such securities within a reasonable time—pay to the claimant the amount that, as at the time when the Board decides that it is so satisfied, is the actual pecuniary loss suffered by the claimant, in respect of the transferred securities, as a result of the unauthorised execution (other than loss suffered as mentioned in subsection (3)).
- (3) If SEGC allows the claim, it shall pay to the claimant the amount that, as at the time when the claim is allowed, or when the Board decides as mentioned in paragraph (2)(b), as the case requires, is the actual pecuniary loss suffered by the claimant, as a result of the unauthorised execution, in respect of payments or other benefits:
 - (a) in any case—to which the claimant would have become entitled, as the holder of such of the transferred securities as the claimant has, as a result of the unauthorised execution, ceased to hold, if the claimant had continued to hold the securities concerned until that time; or
 - (b) if the claim was made under section 958—that the claimant has received as holder of any of the transferred securities.
- (4) For the purposes of this section, where securities are purportedly transferred from a person to another person, the first-mentioned person shall be deemed to cease to hold, and the other person shall be deemed to hold, the securities even if the other person did not by virtue of the transfer get a good title to the securities.

961 Discretionary further compensation to transferor

- (1) If SEGC allows a claim made under section 957 and the Board is satisfied that the supply of securities, or the payment of money, or both, as the case requires, to the claimant in accordance with section 960 will not adequately compensate the claimant in respect of a pecuniary or other gain that the claimant might, if the claimant

The Corporations Law—Section 961A

had continued to hold the transferred securities, have made but did not in fact make, the Board may determine in writing that there be paid to the claimant in respect of that gain a specified amount that the Board considers to be fair and reasonable in all the circumstances.

- (2) If a determination is made under subsection (1), SEGC shall pay to the claimant the amount specified in it.

961A Nexus between dealer and this jurisdiction

Neither of sections 957 and 958 entitles a person to make a claim unless the dealer was on the day of the unauthorised execution a member of a participating exchange and:

- (a) the dealer was carrying on a securities business in this jurisdiction on that day (whether on his, her or its own account or in partnership); or
- (b) if the dealer was not so carrying on such a business—the last securities business that the dealer carried on (whether on his, her or its own account or in partnership) before that day was carried on in this jurisdiction.

961B Preventing double recovery

If:

- (a) section 957 or 958 of the Corporations Law of another jurisdiction entitles a person to make a claim in respect of a loss; and
- (b) SEGC allows the claim;

SEGC must not allow a claim that the corresponding section of the Corporations Law of this jurisdiction entitles the person to make in respect of that loss.

Division 8—Claims in respect of insolvent members

962 Interpretation

- (1) In this Division, unless the contrary intention appears:
- claim* means a claim against SEGC under this Division;
- dealer* means a member of a participating exchange;
- member organisation* means a member organisation of a participating exchange.
- (2) A reference in this Part to property being entrusted to, or received by, a person or partnership includes a reference to the property being entrusted to, or received by, the person or partnership outside this jurisdiction, whether in Australia or not.

963 Claim in respect of property entrusted to, or received by, dealer before dealer became insolvent

- (1) Subject to this Division, where:
- (a) a dealer has at a particular time, whether before or after the commencement of this Part, become insolvent;
- (b) at an earlier time (whether before or after that commencement), property was, in the course of, or in connection with, the dealer's business of dealing in securities, entrusted to, or received by:
- (i) if the dealer was, at the earlier time, a partner in a member organisation—the member organisation, or a partner in, or an employee of, the member organisation; or
- (ii) otherwise—the dealer or an employee of the dealer; and was so entrusted or received on behalf of, or because the dealer was a trustee of the property for, a person (other than an excluded person in relation to the dealer); and

The Corporations Law—Section 963

- (c) as at the first-mentioned time, the obligations of the dealer, or of a member organisation in which the dealer is a partner, as the case requires, to the person in respect of the property have not been discharged;
the person may make a claim in respect of the property.
- (2) Where a person makes a claim in respect of property and, at a particular time, the Board is satisfied that:
 - (a) because of a dealer having become insolvent, this Division entitles the claimant to make the claim; and
 - (b) as at that time, the obligations of the dealer, or of a member organisation in which the dealer is a partner, as the case requires, to the claimant in respect of the property have not been discharged;SEGC shall allow the claim and:
 - (c) if the property is, or includes, money—pay to the claimant an amount equal to the amount of that money; and
 - (d) if the property is, or includes, property other than money—subject to subsection (3) and section 964, supply the last-mentioned property to the claimant.
- (3) Where:
 - (a) SEGC allows a claim that, because of a dealer having become insolvent, this Division entitles a person to make in respect of property that is, or includes, a number of securities of a particular kind or documents of title to a number of securities of a particular kind; and
 - (b) it is not reasonably practicable for SEGC to obtain those securities, or those documents of title to securities, as the case may be, from the dealer or, if the dealer has disposed of them, from the dealer's successor in title, before the end of:
 - (i) if the business rules of a participating exchange of which the dealer is a member, being those business rules as in force when the Board allows the claim, prescribe a period, for the purposes of this section, in relation to a class of claims that includes that claim—that period; or

The Corporations Law—Section 964

- (ii) otherwise—such period as the Board, having regard to all the circumstances relating to the claim, considers reasonable;

SEGC shall, subject to section 964, supply to the person, instead of those securities, or those documents of title to securities, that number of securities of that kind, or documents of title to that number of securities of that kind, as the case may be.

964 Cash settlement of claims where property unobtainable

(1) Where:

- (a) SEGC allows a claim that, because of a dealer having become insolvent, this Division entitles a person to make in respect of property that is, or includes, a number of securities of a particular kind or documents of title to a number of securities of a particular kind;
- (b) it is not reasonably practicable for SEGC to obtain those securities, or those documents of title to securities, as the case may be, from the dealer or, if the dealer has disposed of them, from the dealer's successor in title, before the end of:
 - (i) if the business rules of a participating exchange of which the dealer is a member, being those business rules as in force when the Board allows the claim, prescribe a period, for the purposes of this section, in relation to a class of claims that includes the claim—that period; or
 - (ii) otherwise—such period as the Board, having regard to all the circumstances relating to the claim, considers reasonable; and
- (c) because:
 - (i) whether by reason that dealing in securities of that kind is suspended or for any other reason, there exists at no time during that period an orderly market in such securities; or
 - (ii) the total number of securities of that kind offered for sale on stock markets of participating exchanges or Exchange subsidiaries at times during that period when

The Corporations Law—Section 965

there exists an orderly market in such securities is insufficient;

it is not reasonably practicable for SEGC to obtain that number of securities of that kind, or documents of title to that number of securities of that kind, as the case may be, before the end of that period;

the Board may decide to pay to the claimant the amount that, when the decision is made, is the actual pecuniary loss suffered by the claimant in respect of the first-mentioned securities, or the first-mentioned documents of title, as the case may be, and if the Board does so, SEGC shall pay that amount to the claimant.

(2) Where:

(a) the Board allows a claim that, because of a dealer having become insolvent, this Division entitles a person to make in respect of property that is, or includes, property (in this subsection called the *relevant property*) other than money, securities or documents of title to securities; and

(b) it is not reasonably practicable for SEGC to obtain the relevant property from the dealer or, if the dealer has disposed of it, from the dealer's successor in title, before the end of such period as the Board considers reasonable;

the Board may decide to pay to the claimant the amount that, when the decision is made, is the actual pecuniary loss suffered by the claimant in respect of the relevant property, and if the Board does so, SEGC shall pay that amount to the claimant.

965 Ordering of alternative claims and prevention of double recovery

(1) Where:

(a) a member organisation has received under the agreement for a sale or purchase of securities by the member organisation on behalf of a person, the consideration for the sale or settlement documents in relation to the purchase, as the case may be; and

The Corporations Law—Section 965

- (b) subsection 951(1) or 952(1), as the case may be, entitles the person to make a claim against SEGC under Division 6 in respect of the sale or purchase;
subsection (2) applies.
- (2) This Division does not, because of:
 - (a) a dealer, being the member organisation or a partner in the member organisation, having become insolvent at a particular time; and
 - (b) the member organisation having received, under the agreement, the consideration or the settlement documents;
entitle the person to make a claim in respect of the consideration or the settlement documents, as the case may be, unless the member organisation's obligations to the person in respect of the sale or purchase, as the case may be, in so far as those obligations related to the consideration or the settlement documents, were discharged before that time.
- (3) Where:
 - (a) because of a dealer having become insolvent on a particular day, this Division entitles a person to make a claim (in this subsection called the *first claim*) in respect of property; and
 - (b) because of a dealer having become insolvent on a later day, this Division entitles a person to make another claim in respect of the property;SEGC shall not allow the other claim unless:
 - (c) the person has made the first claim and SEGC has allowed or disallowed it;
 - (d) the Board is satisfied that if the first claim had been made SEGC would have disallowed it; or
 - (e) the Board is satisfied that, when the person first became aware of the dealer referred to in paragraph (b) having become insolvent on the later day:
 - (i) the first claim was barred; or
 - (ii) it was no longer reasonably practicable for the person to make the first claim before it became barred.

The Corporations Law—Section 966

(4) Where:

- (a) at a particular time, SEGC allows a claim made by a person under this Division in respect of property; and
- (b) because of:
 - (i) a dealer having become insolvent (whether before, at or after that time); and
 - (ii) the property having, before that time, been entrusted or received as mentioned in paragraph 963(1)(b);

this Division entitles the person to make another claim in respect of the property;

SEGC shall not allow the other claim.

966 No claim in respect of money lent to dealer

Where, as at the time when a dealer becomes insolvent:

- (a) a person has lent money to the dealer; and
- (b) the liability of the dealer to repay the money remains undischarged;

this Division does not, because of the dealer having become insolvent at that time, entitle the person to make a claim in respect of the money.

966A No claim unless nexus between dealer and this jurisdiction

This Division does not, because of a person (in this section called the *dealer*) having become insolvent on a particular day, entitle a person to make a claim in respect of property unless the dealer was on that day a member of a participating exchange and:

- (a) the dealer was carrying on a securities business in this jurisdiction on that day (whether on his, her or its own account or in partnership); or
- (b) if the dealer was not so carrying on such a business—the last securities business that the dealer carried on (whether on his, her or its own account or in partnership) before that day was carried on in this jurisdiction.

The Corporations Law—Section 967

967 No claim in certain other cases

This Division does not, because of a dealer having become insolvent on a particular day, entitle a person to make a claim in respect of property if:

- (a) before that day the property had, in due course of the administration of a trust, ceased to be under the sole control of the dealer; or
- (b) the Board, or the Court, is satisfied that circumstances that materially contributed to the dealer becoming insolvent on that day were due to, or caused directly or indirectly by, an act or omission of the person.

968 Limits of compensation

- (1) The total amounts paid out of the Fund in connection with claims that:
 - (a) because of:
 - (i) a dealer having become insolvent on a particular day; or
 - (ii) if 2 or more partners in the same member organisation have become insolvent on a particular day—those partners having become insolvent on that day;this Division entitles persons to make; and
 - (b) are allowed by SEGC;shall not exceed an amount equal to 14% of the minimum amount of the Fund as at the end of that day.
- (2) In determining, for the purposes of subsection (1), the total of the amounts paid out of the Fund in connection with claims in respect of property:
 - (a) an amount paid out of the Fund in connection with any of the claims shall, to the extent to which it is repaid to the Fund, be disregarded; and
 - (b) where, by virtue of the exercise of a right or remedy in relation to property that is, or is included in, the first-mentioned property, being a right or remedy of the claimant, or of any of the claimants, to which SEGC is, by

The Corporations Law—Section 968

virtue of section 980, subrogated, money or other property has been recovered by, or on behalf, of SEGC—so much of the amount, or of the total of the amounts, paid out of the Fund in connection with any of the claims as does not exceed:

- (i) the amount of that money; or
 - (ii) the value of so much (if any) of that other property as has not been, and is not required to be, supplied under subsection 963(2) in respect of any of the claims; as the case may be, shall be disregarded.
- (3) In order to ensure compliance with subsection (1) as it applies in relation to particular claims:
- (a) the Board may, in relation to each of those claims, determine in writing an amount to be the maximum amount in relation to the claim; and
 - (b) where paragraph (a) empowers the Board to make determinations in relation to the respective claims of 2 or more claimants—the Board shall, in making those determinations:
 - (i) take into account, in relation to each of those claimants, any money or other property that the claimant has received, or is likely to receive, from sources other than the Fund as compensation for property to which the claimant's claim relates; and
 - (ii) strive to ensure that the proportion of the property to which a claim relates that is represented by the money and other property received from all sources (including the Fund) as compensation for property to which the claim relates is, as nearly as practicable, the same for each of those claimants.
- (4) Where a determination of an amount as the maximum amount in relation to a claim is in force under subsection (3), the amount, or the total of the amounts, paid out of the Fund in connection with the claim shall not exceed the first-mentioned amount.
- (5) In this section, **claim** means a claim under this Division.
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The Corporations Law—Section 969

969 Making of claims

- (1) SEGC may publish, in each State and Territory, in a daily newspaper circulating generally in that State or Territory, a notice in the prescribed form specifying a day, not being earlier than 3 months after the publication of the notice, on or before which claims against SEGC may be made, being claims that, because of a dealer specified in the notice having become insolvent, this Division entitles persons to make.
- (2) Where, because of a dealer having become insolvent on a particular day, this Division entitles a person to make a claim, the claim shall be in writing and shall be served on SEGC:
 - (a) if there has been published in accordance with subsection (1) a notice specifying a day on or before which claims may be made, being claims that, because of the dealer having become insolvent on that day, this Division entitles persons to make—on or before that day; or
 - (b) otherwise—within 6 months after the person becomes aware of the dealer having become insolvent on that day.
- (3) A claim that is not made in accordance with subsection (2) is barred unless the Board otherwise determines.
- (4) SEGC, a member of the Board and any employee of, or person acting on behalf of, SEGC each have qualified privilege in respect of the publication of a notice under subsection (1).

Division 9—Claims under Divisions 6, 7 and 8

970 Power of SEGC to allow and settle claim

Subject to this Part, SEGC may, at any time after a person becomes entitled to make a claim, allow and settle the claim.

971 Successful claimant entitled to costs and disbursements

Where a claim is allowed, then, in addition to the claimant's other rights under this Part, the claimant is entitled to be paid out of the Fund an amount equal to the total of the reasonable costs of, and the reasonable disbursements incidental to, the making and proof of the claim.

972 Interest

- (1) In addition to an amount that is payable to a person out of the Fund in respect of a claim, interest at the rate of 5% per annum or, if another rate is prescribed, at that other rate, is payable to the person out of the Fund, on so much of that amount as is not attributable to costs and disbursements, in respect of the period beginning on the day on which the person became entitled to make the claim and ending on:
 - (a) if the Board has made a determination under subsection 983(1) to pay that amount in instalments—the day on which that amount would, if no such determination had been made and the money in the Fund were unlimited, have been paid to the person;
 - (b) if, because of insufficiency of the Fund, no part of that amount is paid to the person on the day on which that amount would, if the money in the Fund were unlimited, have been so paid—that day; or
 - (c) otherwise—the day on which that amount is paid to the person.
- (2) Where:

The Corporations Law—Section 973

- (a) under subsection (1), interest is payable to a person on an amount in respect of a period; and
- (b) that amount, or a part of that amount, remains unpaid throughout a period beginning immediately after the period referred to in paragraph (a);

then, in addition to that amount and that interest, interest at the prescribed rate is payable to the person out of the Fund on that amount, or on that part of that amount, as the case may be, in respect of that period first referred to in paragraph (b).

973 Application of Fund in respect of certain claims

- (1) SEGC:
 - (a) may buy securities for the purpose of complying with subsection 950(2) or 952(3), paragraph 960(2)(a) or subsection 963(3); and
 - (b) may pay money out of the Fund for the purpose of so buying securities or for any other purpose connected with complying with that subsection or paragraph.
- (2) Securities bought by SEGC as mentioned in subsection (1) form part of the Fund until they are supplied in accordance with this Part to a claimant or sold in accordance with subsection (3).
- (3) Where:
 - (a) the Board:
 - (i) makes in relation to a claim in respect of a purchase of securities a decision under section 953;
 - (ii) decides that it is not practicable for SEGC to obtain, or to obtain within a reasonable time, securities for the purpose of complying with paragraph 960(2)(a) in relation to a claim; or
 - (iii) makes in relation to a claim a decision under subsection 964(1); and
 - (b) SEGC has, before making the decision, bought securities for the purpose of:

The Corporations Law—Section 974

- (i) supplying to the claimant settlement documents in relation to the purchase;
- (ii) complying with paragraph 960(2)(a) in relation to the claim; or
- (iii) supplying under subsection 963(3), in respect of the claim, securities or documents of title to securities; as the case may be;

SEGC shall, as soon as practicable after making the decision, sell the securities so bought and pay the proceeds of sale into the Fund.

974 Allowing of claim not to constitute admission

Where SEGC allows a claim, neither the allowing of the claim, nor any act done by SEGC as a result of allowing the claim, shall be taken for any purpose to constitute an admission by any person of liability in respect of any matter, other than an admission of SEGC of its liability in respect of the claim.

975 SEGC to notify claimant where claim disallowed

SEGC shall, after wholly or partly disallowing a claim, serve on the claimant, or on the claimant's solicitor, notice of the disallowance in the prescribed form.

976 Proceedings in the Court

- (1) Where SEGC has disallowed a claim, the claimant may, within 3 months after notice of the disallowance has been served on the claimant, or on the claimant's solicitor, in accordance with section 975, bring proceedings in the Court to establish the claim.
- (2) Where, as at the end of a reasonable period after a claim was made, SEGC has neither allowed nor disallowed the claim, the claimant may bring proceedings in the Court to establish the claim.

977 Arbitration of amount of cash settlement of certain claims

- (1) Where:

The Corporations Law—Section 977

- (a) section 953 or 960 or subsection 964(1) or (2) of the Corporations Law of this jurisdiction requires SEGC to pay to a person the amount that was at a particular time the amount of the actual pecuniary loss suffered by the person in respect of a particular matter; and
 - (b) that amount cannot be determined by agreement between SEGC and the person;

that amount shall be determined by arbitration in accordance with this section.
- (2) The reference to arbitration shall be made to persons appointed, in accordance with subsection (3), for the purposes of the reference and the law of this jurisdiction relating to arbitration applies in relation to the reference.
- (3) The participating exchange shall appoint, or the participating exchanges shall jointly appoint, as the case requires, for the purposes of the reference to arbitration, 3 persons whose appointment under this subsection has been approved in writing by the Minister and at least 2 of whom are neither members of a participating exchange nor officers or employees of SEGC, of a participating exchange, or of a member organisation of a participating exchange.
- (4) Where, under a corresponding previous law of this jurisdiction, an arbitration:
 - (a) was to take place but had not begun; or
 - (b) had begun but had not been concluded;

before the commencement of this Part, the arbitration shall take place or continue, as the case may be, as if it were an arbitration under this section.
- (5) An approval given by the Ministerial Council before the commencement of this Part of the appointment of a person for the purposes of an arbitration under a corresponding previous law of this jurisdiction shall be deemed to be an approval given by the Minister of the appointment of that person for the purposes of the arbitration as it is to take place or continue under this section.

The Corporations Law—Section 978

- (6) If an arbitration under a corresponding previous law of this jurisdiction had concluded before the commencement of this Part but NSEGC had not made a payment of the amount determined under the arbitration, the amount shall be deemed to have been determined under this section for the purposes of the liability of SEGC to make payment.

978 Form of order of Court establishing claim

- (1) Where, in a proceeding to establish a claim, the Court is satisfied that the claim should be allowed, the Court:
- (a) shall, by order, make a declaration accordingly and direct SEGC to allow the claim and deal with it in accordance with this Chapter; and
 - (b) may, at any time after making the order, give, upon application made by the claimant or SEGC, such directions relating to the claim as the Court thinks just and reasonable.
- (2) In a proceeding to establish a claim, or in an application under paragraph (1)(b), all questions of costs are in the discretion of the Court.

979 Power of Board to require production of securities etc.

- (1) The Board may, by notice served on a person, require the person to give to SEGC specified securities, documents, or statements of evidence, necessary to support a claim or necessary for the purpose of:
- (a) exercising SEGC's rights against a member, or a member organisation, of a participating exchange or against any other person; or
 - (b) enabling criminal proceedings to be taken against a person.
- (2) Where a person fails, without reasonable excuse, to comply with a requirement under subsection (1), SEGC may disallow a claim made by the person.

The Corporations Law—Section 980

980 Subrogation of SEGC to claimant's rights etc.

- (1) Where SEGC:
 - (a) allows under subsection 949(5) or 951(3) a claim made under Division 6 in respect of a sale of securities; or
 - (b) allows under subsection 950(2) or 952(3) a claim made under Division 6 in respect of a purchase of securities;SEGC is subrogated to all the claimant's rights and remedies in relation to the sale or purchase, as the case may be.
- (2) Where SEGC allows a claim made under Division 7 in respect of an unauthorised execution of a document of transfer, SEGC is subrogated to all the claimant's rights and remedies in relation to that execution of that document.
- (3) Where SEGC allows a claim made under Division 8 in respect of property, SEGC is subrogated to all the claimant's rights and remedies in relation to the property.
- (4) Where, by virtue of this section, SEGC is subrogated to a right or remedy that a person has against another person, then:
 - (a) if SEGC has reason to believe that an insurer may be liable to indemnify the other person in respect of the subject matter of the right or remedy—SEGC shall serve a notice on the insurer setting out particulars of the right or remedy and stating that SEGC is, by virtue of this section, subrogated to the right or remedy;
 - (b) an insurer that considers that it may be liable so to indemnify the other person may, whether or not SEGC has served a notice on the insurer under paragraph (a), apply to be joined as a party to a proceeding that relates to the right or remedy and to which the first-mentioned person or SEGC is a party; and
 - (c) the first-mentioned person or SEGC may, to the extent of the liability of an insurer so to indemnify the other person, enforce against the insurer a judgment or order obtained in such a proceeding in so far as the proceeding relates to the right or remedy.

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- (5) Except as provided in this section, nothing in this Part affects a right or remedy that a claimant under Division 6, 7 or 8 has against a person other than SEGC.

981 Payment of claims only from Fund

Property of SEGC, other than property forming part of the Fund, is not available to be applied in respect of a claim that has been allowed by SEGC, whether or not under an order of the Court.

982 SEGC may enter into contracts of insurance or indemnity

- (1) SEGC may enter into a contract with a person carrying on fidelity insurance business under which SEGC will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims.
- (2) A contract entered into under subsection (1) may relate to dealers generally, particular classes of dealers specified in the contract, particular dealers so specified, or dealers generally with the exclusion of particular classes of dealers, or particular dealers, so specified.
- (3) SEGC, a participating exchange, a member of the Board and any employee of SEGC or of a participating exchange each have qualified privilege in respect of the publication of a statement that a contract entered into under subsection (1) does or does not apply with respect to a dealer.
- (4) Where SEGC has entered into a contract of insurance or indemnity with an insurer under this section, a person who has made a claim does not have a right of action against the insurer in respect of the contract or a right or claim in respect of money paid by the insurer in accordance with the contract.
- (5) In this section:

dealer means a member, or a member organisation, of a participating exchange.

The Corporations Law—Section 983

983 Instalment payments

- (1) Where, at a particular time, the Board is of the opinion that, if all the amounts that, as at that time, are payable out of the Fund in connection with claims were so paid, the Fund would be exhausted or substantially depleted, the Board may determine in writing that amounts so payable as at that time shall be so paid in instalments of specified amounts payable on specified days.
- (2) In subsection (1):

claim means a claim under Division 6, 7 or 8 or a claim that, for the purposes of Division 10, is a transferred claim in relation to a joining exchange.
- (3) A determination under subsection (1) applies subject to subsection 932(3).

Division 10—Transitional

984 Definitions

In this Division, unless the contrary intention appears:

joining day, in relation to a joining exchange, means the day on which the joining exchange became a local Exchange subsidiary, or a participating exchange, as the case requires;

joining exchange means a securities exchange that:

- (a) at a particular time after the commencement of this Part becomes a local Exchange subsidiary or a participating exchange; and
- (b) was not, immediately before that time, a participating exchange, or a local Exchange subsidiary, as the case may be;

liability provisions means sections 907 to 916, inclusive;

transferred claim, in relation to a joining exchange, means:

- (a) a claim made, before the joining day in relation to the joining exchange, for compensation from the joining exchange's fidelity fund;
- (b) a claim that, as at the time immediately before the joining day in relation to the joining exchange, the liability provisions entitled a person to make for compensation from the joining exchange's fidelity fund, but that, as at that time, had not been made; or
- (c) a claim that purports to be a claim of a kind referred to in paragraph (b).

985 Assets and liabilities of joining exchange's fidelity fund

- (1) The money that at the end of the joining day in relation to a joining exchange was in the joining exchange's fidelity fund shall, as soon

The Corporations Law—Section 985

as practicable after that day, be paid out of that fidelity fund and into the Fund.

- (2) At the beginning of the next day after the joining day in relation to a joining exchange:
 - (a) the investments and other property of the joining exchange's fidelity fund that at the end of the joining day were vested in the joining exchange vest in SEGC and become part of the Fund;
 - (b) the rights that at the end of the joining day the joining exchange had, whether under a previous law or otherwise, in connection with the administration of the joining exchange's fidelity fund vest in SEGC; and
 - (c) SEGC becomes liable to pay and discharge the debts, liabilities and obligations of the joining exchange that arose, whether under a previous law or otherwise, in connection with the administration of the joining exchange's fidelity fund and that existed at the end of the joining day.
- (3) A reference in subsection (2) to rights or to debts, liabilities and obligations does not include a reference to rights, or to debts, liabilities and obligations, as the case may be, arising under a contract of employment or under a contract for services.
- (4) Investments that at the end of the joining day in relation to a joining exchange were held, by a person other than the joining exchange, for the purposes of the joining exchange's fidelity fund are held after that day for the purposes of the Fund.
- (5) After the joining day in relation to a joining exchange, an agreement (other than a contract of employment or a contract for services) that was entered into:
 - (a) by or on behalf of the joining exchange as a party; and
 - (b) in connection with the administration of the joining exchange's fidelity fund;and was in force at the end of that day applies, with such modifications as the circumstances require, as if:

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- (c) SEGC were substituted for the joining exchange as a party to the agreement; and
 - (d) a reference in the agreement to the joining exchange were, except in relation to a time on or before that day, a reference to SEGC.
- (6) Without limiting the generality of another provision of this section, where, as at the end of the joining day in relation to a joining exchange, an amount advanced under subsection 905(1) by the joining exchange to its fidelity fund has not been repaid, an amount equal to the first-mentioned amount is, after that day, payable, on demand, by SEGC to the joining exchange.
- (7) Where, at the end of the joining day in relation to a joining exchange, proceedings:
- (a) to which the joining exchange was a party; and
 - (b) that arose out of, or were otherwise connected with, the administration of the joining exchange's fidelity fund;
- were pending in a court or tribunal, SEGC is, at the beginning of the next day after the joining day, substituted for the joining exchange as a party to the proceedings and has the same rights in the proceedings as the party for which it was substituted.
- (8) An amount that, as a result of the operation of this section, is or becomes payable by SEGC is payable out of the Fund.
- (9) This section applies subject to section 987.

986 Final accounts in respect of joining exchange's fidelity fund

- (1) A joining exchange shall, as soon as practicable, and in any event within 2 months, after the joining day in relation to the joining exchange:
- (a) prepare a statement of the assets and liabilities of its fidelity fund as on that day; and
 - (b) appoint a registered company auditor to audit the statement.
- (2) Without limiting the generality of subsection (1), a statement prepared under that subsection shall set out full particulars, so far

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as known when the statement is prepared, of all liabilities (including contingent liabilities) of the joining exchange's fidelity fund in respect of transferred claims.

- (3) An auditor appointed to audit a statement prepared under subsection (1) in relation to a joining exchange's fidelity fund shall, within 1 month after the statement is prepared:
 - (a) audit the statement; and
 - (b) cause a report on the statement to be given to the Board and a copy of the report to be given to the board of the joining exchange.
- (4) The Board shall give to the Commission a copy of a report given to the Board under this section, and a copy of the statement to which the report relates, within 14 days after the report is given to the Board.

987 Application of liability provisions in relation to transferred claims

On and after the joining day in relation to a joining exchange, the liability provisions apply, for the purposes of a transferred claim in relation to the joining exchange, as if, except in relation to a time before that day:

- (a) a reference in those provisions to the fidelity fund of a securities exchange were a reference to the Fund;
 - (b) a reference in those provisions to the board of a securities exchange were a reference to the Board; and
 - (c) a reference in those provisions to a securities exchange were a reference to SEGC;
- and with such other modifications as the circumstances require.

988 Claims under corresponding previous law

- (1) Any claim made before the commencement of this Part against NSEGC under a previous law of this jurisdiction corresponding to a provision of this Part shall:

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- (a) unless the claim was disallowed before that commencement, be deemed to be a claim against SEGC made under that provision of this Part; and
 - (b) if the claim had been allowed but had not been settled before that commencement, be treated as if it had been allowed under that provision of this Part.
- (2) A claim that was served on NSEGC before the commencement of this Part and was not disallowed before that commencement shall be deemed to have been served on SEGC.
- (3) Any act done by NSEGC or the previous Board before the commencement of this Part under or for the purposes of a previous law of this jurisdiction corresponding to a provision of this Part shall be deemed to have been done by SEGC or the Board, as the case may be, under or for the purposes of that provision of this Part.
- (4) The generality of subsection (3) is not affected by the following provisions of this section.
- (5) A determination by the previous Board before the commencement of this Part under a previous law of this jurisdiction corresponding to a provision of this Part has effect as if it were made by the Board under that provision of this Part.
- (6) A notice published by NSEGC before the commencement of this Part under a previous law of this jurisdiction corresponding to a provision of this Part shall be deemed to have been published by SEGC under that provision of this Part.
- (7) Any securities bought by NSEGC before the commencement of this Part for a purpose of a corresponding previous law shall be deemed to have been bought by SEGC for the corresponding purpose of this Part.

989 Expenses incurred under corresponding previous law

- (1) Any legal and other expenses incurred before the commencement of this Part in investigating or defending claims made under a

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corresponding previous law or incurred in relation to the previous Fund or in the exercise by NSEGC or the previous Board of the rights, powers and authorities vested in it by the provisions of a corresponding previous law in relation to the previous Fund shall be deemed to be expenses to which paragraph 932(1)(b) applies.

- (2) Any expenses incurred before the commencement of this Part in the administration of the previous Fund, including the salaries and wages of persons employed by NSEGC or the previous Board in relation to the previous Fund, shall be deemed to have been incurred in the administration of the Fund.

990 Money payable under corresponding previous law

- (1) Any money that, immediately before the commencement of this Part, was payable to a participating exchange under a previous law of this jurisdiction corresponding to section 944 shall be deemed to be payable under that section.
- (2) Any money that was payable immediately before the commencement of this Part, or would if this Part had not been enacted have become payable, to NSEGC under a corresponding previous law of this jurisdiction shall be paid to SEGC and, if any money so paid to SEGC would, if this Part had not been enacted and the money had been paid to NSEGC, have been payable by NSEGC to the previous Fund, that money shall be paid by SEGC to the Fund.

991 Contracts made under corresponding previous law

Any contracts of insurance or indemnity entered into before the commencement of this Part by NSEGC shall be deemed to have been entered into by SEGC under section 982 and have effect as if:

- (a) SEGC were substituted for NSEGC as a party to the contract; and
- (b) a reference in the contract to NSEGC were, except in relation to a time before the commencement of this Part, a reference to SEGC.

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992 Periods prescribed by business rules of exchange for purposes of corresponding previous law

A period prescribed by the business rules of a participating exchange for the purposes of a previous law of this jurisdiction corresponding to paragraph (a) of the definition of *completion period*, or paragraph (a) of the definition of *prescribed period*, in section 948, or section 953, 963 or 964, shall be deemed to be also prescribed by those business rules for the purposes of that paragraph or section, as the case may be.

993 Court proceedings and orders

- (1) Any proceeding under a previous law of this jurisdiction corresponding to a provision of this Part pending before the Court at the commencement of this Part shall continue as if it were a proceeding under that provision of this Part.
- (2) An order made by a court under a previous law of this jurisdiction corresponding to a provision of this Part before the commencement of this Part and directed to NSEGC shall be deemed to have been made by the Court under that provision of this Part and to have been directed to SEGC.

Part 7.11—Conduct in relation to securities

Division 2—Prohibited conduct

995 Misleading or deceptive conduct

- (2) A person shall not, in or in connection with:
 - (a) any dealing in securities; or
 - (b) without limiting the generality of paragraph (a):
 - (i) the allotment or issue of securities;
 - (ii) any prospectus issued, or notice published, in relation to securities;
 - (iii) the making of takeover offers or a takeover announcement, or the making of an evaluation of, or of a recommendation in relation to, takeover offers or offers constituted by a takeover announcement; or
 - (iv) the carrying on of any negotiations, the making of any arrangements or the doing of any other act preparatory to or in any other way related to any matter referred to in subparagraph (i), (ii) or (iii);engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- (3) A person who contravenes this section is not guilty of an offence.
- (4) Nothing in the following provisions of this Part or in the provisions of Part 7.12 shall be taken as limiting by implication the generality of subsection (1).

996 False or misleading statement in, or omission from, prospectus

- (1) A person must not authorise or cause the issue of a prospectus in relation to securities of a corporation:
 - (a) in which there is a material statement that is false or misleading; or
 - (b) from which there is a material omission.

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- (2) It is a defence to a prosecution for a contravention of subsection (1) if it is proved:
 - (b) that the defendant, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the issue of the prospectus believe, that the statement was true and not misleading or the omission was not material; or
 - (c) where there was an omission from the prospectus—that the omission was inadvertent.
- (3) A person does not contravene this section merely because the person gave a consent required by this Chapter to the inclusion in the prospectus of a statement purporting to be made by the person as an expert.

997 Stock market manipulation

- (1) A person shall not enter into or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of increasing the price of securities of the body corporate on a stock market, with intention to induce other persons to buy or subscribe for securities of the body corporate or of a related body corporate.
- (4) A person shall not enter into, or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of reducing the price of securities of the body corporate on a stock market, with intent to induce other persons to sell securities of the body corporate or of a related body corporate.
- (7) A person shall not enter into, or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of maintaining or stabilising the price of securities of the body corporate on a stock market, with intent to induce other persons to sell, buy or subscribe for securities of the body corporate or of a related body corporate.

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- (10) A reference in this section to a transaction, in relation to securities, includes:
- (a) a reference to the making of an offer to sell or buy securities; and
 - (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or buy securities.

998 False trading and market rigging transactions

- (1) A person shall not create, or do anything that is intended or likely to create, a false or misleading appearance of active trading in any securities on a stock market or a false or misleading appearance with respect to the market for, or the price of, any securities.
- (3) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities or by any fictitious transactions or devices, maintain, increase, reduce, or cause fluctuations in, the market price of any securities.
- (5) Without limiting the generality of subsection (1), a person who:
 - (a) enters into, or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;
 - (b) offers to sell any securities at a specified price where the person has made or proposes to make, or knows that an associate of the person has made or proposes to make, an offer to buy the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
 - (c) offers to buy any securities at a specified price where the person has made or proposes to make, or knows that an associate of the person has made or proposes to make, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price;

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shall be deemed to have created a false or misleading appearance of active trading in those securities on a stock market.

- (6) In a prosecution of a person for a contravention of subsection (1) constituted by an act referred to in subsection (5), it is a defence if it is proved that the purpose or purposes for which the person did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a stock market.
- (7) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or an associate of the person in relation to those securities, has an interest in the securities after the purchase or sale.
- (8) In a prosecution for a contravention of subsection (3) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if it is proved that the purpose or purposes for which the securities were bought or sold was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.
- (9) The reference in paragraph (5)(a) to a transaction of sale or purchase of securities includes:
 - (a) a reference to the making of an offer to sell or buy securities; and
 - (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or buy securities.

999 False or misleading statements in relation to securities

A person must not make a statement, or disseminate information, that is false in a material particular or materially misleading and:

- (a) is likely to induce the sale or purchase of securities by other persons; or

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- (b) is likely to have the effect of increasing, reducing, maintaining or stabilising the market price of securities; if, when the person makes the statement or disseminates the information:
- (c) the person does not care whether the statement or information is true or false; or
- (d) the person knows or ought reasonably to have known that the statement or information is false in a material particular or materially misleading.

1000 Fraudulently inducing persons to deal in securities

- (1) A person shall not:
 - (a) by making or publishing a statement, promise or forecast that the person knows to be misleading, false or deceptive;
 - (b) by a dishonest concealment of material facts;
 - (c) by the reckless making or publishing (dishonestly or otherwise) of a statement, promise or forecast that is misleading, false or deceptive; or
 - (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false in a material particular or materially misleading;induce or attempt to induce another person to deal in securities.
- (3) It is a defence to a prosecution for a contravention of subsection (1) constituted by recording or storing information as mentioned in paragraph (1)(d) if it is proved that, when the information was so recorded or stored, the defendant had no reasonable grounds for expecting that the information would be available to any other person.

1001 Dissemination of information about illegal transactions

- (1) A person shall not circulate or disseminate any statement or information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained because of any transaction entered into or other act or thing done in relation to

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securities of that body corporate or of a body corporate that is related to that body corporate, in contravention of section 997, 998, 999 or 1000 if:

- (a) the person, or an associate of the person, has entered into any such transaction or done any such act or thing; or
- (b) the person, or an associate of the person, has received, or expects to receive, directly or indirectly, any consideration or benefit in respect of the circulation or dissemination of the statement or information.

1002 Insider trading

- (1) A person who is, or at any time in the preceding 6 months has been, connected with a body corporate shall not deal in any securities of that body corporate if, because of so being, or having been, connected with that body corporate, the person is in possession of information that is not generally available but, if it were, would be likely materially to affect the price of those securities.
- (2) A person who is, or at any time in the preceding 6 months has been, connected with a body corporate shall not deal in any securities of any body corporate if, because of the person so being, or having been, connected with the first-mentioned body corporate, the person is in possession of information that:
 - (a) is not generally available but, if it were, would be likely materially to affect the price of those securities; and
 - (b) relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and securities of the other.
- (3) Where a person is in possession of any information mentioned in subsection (1) or (2) that if generally available would be likely materially to affect the price of securities but is not precluded by either of those subsections from dealing in those securities, the person shall not deal in those securities if:
 - (a) the person has obtained the information, directly or indirectly, from another person and is aware, or ought

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- reasonably to be aware, of facts or circumstances by virtue of which that other person is then precluded by subsection (1) or (2) from dealing in those securities; and
- (b) when the information was so obtained, the person was an associate of that other person or had with that other person an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities by either or both of them.
- (4) A person shall not, at any time when precluded by subsection (1), (2) or (3) from dealing in any securities, cause or procure any other person to deal in those securities.
- (5) A person shall not, at any time when precluded by subsection (1), (2) or (3) from dealing in securities because of being in possession of any information, communicate that information to any other person if:
- (a) trading in these securities is permitted on a stock market; and
- (b) the person knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing, or causing or procuring another person to deal, in those securities.
- (6) Without prejudice to subsection (3) but subject to subsections (7) and (8), a body corporate shall not deal in any securities at a time when any officer of that body corporate is precluded by subsection (1), (2) or (3) from dealing in those securities.
- (7) A body corporate is not precluded by subsection (6) from entering into a transaction at any time merely because of information in the possession of an officer of that body corporate if:
- (a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;
- (b) it had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to that person by a person in possession of the information; and

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- (c) the information was not so communicated and such advice was not so given.
- (8) A body corporate is not precluded by subsection (6) from dealing in securities of another body corporate at any time merely because of information in the possession of an officer of that first-mentioned body corporate, being information that was obtained by the officer in the course of the performance of duties as an officer of that first-mentioned body corporate and that relates only to proposed dealings by that first-mentioned body corporate in securities of that other body corporate.
- (9) For the purposes of this section, a person is connected with a body corporate if, being a natural person:
 - (a) the person is an officer of that body corporate or of a related body corporate;
 - (b) the person is a substantial shareholder within the meaning of Part 6.7 in that body corporate or in a related body corporate; or
 - (c) the person occupies a position that may reasonably be expected to give access to information of a kind to which subsections (1) and (2) apply by virtue of:
 - (i) any professional or business relationship existing between the person (or the person's employer or a body corporate of which the person is an officer) and that body corporate or a related body corporate; or
 - (ii) the person being an officer of a substantial shareholder within the meaning of Part 6.7 in that body corporate or in a related body corporate.
- (10) This section does not preclude the holder of a dealers licence from dealing in securities, or rights or interests in securities, of a body corporate, being securities or rights or interests that are permitted by a securities exchange to be traded on the stock market of that securities exchange, if:
 - (a) the holder of the licence enters into the transaction concerned as agent for another person under a specific instruction by that other person to effect that transaction;

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- (b) the holder of the licence has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities; and
 - (c) the other person is not an associate of the holder of the licence.
- (11) Where a prosecution is instituted against a person for an offence because the person was in possession of certain information and entered into a transaction in contravention of this section, it is a defence if the court is satisfied that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.
- (12) For the purposes of subsection (9), **officer**, in relation to a body corporate, includes:
 - (a) a director, secretary, executive officer or employee of the body corporate;
 - (b) a receiver, or a receiver or manager, of property of the body corporate;
 - (c) an official manager or a deputy official manager of the body corporate;
 - (d) a liquidator of the body corporate; and
 - (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

Division 3—Powers of Court

1003 Provisions relating to prosecutions

In the prosecution of a person for an offence in respect of a contravention of a provision of this Part or Part 7.12, the Court may do either or both of the following:

- (a) grant an injunction under section 1324 against the person in relation to:
 - (i) the conduct that constitutes, or is alleged to constitute, the offence; or
 - (ii) other conduct of that kind;
- (b) make an order under section 1004 in respect of the person.

1004 Order to disclose information or publish advertisements

Without limiting the generality of section 1324, where, on the application of the Commission, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of this Part or Part 7.12, the Court may make either or both of the following orders:

- (a) an order requiring that person or a person involved in the contravention to disclose to the public, to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that last-mentioned person has access;
- (b) an order requiring that person or a person involved in the contravention to publish, at the person's own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in, or are to be determined in accordance with, the order.

Division 4—Civil liability

Subdivision A—General

1005 Civil liability for contravention of this Part or Part 7.12

- (1) Subject to the following sections of this Division, a person who suffers loss or damage by conduct of another person that was engaged in in contravention of a provision of this Part or Part 7.12 may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention, whether or not that other person or any person involved in the contravention has been convicted of an offence in respect of the contravention.
- (2) An action under subsection (1) or under paragraph 1013(1)(d) may be begun at any time within 6 years after the day on which the cause of action arose.
- (3) This Division does not affect any liability that a person has under any other law.
- (4) In a proceeding under this Part in relation to a contravention of this Part or Part 7.12 committed by the publication of an advertisement, it is a defence if it is proved that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the person received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Part or Part 7.12.

Subdivision B—Liability in respect of prospectuses

1006 Civil liability for false or misleading statement in, or omission from, prospectus

- (1) This section applies for the purposes of an action under section 1005 in respect of conduct being the issue of a prospectus in relation to securities of a corporation:
 - (a) in which there is a material statement that is false or misleading; or
 - (b) from which there is a material omission.
- (2) The reference in subsection 1005(1) to any person involved in the contravention includes a reference to all or any of the following persons:
 - (a) the corporation;
 - (b) a person who was a director of the corporation at the time of the issue of the prospectus;
 - (c) a person who authorised or caused himself or herself to be named, and is named, in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
 - (d) a promoter of the corporation;
 - (e) if the prospectus includes a statement purporting to be made by an expert or to be based on a statement made by an expert—that expert;
 - (f) a person named, with the consent of the person, in the prospectus as a stockbroker, sharebroker or underwriter of the corporation or for or in relation to the issue or proposed issue of securities;
 - (g) a person named, with the consent of the person, in the prospectus as an auditor, banker or solicitor of the corporation or for or in relation to the issue or proposed issue of securities;
 - (h) a person named, with the consent of the person, in the prospectus as having performed or performing any function in a professional, advisory or other capacity not mentioned in

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paragraph (e), (f) or (g) for the corporation or for or in relation to the issue or proposed issue of securities;

- (3) A person who is named in the prospectus as:
- (a) a trustee for holders of debentures of the corporation; or
 - (b) a trustee for, or representative of, holders of prescribed interests made available by the corporation;
- shall not, for that reason alone, be taken to have authorised or caused the issue of the prospectus.

1007 No liability to person with knowledge of relevant matter

A person referred to in subsection 1006(2), or a person who authorised or caused the issue of the prospectus, is not liable in an action under section 1005 to a person who suffered loss or damage as a result of a false or misleading statement in, or an omission from, the prospectus if it is proved that, when the last-mentioned person subscribed for or bought the securities to which the prospectus relates, that person knew that the statement was false or misleading or was aware of the omitted matter.

1008 Directors not liable in certain circumstances

- (1) A person referred to in paragraph 1006(2)(b) or (c) is not liable in an action under section 1005 in the circumstances set out in the following provisions of this section.
- (2) The person is not liable if it is proved that, having consented to become a director of the corporation, the person withdrew the consent before the issue of the prospectus, and that it was issued without the person's authority or consent.
- (3) The person is not liable if it is proved that the prospectus was issued without the person's knowledge or consent and:
- (a) as soon as practicable after the person became aware of the issue of the prospectus, the person gave reasonable public notice that it was issued without the person's knowledge; or

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- (b) as soon as practicable after the prospectus was issued, the person gave reasonable public notice that the prospectus was issued without the person's consent;
as the case may be.
- (4) The person is not liable if it is proved that, after the issue of the prospectus and before any allotment, issue or sale under the prospectus, the person, on becoming aware of any false or misleading statement in the prospectus, withdrew the person's consent to the issue of the prospectus and gave reasonable public notice of the withdrawal and of the reason for the withdrawal.
- (5) The person is not liable if it is proved that:
 - (a) as regards every false or misleading statement not purporting to be made on the authority of an expert or of a public official document or statement, the person, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the allotment, issue or sale of the securities believe, that the statement was true and not misleading;
 - (b) as regards every false or misleading statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of, or extract from, a report or valuation of an expert:
 - (i) it fairly represented the statement, or was a correct and fair copy of, or extract from, the report or valuation; and
 - (ii) the person, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the issue of the prospectus believe, that the person making the statement was competent to make it, had given the consent required by section 1032 to the issue of the prospectus and had not withdrawn that consent before lodgment of the prospectus for registration, or, to the defendant's knowledge, before any allotment, issue or sale under the prospectus; and
 - (c) as regards every false or misleading statement purporting to be a statement made by an official person or contained in

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what purports to be a copy of, or extract from, a public official document, it was a correct and fair representation of the statement or a correct and fair copy of, or extract from, the document.

1009 Liability of experts

- (1) In this section, *expert*, in relation to a prospectus in relation to securities of a corporation, includes:
 - (a) a person named, with the consent of the person, in the prospectus as an auditor, banker or solicitor of the corporation or for or in relation to the issue or proposed issue of securities; and
 - (b) a person named, with the consent of the person, in the prospectus as having performed or performing any professional or advisory capacity (other than a capacity mentioned in paragraph (a) or the capacity of a stockbroker, sharebroker or underwriter) for the corporation or for or in relation to the issue or proposed issue of securities.
- (2) A person referred to in paragraph 1006(2)(e), (g) or (h) is liable in an action under section 1005 only in respect of:
 - (a) a false or misleading statement in the prospectus purporting to be made by the person as an expert; or
 - (b) an omission from the prospectus of any material matter for which the person is responsible in the person's capacity or purported capacity as an expert.
- (3) A person referred to in paragraph 1006(2)(e) is not liable in an action under section 1005 in respect of a false or misleading statement if it is proved:
 - (a) that, having given consent under section 1032 to the issue of the prospectus, the person withdrew it in writing before the prospectus was lodged;
 - (b) that, after the prospectus was lodged and before any allotment, issue or sale under the prospectus, the person, on becoming aware of the false or misleading statement, withdrew the person's consent in writing and gave reasonable

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- public notice of the withdrawal and of the reasons for the withdrawal; or
- (c) that the person was competent to make the statement and, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the allotment, issue or sale of the securities believe, that the statement was true and not misleading.
- (4) A person referred to in paragraph 1006(2)(g) or (h) is not liable in an action under section 1005 in respect of a false or misleading statement if it is proved:
- (a) that, after the prospectus was lodged and before any allotment, issue or sale under the prospectus, the person, on becoming aware of the false or misleading statement, withdrew the person's consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or
- (b) that the person was competent to make the statement and, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the allotment, issue or sale of the securities believe, that the statement was true and not misleading.

1010 Liability of persons named in prospectus etc.

- (1) A person referred to in paragraph 1006(2)(f), (g) or (h) who is named in part only of the prospectus is not liable in an action under section 1005 in respect of a false or misleading statement in, or an omission from, the prospectus if it is proved that:
- (a) the statement was not included in, or the matter was not omitted from, that part of the prospectus; or
- (b) in the case of a statement—the statement was not included in, or substantially in, the form and context that the person had agreed to.
- (2) For the purposes of subsection (1), a person referred to in paragraph 1006(2)(f), (g) or (h) shall not be taken to be named in part only of the prospectus unless the prospectus includes an

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express statement that the person was involved only in the preparation of that part.

- (3) A person who has authorised or caused the issue of part only of a prospectus is not liable in an action under section 1005 in respect of a false or misleading statement in, or an omission from, the prospectus if it is proved that:
- (a) the statement was not included in, or the matter was not omitted from, that part of the prospectus; or
 - (b) in the case of a statement—the statement was not included in, or substantially in, the form and context that the person had agreed to.
- (4) For the purposes of subsection (3), a person is not taken to have authorised or caused the issue of part only of a prospectus unless the prospectus includes an express statement that the person authorised or caused the issue of that part only.

1011 No liability for mistake etc. if reasonable precautions taken

- (1) The corporation, a person referred to in paragraph 1006(2)(d) or (f) or a person who authorised or caused the issue of the prospectus is not liable in an action under section 1005 if it is proved that the false or misleading statement or the omission:
- (a) was due to a reasonable mistake;
 - (b) was due to reasonable reliance on information supplied by another person; or
 - (c) was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control;
- and, in a case to which paragraph (c) of this subsection applies, that the defendant took reasonable precautions and exercised due diligence to ensure that all statements to be included in the prospectus were true and not misleading and that there were no material omissions from the prospectus.

- (2) In paragraphs (1)(b) and (c):

another person does not include a person who was:

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- (a) a servant or agent of the defendant; or
- (b) if the defendant was the corporation or another body corporate—a director, servant or agent of the defendant; when the prospectus was issued.

1012 Indemnity

Where:

- (a) a prospectus in relation to securities of a corporation contains the name of a person as a director of the corporation, or as having agreed to become a director, and that person has not consented to become a director, or has withdrawn the consent before the issue of the prospectus, and has not authorised or consented to the issue of the prospectus; or
- (b) the consent of a person is required under section 1032 to the issue of the prospectus and the person either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the corporation, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised or caused the issue of the prospectus are jointly and severally liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which the person may be made liable:

- (c) because of the person's name being so contained in the prospectus;
- (d) because of the inclusion in the prospectus of a statement purporting to be made by the person as an expert; or
- (e) in defending any action or other legal proceeding brought against the person because of the person's name being so contained in the prospectus or the inclusion in the prospectus of such a statement.

The Corporations Law—Section 1013

Subdivision C—Liability in respect of unlawful market activity

1013 Liability for insider trading

(1) Where:

- (a) a person who is in possession of any information mentioned in subsection 1002(1) or (2) in respect of any securities deals in those securities in contravention of subsection 1002(1), (2) or (3) or causes or procures another person to deal in those securities in contravention of subsection 1002(4); or
- (b) a person being a body corporate deals in securities in contravention of subsection 1002(6) at a time when an officer of the body corporate was in possession of any information mentioned in subsection 1002(1) or (2);

then:

- (c) without limiting the generality of section 1005, any other party to the transaction who was not in possession of that information may, by action under that section against the first-mentioned person or against any person involved in the contravention, recover any loss suffered by that party because of any difference between the price at which the securities were dealt in in that transaction and the price at which they would have been likely to have been dealt in in such a transaction when the first-mentioned transaction took place if that information had been generally available; and
 - (d) in addition to any action that may be brought by any person under section 1005, the body corporate that issued the securities may, by action against the first-mentioned person, recover any profit accruing to the first-mentioned person from dealing in the securities.
- (2) For the purposes of paragraph (1)(b), **officer**, in relation to a body corporate, includes:
- (a) a director, secretary, executive officer or employee of the body corporate;
 - (b) a receiver, or a receiver and manager, of the property or any part of the property of that body corporate;

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- (c) an official manager or a deputy official manager of the body corporate;
 - (d) a liquidator of the body corporate; and
 - (e) a trustee or other person administering a compromise or arrangement made between the body corporate and any other person or persons.
- (3) The Commission may, if it considers that it is in the public interest to do so, bring an action under paragraph 1013(1)(d), in the name of, and for the benefit of, a body corporate, for the recovery of a profit that the body is entitled to recover under that paragraph.

1014 Liability for other unlawful market activity

Where a person contravenes section 997, 998, 999, 1000 or 1001, then, without limiting the generality of section 1005, any other person who entered into a transaction for the sale or purchase of securities with the first-mentioned person or with a person acting on behalf of the first-mentioned person may, by action under section 1005 against the first-mentioned person or against any person involved in the contravention, recover the amount of any loss suffered by the person bringing the action because of the difference between the price at which the securities were dealt in in that transaction and the price at which they would have been likely to have been dealt in in such a transaction when the first-mentioned transaction took place if the contravention had not occurred.

1015 Amount recoverable

- (1) The amount that a person may recover by action against another person in the circumstances mentioned in section 1013 or 1014 is:
- (a) if the second-mentioned person has been found by a court to be liable, or has been ordered by a court, to pay an amount or amounts to any other person or persons under this Part or under subsection 232(7) or under a corresponding previous law because of the same act or transaction—the amount of the loss suffered by the first-mentioned person or the amount of the profit referred to in paragraph 1013(1)(d), as the case

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may be, less the amount or the sum of the amounts that the second-mentioned person has been so found to be liable, or has been so ordered, to pay; or

(b) otherwise—the amount of that loss or profit.

- (2) For the purposes of subsection (1), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

Part 7.12—Offering securities for subscription or purchase

Division 2—Prospectuses

1017 Exceptions

This Division does not apply in relation to:

- (a) an excluded issue of securities; or
- (b) an excluded offer of securities for subscription or purchase;
or
- (c) an excluded invitation to subscribe for or buy securities.

1017A Registrable prospectuses

- (1) In this section:

approved unlisted corporation, in relation to securities, means an unlisted corporation that has been approved by the Commission in respect of those securities as a corporation that has established adequate arrangements to keep its employees informed about:

- (a) in the case of shares or debentures—its operations; or
- (b) in the case of prescribed interests—the operations of the relevant undertaking, scheme, enterprise or investment contract to which the interests relate;

exempt recipient means:

- (a) the trustee of a superannuation fund constituted by or under a law of the Commonwealth, of a State, of a Territory or of a foreign country;
- (b) a holder of a dealers licence acting as principal;
- (c) a corporation registered under the *Life Insurance Act 1945* or the *Financial Corporations Act 1974*;
- (d) an investment company within the meaning of Part 4.4;

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- (e) the trustee of a trust that is declared by the Commission to be an equity unit trust for the purposes of this section and in respect of which there is an approved deed for the purposes of Division 5; or
- (f) a person declared by the Commission, by notice published in the *Gazette*, to be an institutional investor for the purposes of this section;

listed corporation means a corporation that is included in the official list of a stock exchange;

unlisted corporation means a corporation other than a listed corporation.

- (2) A prospectus in relation to securities of a corporation is a registrable prospectus unless it is exempt from registration under section 1020A by virtue of this section.
- (3) A prospectus in relation to shares in, or debentures of, a corporation is exempt from registration under section 1020A if:
 - (a) the shares or debentures, as the case may be, are in a class of shares in, or debentures of, the corporation that are listed for quotation on a stock market of a stock exchange; or
 - (b) the relevant allotment, issue, offer or invitation is proposed to be made or issued:
 - (i) in the case of shares—to existing members of the corporation;
 - (ii) in any case—to an exempt recipient; or
 - (iii) if the corporation is a listed corporation, or is an approved unlisted corporation in relation to shares in the corporation, or debentures of the corporation, as the case may be—to employees of the corporation.
- (4) A prospectus in relation to prescribed interests made available by a corporation is exempt from registration under section 1020A if the relevant issue, offer or invitation is proposed to be made or issued:
 - (a) in any case—to an exempt recipient; or

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- (b) if the corporation is a listed corporation, or is an approved unlisted corporation in relation to prescribed interests made available by it—to employees of the corporation.

1018 Prospectus in relation to securities

- (1) A person shall not offer for subscription or purchase, or issue invitations to subscribe for or buy, securities of a corporation unless:
 - (a) a prospectus in relation to the securities has been lodged;
 - (b) the prospectus complies with the requirements of this Division; and
 - (c) if the prospectus is a registrable prospectus—the prospectus has been registered by the Commission under section 1020A.
- (2) Subsection (1) does not apply in relation to an offer for purchase of, or an invitation to buy, issued securities that are in a class of securities of a corporation, if, throughout the period beginning immediately before the commencement of this section and ending immediately after the offer is made, or the invitation is issued, as the case may be, securities in that class were listed securities.
- (5) Subsection (1) does not apply in relation to an offer for purchase of, or an invitation to buy, issued securities that are in a class of listed securities of a corporation if:
 - (a) at some time before the making of the offer, or the issue of the invitation, as the case may be:
 - (i) there was lodged under this Part or a corresponding previous law a prospectus in respect of securities in that class that complied with the requirements of this Part, or of that corresponding previous law, as in force when it was so lodged; and
 - (ii) if this Part or that corresponding previous law, as the case may be, required the prospectus, or a copy of it, to be registered by the Commission or the NCSC—the prospectus or such a copy was so registered; and

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- (b) on the last occasion when any of the following occurred before the making of the offer, or the issue of the invitation, as the case may be:
 - (i) the corporation became required at a particular time, in connection with its admission to an official list of the securities exchange, to comply with such listing rules of the securities exchange as were at that time prescribed for the purposes of this subparagraph;
 - (ii) the corporation became required, at a particular time when it was included in an official list of the securities exchange, to comply with any of such listing rules of the securities exchange as were at that time prescribed for the purposes of this subparagraph;the corporation complied with the listing rules concerned before the making of the offer, or the issue of the invitation, as the case may be.
- (6) For the purposes of paragraph (5)(b), but without limiting its generality, where an obligation or condition is imposed on a corporation at a particular time, by or under a particular listing rule of a securities exchange, in connection with a particular matter:
 - (a) the corporation shall be taken to have become required at that time to comply with that listing rule; and
 - (b) the corporation shall not be taken to comply with that listing rule unless it complies with the obligation, or the condition is satisfied, as the case may be.
- (7) In this section:
 - issued securities*** means securities issued before, at or after the commencement of this section;
 - listed securities*** means securities listed for quotation on a stock market of a stock exchange.
- (8) Subsections (2) and (5) do not apply in relation to:
 - (a) an offer to which section 1030 relates; or

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- (b) an invitation that, because of subsection 1030(7), is taken to be such an offer.

1019 Prohibition on invitations or offers in respect of securities of proposed corporation

A person shall not:

- (a) issue a form of application for the issue of, or an invitation to subscribe for or buy, securities of a corporation that has not been formed; or
 - (b) offer securities of a corporation that has not been formed for subscription or purchase;
- even if it is proposed to form the corporation.

1020 Forms of application for securities to be attached to prospectus

A person shall not issue a form of application for the issue of securities of a corporation unless:

- (a) if the securities are debentures—the form is attached to, or accompanied by, a copy of a prospectus;
- (b) otherwise—the form is attached to a copy of a prospectus;
- (c) a copy of the form, and the prospectus, have been lodged; and
- (d) if the prospectus is a registrable prospectus—the prospectus has been registered by the Commission under section 1020A.

1020A Registration of prospectuses

- (1) Subject to section 102A and to subsection (2) of this section, where a registrable prospectus is lodged together with a written application for the registration of the prospectus, the Commission must register the prospectus as soon as possible and in any event within the prescribed period.
- (2) The Commission shall refuse to register a prospectus if:
 - (a) it appears that the prospectus does not comply with the requirements of this Division; or

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- (b) the Commission is of the opinion that the prospectus contains a false or misleading statement or that there is an omission from the prospectus.

1021 Specific provisions applicable to all prospectuses

- (1) This section applies in relation to any prospectus in relation to securities of a corporation.
- (2) The prospectus shall be printed in type of a size not less than the type known as eight point Times unless the Commission, before the issuing or advertising of the prospectus, certifies in writing that the type and size of letter are legible and satisfactory.
- (3) The prospectus shall be dated.
- (4) The date inserted in the prospectus under subsection (3) shall, unless the contrary is proved, be taken to be the date of issue of the prospectus.
- (5) The prospectus shall contain a statement that no securities will be allotted or issued on the basis of the prospectus later than 6 months after the date of the issue of the prospectus.
- (6) The prospectus shall set out full particulars of:
 - (a) the nature and extent of the interest (if any) of every director or proposed director, and of every expert, in the promotion of, or in the property proposed to be acquired by, the corporation; or
 - (b) where the interest of such a director or proposed director or such an expert consists of being a partner in a firm, the nature and extent of the interest of the firm;
with a statement of all amounts paid or agreed to be paid to him or her or to the firm in cash or shares or otherwise by any persons:
 - (c) in the case of a director or proposed director, either to induce him or her to become, or to qualify him or her as, a director, or otherwise for services rendered by him or her or by the firm in connection with the promotion or formation of the corporation; or

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- (d) in the case of an expert, for services rendered by him or her or the firm in connection with the promotion or formation of the corporation.
- (7) The regulations may require prospectuses included in a specified class of prospectuses to set out such matters, or contain such reports, or both, as are specified in the regulations.
- (8) Without limiting the generality of subsection (7), a class of prospectuses may comprise any one or more of the following:
 - (a) prospectuses in relation to a specified class of securities;
 - (b) prospectuses in relation to a specified class of corporations;
 - (c) prospectuses issued to a specified class of persons.
- (9) A condition requiring or binding an applicant for securities of a corporation to waive compliance with any requirement of this section, or purporting to affect such an applicant with notice of any contract, document or matter not specifically referred to in the prospectus, is void.
- (10) If any requirement set out in this section is contravened, a director or other person responsible for, or involved in the preparation of, the prospectus does not incur any liability by reason of the contravention if it is proved that:
 - (a) as regards any matter omitted, the person had no knowledge of that matter;
 - (b) the contravention arose from an honest mistake on the part of the person concerning the facts; or
 - (c) the contravention was:
 - (i) in respect of matter that, in the opinion of the court dealing with the case, was immaterial; or
 - (ii) otherwise such as, in the opinion of that court, having regard to all the circumstances of the case, ought reasonably to be excused.
- (11) In the event of failure to include in a prospectus a statement with respect to the matters specified in subsection (6), a director or other person does not have any liability in respect of the failure unless it

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is proved that the director or other person had knowledge of the matters not included.

- (12) Nothing in this section limits or diminishes any liability that a person may incur under any rule of law or any enactment or under this Law apart from this section.
- (13) The prospectus shall be signed by every director, and by every person who is named in the prospectus as a proposed director, of the corporation or by a person authorised in writing by the director or proposed director to sign the prospectus on his or her behalf.
- (14) Each copy of the prospectus shall:
 - (a) state that the prospectus has been lodged;
 - (b) specify the date of lodgment; and
 - (c) state that the Commission takes no responsibility as to the contents of the prospectus.

1022 General provisions applicable to all prospectuses

- (1) In addition to the information required by section 1021 to be included in a prospectus in relation to securities of a corporation, such a prospectus shall, subject to subsection (2), contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of:
 - (a) the assets and liabilities, financial position, profits and losses, and prospects of the corporation; and
 - (b) the rights attaching to the securities.
- (2) The information to be included by virtue of this section is such of the information mentioned in subsection (1) as is known to:
 - (a) any person referred to in any of paragraphs 1006(2)(b) to (h), inclusive; or
 - (b) any person who authorised or caused the issue of the prospectus;or such of the information so mentioned as it would be reasonable for such a person to obtain by making inquiries.

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- (3) In determining what information is required to be included in a prospectus by virtue of this section, regard shall be had to:
- (a) the nature of the securities and of the corporation;
 - (b) the kinds of persons likely to consider subscribing for or buying the securities;
 - (c) the fact that certain matters may reasonably be expected to be known to professional advisers of any kind whom those persons may reasonably be expected to consult;
 - (d) whether the persons to whom the offers or invitations are to be made or issued are the holders of shares in the corporation and, if they are, to what extent (if any) relevant information has previously been given to them by the corporation under any law, any requirement of the business rules or listing rules of a securities exchange, or otherwise; and
 - (e) any information known to investors or their professional advisers by virtue of any Act, State Act or law of a Territory.

1023 Special provisions applicable to prospectuses in relation to debentures

- (1) A prospectus in relation to:
- (a) an invitation to subscribe for or buy debentures of a corporation; or
 - (b) an offer of debentures of a corporation for subscription or purchase;
- shall contain an undertaking by the corporation that it will, within 2 months after the acceptance of any money as a deposit or loan from any person in response to the invitation or offer, issue to that person a document that acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan.
- (2) Where, pursuant to an invitation or offer referred to in subsection (1), a corporation has accepted from any person any money as a deposit or loan, the corporation shall, within 2 months after the acceptance of the money, give to that person a document that:

The Corporations Law—Section 1024

- (a) acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan; and
- (b) complies with the requirements of section 1045.

1024 Supplementary prospectuses

- (1) Where:
 - (a) a prospectus has been lodged in relation to securities of a corporation; and
 - (b) at any time while securities can be allotted or issued on the basis of the prospectus:
 - (i) there is a significant change affecting any matter contained in the prospectus the inclusion of which was required by this Part; or
 - (ii) a significant new matter arises the inclusion of information in respect of which would have been required by this Part if the matter had arisen when the prospectus was prepared;

the person who lodged the prospectus shall lodge a supplementary prospectus containing particulars of the change or new matter.
- (2) In subsection (1):

significant means significant for the purpose of making an informed assessment of the matters mentioned in subsection 1022(1).
- (3) If the person who lodged the prospectus is not aware of the change or new matter, that person is not required to comply with subsection (1) unless that person is notified of the change or new matter by a person referred to in subsection 1006(2) or a person who authorised or caused the issue of the prospectus.
- (4) A person (other than the person who lodged the prospectus) who:
 - (a) is referred to in subsection 1006(2); or
 - (b) authorised or caused the issue of the prospectus;

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and is aware of the change or new matter, must give notice of the change or new matter to the person who lodged the prospectus.

- (5) If, after a prospectus has been lodged in respect of any securities, the Commission makes an order under section 1033 in respect of the securities, the person who lodged the prospectus may lodge a supplementary prospectus.
- (6) After a supplementary prospectus is lodged, every copy of the prospectus that is issued shall be accompanied by a copy of the supplementary prospectus.
- (7) In sections 96, 995, 996, 1006, 1007, 1008, 1009, 1010, 1011 and 1012, subsections 1021(2), (3), (4), (10), (13) and (14), sections 1029, 1031, 1032 and 1033, and subsections (1) to (4), inclusive, of this section, unless the context otherwise requires, a reference to a prospectus includes a reference to a supplementary prospectus.

1025 Certain notices etc. not to be published

- (1) In this section:

notice does not include a prospectus that has been lodged or a report, statement or notice the publication of which is permitted under section 1026.

- (2) Nothing in this Part prohibits the publishing of a notice that:
 - (a) is published by the person who issued the prospectus concerned, the holder of a dealers licence, the holder of an investment advisers licence or an exempt dealer;
 - (b) states that a prospectus in relation to securities of a body corporate or proposed body corporate has been lodged;
 - (c) specifies the date of the prospectus;
 - (d) states where a copy of the prospectus can be obtained;
 - (e) states that allotments or issues of, or contracts for the subscription for or purchase of, securities to which the prospectus relates will be made only on receipt of a form of application referred to in and:

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- (i) if the securities are debentures—attached to, or accompanied by; or
 - (ii) otherwise—attached to;
 - a copy of the prospectus; and
 - (f) specifies the interest (if any) that the person publishing the notice has in the success of the offer or invitation to which the prospectus relates, being an interest that the person has as underwriter or sub-underwriter to the issue of the securities to which the prospectus relates or a relevant interest in those securities.
- (3) Except as provided by subsection (2), a person shall not publish a notice that:
- (a) offers for subscription or purchase securities of a corporation or proposed corporation;
 - (b) issues invitations to subscribe for or buy securities of a corporation or proposed corporation; or
 - (c) refers or calls attention, whether directly or indirectly, to:
 - (i) a prospectus in relation to securities of a corporation;
 - (ii) an offer or intended offer for subscription or purchase of securities of a corporation;
 - (iii) an invitation or intended invitation to subscribe for or buy securities of a corporation; or
 - (iv) another notice that refers or calls attention, whether directly or indirectly, to a prospectus in relation to securities of a corporation or such an offer, intended offer, invitation or intended invitation, not being a notice referred to in subsection (2).

1026 Certain reports referring to prospectuses not to be published

- (1) In this section, unless the contrary intention appears:

report includes a statement or notice, whether or not in writing, but does not include a notice the publication of which is permitted under section 1025.

The Corporations Law—Section 1026

- (2) Nothing in this Part prohibits the publishing of:
- (a) a report that relates to affairs of a body corporate that is included in the official list of a securities exchange and:
 - (i) is published only to that securities exchange or an officer of that securities exchange on behalf of the body or by or on behalf of one or more of its directors; or
 - (ii) has been so published;
 - (b) a report of the whole or part of the proceedings at a general meeting of a body corporate that is included in the official list of a securities exchange if the report does not contain any matter other than matters laid before that meeting;
 - (c) a report that relates to a body corporate and is published by or on behalf of the body or by or on behalf of one or more of its directors and:
 - (i) does not contain matter that materially affects affairs of the body other than matter previously made available in a prospectus that has been lodged, an annual report or a report referred to in paragraph (a) or (b);
 - (ii) does not contain a reference, whether directly or indirectly, to an offer of securities for subscription or purchase or to an invitation to subscribe for or buy securities, being an offer or invitation that, when the report is published, is open or is intended to be made or issued, other than a reference to the principal business of the body where the principal business of the body is the borrowing of money and the provision of finance; and
 - (iii) is not accompanied by a copy of a prospectus that has been lodged or a notice described in subsection 1025(3), and is a report that the body and its directors have taken all reasonable steps to ensure is not published in a form or manner in which it might be associated with a notice described in subsection 1025(3);
 - (d) a report published on behalf of a body corporate by or on behalf of its directors with the consent of the Commission;

The Corporations Law—Section 1026

- (e) a report that is a news report (whether or not with other comment), or is genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising relating to:
 - (i) a prospectus that has been lodged or information contained in such a prospectus; or
 - (ii) a report referred to in paragraph (a), (b), (c) or (d);if none of the following:
 - (iii) that person;
 - (iv) an agent or employee of that person;
 - (v) where the report or comment is published in a newspaper or periodical—the publisher of the newspaper or periodical; or
 - (vi) where the report or comment is published by broadcasting or televising—the licensee of the broadcasting or television station by which it is published;receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of securities to which the report or comment relates as an inducement to publish, or as the result of the publication of, the report or comment;
- (f) a report where the report is not published:
 - (i) by or on behalf of a body corporate to which the report relates or, whether directly or indirectly, at the instigation of, or by arrangement with, the body corporate or its directors;
 - (ii) by or on behalf of the directors or promoters of a proposed body corporate to which the report relates; or
 - (iii) by or on behalf of a person who has an interest in the success of the issue of securities to which the report relates;and the person publishing the report does not receive and is not entitled to receive any consideration or other benefit from the body corporate or any of its directors or any of the directors or promoters of the proposed body corporate, or

The Corporations Law—Section 1027

from a person mentioned in subparagraph (iii), as an inducement to publish, or as the result of the publication of, the report; or

- (g) a report containing only matter that is prescribed matter for the purposes of this subsection or relating only to a body corporate that is, or is included in a class of bodies corporate that is, prescribed for the purposes of this subsection.
- (3) Except as provided by subsection (2), a person who is aware that a prospectus relating to an issue of securities:
- (a) is in course of preparation by or on behalf of a corporation, or in respect of a corporation that is proposed to be formed; or
 - (b) has been issued by or on behalf of a corporation;
- shall not publish a report that is reasonably likely to induce persons to apply for those securities.

1027 Evidentiary provisions etc

- (1) In this section:

notice means a notice within the meaning of section 1025;

report means a report within the meaning of section 1026.

- (2) A person who publishes a notice or report relating to a body corporate or proposed body corporate after receiving a certificate that:
- (a) specifies the names of 2 directors of the body or 2 proposed directors of the proposed body and is signed by those directors or proposed directors; and
 - (b) is to the effect that, because of subsection 1025(2) or 1026(2), subsection 1025(3) or 1026(3), as the case may be, does not apply to the notice or report;
- does not contravene subsection 1025(3) or 1026(3), as the case may be.

The Corporations Law—Section 1028

- (3) Where a notice or report to which a certificate under subsection (2) relates is published, each director or proposed director who signed that certificate shall, for the purposes of sections 1025 and 1026, be deemed to have published the notice or report.
- (4) A person who publishes a notice or report to which a certificate under subsection (2) relates shall, if the Commission requires the person to do so, deliver the certificate to the Commission as soon as practicable.
- (5) In proceedings for a contravention of section 1025 or 1026 a certificate relating to a notice or report that purports to be a certificate under this section is *prima facie* evidence that:
 - (a) when the certificate was issued, the persons named in the certificate as directors of the body corporate or proposed directors of the proposed body corporate, as the case may be, were the directors or proposed directors;
 - (b) the signatures in the certificate purporting to be the signatures of the directors or proposed directors, as the case may be, are those signatures; and
 - (c) the publication of the notice was authorised by those directors or proposed directors, as the case may be.
- (6) Nothing in section 1025 or 1026 or this section limits or diminishes the liability that a person may incur, otherwise than under section 1025 or 1026 or this section, under any rule of law or under any other enactment.

1028 Retention of over-subscriptions in debenture issues

- (1) A corporation shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the corporation has specified in the prospectus:
 - (a) that it expressly reserves the right to accept or retain oversubscriptions; and
 - (b) a limit on the amount of over-subscriptions that may be accepted or retained.

The Corporations Law—Section 1029

- (2) Subject to section 1021 and any regulations made for the purposes of subsection 1021(7), where a corporation specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions:
- (a) the corporation shall not cause, authorise or permit any statement or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total assets and the total liabilities of the corporation; and
 - (b) the corporation shall set out in the prospectus a statement or reference as to what the total assets and total liabilities of the corporation would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.
- (3) In this section:

prospectus includes a prospectus issued before the commencement of this Part.

1029 Documents to be kept by corporations

A corporation in respect of which a prospectus has been lodged shall cause:

- (a) a true copy, verified by a statement in writing, of any consent required by section 1032 to the issue of the prospectus; and
- (b) a true copy, verified by a statement in writing, of every material contract referred to in the prospectus or, in the case of such a contract that is not reduced to writing, a memorandum, verified by a statement in writing, giving full particulars of the contract;

to be deposited, within 7 days after lodgment of the prospectus, at the registered office of the corporation in Australia and shall keep each such copy for a period of at least 6 months after the lodgment of the prospectus for inspection by any person without charge.

1030 Document containing offer of securities for sale deemed to be prospectus

- (1) Where a corporation allots or issues or agrees to allot or issue to a person any securities of the corporation for the purpose of all or any of them being offered for sale:
 - (a) any document by which the offer for sale is made shall, for all purposes, be deemed to be a prospectus issued by the corporation; and
 - (b) for the purposes of this Law, any other law of this jurisdiction and any rule of law, persons accepting the offer in respect of any securities shall be deemed to have been subscribers for the securities.
- (2) Nothing in subsection (1) prejudices the liability (if any) of the persons by whom the offer is made in respect of statements in, or omissions from, the document or otherwise.
- (3) For the purposes of this Act, unless the contrary is proved, it is evidence that an allotment or issue of, or an agreement to allot or issue, securities was made for the purpose of the securities being offered for sale if it is shown:
 - (a) that an offer of the securities or of any of them for sale was made within 6 months after the allotment or issue or agreement to allot or issue; or
 - (b) that an offer of the securities or of any of them for sale was made, and that, when the offer was made, the corporation had not received the whole of the consideration to be received in respect of the securities.
- (4) The requirements of this Division apply as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.
- (5) In addition to complying with the other requirements of this Division, the document making the offer shall state:

The Corporations Law—Section 1031

- (a) the net amount of the consideration received or to be received by the corporation in respect of securities to which the offer relates; and
 - (b) the place and time at which the contract under which the securities have been or are to be allotted or issued may be inspected.
- (6) Where an offer to which this section relates is made by a body corporate or a firm, it is sufficient for the purposes of subsection 1021(13) if the document referred to in subsection (1) is signed on behalf of the body corporate or firm by 2 directors of the body corporate or by members of the firm who constitute not less than one-half of the number of members of the firm, as the case may be, and any such director or member may sign by an agent authorised in writing.
- (7) For the purposes of this section, an invitation to make offers to buy securities shall be deemed to constitute an offer of the securities for sale and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer of the securities for sale that is so deemed to be constituted by the invitation.

1031 Allotment or issue of securities where prospectus indicates application for quotation on stock market

- (1) Subject to this section, where a prospectus in relation to securities of a corporation states that application has been or will be made to a securities exchange, whether in Australia or elsewhere, for permission for the securities to be listed for quotation on the stock market of that securities exchange and:
- (a) the permission is not applied for in the form for the time being required by that securities exchange on or before the third day on which that securities exchange is open after the date of issue of the prospectus; or
 - (b) the permission is not granted before the end of 6 weeks after the date of issue of the prospectus or such longer period, not exceeding 12 weeks, after the date of issue as is, within those

The Corporations Law—Section 1031

- 6 weeks, notified to the applicant by or on behalf of the securities exchange;
- any allotment or issue, whenever made, on an application pursuant to the prospectus is void and the corporation shall repay, in accordance with the following provisions of this section, any money received by it pursuant to the prospectus.
- (2) Where a corporation is liable under subsection (1) to repay money received pursuant to a prospectus:
- (a) the money shall be repaid as soon as practicable without interest; and
 - (b) if the money is not repaid:
 - (i) where the liability to repay the money arose because of paragraph (1)(a)—within 14 days after the third day referred to in that paragraph; or
 - (ii) where the liability to repay the money arose because of paragraph (1)(b)—within 14 days after:
 - (A) the period of 6 weeks first referred to in that paragraph; or
 - (B) if a longer period has been notified under that paragraph—that longer period;
- then, in addition to the liability of the corporation to repay the money, the directors are jointly and severally liable to repay the money with interest at the rate of 8% per annum (or, if another rate is prescribed, that other rate) calculated from the end of the 14 days referred to in subparagraph (i) or (ii), as the case requires.
- (3) Where, in relation to any securities of a corporation:
- (a) permission is not applied for as specified in paragraph (1)(a); or
 - (b) permission is not granted as specified in paragraph (1)(b);
- the Commission may, by notice published in the *Gazette*, on the application of the corporation made before any security is purported to be allotted or issued, exempt the allotment or issue of the securities from the operation of this section.

The Corporations Law—Section 1031

- (4) A director is not liable under this section if it is proved that the default in the repayment of the money was not due to any misconduct or negligence on the part of that director.
- (5) Without limiting the application of any of the provisions of this section apart from this subsection, this section applies:
 - (a) in relation to any securities agreed to be taken by a person underwriting an offer of, or invitation in relation to, those securities contained in a prospectus as if the person had applied for those securities pursuant to the prospectus; and
 - (b) in relation to a prospectus offering shares or prescribed interests for sale or inviting offers to buy shares or prescribed interests, as if:
 - (i) a reference to sale or purchase, as the case may be, were substituted for a reference to allotment; and
 - (ii) the persons by whom the offer is made or the invitation is issued, and not the corporation, were liable under this section to repay money received from applicants, and references to the corporation's liability under this section were construed accordingly.
- (6) A corporation that receives money pursuant to a prospectus as mentioned in the preceding provisions of this section shall keep the money in a separate bank account so long as the corporation is liable to repay it under this section.
- (7) Where a securities exchange has, within the period applicable under paragraph (1)(b), granted permission subject to compliance with any requirements specified by the securities exchange, permission shall be deemed to have been granted by the securities exchange if the directors have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.
- (8) A director of a corporation shall not contravene an undertaking given by the directors of the corporation as mentioned in subsection (7).

The Corporations Law—Section 1032

- (9) A person shall not issue a prospectus inviting persons to subscribe for, or offering to accept subscriptions for, securities of a corporation if the prospectus includes:
- (a) a false or misleading statement that permission has been granted for those securities to be dealt in or quoted or listed for quotation on a stock market of a securities exchange; or
 - (b) a statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the securities on, or on a stock market of, a securities exchange, or to any requirements of a securities exchange unless that statement is, or is to the effect that, permission has been granted or that application has been or will be made to the securities exchange within 3 days after the issue of the prospectus.
- (10) A condition requiring or binding, or purporting to require or bind, an applicant for securities to waive compliance with a requirement of this section is void.
- (11) In this section:

prospectus includes a prospectus issued before the commencement of this Part.

1032 Expert's consent to issue of prospectus containing statement by the expert

A person shall not issue a prospectus in relation to securities of a corporation that includes a statement purporting to be made by an expert or to be based on a statement made by an expert unless:

- (a) the expert has given, and has not, before lodgment of the prospectus, withdrawn, the expert's written consent to the issue of the prospectus with the statement included in the form and context in which it is included; and
- (b) there appears in the prospectus a statement that the expert has given, and has not withdrawn, the expert's consent.

The Corporations Law—Section 1033

1033 Order to stop issue of securities

- (1) Where it appears to the Commission that any of the circumstances referred to in subsection (2) exist in respect of a prospectus lodged in relation to securities of a corporation, the Commission may, by order in writing served on the person by whom the prospectus was lodged, direct that no further securities to which the prospectus relates be issued.
- (2) The circumstances are:
 - (a) the prospectus contravenes in a substantial respect any of the requirements of this Division;
 - (b) the prospectus contains a statement, promise, estimate or forecast that is false, misleading or deceptive; and
 - (c) the prospectus contains a material misrepresentation.
- (3) Subject to this section, the Commission shall not make an order under subsection (1) unless the Commission has held a hearing and given a reasonable opportunity to any interested persons to make oral or written submissions to the Commission on the question whether such an order should be made.
- (4) If the Commission considers that any delay in making an order under subsection (1) pending the holding of a hearing would be prejudicial to the public interest, the Commission may make an interim order or interim orders under that subsection without holding a hearing.
- (5) Subject to subsection (6), an interim order, unless sooner revoked, has effect until the end of 21 days after the day on which it is made.
- (6) At any time during the hearing, the Commission may make an interim order under subsection (1) that is expressed to have effect until the Commission makes a final order after the conclusion of the hearing or until the interim order is revoked, whichever first happens.
- (7) While an order is in force under this section:

The Corporations Law—Section 1034

- (a) this Division applies as if the prospectus had not been lodged; and
 - (b) a person is not entitled to lodge a further prospectus in relation to the securities other than a supplementary prospectus under section 1024.
- (8) If, while an order is in force under this section, the Commission becomes satisfied that, whether because of the lodgment of a supplementary prospectus or otherwise, the circumstances that resulted in the making of the order no longer exist, the Commission may, by further order in writing, revoke the first-mentioned order.

1034 Transitional

- (1) Where a copy of a prospectus in relation to securities of a corporation was registered by the NCSC within 6 months before the commencement of this Part for the purposes of a corresponding previous law of this jurisdiction, the copy is taken to be a prospectus in relation to those securities:
 - (a) lodged with the Commission on the commencement of this Part for the purposes of this Part; and
 - (b) in the case of a registrable prospectus—registered by the Commission on the commencement of this Part.
- (2) Where the NCSC has exercised its power under a previous law of this jurisdiction that corresponds to section 1084 to extend the period during which securities may be allotted or issued pursuant to a prospectus, subsection (1) applies in relation to the prospectus as if the reference to 6 months were a reference to the period so extended.
- (3) Nothing in this section operates to alter the date of issue of the prospectus for the purposes of this Law.
- (4) The regulations may make provision about the application, to a prospectus to which subsection (1) applies, of:
 - (a) the provisions of this Law (other than the applied provisions); and

The Corporations Law—Section 1034

- (b) the provisions of previous corresponding laws of this jurisdiction.
- (5) The regulations that may be made under subsection (4) include, but are not limited to, regulations providing that a specified provision of this Law or a corresponding previous law of this jurisdiction applies, in relation to prospectuses, subject to modifications specified in those regulations.
- (6) In this section:

applied provisions means the provisions of this Law that are expressed to apply to prospectuses issued before the commencement of this Part.

Division 3—Restrictions on allotment and variation of contracts

Subdivision A—Provisions relating to companies

1035 Prohibition of allotment unless minimum subscription received

- (1) A company shall not make an allotment of shares in the company if the shares have been offered for subscription, or an invitation to subscribe for the shares has been issued, whether the offer or invitation was made or issued before or after the commencement of this Part, unless:
 - (a) the minimum subscription has been subscribed; and
 - (b) the amount payable on application for the shares so subscribed has been received by the company.
- (2) For the purposes of subsection (1), where a company has, whether before or after the commencement of this Part, received a cheque or order for the payment of money for the amount payable on application for an allotment of shares in the company, the amount shall be deemed not to have been received by the company until the cheque or order is paid by the banker or other person on which it is drawn.
- (3) In ascertaining for the purposes of subsection (1) whether the minimum subscription has been subscribed in relation to an allotment of shares, there shall, in respect of each share for the allotment of which an application has been made, be deemed to have been subscribed an amount equal to the sum of:
 - (a) the nominal value of that share; and
 - (b) if the share is, or is to be, issued at a premium—the amount of the premium payable on the share;less any amount payable otherwise than in cash.
- (4) Except in the case of a no liability company, the amount payable on application for each share that has been offered or in respect of

The Corporations Law—Section 1036

which an invitation to subscribe has been issued shall be not less than 5% of the nominal amount of the share.

1036 Repayment of subscriptions

- (1) If the requirements referred to in paragraphs 1035(1)(a) and (b) have not been satisfied within 4 months after the issue of the prospectus in relation to the shares, the company shall repay, within 7 days after the end of those 4 months, all money received from applicants for shares.
- (2) If any such money is not so repaid, the directors are, whether or not they or any of them have been convicted of an offence or offences in respect of the failure to repay the money, jointly and severally liable to repay the money with interest at the rate of 8% per annum (or if another rate is prescribed, that other rate) calculated from the end of the period of 7 days.
- (3) A director is not guilty of an offence in respect of a contravention of subsection (1), and is not liable under subsection (2) in respect of such a contravention, if it is proved that the failure to repay the money was not due to any misconduct or negligence by that director.
- (4) In this section:

prospectus includes a prospectus issued before the commencement of this Part.

1037 Allotment voidable at applicant's option

- (1) Except as provided by section 1041, an allotment of shares made by a company to an applicant in contravention of this Division is voidable at the option of the applicant and is so voidable notwithstanding that the company is in the course of being wound up.
- (2) An option referred to in subsection (1) is exercisable by written notice served on the company:

The Corporations Law—Section 1038

- (a) if the company is not required to hold a statutory meeting—within one month after the date of the allotment; or
- (b) otherwise:
 - (i) if the company holds the statutory meeting within the period specified in subsection 244(1)—within one month after the date of the allotment or the holding of the statutory meeting, whichever is the later; or
 - (ii) if the company fails to hold the statutory meeting within that period—within one month after the end of that period or the date of the allotment, whichever is the later.

1038 Restriction on varying contracts referred to in prospectus

A company shall not, before the statutory meeting, vary the terms of a contract referred to in a prospectus relating to securities of the company unless the variation is made subject to the approval of the statutory meeting.

Subdivision B—Provisions relating to corporations

1039 Certain conditions void

A condition requiring or binding, or purporting to require or bind, an applicant for securities of a corporation to waive compliance with any requirement of this Division is void.

1040 Securities not to be allotted or issued after 6 months

A corporation shall not allot or issue, and an officer or promoter of a proposed corporation shall not authorise or permit to be allotted or issued, securities on the basis of a prospectus (including a prospectus issued before the commencement of this Part) after the end of 6 months after the issue of the prospectus.

1041 Validity of allotment or issue of securities

An allotment or issue of securities of a corporation is not void or voidable merely because it took place more than 6 months after the issue of the relevant prospectus (including a prospectus issued before the commencement of this Part).

1042 Liability of directors for loss or damage

- (1) A director of a corporation who knowingly contravenes a provision of this Division is, whether or not the director has been convicted of an offence in respect of the contravention, liable to compensate the corporation and any person to whom an allotment has been made in contravention of this Division for any loss, damage or costs that the corporation or the person has suffered or incurred because of the allotment.
- (2) A person is not entitled to begin proceedings for the recovery of any such compensation after the end of 2 years after the date of the allotment.

1043 Application money to be held in trust

- (1) Where, whether before or after the commencement of this Part, securities of a corporation have been offered for subscription or purchase or invitations have been issued to subscribe for or buy securities of a corporation, all application money and other money paid, whether before or after that commencement, by an applicant on account of the securities before they are allotted or issued shall, until they are allotted or issued, be held by the corporation in trust for the applicant in a bank account established and kept by the corporation solely for the purpose of depositing application money and other money paid by applicants for those securities.
- (2) A bank with which any such money has been deposited does not have any duty to inquire into or see to the proper application of the money so long as the bank acts in good faith.

Division 4—Debentures

1044 Application of Division

Sections 1045 and 1052 to 1060 (inclusive) do not apply in relation to:

- (a) an excluded issue of securities; or
- (b) an excluded offer of securities for subscription or purchase; or
- (c) an excluded invitation to subscribe for or buy securities.

1045 How debentures may be described

- (1) Where a document acknowledges, evidences, or constitutes an acknowledgement of, the indebtedness of a corporation in respect of money accepted by the corporation as a deposit or loan from any person in response to an invitation or offer referred to in subsection 1023(1), the document shall, in the prospectus in relation to the invitation or offer, in any other document constituting or relating to the invitation or offer, and in the document itself, be described or referred to in accordance with this section as:
 - (a) an unsecured note or an unsecured deposit note;
 - (b) a mortgage debenture or certificate of mortgage debenture stock; or
 - (c) a debenture or certificate of debenture stock.
- (2) The document shall be described or referred to as an unsecured note or an unsecured deposit note unless, pursuant to the provisions of either subsection (3) or (4), it is, and may be, otherwise described.
- (3) The document may be described or referred to as a mortgage debenture or certificate of mortgage debenture stock if, and only if, there is included in the prospectus a statement to the effect that:

The Corporations Law—Section 1045

- (a) the payment of all money that has been or may be deposited with or lent to the corporation in response to the invitation or offer is secured by a first mortgage given to the trustee for the holders of the debentures to be issued in relation to the deposit or loan over land vested in the corporation or in any of its guarantor bodies;
 - (b) the mortgage has been duly registered, or is a registrable mortgage that has been lodged for registration, in accordance with the law relating to the registration of mortgages of land in the place where the land is situated; and
 - (c) the total amount of that money and of all other liabilities (if any) secured by the mortgage of that land ranking *pari passu* with the liability to repay that money does not exceed 60% of the value of the corporation's interest in that land as shown in the valuation included in the prospectus.
- (4) The document may be described or referred to as a debenture or certificate of debenture stock if, and only if:
 - (a) pursuant to subsection (3) it may be, but is not, described or referred to in the prospectus or document as a mortgage debenture or certificate of mortgage debenture stock; or
 - (b) the prospectus contains a statement in accordance with subsection (5).
- (5) A statement referred to in paragraph (4)(b) shall be to the effect that:
 - (a) the repayment of all money that has been or may be deposited with or lent to the corporation in response to the invitation or offer has been secured by a charge in favour of the trustee for the holders of the debentures over the whole or any part of the tangible property of the corporation and of its guarantor bodies or any of them; and
 - (b) the tangible property that constitutes the security for the charge is sufficient and is reasonably likely to be sufficient to meet the liability for the repayment of all such money and all other liabilities ranking in priority to, or *pari passu* with, that liability that have been or may be incurred.

The Corporations Law—Section 1046

- (6) This section applies in relation to every document referred to in subsection (1) that is issued after the commencement of this Part, notwithstanding anything in any debenture or trust deed issued or executed before that commencement and in force for the time being.
- (7) For the purposes of this section, a document issued by a borrowing corporation certifying that a person specified in the document is, in respect of any deposit with or loan to the corporation, the registered holder of a specified number or value:
 - (a) of unsecured notes or unsecured deposit notes;
 - (b) of mortgage debentures or certificates of mortgage debenture stock; or
 - (c) of debentures or certificates of debenture stock;issued by the corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan.

1046 Application

The following provisions of this Division apply in relation to debentures whether issued before or after the commencement of this Part.

1047 Register of debenture holders and copies of trust deed

- (1) A company that issues debentures (whether in this jurisdiction or elsewhere) must keep in Australia a register of holders of debentures, whether issued in this jurisdiction or elsewhere.
- (2) A registered Australian body (other than a registrable local body) that issues debentures:
 - (a) in this jurisdiction; or
 - (b) whether in this jurisdiction or elsewhere, pursuant to an application in which an address in this jurisdiction was specified as the address of the applicant for the debentures;must keep in Australia a register of the holders of those debentures.

The Corporations Law—Section 1047

- (2A) A registered foreign company that issues debentures (whether in this jurisdiction or elsewhere):
- (a) pursuant to an application in which an address in Australia or an external Territory was specified as the address of the applicant for debentures; or
 - (b) pursuant to an application made on a form of application attached to, or accompanied by, a prospectus a copy of which has been lodged;
- must keep in Australia a register of the holders of those debentures.
- (3) A register kept under this section shall:
- (a) contain particulars of the names and addresses of the holders of debentures and the respective amounts of debentures held by them; and
 - (b) except when duly closed, be open for inspection at the place where it is kept in accordance with section 1302:
 - (i) by the registered holder of any debentures of, or by any holder of shares in, the corporation—without charge; and
 - (ii) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the corporation requires or, where the corporation does not require the payment of an amount, without charge.
- (4) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles, in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the debentures, during such periods (not exceeding in total 30 days in any calendar year) as are specified in those provisions.
- (5) A registered holder of debentures of, or a holder of shares in, a corporation may request the corporation to give to the holder a copy of its register of the holders of debentures kept under this section or any part of that register.

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- (6) A registered holder of debentures of a corporation may request the corporation to give to the holder a copy of any trust deed relating to or securing the issue of those debentures.
- (7) Where a corporation receives a request under subsection (5) or (6), the corporation shall comply with the request:
 - (a) if the corporation requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the corporation or within such longer period as the Commission approves; or
 - (b) otherwise—within 21 days after the request is made or within such longer period as the Commission approves.
- (8) The Commission may at any time by written notice require a corporation to lodge a copy of any trust deed relating to or securing the issue of debentures of the corporation and, where a corporation receives a notice under this subsection, the corporation shall comply with the notice within 21 days after the day on which it receives the notice.
- (9) In this section:

debenture, in relation to a corporation, means a document issued by the corporation that evidences or acknowledges indebtedness of the corporation in respect of money that is or may be deposited with or lent to the corporation, whether constituting a charge on property of the corporation or not, other than:

 - (a) a cheque, order for the payment of money or bill of exchange; or
 - (b) a promissory note having a face value of not less than \$50,000;

and includes a unit of a debenture.

1048 Branch registers of debenture holders

- (1) A corporation that is required by section 1047 to keep a register of holders of debentures may keep a branch register of holders of debentures in any place inside or outside Australia.

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- (2) A branch register kept by a corporation shall be deemed to be part of the register of holders of debentures kept by that corporation.
- (3) A branch register shall be kept in the same manner as that in which the principal register is required to be kept.
- (4) A corporation shall send to the place at which its principal register is kept a copy of every entry in a branch register within 28 days after the entry is made, and shall keep at that place, duly entered up from time to time, a duplicate of its branch register, and the duplicate branch register shall, for the purposes of this Law, be deemed to be part of the principal register.
- (5) Subject to the provisions of this section with respect to the duplicate branch register, the debentures registered in a branch register shall be distinguished from the debentures registered in the principal register, and no transaction with respect to any debentures registered in a branch register shall, during the continuance of that registration, be registered in any other register.
- (6) A corporation may discontinue a branch register and thereupon the corporation shall transfer all entries in that register to some other branch register kept by the corporation in the same State or Territory or, if there is no other branch register kept by the corporation in that State or Territory, to the principal register.
- (7) A branch register is *prima facie* evidence of any matters that are by this section authorised to be inserted in that register.
- (8) In this section:

branch register, in relation to a corporation, means a branch register of holders of debentures issued by the corporation that is kept under this section;

debenture has the same meaning as in section 1047;

principal register, in relation to a corporation, means the register of holders of debentures issued by the corporation that is kept under section 1047.

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1049 Specific performance of contracts

A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

1050 Perpetual debentures

Notwithstanding any rule of law or equity to the contrary, a condition contained in any debenture or in any deed for securing any debentures, whether the debenture or deed is issued or made before or after the commencement of this Part, is not invalid merely because the debentures are, by the condition, made irredeemable or redeemable only on the happening of a contingency however remote or at the end of a period however long.

1051 Re-issue of redeemed debentures

- (1) Where a company has redeemed any debentures, whether before or after the commencement of this Part:
 - (a) unless any provision to the contrary, whether express or implied, is contained in the articles or in a contract entered into by the company; or
 - (b) unless the company has, by passing a resolution to that effect or by some other act, shown its intention to cancel the debentures;the company has, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.
- (2) The re-issue of a debenture or the issue of one debenture in place of another under this section, whether the re-issue or issue was made before or after the commencement of this Part, shall not be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the company.

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- (3) After the re-issue of any debentures the debentures have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.
- (4) Where a company has, whether before or after the commencement of this Part, deposited any of its debentures to secure advances on current account or otherwise, the debentures shall not be taken to have been redeemed merely because of the account of the company having ceased to be in debit while the debentures remain so deposited.

1052 Qualifications of trustee for debenture holders

- (1) Subject to this section:
 - (a) a corporation that, in this jurisdiction, issues invitations to subscribe for or buy debentures or offers debentures for subscription or purchase; or
 - (b) a corporation that, in this jurisdiction or elsewhere, offers debentures as consideration for the acquisition, under a takeover scheme, of shares in a body corporate;shall make provision in a trust deed relating to those debentures for the appointment, as a trustee for the holders of those debentures, of a body corporate (in this section called a **trustee**) being:
 - (c) a person constituted as the Public Trustee in any State or Territory;
 - (d) a body corporate authorised by a law of a State or Territory to take in its own name a grant of probate of the will, or of letters of administration of the estate, of a dead person;
 - (e) a body corporate registered under the *Life Insurance Act 1945*;
 - (f) an Australian bank;
 - (g) a body corporate (in this paragraph called the **subsidiary**) the whole of the issued shares of which are held beneficially by a body corporate or bodies corporate of a kind referred to in paragraph (d), (e) or (f) (in this paragraph called the **holding company**) if:

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- (i) the holding company is liable for all liabilities incurred or to be incurred by the subsidiary as trustee for the holders of the debentures; or
 - (ii) the holding company has subscribed for and beneficially holds shares in the subsidiary, being shares in respect of which there is a liability of not less than \$500,000 that has not been called up and which, because of a special resolution of the members of the subsidiary, is not capable of being called up except in the event, and for the purposes, of the winding up of the subsidiary; or
 - (h) a body corporate approved by the Commission for the purposes of this subsection.
- (2) The approval of a body corporate by the Commission under paragraph (1)(h) shall be given by notice published in the *Gazette* and:
- (a) may be given generally or in relation to a particular borrowing corporation, a particular class of borrowing corporations or a particular trust deed;
 - (b) may be given subject to such terms and conditions (if any) as the Commission thinks fit and are specified in the notice; and
 - (c) may be varied or revoked by the Commission by notice published in the *Gazette*.
- (3) Where the approval of a body corporate has been revoked under subsection (2), the borrowing corporation shall appoint a trustee qualified under this section in place of the trustee that, because of the revocation, has ceased to be qualified.
- (4) Where a borrowing corporation is required by subsection (1) to make provision in a trust deed for the appointment of a trustee for the holders of debentures, the borrowing corporation shall not issue any of those debentures until the person proposed to be appointed has consented to act as trustee and the appointment has been made.
- (5) Except by leave of the Court, a body corporate shall not be appointed, hold office or act as trustee for the holders of debentures of a borrowing corporation if that body:

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- (a) is a shareholder that beneficially holds shares in the borrowing corporation;
 - (b) is beneficially entitled to moneys owed by the borrowing corporation to it;
 - (c) is indebted (otherwise than as a trustee) in an amount exceeding \$5,000 to the borrowing corporation;
 - (d) has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest on that debt; or
 - (e) is related to:
 - (i) a body corporate of a kind referred to in any of the preceding paragraphs; or
 - (ii) the borrowing corporation.
- (6) Subsection (5) does not prevent a body corporate from being appointed, holding office or acting as trustee for the holders of debentures of a borrowing corporation merely because:
- (a) the borrowing corporation owes to the body corporate or to a body corporate that is related to the body corporate:
 - (i) money the amount of which (excluding any money referred to in subparagraphs (ii) and (iii)), does not:
 - (A) at the time of the appointment or at any time within 3 months after the debentures are first offered—exceed 10% of the amount of the debentures in respect of which invitations or offers are proposed to be issued or made within those 3 months; and
 - (B) at any time after the end of those 3 months—exceed 10% of the amount owed by the borrowing corporation to the holders of the debentures;
 - (ii) money that is secured by, and only by:
 - (A) a first mortgage over land of the borrowing corporation;
 - (B) debentures issued by the borrowing corporation; or

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- (C) debentures to which neither the body corporate, nor any body corporate that is related to the body corporate, is beneficially entitled; or
 - (iii) money to which the body corporate, or a body corporate that is related to the body corporate, is entitled as trustee for holders of any debentures of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed; or
 - (b) the body corporate, or a body corporate that is related to the body corporate, is a shareholder of the borrowing corporation in respect of shares that it beneficially holds, if the voting shares in the borrowing corporation beneficially held by the body corporate, and by all other bodies corporate that are related to it, do not exceed 10% of the voting shares in the borrowing corporation.
- (7) Nothing in subsection (5):
 - (a) affects the operation of any debentures or trust deed issued or executed before the date specified in an application order; or
 - (b) applies in relation to the trustee for the holders of any such debentures;unless, under any such debentures or trust deed, a further offer of debentures was or is made on or after that date.

1053 Retirement of trustees

- (1) Notwithstanding anything in any other law or in the relevant debentures or trust deed, a trustee for the holders of debentures of a corporation does not cease to be the trustee until a body corporate qualified under section 1052 for appointment as trustee for the holders of the debentures has been appointed to be the trustee for the holders of the debentures and has taken office as such.
- (2) Where provision has been made in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures upon retirement or otherwise, the successor may, subject to section 1052, be appointed in accordance with that provision.

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- (3) Where provision has not been made in the relevant trust deed for the appointment of a successor to a retiring trustee, the borrowing corporation may appoint a successor that is qualified for appointment under section 1052.
- (4) Notwithstanding anything in this Law, or in any debentures or trust deed, a borrowing corporation may, with the consent of an existing trustee for the holders of the debentures, appoint as successor to the existing trustee any body corporate that is qualified for appointment under section 1052 and is related to the existing trustee.
- (5) Where:
 - (a) the trustee for the holders of debentures has ceased to exist or to be qualified under section 1052;
 - (b) a trustee for the holders of debentures has not been appointed under subsection 1052(3); or
 - (c) the trustee for the holders of debentures fails or refuses to act or is disqualified under section 1052;the Court may, on the application of the borrowing corporation, the trustee (if any) for the holders of the debentures, the holder of any of the debentures or the Commission, appoint a body corporate qualified under section 1052 to be the trustee for the holders of the debentures and, where appropriate, to be that trustee in place of the trustee that so ceased to exist or to be qualified, so failed or refused to act as trustee or is so disqualified.
- (6) Where a successor is appointed to be a trustee in place of a trustee, the successor shall, within one month after the appointment, lodge notice in the prescribed form of the appointment.

1054 Contents of trust deed

- (1) A corporation shall not, in this jurisdiction, invite subscriptions for or the purchase of debentures or offer debentures for subscription or purchase unless the relevant trust deed:
 - (a) contains a limitation on the amount that the borrowing corporation may borrow under that deed or those debentures;

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- (b) contains covenants by the borrowing corporation as mentioned in subsection (3); and
 - (c) contains covenants by each body corporate that is a guarantor body in relation to the borrowing corporation as mentioned in subsection (4).
- (2) A corporation must not, in this jurisdiction or elsewhere, offer debentures as consideration for the acquisition, under a takeover scheme, of shares in a body corporate unless the relevant trust deed:
 - (a) contains a limitation on the amount that the borrowing corporation may borrow under that deed or those debentures;
 - (b) contains covenants by the borrowing corporation as mentioned in subsection (3); and
 - (c) contains covenants by each body corporate that is a guarantor body in relation to the borrowing corporation as mentioned in subsection (4).
- (3) The covenants referred to in paragraphs (1)(b) and (2)(b) are:
 - (a) a covenant that the borrowing corporation will strive to carry on and conduct its business in a proper and efficient manner;
 - (b) a covenant that the borrowing corporation will:
 - (i) make available for inspection by the trustee for the holders of debentures or any registered company auditor appointed by that trustee the whole of the accounting or other records of the borrowing corporation; and
 - (ii) give to that trustee such information as that trustee requires with respect to all matters relating to the accounting or other records of the borrowing corporation; and
 - (c) a covenant that the borrowing corporation will, on the delivery to its registered office of an application by persons holding not less than 10% in nominal value of the issued debentures to which the covenant relates, by giving notice to each of the holders of the debentures to which the covenant relates (other than debentures payable to bearer) at the holder's address as specified in the register of the holders of

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debentures, convene a meeting of the holders of those debentures:

- (i) to consider the accounts and balance-sheet that were laid before the last preceding annual general meeting of the borrowing corporation; and
- (ii) to give to the trustee directions in relation to the exercise of the trustee's powers;

being a meeting to be held at a time and place specified in the notice and to be presided over by a person nominated by the trustee or, if the trustee does not nominate a person to preside at the meeting, by a person appointed for that purpose by the holders of those debentures present at the meeting.

- (4) The covenants referred to in paragraphs (1)(c) and (2)(c) are:
 - (a) a covenant that the guarantor body will strive to carry on and conduct its business in a proper and efficient manner; and
 - (b) a covenant that the guarantor body will:
 - (i) make available for inspection by the trustee for the holders of the debentures or any registered company auditor appointed by that trustee, the whole of the accounting or other records of the guarantor body; and
 - (ii) give to that trustee such information as that trustee requires with respect to all matters relating to the accounting or other records of the guarantor body.
- (5) For the purposes of subsection (4), each guarantor body shall be deemed to be a party to the trust deed.
- (6) If a trust deed referred to in subsection (1) or (2) does not expressly contain any of the covenants mentioned in subsection (3) or (4), it shall be deemed to contain them.

1055 Power of Court in relation to certain irredeemable debentures

- (1) Notwithstanding anything in any debenture or trust deed, where, on the application of the trustee for the holders of debentures of a corporation that are irredeemable or redeemable only on the happening of a contingency or, if there is no trustee, on the

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application of the holder of any such debentures, the Court is satisfied that:

- (a) at the time of the issue of the debentures the property of the body corporate that constituted or was intended to constitute the security for the debentures was sufficient or likely to become sufficient to discharge the principal debt and any interest on that debt;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of money outstanding (regard being had to all prior charges and charges ranking *pari passu*, if any);
- (c) the property covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation, is worth less than the principal sum; and
- (d) the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest on that sum at such rate as the Court considers would be a fair rate to expect from a similar investment;

the Court may order that the security for the debentures be enforceable immediately or at such time as the Court directs.

- (2) Subsection (1) does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

1056 Duties of trustees

- (1) A trustee for the holders of debentures of a corporation:
 - (a) shall exercise reasonable diligence to ascertain whether or not the property of the borrowing corporation and of each of its guarantor bodies that is or may be available, whether by way of security or otherwise, is sufficient, or is likely to be or

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- become sufficient, to discharge the principal debt as and when it becomes due;
- (b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter that is inconsistent with the terms of the debentures or with the relevant trust deed;
 - (c) shall ensure that the borrowing corporation and each of its guarantor bodies comply with the provisions of Part 3.5 so far as they relate to the debentures and are applicable;
 - (d) shall exercise reasonable diligence to ascertain whether or not the borrowing corporation and each of its guarantor bodies have committed any breach of the covenants, terms and provisions of the debentures or the trust deed;
 - (e) except where it is satisfied that the breach will not materially prejudice the security (if any) for the debentures or the interests of the holders of the debentures—shall take all steps and do all such things as it is empowered to do to cause the borrowing corporation and any of its guarantor bodies to remedy any breach of those covenants, terms and provisions;
 - (f) where the borrowing corporation or any of its guarantor bodies fails, when so required by the trustee, to remedy a breach of the covenants, terms and provisions of the debentures or the trust deed—may place the matter of the failure to remedy the breach before a meeting of holders of the debentures, submit such proposals for the protection of their investment as the trustee considers necessary or appropriate and obtain the directions of the holders in relation to the matter; and
 - (g) where the borrowing corporation submits to those holders a compromise or arrangement—shall give to them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation to the compromise or arrangement.
- (2) Where, after due inquiry, the trustee for the holders of the debentures is at any time of the opinion that the property of the

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borrowing corporation and of any of its guarantor bodies that is or should be available, whether by way of security or otherwise, is insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Commission for an order under subsection (3).

- (3) Where such an application is made, the Commission, after giving to the borrowing corporation an opportunity of making representations in relation to the application:
 - (a) may, by written order served on the borrowing corporation at its registered office in Australia, impose such restrictions on the activities of the corporation, including restrictions on advertising for deposits or loans and on borrowing, as the Commission considers necessary for the protection of the interests of the holders of the debentures; or
 - (b) may, and, if the borrowing corporation so requires, shall, direct the trustee to apply to the Court for an order under subsection (6).
- (4) The trustee shall, when directed under paragraph (3)(b), apply to the Court for an order under subsection (6).
- (5) Where:
 - (a) after due inquiry, the trustee is at any time of the opinion that the property of the borrowing corporation and of any of its guarantor bodies that is or should be available, whether by way of security or otherwise, is insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or
 - (b) the borrowing corporation has contravened an order made by the Commission under subsection (3);the trustee may, and where the borrowing corporation has requested the trustee to do so, the trustee shall, apply to the Court for an order under subsection (6).
- (6) Where an application is made to the Court under subsection (4) or (5), the Court may, after giving the borrowing corporation an opportunity of being heard, by order, do all or any of the following:

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- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate and of obtaining their directions in relation to the protection of their interests and give such directions in relation to the conduct of the meeting as the Court thinks fit;
 - (b) stay all or any actions or other civil proceedings before any court by or against the borrowing corporation;
 - (c) restrain the payment of any money by the borrowing corporation to the holders of debentures of that corporation or to any class of such holders;
 - (d) appoint a receiver of such of the property as constitutes the security (if any) for the debentures;
 - (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing corporation or any of its guarantor bodies or the public;
- but in making any such order the Court shall have regard to the rights of all creditors of the borrowing corporation.
- (7) The Court may vary or rescind any order made under subsection (6) as the Court thinks fit.
 - (8) In making an application to the Commission or to the Court, a trustee shall have regard to the nature and kind of the security given when the debentures were offered and, if no security was given, shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing corporation.

1057 Power of trustee to apply to Court for directions

- (1) The trustee for the holders of debentures of a corporation may apply to the Court:
 - (a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or

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- (b) to determine any question in relation to the interests of the holders of debentures;
- and the Court may:
 - (c) give such directions to the trustee as the Court thinks just and reasonable; and
 - (d) if satisfied that the determination of the question will be just and beneficial—accede wholly or partially to the application on such terms and conditions as the Court thinks just and reasonable or make such other order on the application as the Court thinks just.
- (2) The Court may, on an application under this section, order a meeting of all or any of the holders of debentures to be convened to consider any matters in which they are concerned and to advise the trustee on those matters and may give such ancillary or consequential directions as the Court thinks fit.
- (3) The meeting shall be held and conducted in such manner as the Court directs, and be presided over by a person nominated by the trustee or, if the trustee does not nominate a person to preside at the meeting, by a person appointed for that purpose by the holders of debentures present at the meeting.

1058 Obligations of borrowing corporation

- (1) Where there is a trustee for the holders of any debentures of a borrowing corporation, the trustee shall, by written notice to the borrowing corporation, specify for the purposes of this section a day, being not later than 6 months after the date of the relevant prospectus, and the directors of the borrowing corporation shall:
 - (a) at the end of a period not exceeding 3 months ending on the day so specified; and
 - (b) at the end of each following period, being a period of 3 months or such shorter period as the trustee, in any special circumstances, allows;prepare a report that relates to that period and complies with the requirements of subsection (2) and, within one month after the end

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of each such period, lodge the report relating to that period with the trustee and a copy of the report with the Commission.

- (2) The report referred to in subsection (1) shall be signed by not fewer than 2 of the directors on behalf of all of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of the foregoing, shall state:
- (a) whether or not the limitations on the amount that the borrowing corporation may borrow have been exceeded and, if they have been exceeded, particulars of borrowings exceeding those limitations;
 - (b) whether or not the borrowing corporation and each of its guarantor bodies have complied with all the covenants and provisions binding upon them respectively by or under the debentures or any trust deed;
 - (c) whether or not any event has happened that has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;
 - (d) whether or not any circumstances affecting the borrowing corporation, its subsidiaries or its guarantor bodies or any of them have occurred that materially affect any security or charge included in or created by the debentures or any trust deed and, if so, particulars of those circumstances;
 - (e) whether or not there has been any substantial change in the nature of the business of the borrowing corporation or any of its subsidiaries or any of its guarantor bodies since the debentures were first issued that has not previously been reported upon as required by this section and, if so, particulars of that change; and
 - (f) where the borrowing corporation has deposited money with, lent money to, or assumed any liability of, a body corporate that is related to the borrowing corporation, particulars, with respect to each body corporate that is so related, of:

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- (i) the total of the amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report; and
 - (ii) the total of the amounts owing to the borrowing corporation in respect of money so deposited or lent and the extent of any liability so assumed as at the end of the period covered by the report;
- distinguishing between deposits, loans and assumptions of liability that are secured and those that are unsecured, but excluding any deposit with, loan to, or liability assumed on behalf of, a body corporate if that body corporate has guaranteed the repayment of the debentures of the borrowing corporation and has secured the guarantee by a charge over its property in favour of the trustee for the holders of the debentures of the borrowing corporation.
- (3) Where, during the period to which a report referred to in subsection (1) relates:
 - (a) a body corporate has become a guarantor body;
 - (b) a guarantor body has ceased to be liable for the payment of the whole or part of the money for which it was liable under the guarantee; or
 - (c) a guarantor body has changed its name;the report shall so state and shall give particulars of the matters so stated.
- (4) Where there is a trustee for the holders of any debentures issued by a borrowing corporation and the borrowing corporation or any of its guarantor bodies that has guaranteed the repayment of the money raised by the issue of those debentures creates any charge, the borrowing corporation or the guarantor body, as the case requires, shall, whether or not any demand for the particulars has been made:
 - (a) give to the trustee, within 21 days after the creation of the charge, written particulars of the charge; and
 - (b) if the total amount to be advanced on the security of the charge is indeterminate:

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- (i) give to the trustee, within 7 days after an advance is made, written particulars of the amount of the advance; or
 - (ii) where the advances are merged in a current account with bankers or trade creditors—give to the trustee, at the end of every 3 months, written particulars of the net amount outstanding in respect of the advances.
- (5) The directors of a borrowing corporation that has issued debentures (other than debentures of a kind that could be lawfully described under section 1045 as mortgage debentures or certificates of mortgage debenture stock) and of every relevant guarantor body that has guaranteed the repayment of the money raised by the issue of those debentures shall:
 - (a) at a date not later than 6 months, or, in the case of a particular body corporate, not later than the end of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that body (if any), after the end of each financial year of the body, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures a profit and loss account for that financial year and a balance-sheet as at the end of that financial year; and
 - (b) at a date not later than 10 months, or, in the case of a particular body corporate, not later than the end of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that body (if any), after the end of each financial year of the body, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures a profit and loss account for the period from the end of that financial year until the end of 6 months after the end of that financial year and a balance-sheet as at the end of the period to which the profit and loss account relates.
- (6) The directors of a borrowing corporation that is a holding company shall:

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- (a) at a date not later than 6 months, or, in the case of a particular borrowing corporation, not later than the end of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that corporation, after the end of each financial year of the corporation, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures (if any) a set of consolidated accounts for the borrowing corporation and each guarantor body that is a subsidiary of the borrowing corporation for that financial year; and
 - (b) at a date not later than 10 months, or, in the case of a particular borrowing corporation, not later than the end of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that corporation, after the end of each financial year of the corporation, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures (if any) a set of consolidated accounts for the borrowing corporation and each guarantor body that is a subsidiary of that borrowing corporation for the period from the end of that financial year until the end of 6 months after the end of that financial year.
- (7) A trustee for debenture holders of a borrowing corporation may give to the directors of a guarantor body that is a subsidiary of that borrowing corporation a notice requiring them to comply with subsection (5) and, where a notice is so given:
 - (a) the directors of the guarantor body shall comply with the requirements of subsection (5) in relation to the next financial year of that body that ends after the notice is so given and in relation to each subsequent financial year of that body; and
 - (b) where the notice is given within the 6 months after the end of a financial year of that guarantor body—the directors of the body shall comply with the requirements of paragraph (5)(b) in relation to the period beginning at the end of that financial year and ending at the end of those 6 months.

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- (8) A trustee for debenture holders shall, within 7 days after the trustee gives a notice under subsection (7), lodge a copy of that notice with the Commission.
- (9) Nothing in subsection (5), (6) or (7) applies to the directors of a body corporate that:
 - (a) is a pastoral company in respect of which an exemption granted under section 11 of the *Banking Act 1959* is in force; and
 - (b) is declared by the Commission by notice published in the *Gazette* to be a body corporate to which those subsections do not apply.
- (10) The Commission may, by notice published in the *Gazette*:
 - (a) specify terms and conditions subject to which subsection (9) has effect in relation to a body corporate; or
 - (b) vary or revoke any declaration made under subsection (9) or any terms or conditions specified under paragraph (a) of this subsection.
- (11) Subsections (1), (4), (5), (6) and (7) do not apply in respect of a borrowing corporation or a guarantor body if:
 - (a) the borrowing corporation or the guarantor body, as the case may be, is being wound up; or
 - (b) a receiver, or a receiver and manager, of property of the borrowing corporation or of the guarantor body, as the case may be, has been appointed and has not ceased to act under that appointment.
- (12) The provisions of Divisions 4, 5 and 6 of Part 3.6 (other than sections 307, 308, 309 and 310), section 313, section 332 (other than subsection (8)) and section 409 apply, with such adaptations as are necessary, to every profit and loss account and balance-sheet made out and lodged under subsection (5) of this section by the directors of a borrowing corporation as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those provisions.

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- (13) Notwithstanding anything in the preceding provisions of this section, the directors of a borrowing corporation are not required to comply, in relation to profit and loss accounts and balance-sheets required to be made out and lodged under subsection (5), with section 295 or 305 or with section 332(as it relates to group accounts) if the trustee for debenture holders consents in writing to the directors being exempt from those requirements.
- (14) The provisions of Divisions 4, 5 and 6 of Part 3.6(other than sections 307, 308, 309 and 310), section 313, section 332(other than subsection (8)) and section 409 apply, with such adaptations as are necessary, to every profit and loss account and balance-sheet made out and lodged under subsection (6) of this section by directors of the borrowing corporation as if:
 - (a) that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those provisions; and
 - (b) references in those provisions to group accounts were references to the consolidated accounts referred to in subsection (6) of this section.
- (15) The provisions of Divisions 4, 5 and 6 of Part 3.6(other than sections 295, 305, 307, 308, 309 and 310), section 332(except so far as relating to group accounts) and section 409 apply, with such adaptations as are necessary, to every profit and loss account and balance-sheet made out and lodged under subsection (5) of this section by the directors of a relevant guarantor body as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those provisions.
- (16) Notwithstanding the provisions of subsection (15), where a guarantor body, being a body corporate that is incorporated in the United Kingdom or in a State or Territory of the United States of America, has lodged with the Department of Trade or other appropriate Government Department in the United Kingdom or the Securities and Exchange Commission of the United States of America a profit and loss account and balance-sheet for a period in respect of which the body corporate is required to lodge a profit and loss account and balance-sheet under subsection (5) of this

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section, it is sufficient compliance with the requirements of that subsection if certified copies of the profit and loss account and balance-sheet so lodged with the Department of Trade or that other Department or the Securities and Exchange Commission are, with the consent of the trustee for the debenture holders, lodged with the Commission and the trustee for the debenture holders within the time prescribed by that subsection.

(17) Where:

- (a) the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by subsection (1); or
- (b) the directors of a borrowing corporation or the directors of a guarantor body do not lodge with the trustee the balance-sheets, profit and loss accounts and reports as required by subsections (5) to (15), inclusive;

within the period, or at the date, specified in the subsection concerned, the trustee shall as soon as practicable lodge notice of that fact with the Commission.

- (18) Notwithstanding anything contained in subsections (12) to (15), inclusive, the audit of a profit and loss account and balance-sheet of a borrowing corporation or its guarantor body relating to a period of 6 months immediately following a financial year of the borrowing corporation or guarantor body, as the case may be, required to be made out and lodged in accordance with subsection (5) or (6) may be dispensed with or may be of a limited nature or extent if the trustee for the holders of the debentures of the borrowing corporation has consented in writing to the audit being dispensed with or being of such a limited nature or extent, as the case may be.

- (19) Where the trustee has so consented to the audit of a profit and loss account and balance-sheet of a borrowing corporation or guarantor body being dispensed with or being of a limited nature or extent, the directors of the borrowing corporation or guarantor body, as the case may be, shall lodge with the Commission a copy of the

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consent when the profit and loss account and balance-sheet are so lodged.

- (20) Where the trustee for debenture holders for a borrowing corporation has consented to the directors of the borrowing corporation being exempt from complying with the requirements relating to profit and loss accounts and balance-sheet, referred to in subsection (13), the directors shall lodge with the Commission a copy of the consent when the profit and loss account and balance-sheet are so lodged.
- (21) Notwithstanding anything in this section, a profit and loss account and balance-sheet of a borrowing corporation or its guarantor body relating to a period of 6 months immediately following a financial year of the corporation or body required to be made out and lodged in accordance with subsection (5) may, unless the trustee for the holders of the debentures of the borrowing corporation otherwise requires in writing, be based upon the value of the trading stock of the borrowing corporation or the guarantor body, as the case may be, as:
- (a) reasonably estimated by the directors of that corporation or body on the basis of the value of that trading stock as adopted for the purpose of the profit and loss account and balance-sheet of that corporation or body laid before the corporation or body at its last preceding annual general meeting; and
 - (b) certified in writing as such by those directors.
- (22) In this section:
- relevant guarantor body***, in relation to a borrowing corporation, means:
- (a) a guarantor body that is not a subsidiary of that borrowing corporation; and
 - (b) a guarantor body that is a subsidiary of that borrowing corporation and the directors of which have been given notice under subsection (7) by the trustee for debenture holders of that borrowing corporation.

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- (23) For the purposes of the application, by virtue of subsection (12) or (14), of a provision of this Law, section 74 has effect as if paragraph 74(b) were omitted.

1059 Obligation of guarantor body to provide information

For the purpose of the preparation of a report that is required by this Law to be signed by or on behalf of the directors of a borrowing corporation or any of them, that corporation may, by written notice, require any of its guarantor bodies to provide it with any information relating to that guarantor body that is required by this Law to be contained in that report, and that guarantor body shall provide the borrowing corporation with that information before such date, being a date not earlier than 14 days after the notice is given, as is specified for that purpose in the notice.

1060 Loans and deposits to be immediately repayable on certain events

- (1) Where, in a prospectus issued in connection with an invitation to subscribe for or to buy debentures of a corporation, or in connection with an offer of debentures of a corporation for subscription or purchase, there is a statement as to any particular purpose or project for which the money received by the corporation in response to the invitation or offer is to be applied, the corporation shall from time to time make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving that purpose or completing that project.
- (2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under subsection 1058(1).
- (3) Where it appears to the trustee for the holders of the debentures that the purpose or project has not been achieved or completed within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where no such time was stated, within a reasonable time, the trustee may, and, if in the trustee's opinion it is necessary for the protection of the interests of

The Corporations Law—Section 1060

the holders of the debentures, shall, give written notice to the corporation requiring it to repay the money so received by it and the trustee shall, within one month after such a notice is given, lodge with the Commission a copy of the notice.

- (4) The trustee shall not give a notice under subsection (3) if the trustee is satisfied:
- (a) that the purpose or project has been substantially achieved or completed;
 - (b) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or
 - (c) that the failure to achieve or complete the purpose or project was due to circumstances beyond the control of the corporation that could not reasonably have been foreseen by the corporation when the prospectus was issued.
- (5) Upon receipt by the corporation of a notice referred to in subsection (3), the corporation is liable to repay any money owing to a person (in this subsection called the ***lender***) as the result of a loan or deposit made in response to the invitation or offer, and, on demand in writing by the lender, shall immediately repay the money to the lender unless:
- (a) before the money received by the corporation in response to the invitation or offer was accepted by the corporation, the corporation, by written notice served on the persons from whom money was received:
 - (i) had specified the purpose or project for which the money would in fact be applied by the corporation; and
 - (ii) had offered to repay the money to those persons;and the lender had not, within 14 days after receiving the notice or such longer time as was specified in the notice, demanded in writing from the corporation repayment of the money owing to the lender; or
 - (b) the corporation, by written notice served on the holders of the debentures:

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- (i) had specified the purpose or project for which the money would in fact be applied by the corporation; and
 - (ii) had offered to repay the money to the holders of the debentures;
- and the lender had not, within 14 days after receiving the notice or such longer time as was specified in the notice, demanded in writing from the corporation repayment of the money owing to the lender.
- (6) Where the corporation has given a written notice as provided by subsection (5) specifying the purpose or project for which the money received by the corporation in response to the invitation or offer will in fact be applied by the corporation, this section applies as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the money was to be applied.

1061 Invitations or offers by excluded corporations

Notwithstanding any other provision of this Law, an invitation by an excluded corporation to lend money to, or to deposit money with, that corporation or an offer by an excluded corporation to accept money that is lent to, or deposited with, that corporation shall, for the purposes of this Division, be deemed not to be an invitation to subscribe for or buy debentures of the corporation or an offer of debentures of the corporation for subscription or purchase.

1062 Liability of trustees for debenture holders

- (1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures of a corporation, or in any contract with the holders of debentures of a corporation secured by a trust deed, is void in so far as it would have the effect of exempting a trustee from, or indemnifying it against, liability for breach of trust where it fails to show the degree of care and diligence required of it as trustee having regard to its powers, authorities or discretions under the trust deed or contract.

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- (2) Subsection (1) does not invalidate:
 - (a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
 - (b) a provision enabling such a release to be given:
 - (i) on the agreement to the giving of the release of a majority of not less than three-quarters in nominal value of the holders of the debentures present and voting in person or, where proxies are permitted, by proxy at a meeting convened for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on its ceasing to act.
- (3) Subsection (1) does not:
 - (a) invalidate a provision in force immediately before the commencement of this Part so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed concerned; or
 - (b) deprive a trustee of an exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

Division 5—Prescribed interests

1063 Exceptions and modifications

- (1) This Division does not apply in relation to:
 - (a) an excluded issue of prescribed interests; or
 - (b) an excluded offer of prescribed interests for subscription or purchase; or
 - (c) an excluded invitation to subscribe for or buy prescribed interests.
- (2) The provisions of this Law relating to securities shall, in their application in relation to securities being prescribed interests, have effect with such modifications (if any) as are necessary or as are prescribed by the regulations.

1064 Issue of prescribed interests restricted

- (1) A person, other than a public corporation, must not make available, offer for subscription or purchase, or issue an invitation to subscribe for or buy, any prescribed interest.
- (7) Nothing in this section prohibits an agent of a public corporation authorised for the purpose under the common or official seal of the corporation from making available, offering for subscription or purchase, or issuing invitations to subscribe for or buy, a prescribed interest on behalf of the corporation and a prescribed interest made available by such an agent shall be deemed for the purposes of this section to have been made available by the corporation.
- (8) This section does not apply in relation to a prescribed interest that:
 - (a) is an interest in a partnership agreement; and
 - (b) was subscribed for or first purchased in this jurisdiction before the relevant day.
- (9) In subsection (8):

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relevant day, in relation to a jurisdiction, means:

- (a) in the case of New South Wales, Victoria or Queensland—
1 January 1972; or
- (b) in the case of Western Australia—15 October 1972; or
- (c) in the case of South Australia—5 October 1972; or
- (d) in the case of Tasmania—1 January 1963; or
- (e) in the case of the Northern Territory—1 July 1986; or
- (f) in the case of the Capital Territory—1 July 1982.

1065 No issue without approved deed

- (1) A person shall not issue, offer for subscription or purchase, or issue invitations to subscribe for or buy, any prescribed interest unless, at the time of the issue, offer or invitation, there is in force, in relation to the interest, a deed for the purposes of this Division or a corresponding law that is an approved deed.
- (2) Where a deed would, but for this subsection, have ceased to be an approved deed for the purposes of this Division because there is no trustee or representative for the purposes of the deed or the approval of the trustee or representative has been revoked or because of any other circumstance relating to the trustee or representative, the Commission may, despite section 1066, direct that the deed is to continue to be an approved deed for such period and for such purposes as the Commission directs and, upon the giving of such a direction, the deed continues to be an approved deed accordingly.
- (3) A person shall not, in any deed, prospectus, statement, advertisement or other document relating to a prescribed interest, make any reference to an approval of a deed, or an approval of a trustee or representative, granted under this Division, a corresponding law or a corresponding previous law.

1066 Approved deeds

- (1) For the purposes of this Division, a deed is an approved deed if:

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- (a) an approval has been granted to the deed under this Division or a corresponding previous law of this jurisdiction;
 - (b) an approval has been granted under this Division or a corresponding previous law of this jurisdiction to the trustee or representative appointed for the purposes of the deed acting as trustee or representative and that approval has not been revoked and the trustee or representative has not ceased to hold office; and
 - (c) the deed, or a copy of the deed verified by a written statement, has been lodged with the Commission, or was lodged before the commencement of this Part with the NCSC.
- (2) Where a deed ceases after the commencement of this Division to be an approved deed, the management company may nevertheless comply with the terms of a buy-back covenant contained or deemed to be contained in the deed.

1067 Approvals

- (1) A person may apply in writing to the Commission for the grant of its approval to a deed.
- (2) On an application under subsection (1), the Commission must grant its approval to the deed unless it is of the opinion that the deed does not comply with the requirements of this Division and of the regulations.
- (3) A person may apply in writing to the Commission for the grant of its approval to a person acting as trustee or representative for the purposes of a deed.
- (4) On an application under subsection (3), the Commission may, subject to such terms and conditions as it thinks fit, grant its approval to the person acting as trustee or representative for the purposes of the deed.
- (5) The Commission may at any time, because of a breach of a term or condition subject to which the approval was granted or for any

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other reason, revoke an approval granted under this section or a corresponding previous law.

- (6) This section has effect subject to section 102A.

1068 Lodgment of consolidated copies of deed

- (1) Where an instrument or instruments amending an approved deed have been made, the management company shall, on being required by the Commission to do so, lodge a printed copy (in this subsection called a *consolidated copy*) of the deed as amended by the instrument or instruments, being a copy that:
- (a) is verified by a written statement;
 - (b) bears a notation sufficient to distinguish it from:
 - (i) the deed as lodged, or the copy of the deed lodged, as the case may be, as mentioned in paragraph 1066(1)(c);
 - (ii) the instrument, or each of the instruments, as the case may be; and
 - (iii) each copy (if any) of the deed previously lodged under this subsection or a corresponding previous law; and
 - (c) if an amendment or amendments made by the instrument or instruments have not, as at the date on which the consolidated copy is lodged under this subsection, come into operation—has marked on it, in relation to the provision, or in relation to each provision, as the case may be, altered, omitted or inserted by the amendment or amendments, a note that identifies the instrument that altered, omitted or inserted the provision and contains a statement to the effect that:
 - (i) in the case of a provision that has been altered or omitted—the alteration or omission; or
 - (ii) in the case of a provision that has been inserted—the provision inserted;
- has not yet come into operation;
- and a consolidated copy so lodged shall for all purposes, unless the contrary is proved, be regarded as a true copy of the deed as so amended.

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- (2) Where a provision of an instrument affects the operation of a deed otherwise than by way of textual amendment, the management company shall not lodge a copy of the deed under subsection (1) unless a copy of the instrument is annexed to the copy of the deed.
- (3) A reference in this section to an instrument amending a deed includes a reference to such an instrument made before the commencement of this section, unless a copy of the deed as amended by that instrument has already been lodged under a previous law corresponding to this section.

1069 Covenants to be included in deeds

- (1) Subject to subsection (3), a deed shall contain covenants to the following effect:
 - (a) a covenant binding the management company that it will strive to carry on and conduct its business in a proper and efficient manner and to ensure that any relevant undertaking, scheme or enterprise is carried on and conducted in a proper and efficient manner;
 - (b) covenants binding the management company:
 - (i) to pay to the trustee or representative, within 30 days after receiving it, money that, under the deed, is payable by the management company to the trustee or representative;
 - (ii) not to sell or issue, or permit to be sold or issued, a relevant prescribed interest except at a price calculated in accordance with the provisions of the deed; and
 - (iii) not to publish, without the approval of the trustee or representative, a notice or other document containing a statement with respect to the sale price of relevant prescribed interests or the yield from those interests or containing any invitation to buy prescribed interests;
 - (c) a buy-back covenant;
 - (d) a covenant binding the management company to make, and to maintain at all times, adequate buy-back arrangements;
 - (e) covenants binding the trustee or representative:

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- (i) to exercise all due diligence and vigilance in carrying out his, her or its functions and duties and in protecting the rights and interests of the holders of the relevant prescribed interests;
 - (ii) to supervise the making and maintaining of adequate buy-back arrangements and to monitor the maintaining of such arrangements and the extent of compliance with the buy-back covenant;
 - (iii) to keep proper books of account in relation to those prescribed interests; and
 - (iv) to cause a registered company auditor to audit those accounts at the end of each financial year;
- (f) a covenant binding the trustee or representative to send, within 2 months after the end of each financial year, to each of the holders of those prescribed interests:
 - (i) a statement of the accounts for that financial year in relation to those prescribed interests;
 - (ii) a statement that describes the buy-back arrangements in effect when it is sent and states whether or not, in the opinion of the trustee or representative, those arrangements are adequate; and
 - (iii) a copy of the auditor's report on those accounts;
- (g) a covenant binding the management company and the trustee or representative, respectively, that no money available for investment in respect of the relevant undertaking, scheme or enterprise will be invested in or lent to the management company, the trustee or representative, or any person (other than an Australian bank or an eligible money market dealer) who is an associate of the management company or of the trustee or representative;
- (h) a covenant binding the management company that the management company will:
 - (i) make available to the trustee or representative, or to any registered company auditor appointed by the trustee or representative, for inspection all the books of the

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management company whether kept at the registered office or elsewhere; and

- (ii) give to the trustee or representative or to any such auditor such oral or written information as the trustee or representative or the auditor requires with respect to all matters relating to the undertaking, scheme or enterprise of the management company or any property (whether acquired before or after the date of the deed) of the management company or otherwise relating to the affairs of the management company;
- (j) a covenant binding the management company that the management company will make available, or ensure that there is made available, to the trustee or representative such details as the trustee or representative requires with respect to all matters relating to the relevant undertaking, scheme or enterprise;
- (k) covenants binding the management company and the trustee or representative, respectively, that the management company or the trustee or representative, as the case may be, will not exercise the right to vote in respect of any shares relating to the relevant prescribed interests held by the management company or by the trustee or representative at any election for directors of a body corporate shares in which are so held, without the consent of the majority of the holders of those interests present in person and voting given at a meeting of those holders convened in the manner provided for in paragraph (m) for the purpose of authorising the exercise of the right at the next election;
- (m) a covenant binding the management company that the management company will, within 21 days after an application is delivered to the management company at its registered office, being an application by not fewer than 50, or one-tenth in number, whichever is the less, of the holders of the relevant prescribed interests, by sending notice by post of the proposed meeting at least 7 days before the proposed meeting to each of the holders of those interests at the holder's last known address or, in the case of joint holders, to

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the joint holder whose name appears first in the management company's records, convene a meeting of the holders for the purpose of:

- (i) laying before the meeting the accounts and balance-sheet that were laid before the last preceding annual general meeting of the management company or the last audited statement of accounts of the trustee or representative; and
 - (ii) giving to the trustee or representative such directions as the meeting thinks proper; and
 - (n) such other covenants as are prescribed by the regulations.
- (2) Nothing in subsection (1) limits the generality of anything else in it.
- (3) The Commission may, by writing, declare that, subject to such terms and conditions as are specified in the declaration, a specified deed that makes provision for the appointment of a specified person as trustee for or representative of the holders of the prescribed interests to which the deed relates is not required to contain covenants to the effect of such of the matters referred to in subsection (1) as are specified in the declaration and the Commission may, by writing, revoke the declaration or vary it in such manner as it thinks fit.
- (4) The Commission shall cause a copy of a declaration under subsection (3) to be published in the *Gazette*.
- (5) Where, as at the commencement of this Division, approval had been granted to a deed under a previous law of this jurisdiction corresponding to this Division, the deed shall, if it does not contain the covenants concerned, be deemed to contain covenants to the effect of the covenants required to be contained in a deed under subsection (1), except the covenants required under subparagraphs (1)(b)(i) and (ii), paragraphs (1)(c) and (d) and subparagraphs (1)(e)(ii) and (f)(ii), and subsections (11), (12), (13) and (14) apply in relation to the deed accordingly.
- (6) Where, as at the commencement of this Division:
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- (a) approval had been granted to a deed under a previous law of this jurisdiction corresponding to this Division; and
 - (b) the deed contains a covenant to the effect of the covenant required to be contained in a deed under paragraph (1)(c);the deed shall, if it does not contain the covenants concerned, be deemed to contain covenants to the effect of the covenants required to be contained in a deed under paragraph (1)(d) and subparagraphs (1)(e)(ii) and (f)(ii).
- (7) If a deed (other than a deed to which subsection (5) or (6) applies) does not expressly contain a covenant that is required by this section to be contained in that deed, a covenant to the same effect shall, so far as is practicable, be deemed to be contained in that deed.
- (8) If:
 - (a) a prescribed interest has, whether before or after the commencement of this Division, been made available;
 - (b) there was no deed in force in relation to that interest at the time when it was made available; and
 - (c) because there was no deed so in force the making available of the interest contravened section 1065 or a corresponding previous law of this jurisdiction;the covenants that would, had such a deed been in force at that time, have been required by this section or a corresponding previous law of this jurisdiction, as the case may be to have been contained in the deed shall, so far as is practicable, be deemed to be given by a deed in force in relation to that interest.
- (9) If a regulation is made prescribing a covenant for the purposes of paragraph (1)(n), that covenant shall except in so far as the regulations provide otherwise:
 - (a) be deemed to be contained in every approved deed that is in force when the regulation comes into force; and
 - (b) in relation to a prescribed interest to which subsection (8) applies—be deemed to be given by a deed in force in relation to that interest.

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- (10) If:
- (a) a covenant that is contained in an approved deed refers to a price calculated in accordance with the deed but no provision is made for the calculation of the price; or
 - (b) a covenant that is deemed to be contained in a deed or to be given refers to such a price;
- the price shall be calculated as prescribed or as the Commission determines.
- (11) A meeting convened for the purposes of a covenant referred to in paragraph (1)(k) or (m) shall be held at the time and place specified in the notice, being a time not later than 2 months after the day on which the notice was given, to be presided over by:
- (a) a person appointed for that purpose by the holders of the relevant prescribed interests who are present at the meeting; or
 - (b) where no such appointment is made, a nominee of the trustee or representative approved by the Commission;
- and shall be conducted in accordance with the provisions of the deed or, in so far as the deed makes no provision or if there is no deed, as directed by the person presiding at the meeting.
- (12) Notwithstanding anything to the contrary contained in an approved deed, the undertaking, scheme, enterprise, contract or arrangement may be continued in operation or existence if it appears to be in the interests of the holders of the relevant prescribed interests during such period or periods as are agreed upon by the trustee or representative and the management company.
- (13) Where a direction is given to the trustee or representative at a meeting convened pursuant to a covenant referred to in paragraph (1)(m), the trustee or representative:
- (a) shall comply with the direction unless it is inconsistent with the deed or this Law; and
 - (b) is not liable for anything done or omitted to be done pursuant to that direction.

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- (14) Where the trustee or representative is of the opinion that a direction so given is inconsistent with the deed or this Law or is otherwise objectionable, the trustee or representative may apply to the Court for an order confirming, setting aside or varying the direction and the Court may make such order as it thinks fit.

1070 Register of holders of prescribed interests

- (1) The management company shall, in respect of each deed that is or has at any time been an approved deed and with which the management company is concerned, keep at the registered office or principal place of business in Australia of the management company, or at such other place in Australia as the Commission approves, a register of the holders of prescribed interests (whether made available in this jurisdiction or elsewhere) under the deed and enter in the register:
- (a) the names and addresses of the holders;
 - (b) the extent of the holding of each holder and, if the holder's prescribed interest consists of a specified interest in any property, a description of the property sufficient to identify it;
 - (c) the date at which the name of each person was entered in the register as a holder; and
 - (d) the date at which any person ceased to be a holder.
- (2) The provisions of Division 5 of Part 2.4 (except section 214) shall, with such modifications as are necessary, apply in relation to the registers kept under subsection (1).
- (3) A management company that:
- (a) keeps a register of holders of prescribed interests under subsection (1) at a place within 25 kilometres of an office of the Commission; and
 - (b) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of holders of interests;
- need not comply with the provisions of paragraph 1071(1)(c) in relation to the deed under which those interests are held unless the Commission, by order published in the *Gazette*, otherwise directs.

The Corporations Law—Section 1071

1071 Returns and information relating to prescribed interests

- (1) Where a deed is or has at any time been an approved deed, the management company shall lodge:
 - (a) so long as the deed, or any deed in substitution in whole or in part for the deed, remains in force—within 2 months after the end of each financial year applicable to the deed or substituted deed; or
 - (b) if the deed ceases to be in force and no deed has been substituted in whole or in part for the deed, or any such substituted deed ceases to be in force—within 2 months after the deed or substituted deed, as the case may be, ceases to be in force;a return in the prescribed form containing:
 - (c) a list of all persons who, at the end of the relevant financial year, were holders of the prescribed interests to which the deed or substituted deed relates; and
 - (d) such other particulars as are prescribed;and accompanied by the prescribed documents.
- (2) A document required to be lodged by the management company under subsection (1) shall be signed by at least one director of the management company.
- (3) A management company to which subsection (1) applies shall, if so requested by any holder of a prescribed interest to which the deed relates within one month after the end of the relevant financial year, send to the holder, within 2 months after the end of the relevant financial year, a copy of each of the documents that the management company is required to lodge by virtue of that subsection (other than the list referred to in paragraph (1)(c)).
- (4) In this section:

relevant financial year means:

 - (a) in a case to which paragraph (1)(a) applies—the financial year referred to in that paragraph in respect of which the return is lodged; or

The Corporations Law—Section 1072

- (b) in a case to which paragraph (1)(b) applies:
 - (i) if the deed ceases to be in force at the end of the last day of a financial year applicable to the deed—that financial year; or
 - (ii) in any other case—the period that began at the end of the last preceding financial year applicable to the deed and ended on the day on which the deed ceased to be in force.

1072 Buy-back covenant and buy-back arrangements

- (1) As soon as practicable after the trustee or representative in relation to a deed that is or has at any time been an approved deed becomes of the opinion that the buy-back arrangements are inadequate, he, she or it shall notify the management company in writing that he, she or it is of that opinion.
- (2) Where, at the end of the period of 21 days starting on the day on which a notice is given under subsection (1), the trustee or representative is still of that opinion, he, she or it shall, as soon as practicable after the end of that period, notify the Commission in writing that he, she or it is of that opinion.
- (3) Where, at the end of the period of 21 days starting on the day on which a notice is given under subsection (1), the buy-back arrangements are inadequate, the management company contravenes this subsection.
- (4) Where:
 - (a) the management company in relation to a deed that is or has at any time been an approved deed contravenes a buy-back covenant contained in the deed; and
 - (b) as at the end of 14 days after the contravention, neither the management company nor the trustee or representative has notified the Commission in writing of the contravention;the management company and the trustee or representative each contravene this subsection.

The Corporations Law—Section 1073

1073 Consequences of contravention

- (1A) A person must not contravene a covenant contained, or taken to be contained, in a deed that is, or has at any time been, an approved deed.
- (1B) A person who contravenes subsection (1A) is not guilty of an offence.
- (1) A person is not relieved from any liability to a holder of a prescribed interest merely because the person has been convicted of an offence in respect of a contravention of a provision of this Part that resulted in that liability.
- (2) Where:
 - (a) an offer of a prescribed interest for subscription has been made; or
 - (b) an invitation to subscribe for a prescribed interest has been issued;in contravention of a provision of this Law, a contract entered into by any person (other than the management company) to subscribe for the prescribed interest as a result of the acceptance by the person of the offer, or the acceptance of an offer made by the person pursuant to the invitation, is voidable at the option of that person.

1074 Winding up of schemes

- (1) Where:
 - (a) the management company under a deed is in the course of being wound up; or
 - (b) in the opinion of the trustee or representative, the management company has ceased to carry on business or has, to the prejudice of holders of prescribed interests to which the deed relates, failed to comply with a provision of the deed;the trustee or representative shall convene a meeting of those holders in the manner set out in subsection (2).

The Corporations Law—Section 1075

- (2) A meeting under subsection (1) shall be convened by sending notice of the proposed meeting at least 21 days before the proposed meeting to each holder at the holder's last known address, or, in the case of joint holders, to the joint holder whose name appears first in the management company's records.
- (3) The provisions of subsection 1069(11) apply to such a meeting as if the meeting were a meeting referred to in that subsection.
- (4) If at any such meeting a resolution is passed by a majority of not less than three-quarters in value of the holders of the prescribed interests present in person and voting at the meeting that the undertaking, scheme, enterprise, contract or arrangement to which the deed relates be wound up, the trustee or representative shall, within 28 days after the day on which the meeting is held, apply to the Court for an order confirming the resolution.
- (5) On an application by the trustee or representative, the Court may, if it is satisfied that it is in the interest of the holders of the prescribed interests, confirm the resolution and may make such orders as it thinks just and reasonable for the effective winding up of the undertaking, scheme, enterprise, contract or arrangement.

1075 Non-application of Division in certain circumstances

This Division does not apply in the case of the sale of any prescribed interest by a personal representative, liquidator, receiver or trustee in bankruptcy in the normal course of realisation of property.

1076 Liability of trustees

- (1) A provision contained in a deed that is or has been at any time an approved deed, or in any contract with the holders of prescribed interests to which such a deed relates, is void in so far as it would have the effect of exempting a trustee or representative under the deed from, or indemnifying a trustee or representative against, liability for breach of trust where the trustee or representative fails to show the degree of care and diligence required of a trustee or

The Corporations Law—Section 1076

representative having regard to the powers, authorities or discretions conferred on the trustee or representative by the deed.

(2) Subsection (1) does not invalidate:

- (a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee or representative before the giving of the release; or
- (b) any provisions enabling such a release to be given:
 - (i) on the agreement to the giving of the release of a majority of not less than three-quarters in nominal value of holders of prescribed interests present in person and voting at a meeting convened for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee or representative ceasing to act.

Division 6—Hawking of securities

1077 Interpretation

In this Division:

- (a) a reference to a person going from place to place includes a reference to a person communicating with other persons at different places by the use of an eligible communications service; and
- (b) a reference to the buying or purchase of securities includes a reference to acquiring securities by barter or exchange.

1077A Exempt securities

This Division does not apply in relation to:

- (a) an invitation to subscribe for or buy securities that because of section 69A are exempt securities in relation to this jurisdiction; or
- (b) an offer of such securities for subscription or purchase.

1078 Restriction on hawking securities

- (1) A person shall not, whether by appointment or otherwise, go from place to place:
 - (a) issuing invitations to subscribe for or buy securities of a corporation; or
 - (b) offering securities of a corporation for subscription or purchase.
- (2) Subsection (1) does not apply in relation to securities of a corporation where the Commission has, on the application of the corporation, by writing published in the *Gazette*, exempted the corporation from the operation of that subsection.
- (3) Subsection (1) does not apply in respect of an invitation or offer in relation to securities where:

The Corporations Law—Section 1079

- (a) the securities are included in a class of securities that are listed for quotation on a stock market of a securities exchange and the invitation or offer so states, specifying the securities exchange; and
 - (b) the invitation or offer was issued or made by the holder of a dealers licence and was communicated by the use of an eligible communications service.
- (4) Subsection (1) does not apply in relation to a prescribed invitation or a prescribed offer.

1079 Restriction on written invitations or offers in respect of securities

- (1) A person shall not:
- (a) issue a written invitation to a person to buy securities of a corporation; or
 - (b) make a written offer to a person of securities of a corporation for purchase;
- unless the invitation or offer is accompanied by:
- (c) a statement in writing in relation to the securities that:
 - (i) is signed by the person;
 - (ii) is dated; and
 - (iii) complies with the requirements of this section and the requirements (if any) prescribed by the regulations; or
 - (d) a prospectus in relation to the securities that complies with the requirements of Division 2.
- (2) Subject to subsection (3), subsection (1) applies in relation to an invitation or offer that is broadcast, televised or included in a cinematograph film in the same way as it applies in relation to a written invitation or offer.
- (3) Where an invitation or offer is issued or made as mentioned in subsection (2), a statement or prospectus shall be deemed to accompany the invitation or offer if:

The Corporations Law—Section 1079

- (a) the statement or prospectus is prepared by the person on whose behalf the invitation is issued or the offer is made;
 - (b) notice is given at the same time and by the same means as that by which the invitation is issued or the offer is made that a copy of the statement or prospectus will be supplied on request being made at a specified address; and
 - (c) where a request for a copy of a statement or prospectus is made at that address within one month after the invitation was issued or the offer was made—the person making the request is supplied with a copy within 7 days after the request was made.
- (3A) Subsection (1) does not apply in respect of an invitation or offer that is an excluded invitation or an excluded offer.
- (4) Subsection (1) does not apply in respect of an invitation or offer in relation to securities where:
- (a) the securities are included in a class of securities that are listed for quotation on the stock market of a securities exchange and the invitation or offer so states, specifying the securities exchange;
 - (b) the securities are securities that a corporation has allotted or issued or agreed to allot or issue for the purpose of their being offered for sale and the invitation or offer is made by a document that complies with the requirements of this Part, and any applicable rules of law, relating to prospectuses;
 - (c) the provisions of Division 2 and, where applicable, Division 4 or 5, apply in relation to the invitation or offer and have been complied with; or
 - (d) the invitation or offer relates to debentures of an excluded corporation.
- (5) A statement referred to in subsection (1) shall not contain any matter other than the particulars required by section 1080 to be included in the statement, and shall not be in characters smaller or less legible than any characters used in the invitation or offer or in any document sent with the invitation or offer.

The Corporations Law—Section 1080

1080 Particulars to be included in statement

A statement referred to in subsection 1079(1) in relation to securities of a corporation shall contain particulars as to:

- (a) whether the person issuing the invitation or making the offer is acting as principal or agent and, if as agent:
 - (i) the name of the person's principal;
 - (ii) an address in Australia where that principal can be served with process; and
 - (iii) particulars as to the remuneration payable by the principal to the agent;
- (b) the date on which and the place at which the corporation was incorporated and the address of its registered or principal office:
 - (i) in its place of incorporation; and
 - (ii) if that place is outside Australia—in Australia;
- (c) the authorised share capital of the corporation, its issued share capital, its paid-up share capital, the classes into which its share capital is divided and the rights of each class of shareholders in respect of capital, dividends and voting;
- (d) the dividends (if any) paid by the corporation in respect of each class of shares during each of the 5 financial years immediately before the invitation or offer was issued or made and, if no dividend has been paid in respect of shares of a particular class during any one or more of those years, a statement to that effect;
- (e) the total amount of any debentures issued by the corporation and outstanding at the date of the statement, together with the rate of interest payable on those debentures;
- (f) the names and addresses of the directors;
- (g) if the securities are shares—whether or not those shares are fully paid up and, if not, to what extent they are paid up;
- (h) whether or not the securities are listed for quotation on the stock market or, or permission to deal in the securities on a stock market has been granted by, any securities exchange and, if so, the name of each such securities exchange;

The Corporations Law—Section 1081

- (j) where the securities are units of shares or units of debentures—the names and addresses of the persons in whom the shares or debentures are vested, the date of, and the parties to, any document defining the terms on which those shares or debentures are held, and an address in Australia where that document or a copy of that document can be inspected; and
- (k) the last audited balance-sheet of the corporation.

1081 Prohibition on hawking securities of proposed corporation

A person shall not, whether by appointment or otherwise, go from place to place:

- (a) issuing invitations to subscribe for or buy securities of a corporation that is proposed to be formed; or
- (b) offering securities of a corporation that is proposed to be formed for subscription or purchase.

1082 Power of courts to make orders

- (1) Where a person is convicted of an offence in respect of an invitation or offer issued or made in contravention of this Division, the Court or, if the person was convicted by another court, that other court, may order that any contract made as a result of the acceptance of an offer made pursuant to the invitation, or the acceptance of the offer, is void and may give such consequential directions as it thinks proper for the repayment of any money or the re-transfer of any securities.
- (2) A person aggrieved by an order made or directions given under subsection (1) by a court other than the Court may appeal to the Court against the order or direction, and the Court may confirm, reverse or modify the order or direction and make such further order or give such further directions as it thinks just.

Division 7—Exemptions and modifications

1083 Australian banks

- (1) Subject to subsection (3):
 - (a) nothing in a prescribed provision applies in relation to anything done or to be done by an Australian bank in the ordinary course of its banking business;
 - (b) an Australian bank is not required to comply with a prescribed provision in respect of anything done or to be done by the bank in the ordinary course of its banking business; and
 - (c) an Australian bank shall not be taken, because of anything done or to be done by the bank in the ordinary course of its banking business, to be a borrowing corporation for the purposes of a prescribed provision.
- (2) In subsection (1);
prescribed provision means a provision of Division 2, 4 or 6.
- (3) Where:
 - (a) a borrowing corporation is required by subsection 1052(1) to make provision in a trust deed for the appointment of a body corporate as a trustee for the holders of debentures; and
 - (b) an Australian bank is appointed as a trustee for the holders of those debentures;subsection (1) does not affect the application of a provision of Division 4 in relation to the bank in its capacity as trustee for the holders of those debentures.

1084 Powers of Commission

- (1) This section applies to Divisions 2, 3, 4, 5 and 6.
- (2) The Commission may, by writing, exempt a particular person or persons or a particular class of persons, either generally or as

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otherwise provided in the exemption, and either unconditionally or subject to such conditions (if any) as are specified in the exemption, from compliance with all or any of the provisions of:

- (a) the Divisions to which this section applies; and
 - (b) regulations made for the purposes of the provisions of those Divisions or any of them.
- (3) Without limiting the generality of subsection (2), an exemption under that subsection may relate to particular securities or to a particular class of securities.
- (4) A person shall not contravene a condition to which an exemption under subsection (2) is subject.
- (5) Where a person has contravened a condition to which an exemption under subsection (2) is subject, the Court may, on the application of the Commission, order the person to comply with the condition.
- (6) The Commission may, by writing, declare that a Division to which this section applies and regulations made for the purposes of the provisions of that Division or any of them, shall have effect in their application in relation to a particular person or persons, or a particular class of persons, either generally or otherwise as provided in the declaration, as if a specified provision or provisions of that Division or of those regulations were omitted, modified or varied in a manner specified in the declaration, and, where such a declaration is made, that Division and those regulations have effect accordingly.
- (7) Without limiting the generality of subsection (6), a declaration under that subsection may relate to particular securities or a particular class of securities.
- (8) The Commission shall cause a copy of an exemption or declaration under this section to be published in the *Gazette*.
- (9) An exemption or declaration that was granted or made under, or continued in force by, a corresponding previous law, being an exemption or declaration that related to, or to a regulation made for

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the purposes of, a provision of the corresponding previous law that corresponds with a provision to which this section applies and was in force immediately before the commencement of this Part, has effect after that commencement as if:

- (a) it had been made under this section; and
- (b) a reference in the exemption or declaration to, or to a regulation made for the purposes of, a provision of the corresponding previous law that corresponds to a provision to which this section applies were a reference to that last-mentioned provision.

Part 7.13—Title to, and transfer of, securities

Division 1—Title to securities

1085 Nature of shares and other interests

- (1) A share or other interest of a member in a company:
 - (a) is personal property;
 - (b) is transferable or transmissible as provided by the articles;
and
 - (c) subject to the articles, is capable of devolution by will or by
operation of law.
- (2) Subject to subsection (1):
 - (a) the laws applicable to ownership of and dealing with
personal property apply to a share or other interest of a
member in a company as they apply to other property; and
 - (b) equitable interests in respect of a share or other interest of a
member in a company may be created, dealt with and
enforced as in the case of other personal property.
- (3) For the purposes of any law, a share or other interest of a member
in a company shall be taken to be situated:
 - (a) in a case to which paragraph (b) does not apply—in the State
or Territory in which the register of members of the company
is kept; or
 - (b) if the name of the member is, in respect of the share or
interest concerned, entered in a branch register—in the State,
Territory or country other than Australia in which that branch
register is kept.

1086 Numbering of shares

- (1) Each share in a company shall be distinguished by an appropriate
number.

The Corporations Law—Section 1087

- (2) Despite subsection (1):
- (a) if at any time all the issued shares in a company, or all the issued shares in a company of a particular class, are fully paid up and rank equally for all purposes, none of those shares is required to have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or
 - (b) if all the issued shares in a company are evidenced by certificates in accordance with the provisions of section 1087, each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares is required to have a distinguishing number.

1087 Certificate to be evidence of title

- (1) A certificate issued after the commencement of this section specifying shares held by a member of a company:
- (a) must be under the common seal of the company, or, in the case of a share certificate relating to shares on a branch register, the common or official seal of the company; and
 - (b) must state:
 - (i) the name of the company and its jurisdiction of incorporation; and
 - (ii) the class of the shares; and
 - (iii) the nominal value of the shares and the extent to which the shares are paid up.
- (2) A certificate issued in accordance with subsection (1) or a corresponding previous law specifying shares held by a member of a company is *prima facie* evidence of the title of the member to the shares.
- (3) A failure to comply with subsection (1) does not affect the rights of a holder of shares.

The Corporations Law—Section 1088

1088 Company may have duplicate common seal

A company may, if authorised by its articles, have a duplicate common seal, which shall be a facsimile of the common seal of the company with the addition on its face of the words “Share Seal” or “Certificate Seal” and a certificate referring to or relating to securities of the company sealed with such a duplicate seal shall, for the purposes of this Law, be deemed to be sealed with the common seal of the company.

1089 Loss or destruction of certificates

- (1) Subject to subsection (2), where a certificate or other document of title to shares, debentures or prescribed interests is lost or destroyed, the company shall, on application by the owner of the shares, debentures or prescribed interests, issue a duplicate certificate or document to the owner:
 - (a) if the company requires the payment of an amount not exceeding the prescribed amount—within 21 days after the payment is received by the company or within such longer period as the Commission approves; or
 - (b) in a case to which paragraph (a) does not apply—within 21 days after the application is made or within such longer period as the Commission approves.
- (2) The application shall be accompanied by:
 - (a) a statement in writing that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and
 - (b) an undertaking in writing that if it is found or received by the owner it will be returned to the company.
- (3) The directors of a company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant:
 - (a) to cause an advertisement to be inserted in a daily newspaper circulating in a place specified by the directors stating that

The Corporations Law—Section 1089

- the certificate or document has been lost or destroyed and that the owner intends, after the end of 14 days after the publication of the advertisement, to apply to the company for a duplicate; or
- (b) to furnish a bond for an amount equal to at least the current market value of the shares, debentures or prescribed interests indemnifying the company against loss following the production of the original certificate or document;
- or to do both those things.

Division 2—Transfer of securities

1090 Definition

In this Division:

interest includes a prescribed interest.

1091 Instrument of transfer

- (1) Notwithstanding anything in its articles or in a deed relating to debentures or interests, a company shall not register a transfer of shares, debentures or interests unless a proper instrument of transfer has been delivered to the company.
- (1A) An instrument of transfer is not a proper instrument of transfer for the purposes of subsection (1) unless:
 - (a) in the case of a transfer of marketable securities within the meaning of Division 3 of Part 7.13—it is a sufficient transfer of the marketable securities under that Division; or
 - (b) in any other case—it shows the jurisdiction of incorporation of the company concerned.
- (2) Subsection (1) does not prejudice the power of the company to register as a shareholder, debenture holder or interest holder a person to whom the right to any shares in, debentures of, or interests made available by, the company has devolved by will or by operation of law.
- (3) A transfer of shares, debentures or interests of a dead holder made by his or her personal representative is, although the personal representative is not himself, herself or itself registered as the holder of those shares, debentures or interests, as valid as if he, she or it had been so registered at the time of the execution of the instrument of transfer.
- (4) Where the personal representative of a dead holder duly constituted as such under a law of another jurisdiction:

The Corporations Law—Section 1091

- (a) executes an instrument of transfer of a share, debenture or interest of the dead holder to himself, herself or itself or to another person; and
- (b) delivers the instrument to the company, together with a statement in writing made by the personal representative to the effect that, to the best of the personal representative's knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in this jurisdiction and no application for such a grant will be made, being a statement made within the period of 3 months immediately before the date of delivery of the statement to the company;

the company shall register the transfer and pay to the personal representative any dividends or other money accrued in respect of the share, debenture or interest up to the time of the execution of the instrument, but this subsection does not operate so as to require the company to do an act or thing that it would not have been required to do if the personal representative were the personal representative of the dead holder duly constituted under a law of this jurisdiction.

- (5) A transfer or payment made under subsection (4) and a receipt or acknowledgment of such a payment is, for all purposes, as valid and effectual as if the personal representative were the personal representative of the dead holder duly constituted under a law of this jurisdiction.
- (6) For the purposes of this section, an application by a personal representative of a dead person for registration as the holder of a share, debenture or interest in place of the dead person shall be deemed to be an instrument of transfer effecting a transfer of the share, debenture or interest to the personal representative.
- (7) The production to a company of a document that is, under the law of a jurisdiction, sufficient evidence of probate of the will, or letters of administration of the estate, of a dead person having been granted to a person shall be accepted by the company, notwithstanding anything in its articles, or in a deed relating to debentures or interests, as sufficient evidence of the grant.

1092 Registration of transfer at request of transferor

- (1) On the written request of the transferor of a share in, debenture of, or interest made available by, a company, the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.
- (2) On the request in writing of the transferor of a share in, debenture of, or interest made available by, a company, the company shall, by written notice, require the person having the possession, custody or control of the share certificate or debenture or any document evidencing title to the interest (as the case may be) and the instrument of transfer of the share, debenture or interest, or either of them, to bring it or them into the office of the company within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate, debenture or document cancelled or rectified and the transfer registered or otherwise dealt with.
- (3) If a person refuses or fails to comply with a notice given under subsection (2), the transferor may apply to the Court for the issue of a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.
- (4) Upon appearance of a person so summoned, the Court may examine the person upon oath or affirmation and receive other evidence or, if the person does not appear after being duly served with the summons, the Court may receive evidence in the person's absence, and, in either case, the Court may order the person to deliver up such documents to the company upon such terms or conditions as the Court considers just and reasonable, and the costs of the summons and of proceedings on the summons are in the discretion of the Court.
- (5) Lists of share certificates, debentures and other documents required to be brought in under this section and not brought in shall be exhibited in the office of the company and shall be advertised in

The Corporations Law—Section 1093

the *Gazette* and in such newspapers and at such times as the company thinks fit.

1093 Notice of refusal to register transfer

If a company refuses to register a transfer of any shares in, debentures of, or interests made available by, the company, it shall, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

1094 Remedy for refusal to register transfer or transmission

- (1) Where a relevant authority in relation to a company refuses or fails to register, or refuses or fails to give its consent or approval to the registration of, a transfer or transmission of shares in, debentures of, or an interest made available by, the company, the transferee or transmittee may apply to the Court for an order under this section.
- (2) Where, on an application made under subsection (1), the Court is satisfied that the refusal or failure was without just cause, the Court may:
 - (a) order that the transfer or transmission be registered; or
 - (b) make such other order as it thinks just and reasonable, including, in the case of a transfer or transmission of shares, an order providing for the purchase of the shares by a specified member of the company or by the company and, in the case of a purchase by the company, providing for the reduction accordingly of the capital of the company.
- (3) In this section:

relevant authority, in relation to a company, means:

 - (a) a person who has, 2 or more persons who together have, or a body that has, authority to register a transfer or transmission of shares in, debentures of, or interests made available by, the company; or
 - (b) a person, 2 or more persons, or a body, whose consent or approval is required before a transfer or transmission of

The Corporations Law—Section 1095

shares in, debentures of, or interests made available by, the company is registered.

1095 Certification of transfers

- (1) The certification by a company of an instrument of transfer of shares in, debentures of, or interests made available by, the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show *prima facie* title to the shares, debentures or interests in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares, debentures or interests.
- (2) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.
- (3) Where a certification is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers are not, in the absence of fraud, liable in respect of the registration of any transfer of shares, debentures or interests comprised in the certification after the end of the period so limited or any extension of that period given by the company if the instrument of transfer has not, within that period, been lodged with the company for registration.
- (4) For the purposes of this section:
 - (a) an instrument of transfer shall be deemed to be certified if it bears the words “certificate lodged” or words to the like effect;
 - (b) the certification of an instrument of transfer shall be deemed to be made by a company if:
 - (i) the person issuing the instrument is a person authorised to issue certified instruments of transfer on the company’s behalf; and

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- (ii) the certification is signed by a person authorised to certify transfers on the company's behalf or by an officer of the company or of a body corporate so authorised; and
- (c) a certification that purports to be authenticated by a person's signature or initials (whether handwritten or not) shall be deemed to be signed by the person unless it is shown that the signature or initials was not or were not placed there by the person and was not or were not placed there by any other person authorised to use the signature or initials for the purpose of certifying transfers on the company's behalf.

1096 Duties of company with respect to issue of certificates

- (1) Within 2 months after the allotment of any shares in, the issue of debentures of, or the making available of interests by, a company, the company shall:
 - (a) complete and have ready for delivery to the allottee, debenture holder or interest holder, as the case may be, (in this subsection called the *relevant person*), all the appropriate certificates, debentures or other documents in connection with the allotment of the shares, the issue of the debentures or the making available of the interests unless, in the case of shares, the conditions of the allotment otherwise provide; and
 - (b) unless otherwise instructed by the relevant person, send or deliver the completed certificates, debentures or other documents to the relevant person or, where the relevant person has instructed the company in writing to send them to a nominated person, to that person.
- (2) Within one month after the date on which a transfer of any shares, debentures or interests is lodged with a company (other than a transfer that the company is for any reason entitled to refuse to register and does not register) the company shall:
 - (a) complete and have ready for delivery to the transferee all the appropriate certificates, debentures or other documents in connection with the transfer; and

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- (b) unless otherwise instructed by the transferee, send or deliver the completed certificates, debentures or other documents to the transferee or, where the transferee has instructed the company in writing to send them to a nominated person, to that person.
- (3) A company need not comply:
 - (a) with subsection (1) in relation to the allotment of any shares in, the issue of debentures of, or the making available of interests by, the company; or
 - (b) with subsection (2) in relation to a transfer of shares, debentures or interests;if the allottee, debenture holder or interest holder, or the transferee, as the case may be, is a person who has applied to the Commission for the making of a declaration under this subsection and has been declared by the Commission, by writing published in the *Gazette*, to be a person in relation to whom this section does not apply.
- (4) If a company on which a notice has been served requiring the company to remedy any contravention of a provision of this section fails to remedy the contravention within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates, debentures or other documents delivered to him, her or it, make an order directing the company and any officer of the company to remedy the contravention within such period as is specified in the order, and the order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company who was involved in the contravention in such proportions as the Court thinks just and reasonable.

Division 3—Transfer of marketable securities and marketable rights

1097 Interpretation

- (1) In this Division, unless the contrary intention appears:

associate, in relation to a broker, means:

- (a) if the broker is a member of a firm of brokers and is not a broker's agent—any other member of the firm; or
- (b) if the broker is another broker's agent or employee—the other broker or, if the other broker is a member of a firm of brokers, any member of that firm;

beneficial owner, in relation to a marketable security or a marketable right, means a person for whom an authorised trustee corporation holds (whether alone or together with any other person or persons) the security or right in trust in the ordinary course of its business;

broker means a member of a securities exchange;

broker's agent means a broker's agent or employee;

duly completed, in relation to a document, has a meaning affected by section 1098;

duly completed Part 1 means a document that has been duly completed in accordance with Part 1 of Form 1, 2, 3, 5, 6 or 7;

eligible body means:

- (a) a company; or
- (b) a body corporate (other than a company) that:
 - (i) is incorporated in this jurisdiction; and
 - (ii) is prescribed for the purposes of this paragraph; or
- (c) an unincorporated society, association or body, that:
 - (i) is formed or established in this jurisdiction; and

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- (ii) is included in the official list of a securities exchange;
and
- (iii) is prescribed for the purposes of this paragraph;

execution time, in relation to a document, means the time:

- (a) in the case of a sufficient transfer under section 1101—when the document was stamped with a stamp purporting to be that of the transferee's broker; or
- (b) in the case of a sufficient transfer under section 1102—when the document was executed by the transferor;

in accordance with includes to the effect of;

issuing body, in relation to a marketable security or a marketable right, means the body (whether incorporated or not) that, or other person who, issued, or proposes to issue, the security or right;

legal representative means the executor, original or by representation, of a will, or the administrator of the estate, of a dead person;

marketable right means a right, whether existing or future, and whether contingent or not, of a person to have a marketable security issued to the person, whether or not on payment of any money or for any other consideration;

marketable security means:

- (a) a share in, or a debenture of, an eligible body; or
- (b) a prescribed security;

prescribed security means a prescribed interest that is prescribed for the purposes of this definition;

securities exchange means a prescribed body corporate;

stamp has the meaning given by section 1099;

transfer, in relation to a marketable right, means the renunciation and transfer of that right.

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- (2) A reference in this Division to a form by number is a reference to the form so numbered in Schedule 2 or to a form to the like effect.
- (3) A reference in a form in Schedule 2 to the full name of the transferor of marketable securities or marketable rights includes a reference to the name of the person shown in the records of the issuing body in relation to those securities or rights as the holder of those securities or rights.

1098 Document duly completed in accordance with a particular form

- (1) For the purposes of this Division, a document is not duly completed in accordance with one of Forms 1, 2, 3, 4, 5, 6, 7 and 8, or a part of one of those forms, unless it:
 - (a) where the form or part refers to the name and address of the transferee—purports to state that name and address;
 - (b) where the form or part refers to the transferor's broker's stamp—bears a stamp that purports to be such a stamp;
 - (c) where the form or part refers to the transferee's broker's stamp—bears a stamp that purports to be such a stamp; and
 - (d) where the form or part refers to a securities exchange stamp—bears a stamp that purports to be a stamp of a securities exchange.
- (2) Where a document (in this section called the *first document*) relates to particular marketable securities or marketable rights, subsections (3), (4) and (5) apply for the purposes of determining whether the first document and another document (in this section called the *second document*) are, or together with another document or documents are, a sufficient transfer of the securities or rights.
- (3) The first document is not duly completed in accordance with Part 3 of Form 1, 2, 3, 5, 6 or 7 unless, where that part refers to the transferee's broker's stamp, the first document bears a stamp that purports to be such a stamp and includes a string of characters that

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purports to be the transfer consolidation number of the first document.

- (4) The second document is not duly completed in accordance with Part 1 of Form 4 or 8 unless, where that part refers to a transfer consolidation number or transfer consolidation numbers, the second document sets out the string of characters referred to in subsection (3).
- (5) The second document shall not be taken not to be duly completed in accordance with Part 1 of Form 4 or 8 merely because of either or both of the following:
 - (a) the second document sets out, where that part refers to a transfer consolidation number or transfer consolidation numbers, a string or strings of characters other than the string referred to in subsection (3);
 - (b) the second document fails to set out correctly the number of marketable securities or marketable rights to which it relates.

1099 Stamping of documents

- (1) In this Division (other than section 1112):
 - (a) a reference to the stamping of a document is a reference to stamping in ink; and
 - (b) a reference to a stamp on a document, or to a stamp borne by a document, is a reference to a stamp stamped on the document in ink.
- (2) A reference in section 1112 to the stamping of a document is a reference to stamping the document:
 - (a) in ink;
 - (b) by affixing a stamp;
 - (c) by impressing a stamp; or
 - (d) in any other manner.

The Corporations Law—Section 1100

1100 Sufficient transfers

- (1) A document that is under this Division a sufficient transfer of marketable securities may be used:
 - (a) as a proper instrument of transfer for the purposes of section 1091; and
 - (b) as an instrument of transfer for the purposes of any other law or instrument governing or relating to those securities.
- (2) A document that is under this Division a sufficient transfer of marketable rights may be used as an instrument of transfer of those rights for the purposes of any law or instrument governing or relating to those rights or the marketable securities to which those rights relate.

1101 What is a sufficient transfer of marketable securities or marketable rights: generally

- (1) A document is a sufficient transfer of marketable securities if it relates to those securities and is duly completed in accordance with:
 - (a) Parts 1 and 2 of Form 1;
 - (b) Part 1 of Form 1 and Parts 1 and 2 of Form 2 or 3;
 - (c) Parts 1 and 3 of Form 1 and both parts of Form 4; or
 - (d) Part 1 of Form 1, Parts 1 and 3 of Form 2 or 3 and both parts of Form 4.
- (2) A document is a sufficient transfer of marketable rights if it relates to those rights and is duly completed in accordance with:
 - (a) Parts 1 and 2 of Form 5;
 - (b) Part 1 of Form 5 and Parts 1 and 2 of Form 6 or 7;
 - (c) Parts 1 and 3 of Form 5 and both parts of Form 8; or
 - (d) Part 1 of Form 5, Parts 1 and 3 of Form 6 or 7 and both parts of Form 8.

1102 What is a sufficient transfer by an authorised trustee corporation

- (1) In respect of the transfer of marketable securities, otherwise than by way of sale, gift or exchange, by an authorised trustee corporation (whether alone or together with any other person or persons) to the beneficial owner of the securities, a document is a sufficient transfer if it relates to those securities and is duly completed in accordance with Form 9.
- (2) In respect of the transfer of marketable rights, otherwise than by way of sale, gift or exchange, by an authorised trustee corporation (whether alone or together with any other person or persons) in favour of the beneficial owner of those rights, a document is a sufficient instrument of transfer if it relates to those rights and is duly completed in accordance with Form 10.

1103 Transferee's execution of transfer of marketable securities

- (1) This section applies where marketable securities are transferred by means of a sufficient transfer under this Division.
- (2) The transferee shall be deemed to have agreed at the execution time to accept the securities subject to the terms and conditions on which the transferor held them at that time, being the terms and conditions applicable as between the issuing body in relation to, and the holder for the time being of, the securities.
- (3) If the securities are shares, the transferee shall be deemed to have agreed at the execution time to become a member of the issuing body and to be bound, on being registered as the holder of the shares, by the issuing body's constitution.

1104 Transferee's execution of transfer of marketable rights

- (1) This section has effect where marketable rights relating to marketable securities are transferred by means of a sufficient transfer under this Division.

The Corporations Law—Section 1105

- (2) The transferee shall be deemed:
 - (a) to have applied at the execution time to the issuing body in relation to the securities for the allotment to him, her or it of the securities; and
 - (b) to have agreed at the execution time to accept the securities subject to the terms and conditions on which the issuing body offers them for subscription.
- (3) If the securities are shares, the transferee shall be deemed to have agreed at the execution time to become a member of the issuing body and to be bound, on being registered as the holder of the shares, by the issuing body's constitution.

1105 Effect where document purports to bear transferor's broker's stamp

- (1) This section applies where a document relating to marketable securities or marketable rights:
 - (a) is a duly completed Part 1; and
 - (b) bears a stamp that purports to be that of the transferor's broker.
- (2) Each associate (if any) of the broker (in this section called the *designated broker*) of whom the stamp referred to in paragraph (1)(b) purports to be the stamp and, unless the designated broker is a broker's agent, the designated broker shall be deemed to have warranted:
 - (a) that the statements in the document that purport to be certified by the transferor's broker are accurate; and
 - (b) that the transferor is:
 - (i) the registered holder of, or entitled to be registered as the holder of, the securities; or
 - (ii) is entitled to the rights;
as the case may be, and is legally entitled or authorised to sell or dispose of the securities or rights.

The Corporations Law—Section 1106

- (3) If the document has been duly completed in accordance with Part 1 of Form 1 or 5, then:
- (a) if, when the document was stamped with the stamp referred to in paragraph (1)(b), the designated broker had authority to sell the securities or rights, on the transferor's behalf, to:
 - (i) the transferee;
 - (ii) particular persons who include, or particular classes of persons at least one of which includes, the transferee; or
 - (iii) any person at all;the designated broker shall be deemed to have been authorised to execute, and to have executed, the document on the transferor's behalf; and
 - (b) each associate (if any) of the designated broker and, unless the designated broker is a broker's agent, the designated broker is or are, as the case requires, liable to indemnify:
 - (i) the issuing body in relation to the securities or rights;
 - (ii) the transferor;
 - (iii) the transferee; and
 - (iv) the transferee's broker;against any loss or damage arising if:
 - (v) the stamp referred to in paragraph (1)(b) is not in fact the designated broker's stamp; or
 - (vi) apart from the effect of paragraph (a) of this subsection, the designated broker was not authorised to execute the document on the transferor's behalf.

1106 Warranties by securities exchange where document purports to bear its stamp

- (1) This section applies where a document:
- (a) has been duly completed in accordance with Part 1 of Form 3 or 7; and
 - (b) bears a stamp that purports to be that of a securities exchange.
- (2) The securities exchange shall be deemed to have warranted that:

The Corporations Law—Section 1107

- (a) the statements in the document that purport to be certified by a securities exchange are accurate; and
- (b) the transferor is:
 - (i) the registered holder of, or entitled to be registered as the holder of, the securities; or
 - (ii) entitled to the rights;as the case may be, and is legally entitled or authorised to sell or dispose of the securities or rights.

1107 Indemnities by securities exchange and broker where documents purport to bear their stamps

- (1) This section applies where:
 - (a) a document (in this section called the *first document*) relating to marketable securities or marketable rights:
 - (i) has been duly completed in accordance with Part 1 of Form 1 or 5; and
 - (ii) bears a stamp that purports to be that of the transferor's broker; and
 - (b) another document:
 - (i) relates to any or all of the securities or rights;
 - (ii) has been duly completed in accordance with Part 1 of Form 3 or 7; and
 - (iii) bears a stamp that purports to be that of a particular securities exchange.
- (2) The securities exchange is liable to indemnify:
 - (a) the issuing body in relation to the securities or rights;
 - (b) the transferor in relation to the other document;
 - (c) the transferee in relation to the other document; and
 - (d) the broker of the transferee in relation to the other document;against any loss or damage arising if:
 - (e) the stamp referred to in subparagraph (1)(a)(ii) is not in fact the stamp of the broker (in this section called the *designated broker*) of whom it purports to be the stamp; or

The Corporations Law—Section 1108

- (f) apart from the effect of paragraph 1105(3)(a), the designated broker was not authorised to execute the first document on behalf of the transferor in relation to the first document.
- (3) Each associate (if any) of the designated broker and, unless the designated broker is a broker's agent, the designated broker is or are, as the case requires, liable to indemnify the securities exchange against any loss or damage arising as mentioned in subsection (2).
- (4) Nothing in this section limits the operation of anything in section 1105 or 1106 or of anything else in this section.

1108 Joint and several warranties and liabilities

- (1) If 2 or more persons are deemed to have warranted as mentioned in paragraph 1105(2)(a) or (b), they shall be deemed to have so warranted jointly and severally.
- (2) If 2 or more persons are liable as mentioned in paragraph 1105(3)(b) or subsection 1107(3), they are so liable jointly and severally.

1108A Marketable securities and rights from other jurisdictions: effect of sections 1105 to 1108

- (1) Sections 1105 to 1108, inclusive, apply in relation to marketable securities, and marketable rights, within the meaning of Division 3 of Part 7.13 of the Corporations Law of another jurisdiction and, for the purposes of those sections as so applying:
 - (a) subject to paragraph (b) of this subsection, an expression has the same meaning in those sections as in that Division; and
 - (b) a reference in those sections to a document bearing a stamp of a particular kind is taken to be a reference to the document bearing a stamp of that kind that purports to have been stamped in this jurisdiction.

The Corporations Law—Section 1109

- (2) The effect that a provision has because of subsection (1) is additional to, and does not prejudice, the effect the provision otherwise has.

1109 Registration of certain instruments

An eligible body with which a sufficient transfer under this Division is lodged for the purpose of registering a transfer, or obtaining the allotment or issue, of marketable securities is, and its officers are, in the absence of knowledge to the contrary, entitled to assume without inquiry that:

- (a) in the case of a sufficient transfer under section 1101:
 - (i) a stamp on the document that purports to be the transferor's broker's stamp is the stamp of that broker;
 - (ii) a stamp on the document that purports to be the transferee's broker's stamp is the stamp of that broker; and
 - (iii) a stamp on the document that purports to be the stamp of a securities exchange is the stamp of that securities exchange; or
- (b) in the case of a sufficient transfer under section 1102:
 - (i) at the execution time, the authorised trustee corporation named in the instrument held (whether alone or together with any other person or persons) in the ordinary course of its business, in trust for or on behalf of the transferee, the marketable securities or marketable rights to which the sufficient transfer relates; and
 - (ii) the transfer was not made by way of a sale, gift or exchange of the securities or rights.

1110 Operation of Division

- (1) This Division applies in relation to a transfer of marketable securities or marketable rights despite anything to the contrary in this Law (other than this Division) or in another law or instrument relating to the transfer of the securities or rights.

The Corporations Law—Section 1111

- (2) Except as provided in this Division, this Division does not affect the terms and conditions on which marketable securities or marketable rights are sold.
- (3) Nothing in this Division affects any right of an eligible body to refuse:
 - (a) to acknowledge or register a person as the holder of marketable securities; or
 - (b) to allot or issue marketable securities to a person; on a ground other than an objection to the form of instrument that is lodged with the eligible body and purports to transfer to the person the securities, or marketable rights relating to the securities.
- (4) The registration of a transfer, or the allotment or issue, of a marketable security by means of a sufficient transfer under this Division does not breach any law, memorandum, articles, trust deed or other instrument relating to marketable securities.
- (5) This Division does not prevent or affect the use of:
 - (a) any other form of transfer of marketable securities or marketable rights; or
 - (b) any other mode of executing an instrument of transfer of marketable securities or marketable rights; that is otherwise permitted by law.
- (6) A transfer of marketable securities or marketable rights by or to a trustee or legal representative may be effected by means of a sufficient transfer under this Division despite any law or the provisions of the instrument (if any) creating, or having effect in relation to, the trust or will under which the trustee or legal representative is appointed.

1111 Occupation need not appear in instrument, register etc.

- (1) An instrument of transfer of marketable securities or marketable rights need not state the occupation of the transferor or transferee, and the signature of the transferor or transferee need not be witnessed.

The Corporations Law—Section 1112

- (2) Subsection (1) applies despite anything in:
 - (a) the constitution of an eligible body; or
 - (b) the terms and conditions on which marketable securities or marketable rights are created or issued.
- (3) The omission from a register, certificate or other document relating to marketable securities of a statement of the occupation of a person who is, or is entitled to be, registered as the holder of the securities does not breach any law, memorandum, articles, trust deed or other document relating to the securities.

1112 Offences

- (1) A broker must not, in this jurisdiction or elsewhere, stamp with a broker's stamp a document that relates to marketable securities or marketable rights and may be used as a sufficient transfer under this Division unless the document relates to a sale or purchase of the securities or rights, in the ordinary course of the broker's business, for a consideration of not less than their unencumbered market value at the time of the sale or purchase.
- (2) A person must not, in this jurisdiction or elsewhere, stamp with a stamp that purports to be that of the transferor's broker a document that relates to marketable securities or marketable rights and may be used as a sufficient transfer under this Division unless:
 - (a) the stamp is in fact that of the transferor's broker;
 - (b) apart from the effect of paragraph 1105(3)(a), the transferor's broker is authorised to execute the document on the transferor's behalf; and
 - (c) the person is the transferor's broker or is authorised so to stamp the document on the transferor's broker's behalf.
- (3) A securities exchange must not, in this jurisdiction or elsewhere, stamp with a stamp of the securities exchange a document that may be used as a sufficient transfer under this Division of marketable securities or marketable rights, unless:
 - (a) there has been lodged; or

The Corporations Law—Section 1112

- (b) the securities exchange holds a duly completed Part 1 bearing a certificate that purports to be that of the transferor's broker and states that there has been or will be lodged;
with the issuing body in relation to the securities or rights a duly completed Part 1 relating to the securities or rights.
- (4) A person must not, in this jurisdiction or elsewhere, execute a document that may be used as a sufficient transfer under section 1102 and relates to a transfer of marketable securities or of marketable rights:
- (a) made by way of a sale, gift or exchange of the securities or rights; or
 - (b) to or in favour of a person who is not the beneficial owner of the securities or rights.
- (5) A person other than an authorised trustee corporation must not, in this jurisdiction or elsewhere, knowingly cause, authorise or permit to be executed a document that relates to marketable securities or marketable rights and may be used as a sufficient transfer under section 1102 but is not in fact a sufficient transfer under that section.
- (6) A person must not, in this jurisdiction or elsewhere, knowingly lodge or cause to be lodged with an eligible body a document that has been stamped in contravention of subsection (1), (2) or (3), or that has been executed in contravention of subsection (4), for the purpose of securing the registration of the transfer of, or the allotment or issue of, marketable securities to the transferee named in the document.

Division 4—Exemptions and modifications

1113 Powers of Commission

- (1) This section applies to Divisions 1, 2 and 3.
- (2) The power of the Commission to grant an exemption or make a declaration under this section may be exercised in relation to securities or a class of securities only where the Commission is satisfied that:
 - (a) if the exemption were granted or the declaration were made, the interests of the holders of those securities or of securities in that class would continue to have adequate protection; and
 - (b) the granting of the exemption or the making of the declaration would make transfer of those securities, or of securities in that class, more efficient.
- (3) The Commission may, by writing, exempt particular securities, or a particular class of securities, either generally or as otherwise provided in the exemption, and either unconditionally or subject to such conditions (if any) as are specified in the exemption, from the operation of all or any of the provisions of:
 - (a) the Divisions of this Part to which this section applies; and
 - (b) regulations made for the purposes of the provisions of those Divisions or any of them.
- (4) A person shall not contravene a condition to which an exemption under subsection (3) is subject.
- (5) Where a person has contravened a condition to which an exemption under subsection (3) is subject, the Court may, on the application of the Commission, order the person to comply with the condition.
- (6) The Commission may, by writing, declare that a Division to which this section applies, and regulations made for the purposes of the provisions of that Division or any of them, shall have effect in their application in relation to particular securities, or a particular class

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of securities, either generally or otherwise as provided in the declaration, as if a specified provision or provisions of that Division or of those regulations were omitted, modified or varied in a manner specified in the declaration, and, where such a declaration is made, that Division and those regulations have effect accordingly.

- (7) The Commission shall cause a copy of an exemption or declaration under this section to be published in the *Gazette*.

Part 7.14—Miscellaneous

1114 Power of Court to make certain orders

(1) Where:

(a) on the application of the Commission, it appears to the Court that a person:

- (i) has contravened this Chapter, or any other law relating to trading or dealing in securities;
- (ii) has contravened the conditions or restrictions of a licence or the business rules or listing rules of a securities exchange; or
- (iii) is about to do an act with respect to trading or dealing in securities that, if done, would be such a contravention; or

(b) on the application of a securities exchange, it appears to the Court that a person has contravened the business rules or listing rules of the securities exchange;

the Court may make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the following orders:

- (c) in the case of persistent or continuing contraventions of this Chapter, or of any other law relating to trading or dealing in securities, of the conditions or restrictions of a licence, or of the business rules or listing rules of a securities exchange—an order restraining a person from carrying on a business, or doing an act or classes of acts, in relation to securities;
- (d) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;
- (e) an order appointing a receiver of the property of a dealer or of property that is held by a dealer on behalf of another person, whether in trust or otherwise;

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- (f) an order declaring a contract relating to securities to be void or voidable;
 - (g) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
 - (h) any ancillary order considered to be just and reasonable in consequence of the making of an order under any of the preceding provisions of this subsection.
- (2) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, make an interim order, being an order of the kind applied for that is expressed to apply pending the determination of the application.
 - (3) Where the Commission applies to the Court for an order under subsection (1), the Court shall not require the Commission or any other person, as a condition of making an interim order under subsection (2), to give any undertakings as to damages.
 - (4) The Court shall not make an order under subsection (1) if it is satisfied that the order would unfairly prejudice any person.
 - (5) Before making an order under subsection (1), the Court may direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
 - (6) A person appointed by order of the Court under subsection (1) as a receiver of the property of a dealer:
 - (a) may require the dealer to deliver to the person any property of which the person has been appointed receiver or to give to the person all information concerning that property that may reasonably be required;
 - (b) may acquire and take possession of any property of which the person has been appointed receiver;
 - (c) may deal with any property that the person has acquired or of which the person has taken possession in any way in which the dealer might lawfully have dealt with the property; and

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- (d) has such other powers in respect of the property as the Court specifies in the order.
- (7) In paragraph (1)(e) and subsection (6):

property, in relation to a dealer, includes money, securities and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with a securities business carried on by the dealer.
- (8) A person shall not, without reasonable excuse, contravene:
 - (a) an order under this section; or
 - (b) a requirement of a receiver appointed by order of the Court under subsection (1).
- (9) The Court may rescind or vary an order made by it under this section or suspend the operation of such an order.

1115 Restrictions on use of titles “stockbroker”, “sharebroker” and “stock exchange”

- (1) A person who is not a member of a stock exchange shall not take or use, or by inference adopt, the name or title of stockbroker or sharebroker or take or use or have attached to or exhibited at any place a name, title or description implying or tending to create the belief that the person is a stockbroker or a sharebroker.
- (3) A body corporate that is not a stock exchange shall not take or use, or by inference adopt, the name or title of stock exchange or take or use or have attached to or exhibited at any place a name, title or description implying or tending to create the belief that the body corporate is a stock exchange.

1116 Preservation and disposal of records etc.

- (1) A person who is required by a provision of this Chapter to maintain, make or keep a register or any accounting or other record in relation to a business carried on by the person shall preserve that

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register or record for the prescribed period, whether or not the person ceases to carry on that business before the end of that period.

- (2) The prescribed period for the purposes of subsection (1) is:
 - (a) in relation to a register or a record other than an accounting record, the 5 years next after the day on which the last entry was made in the register or record; or
 - (b) in relation to an accounting record, the 7 years next after the last day of the accounting period to which the record relates.
- (3) Subsections (1) and (2) do not apply in relation to a contract note or copy of a contract note received or issued by a dealer who is a member of a securities exchange if the matters referred to in subsection 842(3) in relation to the contract note are recorded:
 - (a) by the securities exchange; or
 - (b) subject to such conditions (if any) as the Commission imposes, by the dealer;in a manner approved by the Commission and the record of those matters is retained for not less than 5 years.
- (4) A matter that a securities exchange records under subsection (3) shall be deemed to have been so recorded with the member's authority.
- (5) The Commission may, if of the opinion that it is no longer necessary or desirable to retain it, destroy or otherwise dispose of any document that is lodged under or for the purposes of this Chapter and has been in the possession of the Commission for such period as is prescribed for the purposes of this subsection, either generally or in relation to a particular document or class of documents.

1117 Concealing etc. of books relating to securities

- (1) A person shall not:
 - (a) conceal, destroy, mutilate or alter a book relating to the business carried on by a dealer or required under this Chapter

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to be kept by the holder of a licence, by a person who holds a proper authority from the holder of a licence or by a financial journalist within the meaning of Part 7.7; or

- (b) where such a book is in this jurisdiction—send the book out of Australia.
- (2) In a prosecution of a person for a contravention of subsection (1), it is a defence if it is proved that the person did not act with intent to defraud, to defeat the purposes of this Chapter or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power, under this Chapter.

1118 Falsification of records

- (1) Where matter that is used or intended to be used in connection with the keeping of a book required to be kept under this Chapter or a register or any accounting or other record referred to in section 1116 is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person shall not:
- (a) record or store by means of that device matter that the person knows to be false in a material particular or materially misleading;
 - (b) destroy, remove or falsify matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling other matter to be recorded or stored, by means of that device; or
 - (c) fail to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter.
- (2) In a prosecution of a person for a contravention of subsection (1), it is a defence if it is proved that the person acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

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1119 Precautions against falsification of records

A person required by this Chapter to keep a book or record shall take reasonable precautions for guarding against falsification of the book or record and for facilitating discovery of any falsification.

Chapter 8—The futures industry

Part 8.1—Interpretation

1120 Business rules: futures association

For the purposes of this Chapter, the business rules of a body corporate that is, or proposes to be, a futures association are such of the rules, regulations and by-laws made by the body or contained in its constitution as govern the activities and conduct of the body and its members in relation to the body's operation as a futures association.

1121 Business rules: clearing house

For the purposes of this Chapter, the business rules of a body corporate that provides, or proposes to provide, clearing house facilities for a futures market are such of the rules, regulations and by-laws made by the body or contained in its constitution as govern:

- (a) the activities and conduct of the body and its members; and
- (b) the activities and conduct of other persons in relation to the body's provision of clearing house facilities for a futures market.

1122 Business rules: futures exchange

For the purposes of this Chapter, the business rules of a body corporate that conducts, or proposes to establish or conduct, a futures market are such of the rules, regulations and by-laws made by the body corporate or contained in its constitution as govern:

- (a) the activities and conduct of the body and its members;
- (b) the activities and conduct of each clearing house for the body; and

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- (c) the activities and conduct of other persons in relation to each futures market run by the body.

Part 8.2—Futures exchanges, clearing houses and futures associations

Division 1—Futures exchanges and exempt futures markets

1123 Conducting unauthorised futures markets

A person must not establish or conduct, assist in establishing or conducting, or hold out that the person conducts, an unauthorised futures market.

1126 Approval of futures exchange

- (1) A body corporate may apply to the Commission in writing for approval by the Minister as a futures exchange.
- (2) Subject to section 102A, where a body applies under subsection (1) of this section, the Minister may by writing approve the body as a futures exchange if, and only if, he or she is satisfied that:
 - (c) the body's business rules make satisfactory provision:
 - (i) for the admission as members of persons licensed, or proposing to apply to be licensed, under Part 8.3, or of a specified class of such persons;
 - (ii) for the qualifications for membership, including the necessary standards of training and experience for:
 - (A) responsible officers of bodies corporate that;
and
 - (B) natural persons who;
are, or propose to be, members;
 - (iii) for the manner in which members are to conduct their business of dealing in futures contracts so as to ensure efficiency, honesty and fair practice in relation to such dealing;

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- (iiia) for the exclusion of a body corporate from membership where a responsible officer of the body corporate would be excluded from membership;
- (iv) for the exclusion of a person from membership where:
 - (A) if the person is a body corporate—a responsible officer, or an employee, of the body corporate; or
 - (B) otherwise—the person or an employee of the person;is not of good character and high business integrity;
- (v) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body's business rules or of this Chapter;
- (vi) for an appropriate mechanism whereby a person whose application for membership of the body is refused, or whose membership of the body is cancelled or suspended, in circumstances where the person does not have a right to appeal to the Court under subsection 1135(1) against the decision to refuse the application, or to cancel or suspend the membership, as the case may be, may appeal against the decision;
- (vii) for an appropriate mechanism whereby a person who has been disciplined by the body otherwise than by way of cancellation or suspension of the person's membership of the body may appeal against the decision to discipline the person;
- (viii) for the inspection and audit of the accounting records that this Chapter requires members to keep;
- (ix) with respect to the classes of futures contracts that may be dealt in by members;
- (xi) prohibiting a member from accepting or executing, otherwise than in accordance with the business rules, instructions from another person to deal in futures contracts;

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- (xii) prohibiting a member from dealing in futures contracts on behalf of another person otherwise than in accordance with instructions accepted by the member from the person;
 - (xiii) prohibiting a member from dealing in futures contracts, on behalf of another person, on a futures market of a futures exchange or of a recognised futures exchange, otherwise than in accordance with the business rules of the futures exchange or recognised futures exchange, as the case may be;
 - (xiv) prohibiting a member, except as permitted by the business rules, from executing the instructions of another person to deal in futures contracts unless the instructions are executed in such a manner that the dealing is effected on a futures market of a futures exchange or of a recognised futures exchange or on an exempt futures market;
 - (xv) with respect to the conditions under which members may deal in futures contracts;
 - (xvi) for the equitable and expeditious settlement of claims and grievances between members, being claims and grievances relating to the transaction of business by members in their capacity as members;
 - (xvii) for appropriate mechanisms for the conciliation and settlement of disputes between members and their clients, being disputes concerning dealings in futures contracts by members on behalf of their clients or concerning transactions between members and their clients in connection with such dealings; and
 - (xviii) generally for carrying on the business of the proposed futures exchange with due regard for the interests and protection of the public;
- (d) there will be enough money in the body's fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 8.6; and
- (e) the interests of the public will be served by granting the application.

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- (3) Where, immediately before the commencement of this section, a body corporate was a futures exchange within the meaning of a previous law of this jurisdiction corresponding to this Part, the Minister shall be deemed to have approved the body at that commencement as a futures exchange under subsection (2).

1127 Exempt futures market

- (1) The Minister may by writing declare a specified futures market to be, subject to any specified conditions, an exempt futures market.
- (2) Without limiting the matters to which the Minister may have regard in considering whether to vary or revoke a declaration in force under this section, he or she may, in so considering, have regard to a breach of a condition specified in the declaration.
- (3) A declaration by the Ministerial Council, under a previous law of this jurisdiction corresponding to subsection (1), of a futures market as an exempt futures market, being a declaration that was in force immediately before the commencement of this Part, has effect as if it were a declaration by the Minister under that subsection.

Division 2—Clearing houses

1128 When a person may provide clearing house facilities

A person must not provide, or hold out that the person provides, clearing house facilities for a futures market (other than an exempt futures market) unless:

- (a) the futures market is conducted by a futures exchange; and
- (b) the person is a body corporate; and
- (c) an approval of the person under section 1131 as a clearing house for that futures exchange is in force.

1131 Approval of clearing house

- (1) A body corporate that proposes to provide clearing house facilities for a futures market of a futures exchange may apply to the Commission in writing for approval by the Minister as a clearing house for that futures exchange.
- (2) Subject to section 102A, where a body applies under subsection (1) of this section, the Minister may by writing approve the body as a clearing house for the futures exchange if, and only if, he or she is satisfied that:
 - (b) the body's business rules are satisfactory, in particular such of those business rules as relate to the registration of futures contracts made on a futures market of the futures exchange;
 - (c) the body's business rules make satisfactory provision for the expulsion, suspension or disciplining of members for a contravention of the business rules or for a contravention of this Chapter; and
 - (d) the interests of the public will be served by granting the application.
- (3) Without limiting the matters to which the Minister may have regard in considering an application under subsection (1), he or she may, in considering the application, have regard to any business rules of the applicant that relate to the guaranteeing, to members of

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the applicant, of the performance of futures contracts made on a futures market of the futures exchange.

- (4) Where, immediately before the commencement of this section, an approval of a body corporate as a clearing house for a futures exchange within the meaning of a previous law of this jurisdiction corresponding to subsection (2) was, or was deemed to be, in force under that law, the Minister shall be deemed to have approved the body at that commencement, as a clearing house for that futures exchange, under that subsection.

Division 3—Futures associations

1132 Approval of futures association

- (1) A body corporate that proposes to be a futures association may apply to the Commission in writing for approval by the Minister as a futures association.
- (2) Subject to section 102A, where a body applies under subsection (1) of this section, the Minister may by writing approve the body as a futures association if, and only if, he or she is satisfied that:
 - (c) that the body's nature is such that the body may properly exercise its functions as a futures association, being the functions of:
 - (i) regulating the association's affairs in the interests of the public; and
 - (ii) administering and enforcing the association's business rules;
 - (d) that the body's business rules make satisfactory provision:
 - (i) for the admission as members of persons licensed, or proposing to apply to be licensed, under Part 8.3, or of a specified class of such persons;
 - (ii) for the qualifications for membership, including the necessary standards of training and experience for:
 - (A) responsible officers of bodies corporate that;
and
 - (B) natural persons who;
are, or propose to be, members;
 - (iii) for the manner in which members are to conduct their business of dealing in futures contracts so as to ensure efficient, honest and fair practices in relation to such dealing;
 - (iiia) for the exclusion of a body corporate from membership where a responsible officer of the body corporate would be excluded from membership;

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- (iv) for the exclusion of a person from membership where:
 - (A) if the person is a body corporate—a responsible officer, or an employee, of the body corporate;
or
 - (B) otherwise—the person or an employee of the person;
is not of good character and high business integrity;
- (v) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body's business rules or of this Chapter;
- (vi) for an appropriate mechanism whereby a person whose application for membership of the body is refused, or whose membership of the body is cancelled or suspended, in circumstances where the person does not have a right to appeal to the Court under subsection 1135(1) against the decision to refuse the application, or to cancel or suspend the membership, as the case may be, may appeal against the decision;
- (vii) for an appropriate mechanism whereby a person who has been disciplined by the body otherwise than by way of cancellation or suspension of the person's membership of the body may appeal against the decision to discipline the person;
- (viii) for the inspection and audit of the accounting records that this Chapter requires members to keep;
- (x) prohibiting a member from accepting or executing, otherwise than in accordance with the business rules, instructions from another person to deal in futures contracts;
- (xi) prohibiting a member from dealing in futures contracts on behalf of another person otherwise than in accordance with instructions accepted by the member from the person;

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- (xii) prohibiting a member from dealing in futures contracts, on behalf of another person, on a futures market of a futures exchange or of a recognised futures exchange, otherwise than in accordance with the business rules of the futures exchange or recognised futures exchange, as the case may be;
- (xiii) prohibiting a member, except as permitted by the business rules, from executing the instructions of another person to deal in futures contracts unless the instructions are executed in such a manner that the dealing is effected on a futures market of a futures exchange or of a recognised futures exchange or on an exempt futures market;
- (xiv) for the equitable and expeditious settlement of claims and grievances between members, being claims and grievances relating to the transaction of business by members in their capacity as members; and
- (xv) for appropriate mechanisms for the conciliation and settlement of disputes between members and their clients, being disputes concerning dealings in futures contracts by members on behalf of their clients or concerning transactions between members and their clients in connection with such dealings;
- (e) if the body is expected to be a futures organisation within the meaning of Part 8.6:
 - (i) there will be enough money in the body's fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 8.6; or
 - (ii) the body will enter into a contract, in a form approved by the Minister, with an insurer approved by the Minister, under which the insurer undertakes to supplement the fund, if a claim is made on the fund, so that the total amount available to satisfy the claim will be not less than an amount so approved; and
- (f) that the interests of the public will be served by granting the application.

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- (3) An approval by the Ministerial Council, under a previous law of this jurisdiction corresponding to subsection (2), of a body corporate as a futures association, being an approval that was in force immediately before the commencement of this section, has effect as if it were an approval by the Minister under that subsection.

1133 Suspension or cancellation of approval

- (1) The Minister may cause to be served on a body corporate a written notice requiring the body to show cause, at a hearing before a specified person, why the body's approval as a futures association should not be suspended or cancelled on specified grounds.
- (2) A notice under subsection (1) shall specify, and give reasonable notice of, the time and place at which the hearing is to occur, but the specified person may, with the body's consent, fix a different time, a different place, or both, for the hearing.
- (3) Where a notice is served under subsection (1), the specified person shall, after giving the body an opportunity to be heard at the hearing, submit to the Minister a report about the hearing and a recommendation about the matters to which the notice related.
- (4) After considering a report and recommendation under subsection (3), the Minister may:
- (a) decide to take no further action in relation to the matter; or
 - (b) by writing, suspend for a specified period, or cancel, the body's approval as a futures association.
- (5) A body corporate shall be deemed not to be a futures association at any time during a period for which the body's approval as a futures association is suspended.
- (6) A body corporate's approval as a futures association shall not be suspended or cancelled except under this section.

Division 4—General

1134 Publication of certain instruments

The Commission shall cause a copy of an instrument executed under subsection 1126(2), 1127(1), 1131(2), 1132(2) or 1133(4) to be published in the *Gazette*.

1135 Appeal to the Court against certain decisions of futures exchanges and futures associations

- (1) Where a body corporate, being a futures exchange or futures association:
 - (a) decides, at a time when a person is a member of no futures organisation, to refuse an application by the person for membership of the body corporate; or
 - (b) decides, at a time when a person is a member of no other futures organisation, to suspend or cancel the person's membership of the body corporate;the body corporate shall, within 14 days after so deciding, give to the person, and to the Commission, a notice in writing setting out the decision and the reasons for the decision, and the person may, within the period of 21 days beginning when the notice is so given or within that period as extended by the Court, appeal to the Court against the decision by filing a written notice of appeal.
- (2) A person whose membership of a futures organisation is suspended for a period:
 - (a) shall be deemed, for the purposes of paragraph (1)(a), to be a member of that futures organisation throughout that period; and
 - (b) shall be deemed, for the purposes of paragraph (1)(b), not to be a member of that futures organisation at any time during that period.

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- (3) A person shall, on the day on which the person files a notice of appeal with the Court under subsection (1), lodge a copy of the notice.
- (4) Where a body corporate decides as mentioned in paragraph (1)(b), then:
 - (a) subject to paragraph (c) of this subsection and to subsection (6), the decision takes effect at the end of the day on which a notice relating to the decision is given by the body corporate in accordance with subsection (1);
 - (b) if the person to whom the decision relates appeals to the Court under subsection (1) against the decision—the Court may, at any time before it determines the appeal, make such order as it thinks fit concerning the effect, pending determination of the appeal, of the decision, including, without limiting the generality of the foregoing, an order that is subject to conditions specified in the order; and
 - (c) an order made by the Court under paragraph (b) has effect accordingly.
- (5) The Court may, after hearing an appeal under subsection (1), dismiss the appeal or:
 - (a) in the case of an appeal against a decision to refuse an application for membership—decide that the application should be granted, or should be granted subject to specified conditions;
 - (b) in the case of an appeal against a decision to suspend for a period a person's membership—decide that the person's membership:
 - (i) should not be suspended; or
 - (ii) should be suspended for a specified lesser period; or
 - (c) in the case of an appeal against a decision to cancel a person's membership—decide that the person's membership:
 - (i) should not be cancelled; or
 - (ii) should not be cancelled, but should be suspended for a specified period.

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- (6) Where, on an appeal against a decision of a body corporate, the Court decides as mentioned in paragraph (5)(a), (b) or (c), then, as from the day on which the appeal is decided:
 - (a) the first-mentioned decision ceases to have effect; and
 - (b) the decision of the Court has effect, except for the purposes of subsection (1), as a decision of the body corporate and shall take effect accordingly.

1136 Commission to be notified of amendments of business rules

- (1) Where an amendment is made by way of rescission or alteration of, or addition to, the business rules of a futures exchange, of a clearing house for a futures exchange, or of a futures association, the futures exchange, clearing house or futures association, as the case may be, shall, forthwith after the making of the amendment, give written notice of the amendment to the Commission.
- (2) A notice under subsection (1) shall:
 - (a) set out the text of the amendment to which it relates;
 - (b) specify the date on which the amendment was made; and
 - (c) contain an explanation of the purpose of the amendment.
- (3) If a notice required by subsection (1) to be given in relation to an amendment is not given within 21 days after the making of the amendment, the amendment ceases to have effect.
- (4) Where the Commission receives a notice under this section, the Commission shall forthwith send a copy of the notice to the Minister.
- (5) The Minister may, within 28 days after the receipt by the Commission of a notice under this section, disallow the whole or a specified part of the amendment to which the notice relates.
- (6) Where the Minister disallows under this section the whole or a part of an amendment of the business rules of a body corporate, the Commission shall forthwith give notice of the disallowance to the body corporate and, upon receipt by the body corporate of the

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notice of disallowance, the amendment ceases, to the extent of the disallowance, to have effect.

(7) If:

- (a) a notice was duly given by a futures exchange to the NCSC before the commencement of this Part under a previous law corresponding to this section;
- (b) a period of 28 days after the receipt of the notice by the NCSC had not elapsed before that commencement; and
- (c) the Ministerial Council had not before that commencement disallowed the whole or a part of the amendment to which the notice related;

this section (other than paragraph (2)(b)) applies as if the amendment had been made or adopted, as the case may be, on the day of commencement of this Part.

1137 Orderly markets in futures contracts—functions and powers of futures exchanges and clearing houses

- (1) A futures exchange, and a clearing house for a futures exchange, shall, to the extent that it is reasonably practicable to do so, take all steps, and do all things, necessary to ensure an orderly and fair market for dealings in futures contracts on a futures market of the futures exchange.
- (2) A futures exchange may, for the purpose of performing its functions under subsection (1), give to a person who is not a member of the futures exchange but in whose name a futures contract entered into on a futures market of the futures exchange is registered a direction:
 - (a) to do a particular act or thing; or
 - (b) to refrain from doing a particular act or thing.
- (3) A person shall comply with a direction given to the person in accordance with subsection (2), but a person who contravenes this subsection is not guilty of an offence.

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1138 Orderly markets in futures contracts—powers of Commission

- (1) Subject to subsections (2) and (6), the Commission may, in relation to a futures market of a futures exchange, give a direction in writing to the futures exchange:
- (a) to close the futures market;
 - (b) to suspend dealing on the futures market in a specified class of futures contracts;
 - (c) to limit transactions on the futures market to the closing out of futures contracts;
 - (d) to defer for a specified period the completion date for all futures contracts, or for a specified class of futures contracts, made on the futures market;
 - (e) to cause a specified futures contract made on the futures market, or each futures contract included in a specified class of futures contracts so made, to be:
 - (i) closed out forthwith as the result of the matching up of the futures contract with a futures contract of the same kind whose price or value is equal to a price or value determined by the futures exchange; or
 - (ii) invoiced back to a specified date at a price or value determined by the futures exchange;
 - (f) to require a futures contract made on the futures market, or each futures contract included in a specified class of futures contracts so made, to be discharged by:
 - (i) the tendering of a merchantable lot of a commodity determined by the futures exchange, being a commodity of a quality or standard that is:
 - (A) different from the quality or standard of the commodity specified in the futures contract; and
 - (B) determined by the futures exchange; and
 - (ii) the tendering of a price adjusted by an amount that is:
 - (A) appropriate having regard to the quality or standard of the commodity referred to in subparagraph (i); and

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- (B) determined by the futures exchange; or
 - (g) to require a member of the futures exchange to act in a specified manner in relation to dealings in futures contracts on the futures market, or in relation to a specified class of such dealings.
- (2) The Commission shall not give a direction under subsection (1) in relation to a futures market of a futures exchange unless:
 - (a) it has determined that a direction should be so given because it is of the opinion that:
 - (i) subsection 1137(1) has not been complied with in relation to that futures market;
 - (ii) it is necessary to protect the interests of persons on behalf of whom futures contracts are or may be dealt with on that futures market; or
 - (iii) it would be in the public interest for a direction to be so given;
 - (b) it has given to the futures exchange a notice in writing stating that it has formed that opinion and specifying:
 - (i) its reasons for forming that opinion;
 - (ii) the direction that it considers should be so given; and
 - (iii) a time, or a date and time, before which it will not so give the direction;
 - (c) it has given a copy of the notice to each clearing house for that futures market; and
 - (d) the direction is so given after the time, or date and time, as the case may be, specified pursuant to subparagraph (b)(iii).
- (3) The Commission shall, before determining in relation to a futures market of a futures exchange as mentioned in paragraph (2)(a), consult the futures exchange and each clearing house for that futures market.
- (4) A failure by the Commission to comply with subsection (3) does not affect the validity of:
 - (a) a determination under paragraph (2)(a); or

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- (b) a direction given under subsection (1) pursuant to such a determination.
- (5) The Commission shall, as soon as practicable after giving a notice under paragraph (2)(b) in relation to a futures market of a futures exchange:
 - (a) give to the Minister a copy of the notice and a written report setting out the reasons for the giving of the notice;
 - (b) give a copy of the report to the futures exchange; and
 - (c) give a copy of the report to each clearing house for that futures market.
- (6) The Commission shall not give a direction under subsection (1) in relation to a futures market of a futures exchange if:
 - (a) the Minister has directed the Commission not to give the direction; or
 - (b) the futures exchange has acted as if the direction had been given.
- (7) The Commission shall, as soon as practicable after giving a direction under subsection (1) in relation to a futures market of a futures exchange:
 - (a) give to the Minister a copy of the direction; and
 - (b) give to each clearing house for that futures market:
 - (i) a copy of the direction; and
 - (ii) a direction in writing prohibiting the clearing house from acting in a manner inconsistent with, and requiring the clearing house to do all that it is reasonably capable of doing to give effect to, the direction under subsection (1) while the last-mentioned direction remains in force.
- (8) The Minister may determine in writing the period throughout which a particular direction under subsection (1) is to remain in force.
- (9) A direction given under subsection (1) remains in force:

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- (a) in a case where a determination under subsection (8) is in force—throughout the period specified in the determination; or
 - (b) in any other case—unless sooner revoked, until the end of the period of 21 days, or such shorter period (if any) as is specified in the direction, commencing when the direction is given.
- (10) A futures exchange shall not, while a direction given under subsection (1) in relation to a futures market of the futures exchange remains in force, fail to comply with the direction.
- (11) A clearing house for a futures exchange shall not fail to comply with a direction given to the clearing house under subparagraph (7)(b)(ii).
- (12) A document may be given to a person under this section by sending to the person, by telegraph, telex, facsimile service or other similar means of communication, a message to the effect of the document.
- (13) Where, immediately before the commencement of this section:
 - (a) a direction was in force under a previous law corresponding to subsection (1); or
 - (b) a determination was in force under a previous law corresponding to subsection (8);the direction or determination has effect after that commencement:
 - (c) as if it had been given or made under that subsection; and
 - (d) with such modifications as the circumstances require.

1139 Futures exchanges and others to assist Commission

- (1) A futures exchange, a clearing house for a futures exchange, and a futures association, shall each provide such assistance to the Commission, or to a person acting on behalf of, or with the authority of, the Commission, as the Commission reasonably requires for the performance of its functions under this Chapter.
 - (2) Where:
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- (a) a body corporate, being a futures exchange, a clearing house for a futures exchange, or a futures association, decides to reprimand, fine, suspend, expel or otherwise take disciplinary action against, a member of the body corporate; and
 - (b) subsection 1135(1) does not require the body corporate to give to the Commission a notice relating to the decision;
the body corporate shall, within 14 days after so deciding, give to the Commission a notice in writing setting out particulars of the name of the member, the decision, the reasons for the decision and, in the case of a decision to fine a member, the amount of the fine.
- (3) Where a clearing house for a futures exchange:
- (a) refuses to register a dealing in a futures contract; or
 - (b) closes out a futures contract because of a failure to meet a call for deposit or margin;
- it shall forthwith furnish the Commission with particulars of its action.
- (4) A person authorised by the Commission is entitled at all reasonable times to full and free access for any of the purposes of this Law to the trading floor of a futures market of a futures exchange.
- (5) A person who refuses or fails, without lawful excuse, to allow a person authorised by the Commission access in accordance with subsection (4) to the trading floor of a futures market of a futures exchange contravenes this subsection.

1140 Power of Court to order observance or enforcement of business rules of futures exchange, clearing house or futures association

Where a person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a futures exchange, of a clearing house for a futures exchange, or of a futures association, fails to comply with, observe, enforce or give effect to those rules, the Court may, on the application of the futures exchange, clearing house or futures association, as the case may be, of the Commission, or of a person aggrieved by the

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failure, and after giving to the person against whom the order is sought an opportunity of being heard, make an order giving directions to the last-mentioned person concerning compliance with, observance or enforcement of, or giving effect to, those rules.

1141 Gaming and wagering laws not applicable to certain futures contracts

Nothing in a law of this jurisdiction about gaming or wagering prevents the entering into of, or affects the validity or enforceability of, a futures contract made:

- (a) on a futures market of a futures exchange or of a recognised futures exchange; or
- (b) on an exempt futures market; or
- (c) as permitted by the business rules of a futures association, of a futures exchange or of a recognised futures exchange.

1141A Qualified privilege in respect of disciplinary proceedings

- (1) In this section:

disciplinary proceeding, in relation to a futures organisation, means:

- (a) a proceeding under the business rules of the futures organisation that may result in the disciplining of a member of the futures organisation; or
- (b) an appeal under the business rules of the futures organisation from a proceeding of a kind referred to in paragraph (a);

disciplining, in relation to a member of a futures organisation, includes expulsion from, or suspension of, membership of the futures organisation;

member, in relation to a futures organisation, includes a person who is under an obligation to comply with or enforce the business rules of the futures organisation.

The Corporations Law—Section 1141A

- (2) A futures organisation, or a member, officer or employee of a futures organisation, has qualified privilege in respect of a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with, a disciplinary proceeding of the futures organisation.
- (3) A person has qualified privilege in respect of the publication of:
 - (a) a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with; or
 - (b) a document prepared, given or produced by a person, in the course of, or otherwise for the purposes of or in connection with;a disciplinary proceeding of a futures organisation.

Part 8.3—Participants in the futures industry

Division 1—Futures brokers and futures advisers

1142 Futures brokers

A person must not:

- (a) deal in a futures contract on another person's behalf; or
 - (b) hold out that the person carries on a futures broking business;
- unless the first-mentioned person holds a futures brokers licence or is an exempt broker.

1143 Futures advisers

A person must not:

- (a) carry on a futures advice business; or
 - (b) hold out that the person is a futures adviser;
- unless the person is a licensee or an exempt futures adviser.

1144 Application for a licence

- (1) A person may apply to the Commission, in the prescribed form and manner, for a futures brokers licence or a futures advisers licence.
- (2) The Commission may require an applicant for a licence to give the Commission such further information in relation to the application as the Commission thinks necessary.
- (3) An application duly made to the NCSC before the commencement of this Part under a previous law of this jurisdiction corresponding to subsection (1) that had not been dealt with by the NCSC before that commencement shall be deemed to be an application duly made to the Commission under that subsection.

The Corporations Law—Section 1144A

1144A Grant of licence to natural person

- (1) This section applies where a natural person applies for a licence.
- (2) The Commission must grant the licence if:
 - (a) the application was made in accordance with section 1144;
and
 - (b) the person is not an insolvent under administration; and
 - (c) if the application is for a futures brokers licence—the person is a member of a futures organisation; and
 - (d) the Commission is satisfied that the person's educational qualifications and experience are adequate having regard to the nature of the duties of a holder of a licence of the kind applied for; and
 - (e) the Commission has no reason to believe that the person is not of good fame and character; and
 - (f) the Commission has no reason to believe that the person will not perform those duties efficiently, honestly and fairly.
- (3) Otherwise, the Commission must refuse the application.
- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(e) or (f), the Commission must have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.

1145 Grant of licence to body corporate

- (1) This section applies where a body corporate applies for a licence.
- (2) The Commission shall grant the licence if:
 - (a) the application was made in accordance with section 1144;
 - (c) the applicant is not an externally-administered body corporate;
 - (d) if the application is for a futures brokers licence—the applicant is a member of a futures organisation;
 - (e) the Commission is satisfied that the educational qualifications and experience of each responsible officer of

The Corporations Law—Section 1145A

the applicant are adequate having regard to the duties that the officer would perform in connection with the holding of the licence; and

- (f) the Commission has no reason to believe that the applicant will not perform efficiently, honestly and fairly the duties of a holder of a licence of the kind applied for.
- (3) Otherwise, the Commission shall refuse the application.
- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(f), the Commission shall have regard, in relation to each responsible officer of the applicant, to:
- (a) whether or not the officer is an insolvent under administration;
 - (b) any conviction of the officer, during the 10 years ending on the day of the application, of serious fraud;
 - (c) any reason the Commission has to believe that the officer is not of good fame and character; and
 - (d) any reason the Commission has to believe that the officer will not perform efficiently, honestly and fairly the duties that the officer would perform in connection with the holding of the licence.

1145A Effect of certain provisions

- (1) Sections 1144A and 1145 apply subject to sections 102A, 1199A, 1200 and 1202 and the regulations.
- (2) Nothing in subsection 1144A(4) or 1145(4) limits the matters to which the Commission may have regard:
 - (a) in deciding on an application for a licence; or
 - (b) in connection with performing or exercising any other function or power under this Part.

1146 Licences under corresponding previous laws

Where, as at the commencement of this Division, a person held a futures brokers licence or futures advisers licence in force under a

The Corporations Law—Section 1147

previous law of this jurisdiction corresponding to this Division, the licence has effect as if it were a futures brokers licence or futures advisers licence, as the case may be, granted under this Part.

1147 Conditions of licence: general

A licence is subject to:

- (a) such conditions and restrictions as are prescribed; and
- (b) subject to section 1200, such conditions and restrictions as the Commission imposes when granting the licence or while it is in force.

1148 Conditions of futures brokers licence: membership of futures organisation

(1) A futures brokers licence is subject to:

- (a) a condition that the licensee be, throughout the currency of the licence, a member of a futures organisation; and
- (b) a condition that the licence is suspended throughout a period throughout which the licensee:
 - (i) is a member of no futures organisation; and
 - (ii) would, but for the suspension of the licensee's membership of a futures organisation, be a member of the last-mentioned futures organisation.

(2) A person whose membership of a futures organisation is suspended for a period:

- (a) is, for the purposes of paragraph (1)(a), a member of that futures organisation throughout that period; and
- (b) is, for the purposes of paragraph (1)(b), a member of that futures organisation at no time during that period.

1149 Conditions of futures brokers licence: assets and liabilities

(1) Without limiting the generality of section 1147, one or more of the following may be imposed under that section on a futures brokers licence:

The Corporations Law—Section 1150

- (a) a condition or restriction about limiting the liability that the licensee may incur in connection with a business of dealing in futures contracts;
 - (b) a condition or restriction about incurring, or a condition about disclosing, liabilities of the licensee that arise otherwise than in connection with such a business;
 - (c) a condition or restriction about the licensee's financial position, whether or not in relation to such a business;
 - (d) without limiting the generality of paragraph (c), a condition that the licensee's assets include, or not include, specified assets;
 - (e) without limiting the generality of paragraph (c), a condition that the sum of the values of specified assets included in the licensee's assets be not less than, or not greater than, an amount ascertained in accordance with the condition.
- (2) A condition imposed by virtue of paragraph (1)(e) may provide for the values of assets to be ascertained, for the purposes of applying the condition, in a manner specified in, or determined in accordance with, the condition.
- (3) Without limiting the generality of paragraph (1)(e), a condition imposed by virtue of that paragraph may provide for the amount referred to in that paragraph to be a specified percentage of the sum of:
- (a) the values of all the licensee's assets;
 - (b) the values of specified assets included in the licensee's assets;
 - (c) the amounts of all the licensee's liabilities; or
 - (d) the amounts of specified liabilities included in the licensee's liabilities.

1150 Conditions of licence: supervision of representatives

Without limiting the generality of section 1147, one or more of the following may be imposed under that section on a licence:

The Corporations Law—Section 1151

- (a) a condition about what the licensee is to do to, by way of supervision or otherwise, in order to prevent the licensee's representatives from contravening:
 - (i) a futures law; or
 - (ii) other conditions of the licence;
- (b) a condition about what the licensee is to do to ensure that each representative of the licensee has adequate qualifications and experience having regard to what the representative will do on the licensee's behalf in connection with a futures broking business or futures advice business carried on by the licensee.

1151 Revocation and variation of licence conditions

Subject to section 1200, the Commission may at any time revoke or vary a condition of a licence unless it was imposed by the regulations.

1152 Futures organisations to be informed about conditions of futures brokers licence

- (1) As soon as practicable after imposing a condition on, or revoking or varying a condition of, a futures brokers licence, the Commission shall inform in writing:
 - (a) each futures organisation of which the licensee is a member; and
 - (b) each corporation that is a clearing house for a futures exchange of which the licensee is a member.
- (2) A contravention of subsection (1) does not affect the validity of an act done by the Commission.

1153 Licensee to notify breach of licence condition

- (1) Within one business day after the happening of an event constituting a contravention of a condition of a licence held by a corporation, the licensee shall give to:
 - (a) the Commission; and

The Corporations Law—Section 1154

- (b) each futures organisation of which the licensee is a member;
a written notice setting out particulars of the event.
- (2) It is a defence to a prosecution for failing to give a particular notice to a person as required by this section if it is proved that:
 - (a) when the requirement arose, the defendant was unaware of the event that gave rise to the requirement; and
 - (b) the defendant:
 - (i) did not become aware of the event before the date of the information; or
 - (ii) did become so aware before that date but gave the notice to that person as soon as reasonably practicable after becoming so aware.

1154 Commission may require licensed futures broker to give information

- (1) The Commission may, by writing given to a corporation that is the holder of a futures brokers licence, direct the holder to give the Commission specified information about, or a specified statement relating to, a business of dealing in futures contracts that the holder carries on or has carried on.
- (2) A direction under subsection (1) to give a specified statement may also direct the holder to cause the statement to be audited by a registered company auditor before it is given to the Commission.
- (3) A person shall comply with a direction under this section:
 - (a) if the direction specifies a reasonable period for compliance—within that period; or
 - (b) in any other case—within a reasonable period;
or within that period as extended by the Commission by writing given to the person.

1155 Register of Futures Licensees

- (1) The Commission shall keep a Register of Futures Licensees for the purposes of this Part.

The Corporations Law—Section 1156

- (2) The Commission shall include in the Register, in relation to each licence, a copy of:
 - (a) the licence; and
 - (b) each instrument that imposes conditions on the licence, or revokes or varies conditions of the licence, after the licence is granted.
- (3) The Commission shall enter in the Register, in relation to each licence:
 - (a) the name of the licensee;
 - (b) if the licensee is a body corporate—the name of each director, and of each secretary, of the licensee;
 - (c) the day on which the licence was granted;
 - (d) in relation to each business to which the licence relates:
 - (i) the address of the principal place of business at which the business is carried on;
 - (ii) the addresses of the other places (if any) at which the business is carried on; and
 - (iii) if the business is carried on under a name or style other than the name of the licensee—that name or style;
 - (e) in the case of a futures brokers licence—the name, and the address of the principal place of business, of each futures organisation of which the licensee is a member;
 - (f) particulars of any suspension of the licence; and
 - (g) such other matters (if any) as are prescribed.
- (4) Where a person ceases to hold a particular licence, the Commission shall remove from the Register the documents included in it, and the particulars entered in it, in relation to that licence.
- (5) A person may inspect, and may make copies of, or take extracts from, the Register.

1156 Notifying change in particulars

Within 21 days after:

The Corporations Law—Section 1157

- (a) the holder of a futures brokers licence ceases to carry on the business to which the licence relates;
- (b) the holder of a futures advisers licence ceases to act as, or to hold out that the holder is, a futures adviser; or
- (c) there is a change in a matter particulars of which are required by virtue of any of paragraphs 1155(3)(a) to (e), inclusive, to be entered, in relation to a licence, in the Register of Futures Licensees;

the holder of the licence shall give the Commission written particulars, in the prescribed form, of that fact, or of that change, as the case may be.

1157 Annual statement of licensee

- (1) A person who is or has been a licensee shall lodge, in respect of each year or part of a year during which the licence is or was in force, a statement in the prescribed form that complies with this section.
- (2) The statement shall set out the number of persons:
 - (a) who, when the statement is lodged, hold; or
 - (b) who, when the person last ceased to be a licensee, held; as the case may be, proper authorities from the person.
- (3) The statement shall also contain such information as is prescribed.

1158 Time for lodging annual statement

- (1) A person required by section 1157 to lodge a statement shall lodge the statement:
 - (a) if the licence is a futures brokers licence—within the period within which the person must lodge with the Commission a profit and loss account and balance sheet referred to in section 1218; or
 - (b) if the licence is a futures advisers licence—within the period of 1 month immediately before the anniversary of the day on which the licence was granted;

The Corporations Law—Section 1158

or within that period as extended by the Commission by writing given to the person.

- (2) Where an extension was granted by the NCSC before the commencement of this Part under a previous law corresponding to this section and the period as extended ends after the commencement of this Part, the extension shall be deemed to have been granted by the Commission under this section.

Division 2—Agreements with unlicensed persons

Subdivision A—Agreements affected

1159 Excluded clients

In this Division:

excluded client means a person who is:

- (a) a futures broker;
- (b) a futures adviser; or
- (c) one of 2 or more persons who together constitute a futures broker or futures adviser.

1160 Agreement about a dealing in breach of section 1142

Where a person (in this section and Subdivision B called the *non-licensee*) and another person (in this section and Subdivision B called the *client*), not being an excluded client, enter into an agreement relating to a dealing or proposed dealing in a futures contract by the non-licensee on the client's behalf, being a dealing or proposed dealing involving a contravention by the non-licensee of section 1142, Subdivision B applies, whether or not anyone else is a party to the agreement.

1161 Agreement with corporation acting in breach of section 1143

Where, during a period when a person (in this section and Subdivision B called the *non-licensee*), in contravention of section 1143, carries on a futures advice business or holds out that the person is a futures adviser, the non-licensee and a client (other than an excluded client) of the non-licensee enter into an agreement that relates to advising the client about futures contracts or to giving the client futures reports, Subdivision B applies, whether or not anyone else is a party to the agreement.

Subdivision B—Effect on agreements

1164 Client may give notice of rescission

- (1) Subject to this section, the client may, whether before or after completion of the agreement, give to the non-licensee a written notice stating that the client wishes to rescind the agreement.
- (2) The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.
- (3) The client is not entitled to give a notice under this section if the client engages in conduct by engaging in which the client would, if the entitlement so to give a notice were a right to rescind the agreement for misrepresentation by the non-licensee, be taken to have affirmed the agreement.
- (4) The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that:
 - (a) the non-licensee did not hold a futures brokers licence; or
 - (b) the non-licensee did not hold a futures brokers licence and did not hold a futures advisers licence;as the case requires.
- (5) If, at a time when a futures brokers licence or futures advisers licence held by the non-licensee was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of subsection (4) to have informed the client at that time that the non-licensee did not hold a futures brokers licence or futures advisers licence, as the case may be.
- (6) None of subsections (2), (3) and (4) limits the generality of either of the others.

The Corporations Law—Section 1165

- (7) Subject to this section, the client may give a notice under this section whether or not:
- (a) the notice will result under section 1165 in rescission of the agreement; or
 - (b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 1166.

1165 Effect of notice under section 1164

A notice given under section 1164 rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

1165A Client may apply to Court for partial rescission

- (1) If the client gives a notice under section 1164 but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 1165, the client may, within a reasonable period after giving the notice, apply to the Court for an order under subsection (4) of this section.
- (2) The Court may extend the period for making an application under subsection (1).
- (3) If an application is made under subsection (1), the Court may make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 1165 and the application were for orders under section 1166.
- (4) On an application under subsection (1), the Court may make an order:
 - (a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and

The Corporations Law—Section 1166

- (b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.
- (5) If the Court makes an order under subsection (4), the agreement shall be taken for the purposes of section 1166 to have been rescinded under section 1165.
- (6) An order under subsection (4) does not affect the application of section 1168 or 1170 in relation to the agreement as originally made or as varied by the order.

1166 Court may make consequential orders

- (1) Subject to subsection (2), on rescission of the agreement under section 1165, the Court may, on the application of the client or the non-licensee, make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.
- (2) The Court is not empowered to make a particular order under subsection (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

1167 Agreement unenforceable against client

- (1) This section:
 - (a) applies while both of the following are the case:
 - (i) the client is entitled to give a notice under section 1164;
 - (ii) a notice so given will result under section 1165 in rescission of the agreement; and
 - (b) applies after the agreement is rescinded under section 1165; but does not otherwise apply.
- (2) The non-licensee is not entitled, as against the client:
 - (a) to enforce the agreement, whether directly or indirectly; or

The Corporations Law—Section 1168

- (b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

1168 Non-licensee not entitled to recover commission

- (1) Without limiting the generality of section 1167, this section:
- (a) applies while the client is entitled to give a notice under section 1164; and
 - (b) applies after the client so gives a notice, even if the notice does not result under section 1165 in rescission of the agreement;
- but does not otherwise apply.
- (2) The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a *quantum meruit*) any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

1169 Onus of establishing non-application of section 1167 or 1168

For the purposes of determining, in a proceeding in a court, whether or not the non-licensee is, or was at a particular time, entitled as mentioned in subsection 1167(2) or 1168(2), it shall be presumed, unless the contrary is proved, that section 1167 or 1168, as the case may be, applies, or applied at that time, as the case may be.

1170 Client may recover commission paid to non-licensee

- (1) Without limiting the generality of section 1166, if the client gives a notice under section 1164, the client may, even if the notice does not result under section 1165 in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.

The Corporations Law—Section 1171

- (2) The Commission may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

1171 Remedies under this Division additional to other remedies

The client's rights and remedies under this Division are additional to, and do not prejudice, any other right or remedy of the client.

Division 3—Futures representatives

1172 Representatives of futures brokers

A natural person shall not do an act as a representative of a futures broker (other than an exempt broker) unless:

- (a) the broker holds a futures brokers licence; and
- (b) the person holds a proper authority from the broker.

1173 Representatives of futures advisers

A natural person shall not do an act as a representative of a futures adviser (other than an exempt futures adviser) unless the futures adviser:

- (a) is also a futures broker and holds a futures brokers licence; or
 - (b) holds a futures advisers licence;
- and the person holds a proper authority from the futures adviser.

1174 Defence

It is a defence to a prosecution for a contravention of section 1172 or 1173 constituted by an act done by a person as a representative of another person if it is proved that:

- (a) but for the revocation or suspension of a licence held by the other person, the act would not have been such a contravention;
- (b) when he or she did the act, the first-mentioned person:
 - (i) believed in good faith that the other person held the licence; and
 - (ii) was unaware of the revocation or suspension; and
- (c) in all the circumstances it was reasonable for the first-mentioned person so to believe and to be unaware of the revocation or suspension.

The Corporations Law—Section 1175

1175 Body corporate not to act as representative

A body corporate shall not do an act as a representative of a person.

1176 Licensee to keep register of holders of proper authorities

- (1) A licensee shall establish a register of the persons who hold proper authorities from the licensee and shall keep it in accordance with this section.
- (2) The register shall be in writing or in such other form as the Commission approves.
- (3) The register shall contain, in relation to each person (if any) who holds a proper authority from the licensee:
 - (a) a copy of the proper authority;
 - (b) the person's name;
 - (c) the person's current residential address;
 - (d) unless the person's current business address is the same as the licensee's—the person's current business address; and
 - (e) such other information (if any) as is prescribed.
- (4) A copy of a proper authority of a person from the licensee that subsection (3) requires the register to contain shall be included in the register within 2 business days after the person begins to hold that proper authority.
- (5) Information that subsection (3) requires the register to contain in relation to a person shall be entered in the register within 2 business days after:
 - (a) the person begins to hold a proper authority from the licensee; or
 - (b) the licensee receives the information;whichever happens later.
- (6) Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall:

The Corporations Law—Section 1177

- (a) in any case:
 - (i) include, in a part of the register separate from the part in which copies of proper authorities are included under subsection (4); and
 - (ii) remove from the last-mentioned part; the copy of the proper authority that was included in the last-mentioned part; and
- (b) unless, at the end of those 2 business days, the person again holds a proper authority from the licensee:
 - (i) enter, in a part of the register separate from the part in which information is entered under subsection (5); and
 - (ii) remove from the last-mentioned part; the information that has been entered in the last-mentioned part in relation to the person.
- (7) Information that has been entered under paragraph (6)(b) in a separate part of the register shall be deemed for the purposes of subsections (3) and (5) not to be contained or entered in the register.
- (8) Where a licensee whom subsection (1) requires to establish a register already keeps one under this section or a corresponding previous law, the licensee need not establish a new register but must keep the existing one in accordance with this section.

1177 Licensee to notify Commission of location and contents of register

- (1) This section has effect where a licensee keeps a register under section 1176.
- (2) Within 14 days after establishing the register, the licensee shall lodge written notice of where the register is kept.
- (3) As soon as practicable after changing the place where the register is kept, the licensee shall lodge written notice of the new place where the register is kept.

The Corporations Law—Section 1178

- (4) Within 2 business days after the day on which a person begins to hold a particular proper authority from the licensee, the licensee shall, whether or not the person has previously held a proper authority from the licensee, lodge:
 - (a) a copy of the first-mentioned proper authority; and
 - (b) a written notice stating that the person began to hold that proper authority on that day.
- (5) Within the period within which subsection 1176(5) requires the licensee to enter in the register information that the register is required by virtue of paragraph 1176(3)(b), (c), (d) or (e) to contain, the licensee shall lodge a written notice setting out the information and stating that the information has been, or is to be, entered in the register.
- (6) Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall, unless at the end of those 2 business days the person again holds a proper authority from the licensee, lodge a written notice stating that the person has ceased to hold such a proper authority.

1178 Inspection and copying of register

- (1) A licensee shall ensure that a register kept by it under section 1176 is open for inspection without charge.
- (2) A person may by writing request a licensee to give the person a copy of the whole, or of a specified part, of a register kept by the licensee under section 1176.
- (3) A licensee shall comply with a request under subsection (2) within 2 business days after:
 - (a) if the licensee requires the person to pay for the copy an amount of not more than the prescribed amount—receiving the amount from the person; or
 - (b) otherwise—receiving the request.

[The next section is 1180]

The Corporations Law—Section 1180

1180 Commission may require production of authority

- (1) Where the Commission has reason to believe that a person:
 - (a) holds a proper authority from a licensee; or
 - (b) has done an act as a representative of another person;then, whether or not the Commission knows who the licensee or other person is, it may require the first-mentioned person to produce:
 - (c) any proper authority from a licensee; or
 - (d) any invalid futures authority from a person;that the first-mentioned person holds.
- (2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

1181 Commission may give licensee information about representative

- (1) Where the Commission believes on reasonable grounds that:
 - (a) a person (in this section called the **holder**) holds, or will hold, a proper authority from a licensee;
 - (b) having regard to that fact, the Commission should give to the licensee particular information that the Commission has about the person; and
 - (c) the information is true;the Commission may give the information to the licensee.
- (2) Where the Commission gives information under subsection (1), the licensee or an officer of the licensee may, for a purpose connected with:
 - (a) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, the information; or
 - (b) the licensee taking action pursuant to such a decision;or for 2 or more such purposes, and for no other purpose, give to another person, make use of, or make a record of, some or all of the information.

The Corporations Law—Section 1181

- (3) A person to whom information has been given, in accordance with subsection (2) or this subsection, for a purpose or purposes may, for that purpose or one or more of those purposes, and for no other purpose, give to another person, make use of, or make a record of, that information.
- (4) Subject to subsections (2) and (3), a person shall not give to another person, make use of, or make a record of, information given by the Commission under subsection (1).
- (4A) Subsection 8(3) does not apply in relation to a reference in subsection (2), (3) or (4) of this section to a provision of this section.
- (5) A person has qualified privilege in respect of an act done by the person as permitted by subsection (2) or (3).
- (6) A person to whom information is given in accordance with this section shall not:
 - (a) give any of the information to a court; or
 - (b) produce in a court a document that sets out some or all of the information;except:
 - (c) for a purpose connected with:
 - (i) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, some or all of the information;
 - (ii) the licensee taking action pursuant to such a decision; or
 - (iii) proving in a proceeding in that court that particular action taken by the licensee in relation to the holder was so taken pursuant to such a decision;or for 2 or more such purposes, and for no other purpose;
 - (d) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section;
 - (e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or

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- (f) in a proceeding in respect of the giving to a court of false information being or including some or all of the first-mentioned information.
- (7) A reference in this section to a person taking action in relation to another person is a reference to the first-mentioned person:
 - (a) taking action by way of making, terminating, or varying the terms and conditions of; or
 - (b) otherwise taking action in relation to;
a relevant agreement, in so far as the relevant agreement relates to the other person being employed by, or acting for or by arrangement with, the first-mentioned person in connection with a futures broking business or futures advice business carried on by the first-mentioned person.
- (8) In addition, and without prejudice, to the effect it has of its own force, subsection (6) has by force of this subsection the effect it would have if:
 - (a) the reference in it to information being given in accordance with this section were a reference to information being given in accordance with section 1181 of the Corporations Law of this jurisdiction; and
 - (b) a reference in it to a court were a reference to a court of an external Territory or of a country outside Australia and the external Territories; and
 - (c) paragraphs (6)(d) and (e) were omitted.

1182 Holder of authority may be required to return it

- (1) Where a person holds a proper authority from a licensee but is neither employed by, nor authorised to act for or by arrangement with, the licensee, the licensee may, by writing given to the person, require the person to give the proper authority to the licensee within a specified period of not less than 2 business days.
- (2) Where a person holds an invalid futures authority from another person, the other person may, by writing given to the first-mentioned person, require the first-mentioned person to give

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the invalid futures authority to the other person within a specified period of not less than 2 business days.

- (3) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made of the person in accordance with subsection (1) or (2).

Division 4—Liability of principals for representatives' conduct

1183 Conduct engaged in as a representative

Where a person engages in conduct as a representative of another person (in this section called the *principal*), then, as between the principal and a third person (other than the Commission), the principal is liable in respect of that conduct in the same manner, and to the same extent, as if the principal had engaged in it.

1184 Liability where identity of principal unknown

- (1) This section applies for the purposes of a proceeding in a court where:
 - (a) in this jurisdiction or elsewhere, a person (in this section called the *representative*) engages in particular conduct while the person is a representative of 2 or more persons (in this section called the *indemnifying principals*); and
 - (b) it is proved for the purposes of the proceeding that the representative engaged in the conduct as a representative of some person (in this section called the *unknown principal*) but it is not proved for those purposes who the unknown principal is.
- (2) If only one of the indemnifying principals is a party to the proceeding, he, she or it is liable in respect of that conduct as if he, she or it were the unknown principal.
- (3) If 2 or more of the indemnifying principals are parties to the proceeding, each of those parties is liable in respect of that conduct as if he, she or it were the unknown principal.

1185 Liability of principals where act done in reliance on representative's conduct

- (1) This section applies where:

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- (a) at a time when a person (in this section called the *representative*) is a representative of only one person (in this section called the *indemnifying principal*) or of 2 or more persons (in this section called the *indemnifying principals*), the representative, in this jurisdiction or elsewhere:
 - (i) engages in particular conduct; or
 - (ii) proposes, or represents that the representative proposes, to engage in particular conduct;
 - (b) another person (in this section called the *client*) does, or omits to do, a particular act, in this jurisdiction or elsewhere, because the client believes at a particular time in good faith that the representative engaged in, or proposes to engage in, as the case may be, that conduct:
 - (i) on behalf of some person (in this section called the *assumed principal*) whether or not identified, or identifiable, at that time by the client; and
 - (ii) in connection with a futures broking business or futures advice business carried on by the assumed principal; and
 - (c) it is reasonable to expect that a person in the client's circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief;
- whether or not that conduct is or would be within the scope of the representative's employment by, or authority from, any person.
- (2) If:
- (a) subparagraph (1)(a)(i) applies; or
 - (b) subparagraph (1)(a)(ii) applies and the representative engages in that conduct;
- then, for the purposes of a proceeding in a court:
- (c) as between the indemnifying principal and the client or a person claiming through the client, the indemnifying principal is liable; or
 - (d) as between any of the indemnifying principals and the client or a person claiming through the client, each of the indemnifying principals is liable;

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as the case may be, in respect of that conduct in the same manner, and to the same extent, as if he, she or it had engaged in it.

- (3) Without limiting the generality of subsection (2), the indemnifying principal, or each of the indemnifying principals, as the case may be, is liable to pay damages to the client in respect of any loss or damage that the client suffers as a result of doing, or omitting to do, as the case may be, the act referred to in paragraph (1)(b).

- (3A) Subsection (3) does not apply unless:

- (a) the conduct was engaged in, the proposed conduct would have been engaged in, or the representation was made, in this jurisdiction; or
- (b) the act referred to in paragraph (1)(b) was done, or would have been done, as the case may be, in this jurisdiction; or
- (c) some or all of the loss or damage was suffered in this jurisdiction.

- (4) If:

- (a) there are 2 or more indemnifying principals;
- (b) 2 or more of them are parties (in this subsection called the ***indemnifying parties***) to a proceeding in a court;
- (c) it is proved for the purposes of the proceeding:
 - (i) that the representative engaged in that conduct as a representative of some person; and
 - (ii) who that person is; and
- (d) that person is among the indemnifying parties;

subsections (2) and (3) do not apply, for the purposes of the proceeding, in relation to the indemnifying parties other than that person.

1186 Presumptions about certain matters

- (1) Where it is proved, for the purposes of a proceeding in a court, that a person (in this subsection called the ***representative***) engaged in particular conduct, in this jurisdiction or elsewhere, while the person was a representative of:

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- (a) only one person (in this subsection called the *indemnifying principal*); or
 - (b) 2 or more persons (in this subsection called the *indemnifying principals*);
- then, unless the contrary is proved for the purposes of the proceeding, it shall be presumed for those purposes that the representative engaged in the conduct as a representative of:
- (c) the indemnifying principal; or
 - (d) as a representative of some person among the indemnifying principals;
- as the case may be.
- (2) Where, for the purposes of establishing in a proceeding in a court that section 1185 applies, it is proved that a person did, or omitted to do, a particular act because the person believed at a particular time in good faith that certain matters were the case, then, unless the contrary is proved for those purposes, it shall be presumed for those purposes that it is reasonable to expect that a person in the first-mentioned person's circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief.

1187 No contracting out of liability for representative's conduct

- (1) For the purposes of this section, a liability of a person:
- (a) in respect of conduct engaged in by another person as a representative of the first-mentioned person; or
 - (b) arising under section 1185 because another person has engaged in, proposed to engage in, or represented that the other person proposed to engage in, particular conduct;
- is a liability of the first-mentioned person in respect of the other person.
- (2) Subject to this section, an agreement is void in so far as it purports to exclude, restrict or otherwise affect a liability of a person in respect of another person, or to provide for a person to be

The Corporations Law—Section 1188

indemnified in respect of a liability of the person in respect of another person.

- (3) Subsection (2) does not apply in relation to an agreement in so far as it:
- (a) is a contract of insurance;
 - (b) provides for a representative of a person to indemnify the person in respect of a liability of the person in respect of the representative; or
 - (c) provides for a licensee from whom a person holds a proper authority to indemnify another such licensee in respect of a liability of the other licensee in respect of the person.
- (4) A person shall not make, offer to make, or invite another person to offer to make, in relation to a liability of the first-mentioned person in respect of a person, an agreement that is or would be void, in whole or in part, by virtue of subsection (2).

1188 Effect of Division

- (1) Where 2 or more persons are liable under this Division in respect of the same conduct or the same loss or damage, they are so liable jointly and severally.
- (2) Nothing in section 1183, 1184 or 1185:
- (a) affects a liability arising otherwise than by virtue of this Division;
 - (b) notwithstanding paragraph (a) of this subsection, entitles a person to be compensated twice in respect of the same loss or damage; or
 - (c) makes a person guilty of an offence.

Division 5—Excluding persons from the futures industry

1189A Power to revoke, without a hearing, licence held by natural person

The Commission may, by written order, revoke a licence held by a natural person if the person:

- (a) becomes an insolvent under administration; or
- (b) is convicted of serious fraud; or
- (c) becomes incapable, through mental or physical incapacity, of managing his or her affairs; or
- (d) asks the Commission to revoke the licence.

1190 Power to revoke, without a hearing, licence held by body corporate

The Commission may, by written order, revoke a licence held by a body corporate if:

- (a) the body ceases to carry on business; or
- (b) the body becomes an externally-administered body corporate; or
- (c) the body asks the Commission to revoke the licence; or
- (d) a director, secretary or executive officer of the body contravenes this Law because:
 - (i) he or she does not hold a licence; or
 - (ii) a licence he or she holds is suspended.

1191 Power to revoke licence after a hearing

- (1) Subject to section 1200, the Commission may, by written order, revoke a licence if:
 - (a) the application for the licence contained matter that was false in a material particular or materially misleading;
 - (b) there was an omission of material matter from the application for the licence;

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- (c) the licensee contravenes a futures law;
- (d) the licensee contravenes a condition of the licence;
- (ea) the licensee is a natural person and the Commission has reason to believe that he or she is not of good fame and character;
- (e) the licensee is a body corporate and the Commission is satisfied that the educational qualifications or experience of a person who:
 - (i) is an officer of the licensee; and
 - (ii) was not an officer of the licensee when the licence was granted;are or is inadequate having regard to the duties that the officer performs, or will perform, in connection with the holding of the licence;
- (f) the licensee is a body corporate and the Commission is satisfied that:
 - (i) an officer of the licensee performs, or will perform, in connection with the holding of the licence, duties that are or include duties (in this paragraph called the ***different duties***) other than those having regard to which the Commission was satisfied, before granting the licence, that the officer's educational qualifications and experience were adequate; and
 - (ii) the officer's educational qualifications or experience are or is inadequate having regard to the different duties;
- (g) the licensee is a body corporate and:
 - (i) a licence held by a director, secretary or executive officer of the body is suspended or revoked; or
 - (ii) an order is made under section 1194 against such a director, secretary or executive officer;
- (h) the Commission has reason to believe that the licensee has not performed efficiently, honestly and fairly the duties of a holder of a futures brokers licence or a futures advisers licence, as the case requires; or
- (j) the Commission has reason to believe that the licensee will not perform those duties efficiently, honestly and fairly.

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- (2) In determining whether or not it has reason to believe as mentioned in paragraph (1)(ea) or (j) in relation to a licensee, the Commission is not precluded from having regard to a matter that arose before the time when the licence was granted unless the Commission was aware of the matter at that time.

1192 Power to suspend licence instead of revoking it

- (1) Subject to section 1200, where:
- (a) section 1189A or 1190 empowers the Commission to revoke a licence otherwise than because the licensee has asked for the revocation; or
 - (b) the Commission is empowered by virtue of paragraph 1191(1)(c), (d), (e), (f), (g), (h) or (j) to revoke a licence;
- the Commission may, if it considers it desirable to do so, instead:
- (c) by written order, suspend the licence for a specified period; or
 - (d) by written order, prohibit the licensee, either permanently or for a specified period, from doing specified acts, being acts that section 1142 or 1143 would prohibit the licensee from doing if the licensee did not hold the licence.
- (2) The Commission may at any time, by written order, vary or revoke an order in force under this section.
- (3) For the purposes of sections 1142, 1143, 1172 and 1173 a licensee shall be deemed not to hold the licence at any time during a period for which the licence is suspended.
- (4) Where an order in force under this section prohibits the licensee as mentioned in paragraph (1)(d):
- (a) the licensee shall not contravene the order; and
 - (b) in relation to the doing by a person, as a representative of the licensee, of an act specified in the order, sections 1172 and 1173 apply, or apply during the period specified in the order, as the case requires, as if the licensee did not hold the licence.

1192A Power to make banning order where licence revoked or suspended

Subject to section 1200, where the Commission:

- (a) revokes under section 1189A; or
- (b) revokes because of paragraph 1191(1)(a), (b), (c), (d), (h) or (j); or
- (c) revokes because of paragraph 1191(1)(ea); or
- (d) suspends because of paragraph 1192(1)(a); or
- (e) suspends because of paragraph 1192(1)(b);

a licence held by a natural person, it may also make a banning order against the person.

1193 Power to make banning order against unlicensed person

Subject to section 1200, the Commission may make a banning order against a natural person (other than a licensee) if:

- (a) he or she becomes an insolvent under administration;
- (b) he or she is convicted of serious fraud;
- (c) he or she becomes incapable, through mental or physical incapacity, of managing his or her affairs;
- (d) he or she contravenes a futures law;
- (e) the Commission has reason to believe that he or she is not of good fame and character;
- (f) the Commission has reason to believe that he or she has not performed efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or
 - (ii) a representative of a futures adviser; or
- (g) the Commission has reason to believe that he or she will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or
 - (ii) a representative of a futures adviser.

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1194 Nature of banning order

- (1) Where this Division empowers the Commission to make a banning order against a person, the Commission may, by written order, prohibit the person:
 - (a) in any case—permanently; or
 - (b) except where the Commission is empowered by virtue of paragraph 1193(e) to make the order—for a specified period; from doing an act as:
 - (c) a representative of a futures broker;
 - (d) a representative of a futures adviser; or
 - (e) a representative of a futures broker or a futures adviser; whichever the order specifies.
- (2) The Commission shall not vary or revoke a banning order except under section 1195, 1196 or 1197.

1195 Exceptions to banning order

- (1) An order made against a person under subsection 1194(1) may include a provision that permits the person, subject to such conditions (if any) as are specified, to do, or to do in specified circumstances, specified acts that the order would otherwise prohibit the person from doing.
- (2) Subject to section 1200, the Commission may, at any time, by written order, vary a banning order against a person:
 - (a) by adding a provision that permits the person as mentioned in subsection (1);
 - (b) by varying such a provision in relation to conditions, circumstances or acts specified in the provision;
 - (c) by omitting such a provision and substituting another such provision; or
 - (d) by omitting such a provision.

1196 Variation or revocation of banning order on application

- (1) Subject to sections 1197 and 1200, this section has effect where a person applies to the Commission to vary or revoke a banning order relating to the person.
- (2) If:
 - (a) the person is not an insolvent under administration;
 - (b) the Commission has no reason to believe that the person is not of good fame and character; and
 - (c) the Commission has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or
 - (ii) a representative of a futures adviser;the Commission shall, by written order:
 - (d) if only one of subparagraphs (c)(i) and (ii) applies—vary the banning order so that it no longer prohibits the person from doing an act as a representative of a futures broker or of a futures adviser, as the case may be; or
 - (e) in any other case—revoke the banning order.
- (3) Otherwise, the Commission shall refuse the application.
- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(b) or (c), the Commission shall have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.
- (5) Nothing in subsection (4) limits the matters to which the Commission may have regard:
 - (a) in deciding on the application; or
 - (b) in connection with performing or exercising any other function or power under this Part.

1197 Revocation of banning order in certain cases

Where:

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- (a) section 1196 requires the Commission to vary a banning order so that it no longer has a particular operation; and
 - (b) the order has no other operation;
- the Commission shall, by written order, instead revoke the banning order.

1198 Effect and publication of orders under this Division

- (1) An order by the Commission under this Division takes effect when served on the person to whom the order relates.
- (2) As soon as practicable on or after the day on which an order by the Commission under this Division takes effect, the Commission shall publish in the *Gazette* a notice that sets out a copy of:
 - (a) if the order is made under section 1189A, 1190, 1191, 1192 or 1194 or revokes a banning order—the first-mentioned order; or
 - (b) if the order varies a banning order—the banning order as in force immediately after the first-mentioned order takes effect; and states that the first-mentioned order, or the banning order as so in force, as the case may be, took effect on that day.
- (3) Where:
 - (a) but for this subsection, subsection (2) would require publication of a notice setting out a copy of a banning order as in force at a particular time;
 - (b) the banning order as so in force includes a provision that permits a person as mentioned in subsection 1195(1); and
 - (c) in the Commission's opinion, the notice would be unreasonably long if it set out a copy of the whole of that provision;the notice may, instead of setting out a copy of that provision, set out a summary of the provision's effect.

1199 Contravention of banning order

A person shall not contravene a banning order relating to the person.

1199A Banned person ineligible for licence

The Commission must not grant a futures brokers licence or a futures advisers licence to a person if a banning order prohibits the person (except as permitted by the order) from doing an act as a representative of a futures broker, or of a futures adviser, as the case may be.

1200 Opportunity for hearing

- (1) The Commission shall not:
 - (a) refuse an application for a licence on the ground, or grounds including the ground, that paragraph 1144A(2)(d), (e) or (f) or 1145(2)(e) or (f) does not apply in relation to the applicant;
 - (b) impose conditions on a licence;
 - (c) vary the conditions of a licence;
 - (d) revoke or suspend a licence otherwise than by virtue of section 1189A or 1190 or paragraph 1192(1)(a);
 - (e) make, otherwise than by virtue of paragraph 1192A(a) or (d) or 1193(a), (b) or (c), an order under section 1194 against a person;
 - (f) make under subsection 1195(2) an order varying a banning order against a person; or
 - (g) refuse an application by a person under section 1196;unless the Commission complies with subsection (2) of this section.
- (2) The Commission shall give the applicant, licensee or person, as the case may be, an opportunity:
 - (a) to appear at a hearing before the Commission that takes place in private; and

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- (b) to make submissions and give evidence to the Commission in relation to the matter.

1201 Disqualification by the Court

- (1) Where the Commission:
 - (a) revokes under section 1189A, 1190 or 1191 a licence held by a person; or
 - (b) makes under section 1194 against a person an order that is to operate otherwise than only for a specified period;the Commission may apply to the Court for an order or orders under this section in relation to the person.
- (2) On an application under subsection (1), the Court may make one or more of the following:
 - (a) an order disqualifying the person, permanently or for a specified period, from holding:
 - (i) a futures brokers licence;
 - (ii) a futures advisers licence; or
 - (iii) a futures brokers licence or a futures advisers licence;whichever the order specifies;
 - (b) an order prohibiting the person, permanently or for a specified period, from doing an act as:
 - (i) a representative of a futures broker;
 - (ii) a representative of a futures adviser; or
 - (iii) a representative of a futures broker or of a futures adviser;whichever the order specifies;
 - (c) such other order as it thinks fit;or may refuse the application.
- (3) The Court may revoke or vary an order in force under subsection (2).

1202 Effect of orders under section 1201

- (1) The Commission shall not grant a futures brokers licence or a futures advisers licence to a person whom an order in force under section 1201 disqualifies from holding a futures brokers licence or a futures advisers licence, as the case may be.
- (2) A person shall not contravene an order that:
 - (a) is of a kind referred to in paragraph 1201(2)(b);
 - (b) is in force under section 1201; and
 - (c) relates to the person.

1203 Effect of previous orders under laws corresponding to section 1201

- (1) This section applies where, immediately before the commencement of section 1201, a person was, for the purposes of subsection 78(5) of the *Futures Industry Act 1986* or a previous corresponding law of this or any other jurisdiction, disqualified, or deemed to be disqualified, either permanently or for a period, because of an order of an Australian court, from holding:
 - (a) a futures broker's licence;
 - (b) a futures adviser's licence;
 - (c) a futures broker's representatives licence; or
 - (d) a futures adviser's representatives licence;under that Act or a corresponding previous law.
- (2) As from that commencement, the order has effect for the purposes of this Law as if it were an order:
 - (a) disqualifying the person, permanently or for that period, as the case may be, from holding:
 - (i) if paragraph (1)(a) applies—a futures brokers licence under this Law; or
 - (ii) if paragraph (1)(b) applies—a futures advisers licence under this Law; or
 - (b) prohibiting the person, permanently or for that period, as the case may be, from doing an act as:

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- (i) if paragraph (1)(c) applies—a representative of a futures broker; or
 - (ii) if paragraph (1)(d) applies—a representative of a futures adviser;
- as the case requires, being an order in force under subsection 1201(2).
- (3) The effect that the order has by force of subsection (2) is in addition to, and does not prejudice, its effect otherwise than by force of that subsection.

Part 8.4—Conduct of futures business

1204 Certain representations prohibited

- (1) A person who is the holder of a licence shall not represent or imply, or knowingly permit to be represented or implied, in any manner to a person that the abilities or qualifications of the holder of the licence have in any respect been approved by the Commission.
- (2) A statement that a person is the holder of a licence is not a contravention of this section.

1205 Undesirable advertising

- (1) In this section:

publish, in relation to a statement, means:

- (a) insert the statement in a newspaper or periodical or cause it to be so inserted;
- (b) publicly exhibit the statement or cause it to be publicly exhibited; or
- (c) include the statement, or cause it to be included, in a document that, whether or not in response to a request, is sent or delivered to a person, or thrown or left upon premises in the occupation of a person;

broadcast, in relation to a statement, means broadcast the statement by wireless transmission or television or cause it to be so broadcast.

- (2) Where the Commission considers that, having regard to conduct that a person has engaged in, is engaging in, or proposes to engage in, it is in the public interest to do so, it may, by written order given to the person, prohibit the person from publishing or broadcasting statements about:
 - (a) futures contracts; or

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- (b) businesses carried on, or proposed to be carried on, by persons and involving dealing in futures contracts on behalf of other persons; or
 - (c) futures advice businesses or proposed futures advice businesses;unless the form and content of the statements have first been approved by the Commission.
- (3) An order under subsection (2) shall not be made unless the Commission has first given the person in relation to whom it proposes to make the order an opportunity to appear at a hearing before the Commission (being a hearing that takes place in private) and make submissions and give evidence to the Commission in relation to the matter.
- (4) A person the subject of an order under subsection (2) shall comply with the order.
- (5) For the purposes of this section, where a statement is published or broadcast and there is also published or broadcast in relation to the statement:
 - (a) the name or address of a person;
 - (b) the telephone or telex number of a person; or
 - (c) the post office or other delivery box number of a person;it shall be presumed, unless the contrary is proved, that the statement was published or broadcast by that person.

1205A Application of sections 1206 and 1207: exempt brokers

Neither of sections 1206 and 1207 applies in relation to an exempt broker, except in so far as the exempt broker carries on a futures broking business as a personal representative of a dead futures broker.

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1206 Issue of contract notes

- (1) A futures broker shall, in respect of a transaction, being the acquisition or disposal of a futures contract, that is entered into by the broker on behalf of another person, give as soon as practicable:
- (a) in a case where the transaction is not an operation by the broker on a discretionary account—to that other person; or
 - (b) in a case where the transaction is an operation by the broker on a discretionary account—to the person, or to each person, as the case requires, who gave instructions to the broker authorising the broker to operate on the discretionary account, other than a person who agrees in the prescribed manner to waive the operation of this paragraph;
- a contract note that complies with subsection (3), (4) or (5), as the case requires.
- (2) Subsection (1) does not require a futures broker to give a contract note to a person in respect of a transaction if the person was at the time of the transaction the holder of a futures brokers licence.
- (3) A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of a futures contract (other than a futures option or an eligible exchange-traded option), shall include:
- (a) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;
 - (b) the name of the person to whom the broker gives the contract note;
 - (c) the day on which the transaction took place;
 - (d) a description of the futures contract sufficient to identify the nature of the transaction, including:
 - (i) in a case where the futures contract is a commodity agreement—a description of the commodity and a statement of the contract price;
 - (ii) in a case where the futures contract is an adjustment agreement:

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- (A) a description of the class of adjustment agreements in which the futures contract is included;
 - (B) a statement of the contract price; and
 - (C) if the transaction is the completion of the futures contract—the value or worth (as determined in accordance with the futures contract) of the futures contract at the time of that completion; and
 - (iii) in a case where the transaction is a liquidating trade—details of the liquidating trade and of the futures contract that is intended to be closed out following the entering into of the liquidating trade;
 - (e) the deposit paid or payable in respect of the transaction;
 - (f) the month and year for the performance or settlement of the contract;
 - (g) in a case where the transaction took place on a futures market of a futures exchange or of a recognised futures exchange, or on an exempt futures market—a name or abbreviation by which the futures exchange, recognised futures exchange or exempt futures market, as the case may be, is generally known;
 - (h) a statement of the amount of commission charged or the rate (if any) at which the commission was charged; and
 - (j) a statement of the amounts (if any) of all stamp duties and other duties and taxes payable in connection with the transaction.
- (4) A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of a futures option, shall include:
- (a) the matters specified in paragraphs (3)(a), (b), (c), (g), (h) and (j);
 - (b) a description of the class of futures contracts in which is included the futures contract to which the futures option relates;

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- (c) the month and year for performance or settlement of the futures contract to which the futures option relates;
 - (d) the date by which the purchaser of the futures option, in order to exercise the futures option, must declare an intention to exercise the futures option;
 - (e) a statement of the amount of the premium; and
 - (f) details of the price at which the purchaser of the futures option has, by virtue of the futures option, an option or Chapter 8 right to assume a bought position, or sold position, as the case requires, in relation to the futures contract to which the futures option relates.
- (5) A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of an eligible exchange-traded option (in this subsection called the **option**), shall include:
- (a) the matters specified in paragraphs (3)(a), (b), (c), (g), (h) and (j);
 - (b) a description of the commodity or index to which the option relates;
 - (c) the date by which the purchaser of the option, in order to exercise the option, must declare an intention to exercise the option;
 - (d) a statement of the amount of the premium; and
 - (e) details of:
 - (i) in a case where the option relates to a commodity—the price at which the purchaser of the option has, by virtue of the option, an option or right to purchase, or sell, as the case requires, that commodity; or
 - (ii) in a case where the purchaser of the option has, by virtue of the option, an option or right to be paid an amount of money to be determined by reference to the amount by which a specified number is greater or less than the number of a specified index—the specified number and the manner in which that amount of money is to be determined.

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- (6) A futures broker shall not include in a contract note given under subsection (1), as the name of a person with or on behalf of whom the broker has entered into the transaction, a name that the broker knows, or could reasonably be expected to know, is not a name by which that person is ordinarily known.
- (7) For the purposes of this section, a futures contract is included in the same class of futures contracts as another futures contract if, and only if, the first-mentioned futures contract is of the same kind as the other futures contract.

1207 Futures broker to furnish monthly statement to client

- (1) Where:
 - (a) a futures broker has, at any time during a particular month, held money or property on account of a client; or
 - (b) a futures broker has, before or during a particular month, acquired a futures contract on behalf of a client, and, as at the end of that month, the futures contract has not been disposed of;the broker shall, within 7 days after the end of that month, send to the client a written statement setting out:
 - (c) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;
 - (d) the opening cash balance for that month in the client's account;
 - (e) all deposits, credits, withdrawals and debits affecting the account during that month;
 - (f) the cash balance in the account at the end of that month;
 - (g) in relation to each futures contract that the broker has, before or during that month, acquired on behalf of the client and that, as at the end of that month, has not been disposed of, particulars of the futures contract, including the particulars required by virtue of paragraph 1206(3)(d), or paragraphs 1206(4)(b), (e) and (f) or (5)(b), (d) and (e), as the case

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requires, to be included in a contract note relating to the acquisition of the futures contract; and

- (h) details of each outstanding call for a deposit or margin in respect of a futures contract that the broker has acquired on behalf of the client.
- (2) Where a futures broker has, during a particular month, authority to operate on a discretionary account, the broker shall, within 7 days after the end of that month, send to the person, or to each person, as the case requires, who gave instructions to the broker authorising the broker to operate on the discretionary account a written statement setting out:
- (a) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;
 - (b) the opening cash balance for that month in the account (in this subsection called the **account**) maintained by the broker in respect of the discretionary account;
 - (c) all deposits, credits, withdrawals and debits affecting the account during that month;
 - (d) the cash balance in the account at the end of that month;
 - (e) in relation to each futures contract:
 - (i) that the broker has acquired before or during that month;
 - (ii) the acquisition of which was an operation by the broker on the discretionary account; and
 - (iii) that, as at the end of that month, has not been disposed of;particulars of the futures contract, including the particulars required by virtue of paragraph 1206(3)(d), or paragraphs 1206(4)(b), (e) and (f) or (5)(b), (d) and (e), as the case requires, to be included in a contract note relating to the acquisition of the futures contract; and
 - (f) details of each outstanding call for a deposit or margin in respect of a futures contract that the broker has acquired on behalf of the client and the acquisition of which was an operation by the broker on the discretionary account.
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1208 Dealings by futures broker on own account

- (1) A futures broker shall maintain separately from other records such records as correctly record and explain dealings in futures contracts by the broker on the broker's own account including, but not limited to, records specifying:
 - (a) a description of each of those dealings together with the date on which and the time at which:
 - (i) the instructions (if any) for each of those dealings were received by the futures broker;
 - (ii) the instructions (if any) for each of those dealings were transmitted to the futures market on which the dealing was effected; and
 - (iii) the dealing was effected; and
 - (b) the source of the funds used for effecting those dealings.
- (2) A futures broker shall be deemed not to have maintained records in compliance with subsection (1) unless the entries in the records are made in writing in the English language or are made in such a manner as will enable them to be readily accessible and to be readily converted into writing in the English language.
- (3) A futures broker shall not knowingly take the other side of an order of a client of the broker in relation to a futures contract unless:
 - (a) the client has consented to the broker taking the other side of the order in relation to that futures contract; or
 - (b) in dealing in that futures contract on behalf of the client, the broker is to be taken, for the purposes of this Law, to be dealing in that futures contract on the broker's own account.
- (4) For the purposes of subsection (3), a futures broker takes the other side of an order of a client of the broker in relation to a futures contract where the broker:
 - (a) when dealing on the broker's own account, assumes a bought position or sold position in relation to the contract; and
 - (b) when dealing on the instructions of the client, assumes the opposite sold position or bought position in relation to the contract.

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1209 Segregation of client money and property

(1) In this section:

client, in relation to a futures broker, means a person on behalf of whom the broker deals, or from whom the broker accepts instructions to deal, in futures contracts, but does not include:

- (a) the broker;
- (b) if the broker is a body corporate—a director, or an officer, of the broker;
- (c) an employee of the broker;
- (d) if the broker is a body corporate—a body corporate that is related to the broker;
- (e) a person who is associated with, or who is a partner of, the broker; or
- (f) a body corporate in which the broker has, or the broker and partners of the broker together have, a controlling interest;

credit facility means a document evidencing the right of a person to obtain money on credit from another person, and, without limiting the generality of the foregoing, includes a letter of credit and a bank guarantee;

property includes credit facilities and securities;

relevant credit balance, in relation to a client of a futures broker, means the total of:

- (a) the amounts deposited by the broker in respect of the client in a clients' segregated account, or clients' segregated accounts, of the broker, less so much of those amounts as has been withdrawn from the account or accounts; and
- (b) the values of the items of property that:
 - (i) have, in respect of the client, been deposited by the broker in safe custody pursuant to subsection (3);
 - (ii) have not been withdrawn from safe custody; and
 - (iii) under the terms and conditions on which they were deposited with, or received by, the broker, are available

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to meet, or to provide security in connection with the meeting of, relevant liabilities of the client;

relevant liabilities, in relation to a client of a futures broker, means debts and liabilities of the client arising out of dealings in futures contracts effected by the broker on behalf of the client;

settling, in relation to a dealing in a futures contract, includes making delivery, or taking delivery, of a commodity to which the futures contract relates.

- (2) For the purposes of the definition of **relevant credit balance** in subsection (1), the value of an item of property at a particular time is:

- (a) in the case of a credit facility—the amount of money that the person entitled to the right evidenced by the credit facility can, at that time or within a reasonable period after that time, obtain by virtue of that right; or
- (b) in any other case—the market value of the property as at the end of the last business day before that time.

- (3) Where, in connection with:

- (a) dealings in futures contracts effected, whether in this jurisdiction or elsewhere or proposed to be effected, by a futures broker on behalf of a client of the broker; or
- (b) instructions by a client of a futures broker to deal in futures contracts, whether in this jurisdiction or elsewhere;

money or property (other than property to which section 1214 applies) is deposited with the broker by the client, or is received by the broker for, or on behalf of, the client, the broker shall:

- (c) in the case of money—deposit the money in a clients' segregated account of the broker maintained in Australia or in the place where the money was deposited with, or received by, the broker; or
- (d) in the case of property—deposit the property in safe custody, in Australia or in the place where the property was deposited with, or received by, the broker, in such a manner that the property is segregated from property other than property

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deposited by the broker in safe custody pursuant to this subsection;

on or before the next day after the money or property is deposited with, or received by, the broker that is a day on which the money or property can be deposited as first mentioned in paragraph (c) or (d).

- (4) Without limiting the generality of subsection (3), where, in connection with dealings in futures contracts effected, whether in this jurisdiction or elsewhere, by a futures broker, the broker receives from a person an amount of money some or all of which is attributable to dealings in futures contracts so effected on behalf of clients of the broker, the broker shall, on the next day on which the amount can be so deposited, deposit the amount in a clients' segregated account of the broker maintained in Australia or in the place where the broker receives the amount.
- (5) Where, pursuant to this section, a futures broker deposits money in respect of a client in a clients' segregated account of the broker, the broker shall not withdraw any of the money except for the purpose of:
 - (a) making a payment to, or in accordance with the written direction of, a person entitled to the money;
 - (b) making a payment for, or in connection with, the entering into, margining, guaranteeing, securing, transferring, adjusting or settling of dealings in futures contracts effected by the broker on behalf of the client;
 - (c) defraying brokerage and other proper charges incurred in respect of dealings in futures contracts effected by the broker on behalf of the client;
 - (d) investing it:
 - (i) in any manner in which trustees are for the time being authorised by law to invest trust funds;
 - (ii) on deposit with an eligible money market dealer;
 - (iii) on deposit at interest with a banking corporation;
 - (iv) on deposit with a clearing house for a futures exchange;or

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- (v) in the purchase of cash management trust interests;
 - (e) paying to the broker the amount of a fee that the broker may charge, or an amount to which the broker is entitled, under an agreement with the client made under subsection (7); or
 - (f) making a payment that is otherwise authorised by law; or as permitted by subsection (11).
- (6) A futures broker shall not deal with property deposited by the broker in safe custody under subsection (3) otherwise than in accordance with the terms and conditions on which the property was deposited with, or received by, the broker.
- (7) A futures broker who invests as mentioned in paragraph (5)(d) money that was, in respect of a client of the broker, deposited by the broker under subsection (3):
 - (a) may charge such fee (if any) for so investing the money; and
 - (b) is entitled to so much (if any) of the return on the money so invested;as the broker and the client agree in writing.
- (8) A futures broker shall not invest an amount pursuant to paragraph (5)(d) by depositing it with a person for that person to invest, unless the broker:
 - (a) has informed the person that the amount has been withdrawn from a clients' segregated account of the broker and is money to which clients of the broker are entitled; and
 - (b) has obtained from the person a written statement that is signed by the person, sets out the amount and acknowledges that the broker has informed the person as mentioned in paragraph (a).
- (9) Where, at a particular time, the total amount of the relevant liabilities of a client of a futures broker exceeds the relevant credit balance of the client, the broker may, in respect of the client, deposit in a clients' segregated account of the broker an amount of money not greater than the amount of the excess, and, if the broker does so, the amount so deposited shall, subject to subsection (10), be deemed to be money to which the client is entitled.

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(10) Where:

- (a) a futures broker has, in respect of a client of the broker, deposited an amount pursuant to subsection (9) in a clients' segregated account of the broker; and
- (b) the relevant credit balance of the client exceeds by a particular amount the total amount of the relevant liabilities of the client;

the broker may withdraw from the account so much of the amount referred to in paragraph (a) as does not exceed the amount first referred to in paragraph (b).

(11) A futures broker shall keep in relation to the clients' segregated account, or clients' segregated accounts, of the broker accounting records that:

- (a) are separate from any other accounting records of the broker;
- (b) record separately in respect of each client of the broker particulars of the amounts deposited in, and the amounts withdrawn from, the account or accounts in respect of the client; and
- (c) record, separately from the particulars referred to in paragraph (b):
 - (i) particulars (including particulars of withdrawals) of so much of the amounts deposited as required by subsection (4) in the account or accounts as was not attributable to dealings in futures contracts effected by the broker on behalf of clients of the broker;
 - (ii) particulars of all amounts deposited in the account or accounts pursuant to subsection (9); and
 - (iii) particulars of all amounts withdrawn from the account or accounts pursuant to subsection (10).

(12) A futures broker shall keep records that:

- (a) relate to deposits of property in safe custody by the broker pursuant to subsection (3); and
- (b) record separately in respect of each client of the broker particulars of the property deposited in respect of the client.

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- (13) Section 1213 applies, so far as it is capable of application, in relation to accounting records, and other records, that are required by subsections (11) and (12), respectively, of this section to be kept by a futures broker, and so applies as if those accounting records and other records were accounting records required by that section to be kept by the broker.
- (14) Subject to subsections (15) and (16), none of the following:
 - (a) money deposited by a futures broker pursuant to this section in a clients' segregated account of the broker;
 - (b) property in which money deposited by a futures broker as mentioned in paragraph (a) of this subsection has been invested pursuant to paragraph (5)(d);
 - (c) property deposited by a futures broker in safe custody pursuant to subsection (3);is available for the payment of a debt or liability of the broker or is liable to be attached, or taken in execution, under the order or process of a court at the instance of a person suing in respect of such a debt or liability.
- (15) Nothing in subsection (14) affects the right of a client of a futures broker to recover money or property to which the client is entitled.
- (16) Where a futures broker is entitled to withdraw money from a clients' segregated account of the broker for the purpose of making a payment to the broker, subsection (14) does not apply in relation to that money.
- (17) Where a futures broker invests money pursuant to paragraph (5)(d) by depositing it with a person for the person to invest, neither that money, nor any property in which the person invests any of that money, is available for the payment of a debt or liability of the person or is liable to be attached, or taken in execution, under the order or process of a court at the instance of a person suing in respect of such a debt or liability.
- (18) Nothing in this section affects a claim or lien that a futures broker has, under an agreement, under an Australian law or otherwise, against or on:

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- (a) money deposited by the broker pursuant to this section in a clients' segregated account of the broker;
- (b) property in which such money has been invested pursuant to paragraph (5)(d); or
- (c) property deposited by the broker in safe custody pursuant to subsection (3).

1210 Futures broker to give certain information to prospective clients

A futures broker shall, before accepting a person as a client of the broker, give to the person:

- (a) a document that:
 - (i) explains the nature of futures contracts;
 - (ii) explains the nature of the obligations assumed by a person who instructs a futures broker to enter into a futures contract;
 - (iii) sets out a risk disclosure statement in the prescribed form; and
 - (iv) sets out the specifications, and details of the essential terms, of each kind of futures contract in which the broker deals on behalf of clients; and
- (b) a copy of each agreement into which the broker proposes, if the broker agrees to accept instructions from the person in relation to dealings in futures contracts, to require the person to enter.

Part 8.5—Accounts and audit

1211 Interpretation

In this Part, unless the contrary intention appears, a reference to a book, futures contract or business of or in relation to a futures broker who carries on business in partnership is a reference to such a book, futures contract or business of or in relation to the partnership.

1212 Application of Part

- (1) This Part applies in relation to a futures broker in relation to his, her or its business of dealing in futures contracts, whether carried on in this jurisdiction or elsewhere.
- (2) This Part does not affect the operation of Parts 3.6 and 3.7 in relation to a company that holds a futures brokers licence or in relation to a business of dealing in futures contracts that such a company carries on.

1213 Accounts to be kept by futures brokers

- (1) A futures broker shall:
 - (a) keep such accounting records as correctly record and explain the transactions and financial position of the business of dealing in futures contracts carried on by the broker;
 - (b) keep accounting records in such a manner as will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and
 - (c) keep accounting records in such a manner as will enable profit and loss accounts and balance sheets of the business of dealing in futures contracts carried on by the broker to be conveniently and properly audited.

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- (2) Without limiting the generality of subsection (1), a futures broker shall be deemed not to have complied with that subsection in relation to records if those records:
- (a) are not kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language;
 - (b) are not kept in sufficient detail to show particulars of:
 - (i) all money received or paid by the broker, including money paid to, or disbursed from, an account of the kind referred to in paragraph 1209(3)(c);
 - (ii) all dealings in futures contracts made by the broker, the charges and credits arising from them, and the name of the person on whose behalf each dealing was effected;
 - (iii) all income received from commissions, interest and other sources, and all expenses, commissions and interest paid, by the broker;
 - (iv) all the assets and liabilities (including contingent liabilities) of the broker;
 - (v) all futures contracts to which the broker has become a party as a result of trading on the broker's own account;
 - (vi) all futures contracts dealt with by the broker pursuant to instructions given by another person, showing who gave the instructions;
 - (vii) all property that is property of the broker and in respect of which the business rules of a futures exchange authorise the making of a futures contract in the futures market of the futures exchange, showing by whom the property is held and, if held by some other person, whether or not the property is so held as security against loans or advances; and
 - (viii) all such property that is not property of the broker and for which the broker or any nominee controlled by the broker is accountable, showing by whom, and for whom, the property is held and the extent to which the property is either held for safe custody or deposited with

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- a third party as security for loans or advances made to the broker;
- (c) are not kept in sufficient detail to show separately particulars of every transaction by the broker;
 - (d) do not specify the day on which or the period during which each transaction by the broker took place; or
 - (e) do not contain copies of acknowledgments of the receipts of property received by the broker from clients.
- (3) Without affecting the operation of subsections (1) and (2), a futures broker shall be deemed not to have complied with subsection (1) in relation to records if, in respect of a discretionary account on which the broker operates, those records are not kept in sufficient detail to show the particulars that the broker is required to furnish to clients in order to comply with subsection 1207(2).
- (4) Without affecting the operation of subsection (2) or (3), a futures broker shall keep records in sufficient detail to show separately particulars of all transactions by the broker:
- (a) with, on behalf of, or on the account of, clients of the broker, excluding, in a case where the broker carries on business in partnership, the partners in the firm;
 - (b) in a case where the broker carries on business in partnership—on the broker's own account or with, on behalf of, or on the account of, the partners in the firm;
 - (c) in a case where the broker does not carry on business in partnership—on the broker's own account;
 - (d) with, on behalf of, or on the account of, other futures brokers;
 - (e) with, on behalf of, or on the account of, representatives of the broker; and
 - (f) with, on behalf of, or on the account of, employees of the broker.
- (5) An entry in the accounting and other records of a futures broker required to be kept in accordance with this section, and any matter recorded by a futures exchange in relation to a member pursuant to

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subsection 1270(3) shall be deemed to have been made by, or with the authority of, the broker or member.

- (6) Where a record required by this section to be kept is not kept in writing in the English language, the futures broker shall, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.
- (7) Notwithstanding any other provision of this section, a futures broker shall not be deemed to have failed to keep a record referred to in subsection (1) by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business other than dealing in futures contracts that is carried on by the broker.
- (8) If accounting or other records are kept by a futures broker at a place outside Australia, the broker shall cause to be sent to and kept at a place in Australia such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance-sheets to be prepared.
- (9) If any accounting records of a futures broker are kept at a place outside Australia, the broker shall, if required by the Commission to produce those records at a place in Australia, comply with the requirement not later than 28 days after the requirement is made.

1214 Property in custody of futures broker

- (1) Where a futures broker receives for safe custody property:
 - (a) that is the property of another person (in this section called the *client*);
 - (b) that is, or is to be, delivered in accordance with a futures contract; and
 - (c) for which the broker or a nominee of the broker is accountable;the broker shall forthwith:

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- (d) if the client requests that the property be deposited in safe custody with the broker's bankers—cause it to be so deposited or notify the client of any failure to comply with the request, whether or not caused by a refusal by the bankers to comply with the request; or
 - (e) if the client does not make, or the bankers refuse to comply with, such a request and the business rules of the futures exchange that maintained or provided the futures market on which the contract was made enable the property to be deposited in safe custody—cause the property to be so deposited in accordance with those rules.
- (2) A futures broker shall not deposit as security for a loan or advance made to the broker property of a kind referred to in subsection (1) unless an amount is owed to the broker by the client in connection with a transaction entered into on the instructions of the client and the broker:
 - (a) gives a written notice to the client identifying the property and stating that the broker intends to deposit the property as security for a loan or advance to the broker; and
 - (b) deposits the property as security for a loan or advance to the broker, being a loan or advance of an amount that does not exceed the amount owed to the broker by the client on the day of the receipt by the broker of the property.
- (3) Where:
 - (a) a futures broker has given a notice to a person as mentioned in subsection (2) and has deposited the property referred to in the notice as security for a loan or advance; and
 - (b) the person:
 - (i) has paid to the broker the amount owed by the person to the broker at the time the property was so deposited; and
 - (ii) requests the broker to withdraw the property from deposit;

the broker shall, as soon as practicable after the request, withdraw the property from deposit, but nothing in this subsection prevents

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the broker from redepositing the property, as permitted by subsection (2), as a security for a loan or advance.

- (4) Where a futures broker deposits as security for a loan or advance made to the broker property of a kind referred to in subsection (1), the broker shall, at the end of the period of 3 months after the day on which the property is deposited, and at the end of each subsequent period of 3 months if the property is still on deposit, send to the person whose property it is written notice to that effect.

1215 Appointment of auditor by futures broker

- (1) Within 1 month after becoming the holder of a futures brokers licence, a futures broker (other than an Australian bank) shall appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors to audit the broker's accounts.
- (2) Subject to this section, a person shall not:
- (a) consent to be appointed as auditor of a futures broker; or
 - (b) act as auditor of a futures broker; or
 - (c) prepare a report required by this Law to be prepared by an auditor of a futures broker;
- if:
- (d) the person is not a registered company auditor; or
 - (e) the person, or a body corporate in which the person is a substantial shareholder for the purposes of Part 6.7, is indebted in an amount exceeding \$5,000 to the futures broker or, if the futures broker is a body corporate, to a body corporate related to the futures broker; or
 - (f) the person is a partner or employee of the futures broker; or
 - (g) in a case where the futures broker is a body corporate—the person is:
 - (i) an officer of the body; or
 - (ii) a partner, employer or employee of an officer of the body; or

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- (iii) a partner or employee of an employee of an officer of the body.
 - (3) Subject to this section, a firm shall not:
 - (a) consent to be appointed as an auditor of a futures broker; or
 - (b) act as auditor of a futures broker; or
 - (c) prepare a report required by this Law to be prepared by an auditor of a futures broker;
- unless:
- (d) at least one member of the firm is a registered company auditor who is ordinarily resident in Australia; and
 - (e) where the business name under which the firm is carrying on business is not registered under a law of a State or Territory relating to the registration of business names—there has been lodged a return in the prescribed form showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report; and
 - (f) no member of the firm, and no body corporate in which any member of the firm is a substantial shareholder for the purposes of Part 6.7, is indebted in an amount not exceeding \$5,000 to the futures broker or, if the futures broker is a body corporate, to a body corporate that is related to the futures broker; and
 - (ga) no member of the firm is a partner or employee of the futures broker; and
 - (g) in a case where the futures broker is a body corporate—no member of the firm is:
 - (i) an officer of the body; or
 - (ii) a partner, employer or employee of an officer of the body; or
 - (iii) a partner or employee of an employee of an officer of the body; and
 - (h) in a case where the futures broker is a body corporate—no officer of the body receives any remuneration from the firm

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for acting as a consultant to it on accounting or auditing matters.

- (4) A reference in subsection (2) or (3) to indebtedness does not, in relation to indebtedness of a natural person, include a reference to indebtedness of that person to a body corporate that is a prescribed corporation for the purposes of Part 4.5 where:
 - (a) the indebtedness arose as a result of a loan made to that person by the body corporate in the ordinary course of its ordinary business; and
 - (b) the amount of that loan was used by that person to pay the whole or part of the purchase price of premises that are used by that person as the person's principal place of residence.
- (5) For the purposes of subsections (2) and (3), a person shall be deemed to be an officer of a body corporate if:
 - (a) the person is an officer of a related body corporate; or
 - (b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to the person—the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the body corporate or of a related body corporate.
- (6) For the purposes of this section, a person shall not be taken to be an officer of a body corporate by reason only of being or having been the liquidator of the body corporate or of a related body corporate.
- (7) For the purposes of this section, a person shall not be taken to be an officer of a body corporate by reason only of having been appointed as an auditor of that body corporate or of a related body corporate or, for any purpose relating to taxation, a public officer of a body corporate or by reason only of being or having been authorised to accept on behalf of the body corporate or a related body corporate service of process or any notices required to be served on the body corporate or related body corporate.

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- (8) The appointment of a firm as auditor of a futures broker shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, at the date of the appointment.
- (9) Where a firm that has been appointed as auditor of a futures broker is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both:
 - (a) a person who was deemed under subsection (8) to be an auditor of the broker and who has so retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as auditor of the company as from the day of the person's retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 1216 does not apply to that resignation;
 - (b) a person who is a registered company auditor and who is so admitted to the firm shall be deemed to have been appointed as an auditor of the broker as from the day of admission; and
 - (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the broker;but nothing in this subsection affects the operation of subsection (3).
- (10) Except as provided by subsection (9), the appointment of the members of a firm as auditors of a futures broker that is deemed by subsection (8) to have been made by reason of the appointment of the firm as auditor of the broker is not affected by the dissolution of the firm.
- (11) A report or notice that purports to be made or given by a firm appointed as auditor of a futures broker shall not be taken to be duly made or given unless it is signed, in the firm name and in the

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name of the member concerned, by a member of the firm who is a registered company auditor.

- (12) Where a person or firm is appointed as an auditor under subsection (1)(not being an appointment that is deemed to be made by virtue of subsection (9)) or under subsection (16), the futures broker shall, within 14 days after the appointment, lodge with the Commission a notice in writing stating that the broker has made the appointment and specifying the name of the person or firm.
- (13) Without limiting the generality of section 1311, if, in contravention of this section, a firm consents to be appointed, or acts as, an auditor of a futures broker or prepares a report required by this Law to be prepared by an auditor of a futures broker, each member of the firm is guilty of an offence.
- (14) A person shall not:
 - (a) if the person has been appointed auditor of a futures broker—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the broker; or
 - (b) if the person is a member of a firm that has been appointed auditor of a futures broker—knowingly disqualify the firm while the appointment continues from acting as auditor of the broker.
- (15) An auditor of a futures broker holds office until death, until removal or resignation from office in accordance with section 1216 or until becoming prohibited from acting as auditor by reason of subsection (2) or (3).
- (16) Within 14 days after a vacancy occurs in the office of an auditor of a futures broker, if there is no surviving or continuing auditor of the broker, the broker shall appoint a person or persons, a firm or firms or a person or persons and a firm or firms to fill the vacancy.
- (17) While a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act.

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- (18) A futures broker shall not appoint a person or firm as auditor of the broker unless that person or firm has, before the appointment, consented by notice in writing given to the broker to act as auditor and has not withdrawn the consent by notice in writing given to the broker.
- (19) This section does not apply in relation to a body corporate (other than an exempt proprietary company) in relation to which section 327 applies.

1216 Removal and resignation of auditors

- (1) A futures broker may, with the consent of the Commission, remove an auditor of the broker from office.
- (2) An auditor of a futures broker may, by notice in writing given to the broker, resign as auditor of the broker if:
 - (a) the auditor has, by notice in writing given to the Commission, applied for consent to the resignation and, at or about the same time as the notice was given to the Commission, notified the broker in writing of the application to the Commission; and
 - (b) the auditor has received the consent of the Commission.
- (3) The Commission shall, as soon as practicable after receiving a notice from an auditor under subsection (2), notify the auditor and the futures broker whether it consents to the resignation of the auditor.
- (4) A statement made by an auditor in an application to the Commission under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application:
 - (a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence against section 1308; and
 - (b) may not be made the ground of a prosecution (other than a prosecution for an offence against section 1308), action or suit against the auditor;

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and a certificate by the Commission that the statement was made in the application or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.

- (5) Subject to subsection (6), the resignation of an auditor takes effect:
 - (a) on the date (if any) specified for the purpose in the notice of resignation;
 - (b) on the date on which the Commission gives its consent to the resignation; or
 - (c) on the date (if any) fixed by the Commission for the purpose; whichever last occurs.
- (6) Where, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, by reason of the provisions of paragraph 1215(3)(d), of acting as auditor of a futures broker, the member so retiring or withdrawing shall, if not disqualified from acting as auditor of the broker, be deemed to be the auditor of the broker until the member obtains the consent of the Commission to the retirement or withdrawal.
- (7) This section does not apply in relation to a body corporate (other than an exempt proprietary company) in relation to which section 329 applies.

1217 Fees and expenses of auditors

The reasonable fees and expenses of an auditor of a futures broker are payable by the broker.

1218 Futures brokers' accounts

- (1) In this section:
 - financial year***, in relation to a futures broker, means:
 - (a) if the broker is a natural person—a period of 12 months ending on 30 June in a year; or

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- (b) if the broker is a body corporate—a period that is a financial year of the body corporate because of the definition of *financial year* in section 9;

prescribed day, in relation to a financial year of a futures broker, means the day that is:

- (a) if the broker is a natural person—2 months; or
- (b) if the broker is a body corporate—3 months;

after the end of that financial year or, if an extension is approved under subsection (3), the day on which the extended period ends.

- (2) A futures broker (other than an Australian bank) shall, in respect of each financial year, other than a financial year that ended before the date of commencement of this Law or ended on or after that date but before the date on which the broker commenced to carry on business as a futures broker, prepare a true and fair profit and loss account and balance sheet on the basis of such accounting principles (if any) and containing such information and matters as are prescribed for the purposes of this subsection and lodge them with the Commission before the prescribed day for that financial year, together with an auditor's report containing such information and matters as are prescribed for the purposes of this subsection and such other information and matters as the auditor thinks fit to include in the report.
- (3) The Commission may, on application made by a futures broker and the auditor of the broker before the end of the period referred to in paragraph (a) or (b), as the case requires, of the definition of *prescribed day* in subsection (1) or, if that period has been extended pursuant to an approval or approvals previously given under this subsection, before the end of the period as so extended, approve an extension or further extension of the period, and such an approval may be given subject to such conditions (if any) as the Commission imposes.
- (4) Where an approval under subsection (3) in relation to a futures broker is given subject to conditions, the broker shall comply with those conditions.

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1219 Auditor's right of access to records, information etc.

- (1) An auditor of a futures broker has a right of access at all reasonable times to the accounting records and other records, including any register, of the broker, and is entitled to require from the broker or, in the case of a futures broker that is a body corporate, from any executive officer of the broker, such information and explanations as the auditor desires for the purposes of audit.
- (2) A futures broker, or an executive officer of a futures broker that is a body corporate, shall not, without lawful excuse:
 - (a) refuse or fail to allow an auditor of the broker access, in accordance with subsection (1), to accounting records or other records, including any register, of the broker;
 - (b) refuse or fail to give information, or an explanation, as and when required under subsection (1); or
 - (c) otherwise hinder, obstruct or delay an auditor of the broker in the performance or exercise of the auditor's duties or powers.

1220 Auditor to report to Commission in certain cases

- (1) Where an auditor, in the performance of the duties of auditor of a futures broker, becomes aware of a prescribed matter, the auditor shall, within 7 days after becoming aware of that matter, lodge a written report on the matter and send a copy of the report to:
 - (a) the broker;
 - (b) each futures exchange of which the broker is a member and to each clearing house (if any) for that futures exchange; and
 - (c) each futures association of which the broker is a member, unless the futures association is also a futures exchange of which the broker is a member.
- (2) In this section, ***prescribed matter*** means a matter that, in the opinion of the auditor:
 - (a) has adversely affected, is adversely affecting, or may adversely affect, the ability of the futures broker to meet the broker's obligations as a broker;

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- (b) constitutes or may constitute a contravention of section 1209, 1213 or 1214; or
- (c) constitutes or may constitute a contravention of a condition of a licence held by the futures broker.

1221 Certain matters to be reported to Commission

- (1) Where, in relation to a futures broker who is a member of a futures exchange, the futures exchange becomes aware of a prescribed matter, the futures exchange shall, as soon as practicable after becoming aware of the matter, lodge a written report on the matter and send a copy of the report to the broker.
- (2) Subsection (1) applies:
 - (a) in relation to a clearing house for a futures exchange and a member of the clearing house; and
 - (b) in relation to a futures association and a member of the futures association (unless the futures association is also a futures exchange);in the same manner as it applies in relation to a futures exchange and a member of the futures exchange.
- (3) In this section, *prescribed matter*, in relation to a futures broker, means a matter that, in the opinion of the futures exchange, clearing house or futures association concerned:
 - (a) has adversely affected, is adversely affecting, or may adversely affect, the ability of the broker to meet the broker's obligations as a broker;
 - (b) constitutes or may constitute a contravention of section 1209, 1213 or 1214;
 - (c) constitutes or may constitute a contravention of a condition of a licence held by the broker; or
 - (d) constitutes a failure to make, in accordance with Part 8.6, contributions to a fidelity fund.

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1222 Defamation

- (1) An auditor of a futures broker has qualified privilege in respect of:
 - (a) any statement made, orally or in writing, in the course of performing the duties of an auditor; or
 - (b) the lodging of a report, or the sending of a report under section 1220 to the futures broker, a futures exchange, a clearing house for a futures exchange, or a futures association.
- (2) A futures exchange, a clearing house for a futures exchange, a futures association, or an officer of a futures exchange, of a clearing house for a futures exchange, or of a futures association, has qualified privilege in respect of:
 - (a) any statement made, orally or in writing, in the course of performing the duties imposed by section 1221; or
 - (b) the lodging of any report with the Commission, or the sending of any report to a futures broker, under section 1221.
- (3) A person has qualified privilege in respect of the publishing of:
 - (a) a statement made by an auditor of a futures broker as mentioned in paragraph (1)(a), or by a futures exchange, a clearing house for a futures exchange, a futures association, or an officer, as mentioned in paragraph (2)(a);
 - (b) a document prepared by an auditor of a futures broker in the course of performing the duties of an auditor;
 - (c) a document prepared by a futures exchange, a clearing house for a futures exchange, a futures association, or an officer of a futures exchange, of a clearing house for a futures exchange, or of a futures association, in the course of performing the duties imposed by section 1221; or
 - (d) a document required by or under this Chapter to be lodged, whether or not the document has been lodged.

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1223 This Part not to affect right of futures exchange or futures association to impose obligations etc. on members

Nothing in this Part prevents a futures exchange or futures association imposing on members of that futures exchange or futures association any obligations or requirements (not being obligations or requirements inconsistent with this Law) that the futures exchange or futures association thinks fit with respect to:

- (a) the audit of accounts (including the audit of accounts by an auditor appointed by the futures exchange or futures association);
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of books.

1224 Power of Court to restrain dealings with futures broker's bank accounts

- (1) Where the Court is satisfied that:
 - (a) there are reasonable grounds for believing that:
 - (i) there is a deficiency in an account that is, or has at any time been, a clients' segregated account of a person; and
 - (ii) the person was, when the deficiency occurred, a futures broker or a member of a futures organisation;
 - (b) there has been, at a time when a person was a futures broker or a member of a futures organisation, undue delay, or unreasonable refusal, on the person's part in paying, applying or accounting for money as required by this Chapter or a corresponding previous law;
 - (c) a person has, at a time when the person was a futures broker or a member of a futures organisation, failed to pay money into a clients' segregated account of the person as required by this Chapter or a corresponding previous law; or
 - (d) a person who is, or has at any time been, a futures broker or a member of a futures organisation, is carrying on, or last carried on, as the case requires, a futures broking business otherwise than in partnership and:

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- (i) in any case—the last futures brokers licence held by the person has been revoked or suspended; or
- (ii) in any case—the person no longer carries on a futures broking business; or
- (iii) if the person is a natural person—the person has died, or is incapable, because of physical or mental incapacity, of managing his or her affairs;

the Court may by order restrain dealings in respect of specified bank accounts that the person holds or maintains in Australia (whether in this jurisdiction or not), subject to such terms and conditions as the Court imposes.

- (2) An order under subsection (1) may only be made on an application by the Commission or by the futures organisation (if any) concerned.
- (4) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (5) Where the Commission makes an application to the Court for the making of an order under subsection (1), the Court shall not require the Commission, as a condition of granting an interim order under subsection (4), to give any undertaking as to damages.

1225 Duty of banker or body corporate to make full disclosure

Where an order made under section 1224 is directed to a banker or a body corporate, the banker or body corporate shall:

- (a) disclose to the applicant for the order every account kept by the bank or body corporate in the name of the person to whom the order relates, and any account that the banker or body corporate reasonably suspects is held or kept by the bank or body corporate for the benefit of that person; and

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- (b) permit the applicant for the order to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker's books relating to that person or the like books in the possession of the body corporate.

1226 Power of Court to make further orders and give directions

Where an order is made under section 1224, the Court may, on the application of the Commission, a futures organisation or a person affected by the order, make further orders:

- (a) dealing with such ancillary matters as the Court considers necessary or desirable;
- (b) directing that all or any of the money in an account affected by an order so made be paid by the bank or body corporate to the Commission or a person nominated by the Commission, on such terms and conditions as the Court thinks fit; and
- (c) discharging or varying the order.

1227 Power of Court to make order relating to payment of money

- (1) An order made under section 1226 may include directions to the person to whom the money is paid directing that that person:
 - (a) shall cause the money to be paid into a trust account;
 - (b) is authorised to prepare a scheme for distributing the money to persons who claim, during a period of 6 months after the Commission or that other person receives the money, to be entitled to the money and satisfy the Commission or that other person that they are so entitled; or
 - (c) where the money received is insufficient to pay all proved claims, may, notwithstanding any rule of law or equity to the contrary, apportion the money among the claimants in proportion to their proved claims and show in the scheme how the money is so apportioned.
- (2) Where a person prepares a scheme for distribution of money pursuant to subsection (1), the person shall apply to the Court for approval of the scheme and for directions with respect to it.

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- (3) The Court may give such directions as to the money held in a trust account pursuant to subsection (1), as to the persons to whom and in what amounts the whole or any portion of that money shall be paid, and as to the payment of the balance of the money (if any) remaining in the account, as the Court thinks fit.

Part 8.6—Fidelity funds

1228 Establishment of fidelity funds

- (1) A futures organisation shall keep a fidelity fund, and the board of the futures organisation shall administer the fidelity fund.
- (2) The assets of a fidelity fund of a futures organisation are the property of the futures organisation, but shall be kept separately from all other property of the futures organisation and shall be held in trust for the purposes set out in this Part.
- (3) A futures organisation that, immediately before the commencement of this section, kept a fidelity fund under a previous law corresponding to this Part shall, after that commencement, keep that fidelity fund in accordance with, and for the purposes of, this Part.

1229 Money constituting fidelity fund

- (1) The fidelity fund of a futures organisation shall consist of:
 - (a) in the case of a fidelity fund established before the commencement of this Part—the money, and other property, of which the fund consisted immediately before that commencement;
 - (b) in the case of a fidelity fund established after the commencement of this Part—any amount that is paid to the credit of the fund by the futures organisation on the establishment of the fund;
 - (c) money paid to the futures organisation, in accordance with this Part or the business rules of the futures organisation, by contributing members of the futures organisation;
 - (d) the interests and profits from time to time accruing from the investment of the fidelity fund;
 - (e) money paid into the fidelity fund by the futures organisation;

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- (f) money recovered by or on behalf of the futures organisation in the exercise of a right of action conferred by this Part;
 - (g) money paid by an insurer pursuant to a contract of insurance or indemnity entered into by the futures organisation under section 1249; and
 - (h) all other money lawfully paid into the fund.
- (2) Where a futures organisation has, under paragraph (1)(b) or a corresponding previous law, paid an amount to the credit of its fidelity fund:
- (a) the Minister may approve in writing, on such conditions (if any) as are specified in the approval, the repayment of the whole, or a specified part, of the amount from the fidelity fund to the general funds of the futures organisation; and
 - (b) if the Minister does so, the whole, or the specified part, as the case may be, of the amount may, in accordance with the conditions (if any) so specified, be so repaid.

1230 Fund to be kept in separate bank account

The money in a fidelity fund shall, until invested or applied in accordance with this Part, be kept in a separate account with an Australian bank.

1231 Payments out of fund

Subject to this Part, there shall be paid out of the fidelity fund of a futures organisation in such order as the board of the futures organisation deems proper:

- (a) the amount of all claims, including costs, allowed by the board or established against the futures organisation under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the futures organisation or the board of the rights, powers and authorities vested in it by this Part in relation to the fund;

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- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the futures organisation under section 1249;
- (d) the expenses incurred in the administration of the fund, including the salaries and wages of persons employed by the futures organisation or the board in relation to the fund; and
- (e) all other money payable out of the fund in accordance with the provisions of this Chapter.

1232 Accounts of fund

- (1) A futures organisation shall establish and keep proper accounts of its fidelity fund and shall, within the period of 3 months that next succeeds the end of its financial year, cause a balance-sheet in respect of those accounts to be made out as at the end of that financial year.
- (2) A futures organisation shall appoint a registered company auditor to audit the accounts of the fidelity fund.
- (3) The auditor appointed by a futures organisation shall audit the accounts of the fidelity fund and shall audit each balance-sheet and cause a report on the accounts and balance-sheet to be laid before the board of the futures organisation not later than 1 month after the balance-sheet is made out.
- (4) A futures organisation shall give to the Commission a copy of each report laid before the board of the futures organisation under this section and of the balance-sheet to which the report relates within 14 days after the report was so laid before the board.

1233 Management sub-committee

- (1) The board of a futures organisation may, by resolution, appoint a management sub-committee of not fewer than 3 and not more than 5 persons, at least one of whom is also a member of the board.
- (2) The board of a futures organisation may, by resolution, delegate to a sub-committee appointed by it under this section all or any of its

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powers, authorities and discretions under a provision of this Part (other than this section).

- (3) A power, authority or discretion delegated under subsection (2) may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred by this Part on a majority of the members of the sub-committee.
- (4) A delegation by the board of a futures organisation under this section may at any time, by resolution of the board, be varied or revoked.
- (5) The board of a futures organisation may at any time, by resolution, remove a member of a sub-committee appointed by it under this section and may, by resolution, fill a vacancy arising in the membership of the sub-committee.
- (6) A delegation by the board of a futures organisation under this section does not prevent the exercise of a power, authority or discretion by that board.
- (7) A management sub-committee appointed by a futures organisation before the commencement of this Part under a corresponding previous law and in existence immediately before that commencement shall be deemed to have been appointed by the futures organisation on that commencement under this section.
- (8) If the board of a futures organisation referred to in subsection (7) had before the commencement of this Part delegated to a management sub-committee referred to in that subsection any powers, authorities or discretions under the corresponding previous law so referred to and had not revoked the delegation before that commencement, the board shall be deemed to have, on that commencement, delegated to the management sub-committee its corresponding powers, authorities and discretions under this Part.

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1234 Contribution to fund

- (1) A person is not to be admitted to membership of a futures organisation unless:
 - (a) in any case—the person has paid to the organisation, as a contribution to its fidelity fund, such amount, being not less than \$500, as the organisation determines in relation to the person or a class including the person; or
 - (b) if the organisation is not a futures exchange—the person is already a member of a futures exchange.
- (2) A contributing member of a futures organisation must, on or before 31 March in each year, pay to the organisation, as a contribution to its fidelity fund, such amount, being not less than \$100, as the organisation determines in relation to the contributing member or a class including the contributing member.
- (3) This section has effect subject to section 1236.

1235 Levy in addition to annual contributions

- (1) If at any time the amount of a fidelity fund is insufficient to pay all amounts that, at that time, are required to be paid under section 1231, the futures organisation may determine that a levy of a specified amount must be paid by specified contributing members of the organisation.
- (2) The amount of the levy must be paid within the time, and in the manner, specified by the futures organisation either generally or in relation to a particular case.
- (3) A person or partnership need not pay by way of levy under this section more than \$5,000 in total or more than \$1,000 in any period of 12 months.
- (4) An amount of levy paid under this section must be paid into the futures organisation's fidelity fund.
- (5) This section has effect subject to section 1236.

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1236 Contributions and levies not payable in certain cases

- (1) A person or partnership need not pay a contribution under subsection 1234(1) or (2) or a levy under section 1235 unless a provision of an Act of this jurisdiction imposes the contribution or levy.
- (3) A futures organisation may determine in writing that subsection 1234(1) does not apply in relation to the futures organisation in relation to specified persons.
- (4) A futures organisation may determine in writing that subsection 1234(2) does not apply in relation to the futures organisation in relation to specified contributing members of the futures organisation.
- (5) A determination in force under subsection (3) or (4) has effect accordingly.

1237 Power of futures organisation to make advances to fund

- (1) A futures organisation may, from its general funds, give or advance, on such terms as the board of the futures organisation thinks fit, any sums of money to its fidelity fund.
- (2) Money that is advanced under subsection (1) may at any time be repaid from the fidelity fund to the general funds of the futures organisation.

1238 Investment of fund

Money in a fidelity fund of a futures organisation that is not immediately required for the purposes of the fund may be invested by the futures organisation in any manner in which trustees are for the time being authorised by a law in force in a jurisdiction to invest trust funds or on deposit with an eligible money market dealer.

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1239 Application of fund

- (1) Subject to this Part, where:
- (a) a person (in this subsection called the *futures person*) suffers pecuniary loss at a particular time because of a defalcation, or because of fraudulent misuse of money or other property, by:
 - (i) a person who is at that time a contributing member of a futures organisation;
 - (ii) a director, partner, officer or employee of a person who is at that time a contributing member of a futures organisation; or
 - (iii) a partner in, or employee of, a partnership that is at that time a contributing member of a futures organisation; and
 - (b) the loss is suffered in respect of money or other property that was, in connection with the contributing member's dealings in futures contracts (whether or not any of those dealings was effected on a futures market), entrusted to or received by the contributing member, or a director, partner, officer or employee of the contributing member (whether before or after the commencement of this section):
 - (i) for or on behalf of the futures person or another person; or
 - (ii) because the contributing member was trustee of the money or other property;
- the fidelity fund of the futures organisation shall be applied for the purpose of compensating the futures person.
- (2) The reference in paragraph (1)(b) to a partner of a contributing member of a futures organisation is, in a case where the contributing member is a partnership, a reference to a partner in the partnership.
- (3) Subject to this Part, where a right to compensation does not arise under subsection (1), a fidelity fund of a futures organisation may, if the board of the futures organisation thinks fit, be applied for the purpose of paying to an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* an amount not greater than

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the amount that the official receiver or trustee, as the case may be, certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt who is a contributing member of the futures organisation are insufficient to satisfy the debts arising from dealings in futures contracts that have been proved in the bankruptcy by creditors of the bankrupt.

- (4) Subsection (3) applies in the case of a contributing member of a futures organisation who has made a composition with the member's creditors, or has executed a deed of assignment or a deed of arrangement, under Part X of the *Bankruptcy Act 1966* in like manner as that subsection applies in the case of a contributing member of a futures organisation who has become bankrupt and, for the purposes of that subsection as so applying by virtue of this subsection:
- (a) the reference in that subsection to a trustee shall be deemed to be a reference to a controlling trustee within the meaning of that Part;
 - (b) the reference to debts proved in the bankruptcy shall be deemed to be a reference to provable debts in relation to the composition or deed within the meaning of that Part; and
 - (c) a reference to the bankrupt shall be deemed to be a reference to the person who made the composition or executed the deed.
- (5) Subject to this Part, where a right to compensation does not arise under subsection (1), a fidelity fund of a futures organisation may, if the board of the futures organisation thinks fit, be applied for the purpose of paying to the liquidator of a body corporate that is a contributing member of the futures organisation and that has commenced to be wound up, an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the body corporate are insufficient to satisfy the debts of the body corporate arising from dealings in futures contracts that have been proved in the winding up by creditors of the body corporate.

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- (6) Money paid pursuant to subsection (3) or (5) is so paid only on condition that it is applied by the official receiver, trustee or liquidator towards satisfaction of debts arising from dealings in futures contracts and for no other purpose.
- (7) Subject to subsection (9), the amount, or the sum of the amounts, paid under this Part out of a fidelity fund of a futures organisation:
 - (a) for the purpose of compensating pecuniary loss as mentioned in subsection (1); or
 - (b) for the purpose of making payments under subsection (3) or (5);shall not exceed, in respect of a particular contributing member of the futures organisation:
 - (c) unless paragraph (d) applies—\$500,000; or
 - (d) if some other amount is prescribed, for the purposes of this subsection, in relation to the futures organisation, a class of futures organisations that includes the futures organisation, or futures organisations generally—that amount.
- (8) For the purposes of calculating the sum referred to in subsection (7), an amount that is paid from a fidelity fund shall, to the extent to which that amount is repaid to the fund, be disregarded.
- (9) If a futures organisation considers, having regard to the ascertained or contingent liabilities of its fidelity fund, that the assets of the fund so permit, the futures organisation may apply out of the fund such sums in excess of the amount limited by or under this section as the futures organisation, in its discretion, thinks fit in or towards the compensation of persons who have suffered pecuniary loss as mentioned in subsection (1) or making a payment under subsection (3) or (5).
- (10) Where:
 - (a) money or other property has been entrusted to, or received by:
 - (i) a person or partnership;
 - (ii) a director, partner, officer or employee of a person; or

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- (iii) a partner in or employee of, a partnership;
being a person who, or a partnership that, has at any time
been but is no longer a contributing member of a futures
organisation;
 - (b) immediately before that person or partnership last ceased to
be a member or member organisation of the futures
organisation, he, she or it was a contributing member of the
futures organisation;
 - (c) because of a defalcation, or the fraudulent misuse of money
or other property by:
 - (i) that person or a director, partner, officer or employee of
that person; or
 - (ii) a partner in, or employee of, that partnership;
as the case may be, the person by or from whom the money
or other property was so entrusted or received suffered
pecuniary loss; and
 - (d) at the time when the money or other property was so
entrusted or received, the person suffering the pecuniary loss
believed, on reasonable grounds, that that person or
partnership was at that time a member or member
organisation of the futures organisation;
- that person or partnership shall, for the purposes of this section
(other than this subsection and subsection (11)), be deemed to have
been, when the pecuniary loss was suffered, a contributing member
of the futures organisation.

(11) Where:

- (a) a person who or a partnership that has at any time been, but is
no longer, a contributing member of a futures organisation
has incurred a debt arising from dealings in futures contracts;
and
- (b) at the time when the debt was incurred, the creditor, or one or
more of the creditors, in relation to the debt believed on
reasonable grounds that that person or partnership was at that
time a member or member organisation of the futures
organisation;

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a reference in this section (other than subsection (10) and this subsection) to a contributing member of the futures organisation shall, for the purpose of determining the application of subsection (3) or (5) in relation to that creditor or those creditors, as the case may be, in relation to that debt, be deemed to include a reference to that person or partnership.

- (12) A reference in this section to a defalcation, or to a fraudulent misuse of money or other property, is a reference to a defalcation, or to such a fraudulent misuse, wherever and whenever occurring.

1240 Claims against fund

- (1) Subject to this Part, a person who suffers pecuniary loss as mentioned in subsection 1239(1) is entitled to claim compensation from the fidelity fund of a futures organisation whose fidelity fund is, pursuant to that subsection, required to be applied to compensate the person, and to take proceedings in the Court as provided in this Part against the futures organisation to establish that claim.
- (2) A person does not have a claim against a fidelity fund of a futures organisation in respect of:
- (a) pecuniary loss suffered before 1 July 1986; or
 - (b) pecuniary loss in respect of money or other property suffered after the money or property had, in due course of the administration of a trust, ceased to be under the sole control of a member organisation of the futures organisation.
- (3) Subject to this Part, the amount that a claimant is entitled to claim as compensation from a fidelity fund of a futures organisation is the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of, and disbursements incidental to, the making and proof of the claim) less the total amount or value of all amounts or other benefits received or receivable by the claimant from a source other than the fund in reduction of the loss.
- (4) In addition to any compensation that is payable under this Part, interest is payable out of the fidelity fund on the amount of the

The Corporations Law—Section 1241

compensation, less any amount attributable to costs and disbursements, at the prescribed rate calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.

- (5) A claim duly made before the commencement of this Part against the fidelity fund of a futures organisation under a previous law corresponding to this section shall be deemed to have been duly made against that fidelity fund under this section.

1241 Rights of innocent partner in relation to fund

- (1) Where all persons who have submitted claims pursuant to section 1240 have been fully compensated in accordance with the provisions of this Part for pecuniary loss in relation to a contributing member of a futures organisation, being pecuniary loss as mentioned in subsection 1239(1) suffered in relation to money or other property, any partner of the contributing member who has made payment to a person in compensation for loss suffered by the person in relation to that money or property shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of that person against the fidelity fund of the futures organisation if the board of the futures organisation, having regard to all the circumstances, determines that the partner was in no way a party to the loss and acted honestly and reasonably in the matter.
- (2) If a partner of a contributing member of a futures organisation feels aggrieved by the determination of a board under subsection (1), the partner may, within 28 days after receipt of notice of the determination, appeal to the Court against the determination by lodging a notice of appeal in the prescribed form.
- (3) The appellant shall, on the day on which the appellant lodges notice of appeal with the Court, lodge a copy of the notice with the futures organisation concerned.
- (4) The Court shall inquire into and decide upon the appeal and, for that purpose, may do all such matters and things, and may do those

The Corporations Law—Section 1242

matters and things in the same manner and to the same extent, as it is empowered to do in the exercise of its ordinary jurisdiction and if the Court is of the opinion having regard to all the circumstances that the appellant was not a party to the defalcation or fraudulent misuse of money or other property from which the pecuniary loss arose and that the appellant acted honestly and reasonably in the matter, it may order that the appellant shall, to the extent of any payment made by the appellant, be subrogated to the rights and remedies, in relation to the fidelity fund of the futures organisation concerned, of the person to whom the appellant made such a payment.

1242 Notice calling for claims against fund

- (1) A futures organisation may cause to be published in a daily newspaper circulating generally in each State and Territory, a notice in the prescribed form specifying a date, not being earlier than 3 months after the publication of the notice, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.
- (2) A claim for compensation from a fidelity fund of a futures organisation in respect of a pecuniary loss shall be made in writing to the futures organisation:
 - (a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or
 - (b) where no such notice has been published, within 6 months after the claimant became aware of the pecuniary loss;and a claim that is not so made is barred unless the futures organisation otherwise determines.
- (3) A futures organisation, a member of a board of a futures organisation, or a member or employee of a futures organisation, has qualified privilege in respect of the publication of a notice under subsection (1).
- (4) A notice duly published by a futures organisation, before the commencement of this Part, under a previous law corresponding to

The Corporations Law—Section 1243

subsection (1) shall be deemed to have been duly published under that subsection.

1243 Power of board to settle claims

- (1) Subject to this Part, the board of a futures organisation may allow and settle a proper claim for compensation from a fidelity fund of the futures organisation at any time after the occurrence of the pecuniary loss in respect of which the claim arose.
- (2) Subject to subsection (3), a person shall not commence proceedings under this Part against a futures organisation without leave of the board unless:
 - (a) the board has disallowed the person's claim; and
 - (b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money or other property in respect of which the pecuniary loss occurred, being rights and remedies that are available against the member of the futures organisation in relation to whom the claim arose and all other persons who are liable in respect of the loss suffered by the claimant, other than any right or remedy that the claimant may have, under section 1240 or a corresponding previous law, against a person other than the futures organisation.
- (3) A person who has been refused leave by the board of a futures organisation under subsection (2) may apply to the Court for leave to commence proceedings against the futures organisation and the Court may make such order in the matter as it thinks fit.
- (4) The board of a futures organisation, after disallowing, whether wholly or partly, a claim for compensation from the fidelity fund of the futures organisation, shall serve notice of the disallowance in the prescribed form on the claimant or on the claimant's solicitor.
- (5) Proceedings against a futures organisation in respect of a claim that has been disallowed by the board of the futures organisation shall not be commenced after the end of 3 months after the service of the notice of disallowance referred to in subsection (4).

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- (6) In proceedings brought to establish a claim, evidence of an admission or confession by, or other evidence that would be admissible against, the person against whom a defalcation or fraudulent misuse of property is alleged is admissible to prove the defalcation or fraudulent misuse notwithstanding that the person is not the defendant in or a party to those proceedings, and all defences that would have been available to that person are available to the futures organisation.
- (7) The board or, where proceedings are brought to establish a claim, the Court, if satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim, may allow the claim and act accordingly notwithstanding that the person against whom the defalcation or fraudulent misuse of property is alleged has not been convicted or prosecuted or that the evidence on which the board or the Court, as the case may be, acts would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse of property.

1244 Form of order of Court establishing claim

- (1) Where, in proceedings brought to establish a claim, the Court is satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim and that otherwise the claimant has a valid claim, the Court shall, by order:
 - (a) declare the fact and the date of the defalcation or fraudulent misuse of property and the amount of the claim; and
 - (b) direct the board to allow the claim as so declared and deal with it in accordance with the provisions of this Part.
- (2) In any such proceedings all questions of costs are in the discretion of the Court.

1245 Power of Board to require production of documents etc.

The board of a futures organisation may at any time require a person to produce and deliver any documents or statements of evidence necessary to support a claim made or necessary for the

The Corporations Law—Section 1246

purpose either of exercising its rights against a contributing member of the futures organisation or a partner or the partners in a partnership that is a contributing member of the futures organisation or any other person or of enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property, and in default of delivery of such documents or statements of evidence by the first-mentioned person, the board may disallow any claim by the first-mentioned person under this Part.

1246 Subrogation of futures organisation to rights etc. of claimant on payment from fund

On payment out of a fidelity fund of a futures organisation of any money in respect of a claim under this Part, the futures organisation is subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant from the defalcation or fraudulent misuse of property.

1247 Payment of claims only from fund

Money or other property belonging to a futures organisation, other than its fidelity fund, is not available for the payment of a claim under this Part, whether the claim is allowed by the board of the futures organisation or is made the subject of an order of the Court.

1248 Provisions where fund insufficient to meet claims or where claims exceed total amount payable

- (1) Where the amount in a fidelity fund of a futures organisation is insufficient to pay the whole of the amount of all claims against it that have been allowed or in respect of which orders of the Court have been made, the amount in the fund shall, subject to subsection (2), be apportioned among the claimants in such manner as the board of the futures organisation thinks equitable, and such a claim so far as it then remains unpaid shall be deemed to be

The Corporations Law—Section 1249

charged against future receipts of the fund and paid out of the fund when money is available in the fund.

- (2) Where the aggregate of all claims that have been allowed or in respect of which orders of the Court have been made in relation to defalcations or fraudulent misuses of property by or in connection with a contributing member of a futures organisation exceeds the total amount that may, pursuant to section 1239, be paid under this Part in respect of that contributing member, the total amount shall be apportioned among the claimants in such manner as the board thinks equitable, and on payment out of the fund of that total amount in accordance with that apportionment all such claims and any orders relating to those claims and all other claims against the fund that may thereafter arise or be made in respect of defalcations or fraudulent misuses of property by or in connection with that contributing member are discharged.

1249 Power of futures organisation to enter into contracts of insurance or indemnity

- (1) A futures organisation may enter into a contract with a person carrying on fidelity insurance business whereby the futures organisation will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Part.
- (2) Such a contract may be entered into in relation to contributing members of the futures organisation generally, or in relation to particular contributing members named in the contract, or in relation to contributing members generally with the exclusion of particular contributing members named in the contract.
- (3) A futures organisation, a member or employee of a futures organisation or of the board of a futures organisation, or a member of the management sub-committee of the board of a futures organisation, has qualified privilege in respect of the publication of a statement that a contract entered into under this section does, or does not, as the case may be, apply in relation to that member.

The Corporations Law—Section 1250

1250 Application of insurance money

A claimant against a fidelity fund of a futures organisation does not have a right of action against a person with whom a contract of insurance or indemnity is made under this Part in respect of such a contract or a right or claim with respect to any money paid by the insurer in accordance with such a contract.

Part 8.7—Offences

Division 1—Insider dealing

1251 Futures contract concerning a body corporate

For the purposes of this Division, a futures contract concerns a body corporate if, and only if:

- (a) the futures contract is a commodity agreement and a commodity to which it relates is securities of the body; or
- (b) the futures contract is an adjustment agreement and a state of affairs to which it relates concerns the price of securities of the body, or the prices of a class of securities that includes securities of the body, at a particular time.

1252 Person connected with a body corporate

- (1) For the purposes of this Division, a person is connected with a body corporate (in this subsection called the **relevant body corporate**) if the person is a natural person and:
 - (a) is an officer of the relevant body corporate or of a related body corporate;
 - (b) is, for the purposes of Part 6.7, a substantial shareholder in the relevant body corporate or in a related body corporate; or
 - (c) occupies a position that may reasonably be expected to give the person access to information of a kind referred to in subsection 1253(1) or (2) by virtue of:
 - (i) any professional or business relationship existing between the person (or the person's employer or a body corporate of which the person is an officer) and the relevant body corporate or a related body corporate; or
 - (ii) the person being an officer of a body corporate that is, for the purposes of Part 6.7, a substantial shareholder in the relevant body corporate or in a related body corporate.

The Corporations Law—Section 1253

- (2) For the purposes of subsection (1), *officer*, in relation to a body corporate, includes:
- (a) a director, secretary, executive officer or employee of the body corporate;
 - (b) a receiver, or a receiver and manager, of property of the body corporate;
 - (c) an official manager or a deputy official manager of the body corporate;
 - (d) a liquidator of the body corporate; and
 - (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

1253 Persons precluded from dealing

- (1) For the purposes of this Part, a person is precluded on a particular day from dealing in a futures contract concerning a body corporate if, by virtue of being, or having been at any time during the 6 months ending on that day, connected with the body, the person has inside information in relation to that futures contract.
- (2) For the purposes of this Part, a person is also precluded on a particular day from dealing in a futures contract concerning a body corporate if, by virtue of being, or having been at any time during the 6 months ending on that day, connected with another body corporate, the person has information that:
- (a) is inside information in relation to that futures contract; and
 - (b) relates to any transaction (actual or expected) involving both those bodies, or involving one of them and securities of the other.
- (3) For the purposes of this Part, a person is also precluded from dealing in a futures contract if the person:
- (a) has inside information in relation to the futures contract;
 - (b) obtained the information, directly or indirectly, from another person;

The Corporations Law—Section 1254

- (c) is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is precluded by subsection (1) or (2) from dealing in the futures contract; and
- (d) when the information was so obtained:
 - (i) was an associate of the other person; or
 - (ii) had with the other person an arrangement for the communication of information of a kind referred to in subsection (1) or (2) with a view to a dealing, by the first-mentioned person, by the other person, or by both of them together, in that futures contract or a futures contract of the same kind as that futures contract.

1254 Body corporate precluded from dealing when officer precluded

- (1) Without prejudice to subsection 1253(3), but subject to this section, while an officer of a body corporate is precluded from dealing in a futures contract, the body is, for the purposes of this Part, also precluded from dealing in the futures contract.
- (2) A body corporate is not, merely because of information that an officer of the body has, precluded by subsection (1) from dealing at a particular time in a futures contract if:
 - (a) the decision to deal in the futures contract at that time was taken on the body's behalf by a person other than the officer;
 - (b) the body had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to that person by a person who had the information; and
 - (c) the information was not so communicated and no such advice was so given.
- (3) A body corporate is not, merely because of information that an officer of the body has, precluded by subsection (1) from dealing in a futures contract concerning another body corporate if the information:
 - (a) was obtained by the officer in the course of performing duties as an officer of the first-mentioned body; and

The Corporations Law—Section 1255

- (b) relates only to a proposed dealing by the first-mentioned body in securities of, or a futures contract concerning, the other body.

1255 Exceptions: licensed futures brokers

For the purposes of this Part, a person who holds a futures brokers licence is not precluded from dealing in a futures contract concerning a body corporate if:

- (a) the licensee enters into the dealing as agent for another person pursuant to a specific instruction by that other person to enter into that dealing;
- (b) the licensee has not given any advice to the other person in relation to dealing in a futures contract concerning the body corporate; and
- (c) the other person is not, in relation to the dealing, an associate of the licensee.

1256 Prohibitions where dealing precluded

- (1) A person must not, while precluded from dealing in a futures contract, deal in that futures contract.
- (2) A person who, because of having particular information, is precluded from dealing in a futures contract, must not, while so precluded, communicate the information to another person if the first-mentioned person knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing in that futures contract.

1257 Defence where other party to dealing also had the inside information

Where a prosecution is begun against a person for an offence because the person had particular information and dealt in a futures contract in contravention of section 1256, it is a defence if it is proved that the other party to the dealing knew, or ought

The Corporations Law—Section 1257

reasonably to have known, the information before entering into the dealing.

The Corporations Law—Section 1258

Division 2—General

1258 Dealings by futures broker on behalf of others

A futures broker shall not deal in a futures contract on behalf of another person unless the dealing is effected:

- (a) on a futures market of a futures exchange or recognised futures exchange;
- (b) on an exempt futures market; or
- (c) as permitted by the business rules of a futures organisation of which the broker is a member.

1259 Futures market manipulation

A person must not, in this jurisdiction or elsewhere, take part in, be concerned in, or carry out, whether directly or indirectly:

- (a) a transaction (whether a dealing in a futures contract or not) that has, is intended to have, or is likely to have; or
- (b) 2 or more transactions (whether any of them is a dealing in a futures contract or not) that have, are intended to have, or are likely to have:

the effect of:

- (c) creating an artificial price for dealings in futures contracts on a futures market in this jurisdiction; or
- (d) maintaining at a level that is artificial (whether or not it was previously artificial) a price for dealings in futures contracts on a futures market in this jurisdiction.

1260 False trading and market rigging

- (1) A person must not, in this jurisdiction or elsewhere, create, cause to be created, or do anything that is calculated to create, a false or misleading appearance:
 - (a) of active dealing in futures contracts on a futures market in this jurisdiction; or

The Corporations Law—Section 1261

- (b) with respect to the market for, or the price for dealings in, futures contracts on a futures market in this jurisdiction.
- (2) A person must not, in this jurisdiction or elsewhere, by any fictitious or artificial transactions or devices, maintain, inflate, depress, or cause fluctuations in, the price for dealings in futures contracts on a futures market in this jurisdiction.
- (3) In determining whether a transaction is fictitious or artificial for the purposes of subsection (2), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive.

1261 False or misleading statements etc.

A person contravenes this section if the person:

- (a) in this jurisdiction or elsewhere, makes a statement, or disseminates information, that is false or misleading in a material particular and is likely:
 - (i) to induce other persons to deal in futures contracts on a futures market in this jurisdiction; or
 - (ii) to have the effect of raising, lowering, maintaining or stabilising the price for dealings in futures contracts, or in a class of futures contracts, on a futures market in this jurisdiction; and
- (b) when making the statement, or disseminating the information:
 - (i) is recklessly indifferent as to whether the statement or information is true or false; or
 - (ii) knows, or ought reasonably to know, that the statement is false or misleading in a material particular.

1262 Fraudulently inducing person to deal in futures contracts

- (1) A person must not:
 - (a) by making or publishing any statement, promise or forecast that the person knows to be misleading, false or deceptive;

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- (b) by any dishonest concealment of material facts;
 - (c) by the reckless making or publishing (dishonestly or otherwise) of any statement, promise or forecast that is misleading, false or deceptive; or
 - (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false or misleading in a material particular;
- induce or attempt to induce another person to deal in a futures contract or a class of futures contracts.
- (7) It is a defence to a prosecution for an offence under this section constituted by recording or storing information as mentioned in paragraph (1)(d) if it is proved that, when the defendant so recorded or stored the information, the defendant had no reasonable grounds for expecting that the information would be available to any person.

1263 Dissemination of information about illegal transactions

Where:

- (a) in this jurisdiction or elsewhere, a person circulates or disseminates, or authorises or is concerned in the circulation or dissemination of, any statement or information to the effect that the price for dealings in futures contracts, or in a class of futures contracts, on a futures market in this jurisdiction will, or is likely to, rise or fall or be maintained because of a transaction, or other act or thing done, in relation to such futures contracts or futures contracts included in that class, being a transaction, or other act or thing, that constitutes a contravention of section 1259, 1260, 1261 or 1262; and
- (b) the person, or an associate of the person:
 - (i) has entered into such a transaction or done such an act or thing; or
 - (ii) has received, or expects to receive, directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising or being concerned in the

The Corporations Law—Section 1264

circulation or dissemination of, the statement or information;

the first-mentioned person contravenes this section.

1264 Fraud in connection with dealings in futures contracts

- (1) Where, in connection with a dealing or proposed dealing in a futures contract by a futures broker on behalf of a client of the broker, a person who:
- (a) is the broker or an employee or agent of the broker; or
 - (b) has an interest, or is otherwise concerned in, the dealing or proposed dealing;
- does any of the following:
- (c) defrauds the client;
 - (d) does an act, or omits to do an act, knowing that the client will be deceived or misled, or with reckless indifference as to whether or not the client will be deceived or misled, as a result of the act or omission;
 - (e) (without limiting the generality of paragraph (d)) makes a statement, promise or forecast to the client, or makes an entry in a record relating to the client or persons including the client:
 - (i) knowing that the statement, promise, forecast or entry is false, misleading or deceptive in a material particular; or
 - (ii) with reckless indifference as to whether or not the statement, promise, forecast or entry is false, misleading or deceptive in a material particular;
- the person contravenes this section.

1265 Compensation for loss etc.

- (1) Where:
- (a) a person who, because of having particular information, is precluded by section 1253 from dealing in a futures contract deals, in contravention of section 1256, in that futures contract; or

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- (b) a person, being a body corporate, deals, in contravention of section 1256, in a futures contract at a time when an officer of the body is, because of having particular information, precluded from dealing in that futures contract;
the person is liable (whether or not the person has been convicted of an offence in respect of the contravention) to compensate any other party to the dealing who did not have that information for any loss sustained by that party because of any difference between the price at which the dealing took place and the price at which it would be likely to have taken place if that information had been generally available.
- (2) A person who contravenes any of sections 1259 to 1264 (inclusive) (whether or not the person has been convicted of an offence in respect of the contravention) is liable to pay compensation to any other person who, in dealing in futures contracts, suffers loss because of the difference between the price at which the dealing takes place and the price at which it would be likely to have taken place if the contravention had not occurred.
- (3) The amount of compensation for which a person is liable under subsection (1) or (2) is:
- (a) in a case to which paragraph (b) does not apply—the amount of the loss sustained by the person claiming the compensation; or
 - (b) if the first-mentioned person has been found by a court to be liable, or has been ordered by a court, to pay an amount or amounts to any other person or persons under this Part or under subsection 232(7) or a corresponding previous law because of the same act or transaction—the amount of that loss less the amount or the sum of the amounts that the first-mentioned person has been so found to be liable, or has been so ordered, to pay.
- (4) For the purposes of subsection (3), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.
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- (5) An action under this section for recovery of compensation for a loss is not maintainable after the end of the period of 2 years commencing on the day of completion of the dealing in which the loss occurred.
- (6) The Commission may, if it considers it to be in the public interest to do so, bring an action in the name of, and for the benefit of, a person for recovery of compensation for a loss referred to in subsection (1) and suffered by that person.
- (7) Nothing in subsection (1) affects any liability that a person may incur under any other law.

1266 Sequence of transmission and execution of orders

- (1) In this section, a reference to the transmission by a futures broker of instructions to deal in a class of futures contracts is a reference:
 - (a) where the broker has direct access to the futures market on which the instructions are to be executed—to the transmission of the instructions to that futures market; or
 - (b) where the broker has access to the futures market on which the instructions are to be executed only through another futures broker—to the transmission of the instructions to that other futures broker.
- (2) Subject to subsection (3), a futures broker shall transmit in the sequence in which they are received by the broker all instructions to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions.
- (3) Where a futures broker proposes to deal in a class of futures contracts on the broker's own account and the person by whom or on whose instructions the instructions for the dealing are to be transmitted is aware of instructions of a client of the broker to deal in that class of futures contracts at or near the market price for a futures contract of that class prevailing at that time (being instructions that have not been transmitted), that person shall not transmit, and shall not give instructions to any other person to

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transmit, the instructions to give effect to the proposal of the broker to deal in that class of futures contracts before the instructions of the client are transmitted.

- (4) A futures broker, or a director, partner, officer or employee of a futures broker, shall not, except:
- (a) to the extent necessary to execute the instructions concerned;
 - (b) as required by this Law or any other law; or
 - (c) as required by the business rules of a futures organisation of which the broker is a member;
- disclose to any other futures broker, or to a person engaged or employed in the business of the first-mentioned broker or of any other futures broker, instructions of a client to deal in a class of futures contracts.
- (5) A member of a futures exchange who is concerned in the execution, on a trading floor of the futures exchange, of instructions to deal in futures contracts shall execute in the order in which they are received by the member all instructions to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions.
- (6) Where:
- (a) during a particular period, a futures broker transmits instructions (whether or not those instructions consist of, or include, instructions giving effect to a proposal of the broker to deal in the class of contracts concerned on the broker's own account) to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions; and
 - (b) dealings in that class of futures contracts are effected pursuant to those instructions;
- the broker shall, except so far as the business rules of a futures organisation of which the broker is a member otherwise provide, allocate the dealings to those instructions:
- (c) in the sequence in which the dealings were effected; and

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- (d) in the sequence in which the broker transmitted those instructions.
- (7) A futures broker shall maintain, in accordance with the regulations, records that set out the prescribed particulars of:
 - (a) instructions by a client to deal in futures contracts;
 - (b) the date and time of receipt, transmission and execution of those instructions;
 - (c) the person by whom those instructions are received, the person by whom they are transmitted and the person by whom they are executed;
 - (d) the date and time of receipt, transmission and execution of instructions to deal in futures contracts on the broker's own account; and
 - (e) the person by whom instructions of the kind referred to in paragraph (d) are received, the person by whom they are transmitted and the person by whom they are executed;and shall retain those records for the prescribed period.
- (8) Where:
 - (a) a futures broker transmits for execution on a futures market outside Australia and the external Territories instructions to deal in futures contracts; and
 - (b) it is not reasonably practicable for the broker to set out in the records maintained by the broker pursuant to subsection (7) the prescribed particulars of the date and time of execution of those instructions;the broker shall so set out those particulars as precisely as is reasonably practicable.

1267 Dealings by employees of futures brokers and futures advisers

- (1) A person who is a futures broker or a futures adviser and an employee of that person shall not, as principals, jointly deal in, or agree to deal in, futures contracts.
- (2) A person who is a partner in a partnership that carries on a business of dealing in futures contracts and an employee of the partnership

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shall not, as principals, jointly deal in, or agree to deal in, futures contracts.

- (3) A person who is a partner in a partnership that carries on a futures advice business and an employee of the partnership shall not, as principals, jointly deal in, or agree to deal in, futures contracts.
- (4) A person who is a futures broker or a futures adviser shall not give credit to an employee of that person or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:
 - (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or
 - (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.
- (5) A person who is a partner in a partnership that carries on a business of dealing in futures contracts shall not give credit to an employee of the partnership or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:
 - (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or
 - (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.
- (6) A person who is a partner in a partnership that carries on a futures advice business shall not give credit to an employee of the partnership or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:
 - (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or

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- (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.
- (7) A person who is an employee of a member organisation of a futures exchange in connection with a business of dealing in futures contracts carried on by the member organisation shall not, as principal, deal, or agree to deal, in futures contracts unless the member organisation acts as the agent of the person in respect of the transaction.
- (8) A reference in subsection (1) or (4) to an employee of a person who is a futures broker or a futures adviser includes, in the case of a body corporate that is a futures broker or a futures adviser, a reference to an officer of the body corporate.
- (9) The reference in subsection (7) to an employee of a member organisation of a futures exchange includes:
 - (a) in the case of a member organisation that is a body corporate; and
 - (b) in the case of a member organisation that is a partnership in which a partner is a body corporate;a reference to an officer of the body corporate.
- (10) A reference in this section to an employee of a futures broker, a futures adviser, a partnership or a member organisation of a futures exchange includes a reference to a person who, pursuant to a subsisting agreement, performs services for the futures broker, futures adviser, partnership or member organisation in connection with dealings in futures contracts by the futures broker, futures adviser, partnership or member organisation.

Part 8.8—Miscellaneous

1268 Power of Court to make certain orders

(1) Where:

- (a) on the application of the Commission, it appears to the Court that a person has contravened this Chapter, or any other law in force in this jurisdiction relating to dealing in futures contracts, or has contravened the conditions of a licence, the business rules of a futures exchange, a clearing house or a futures association or is about to do an act with respect to dealing in futures contracts that, if done, would be such a contravention; or
- (b) on the application of a futures exchange, clearing house or futures association, it appears to the Court that a person has contravened the business rules of the futures exchange, clearing house or futures association, as the case may be;

the Court may make such order or orders as it thinks fit including, but without limiting the generality of the foregoing, one or more of the following orders:

- (c) in the case of persistent or continuing breaches of this Chapter, or of any other law in force in this jurisdiction relating to dealing in futures contracts, or the conditions or restrictions of a licence, or of the business rules of a futures exchange, clearing house or futures association—an order restraining a person from carrying on a business of dealing in futures contracts, acting as a futures adviser, holding himself, herself or itself out as so carrying on business or so acting, or from doing an act as a representative of a futures broker or of a futures adviser;
- (d) an order restraining a person from acquiring, disposing of or otherwise dealing in any class of futures contracts that is specified in the order;

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- (e) an order appointing a receiver of property of a futures broker or of property that is held by a futures broker for or on behalf of another person, whether as trustee or otherwise;
 - (f) an order declaring a futures contract to be void or voidable;
 - (g) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
 - (h) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding paragraphs.
- (2) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (3) Where the Commission makes an application to the Court for the making of an order under subsection (1), the Court shall not require the Commission or any other person, as a condition of granting an interim order under subsection (2), to give any undertaking as to damages.
- (4) The Court shall not make an order under subsection (1) if it is satisfied that the order would unfairly prejudice a person.
- (5) The Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
- (6) A person appointed by order of the Court under subsection (1) as a receiver of property of a futures broker:
 - (a) may require the broker to deliver to the person any property of which the person has been appointed receiver or to give to the person all information concerning that property that may reasonably be required;

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- (b) may acquire and take possession of any property of which the person has been appointed receiver;
 - (c) may deal with any property that the person has acquired or of which the person has taken possession in any manner in which the broker might lawfully have dealt with the property; and
 - (d) has such other powers in respect of the property as the Court specifies in the order.
- (7) In paragraph (1)(e) and subsection (6), **property**, in relation to a futures broker, includes money or other property entrusted to or received on behalf of any other person by the broker or another person in the course of or in connection with a business of dealing in futures contracts carried on by the futures broker.
- (8) A person shall not, without reasonable excuse, contravene:
- (a) an order under this section that is applicable to the person; or
 - (b) a requirement of a receiver appointed by order of the Court under subsection (1).
- (9) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

1269 Restrictions on use of titles “futures broker”, “futures exchange” etc.

- (1) A person who is not the holder of a futures brokers licence shall not take or use, or by inference adopt, the name or title of futures broker, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the person is a futures broker.
- (2) A person who is not the holder of a futures brokers licence shall not:
- (a) take or use, or by inference adopt; or
 - (b) have attached to, or exhibited at, any place;
- a name, title or description implying, or tending to create the belief, that the person is the holder of a futures brokers licence.

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- (3) A body corporate that is not:
 - (a) a futures exchange; or
 - (b) a recognised futures exchange;shall not take or use, or by inference adopt, the name or title of futures exchange, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the body is:
 - (c) a futures exchange; or
 - (d) a recognised futures exchange.
- (4) A body corporate that is not a futures association shall not take or use, or by inference adopt, the name or title of futures association, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the body is a futures association.

1270 Preservation and disposal of records etc.

- (1) A person who is required by a provision of this Law to maintain, make or keep a register or any accounting or other record in relation to a business carried on by the person shall preserve that register or record for the prescribed period, whether or not the person ceases to carry on that business before the end of that period.
- (2) The prescribed period for the purposes of subsection (1) is:
 - (a) in relation to a register or a record other than an accounting record, the period of 5 years next after the day on which the last entry was made in the register or record; or
 - (b) in relation to an accounting record, the period of 7 years next after the last day of the accounting period to which the record relates.
- (3) Subsections (1) and (2) do not apply in relation to a contract note or copy of a contract note received or issued by a futures broker who is a member of a futures exchange if the matters required by subsection 1206(4), (5) or (6), as the case requires, to be included in the contract note are recorded:

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- (a) by the futures exchange; or
 - (b) subject to such conditions (if any) as the Commission imposes, by the broker;
- in a manner approved by the Commission and the record of those matters is retained for not less than 5 years.
- (4) The Commission may, if of the opinion that it is no longer necessary or desirable to retain it, destroy or otherwise dispose of any document that is given to or lodged with the Commission under or for the purposes of this Law and that has been in the possession of the Commission for such period as is prescribed for the purposes of this subsection, either generally or in relation to a particular document or class of documents.

1271 Concealing etc. books relating to futures contracts

- (1) A person who:
- (a) in any case—conceals, destroys, mutilates or alters a book relating to the business carried on by a futures broker or required under this Law to be kept by the holder of a licence; or
 - (b) where such a book is in this jurisdiction—sends or takes, or causes the sending or taking of, the book out of Australia;
- contravenes this subsection.
- (2) In a prosecution of a person for an offence under subsection (1), it is a defence if it is established that the person did not act with intent to defraud, to defeat the purposes of this Law or the ASC Law or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power or authority, under this Law or the ASC Law.

1272 Falsification of records

- (1) Where matter that is used or intended to be used in connection with the keeping of a book required to be kept under this Law or a register or any accounting or other record referred to in section 1270 is recorded or stored in an illegible form by means of

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a mechanical device, an electronic device or any other device, a person who:

- (a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular;
 - (b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling other matter to be recorded or stored, by means of that device; or
 - (c) fails to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter;
- contravenes this subsection.
- (2) In a prosecution of a person for an offence under subsection (1), it is a defence if it is established that the person acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

1273 Precautions against falsification of records

A person required by this Chapter to keep a book or record shall take reasonable precautions for guarding against falsification of the book or record and for facilitating discovery of any falsification.