



Corporations Act 1989

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This compilation is in 5 volumes

- Volume 1: sections 1-82, Corporations Law sections 1-111J,
Part 1.5—Small Business Guide
- Volume 2: section 82, Corporations Law sections 112-451D
- Volume 3: section 82, Corporations Law sections 459A-864
- Volume 4: section 82, Corporations Law sections 865-1273**
- Volume 5: section 82, Corporations Law sections 1274-1493,
Schedules 2-4 and 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.**

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 24 November 2000 (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 ADI; or
 - (b) 2 or more such accounts.

The Corporations Law—Section 867

- (2) Where a condition of a licence prohibits the licensee from holding money in trust for the licensee's clients, subsection (1) does not 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.

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 by cheque that a bank or other institution draws on itself, 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 ADI; and
 - (b) contains no money other than money lent to the dealer;

The Corporations Law—Section 873

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.

- (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 ADI with which the dealer maintains an account, the dealer must cause the scrip to be so deposited.
- (4) If:

The Corporations Law—Section 874

- (a) neither of subsections (2) and (3) applies; and
 - (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 or a corresponding previous law, 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 (whether in Australia or elsewhere), 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.

The Corporations Law—Section 876

- (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.

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:

The Corporations Law—Section 878

- (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
 - (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 interests 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 interests 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 relevant interests 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 interests in those securities.
- (3) Where a person to whom this Part applies becomes aware that the person has relevant interests 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 interests in those securities.
- (4) Where there is a change in the relevant interests 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 relevant interests in securities, there shall be deemed to be a change in the relevant interests 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 interests in those securities, or particulars of a change in the person's relevant interests in any securities, the particulars to be entered include:
 - (a) the date on which the person began or ceased to have the relevant interests or on which the change occurred;
 - (b) the number of securities to which the relevant interests relate or related;
 - (c) if the relevant interests were 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

The Corporations Law—Section 884

(d) the name of the newspaper or periodical;
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.

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

The Corporations Law—Section 891

partnership, as the case may be, shall so lodge the amount of the 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 ADI; 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) contributions that members pay to the securities exchange under section 902;

The Corporations Law—Section 897

- (ba) money paid into the fidelity fund under section 904;
- (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 ADI 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 ADI.

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;

The Corporations Law—Section 899

- (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
- (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.

The Corporations Law—Section 900

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 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.

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- (4) A delegation 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 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

The Corporations Law—Section 903

\$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.

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.

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- (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).
- (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.

The Corporations Law—Section 904

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).
- (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:
 - (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

The Corporations Law—Section 907

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):
- (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.

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- (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 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;

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- (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 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

The Corporations Law—Section 909

- (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 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 Corporations Law—Section 910

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.
- (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.

The Corporations Law—Section 911

- (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.
- (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

The Corporations Law—Section 911

- (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.
- (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

The Corporations Law—Section 912

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:
 - (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.

The Corporations Law—Section 914

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 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:

The Corporations Law—Section 917

- (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.

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.

The Corporations Law—Section 919

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:

borrower, in relation to a guaranteed securities loan, has the meaning given by section 954B.

claim means a claim under Division 6, 6A, 6B, 6C, 7, 7A or 8.

clearing nominee, in relation to a settlement authority, means a subsidiary of the settlement authority operated for the purpose of facilitating the transfer of securities.

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.

guaranteed securities loan has the meaning given by section 954B.

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.

The Corporations Law—Section 920

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, under the SCH 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.

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, securities and scrip.

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.

replacement agreement, in relation to an agreement that has been novated, has the meaning given by section 924A.

reportable transaction means a sale or purchase, by a member organisation (in this definition called the **first dealer**) of a participating exchange, of securities, where the securities are quoted on a stock market of a participating exchange or of an Exchange subsidiary when the agreement for the sale or purchase is made and:

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- (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.

securities:

- (a) except in Division 7—includes marketable securities, or marketable rights, within the meaning of Division 3 of Part 7.13; and
- (b) in Division 7—has the meaning given by subsection 955(1).

settlement authority means a participating exchange or the securities clearing house.

settlement documents, in relation to a transaction (other than a guaranteed securities loan), 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.

TDS nominee, in relation to the transfer delivery service provisions of a settlement authority, means the clearing nominee referred to in the definition of **transfer delivery service provisions**.

The Corporations Law—Section 920

transaction, except in Division 6B, means a sale or purchase of securities or a guaranteed securities loan.

transfer, except in Division 7, has a meaning affected by section 924.

transfer delivery service provisions, in relation to a settlement authority, means provisions of the business rules of the settlement authority under which a person or partnership may elect to bring about a transfer of securities of a particular kind and number to another person or partnership by:

- (a) the first-mentioned person or partnership transferring securities of that kind and number to a clearing nominee of the settlement authority; and
- (b) the clearing nominee transferring securities of that kind and number to the other person or partnership.

transfer documents, except in Division 7, has the meaning given by section 924.

- (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;
 - (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;

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- (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
- (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:
 - (aa) an administrator of the body corporate is appointed under section 436A, 436B or 436C;
 - (a) the body corporate commences to be wound up 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
 - (c) the body corporate enters into a compromise or arrangement with its creditors or a class of them.
- (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:

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- (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.

924 Transfer of securities etc. and payment of money

- (1) This section has effect for the purposes of this Part (other than Division 7).
- (2) A person (*the transferor*) transfers securities to another person (*the transferee*) if, and only if:
 - (a) in the case of an SCH-regulated transfer—the transferor does, or causes to be done, all things that the SCH business rules require to be done by or on behalf of the transferor to effect the transfer; or
 - (b) in any other case—the transferor delivers, or causes to be delivered, to the transferee documents (*transfer documents*) that are sufficient to enable the transferee:
 - (i) except in the case of marketable rights within the meaning of Division 3 of Part 7.13—to become registered as the holder of the securities; or
 - (ii) in the case of such marketable rights—to obtain the issue to the transferee of the securities to which the marketable rights relate;without the transferor doing anything more, or causing anything more to be done, by way of executing or supplying documents.
- (3) If a person:
 - (a) causes property (other than securities or money) to be transferred to another person; or
 - (b) causes documents that are sufficient to enable another person to become the legal owner of property (other than securities or money) to be delivered to another person;the first-mentioned person is taken to have transferred the property to the other person.

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- (4) If a person causes money to be paid to another person, the first-mentioned person is taken to have paid the money to the other person.
- (5) In this section:
person includes a partnership.

924A Novation of agreements

For the purposes of this Part, an agreement is novated if, and only if, because of the operation of a settlement authority's business rules, the agreement is discharged and replaced with one or more other agreements (each of which is called a *replacement agreement*).

924B Attributing securities and payments to transactions

If:

- (a) either:
 - (i) a number of securities are transferred to a participating exchange or a member organisation of a participating exchange in respect of a number of transactions; or
 - (ii) a payment is made to a participating exchange or a member organisation of a participating exchange in respect of a number of transactions; and
- (b) apart from this section, it is not possible to tell, for the purposes of this Part, how many of the securities are transferred, or how much of the payment is made, in respect of each of the transactions; and
- (c) the business rules of the participating exchange include provisions determining how many of the securities are transferred, or how much of the payment is made, in respect of each of the transactions;

those provisions have effect accordingly for the purposes of this Part.

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), 954F(2), 954Q(2), 954Y(2), 959(3), 961E(3) 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.
- (5A) A delegation under this section continues in force even if there is a change in the membership of the Board or of the sub-committee.

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- (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.
- (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.

927A Sub-delegation by management sub-committee

- (1) A management sub-committee may delegate to:
 - (a) a member of the Board; or
 - (b) a member of the sub-committee; or
 - (c) an officer of SEGC;all or any of the powers, authorities and discretions that have been delegated under subsection 927(2) to the sub-committee.
- (2) A delegation must be in writing signed by a majority of the members of the sub-committee.
- (3) A delegation may be varied or revoked at any time by writing signed by a majority of the members of the sub-committee.
- (4) A delegation continues in force even if there is a change in the membership of the sub-committee.
- (5) A power, authority or discretion performed or exercised by a person under a delegation is taken to have been exercised by the Board.
- (6) A delegation of a power, authority or discretion does not prevent the performance or exercise of the power, authority or discretion by the Board, or by the sub-committee that made the delegation.
- (7) Section 109ZE has effect in relation to a delegation subject to this section.
- (8) In this section:

delegation means a delegation under this section.

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management sub-committee means a management sub-committee appointed under subsection 927(1).

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

928A Interpretation—borrowing

In this Division, a reference to borrowing money includes a reference to obtaining credit.

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 section 938 or 940;
- (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);
- (fa) money paid into the Fund under subsection 930B(2);

The Corporations Law—Section 930A

- (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;
- (j) money paid to SEGC for the purposes of a claim under Division 6, 6A or 6C; and
- (k) all other money or other property lawfully paid into, or forming part of, the Fund.

930A Power to borrow etc. for purposes of the Fund

- (1) If the Board considers that, in the interests of the sound financial management of the Fund, money should be borrowed for the purpose of meeting a payment due out of the Fund, SEGC may borrow money for that purpose on such terms and conditions as the Board thinks appropriate.
- (2) SEGC may give security, including security over the assets of the Fund, in respect of SEGC's obligations in relation to a borrowing under subsection (1).
- (3) If:
 - (a) money borrowed under subsection (1) is a loan from a participating exchange; and
 - (b) the participating exchange borrowed money for the purpose of making the loan to SEGC;SEGC may give security, including security over the assets of the Fund, in relation to the participating exchange's obligations in respect of the borrowing referred to in paragraph (b).

930B Money borrowed and paid to SEGC

- (1) This section applies where money borrowed by SEGC under subsection 930A(1) is paid to SEGC.
- (2) SEGC must pay the money into the Fund.

The Corporations Law—Section 930C

- (3) If:
- (a) the money was borrowed for the purpose of meeting a payment due out of the Fund; and
 - (b) the borrowed money has been paid into the Fund; and
 - (c) the payment due out of the Fund has not yet been made; then, for the purposes of Division 4, the amount in the Fund is taken to be reduced by the amount of the borrowed money.

930C Money borrowed and not paid to SEGC

- (1) This section applies where money borrowed by SEGC under subsection 930A(1) is not paid to SEGC but is payable to other persons at the direction of SEGC.
- (2) SEGC must not direct that any of the money be paid to a person unless the payment is of a kind that can, under section 932, be made out of the Fund.

931 Fund to be kept in separate ADI 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 ADI 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;

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- (ba) money payable to a person or partnership under section 972A;
 - (c) money payable to a participating exchange under section 944;
 - (da) to the extent that the money referred to in section 935 is insufficient for the purpose, payments of principal, interest and other amounts payable by SEGC in respect of money borrowed, and security given, under section 930A;
 - (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.
- (2) In paragraphs (1)(a) and (b), **claim** means a claim under Division 6, 6A, 6B, 6C, 7, 7A 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, 6A, 6B, 6C, 7 or 7A 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.
- (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.

The Corporations Law—Section 935

- (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
 - (b) all premiums payable in respect of contracts of insurance or indemnity entered into by SEGC under section 982; and
 - (c) principal, interest and other amounts payable by SEGC in respect of money borrowed, and security given, under section 930A.
- (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.

The Corporations Law—Section 936

- (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 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; or
 - (iii) in the case of a guaranteed securities loan—the borrower.

leviable transaction means:

- (a) 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:
 - (i) the sale or purchase is a reportable transaction as defined in subsection 920(1); and
 - (ii) the person or partnership is a member organisation of a participating exchange and carries on a securities business in this jurisdiction; or

The Corporations Law—Section 938

- (b) a guaranteed securities loan where, as at the time when the loan is entered into, the borrower carries on a securities business in this jurisdiction.
- (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 leviable transactions.
- (3) A levy under subsection (2) is payable in respect of a leviable 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 leviable 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

The Corporations Law—Section 939

- (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.
- (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 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:

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- (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.
- (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:

The Corporations Law—Section 941

- (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.
- (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

The Corporations Law—Section 942

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.

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:

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- (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.

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- (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.

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.

Exchange body means the Exchange or a subsidiary of the 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:

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

948A Effect of using a transfer delivery service

If:

- (a) under an agreement for the sale or purchase of securities, or under a replacement agreement in relation to such an agreement that has been novated, a person or partnership is obliged to transfer securities of a particular kind and number to another person or partnership; and
- (b) for the purpose of discharging the obligation, the first-mentioned person or partnership:
 - (i) elects, in accordance with the transfer delivery service provisions of a settlement authority, to bring about a transfer of securities of that kind and number to the other person or partnership by the means provided for in those provisions; and
 - (ii) for the purpose of so bringing about that transfer, transfers securities of that kind and number to the TDS nominee;

then, for the purposes of the application of this Division in relation to the sale or purchase, the obligation of the first-mentioned person or partnership to supply settlement documents in relation to the sale or purchase is taken to be discharged by the transfer of securities to the TDS nominee.

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:
 - (i) if a transfer of the securities concerned pursuant to the sale would be an SCH-regulated transfer—has done, or is ready, willing and able to do, all things that that dealer is required to do under the SCH business rules to effect a transfer of the securities pursuant to the sale; or
 - (ii) in any other case—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 body purport to authorise that body to make under this section on behalf of a dealer who is a member organisation of the Exchange a claim that the dealer is entitled to make, that body is entitled to make that claim on behalf of that dealer.
- (4) If an Exchange body is entitled under subsection (3) to make claims under this section on behalf of 2 or more dealers, that body 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.
- (4A) If the SCH business rules purport to authorise the securities clearing house to make under this section on behalf of a dealer who is or was an SCH participant a claim that the dealer is entitled to

The Corporations Law—Section 949

make, the securities clearing house is entitled to make that claim on behalf of that dealer.

- (4B) If the securities clearing house is entitled under subsection (4A) to make claims under this section on behalf of 2 or more dealers, the securities clearing house 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 body or the securities clearing house 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:
- (a) subsection (1), (3) or (4A) entitles the claimant to make the claim; and
 - (aa) if a transfer of the securities pursuant to the sale would be an SCH-regulated transfer—the dealer:
 - (i) has done all things that the dealer is required to do under the SCH business rules to effect a transfer of the securities pursuant to the sale; or
 - (ii) has, for the purposes of the claim, in accordance with the SCH business rules, transferred to SEGC or to an Exchange body securities of the same kind and number as the first-mentioned securities; and
 - (b) if paragraph (aa) does not apply—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; and
 - (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.

The Corporations Law—Section 950

- (6) A claim made under subsection (2), (4) or (4B) 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.
- (7) If a dealer transfers securities to an Exchange body as mentioned in subparagraph (5)(aa)(ii), the Exchange body must account to SEGC for those securities in accordance with the SCH business rules.

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:
 - (i) if a transfer of the securities concerned pursuant to the purchase would be an SCH-regulated transfer—has not done all things that that dealer is required to do under the SCH business rules to effect a transfer of the securities pursuant to the purchase; or
 - (ii) in any other case—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.
- (1A) A dealer may make a single claim under this section in respect of 2 or more purchases.
- (1B) A claim made under subsection (1A) is to be treated for the purposes of subsection (2) as if it consisted of a separate claim in respect of each of the purchases to which it relates.
- (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:

The Corporations Law—Section 950

- (a) subsection (1) entitles the claimant to make the claim; and
 - (b) the claimant has:
 - (i) for the purposes of the claim, paid to SEGC; or
 - (ii) under the agreement for the purchase, paid to the other dealer;the amount of the consideration for the purchase; and
 - (ba) if a transfer of the securities pursuant to the purchase would be an SCH-regulated transfer—the other dealer has not done all things that that dealer is required to do under the SCH business rules to effect a transfer of the securities pursuant to the purchase; and
 - (c) if paragraph (ba) does not apply—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.
- (3) If:
- (a) SEGC allows under subsection (2) a claim in respect of a purchase of securities; and
 - (b) a transfer of the securities pursuant to the purchase would be an SCH-regulated transfer;
- SEGC must, subject to section 952A, transfer to the claimant securities of the same kind and number as the first-mentioned securities.
- (4) If:
- (a) SEGC allows under subsection (2) a claim in respect of a purchase of securities; and
 - (b) subsection (3) does not apply;
- SEGC must, subject to section 953, supply to the claimant settlement documents in relation to the purchase.

The Corporations Law—Section 950A

950A Effect of novation, under business rules, of agreement for purchase

- (1) Where:
- (a) a dealer (in this section called the *buyer*) agrees to buy securities from another dealer (in this section called the *seller*); and
 - (b) the purchase is a reportable transaction; and
 - (c) the agreement for the purchase is novated; and
 - (d) under a replacement agreement, the seller becomes obliged to transfer securities to the buyer;
- this section has effect for the purposes of:
- (e) making a claim under section 950 in respect of the purchase; and
 - (f) the application of this Part (other than section 980) in relation to such a claim.
- (2) Subject to subsections (3) and (4), the novation is to be disregarded.
- (3) If:
- (a) the buyer's obligation to supply to the seller, under the agreement for the purchase, the consideration for the purchase is replaced by an obligation under a replacement agreement to pay an amount; and
 - (b) that obligation under the replacement agreement has been, or is to be, taken into account for the purposes of provisions of the business rules of a settlement authority that are of the kind referred to in subsection 954N(1);
- the buyer is taken to have so supplied the consideration for the purchase.
- (4) If the replacement agreement or agreements is or are discharged or otherwise terminated, the agreement for the purchase is taken to be discharged or otherwise terminated.

The Corporations Law—Section 951

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:
 - (aa) if a transfer of the securities concerned pursuant to the sale would be an SCH-regulated transfer—the person:
 - (i) in a case to which subparagraph (ii) does not apply—has done all things necessary to enable the dealer to do all things that the dealer is required to do under the SCH business rules to effect a transfer of the securities pursuant to the sale; or
 - (ii) if the dealer has been suspended by the participating exchange concerned, or the dealer’s status as an SCH participant has been suspended under the SCH business rules, and that suspension has not been removed—has done, or is ready, willing and able to do, all things necessary to enable the dealer to do all things that the dealer is required to do under the SCH business rules to effect a transfer of the securities pursuant to the sale; and
 - (a) if paragraph (aa) does not apply—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

The Corporations Law—Section 951

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.

- (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; and
 - (aa) if a transfer of the securities pursuant to the sale would be an SCH-regulated transfer—the claimant:
 - (i) has done all things necessary to enable the dealer to do all things that the dealer is required to do under the SCH business rules to effect a transfer of the securities pursuant to the sale; or
 - (ii) has, for the purposes of the claim, in accordance with the SCH business rules, transferred to SEGC or to an Exchange body securities of the same kind and number as the first-mentioned securities; and
 - (b) if paragraph (aa) does not apply—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.
- (4) If a person transfers securities to an Exchange body as mentioned in subparagraph (3)(aa)(ii), the Exchange body must account to SEGC for those securities in accordance with the SCH business rules.

The Corporations Law—Section 952

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, or the dealer's status as an SCH participant has been suspended under the SCH business rules, and that 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
 - (aa) if a transfer of the securities concerned pursuant to the purchase would be an SCH-regulated transfer—the dealer's obligations to the person in respect of the purchase, in so far as they relate to the transfer of securities to the person, have not been discharged; and
 - (b) if paragraph (aa) does not apply—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.
- (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; and
 - (b) the claimant has:

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- (i) under the agreement for the purchase, paid to the dealer;
or
 - (ii) for the purposes of the claim, paid to SEGC;
the amount of the consideration for the purchase; and
- (ba) if a transfer of the securities pursuant to the purchase would be an SCH-regulated transfer—the dealer’s obligations to the claimant in respect of the purchase, in so far as they relate to the transfer of securities to the claimant, have not been discharged; and
- (c) if paragraph (ba) does not apply—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.

(4) If:

- (a) SEGC allows under subsection (3) a claim in respect of a purchase of securities by a dealer on behalf of a person; and
- (b) a transfer of the securities pursuant to the purchase would be an SCH-regulated transfer;

SEGC must, subject to section 952A, transfer to the claimant securities of the same kind and number as the first-mentioned securities.

(5) If:

- (a) SEGC allows under subsection (3) a claim in respect of a purchase of securities by a dealer on behalf of a person; and
- (b) subsection (4) does not apply;

SEGC must, subject to section 953, supply to the claimant settlement documents in relation to the purchase.

952A Cash settlement of claims—SCH-regulated transfers

If:

- (a) SEGC:

The Corporations Law—Section 952A

- (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; and
- (b) a transfer of the securities pursuant to the purchase would be an SCH-regulated transfer; and
- (c) it is not reasonably practicable for SEGC to obtain securities of the same kind and number as the first-mentioned securities from the dealer before the end of:
- (i) if the SCH 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 of the claim, considers reasonable; and
- (d) it is not reasonably practicable for SEGC to obtain, otherwise than from the dealer, securities of that kind and number before the end of that period because:
- (i) whether because 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;

SEGC must satisfy the claim by paying 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.

953 Cash settlement of claims—transfers other than SCH-regulated transfers

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; and

(aa) a transfer of the securities pursuant to the purchase would not be an SCH-regulated transfer; and

(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 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;

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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;

SEGC must satisfy the claim by paying 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.

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:
 - (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

The Corporations Law—Section 954

- (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 6A—Securities loans guarantees

954A Interpretation—general definitions

(1) In this Division:

borrower, in relation to a guaranteed securities loan, has the meaning given by section 954B.

claim means a claim under this Division against SEGC.

compliance period, in relation to an obligation under a guaranteed securities loan, means:

- (a) if the business rules of the lender as in force when the loan is made prescribe a period in relation to the obligation for the purposes of this paragraph—that period; or
- (b) otherwise—a period that is reasonable having regard to the obligation and all the circumstances relating to the loan.

excluded amount, in relation to a guaranteed securities loan, means an amount payable by the borrower by way of a fee or charge, or by way of interest or a penalty, in respect of the loan.

guaranteed securities loan has the meaning given by section 954B.

lender, in relation to a guaranteed securities loan, has the meaning given by section 954B.

security benefit means:

- (a) property (other than securities) or money transferred or paid to a person because the person is or was the holder of a security; or
- (b) a right that a person has because the person is or was the holder of a security, including, for example:
 - (i) a right to be paid an amount or to be issued with additional securities; or

The Corporations Law—Section 954B

- (ii) a right that arises out of a reduction in share capital, a scheme of arrangement or compromise or a takeover bid.
- (2) A reference in the definition of *security benefit* in subsection (1) to a right is a reference to a right, whether existing or future, and whether contingent or not.

954B Interpretation—guaranteed securities loan and related concepts

- (1) For the purposes of this Part, an agreement is a guaranteed securities loan if:
 - (a) under the agreement:
 - (i) a participating exchange is to transfer securities of a specified kind and number to, or as directed by, a person or partnership; and
 - (ii) in order to put the participating exchange in the same position (as nearly as practicable) as if the agreement had not been made, the person or partnership is later to transfer to, or as directed by, the participating exchange such securities and security benefits as the agreement requires; and
 - (b) the person or partnership is a member organisation of the participating exchange on the day when the agreement is entered into; and
 - (c) the agreement is entered into after the commencement of this section; and
 - (d) the agreement is of a kind that, according to the business rules of the participating exchange, is to be guaranteed under this Division.
- (2) For the purposes of the application of this Part in relation to a guaranteed securities loan:
 - (a) the participating exchange referred to in subparagraph (1)(a)(i) is the lender; and

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- (b) the person or partnership referred to in subparagraph (1)(a)(i) is the borrower; and
 - (c) the securities transferred as mentioned in subparagraph (1)(a)(i) are borrowed securities.
- (3) The fact that an agreement includes obligations in addition to those mentioned in subsection (1) does not prevent the agreement from being a guaranteed securities loan.

954C Effect of using a transfer delivery service

If:

- (a) under a guaranteed securities loan, or under a replacement agreement in relation to a guaranteed securities loan that has been novated, a person or partnership is obliged to transfer securities of a particular kind to, or as directed by, another person or partnership; and
- (b) for the purpose of wholly or partly discharging the obligation, the first-mentioned person or partnership:
 - (i) elects, in accordance with the transfer delivery service provisions of a settlement authority, to bring about a transfer of a particular number of securities of that kind to, or as directed by, the other person or partnership by the means provided for in those provisions; and
 - (ii) for the purpose of so bringing about that transfer, transfers that number of securities of that kind to the TDS nominee;

then, for the purposes of the application of this Division in relation to the guaranteed securities loan, the obligations of the first-mentioned person or partnership to transfer securities under the loan are taken to be discharged, to the extent of that number of securities of that kind, by the transfer of securities to the TDS nominee.

954D Claim by lender in respect of borrower’s failure to discharge obligation

- (1) If, as at the end of the compliance period in relation to an obligation of the borrower under a guaranteed securities loan to transfer or pay securities or security benefits, or to pay some other amount (except an excluded amount):
 - (a) the lender has transferred borrowed securities in accordance with the agreement; and
 - (b) the obligation remains undischarged to any extent;the lender may, subject to section 954J, make a claim in respect of the obligation.
- (2) A participating exchange may make a single claim under this section in respect of a number of obligations, whether arising under the same or different guaranteed securities loans.
- (3) A claim made under subsection (2) is to be treated for the purposes of sections 954G and 954H as if it were a separate claim in respect of each of the obligations to which it relates.

954E Effect of novation, under business rules, of guaranteed securities loan

- (1) Where:
 - (a) an agreement is novated; and
 - (b) before the novation, the agreement was a guaranteed securities loan;this section has effect for the purposes of:
 - (c) making a claim under section 954D in respect of the loan; and
 - (d) the application of this Part (other than section 980) in relation to such a claim.
- (2) Subject to subsections (3) and (4), the novation is to be disregarded.
- (3) If:

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- (a) an obligation under the loan to pay an amount is replaced by an obligation under a replacement agreement to pay an amount; and
 - (b) that obligation under the replacement agreement has been, or is to be, taken into account for the purposes of provisions of the business rules of a settlement authority that are of the kind referred to in subsection 954N(1);
- the obligation to pay that amount under the loan is taken to be discharged.
- (4) If the replacement agreement or agreements is or are discharged or otherwise terminated, the loan agreement is taken to be discharged or otherwise terminated.

954F How and when claim to be made

- (1) A claim must be in writing and must be served on SEGC within 6 months after the day when the claimant became entitled to make the claim.
- (2) A claim that is not made within the period required by subsection (1) is barred unless the Board otherwise determines.

954G How claim in respect of securities or non-money security benefits is to be satisfied

- (1) Subject to section 954K, SEGC must allow a claim in respect of an obligation under a guaranteed securities loan to transfer securities or security benefits (other than money) if the Board is satisfied that:
 - (a) the claimant is entitled to make the claim; and
 - (b) the obligation is still undischarged to the extent of a particular number of securities or security benefits of a particular kind (in this section called the *outstanding items*).
- (2) Subject to subsection (3), if:
 - (a) SEGC allows the claim; and
 - (b) the claimant has:

The Corporations Law—Section 954G

- (i) under the guaranteed securities loan, paid as directed by the borrower; or
 - (ii) for the purposes of the claim, paid to SEGC; each amount (if any) required to be paid under the loan by the claimant upon the discharge of the obligation;
- SEGC must transfer to, or as directed by, the claimant, securities or security benefits of the same kind and number as the outstanding items.
- (3) If:
- (a) SEGC allows the claim; and
 - (b) either:
 - (i) paragraph (2)(b) is not satisfied; or
 - (ii) paragraph (2)(b) is satisfied but the Board is satisfied that it is not reasonably practicable for SEGC to obtain securities or security benefits of the same kind and number as the outstanding items within the pre-cash settlement period;
- SEGC must satisfy the claim by paying to the claimant the amount that, as at the time when the Board decides it is so satisfied, is the actual pecuniary loss suffered by the claimant in respect of the failure to discharge the obligation.
- (4) In working out the amount of the actual pecuniary loss suffered in respect of the failure to discharge the obligation, regard may be had to the cost to the claimant of any securities or security benefits of the same kind as the outstanding items that the claimant obtained because the obligation was not discharged.
- (5) In this section:
- pre-cash settlement period*** means:
- (a) if the business rules of the claimant, 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

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- (b) otherwise—such period as the Board, having regard to all the circumstances of the claim, considers reasonable.

954H How claim in respect of an amount of money is to be satisfied

- (1) Subject to section 954K, SEGC must allow a claim in respect of an obligation under a guaranteed securities loan to pay a security benefit that is an amount of money, or to pay some other amount, if the Board is satisfied that:
 - (a) the claimant is entitled to make the claim; and
 - (b) the obligation is still undischarged to the extent of a particular amount (in this section called the *outstanding amount*).
- (2) If SEGC allows the claim, it must pay to, or as directed by, the claimant an amount equal to the outstanding amount.

954J Nexus with this jurisdiction

A participating exchange may not make a claim in respect of a guaranteed securities loan unless:

- (a) the borrower was carrying on a securities business in this jurisdiction on the day when the loan was entered into; or
- (b) if the borrower was not so carrying on such a business and was not carrying on a securities business in any other jurisdiction on that day—the last securities business that the borrower carried on in a jurisdiction before that day was carried on in this jurisdiction.

954K Preventing double recovery

If SEGC allows a claim under section 954D of the Corporations Law of another jurisdiction in respect of a failure to discharge an obligation, SEGC must not allow a claim under section 954D of the Corporations Law of this jurisdiction in respect of the same failure.

Division 6B—Claims in respect of net obligations

954L Interpretation

In this Division:

claim means a claim under this Division against SEGC.

dealer, in relation to a participating exchange, means the participating exchange or a member organisation of the participating exchange.

954M Effect of using a transfer delivery service

If:

- (a) a person or partnership (in this section called the *transferor*) is, under provisions of a kind referred to in subsection 954P(1), obliged to transfer securities of a particular kind to another person or partnership (in this section called the *transferee*); and
- (b) for the purpose of wholly or partly discharging the obligation, the transferor:
 - (i) elects, in accordance with the transfer delivery service provisions of a settlement authority, to bring about a transfer of a particular number of securities of that kind to the transferee by the means provided for in those provisions; and
 - (ii) for the purpose of so bringing about the transfer, transfers that number of securities of that kind to the TDS nominee;

then, for the purposes of the application of this Division, the obligation is taken to have been discharged, to the extent of that number of securities of that kind, by the transfer of securities to the TDS nominee.

954N Claim in respect of failure to pay net amount in respect of transactions

- (1) If:
- (a) under provisions of the business rules of a settlement authority, the total of the amounts that become due and payable to a dealer by a subsidiary of the settlement authority on a particular day in respect of transactions (as defined in the business rules) of a kind or kinds specified in the business rules is set off against the total of the amounts that become due and payable by the dealer to the subsidiary on that day in respect of transactions (as so defined) of that kind or those kinds; and
 - (b) depending on which of those totals is the greater, the provisions oblige:
 - (i) the dealer to pay to the subsidiary, or to some other person or persons nominated under the provisions; or
 - (ii) the subsidiary, or some other dealer or dealers nominated under the provisions, to pay to the dealer, or to some other person or persons nominated under the provisions;within a specified period, the difference between those totals; and
 - (c) as at the end of that period, that obligation remains undischarged to the extent of a particular amount; the person to which the amount is payable may, subject to section 954U, make a claim in respect of the obligation.
- (2) Entitlement to make the claim is not affected by a dealer ceasing to be a member organisation of a participating exchange after the obligation arose.
- (3) For the purposes of this section, a total may be a nil amount.
- (4) In this section:
person includes a partnership.

**954P Claim in respect of failure to transfer net number of securities
in respect of transactions**

- (1) This section applies if:
 - (a) under provisions of the business rules of a settlement authority, the total number of securities of a particular kind to be transferred on a particular day to a dealer by a subsidiary of the settlement authority in respect of transactions (as defined in the business rules) of a kind or kinds specified in the business rules is set off against the total number of securities of that kind to be transferred on that day by the dealer to the subsidiary in respect of transactions (as so defined) of that kind or those kinds; and
 - (b) depending on which of those totals is the greater, the provisions oblige:
 - (i) the dealer to transfer to some other person or persons nominated under the provisions; or
 - (ii) some other dealer or dealers nominated under the provisions to transfer to the dealer, or to some other person or persons nominated under the provisions; within a specified period, securities of that kind equal in number to the difference between those totals; and
 - (c) as at the end of that period, the obligation to transfer, or any of the obligations to transfer, as the case requires, remains undischarged to the extent of a particular number of securities of that kind (in this section called the ***default securities***).
- (2) If the settlement authority has not taken action as mentioned in subsection (3), the person to which the default securities should have been transferred may, subject to section 954U, make a claim in respect of the failure to transfer the default securities.
- (3) If, for the purpose of remedying the failure to transfer the default securities, the settlement authority has transferred securities of the same kind and number as the default securities to the person to which the default securities should have been transferred:

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- (a) the settlement authority is subrogated to all the rights and remedies of the person in relation to the failure to transfer the default securities; and
 - (b) the settlement authority may, subject to section 954U, make a claim in respect of its actions to remedy the failure; and
 - (c) any claim made under subsection (2) in respect of the failure is taken not to have been entitled to be made.
- (4) Entitlement to make a claim is not affected by a dealer ceasing to be a member organisation of a participating exchange after the obligation to transfer arose.
- (5) For the purposes of this section, a total number of marketable securities of a particular kind may be zero.
- (6) In this section:
person includes a partnership.

954Q How and when claim to be made

- (1) A claim must be in writing and must be served on SEGC within 6 months after the day on which the claimant became entitled to make the claim.
- (2) A claim that is not made within the period required by subsection (1) is barred unless the Board otherwise determines.

954R How claim under subsection 954N(1) is to be satisfied

- (1) Subject to section 954V, SEGC must allow a claim under subsection 954N(1) if the Board is satisfied that:
 - (a) the claimant is entitled to make the claim; and
 - (b) the obligation referred to in paragraph 954N(1)(c) still remains undischarged to the extent of a particular amount.
- (2) If SEGC allows the claim, SEGC must pay to the claimant the amount referred to in paragraph (1)(b).

954S How claim under subsection 954P(2) is to be satisfied

- (1) Subject to section 954V, SEGC must allow a claim under subsection 954P(2) if the Board is satisfied that:
 - (a) the claimant is entitled to make the claim; and
 - (b) the obligation referred to in paragraph 954P(1)(c) still remains undischarged to the extent of a particular number of securities of a particular kind (in this section called the *outstanding securities*).
- (2) Subject to subsection (3), if SEGC allows the claim, it must transfer to the claimant securities of the same kind and number as the outstanding securities.
- (3) If the Board is satisfied that it is not reasonably practicable for SEGC to obtain securities of the same kind and number as the outstanding securities within the pre-cash settlement period, SEGC must satisfy the claim by paying to the claimant the amount that, as at the time when the Board decides it is so satisfied, is the actual pecuniary loss suffered by the claimant in respect of the failure to transfer the outstanding securities.
- (4) In working out the amount of the actual pecuniary loss suffered in respect of the failure to transfer the outstanding securities, regard may be had to the cost to the claimant of any securities of the same kind as the outstanding securities that the claimant obtained because the outstanding securities were not transferred.
- (5) In this section:

pre-cash settlement period means:

- (a) if the business rules of the settlement authority that is referred to in paragraph 954P(1)(a), 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
- (b) otherwise—such period as the Board, having regard to all the circumstances of the claim, considers reasonable.

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954T How claim under subsection 954P(3) is to be satisfied

- (1) Subject to section 954V, SEGC must allow a claim by a settlement authority under subsection 954P(3) if the Board is satisfied that:
 - (a) the settlement authority is entitled to make the claim; and
 - (b) the settlement authority has paid or transferred to SEGC any money or property it has obtained because of the right of subrogation given by paragraph 954P(3)(a) in relation to the failure to transfer the default securities.
- (2) If SEGC allows the claim, it must pay to the settlement authority the amount that, as at the time when the claim is allowed, is the actual pecuniary loss suffered by the settlement authority because of the actions it has taken to remedy its subsidiary's default.
- (3) In working out the amount of the actual pecuniary loss suffered in respect of the actions taken by the settlement authority to remedy its subsidiary's default, regard may be had to the cost to the settlement authority of obtaining the securities transferred as mentioned in subsection 954P(3).
- (4) Money or property paid or transferred to SEGC under paragraph (1)(b) forms part of the Fund.

954U Nexus with this jurisdiction

A person or partnership may not make a claim in respect of a failure by a person or partnership (in this section called the **defaulter**) to discharge an obligation to pay an amount or transfer securities unless:

- (a) the defaulter was carrying on a securities business in this jurisdiction on the day on which the obligation arose; or
- (b) if the defaulter was not so carrying on such a business and was not carrying on a securities business in any other jurisdiction on that day—the last securities business that the defaulter carried on in a jurisdiction before that day was carried on in this jurisdiction.

954V Preventing double recovery

- (1) If SEGC allows a claim under subsection 954N(1) of the Corporations Law of another jurisdiction in respect of a failure to pay an amount, SEGC must not allow a claim under the corresponding subsection of the Corporations Law of this jurisdiction that relates to the same failure.
- (2) If SEGC allows a claim under section 954P of the Corporations Law of this or another jurisdiction in respect of a failure to transfer securities, SEGC must not allow a claim, or another claim, as the case requires, under section 954P of the Corporations Law of this jurisdiction that relates to the same failure.

Division 6C—Transfer delivery service guarantees

954W Interpretation

In this Division:

claim means a claim under this Division against SEGC.

claimable obligation means:

- (a) an obligation to transfer securities under an agreement for the purchase of securities, where the purchase is, for the purposes of Division 6, a reportable transaction; or
- (b) an obligation to transfer securities under a replacement agreement in relation to an agreement of the kind referred to in paragraph (a) that has been novated; or
- (c) an obligation to transfer securities under a guaranteed securities loan; or
- (d) an obligation to transfer securities under a replacement agreement in relation to a guaranteed securities loan that has been novated; or
- (e) an obligation to transfer securities that arose as mentioned in paragraph 954P(1)(b).

discharge, in relation to an obligation, means:

- (a) except in the case of a purchase obligation—discharge the whole or a part of the obligation; or
- (b) in the case of a purchase obligation—discharge the whole of the obligation.

purchase obligation means an obligation of the kind referred to in paragraph (a) of the definition of **claimable obligation**.

954X Claims in respect of default by TDS nominee

(1) This section applies if:

- (a) a person or partnership (in this Division called the **transferor**) is obliged to transfer securities of a particular

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- kind to, or as directed by, another person or partnership (in this Division called the *transferee*); and
- (b) the obligation is a claimable obligation; and
 - (c) for the purpose of discharging the obligation, the transferor:
 - (i) elects, in accordance with the transfer delivery service provisions of a settlement authority, to bring about a transfer of a particular number of securities of that kind to, or as directed by, the transferee by the means provided for in those provisions; and
 - (ii) for the purpose of so bringing about the transfer, transfers that number of securities of that kind to the TDS nominee; and
 - (d) for the purpose of bringing about the transfer of securities referred to in subparagraph (c)(i) by the means provided for in those provisions, the TDS nominee later purports to transfer that number of securities of that kind to, or as directed by, the transferee; and
 - (e) the TDS nominee is in default under the transfer delivery service provisions because the transfer documents in relation to the purported transfer, so far as they relate to a particular number of securities of that kind (in this Division called the *default securities*), are not sufficient for the purpose referred to in subsection 924(2); and
 - (f) if the obligation is a purchase obligation—the transferee has paid, or is ready, willing and able to pay, to the transferor, under the agreement for the purchase, the consideration for the purchase.
- (2) If the settlement authority has not taken action as mentioned in paragraph (3)(a) or (b), the transferee (even if it is the settlement authority) may, subject to section 954ZB, make a claim in respect of the TDS nominee's default.
- (3) If the settlement authority has, for the purpose of remedying the TDS nominee's default:

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- (a) where the settlement authority is also the transferee—obtained marketable securities of the same kind and number as the default securities; or
 - (b) otherwise—transferred securities of the same kind and number as the default securities to, or as directed by, the transferee;
- the following provisions have effect:
- (c) unless the settlement authority is also the transferee—the settlement authority is subrogated to all the rights and remedies of the transferee in relation to the purported transfer of securities by the TDS nominee;
 - (d) the settlement authority may, subject to section 954ZB, make a claim in respect of its actions to remedy the default;
 - (e) any claim made under subsection (2) in respect of the TDS nominee’s default is taken not to have been entitled to be made.
- (4) A person or partnership may make a single claim under subsection (2) or (3) in respect of 2 or more defaults.
 - (5) A claim made under subsection (4) is to be treated for the purposes of sections 954Z and 954ZA as if it were a separate claim in respect of each of the defaults to which it relates.
 - (6) Entitlement to make a claim in respect of a claimable obligation is not affected by a person or partnership ceasing after the obligation arose to be a member organisation of a participating exchange.

954Y How and when claim to be made

- (1) A claim must be in writing and must be served on SEGC within 6 months after the day on which the claimant became entitled to make the claim.
- (2) A claim that is not made within the period required by subsection (1) is barred unless the Board otherwise determines.

954Z How claim under subsection 954X(2) is to be satisfied

- (1) Subject to section 954ZC, SEGC must allow a claim under subsection 954X(2) if the Board is satisfied that:
 - (a) the claimant is entitled to make the claim; and
 - (b) if paragraph 954X(1)(f) applies—the claimant has:
 - (i) paid to the transferor; or
 - (ii) for the purposes of the claim, paid to SEGC; the consideration, under the agreement for the purchase, for the purchase.
- (2) Subject to subsection (3), if SEGC allows the claim, it must transfer to, or as directed by, the claimant securities of the same kind and number as the default securities.
- (3) If the Board is satisfied that it is not reasonably practicable for SEGC to obtain securities of the same kind and number as the default securities within the pre-cash settlement period, SEGC must satisfy the claim by paying 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 TDS nominee's default.
- (4) In working out the amount of the actual pecuniary loss suffered in respect of the TDS nominee's default, regard may be had to the cost to the claimant of any securities of the same kind as the default securities that the claimant obtained because the TDS nominee failed to transfer the default securities.
- (5) In this section:

pre-cash settlement period means:

 - (a) if the business rules of the settlement authority concerned, 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
 - (b) otherwise—such period as the Board, having regard to all the circumstances of the claim, considers reasonable.

The Corporations Law—Section 954ZA

954ZA How claim under subsection 954X(3) is to be satisfied

- (1) Subject to section 954ZD, SEGC must allow a claim under subsection 954X(3) if the Board is satisfied that:
 - (a) the claimant is entitled to make the claim; and
 - (b) if paragraph 954X(1)(f) applies—the transferee has paid to the transferor the consideration payable, under the agreement for the purchase, for the purchase; and
 - (c) the claimant has paid or transferred to SEGC any money or property it has obtained because of the right of subrogation given by paragraph 954X(3)(c) in relation to the purported transfer of securities by the TDS nominee.
- (2) If SEGC allows the claim, it must pay to the claimant the amount that, as at the time when the claim is allowed, is the actual pecuniary loss suffered by the claimant because of the actions it has taken to remedy the TDS nominee’s default.
- (3) In working out the amount of the actual pecuniary loss suffered in respect of actions taken by the claimant to remedy the TDS nominee’s default, regard may be had to the cost to the claimant of obtaining the securities obtained or transferred as mentioned in paragraph 954X(3)(a) or (b), as the case requires.
- (4) Money or property paid or transferred to SEGC under paragraph (1)(c) forms part of the Fund.

954ZB Nexus with this jurisdiction

A person or partnership may not make a claim under subsection 954X(2) or (3) unless:

- (a) in the case of the settlement authority referred to in that subsection—the settlement authority was carrying on business in this jurisdiction on the day of the purported transfer referred to in paragraph 954X(1)(d); or
- (b) otherwise:

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- (i) the person or partnership was carrying on a securities business in this jurisdiction on the day of the purported transfer referred to in paragraph 954X(1)(d); or
- (ii) if the person or partnership was not so carrying on such a business and was not carrying on a securities business in any other jurisdiction on that day—the last securities business that the person or partnership carried on in a jurisdiction before that day was carried on in this jurisdiction.

954ZC Preventing double recovery

If SEGC allows a claim under section 954X of the Corporations Law of this or another jurisdiction in respect of a purported transfer of securities, SEGC must not allow, under section 954X of the Corporations Law of this jurisdiction, a claim, or another claim, as the case requires that relates to the same purported transfer.

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.

transferor has the meaning given by paragraph 956(3)(b).

transferred securities has the meaning given by paragraph 956(3)(c).

unauthorised execution has the meaning given by paragraph 956(3)(a).

- (2) For the purposes of subsection 956(1), 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.

955A Extended application of Division to non-marketable securities

- (1) If a declaration by the Commission under subsection 1113A(1) is in force in relation to particular non-marketable securities, or a particular class of non-marketable securities:
- (a) this Division, including the regulations made for the purposes of the provisions of this Division, applies in relation to those non-marketable securities, or non-marketable securities of that class, as if they were securities as defined in subsection 955(1); and

The Corporations Law—Section 956

- (b) the Commission may, by writing, declare that this Division, and regulations made for the purposes of this Division, are to have effect in relation to their application to those non-marketable securities, or non-marketable securities of that class, subject to modifications specified in the declaration.
- (2) A declaration under paragraph (1)(b) has effect accordingly.
- (3) The Commission must cause a copy of a declaration under paragraph (1)(b) to be published in the *Gazette*.
- (4) In this section:
- non-marketable securities* has the same meaning as in section 1113A.

956 Situations to which Division applies

- (1) This Division applies if:
- (a) a dealer executes a document of transfer of securities on behalf of a person as transferor of the securities; and
 - (b) the transfer is not an SCH-regulated transfer; and
 - (c) apart from the effect of paragraph 1105(3)(a), the person did not authorise the dealer to execute the document.
- (2) This Division also applies if:
- (a) a dealer effects, or purports to effect, a proper SCH transfer of securities on behalf of a person; and
 - (b) apart from the effect of section 1109B, the person did not authorise the dealer to effect the transfer.
- (3) In this Division:
- (a) the dealer's action referred to in whichever of paragraphs (1)(a) and (2)(a) is applicable is called the *unauthorised execution*; and
 - (b) the person referred to in whichever of those paragraphs is applicable is called the *transferor*; and

The Corporations Law—Section 957

- (c) the securities referred to in whichever of those paragraphs is applicable are called the *transferred securities*.

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.

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:
 - (i) if subsection 956(1) applies—the person stated in the document as the transferee of the transferred securities; or
 - (ii) if subsection 956(2) applies—the person in whose favour the proper SCH transfer was effected, or purported to be effected; or
 - (b) if that person 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 unauthorised execution; or
 - (b) is an excluded person in relation to the dealer.

959 How and when claim may be made

- (1) A claim must:
- (a) be in writing; and
 - (b) be served on SEGC:

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- (i) if a notice under subsection (4) applies to the claim—before the end of the last application day specified in the notice; or
 - (ii) in any other case—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) For the purposes of subsection (1), a notice under subsection (4) applies to a claim if the claim is in respect of an unauthorised execution, by the dealer named in the notice, during the applicable period specified in the notice.
- (3) A claim that is not served on SEGC by the time required by paragraph (1)(b) is barred unless the Board otherwise determines.
- (4) SEGC may publish, in each State and Territory in a daily newspaper circulating in that State or Territory, a notice that:
 - (a) is in the prescribed form; and
 - (b) names a particular dealer; and
 - (c) requires that all claims in respect of unauthorised executions, by the named dealer, during a period (in this section called the *applicable period*) specified in the notice in accordance with subsection (5) must be served on SEGC before the day (in this section called the *last application day*) specified in the notice in accordance with subsection (6).
- (5) The applicable period must be a period that starts and ends before:
 - (a) if each publication of the notice occurs on the same day—the day on which the notice is published; or
 - (b) in any other case—the first day on which the notice is published.
- (6) The last application day must be at least 3 months after:
 - (a) if each publication of the notice occurs on the same day—the day on which the notice is published; or
 - (b) in any other case—the last day on which the notice is published.

The Corporations Law—Section 960

- (7) 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 (4).

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:
- (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.

The Corporations Law—Section 961

- (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 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 and was not carrying on a securities business in any other jurisdiction on that day—the last securities business that the dealer carried on in a jurisdiction (whether on his, her or its own account or in partnership) before that day was carried on in this jurisdiction.

The Corporations Law—Section 961B

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 7A—Contraventions of SCH certificate cancellation provisions

961C Interpretation

In this Division:

claim means a claim under this Division against SEGC.

dealer means a member of a participating exchange.

961D Claim in respect of contravention of SCH certificate cancellation provisions

- (1) Subject to this section, a person who suffers pecuniary loss in respect of a contravention, by a dealer, of the SCH certificate cancellation provisions may make a claim in respect of the loss.
- (2) The loss must not be a loss in respect of an unauthorised execution (within the meaning of section 956) in respect of which the person has made, or is entitled to make, a claim under Division 7.
- (3) The person must not have been involved in the contravention.
- (4) The following paragraphs must be satisfied in relation to the dealer:
 - (a) the dealer was a member of a participating exchange on the day of the contravention; and
 - (b) either:
 - (i) 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
 - (ii) if the dealer was not so carrying on such a business and was not carrying on a securities business in any other jurisdiction on that day—the last securities business that the dealer carried on in a jurisdiction before that day was carried on in this jurisdiction.

The Corporations Law—Section 961E

961E How and when claim may be made

- (1) A claim must:
 - (a) be in writing; and
 - (b) be served on SEGC:
 - (i) if a notice under subsection (4) applies to the claim—before the end of the last application day specified in the notice; or
 - (ii) in any other case—within 6 months after the day on which the claimant first became aware that the claimant had suffered loss as a result of the dealer’s contravention of the SCH certificate cancellation provisions.
- (2) For the purposes of subsection (1), a notice under subsection (4) applies to a claim if the claim is in respect of a contravention of the SCH certificate cancellation provisions, by the dealer named in the notice, during the applicable period specified in the notice.
- (3) A claim that is not served on SEGC by the time required by paragraph (1)(b) is barred unless the Board otherwise determines.
- (4) SEGC may publish, in each State and Territory in a daily newspaper circulating in that State or Territory, a notice that:
 - (a) is in the prescribed form; and
 - (b) names a particular dealer; and
 - (c) requires that all claims in respect of contraventions of the SCH certificate cancellation provisions, by the named dealer, during a period (the *applicable period*) specified in the notice in accordance with subsection (5) must be served on SEGC before the day (the *last application day*) specified in the notice in accordance with subsection (6).
- (5) The applicable period must be a period that starts and ends before:
 - (a) if each publication of the notice occurs on the same day—the day on which the notice is published; or
 - (b) in any other case—the first day on which the notice is published.

The Corporations Law—Section 961F

- (6) The last application day must be at least 3 months after:
 - (a) if each publication of the notice occurs on the same day—the day on which the notice is published; or
 - (b) in any other case—the last day on which the notice is published.
- (7) 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 (4).

961F How claim is to be satisfied

- (1) Subject to section 961H, SEGC must allow a claim if the Board is satisfied that the claimant is entitled to make the claim.
- (2) If SEGC allows the claim, it must pay to the claimant the amount that, when the claim is allowed, is the actual pecuniary loss suffered by the claimant because of the contravention in respect of which the claim was made.
- (3) For the purposes of subsection (2), the actual pecuniary loss suffered by the claimant does not include any loss in respect of an unauthorised execution (within the meaning of section 956) in respect of which the claimant has made, or is entitled to make, a claim under Division 7.

961G Discretionary further compensation

- (1) If:
 - (a) SEGC allows a claim; and
 - (b) the Board is satisfied that the payment of money to the claimant under section 961F will not adequately compensate the claimant for a pecuniary or other gain that the claimant did not make, but might have made, were it not for the contravention in respect of which the claim was made;the Board may determine in writing that the claimant should be paid in respect of that gain a specified amount that the Board considers to be fair and reasonable in all the circumstances.

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

961H Preventing double recovery

If:

- (a) section 961D of the Corporations Law of another jurisdiction permits a person to make a claim in respect of a loss; and
- (b) SEGC allows the claim;

SEGC must not allow a claim that section 961D of the Corporations Law of this jurisdiction permits 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

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- (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.

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(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 and was not carrying on a securities business in any other jurisdiction on that day—the last securities business that the dealer carried on in a jurisdiction (whether on his, her or its own

account or in partnership) before that day was carried on in this jurisdiction.

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;
 - (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

The Corporations Law—Section 968

- (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 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.

The Corporations Law—Section 969

- (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.

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—General provisions relating to claims

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.

970A Claimant may be required to exercise right of set-off

If:

- (a) a person (in this section called the *claimant*) has made a claim in respect of a liability of another person (in this section called the *defaulter*); and
- (b) the claimant has a right, whether under an agreement or otherwise, to set off a liability of the claimant to the defaulter against the liability referred to in paragraph (a);

SEGC may refuse to allow the claim until the claimant has exercised the right.

970B Effect of set-off on claim

(1) If:

- (a) SEGC allows a claim by a person (in this section called the *claimant*) in respect of a liability of another person (in this section called the *defaulter*); and
- (b) the liability of the defaulter to the claimant has been reduced, by an amount of money or a number of securities (in this section called the *set-off reduction*), because of:
 - (i) the exercise by the claimant or the defaulter of a right of set-off, whether under an agreement or otherwise; or
 - (ii) the operation of an agreement so far as it provides for the automatic set-off of liabilities; and
- (c) but for this section, the reduction of the defaulter's liability would not be taken into account when working out the obligations of SEGC in respect of the claim;

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this section applies for the purposes of working out those obligations.

- (2) If:
- (a) SEGC is required to satisfy the claim by paying an amount; and
 - (b) the set-off reduction consists of an amount;
- the amount SEGC must pay in respect of the claim is reduced by the amount of the set-off reduction.
- (3) If:
- (a) SEGC is required to satisfy the claim by paying an amount; and
 - (b) the set-off reduction consists of a number of securities;
- then:
- (c) the Board must work out the value of the securities; and
 - (d) the amount SEGC must pay in respect of the claim is reduced by the value worked out under paragraph (c).
- (4) If:
- (a) SEGC is required to satisfy the claim by transferring securities of a particular kind; and
 - (b) the set-off reduction consists of a number of securities of that kind;
- the number of securities that SEGC must transfer in respect of the claim is reduced by the number referred to in paragraph (b).
- (5) If:
- (a) SEGC is required to satisfy the claim by transferring securities of a particular kind; and
 - (b) the set-off reduction consists of a number of securities that are not of that kind;
- then:
- (c) the Board must work out:
 - (i) the value of the securities that constitute the set-off reduction; and

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- (ii) the number of securities of the kind referred to in paragraph (a) that are equal in value to the value worked out under subparagraph (i); and
 - (d) the number of securities that SEGC is required to transfer in respect of the claim is reduced by the number worked out under subparagraph (c)(ii).
- (6) If:
 - (a) SEGC is required to satisfy the claim by transferring securities of a particular kind; and
 - (b) the set-off reduction consists of an amount of money;then:
 - (c) the Board must work out the number of securities of that kind that are equal in value to that amount; and
 - (d) the number of securities that SEGC must transfer in respect of the claim is reduced by the number worked out under paragraph (c).

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 determined in writing by the Board, 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

The Corporations Law—Section 972A

- 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.
- (1A) A rate of interest determined by the Board for the purposes of subsection (1):
- (a) must not exceed the rate that, when the determination is made, is fixed by Rules of Court for the purposes of paragraph 52(2)(a) of the *Federal Court of Australia Act 1976*; and
 - (b) must not be less than 5% per year.
- (1B) As soon as practicable after determining a rate of interest for the purposes of subsection (1), the Board must cause a copy of the determination to be published in the *Gazette*.
- (2) Where:
- (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).

972A Discretion to pay amounts not received etc. because of failure to transfer securities

- (1) If the Board is satisfied that:
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- (a) a person or partnership (in this section called the **defaulter**) has failed to discharge an obligation to transfer securities to another person or partnership (in this section called the **entitled entity**); and
 - (b) the entitled entity:
 - (i) has made a claim under Division 6, 6A, 6B or 6C in respect of the failure and has had securities transferred to it, or an amount paid to it, in satisfaction of the claim; or
 - (ii) unless it is a settlement authority—would have been entitled to make a claim under Division 6B or 6C in respect of the failure if a settlement authority had not transferred securities to it for the purpose of remedying the failure; or
 - (iii) if it is a settlement authority—would have been entitled to make a claim under Division 6C in respect of the failure if it had not obtained securities for the purpose of remedying the failure; and
 - (c) if the defaulter had duly transferred securities in accordance with the obligation, an amount would have been paid, or property would have been transferred, to the entitled entity as the holder of the securities; and
 - (d) the entitled entity has not received, and is not entitled to receive (otherwise than from the defaulter):
 - (i) the amount or property; or
 - (ii) an equivalent amount or equivalent property in respect of securities transferred or obtained as mentioned in paragraph (b); and
 - (e) if subparagraph (b)(i) applies and an amount has been paid in satisfaction of the claim—the amount paid does not adequately compensate the entitled entity for the loss of the amount or property referred to in paragraph (c);
- the Board may determine in writing that there be paid to the entitled entity, in respect of the loss of the amount or property referred to in paragraph (c), a specified amount that the Board considers to be fair and reasonable in all the circumstances.

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

973 Application of Fund in respect of certain claims

- (1) SEGC:
- (a) may buy securities for the purpose of complying with subsection 950(3), 950(4), 952(4), 952(5), 954G(2), 954S(2) or 954Z(2), 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) If:
- (a) SEGC buys securities for the purpose of complying, in relation to a claim, with a provision referred to in paragraph (1)(a); and
 - (b) SEGC satisfies the claim by paying an amount to the claimant;
- SEGC must, as soon as practicable after satisfying the claim, sell the securities and pay the proceeds of the sale into the Fund.
- (4) In this section:
- securities* includes security benefits, within the meaning of Division 6A, other than amounts of money.

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.

The Corporations Law—Section 975

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:
 - (a) a cash settlement provision requires SEGC to pay an amount in respect of a claim; and
 - (b) that amount cannot be determined by agreement between SEGC and the claimant;that amount shall be determined by arbitration in accordance with this section.

- (1A) Where:
 - (a) in relation to a claim, paragraph 970B(3)(c), (5)(c) or (6)(c) requires the Board to work out the value of securities, or the number of securities that are equal in value to some other value or amount; and
 - (b) the value or number cannot be determined by agreement between the Board and the claimant;the value or number is to be determined by arbitration in accordance with this section.

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- (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.
- (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.
- (7) In this section:

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cash settlement provision means section 952A or 953, subsection 954G(3), 954H(2), 954R(2), 954S(3), 954T(2), 954Z(3) or 954ZA(2), section 960 or 961F or subsection 964(1) or (2) of the Corporations Law of this jurisdiction.

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.
- (1A) The Board may, for the purposes of section 970A or 970B, by notice in writing served on a person, require the person to give SEGC specified information relating to the existence or exercise of rights of set-off.

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- (2) Where a person fails, without reasonable excuse, to comply with a requirement under subsection (1) or (1A), SEGC may disallow a claim made by the person.

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.
- (1A) Where SEGC allows a claim under section 950 in respect of a purchase the agreement for which has been novated, SEGC is subrogated to all the rights and remedies of the claimant in relation to the replacement agreement or agreements.
- (1B) Where SEGC allows a claim under Division 6A in respect of an obligation under a guaranteed securities loan, SEGC is subrogated to all the claimant's rights and remedies in relation to that obligation.
- (1C) Where SEGC allows a claim under section 954D in respect of an obligation under a guaranteed securities loan that has been novated, SEGC is subrogated to all the claimant's rights and remedies in relation to the obligation, under a replacement agreement, that replaced the first-mentioned obligation.
- (1D) Where SEGC allows a claim under subsection 954N(1) or 954P(2) in respect of an obligation to pay an amount or to transfer securities, SEGC is subrogated to all the claimant's rights and remedies in relation to that obligation.
- (1E) Where SEGC allows a claim under subsection 954P(3) in respect of a failure to transfer securities, SEGC is subrogated to all the rights and remedies that the claimant has in relation to that failure because of the subrogation effected by paragraph 954P(3)(a).

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- (1F) Where SEGC allows a claim under subsection 954Y(2) in respect of a purported transfer of securities, SEGC is subrogated to all the claimant's rights and remedies in relation to that purported transfer.
- (1G) Where SEGC allows a claim under subsection 954Y(3) in respect of a purported transfer of securities, SEGC is subrogated to:
 - (a) if the claimant is also the transferee referred to in that subsection—all the claimant's rights and remedies in relation to that purported transfer; or
 - (b) otherwise—all the rights and remedies that the claimant has in relation to that purported transfer because of the subrogation effected by paragraph 954Y(3)(c).
- (2) Where SEGC allows a claim made under Division 7 in respect of an unauthorised execution (within the meaning of that Division), SEGC is subrogated to all the claimant's rights and remedies in relation to the conduct that constitutes the unauthorised execution.
- (2A) Where SEGC allows a claim made under Division 7A in respect of a contravention of the SCH certificate cancellation provisions, SEGC is subrogated to all the claimant's rights and remedies in relation to the contravention.
- (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

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- 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.
- (5) Except as provided in this section, nothing in this Part affects a right or remedy that a claimant under Division 6, 6A, 6B, 6C, 7, 7A 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

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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.

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, 6A, 6B, 6C, 7, 7A 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).

983A Power of Commission to modify effect of claims Divisions

(1) The Commission may, in writing, declare that the provisions of a claims Division are to have effect in their application in relation to a particular transaction, or a particular class of transactions, either generally or as otherwise provided in the declaration, as if specified modifications were made to the provisions.

(2) A declaration may relate to transactions whether entered into before or after the making of the declaration.

(3) A declaration has effect accordingly.

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- (4) The Commission must cause a copy of a declaration to be published in the *Gazette*.
- (5) A reference in this section to the provisions of a claims Division includes a reference to regulations made for the purposes of the provisions, or any of the provisions, of the Division.
- (6) In this section:
claims Division means Division 6, 6A, 6B, 6C, 7, 7A or 8.

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

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- (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:
- (c) SEGC were substituted for the joining exchange as a party to the agreement; and

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- (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 as known when the statement is prepared, of all liabilities

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(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.

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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 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 SEGEC and, if any money so paid to SEGEC 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 SEGEC 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 SEGEC under section 982 and have effect as if:

- (a) SEGEC were substituted for NSEGC as a party to the contract; and

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- (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.

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) a notice published in relation to securities;
 - (iii) the making of, or the making of an evaluation of, or of a recommendation in relation to, offers under a takeover bid;
 - (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.

- (2A) Conduct that contravenes:
- (a) section 670A (misleading or deceptive takeover document);
or
 - (b) section 728 (misleading or deceptive fundraising document);
- does not contravene subsection (2). For this purpose, conduct contravenes the provision even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.
- (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 Chapter 6D shall be taken as limiting by implication the generality of subsection (2).

995A Application of State Fair Trading Act provisions

The provisions of the State Fair Trading Act do not apply to dealings in securities.

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.
- (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;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

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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:

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

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- (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 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

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- (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.

1001A Continuous disclosure—listed disclosing entities

- (1) This section applies to a listed disclosing entity if provisions of the listing rules of a securities exchange:
 - (a) apply to the entity; and
 - (b) require the entity to notify the securities exchange of information about specified events or matters as they arise for the purpose of the securities exchange making that information available to a stock market conducted by the securities exchange.
- (2) The disclosing entity must not contravene those provisions by intentionally, recklessly or negligently failing to notify the securities exchange of information:
 - (a) that is not generally available; and
 - (b) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of ED securities of the entity.
- (3) A contravention of subsection (2) is only an offence if the failure concerned is intentional or reckless.
- (4) For the purposes of the application of this section to a listed disclosing entity that is an undertaking to which interests in a registered scheme relate, the obligation of the entity not to contravene provisions as mentioned in subsection (2) is an obligation of the responsible entity.

1001B Continuous disclosure—unlisted disclosing entities

- (1) If:
 - (a) an unlisted disclosing entity becomes aware of information:
 - (i) that is not generally available; and

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- (ii) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of ED securities of the entity; and
 - (b) the information is not required to be included in a supplementary disclosure document or a replacement disclosure document in relation to the entity;the entity must, as soon as practicable, lodge a document containing the information.
- (2) An unlisted disclosing entity does not contravene subsection (1) except by an intentional, reckless or negligent act or omission.
- (3) A contravention of subsection (1) is only an offence if the failure concerned is intentional or reckless.
- (4) For the purposes of the application of this section to an unlisted disclosing entity that is an undertaking to which interests in a registered scheme relate:
 - (a) the entity is aware of information if, and only if, the responsible entity is aware of the information; and
 - (b) the obligation of the entity to lodge a document under subsection (1) is an obligation of the responsible entity; and
 - (c) subsection (2) applies as if the reference in it to an unlisted disclosing entity were instead a reference to the responsible entity.

1001C Sections 1001A and 1001B—when information is generally available

- (1) This section has effect for the purposes of sections 1001A and 1001B.
- (2) Information is generally available if:
 - (a) it consists of readily observable matter; or
 - (b) without limiting the generality of paragraph (a), both the following subparagraphs apply:
 - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons

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- who commonly invest in securities of a kind whose price or value might be affected by the information; and
- (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed.
- (3) Information is also generally available if it consists of deductions, conclusions or inferences made or drawn from either or both of the following:
- (a) information referred to in paragraph (2)(a);
 - (b) information made known as mentioned in subparagraph (2)(b)(i).

1001D Sections 1001A and 1001B—material effect on price or value

For the purposes of sections 1001A and 1001B, a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell, the first-mentioned securities.

Division 2A—Insider trading

1002 Application of Division

This Division applies to:

- (a) acts and omissions within this jurisdiction in relation to securities of any body corporate, whether formed or carrying on business in this jurisdiction or in Australia or not; and
- (b) acts and omissions outside this jurisdiction, whether in Australia or not, in relation to securities of a body corporate that is formed or carries on business in this jurisdiction.

1002A Securities

- (1) In this Division and in section 1013:

information includes:

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public; and
- (b) matters relating to the intentions, or the likely intentions, of a person.

purchase, in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party, acquire the option or right under the contract, or take an assignment of the option or right, whether or not on another's behalf.

securities, in relation to a body corporate, means any of the following:

- (a) shares in the body corporate;
- (b) debentures (including convertible notes) issued by the body corporate;
- (c) interests in a managed investment scheme made available by the body corporate;

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- (d) units of shares referred to in paragraph (a);
- (e) an option contract under which a party acquires from another party an option or right, exercisable at or before a specified time, to buy from, or sell to, that other party a number of securities of a kind referred to in paragraph (a), (b), (c) or (d) at a price specified in, or to be determined in accordance with, the contract;

but does not include a futures contract or an excluded security.

sell, in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party:

- (a) grant or assign the option or right; or
- (b) take, or cause to be taken, such action as releases the option or right;

whether or not on another's behalf.

- (2) A provision of this Division or of section 1013 that applies in relation to securities of a body corporate:
 - (a) also applies in relation to securities (as defined by subsection 92(1)) issued by a government, an unincorporated body or any other person; and
 - (b) applies, in relation to securities so issued, in the same way, as nearly as practicable, as if the government, body or person were a body corporate.

1002B Information generally available

- (1) This section has effect for the purposes of this Division and section 1013.
- (2) Information is generally available if:
 - (a) it consists of readily observable matter; or
 - (b) without limiting the generality of paragraph (a), both the following subparagraphs apply:
 - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons

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who commonly invest in securities of bodies corporate of a kind whose price or value might be affected by the information; and

- (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed.
- (3) Information is also generally available if it consists of deductions, conclusions or inferences made or drawn from either or both of the following:
- (a) information referred to in paragraph (2)(a);
 - (b) information made known as mentioned in subparagraph (2)(b)(i).

1002C Material effect on price or value of securities

For the purposes of this Division and section 1013, a reasonable person would be taken to expect information to have a material effect on the price or value of securities of a body corporate if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

1002D Trading, and procuring trading, in securities

- (1) Trading in securities of a body corporate that is ordinarily permitted on the stock market of a securities exchange is taken for the purposes of this Division to be permitted on that stock market even though trading in any such securities on that stock market is suspended by action taken by that securities exchange or is prohibited by a notice given to that securities exchange by the Commission under subsection 775(2).
- (2) For the purposes of this Division and section 1013 but without limiting the meaning that the expression *procure* has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the first-mentioned person is taken to procure the act or omission by the other person.

1002E Information in possession of officer of body corporate

For the purposes of this Division and section 1013:

- (a) a body corporate is taken to possess any information which an officer of the body corporate possesses and which came into his or her possession in the course of the performance of duties as such an officer; and
- (b) if an officer of a body corporate knows or ought reasonably to know any matter or thing because he or she is an officer of the body corporate, it is to be presumed that the body corporate knows or ought reasonably to know that matter or thing.

1002F Information in possession of partner or employee of partnership

For the purposes of this Division and section 1013:

- (a) a member of a partnership is taken to possess any information:
 - (i) which another member of the partnership possesses and which came into the other member's possession in the other member's capacity as a member of the partnership; or
 - (ii) which an employee of the partnership possesses and which came into his or her possession in the course of the performance of duties as such an employee; and
- (b) if a member or employee of a partnership knows or ought reasonably to know any matter or thing because the member or employee is such a member or employee, it is to be presumed that every member of the partnership knows or ought reasonably to know that matter or thing.

1002G Prohibited conduct by person in possession of inside information

- (1) Subject to this Division, where:

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- (a) a person (in this section called the *insider*) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of a body corporate; and
 - (b) the person knows, or ought reasonably to know, that:
 - (i) the information is not generally available; and
 - (ii) if it were generally available, it might have a material effect on the price or value of those securities;
- the following subsections apply.
- (2) The insider must not (whether as principal or agent):
 - (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
 - (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.
 - (3) Where trading in the securities referred to in subsection (1) is permitted on the stock market of a securities exchange, the insider must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to:
 - (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
 - (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

1002H Exception for withdrawal from registered scheme

Subsection 1002G(2) does not apply in respect of a member's withdrawal from a registered scheme if the amount paid to the member on withdrawal is calculated (so far as is reasonably practicable) by reference to the underlying value of the assets of the financial or business undertaking or scheme, common

The Corporations Law—Section 1002J

enterprise, investment contract or time-sharing scheme to which the member's interest relates, less any reasonable charge for buying the member's interest.

1002J Exception for underwriters

- (1) Subsection 1002G(2) does not apply in respect of:
 - (a) subscribing for securities under an underwriting agreement or a sub-underwriting agreement; or
 - (b) entering into an agreement referred to in paragraph (a); or
 - (c) selling securities subscribed for under an agreement referred to in paragraph (a).

- (2) Subsection 1002G(3) does not apply in respect of:
 - (a) the communication of information in relation to securities to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities; or
 - (b) the communication of information in relation to securities by a person who may be required under an underwriting agreement to subscribe for any such securities if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:
 - (i) enter into a sub-underwriting agreement in relation to any such securities;
 - (ii) subscribe for any such securities.

1002K Exception for purchase pursuant to legal requirement

Subsection 1002G(2) does not apply in respect of the purchase of securities pursuant to a requirement imposed by this Law.

The Corporations Law—Section 1002L

1002L Exception for information communicated pursuant to a legal requirement

Subsection 1002G(3) does not apply in respect of the communication of information pursuant to a requirement imposed by the Commonwealth, a State, a Territory or any regulatory authority.

1002M Chinese wall arrangements by bodies corporate

A body corporate does not contravene subsection 1002G(2) by entering into a transaction or agreement at any time merely because of information in the possession of an officer of the body corporate if:

- (a) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer; and
- (b) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

1002N Chinese wall arrangements by partnerships, etc.

- (1) The members of a partnership do not contravene subsection 1002G(2) by entering into a transaction or agreement at any time merely because one or more (but not all) of the members, or an employee or employees of the partnership, are in actual possession of information if:
 - (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:

The Corporations Law—Section 1002P

- (i) a member or members who are taken to have possessed the information merely because another member or other members, or an employee or employees of the partnership, were in possession of the information;
 - (ii) an employee or employees of the partnership who was not or were not in possession of the information; and
 - (b) the partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
 - (c) the information was not so communicated and no such advice was so given.
- (2) A member of a partnership does not contravene subsection 1002G(2) by entering into a transaction or agreement otherwise than on behalf of the partnership merely because the member is taken to possess information that is in the possession of another member or an employee of the partnership.

1002P Exception for knowledge of person's own intentions or activities

A natural person does not contravene subsection 1002G(2) by entering into a transaction or agreement in relation to securities of a body corporate merely because the person is aware that he or she proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to securities of that body corporate.

1002Q Exception for bodies corporate

- (1) A body corporate does not contravene subsection 1002G(2) by entering into a transaction or agreement in relation to securities of another body corporate merely because the first-mentioned body corporate is aware that it proposes to enter into or has previously

The Corporations Law—Section 1002R

entered into, one or more transactions or agreements in relation to securities of the other body corporate.

- (2) Subject to subsection (3), a body corporate does not contravene subsection 1002G(2) by entering into a transaction or agreement in relation to securities of another body corporate merely because an officer of the first-mentioned body corporate is aware that the first-mentioned body corporate proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to securities of the other body corporate.
- (3) Subsection (2) does not apply unless the officer of the body corporate first-mentioned in that subsection became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer.

1002R Exception for officers or agents of body corporate

- (1) Subject to subsection (2), a person does not contravene subsection 1002G(2) by entering into a transaction or agreement on behalf of a body corporate in relation to securities of another body corporate merely because the person is aware that the first-mentioned body corporate proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to securities of the other body corporate.
- (2) Subsection (1) does not apply unless the person became aware of the matters referred to in that subsection in the course of the performance of duties as an officer of the first-mentioned body corporate or in the course of acting as an agent of the first-mentioned body corporate.

1002S Transactions by holder of dealers licence or a representative of the holder of such a licence

A person (in this section called the *agent*) does not contravene subsection 1002G(2) by subscribing for, purchasing or selling, or entering into an agreement to subscribe for, purchase or sell, securities of a body corporate that are permitted by a securities

The Corporations Law—Section 1002T

exchange to be traded on the stock market of that securities exchange if:

- (a) the agent is the holder of a dealers licence or a representative of the holder of such a licence; and
- (b) the agent entered into the transaction or agreement concerned on behalf of another person (in this section called the *principal*) under a specific instruction by the principal to enter into that transaction or agreement; and
- (c) the holder of the dealers licence had in operation at the time when that transaction or agreement was entered into arrangements that could reasonably be expected to ensure that any information in the possession of the holder or of any representative of the holder as a result of which the person in possession of the information would be prohibited by subsection 1002G(2) from entering into that transaction or agreement was not communicated to the agent and that no advice with respect to the transaction or agreement was given to the principal or to the agent by a person in possession of the information; and
- (d) the information was not so communicated and no such advice was so given; and
- (e) the principal is not an associate of the holder or of any representative of the holder;

but nothing in this section affects the application of subsection 1002G(2) in relation to the principal.

1002T Prosecutions and defences

- (1) In a prosecution of a person for an act or omission that is alleged to constitute a contravention of subsection 1002G(2) or (3), it is not necessary for the prosecution to prove the non-existence of facts or circumstances which, if they existed, would, by virtue of section 1002H, 1002J, 1002K, 1002L, 1002M, 1002N, 1002P, 1002Q, 1002R or 1002S, preclude the act or omission from constituting a contravention of subsection 1002G (2) or (3), as the case may be, but it is a defence if the Court is satisfied that the facts or circumstances existed.

The Corporations Law—Section 1002U

- (2) In a prosecution brought against a person for an offence against subsection 1002G(2) because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the first-mentioned person's possession:
- (a) it is a defence if the Court is satisfied that the information came into the first-mentioned person's possession solely as a result of the information having been made known as mentioned in subparagraph 1002B(2)(b)(i); and
 - (b) it is a defence if the Court is satisfied that the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.
- (3) In a prosecution against a person for an offence against subsection 1002G(3) because the person communicated information, or caused information to be communicated, to another person:
- (a) it is a defence if the Court is satisfied that the information came into the first-mentioned person's possession solely as a result of the information having been made known as mentioned in subparagraph 1002B(2)(b)(i); and
 - (b) it is a defence if the Court is satisfied that the other person knew, or ought reasonably to have known, of the information before the information was communicated.

1002U Powers of court

Where, in a proceeding instituted under this Law, the Court finds that a contravention of section 1002G has occurred, the Court may, in addition to any other orders that it may make under any other provision of this Law, make such order or orders as it thinks just, including, but without limiting the generality of the above, any one or more of the following orders:

- (a) an order restraining the exercise of any voting or other rights attached to shares;

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- (b) an order restraining the exercise of any rights attached to securities other than shares;
- (c) an order restraining the issue or allotment of shares;
- (d) an order restraining the issue of securities other than shares;
- (e) an order restraining the acquisition or disposal of securities;
- (f) an order directing the disposal of securities;
- (g) an order vesting securities in the Commission;
- (h) an order cancelling an agreement for the acquisition or disposal of securities;
- (j) an order cancelling a securities licence;
- (k) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

Division 4—Civil liability

Subdivision A—General

1005 Civil liability for contravention of this Part

- (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 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 subsection 1013(5) 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 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.

Subdivision C—Liability in respect of unlawful market activity

1013 Liability for insider trading

- (1) Where:

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- (a) a person (in this section called the *insider*) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of a body corporate (other than an option contract); and
 - (b) the person knows, or ought reasonably to know, that:
 - (i) the information is not generally available; and
 - (ii) if the information were generally available, it might have a material effect on the price or value of those securities; and
 - (c) the insider (whether as principal or agent) in contravention of subsection 1002G(2):
 - (i) subscribes for, purchases or sells, or enters into an agreement to subscribe for, purchase or sell, any such securities; or
 - (ii) procures another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities;
- the following subsections apply.
- (2) Where the insider subscribed for or agreed to subscribe for, or procured another person to subscribe for or to agree to subscribe for, the securities, the body corporate that issued the securities may, by action under section 1005 against the insider, the other person or any other person involved in the contravention, recover, as a loss suffered by the body corporate, the amount (if any) by which the price at which the securities were subscribed for, or agreed to be subscribed for, by the insider or the other person was less than the price at which they would have been likely to have been sold in a sale made at the time of the subscription or the time of the agreement, as the case may be, if the information had been generally available.
 - (3) Where the insider purchased or agreed to purchase, or procured another person to purchase or to agree to purchase, the securities from a person (in this subsection and subsection (5) called the

The Corporations Law—Section 1013

seller) who did not possess the information, the seller may, by action under section 1005 against the insider, the other person or any other person involved in the contravention, recover, as a loss suffered by the seller, the amount (if any) by which the price at which the securities were purchased, or agreed to be purchased, by the insider or the other person from the seller was less than the price at which they would have been likely to have been purchased in a purchase made at the time of the first-mentioned purchase or the time of the agreement, as the case may be, if the information had been generally available.

- (4) Where the insider sold or agreed to sell, or procured another person to sell or to agree to sell, the securities to a person (in this subsection and subsection (5) called the *buyer*) who did not possess the information, the buyer may, by action under section 1005 against the insider, the other person or any other person involved in the contravention, recover, as a loss suffered by the buyer, the amount (if any) by which the price at which the securities were sold, or agreed to be sold, by the insider or the other person to the buyer was greater than the price at which they would have been likely to have been sold at the time of the first-mentioned sale or the time of the agreement, as the case may be, if the information had been generally available.
- (5) In addition to any action that may be brought by a person as provided by subsection (3) or (4), the body corporate may, in the case of a purchase or sale of, or an agreement to purchase or sell, securities by the insider or another person in the circumstances mentioned in that subsection, by action under section 1005 against the insider, the other person or any other person involved in the contravention, recover:
 - (a) in the case of a purchase or agreement to purchase securities—the amount (if any) by which the price at which the securities were purchased, or agreed to be purchased, by the insider or other person from the seller was less than the price at which they were likely to have been purchased in a purchase made at the time of the first-mentioned purchase or

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- the time of the agreement, as the case may be, if the information had been generally available; or
- (b) in the case of a sale or an agreement to sell securities—the amount (if any) by which the price at which the securities were sold, or agreed to be sold, by the insider or other person to the buyer was greater than the price at which they would have been likely to have been sold at the time of the first-mentioned sale or the time of the agreement, as the case may be, if the information had been generally available.
- (6) The Commission may, if it considers that it is in the public interest to do so, bring an action in accordance with subsection (2) or (5) in the name of, and for the benefit of, a body corporate for the recovery of an amount that the body is entitled to recover by virtue of that subsection.
- (7) In an action brought against a person in accordance with this section because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the first-mentioned person's possession, it is a defence if the Court is satisfied that the information came into the first-mentioned person's possession solely as a result of the information having been made known as mentioned in subparagraph 1002B(2)(b)(i).
- (8) If:
- (a) the responsible entity for a registered scheme; or
 - (b) the Commission in the name of, and for the benefit of, the responsible entity for a registered scheme;
- brings an action in accordance with subsection (2) in respect of a subscription for, or any agreement to subscribe for, any interests in the scheme, any amount recovered in the action:
- (c) is to be held by the responsible entity on behalf of the persons who, at the time of the subscription or agreement, had rights or interests in the relevant financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme; and

The Corporations Law—Section 1014

- (d) is to be held on their behalf in the respective proportions that, at that time, their individual rights or interests bore to the total of all those rights or interests.
- (8A) If:
- (a) the responsible entity for a registered scheme; or
 - (b) the Commission in the name of, and for the benefit of, the responsible entity for a registered scheme;
- brings an action in accordance with subsection (5) in respect of a purchase or sale of, or an agreement to purchase or sell, interests in the scheme, any amount recovered in the action:
- (c) is to be held by the responsible entity on behalf of the persons who, at the time of the sale, purchase or agreement, had rights or interests in the relevant financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme; and
 - (d) is to be held on their behalf in the respective proportions that, at that time, their individual rights or interests bore to the total of all those rights or interests.
- (9) Any right of action that a person has by virtue of this section is in addition to any right that any other person has under section 1005.

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 Part 9.4B 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 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 7.13—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 company's constitution, or, if they are applicable, the SCH business rules; and
 - (c) subject to the company's constitution (if any) and any replaceable rules that apply to the company and, if they are applicable, the SCH business rules, 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 is taken to be situated:
 - (a) if the share or other interest is entered on the register kept under section 169—in the State or Territory where that register is kept; or
 - (b) if the share or other interest is entered on an overseas branch register kept under section 178—in the foreign country where that register is kept.

The Corporations Law—Section 1086

1086 Numbering shares

- (1) Each share in a company shall be distinguished by an appropriate number.
- (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; and
 - (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; and
 - (c) a share need not have a distinguishing number if the SCH business rules provide that it need not have such a number.

1087 Certificate to be evidence of title

- (1) A certificate issued after the commencement of Schedule 5 to the *Company Law Review Act 1998* specifying shares held by a member of a company must state:
 - (a) the name of the company and its jurisdiction of registration; and
 - (b) the class of the shares; and
 - (c) the unpaid on the shares.
- (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.

The Corporations Law—Section 1089

- (3) A failure to comply with subsection (1) does not affect the rights of a holder of shares.

1089 Loss or destruction of certificates

- (1) Subject to subsection (2), where a certificate or other document of title to shares, debentures or interests in a managed investment scheme is lost or destroyed, the company shall, on application by the owner of the shares, debentures or 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 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 interests

The Corporations Law—Section 1089

indemnifying the company against loss following the production of the original certificate or document;
or to do both those things.

(4) If:

- (a) a certificate of title to shares, debentures or interests is cancelled under the SCH certificate cancellation provisions;
and
- (b) having regard to those provisions, the certificate should not have been cancelled;

this section applies to the certificate as though it were destroyed on its cancellation.

Division 2—Transfer of securities

1090 Definition

In this Division:

interest includes an interest in a managed investment scheme.

1091 Instrument of transfer

(1AA) This section does not apply to an SCH-regulated transfer.

(1) Notwithstanding anything in its constitution 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 case—it shows the jurisdiction of registration 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.

The Corporations Law—Section 1091

- (4) Where the personal representative of a dead holder duly constituted as such under a law of another jurisdiction:
- (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

The Corporations Law—Section 1091AA

granted to a person shall be accepted by the company, notwithstanding anything in its constitution, or in a deed relating to debentures or interests, as sufficient evidence of the grant.

1091AA Transmission of shares on death (*replaceable rule—see section 135*)

If shares not held jointly

- (1) If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.
- (2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:
 - (a) the personal representative may:
 - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
 - (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.
- (3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.
- (4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

If shares held jointly

- (5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased

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shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

1091AB Transmission of shares on bankruptcy (*replaceable rule—see section 135*)

- (1) If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
 - (a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed transfer form to the company, transfer the shares to another person.
- (2) On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.
- (3) A transfer under paragraph (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- (4) This section has effect subject to the *Bankruptcy Act 1966*.

1091A Rights of trustee of estate of bankrupt shareholder

- (1) Where:
 - (a) because of the *Bankruptcy Act 1966*, a share in a company, being part of the property of a bankrupt, vests in the trustee of the bankrupt's estate; and
 - (b) the bankrupt is the registered holder of that share;this section applies whether or not the trustee has been registered as the holder of the share.
- (2) On producing such information as the company's directors properly require, the trustee is entitled to:
 - (a) the same dividends and other benefits; and

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- (b) the same rights, for example, but without limitation, rights in relation to:
 - (i) meetings of the company; or
 - (ii) documents, including notices of such meetings; or
 - (iii) voting; or
 - (iv) inspection of the company's records;as the bankrupt would be entitled to if he or she were not a bankrupt.
- (3) The trustee has the same rights:
 - (a) to transfer the share; and
 - (b) to require a person to do an act or give a consent in connection with completing or registering a transfer of the share;as the bankrupt would have if he or she were not a bankrupt.
- (4) If the trustee transfers the share, the transfer is as valid as if the trustee had been registered as the holder of the share when the trustee executed the instrument of transfer.
- (5) A person or body whose consent or approval is required for the transfer of shares in the company must not unreasonably withhold consent or approval for the transfer of the share by the trustee.
- (6) A person who contravenes subsection (5) is not guilty of an offence.
- (7) If:
 - (a) the company's constitution requires:
 - (i) the share to be offered for purchase to a member of the company; or
 - (ii) an invitation to buy the share to be issued to such a member; and
 - (b) as at the end of a reasonable period after the trustee so offers the share, or so issues such an invitation, no such member has agreed to buy the share from the trustee at a reasonable price;

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the trustee may sell and transfer the share to a person other than such a member.

- (8) A provision of the company's constitution is void as against the trustee in so far as, apart from this section, it would affect rights attached to the share:
- (a) because the bankrupt is a bankrupt; or
 - (b) because of some event that led to the bankrupt becoming, or that indicated that the bankrupt was about to become, or might be about to become, a bankrupt; or
 - (c) for reasons including a reason referred to in paragraph (a) or (b).
- (9) Nothing in this section limits the generality of anything else in it.
- (10) This section has effect despite anything in the company's constitution.

1091B Transmission of shares on mental incapacity (*replaceable rule—see section 135*)

- (1) If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:
- (a) the person may:
 - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
 - (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.
- (2) On receiving an election under subparagraph (1)(a)(i), the company must register the person as the holder of the shares.

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- (3) A transfer under subparagraph (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

1091C Trustee etc. may be registered as owner of shares

- (1) In this section:

share, in relation to a body corporate, means a share in the body that is registered in a register kept in Australia.

- (2) A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a corporation may be registered as the holder of that share as trustee, executor or administrator of that estate.
- (3) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a corporation may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of that share as trustee, executor or administrator of that estate.

- (4) Where:

- (a) a person is appointed, under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and
- (b) the incapable person is the registered holder of a share in a corporation;

the first-mentioned person may be registered as the holder of that share as administrator of that estate.

- (5) Where:

- (a) a person is appointed, under a law of a State or Territory relating to the administration of the estates of a person who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and

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- (b) the incapable person is entitled in equity to a share in a corporation;
the first-mentioned person may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of the share as administrator of that estate.
- (6) Where:
- (a) by virtue of the *Bankruptcy Act 1966*, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and
- (b) the bankrupt is the registered holder of that share;
the Official Trustee may be registered as the holder of that share as the Official Trustee in Bankruptcy.
- (7) Where:
- (a) by virtue of the *Bankruptcy Act 1966*, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and
- (b) the bankrupt is entitled in equity to that share;
the Official Trustee may, with the consent of the body and of the registered holder of that share, be registered as the holder of that share as the Official Trustee in Bankruptcy.
- (8) A person registered under subsection (2), (3), (4), (5), (6) or (7), is, while registered as mentioned in that subsection, subject:
- (a) to the same liabilities in respect of the share as those to which he, she or it would have been subject if the share had remained, or had been, as the case requires, registered in the name of the dead person, the incapable person or the bankrupt, as the case may be; and
- (b) to no other liabilities in respect of the share.
- (9) Shares in a corporation registered in a register and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register in such a way as to identify them as being held in respect of the trust.
- (10) Except as provided in this section and section 216B:
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- (a) no notice of a trust, whether express, implied or constructive, shall be entered on a register kept in Australia or be receivable by the Commission;
 - (b) no liabilities are affected by anything done under a preceding subsection of this section or under section 216B; and
 - (c) nothing so done affects the body corporate concerned with notice of a trust.
- (11) A person shall, within one month after beginning to hold shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a body corporate, serve on the company notice in writing that the person so hold the shares.

1091D Registration of transfers (*replaceable rule—see section 135*)

- (1) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.
- (2) The directors are not required to register a transfer of shares in the company unless:
 - (a) the transfer and any share certificate have been lodged at the company's registered office; and
 - (b) any fee payable on registration of the transfer has been paid; and
 - (c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.
- (3) The directors may refuse to register a transfer of shares in the company if:
 - (a) the shares are not fully-paid; or
 - (b) the company has a lien on the shares.
- (4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The

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periods of suspension must not exceed 30 days in any 1 calendar year.

1091E Additional general discretion for directors of proprietary companies to refuse to register transfers (*replaceable rule—see section 135*)

The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.

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

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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 *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.

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(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 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:

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- (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
 - (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) Subject to subsection (1A), 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

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person has instructed the company in writing to send them to a nominated person, to that person.

- (1A) If the SCH business rules include a provision to the effect that:
- (a) no document is required by subsection (1) to be completed and delivered by a company in relation to the allotment, issue or making available of a share, debenture or interest in specified circumstances; or
 - (b) the only document required by subsection (1) to be completed and delivered by a company in relation to the allotment, issue or making available of a share, debenture or interest in specified circumstances is such document as the provision requires;
- the provision has effect accordingly.
- (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
 - (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.
- (2A) The only document required by subsection (2) to be completed and delivered by a company in relation to an SCH-regulated transfer is such document (if any) as the SCH business rules require to be so completed and delivered.
- (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

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- (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.

1096A Notices relating to non-beneficial and beneficial ownership of shares

- (1) Where, at a particular time:
- (a) an instrument of transfer of shares in a company is lodged, by or on behalf of the transferee, with the company for registration of the transfer;
 - (b) having regard to all relevant circumstances, it may reasonably be expected that, upon registration of the transfer, the transferee will hold non-beneficially particular shares (in this subsection called the *relevant shares*), being any of the shares to which the instrument of transfer relates; and
 - (c) the instrument of transfer does not include a notice that:
 - (i) contains a statement to the effect that, upon registration of the transfer, the transferee will hold the relevant shares non-beneficially;

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- (ii) sets out particulars of the relevant shares; and
 - (iii) is signed by or on behalf of the transferee,the transferee contravenes this subsection.
- (2) The fact that a person has contravened subsection (1) does not affect the validity of the registration of a transfer of shares in a company.
- (3) Where:
 - (a) an instrument of transfer of shares in a company includes a notice of the kind referred to in paragraph (1)(c) and is lodged with the company for registration of the transfer; and
 - (b) upon registration of the transfer, the transferee holds beneficially particular shares (in this subsection called the **relevant shares**), being any of the shares particulars of which are set out in the notice;then, before the end of the period of 14 days beginning on registration of the transfer, the transferee shall, whether or not the transferee begins before the end of that period to hold any of the relevant shares non-beneficially, give to the company a notice that:
 - (c) sets out the name and address of the transferee;
 - (d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially;
 - (e) sets out particulars of the relevant shares; and
 - (f) is signed by or on behalf of the transferee.
- (4) Where:
 - (a) an instrument of transfer of shares in a company is lodged with the company for registration of the transfer; and
 - (b) upon registration of the transfer, the transferee holds non-beneficially particular shares (in this subsection called the **relevant shares**), being any of the shares to which the instrument of transfer relates (other than, in a case where the instrument of transfer includes a notice of the kind referred to in paragraph (1)(c), the shares particulars of which are set out in the notice);

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then, before the end of the period of 14 days beginning on registration of the transfer, the transferee shall, whether or not the transferee begins before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

- (c) sets out the name and address of the transferee;
 - (d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares non-beneficially;
 - (e) sets out particulars of the relevant shares; and
 - (f) is signed by or on behalf of the transferee.
- (5) Where:
- (a) at a particular time, a person holds beneficially shares in a company; and
 - (b) immediately after that time, the person holds non-beneficially particular shares (in this subsection called the **relevant shares**), being any of the shares referred to in paragraph (a);
- then, before the end of the period of 14 days beginning at that time, the person shall, whether or not the person recommences before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:
- (c) sets out the name and address of the person;
 - (d) contains a statement to the effect that, after that time, the person holds the relevant shares non-beneficially;
 - (e) specifies that time and sets out particulars of the relevant shares; and
 - (f) is signed by or on behalf of the person.
- (6) Where:
- (a) at a particular time, a person holds non-beneficially shares in a company; and
 - (b) immediately after that time, the person holds beneficially particular shares (in this subsection called the **relevant shares**), being any of the shares referred to in paragraph (a);
- then, before the end of the period of 14 days beginning at that time, the person shall, whether or not the person recommences before the

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end of that period to hold any of the relevant shares non-beneficially, give to the company a notice that:

- (c) sets out the name and address of the person;
 - (d) contains a statement to the effect that, after that time, the person holds the relevant shares beneficially;
 - (e) specifies that time and sets out particulars of the relevant shares; and
 - (f) is signed by or on behalf of the person.
- (7) In proceedings under this section, a person shall, unless the contrary is established, be presumed to have been aware at a particular time of a circumstance of which an employee or agent of the person, being an employee or agent having duties or acting in relation to the transfer to, or ownership by, the person of a share or shares in the company concerned, was aware at that time.
- (8) In this section, unless the contrary intention appears:
any includes all.
- (9) For the purposes of this section and of section 216B:
- (a) where, at a particular time, a person:
 - (i) holds shares in a capacity other than that of sole beneficial owner; or
 - (ii) without limiting the generality of subparagraph (i), holds shares as trustee for, as nominee for, or otherwise on behalf of or on account of, another person;
the first-mentioned person shall be taken to hold the shares non-beneficially at that time; and
 - (b) a person who holds shares at a particular time shall be taken to hold the shares beneficially at that time unless the person holds the shares non-beneficially at that time.

Division 3—Transfer of marketable securities and marketable rights

Subdivision A—Interpretation

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.

Division 3 transfer means:

- (a) a sufficient transfer under this Division of marketable securities or marketable rights; or
- (b) a proper SCH transfer.

document, in relation to a transfer, includes, in the case of an SCH-regulated transfer, an electronic message or other electronic communication.

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

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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
 - (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.

identification code, in relation to a member organisation, means a code that, for the purposes of the SCH business rules, is the member organisation's identification code, or one of its identification codes, as the case may be.

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 made available, or proposes to issue or make available, 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.

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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.

member organisation means a member organisation of a securities exchange.

prescribed security means an interest in a managed investment scheme 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 security or a marketable right, includes:

- (a) in the case of a quoted security or a quoted right—any change in the ownership of the security or right; and
- (b) in the case of a marketable right—the renunciation and transfer of the right.

transfer document, in relation to a proper SCH transfer, means the document that is taken under the SCH business rules to effect the transfer.

- (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.
- (4) If the SCH business rules include provisions determining:

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- (a) which member organisation effected a proper SCH transfer;
or
 - (b) when a proper SCH transfer takes effect;
- those provisions have effect for the purposes of this Division.

1097A Quoted securities and rights

- (1) A quoted security is a marketable security in a class of marketable securities listed for quotation on a stock market of a securities exchange.
- (2) A quoted right is a marketable right in a class of marketable rights listed for quotation on a stock market of a securities exchange.
- (3) For the purposes of subsections (1) and (2), securities or rights in a class of marketable securities or marketable rights are not taken to have stopped being listed for quotation on a stock market of a securities exchange merely because of a temporary suspension of quotation of securities or rights in that class.
- (4) If:
 - (a) there is a suspension of the quotation, on a stock market of a securities exchange, of marketable securities in a class of marketable securities, or of marketable rights in a class of marketable rights; and
 - (b) during the suspension, the issuing body in relation to the securities or rights ceases to be included in an official list of the securities exchange;then, for the purposes of subsections (1) and (2), marketable securities or marketable rights in that class are taken to stop being listed for quotation on a stock market of the securities exchange when the issuing body ceases to be so included.
- (5) Subsection (4) does not limit the circumstances in which marketable securities in a class of marketable securities, or marketable rights in a class of marketable rights, may be taken to have stopped being listed for quotation on a stock market of a securities exchange.

1097B SCH business rules may extend meaning of quoted securities or quoted rights

- (1) If the SCH business rules provide that marketable securities or marketable rights that stop being quoted securities or quoted rights are to be taken to continue to be quoted securities or quoted rights for a specified period, then, for the purposes of the provisions mentioned in subsection (3), those securities or rights are taken to be quoted securities or quoted rights during that period.
- (2) If the SCH business rules provide that marketable securities or marketable rights that:
 - (a) are approved, by a securities exchange, to be listed for quotation on a stock market of a securities exchange, but that are not yet so listed; and
 - (b) have been issued;are to be taken to be quoted securities or quoted rights for a specified period, then, for the purposes of the provisions mentioned in subsection (3), those securities or rights are taken to be quoted securities or quoted rights during that period.
- (3) These are the provisions:
 - (a) the definitions of *proper SCH transfer*, *SCH certificate cancellation provisions*, *SCH-regulated transfer* and *SCH subregister* in section 9; and
 - (b) section 653A and the provisions of Parts 7.2A and 7.13, and of any regulations made for the purposes of those Parts.

1097C Commission may declare Law applies to securities as if they were quoted securities or rights

- (1) The Commission may, by writing, declare that this Law, and the regulations, or that specified provisions of this Law and the regulations, have effect (subject to any modifications specified in the declaration) in relation to particular securities, or a particular class of securities, that are not quoted securities or quoted rights as if those securities, or securities of that class, were quoted securities or quoted rights.

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- (2) A declaration under subsection (1) has effect accordingly.
- (3) The Commission must cause a copy of a declaration under subsection (1) to be published in the *Gazette*.

1097D Transfer that substantially complies with SCH business rules

For the purposes of this Division, if the securities clearing house determines under the SCH business rules that an SCH-regulated transfer substantially complies with the applicable provisions of those business rules, the transfer is taken to be, and always to have been, a proper SCH transfer.

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.

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- (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 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

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(d) in any other manner.

Subdivision B—Sufficient transfers (transfers other than SCH-regulated transfers)

1099A Subdivision does not apply to SCH-regulated transfers

Nothing in this Subdivision applies in relation to:

- (a) an SCH-regulated transfer; or
- (b) a document that relates to such a transfer.

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.

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- (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

The Corporations Law—Section 1104

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.
- (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.
- (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.

The Corporations Law—Section 1106

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:
 - (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.

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- (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
 - (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

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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.
- (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

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- (ii) the transfer was not made by way of a sale, gift or exchange of the securities or rights.

Subdivision C—SCH-regulated transfers

1109A Member organisation’s authority to enter into transaction continues despite client’s death

If:

- (a) a person authorises a member organisation to enter into a transaction (for example, a sale) involving the disposal of quoted securities or quoted rights; and
- (b) the person dies before the member organisation enters into the transaction; and
- (c) the authority is still in force immediately before the person dies;

then:

- (d) the authority continues, despite the person’s death, as if the person were still alive, but can be revoked by the person’s legal representative just as the person could revoke it if the person were still alive; and
- (e) if the member organisation enters into the transaction while the authority so continues—the transaction is binding on the person’s legal representative.

1109B Authority to enter into transaction gives authority to transfer

- (1) If a person authorises a member organisation to enter into a transaction (for example, a sale) involving the disposal of quoted securities or quoted rights, the person is taken also to have authorised the member organisation to effect any proper SCH transfer of all or any of those securities or rights that the member organisation effects, even if the transfer has no connection with the transaction.

Note: The transfer may have no connection with the transaction because of the operation of the provisions of the SCH business rules referred to in subsection 954P(1).

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- (2) The authority that the person is taken, by subsection (1), to have given:
 - (a) is revoked if, before the transaction is entered into, the authority to enter into the transaction is revoked or otherwise ceases to have effect; and
 - (b) cannot otherwise be revoked; and
 - (c) if the person dies after the transaction is entered into—continues in force, despite the person's death, as if the person were still alive (but cannot be revoked).

1109C Effect of proper SCH transfer

- (1) A proper SCH transfer of quoted securities is valid and effective for the purposes of any law or instrument governing or relating to the way in which the securities may be transferred.
- (2) A proper SCH transfer of quoted rights is valid and effective for the purposes of any law or instrument governing or relating to the way in which the rights may be transferred.

1109D Effect of proper SCH transfer on transferee

- (1) If a proper SCH transfer of quoted securities takes effect at a particular time:
 - (a) the transferee is taken to have agreed at that time to accept the securities subject to the terms and conditions on which the transferor held them immediately before 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; and
 - (b) if the securities are shares—the transferee is also taken to have agreed at that time to become a member of the issuing body and to be bound by the issuing body's constitution.
- (2) If a proper SCH transfer of quoted rights relating to marketable securities takes effect at a particular time:
 - (a) the transferee is taken:

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- (i) to have applied at that time to the issuing body in relation to the securities for the allotment to him, her or it of the marketable securities; and
- (ii) to have agreed at that time to accept the marketable securities subject to the terms and conditions on which the issuing body offers them for subscription; and
- (b) if the marketable securities are shares—the transferee is also taken to have agreed, at that 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.

1109E Warranties by member organisation whose identification code is included in transfer document

- (1) This section applies if the transfer document for a proper SCH transfer of quoted securities or quoted rights includes a member organisation’s identification code as the identification code of the member organisation effecting the transfer.
- (2) If the member organisation is the transferor, the member organisation or, if it is a partnership, each of the partners in the member organisation, is taken to have warranted that:
 - (a) the transfer was effected by the member organisation; and
 - (b) the transferor was legally entitled or authorised to transfer the securities or rights.
- (3) If:
 - (a) the member organisation is not the transferor; and
 - (b) the transfer is pursuant to a transaction in relation to which, or to transactions in relation to each of which, one of the following conditions is satisfied:
 - (i) the transaction was entered into in the ordinary course of trading on a stock market;
 - (ii) the transaction is, under the business rules or listing rules of a stock exchange, described, or to be described, as “special” when it is reported to the stock exchange;

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the member organisation or, if it is a partnership, each of the partners in the member organisation, is taken to have warranted that:

- (c) the transferor was legally entitled or authorised to transfer the securities or rights; and
 - (d) the transfer was effected by the member organisation; and
 - (e) the member organisation was authorised by the transferor to effect the transfer.
- (4) If:
- (a) the member organisation is not the transferor; and
 - (b) subsection (3) does not apply;

the member organisation or, if it is a partnership, each of the partners in the member organisation, is taken to have warranted that:

- (c) the transfer was effected by the member organisation; and
- (d) the member organisation was authorised by the transferor to effect the transfer.

1109F Indemnities in respect of warranted matters

- (1) If:
- (a) a member organisation, or each of the partners in a partnership that is a member organisation, is taken by section 1109E to have warranted, in relation to a proper SCH transfer of quoted securities or quoted rights, that the transfer was effected by the member organisation; and
 - (b) the transfer was not effected by the member organisation; the member organisation, or, if it is a partnership, each of the partners in the member organisation, is liable to indemnify:
 - (c) the issuing body in relation to the securities or rights; and
 - (d) the transferor; and
 - (e) the transferee; and
 - (f) if a member organisation acted as the transferee's agent in the transfer—that member organisation; and
 - (g) the securities clearing house;

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against any loss or damage arising from the transfer not having been effected by the first-mentioned member organisation.

(2) If:

- (a) a member organisation, or each of the partners in a partnership that is a member organisation, is taken by section 1109E to have warranted, in relation to a proper SCH transfer of quoted securities or quoted rights, that the transferor was legally entitled or authorised to transfer the securities or rights; and
- (b) the transferor was not legally entitled or authorised to transfer the securities or rights;

the member organisation, or, if it is a partnership, each of the partners in the member organisation, is liable to indemnify:

- (c) the issuing body in relation to the securities or rights; and
- (d) the transferee; and
- (e) if a member organisation acted as the transferee's agent in the transfer—that member organisation; and
- (f) the securities clearing house;

against any loss or damage arising from the transferor not having been legally entitled or authorised to transfer the securities or rights.

(3) If:

- (a) a member organisation, or each of the partners in a partnership that is a member organisation, is taken by section 1109E to have warranted, in relation to a proper SCH transfer of quoted securities or quoted rights, that the member organisation was authorised by the transferor to effect the transfer; and
- (b) the member organisation was not authorised by the transferor to effect the transfer;

the member organisation or, if it is a partnership, each of the partners in the member organisation, is liable to indemnify:

- (c) the issuing body in relation to the securities or rights; and
- (d) the transferor; and

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- (e) the transferee; and
 - (f) if a member organisation acted as the transferee's agent in the transfer—that member organisation; and
 - (g) the securities clearing house;
- against any loss or damage arising from the first-mentioned member organisation not having been authorised by the transferor to effect the transfer.
- (4) The effect of section 1109B is to be disregarded in determining, for the purposes of this section, whether a person or partnership:
 - (a) was legally entitled or authorised to transfer quoted securities or quoted rights; or
 - (b) was authorised by another person or partnership to effect a transfer of quoted securities or quoted rights.

1109G Joint and several warranties and liabilities

- (1) If 2 or more persons are taken to have warranted as mentioned in subsection 1109E(2), (3) or (4), they are taken to have so warranted jointly and severally.
- (2) If 2 or more persons are liable as mentioned in subsection 1109F(1), (2) or (3), they are so liable jointly and severally.

1109H Quoted securities and rights from other jurisdictions: effect of sections 1109E, 1109F and 1109G

- (1) Sections 1109E, 1109F and 1109G apply in relation to quoted securities and quoted rights, within the meaning of the Corporations Law of another jurisdiction, and, for the purposes of those sections as so applying:
 - (a) subject to paragraph (b), an expression has the same meaning in those sections as in Division 3 of Part 7.13 of that Law; and
 - (b) a reference in section 1109E to a transfer document is taken to be a reference to a transfer document, within the meaning

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of that Division, that purports to have been completed in this jurisdiction.

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

1109J Securities clearing house entitled to assume its business rules complied with

- (1) The securities clearing house is entitled to assume without inquiry, in the absence of knowledge to the contrary, that anything purporting to be done under the SCH business rules in connection with a transfer of a quoted security or quoted right has been done in accordance with those rules.
- (2) If, in reliance on subsection (1), the securities clearing house assumes that a thing was done in accordance with the SCH business rules then, for the purposes of this Law (including the definition of *proper SCH transfer* in section 9), the thing is taken to have been done in accordance with those rules.
- (3) If the securities clearing house is acting on behalf of the issuing body in relation to quoted securities or quoted rights when, in reliance on subsection (1), it assumes that a thing was done in accordance with the SCH business rules, then the issuing body is also taken to assume, and to be entitled to assume, that the thing was so done.

1109K SCH-regulated transfer not to be registered unless proper SCH transfer

- (1) The issuing body in relation to a quoted security or quoted right must not register, or otherwise give effect to, an SCH-regulated transfer of the security or right unless the transfer is a proper SCH transfer.
- (2) Subsection (1) has effect despite anything in:
 - (a) the body's constitution; or

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- (b) a deed relating to debentures; or
- (c) the constitution of a registered scheme; or
- (d) a deed relating to interests.

1109L Issuing body not to refuse to register proper SCH transfer

The issuing body in relation to a quoted security or a quoted right must not refuse or fail to register, or to give effect to, a proper SCH transfer of the security or right.

1109M Trustees and legal representatives may be SCH participants etc.

- (1) A trustee, or a legal representative of a dead person, who, as trustee or legal representative, holds a quoted security or a quoted right may:
 - (a) subject to the requirements of the SCH business rules, be an SCH participant; and
 - (b) have the security or right converted into, and hold it in, a form in which it may be transferred in accordance with the SCH business rules.
- (2) Nothing in subsection (1) authorises the trustee or legal representative to do a thing that the trustee or legal representative is expressly prohibited from doing by any law or by the terms and conditions on which he, she or it holds office.

1109N Determination of who holds quoted securities for the purposes of a meeting

- (1) This section applies to a meeting of:
 - (a) the holders of securities of a body corporate, provided some or all of the securities are quoted securities; or
 - (b) the holders of a class of securities of a body corporate, provided some or all of the securities in that class are quoted securities.

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- (2) The convener of the meeting may determine that:
 - (a) if paragraph (1)(a) applies—all the securities of the body corporate that are quoted securities at a specified time before the meeting; or
 - (b) if paragraph (1)(b) applies—all the securities of the body corporate in the relevant class that are quoted securities at a specified time before the meeting;are taken, for the purposes of the meeting, to be held by the persons who held them at the specified time.
- (3) The specified time must not be more than 48 hours before the meeting.
- (4) Subject to subsection (3), the specified time must satisfy any applicable requirements of the SCH business rules.
- (5) The determination must be made in accordance with any applicable requirements of the SCH business rules as to the way in which it must be made.
- (6) The determination must be made before notice of the meeting is given.
- (7) Particulars of the determination must be included in the notice of the meeting, but a failure to do so does not invalidate the determination.
- (8) The determination has effect accordingly despite anything in:
 - (a) this Law or the regulations; and
 - (b) any other laws (written or unwritten) that apply to the meeting; and
 - (c) any documents (for example, the body corporate's constitution or any relevant trust deed) that apply to the meeting.

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1109P Determination of who holds quoted securities for the purposes of conferring security benefits

- (1) If the SCH business rules include provisions relating to the determination, for the purposes of conferring security benefits, of who holds or is taken to hold quoted securities at a particular time, those provisions have effect accordingly despite anything in:
 - (a) this Law or the regulations; and
 - (b) any other laws (written or unwritten) that apply to the conferral; and
 - (c) any documents (for example, the body corporate's constitution or any relevant trust deed) that apply to the conferral.
- (2) For the purposes of this section, *conferring a security benefit* means:
 - (a) paying or transferring money or property to a person because the person holds or held a security; or
 - (b) issuing securities to a person because the person holds or held a security; or
 - (c) conferring a right on a person because the person holds or held a security.

Subdivision D—Miscellaneous

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.
- (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 (other than section 1109L) affects any right of an eligible body to refuse:

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- (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 document that is lodged with or sent to 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 Division 3 transfer does not breach any law, constitution, trust deed or other instrument relating to marketable securities.
- (5) Nothing in this Division (except section 1109K) prevents or affects the use of:
- (a) any other form of transfer of marketable securities or marketable rights; or
 - (b) any other mode of executing a document transferring 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 Division 3 transfer 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 transfer document, register etc.

- (1) A document transferring marketable securities or marketable rights need not state the occupation of the transferor or transferee and, if the document is signed by a person, the signature need not be witnessed.
- (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.

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- (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, constitution, trust deed or other document relating to the securities.

1112 Offences: stamping of broker's stamp on sufficient transfer

- (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
 - (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.

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- (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.

1112A Offences: inclusion of identification codes in proper SCH transfers

A person must not, in this jurisdiction or elsewhere, include a member organisation's identification code in a document that may be used to effect a proper SCH transfer unless:

- (a) the person:
 - (i) is the member organisation or, if it is a partnership, is a partner in the member organisation; or
 - (ii) is authorised so to include the identification code by the member organisation; and
- (b) if:

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- (i) the identification code is so included as the identification code of the member organisation effecting the transfer; and
- (ii) the member organisation is not the transferor; the member organisation is, apart from the effect of section 1109B, authorised by the transferor to effect the transfer.

1112B Offences: contravention by broker of the SCH certificate cancellation provisions relating to use of cancellation stamps

A broker must not, intentionally or recklessly, contravene the SCH certificate cancellation provisions by affixing, or failing to affix, a cancellation stamp to a certificate or other document of title to quoted securities or quoted rights.

1112C Civil liability: contravention by broker of the SCH certificate cancellation provisions

- (1) A person who suffers loss or damage because of conduct of a broker that was engaged in in contravention of the SCH certificate cancellation provisions may, unless the person was involved in the contravention, recover the amount of the loss or damage by action against the broker, whether or not the broker has been convicted of an offence in respect of the contravention.
- (2) An action under subsection (1) must be begun within 6 years after the day on which the cause of action arose.
- (3) This section does not affect a liability that a person has under any other law.
- (4) For the purposes of section 1310B, an action under subsection (1) is taken to be a proceeding in respect of loss or damage arising out of a contravention of this Law.

**1112D Issuer protected from civil liability for broker’s
contravention of SCH certificate cancellation provisions**

If:

- (a) a broker contravenes the SCH certificate cancellation provisions in relation to particular quoted securities or quoted rights; and
- (b) the issuing body in relation to the securities or rights is not involved in the contravention;

the issuing body is not liable to an action or other proceeding for damages in relation to the broker’s contravention.

Division 4—Exemptions and modifications

1113 General powers of Commission

(1) This section applies to Divisions 1, 2 and 3.

(1A) In this section:

securities includes marketable securities, and marketable rights, within the meaning of Division 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.

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- (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 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.
- (6A) Subsection (6) applies in relation to Division 3 as if the forms in Schedule 2 were provisions of that Division.
- (7) The Commission shall cause a copy of an exemption or declaration under this section to be published in the *Gazette*.

1113A Power of Commission to extend application of Division 3

- (1) The Commission may, by writing, declare that Division 3, and regulations made for the purposes of the provisions of that Division, are to apply to particular non-marketable securities, or a particular class of non-marketable securities, as if those securities, or securities of that class, were marketable securities or marketable rights within the meaning of that Division.
- (2) In a declaration under subsection (1), the Commission may also specify modifications of Division 3, and of regulations made for the purposes of the provisions of that Division, that are to have effect in relation to the application of that Division and those regulations to the non-marketable securities, or the class of non-marketable securities, to which the declaration relates.
- (3) A declaration under subsection (1) has effect accordingly.
- (4) The Commission must cause a copy of a declaration under subsection (1) to be published in the *Gazette*.
- (5) In this section:

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non-marketable securities means securities that are not marketable securities or marketable rights within the meaning of Division 3.

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, the business rules or listing rules of a securities exchange, or the SCH business rules; 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; or
- (ba) on the application of the securities clearing house, it appears to the Court that a person has contravened the SCH business rules; or
- (bb) on the application of a person claiming to be aggrieved by an alleged contravention by another person of the business rules or listing rules of a securities exchange, it appears to the Court that:
 - (i) the other person did contravene those rules; and
 - (ii) the applicant is aggrieved by the contravention;

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, of the business rules or listing rules of a securities exchange, or of

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the SCH business rules—an order restraining a person from carrying on a business, or doing an act or classes of acts, in relation to securities;

- (ca) in the case of a contravention by a person of the business rules or listing rules of a securities exchange:
 - (i) an order giving directions concerning compliance with or enforcement of those rules to:
 - (A) the person; and
 - (B) if the person is a body corporate—the directors of the body corporate; and
 - (ii) if the contravention relates to the disclosure or provision of information—an order of either or both of the following kinds:
 - (A) an order requiring the person, or a person involved in the contravention, to disclose to the public or to specified persons, in accordance with the order, specified information which the person to whom the order is directed possesses or to which that person has access;
 - (B) an order requiring the person, or a person involved in the contravention, to publish advertisements in accordance with the order at that person's expense;
- (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;
- (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;

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- (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.
- (1A) For the purposes of paragraph (1)(bb), if a body corporate contravenes provisions of the business rules or listing rules of a securities exchange, a person who holds securities of the body corporate that are quoted on a stock market of the securities exchange is taken to be a person aggrieved by the contravention.
- (1B) Subsection (1A) does not limit the circumstances in which a person may be aggrieved by a contravention for the purposes of paragraph (1)(bb).
- (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 or the Exchange applies to the Court for an order under subsection (1), the Court shall not require the applicant 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;

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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 way in which the dealer 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 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.
- (10) In this section:
- securities* includes marketable securities and marketable rights within the meaning of Division 3 of Part 7.10.

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.

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- (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 financial record 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 a financial 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 a financial record, the 7 years after the transactions covered by the record are completed.
- (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

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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 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

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- (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.

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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- (iia) for the exclusion of a body corporate from membership where a responsible officer of the body corporate would be excluded from membership;
- (iii) 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;
- (iv) 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;
- (v) 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;
- (vi) 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;
- (vii) for the inspection and audit of the financial records that this Chapter requires members to keep;
- (viii) with respect to the classes of futures contracts that may be dealt in by members;
- (ix) 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.
- (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.
- (1A) A person must not contravene a condition specified in a declaration in force under this section.
- (1B) If a person has contravened a condition specified in a declaration in force under this section, the Court may, on the Commission's application, order the person to comply with the condition.
- (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

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rules of the applicant that relate to the guaranteeing, to members of 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 financial 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.

- (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.

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- (2) Where:
- (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.
- (2A) A futures exchange, a clearing house for a futures exchange or a futures association that believes that a person has committed, is committing or is about to commit a serious contravention of its business rules, or the Corporations Law of this or any other jurisdiction, must, as soon as practicable, lodge a statement setting out:
- (a) particulars of the contravention that it believes the person has committed, is committing or is about to commit; and
 - (b) its reasons for that belief.
- (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 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 and Chapter 8 agreements

- (1) 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.
- (2) Nothing in a law of this jurisdiction about gaming or wagering prevents the entering into, or affects the validity or enforceability, of a Chapter 8 agreement of a kind prescribed for the purposes of paragraph 72A(1)(b).

1141A Qualified privilege in respect of disciplinary proceedings

- (1) In this section:

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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.

- (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.

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

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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

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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:

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- (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:

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- (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:

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- (a) the Commission; and
 - (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 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.

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1155 Register of Futures Licensees

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

- (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 statement and balance sheet referred to in section 1218; or

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- (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;
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.

- (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

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- (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

- (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.

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- (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.

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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:

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- (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.

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- (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.

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;

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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.

- (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;

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- (e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or
 - (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.

Corporations Law Chapter 8 The futures industry

Part 8.3 Participants in the futures industry

Division 3 Futures representatives

The Corporations Law—Section 1182

- (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 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

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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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Part 8.3 Participants in the futures industry

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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:

broadcast, in relation to a statement, means broadcast the statement by wireless transmission or television or cause it to be so broadcast.

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.
- (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:

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- (a) futures contracts; or
 - (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.

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

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behalf of the client and the acquisition of which was an operation by the broker on the discretionary account.

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:

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- (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.

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:

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- (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 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

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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 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.

- (4A) A clients' segregated account of a futures broker must be designated as a clients' segregated account, unless it is maintained outside Australia and the law in force in the place where it is maintained requires it to be designated in some other way.

- (4B) If:

- (a) a clients' segregated account of a futures broker is required by subsection (4A) to be designated as a clients' segregated account; and
 - (b) the account is designated in a way that complies substantially, but not completely, with that requirement;
- subsection (4A) is taken to be complied with in relation to the account.

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- (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 clients only;
 - (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) an Australian ADI; or
 - (B) an approved foreign bank in relation to the broker;
 - (iv) on deposit with a clearing house for a futures exchange; or
 - (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 (10).
- (5A) If, under subsection (5), a broker (the *paying broker*) withdraws money from a clients' segregated account and pays it to another broker (the *receiving broker*):
- (a) the paying broker must ensure that the receiving broker is notified, at the same time as the payment is made or as close to that time as is practicable, of the fact that the money has

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- been withdrawn from a clients' segregated account of the paying broker and should be paid into a clients' segregated account of the receiving broker; and
- (b) on or before the next day after the receiving broker receives the payment, the receiving broker must pay the money into a clients' segregated account of the receiving broker.
- (5B) A notification under paragraph (5A)(a) may be in writing or in an electronic or other form and may convey its message by express words, or by a code or some other means understood by the brokers concerned.
- (6) A futures broker must not deal with property deposited by the broker in safe custody under subsection (3) except:
- (a) in accordance with the terms and conditions on which it was deposited with, or received by, the broker; or
 - (b) for the purpose of meeting obligations incurred by the broker in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in futures contracts effected by the broker on behalf of clients only.
- (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 must not invest an amount pursuant to paragraph (5)(d) by depositing it with a person for that person to invest unless:
- (a) the broker:
 - (i) 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

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- (ii) 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 subparagraph (i); or
- (b) the investment is made by the broker paying the amount into an account maintained with the person in relation to which the following conditions are satisfied:
 - (i) the account is maintained for the sole purpose of having amounts invested in it pursuant to paragraph (5)(d);
 - (ii) the broker has informed the person that amounts paid into the account will be amounts withdrawn from a clients' segregated account of the broker and will be moneys to which clients of the broker are entitled;
 - (iii) the broker has obtained from the person a written statement signed by the person that acknowledges that the broker has informed the person as mentioned in subparagraph (ii).
- (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.
- (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).

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- (11) A futures broker shall keep in relation to the clients' segregated account, or clients' segregated accounts, of the broker financial records that:
- (a) are separate from any other financial 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.
- (13) Section 1213 applies, so far as it is capable of application, in relation to financial 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 financial records and other records were financial 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;

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- (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:
 - (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).

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- (19) A futures broker must not pay an amount into a clients' segregated account of the broker except as required or authorised by this section or the regulations.

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—Financial statements 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 Chapter 2M 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 financial 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 financial records in such a manner as will enable true and fair profit and loss statements and balance sheets to be prepared from time to time; and
 - (c) keep financial records in such a manner as will enable profit and loss statements 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 financial 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 financial records 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 statements and balance-sheets to be prepared.
- (9) If any financial 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 ADI) 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 financial statements.
- (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 has a substantial holding, 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
 - (iii) a partner or employee of an employee of an officer of the body.

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- (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 has a substantial holding, 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 for acting as a consultant to it on accounting or auditing matters.
- (4) For the purposes of paragraphs (2)(e) and (3)(f), disregard a debt owed by a natural person to a body corporate if:

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- (a) the body corporate is:
 - (i) an Australian ADI; or
 - (ii) a body corporate registered under the *Life Insurance Act 1995*; and
 - (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
 - (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their 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.
- (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

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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 name of the member concerned, by a member of the firm who is a registered company auditor.

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- (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.
- (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

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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 (except a 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;
- 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.

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- (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 (except a 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
- (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

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- (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 ADI) 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 statement 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.

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 financial 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

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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 financial 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;
 - (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.

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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.

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

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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.

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:

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- (a) the audit of financial statements (including the audit of financial statements 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:
 - (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;

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the Court may by order restrain dealings in respect of specified bank accounts that the person holds or maintains (whether in Australia or elsewhere), 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
- (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.

The Corporations Law—Section 1226

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.
- (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;

The Corporations Law—Section 1230

- (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 ADI 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 ADI.

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

The Corporations Law—Section 1233

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.

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.

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

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meaning of the *Bankruptcy Act 1966* an amount not greater than 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

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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

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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

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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

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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) has a substantial holding 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 has a substantial holding in the relevant body corporate or in a related body corporate.

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- (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 administrator of the body corporate;
 - (ca) an administrator of a deed of company arrangement executed by 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;

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- (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:

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- (a) was obtained by the officer in the course of performing duties as an officer of the first-mentioned body; and
- (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

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proved that the other party to the dealing knew, or ought reasonably to have known, the information before entering into the dealing.

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

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- (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

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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.

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- (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 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 a financial 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 a financial 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 a financial record, the 7 years after the transactions covered by the record are completed.
- (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:
- (a) by the futures exchange; or

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- (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 ASIC 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 ASIC 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.