

Reprint
as at 1 April 2008

**Investment Advisers (Disclosure)
Act 1996**

Public Act 1996 No 104
Date of assent 2 September 1996

Investment Advisers (Disclosure) Act 1996: repealed, on 29 February 2008, by section 12(2) of the Securities Markets Amendment Act 2006 (2006 No 47).

Contents

	Page
Title	2
1 Short Title and commencement	2
2 Interpretation	2
Disclosure by investment advisers and investment brokers	
3 Initial disclosure by investment advisers and investment brokers	8
4 Request disclosure by investment advisers	9
Method of disclosure	
5 Method of disclosure	11

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Ministry of Commerce

	Disclosure not to be misleading	
6	Disclosure not to be misleading	11
	Enforcement	
7	Power to order certain persons not to give investment advice or receive investment money or investment property	11
8	Injunctions may be granted by Court for contravention	12
9	Order to disclose information	13
10	Civil action for failure to disclose	14
11	Offences and penalties	14
12	Regulations	15

An Act to require the disclosure of certain information by persons who—

- (a) Give investment advice to the public; or**
- (b) Receive money or property for investment from the public as intermediaries**

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Investment Advisers (Disclosure) Act 1996.
- (2) Subject to subsection (3) of this section, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.
- (3) This Act shall come into force on the 1st day of October 1997 if no Order in Council is made under subsection (2) of this section appointing a date that is earlier than that date as the date for the coming into force of this Act.

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—
 - Address** means,—
 - (a) In the case of an individual, both—
 - (i) The address of the individual's principal place of business in New Zealand (if any) or, if the

individual does not have a place of business in New Zealand, the address of the individual's principal place of business outside New Zealand; and

- (ii) The city, town, or district (whether in New Zealand or elsewhere) in which the principal residence of the individual is situated:
- (b) In any other case, the address of the person's principal place of business in New Zealand (if any) or, if the person does not have a place of business in New Zealand, the address of the person's principal place of business outside New Zealand:

Business includes any profession, trade, or undertaking, whether or not carried on with the intention of making a pecuniary profit

Buy means purchase, acquire, or subscribe for, or agree to buy, purchase, acquire, or subscribe for

Court means a District Court

Director, in relation to a body corporate or unincorporate, includes any person who has substantial control or influence over the conduct of the affairs of the body

Disclosure means disclosure under either section 3 or section 4 of this Act

Employment includes a relationship in the nature of employment

Investment advice and **advice** mean—

- (a) A recommendation, opinion, or guidance given to a member of the public in relation to buying or selling (or not buying or selling) securities; and
- (b) Without limiting paragraph (a) of this definition, include any such recommendation, opinion, or guidance, that is communicated by letter, newspaper, periodical, broadcasting, sound recording, television, cinematographic film, video, or any form of electronic or other means of communication; but—
- (c) Do not include—
 - (i) Any such recommendation, opinion, or guidance given by a person whose principal occupation

is that of a journalist and that is given in that person's capacity as a journalist; or

- (ii) Any such guidance about the procedure for buying or selling securities:

Investment adviser and **adviser** mean a person (whether or not the person is also an investment broker) who, in the course of the person's business or employment, gives investment advice; and,—

- (a) Where a person is giving investment advice in the course of his or her employment, include both that person and his or her employer; but
- (b) Do not include the issuer or a promoter or a trustee (within the meaning of the Securities Act 1978 or the Unit Trusts Act 1960) or statutory supervisor (within the meaning of the Securities Act 1978), of the particular securities to which the advice relates; and
- (c) Do not include a person who only transmits investment advice relating to particular securities given by the issuer or a promoter or a trustee (within the meaning of the Securities Act 1978 or the Unit Trusts Act 1960) or statutory supervisor (within the meaning of the Securities Act 1978), of those securities:

Investment broker and **broker** mean a person (whether or not the person is also an investment adviser) who, in the course of the person's business or employment, receives investment money or investment property; and,—

- (a) Where a person is receiving such investment money or investment property in the course of his or her employment, include both that person and his or her employer; but
- (b) Do not include—
 - (i) The issuer or a trustee (within the meaning of the Securities Act 1978 or the Unit Trusts Act 1960); or
 - (ii) A nominated person of a trustee (within the meaning of the Unit Trusts Act 1960); or

- (iii) A nominee of a nominated person of a trustee (within the meaning of the Unit Trusts Act 1960); or
 - (iv) A statutory supervisor (within the meaning of the Securities Act 1978); or
 - (v) A security registrar appointed by the issuer— of a security to which the investment money or investment property relates; and
- (c) Do not include a person who only transmits investment money or investment property to a person to whom paragraph (b) of this definition applies, without being able to apply the money or property for any other purpose:

Investment broker and broker: paragraph (b) of this definition was substituted, as from 3 June 1998, by section 2(1) Investment Advisers (Disclosure) Amendment Act 1998 (1998 No 51).

Investment money and money, in relation to an investment broker, mean any money received from, or on account of, a member of the public in relation to buying or selling securities

Investment money and money: this definition was substituted, as from 3 June 1998, by section 2(2) Investment Advisers (Disclosure) Amendment Act 1998 (1998 No 51).

Investment property and property, in relation to an investment broker, mean security certificates or other valuable property received from, or on account of, a member of the public in relation to buying or selling securities

Investment property and property: this definition was substituted, as from 3 June 1998, by section 2(3) Investment Advisers (Disclosure) Amendment Act 1998 (1998 No 51).

Investor means a member of the public to whom investment advice is given, or on whose behalf investment money or investment property is held by an investment adviser or an investment broker

Person includes an individual, a corporation, an unincorporated body of persons, and an association or combination of individuals or corporate or unincorporated bodies

Receive, in relation to a document, information, or other matter, includes receive by electronic or other means that

enables the recipient to readily store the matter in a permanent and legible form

Remuneration means a commission, fee, or other benefit or advantage, whether pecuniary or not, and whether direct or indirect; but does not include a salary or wages of a fixed amount

Security means a security (within the meaning of the Securities Act 1978) that is being, or has previously been, offered to the public for subscription; but does not include—

- (a) A security exempted from Part 2 of the Securities Act 1978 by any of paragraphs (b) to (h) of section 5(1) of that Act; or
- (b) A call **debt security** as defined in regulations made under that Act:

Sell includes—

- (a) Allot, transfer, dispose of, withdraw, or terminate; and
- (b) Agree to sell, allot, transfer, dispose of, withdraw, or terminate:

Seller includes an issuer within the meaning of section 2(1) of the Securities Act 1978

Send, in relation to a document, information, or other matter, includes send by electronic or other means that enables the recipient to readily store the matter in a permanent and legible form

Voting security has the same meaning as in section 2 of the Securities Markets Act 1988

Voting security: this definition was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the word “Markets” for the word “Amendment”.

Working day means a day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day; and
- (b) A day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year; and
- (c) If the 1st day of January in any year falls on a Friday, the following Monday; and

- (d) If the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday:

Writing includes—

- (a) The recording of words in a permanent and legible form; and
- (b) The display of words by any form of electronic or other means of communication in a manner that enables the words to be readily stored in a permanent form and, with or without the aid of any equipment, to be retrieved and read;—

and **written** has a corresponding meaning.

- (2) For the purposes only of determining whether investment advice is given to the public or investment money or investment property is received from the public, section 3 of the Securities Act 1978 (which relates to the construction of references to offering securities to the public) shall apply as if every reference in that section to an offer of securities were a reference to the giving of investment advice or receiving of investment money or investment property, as the case may be.
- (3) For the purposes of this Act, unless the context otherwise requires, **associated persons** or **persons associated with each other** are—
- (a) Persons who are **relatives** within the meaning of the Income Tax Act 2007; or
- (b) Persons who are partners to whom the Partnership Act 1908 applies; or
- (c) Bodies corporate that consist substantially of the same shareholders or are under the control of the same persons; or
- (d) A body corporate and a person who has the power, directly or indirectly, to exercise, or control the exercise of, the right to vote attached to 25 percent or more of the voting securities of the body corporate; or
- (e) A body corporate and a person who is a director or principal officer of the body corporate.

Section 2(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Disclosure by investment advisers and investment brokers

3 Initial disclosure by investment advisers and investment brokers

- (1) Every investment adviser and investment broker (or, in the case of an adviser or broker that is a body corporate or unincorporate, any of whose directors or secretary) who, during the 5 years preceding the date of giving investment advice or receiving investment money or investment property, as the case may be,—
 - (a) Has been convicted of an offence against this Act, or of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961); or
 - (b) Was a director or principal officer of a body corporate at the time the body corporate committed such an offence; or
 - (c) Has been adjudged bankrupt; or
 - (d) Has been prohibited by an Act or by a court from taking part in the management of a company or a business,—shall, in accordance with section 5 of this Act, disclose that fact to the investor concerned before giving the investment advice or receiving the investment money or the investment property.
- (2) Every investment broker who receives investment money or investment property shall, before receiving the money or property, disclose to the investor concerned, in accordance with section 5 of this Act, a brief description of the procedures of the broker (or, where the broker is acting in the course of his or her employment, of the employer) relating to the receipt and disbursement of the money or receipt and distribution of the property by the broker, including—
 - (a) How payment or delivery of money or delivery of property should be made to the broker; and
 - (b) Whether or not the money or property received by the broker will be held on trust for the investor, and will be

- so held until it is disbursed or distributed in accordance with the investor's instructions; and
- (c) What records will be kept by the broker in relation to the money or property, whether the investor has access to those records, and the terms of any such access; and
 - (d) Whether or not the receipt, holding, and disbursement of the money and the receipt, holding, and distribution of the property, by the broker will be audited by an auditor and, if so, the name of the auditor; and
 - (e) The extent, if any, to which the broker can use the money or property for the benefit of the broker or any other person; and
 - (f) Such other information as is required to be disclosed under this subsection by regulations made under this Act.
- (3) For the purposes of subsection (2)(d) of this section, the term **auditor** means a person who would, if the broker were an issuer of securities, be a qualified auditor within the meaning of section 2C of the Securities Act 1978.

Subsection (2) was amended, as from 3 June 1998, by section 3(1)(a) Investment Advisers (Disclosure) Amendment Act 1998 (1998 No 51) by omitting the words "investment adviser and". It was further amended, as from 3 June 1998, by section 3(1)(b) of that Act by omitting the words "adviser or".

Subsection (3) was amended, as from 3 June 1998, by section 3(2) Investment Advisers (Disclosure) Amendment Act 1998 (1998 No 51) by omitting the words "adviser or".

4 Request disclosure by investment advisers

- (1) Every investment adviser shall, on request (whether made orally or in writing) by an investor to whom that adviser is giving or, during the preceding month has given, investment advice, disclose to that investor, as soon as practicable, and in any event not later than 5 working days after the request and in accordance with section 5 of this Act, such of the following information (current at the date of the request) as has not already been disclosed to the investor in accordance with that section:
- (a) The name of any relevant organisation with which the adviser has a relationship and a description of that relationship:

- (b) The types of securities about which the adviser gives advice; and, if the adviser gives advice only about securities of a particular issuer or particular issuers, a statement to this effect and the name of each of the issuers concerned:
- (c) Any qualifications of the adviser that are relevant to the giving of investment advice, when those qualifications were obtained, and a brief description of the extent to which the adviser has kept up to date the knowledge gained in obtaining those qualifications:
- (d) A brief description of the adviser's experience as an investment adviser:
- (e) Whether or not the adviser or an associated person has, or will or may have, a direct or indirect pecuniary or other interest in giving investment advice to the investor (being an interest that is reasonably likely to influence the adviser in giving the advice) and, if so, the nature of that interest:
- (f) Without limiting paragraph (e) of this subsection, if the adviser or an associated person has received, or will or may receive,—
 - (i) Directly or indirectly, from a person (other than the investor); and
 - (ii) In connection with the giving of the investment advice or a transaction resulting from the giving of the advice,—

remuneration that is reasonably likely to influence the adviser in giving the advice, the nature and (to the extent practicable) the amount or rate of the remuneration, and the name of the person from whom the remuneration has been, or will or may be, received:
- (g) Such other information as is required to be disclosed under this subsection by regulations made under this Act.

- (2) In this section, the term **request** means a request for any or all of the information referred to in paragraphs (a) to (g) of subsection (1) of this section.

Method of disclosure

5 Method of disclosure

Subject to regulations made under this Act, disclosure under this Act to an investor must,—

- (a) Unless the disclosure is made by way of broadcasting (within the meaning of the Broadcasting Act 1989), be made in writing; and
- (b) In the case of an investment adviser or investment broker, other than an employee of an investment adviser or investment broker, state the name, address, and business telephone number of the investment adviser or investment broker concerned; and
- (c) In the case of an investment adviser or investment broker who is an employee of an investment adviser or investment broker, state the name of that employee; and
- (d) Be either received by the investor or delivered or sent to the investor at the investor's last known address or an address (including an electronic address) specified by the investor for this purpose.

Disclosure not to be misleading

6 Disclosure not to be misleading

Disclosure under this Act must not be deceptive, misleading, or confusing in a material respect at the time that it is made.

Enforcement

7 Power to order certain persons not to give investment advice or receive investment money or investment property

- (1) Where a person—
- (a) Has been convicted of an offence against this Act, or of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961); or

- (b) Has failed, more than once, to comply with this Act; or
- (c) Was a director or principal officer of a body corporate at the time the body corporate committed such an offence or so failed,—

the Court may make an order prohibiting or restricting the person from doing all or any of the following things:

- (d) Giving investment advice to, or receiving investment money or investment property from, the public:
 - (e) Acting as a director, or taking part directly or indirectly in the management or control, of any company or business that is an investment adviser or an investment broker:
 - (f) Being an employee, or acting as agent, of an investment adviser or an investment broker in a capacity that allows the person to take part in the giving of investment advice to, or receiving investment money or investment property from, the public.
- (2) Any person may, with the leave of the Court, apply to the Court for an order under this section.
 - (3) An order under this section—
 - (a) May be for a specified period of time or without any time limit, and may be made on such terms and conditions as the Court thinks fit; and
 - (b) May be cancelled or varied at any time by the Court.
 - (4) In proceedings under this section, the Court may make an order for the payment by a party to the proceedings of the whole or part of the full costs (including reasonable costs incurred between solicitor and client, fees, and other expenses) incurred by any other party to the proceedings, and, in any such case, the costs so awarded are recoverable as a debt by the party against whom they have been awarded to the party in whose favour they have been awarded.

8 Injunctions may be granted by Court for contravention

- (1) The Court may, on the application of any person made with the leave of the Court, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention of a provision of this Act or an attempt to contravene such a provision.

- (2) The Court may, at any time, rescind or vary an injunction granted under this section.
- (3) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—
 - (a) If it is satisfied that the person has engaged in conduct of that kind—
 - (i) Grant an injunction restraining the person from engaging in conduct of that kind; or
 - (ii) If, in the opinion of the Court, it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,— whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) If it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind,—
 - (i) Grant an injunction restraining the person from engaging in conduct of that kind; or
 - (ii) If, in the opinion of the Court, it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,— whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engaged in conduct of that kind.

9 Order to disclose information

Where, on the application of any person made with the leave of the Court, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of this Act, the Court may (whether or not that person has previously engaged in such conduct), make an order requiring that person, or any other person involved in the contravention, to disclose, at that person's own expense, to the public, or to a particular person or to persons of a particular class, in such manner as is specified in the order, such information, or information of

such kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that person has access.

10 Civil action for failure to disclose

(1) Where, on the application (made with the leave of the Court) of any person—

- (a) Who has received investment advice from an investment adviser; or
- (b) Whose investment money or investment property has been paid or delivered to an investment adviser or an investment broker,—

the Court is satisfied that the adviser or broker has engaged in conduct constituting a significant contravention of a provision of this Act, the Court may (whether or not that adviser or broker has previously engaged in such conduct and whether or not the person has suffered any loss as a result of the conduct), make an order requiring that adviser or broker to pay to the person an amount determined by the Court not exceeding,—

- (c) If the adviser or broker is an individual, \$10,000; or
- (d) In any other case, \$30,000—

together with the costs (including reasonable costs incurred between solicitor and client, fees, and other expenses) incurred in respect of the proceedings.

(2) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.

11 Offences and penalties

(1) Every person who, without reasonable excuse, contravenes any of the provisions of this Act commits an offence and is liable on summary conviction, to a fine not exceeding,—

- (a) If the person is an individual, \$10,000; or
- (b) In any other case, \$30,000.

(2) Where a person is convicted, whether in the same or separate proceedings, of 2 or more offences in respect of contraventions of the same provisions of this Act and those contraventions are of the same or a substantially similar nature and occurred at or about the same time, the aggregate amount of any fines imposed on that person in respect of those convictions shall not

exceed the amount of the maximum fine that may be imposed in respect of a conviction for a single offence.

- (3) Proceedings under this section may be commenced at any time within 3 years after the matter giving rise to the contravention arose.

12 Regulations

- (1) The Governor-General may from time to time, by Order in Council, in accordance with the recommendation of the Securities Commission, make regulations for all or any of the following purposes:
- (a) Requiring information to be disclosed under section 3 or section 4 of this Act:
 - (b) Prescribing the method of disclosure under this Act:
 - (c) Providing for such other matters, not inconsistent with this Act, as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) The provisions of section 70(3) of the Securities Act 1978, including the provisos, shall apply in relation to any recommendation by the Securities Commission.
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Contents

- 1 General
 - 2 About this eprint
 - 3 List of amendments incorporated in this eprint (most recent first)
-

Notes**1 General**

This is an eprint of the Investment Advisers (Disclosure) Act 1996. It incorporates all the amendments to the Investment Advisers (Disclosure) Act 1996 as at 1 April 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Securities Markets Amendment Act 2006 (2006 No 47): section 12(2)
