

EXPLANATORY STATEMENT

STATUTORY RULES 1987 No. 128

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

NATIONAL COMPANIES AND SECURITIES COMMISSION
REGULATIONS (AMENDMENT)

Section 53 of the National Companies and Securities Commission Act 1979 ("the Act") provides in subsection (1) that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Subsection 53(4) of the Act provides that the power of the Governor-General to make regulations shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council for Companies and Securities ("the Council").

2. The Council was established under an agreement between the Commonwealth and the States, executed on 22 December 1978 ("the Agreement"), that provides the framework for a co-operative Commonwealth-State scheme for a uniform system of law and administration in relation to company law and the regulation of the securities and futures industries in the six States, the Australian Capital Territory and the Northern Territory of Australia.

3. Under subclause 45(1) of the Agreement, the Council may consider a proposal for the amendment of regulations made under Commonwealth Acts enacted for the purpose of co-operative companies and securities scheme. Should the council approve any draft amending regulation which gives effect to such a proposal, the Commonwealth is then required, under subclause 45(2) of the Agreement, to submit the draft regulations to the Federal Executive Council for making by the Governor-General.

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4. The accompanying regulations are identical in form and substance to draft regulations approved by the Council.

5. The purpose of the accompanying regulations is to make amendments to the National Companies and Securities Commission Regulations ("the Regulations") by prescribing the Futures Industry Act 1986 and State and Territory Futures Industry (Application of Laws) Acts for the purposes of various provisions in the Act.

6. Details of the accompanying regulations are set out below.

Regulation 1: Principal Regulations

7. This regulation defines the expression "Principal Regulations", which is used in the proposed regulations, as meaning the National Companies and Securities Commission Regulations.

Regulation 2: Commencement

8. The amendments to the Regulations come into operation on 1 July 1987.

Regulation 3: Prescribed enactments for the purposes of subsection 41(4) of the Act

9. Subsection 41(4) of the Act provides, in part, that a person appointed for the purposes of the Act or of any other prescribed Act is not liable to an action or other proceedings for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under any Commonwealth or State Act. Regulation 11 of the Regulations lists the prescribed Acts for the purposes of subsection 41(4).

10. This regulation amends regulation 11 of the Regulations by adding the Futures Industry Act 1986 to the list of Acts prescribed for the purposes of subsection 41(4).

Regulation 4: Prescribed enactments for the purposes of paragraph 47(1)(a) of the Act

11. Paragraph 47(1)(a) of the Act provides that a person who is appointed for the purposes of the Act or any other prescribed Act shall not, except to the extent necessary to perform his official duties, divulge any information that is or was acquired by him by reason of his being or having been so appointed. Regulation 12 of the Regulations lists the prescribed Acts for the purposes of paragraph 47(1)(a).

12. This regulation amends regulation 12 of the Regulations by adding the Futures Industry Act 1986 to the list of Acts prescribed for the purposes of paragraph 47(1)(a).

Regulation 5: Prescribed enactments for the purposes of paragraph 47(2)(a) of the Act

13. Paragraph 47(2)(a) of the Act provides that nothing in subsection 47(1) of the Act (dealing with the disclosure of information acquired in the course of duties) precludes a person from producing a document to a court in the course of criminal proceedings or in the course of any proceedings under the Act or any other prescribed Commonwealth or State Act. Regulation 13 of the Regulations lists the Commonwealth and State Acts prescribed for the purposes of paragraph 47(2)(a).

14. This regulation amends regulation 13 of the Regulations by adding the Futures Industry Act 1986 and the State and Territory Futures Industry (Application of Laws) Acts to the list of Commonwealth and State Acts prescribed for the purposes of paragraph 47(2)(a).

Regulation 6: Prescribed enactments for the purposes of paragraph 48(1)(a) of the Act

15. Paragraph 48(1)(a) of the Act sets out restrictions on dealing in securities and futures contracts by a person who is, or has at any time been, appointed for the purposes of the Act or any other prescribed Act. Regulation 14 of the Regulations lists the prescribed Acts for the purposes of paragraph 48(1)(a).

16. This regulation amends regulation 14 of the Regulations by adding the Futures Industry Act 1986 to the list of Acts prescribed for the purposes of paragraph 48(1)(a).

Regulations 7: Prescribed enactments for the purposes of subsection 49(1) of the Act

17. Subsection 49(1) provides that a person (other than a member, acting member or member of staff of the National Companies and Securities Commission) who is appointed for the purposes of the Act or any other prescribed Act or who is authorised to perform or exercise any function or power of the Commission shall inform the Commission of any interest he might have in matters he is required to consider in the course of his official duties. Regulation 15 of the Regulations lists the prescribed Acts for the purposes of subsection 49(1).

18. This proposed regulation amends regulation 15 of the Regulations by adding the Futures Industry Act 1986 to the list of Acts prescribed for the purposes of subsection 49(1).

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