

Securities Markets Act 1988

Public Act 1988 No 234
Date of assent 21 December 1988

The title of this Act was substituted, as from 1 December 2002, by section 4(1) Securities Markets Amendment Act 2002 (2002 No 44). It previously read “Securities Amendment Act 1988”.

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This Act was previously the Securities Amendment Act 1988, and the long title was effectively repealed following this becoming a principal Act pursuant to section 4(1) Securities Markets Amendment Act 2002 (2002 No 44).

1 Short Title and commencement

- (1) This Act is the Securities Markets Act 1988.
- (2) Except as provided in subsection (3) of this section, this Act shall come into force on the date on which it receives the Royal assent.
- (3) Part 2 (except section 36), Part 3 (except section 41), and sections 42 to 44 of this Act shall come into force on the 1st day of July 1989.

Subsection (1) was substituted, as from 1 December 2002, by section 4(2) Securities Markets Amendment Act 2002 (2002 No 44).

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

business rules means the rules made by a securities exchange that govern the conduct of—

- (a) business on securities markets operated by the securities exchange:
- (b) persons authorised to undertake trading activities on those securities markets

business rules: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Buy includes purchase, and acquire, and agree to buy, purchase, or acquire, and **buyer** has a corresponding meaning

chief executive means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

chief executive: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Commission means the Securities Commission established under the Securities Act 1978

Commission: this definition was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words “Securities Act 1978” for the words “principal Act”

company means a company, or an overseas company, within the meaning of section 2(1) of the Companies Act 1993

company: this definition was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

company: this definition was substituted, as from 15 April 2004, by section 3 Securities Markets Amendment Act 2004 (2004 No 32).

Company secretary means a company secretary of a company within the meaning of the Companies Act 1955

Company secretary: this definition was inserted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

conduct rules means the business rules and the listing rules of a securities exchange

conduct rules: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Consideration includes consideration other than money

continuous disclosure direction has the meaning set out in section 36ZP

continuous disclosure direction: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

continuous disclosure exemption means,—

- (a) if section 19C does not apply to an exchange, an exemption or waiver of a continuous disclosure provision or provisions of the registered exchange's listing rules; or
- (b) if section 19C applies to an exchange, an exemption from a provision or provisions of regulations made under section 19Q that apply to that exchange

continuous disclosure exemption: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

continuous disclosure obligation means section 19B or section 19C (whichever is applicable)

continuous disclosure obligation: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

continuous disclosure provisions has the meaning set out in section 19D

continuous disclosure provisions: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

control, in subpart 1 of Part 2B, has the meaning set out in section 36S

control: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

co-operative company means a company that is registered as a co-operative company under the Co-operative Companies Act 1996

co-operative company: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Court means, in relation to any matter, the Court before which the matter is to be determined

Court: this definition was substituted, as from 1 December 2002, by section 5(2) Securities Markets Amendment Act 2002 (2002 No 44).

Director means—

- (a) In relation to a company, any person occupying the position of a director of the company by whatever name called:
- (b) In relation to a partnership (other than a special partnership), any partner:
- (c) In relation to a special partnership, any general partner:

- (d) In relation to a body corporate or unincorporate, other than a company, partnership, or special partnership, any person occupying a position in the body that is comparable with that of a director of a company:
- (e) In relation to any other person, that person:

directors' and officers' disclosure obligation means any of sections 19T to 19V

directors' and officers' disclosure obligation: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

document means any record of information; and includes—

- (a) anything on which there is writing or any image; and
- (b) information recorded by means of any article or device (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device; and
- (c) material subsequently derived from information recorded by that means

document: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

generally available to the market has the meaning set out in section 19F

generally available to the market: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

holding company has the same meaning as in sections 5 and 6 of the Companies Act 1993

holding company: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Inside information in relation to a public issuer, means information which—

- (a) Is not publicly available; and
- (b) Would, or would be likely to, affect materially the price of the securities of the public issuer if it was publicly available:

listed, in relation to securities of a public issuer, means securities of the issuer that are approved for trading on the relevant registered exchange's market (and, for the avoidance

of doubt, securities do not cease to be listed merely because trading in those securities is suspended)

listed: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

listing rules means the rules made by a securities exchange that relate to—

- (a) the governance of the persons who are parties to listing agreements with the securities exchange; and
- (b) the entry into, and revocation of, those listing agreements

listing rules: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

material information has the meaning set out in section 19E

material information: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Minister: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

non-listed securities means securities that are not listed

non-listed securities: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

officer, for the purposes of Part 2, in relation to a public issuer,—

- (a) means a person, however designated, who is concerned or takes part in the management of the public issuer's business; but
- (b) excludes any class or classes of persons that are declared by regulations not to be officers for the purposes of this Act

officer: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

operate, in relation to a securities market, includes control the operation of that market

operate: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Person includes a corporation sole, a company or other body corporate (whether incorporated in New Zealand or

elsewhere), an unincorporated body of persons, a public body, and a Government department

Prescribed means prescribed by regulations made under the authority of this Act

Principal officer in relation to a body corporate or other body, means—

- (a) A director of the body; or
- (b) A person in accordance with whose directions or instructions any or all of the directors of the body are accustomed to act:

Provided that for the purposes of this Act, a person shall not be regarded as a person in accordance with whose directions or instructions any or all of the directors of a body are accustomed to act by reason only that the directors act on advice given by that person solely in a professional capacity:

Public issuer means—

- (a) A person who is a party to a listing agreement with a registered exchange:
- (b) A person who was previously a party to a listing agreement with a registered exchange, in respect of any action or event or circumstance to which this Act applied while the person was a party to a listing agreement with a registered exchange:

Public issuer: this definition was substituted, as from 26 October 1993, by section 3 Securities Amendment Act 1993 (1993 No 120).

Public issuer: this definition was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44), by substituting the words “registered exchange” for the words “stock exchange” in each place where they occur.

registered exchange means,—

- (a) a body corporate registered under section 36F:
- (b) a body corporate that is treated as if it were registered as a registered exchange under section 36X(3):
- (c) a subsidiary of a registered exchange if the subsidiary operates a securities market

registered exchange: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

registered exchange's market means a securities market operated by a registered exchange

registered exchange's market: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

relevant interest has the meaning set out in section 5

relevant interest: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

securities exchange means a body corporate that operates a securities market

securities exchange: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

securities market means a market, exchange, or other facility for trading securities

securities market: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Security means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and includes—

- (a) Any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property); and
- (b) Any renewal or variation of the terms or conditions of any existing security:

Sell includes dispose of, and agree to sell or dispose of, and **seller** has a corresponding meaning

Stock exchange *[Repealed]*

Stock exchange: this definition was repealed, as from 1 December 2002, by section 5(3) Securities Markets Amendment Act 2002 (2002 No 44).

[Repealed]

subsidiary has the same meaning as in sections 5 and 6 of the Companies Act 1993

subsidiary: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Substantial security holder in relation to a public issuer or other body, means a person who has a relevant interest in 5 percent or more of the voting securities of that public issuer or body

Trading day means a day during which securities are traded on a registered exchanges market

Trading day: this definition was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words “registered exchanges market” for the words “stock exchange”.

transacting shareholder has the same meaning as in section 4 of the Co-operative Companies Act 1996

transacting shareholder: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Trustee corporation means Public Trust or the Maori Trustee or any corporation authorised by any Act of the General Assembly to administer the estates of deceased persons and other trust estates

Trustee corporation: this definition was amended, as from 1 March 2002, by section 170(1) Public Trust Act (2001 No 100) by substituting the words “Public Trust” for the words “the Public Trustee”. See clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

voting right, in subpart 1 of Part 2B, has the meaning set out in section 36S.

voting right: this definition was inserted, as from 1 December 2002, by section 5(1) Securities Markets Amendment Act 2002 (2002 No 44).

Voting security in relation to a public issuer or other body, means a security of the public issuer or body which confers a right to vote at meetings of members or shareholders (whether or not there is any restriction or limitation on the number of votes that may be cast by or on behalf of the holder of the security), not being a right to vote that, under the conditions attached to the security, is exercisable only in one or more of the following circumstances

- (a) During a period in which a dividend (or part of a dividend) in respect of the security is in arrears:
- (b) On a proposal to reduce the capital of the public issuer or body:
- (c) On a proposal that affects rights attached to the security:
- (d) On a proposal to put the public issuer or body into liquidation:
- (e) On a proposal for the disposal of the whole of the property, business, and undertaking of the public issuer or body:
- (f) During the liquidation of the public issuer or body;

and includes a security which, in accordance with the terms of the security, is convertible into a security of that kind.

Voting security: this definition was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by substituting the words “meetings of members or shareholders” for the words “general meetings of members”.

Voting security: paragraph (d) of this definition was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Voting security: paragraph (f) of this definition was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by substituting the word “liquidation” for the words “winding up”.

(2) In this Act,—

- (a) a person is an **associated person** of another person if—
 - (i) they are acting jointly or in concert; or
 - (ii) either person acts, or is accustomed to act, in accordance with the wishes of the other person; or
 - (iii) they are related bodies corporate within the meaning of section 5(7); or
 - (iv) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
 - (v) they are both, directly or indirectly, under the control of the same person; but
- (b) a director of a company or other body corporate is not an associated person of that company or body corporate merely because he or she is a director of that company or body corporate.

(3) Any term or expression that is defined in the Securities Act 1978 and used, but not defined, in this Act has the same meaning as in the Securities Act 1978.

Subsections (2) and (3) were inserted, as from 1 December 2002, by section 5(4) Securities Markets Amendment Act 2002 (2002 No 44).

3 Meaning of insider

- (1) For the purposes of Part 1 of this Act, **insider** in relation to a public issuer, means—
 - (a) The public issuer:

- (b) A person who, by reason of being a principal officer, or an employee, or company secretary of, or a substantial security holder in, the public issuer, has inside information about the public issuer or another public issuer:
 - (c) A person who receives inside information in confidence from a person described in paragraph (a) or paragraph (b) of this subsection about the public issuer or another public issuer:
 - (d) A person who, by reason of being a principal officer, or an employee, or company secretary of, or a substantial security holder in, a person described in paragraph (c) of this subsection, has that inside information:
 - (e) A person who receives inside information in confidence from a person described in paragraph (c) or paragraph (d) of this subsection about the public issuer or another public issuer:
 - (f) A person who, by reason of being a principal officer, or an employee, or company secretary of, or a substantial security holder in, a person described in paragraph (e) of this subsection, has that inside information.
- (2) For the purposes of paragraph (b) of subsection (1) of this section, a principal officer, or an employee, or company secretary of, or a substantial security holder in, the public issuer, who has inside information about the public issuer or another public issuer is presumed, in the absence of evidence to the contrary, to have that inside information by reason of being a principal officer, employee, company secretary or substantial security holder.
- (3) For the purposes of paragraph (d) of subsection (1) of this section, a principal officer, or an employee, or company secretary of, or a substantial security holder in, a person described in paragraph (c) of that subsection who has inside information referred to in that paragraph is presumed, in the absence of evidence to the contrary, to have that inside information by reason of being a principal officer, employee, company secretary or substantial security holder.
- (4) For the purposes of paragraph (f) of subsection (1) of this section, a principal officer, or an employee, or company secretary of, or a substantial security holder in, a person

described in paragraph (e) of that subsection who has inside information referred to in that paragraph is presumed, in the absence of evidence to the contrary, to have that inside information by reason of being a principal officer, employee, company secretary or substantial security holder.

- (5) For the purposes of this Act, a person who was, at any time, an insider of a public issuer because that person was a principal officer, company secretary, or employee of, or a substantial security holder in, the public issuer, continues to be an insider of that public issuer for a period of 6 months after the date on which that person ceases to be a principal officer, company secretary or employee or substantial security holder.

3A What is material information in relation to futures contract

4 Extended meaning of security

For the purposes of Part 1 of this Act **security** includes—

- (a) Any form of beneficial interest in a security;
- (b) The power to exercise any right to vote attached to a security;
- (c) The power to control the exercise of any right to vote attached to a security;
- (d) The power to acquire or dispose of a security;
- (e) The power to control the acquisition or disposition of a security by any person;
- (f) Any power which may exist or arise at any time under any trust, agreement, arrangement, or understanding relating to a security to—
 - (i) Exercise the right to vote attached to a security; or
 - (ii) Control the exercise of the right to vote attached to a security; or
 - (iii) Acquire or dispose of a security; or
 - (iv) Control the acquisition or disposition of a security by any person.

5 Meaning of relevant interest

- (1) For the purposes of this Act a person has a relevant interest in a voting security or other security (whether or not that person is the registered holder of it) if that person—
- (a) Is a beneficial owner of the security; or
 - (b) Has the power to exercise any right to vote attached to the security; or
 - (c) Has the power to control the exercise of any right to vote attached to the security; or
 - (d) Has the power to acquire or dispose of the security; or
 - (e) Has the power to control the acquisition or disposition of the security by another person; or
 - (f) Under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the security (whether or not that person is a party to it)—
 - (i) May at any time have the power to exercise any right to vote attached to the security; or
 - (ii) May at any time have the power to control the exercise of any right to vote attached to the security; or
 - (iii) May at any time have the power to acquire or dispose of, the security; or
 - (iv) May at any time have the power to control the acquisition or disposition of the security by another person.
- (2) Where a person has a relevant interest in a security by virtue of subsection (1) of this section and—
- (a) That person or its directors are accustomed or under an obligation, whether legally enforceable or not, to act in accordance with the directions, instructions, or wishes of any other person in relation to—
 - (i) The exercise of the right to vote attached to the security; or
 - (ii) The control of the exercise of any right to vote attached to the security; or
 - (iii) The acquisition or disposition of the security; or
 - (iv) The exercise of the power to control the acquisition or disposition of the security by another person; or

- (b) Another person has the power to exercise the right to vote attached to 20 percent or more of the securities of that person; or
 - (c) Another person has the power to control the exercise of the right to vote attached to 20 percent or more of the securities of that person; or
 - (d) Another person has the power to acquire or dispose of 20 percent or more of the securities of that person; or
 - (e) Another person has the power to control the acquisition or disposition of 20 percent or more of the securities of that person—
that other person also has a relevant interest in the security.
- (3) A body corporate or other body has a relevant interest in a security in which another body corporate that is related to that body corporate or other body has a relevant interest.
- (4) A person who has, or may have, a power referred to in any of paragraphs (b) to (f) of subsection (1) of this section, has a relevant interest in a security regardless of whether the power—
- (a) Is expressed or implied:
 - (b) Is direct or indirect:
 - (c) Is legally enforceable or not:
 - (d) Is related to a particular security or not:
 - (e) Is subject to restraint or restriction or is capable of being made subject to restraint or restriction:
 - (f) Is exercisable presently or in the future:
 - (g) Is exercisable only on the fulfilment of a condition:
 - (h) Is exercisable alone or jointly with another person or persons.
- (5) A power referred to in subsection (1) of this section exercisable jointly with another person or persons is deemed to be exercisable by either or any of those persons.
- (6) A reference to a power includes a reference to a power that arises from, or is capable of being exercised as the result of, a breach of any trust, agreement, arrangement, or understanding, or any of them, whether or not it is legally enforceable.
- (7) For the purposes of this Act, a body corporate is related to another body corporate if—

- (a) the other body corporate is its holding company or subsidiary within the meaning of sections 5 and 6 of the Companies Act 1993; or
- (b) more than half of its issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital) is held by the other body corporate and bodies corporate related to that other body corporate (whether directly or indirectly, but other than in a fiduciary capacity); or
- (c) more than half of the issued shares of each of them (other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital) is held by shareholders or members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
- (d) The businesses of the bodies corporate have been so carried on that the separate business of each body corporate, or a substantial part thereof, is not readily identifiable; or
- (e) There is another body corporate to which both bodies corporate are related.

Subsection (1) was amended, as from 1 December 2002, by section 6(1) Securities Markets Amendment Act 2002 (2002 No 44) by inserting the words “or other security” after the words “voting security” in the first place where they occur.

Subsection (1)(a) to (f) were amended, as from 1 December 2002, by section 6(2) Securities Markets Amendment Act 2002 (2002 No 44) by omitting the word “voting” from each place where it occurs

Subsections (2), (3) and (4) were amended, as from 1 December 2002, by section 6(2) Securities Markets Amendment Act 2002 (2002 No 44) by omitting the word “voting” from each place where it occurs

Subsection (7)(a) to (c) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsection (7)(a) to (c) was substituted, as from 15 April 2004, by section 4 Securities Markets Amendment Act 2004 (2004 No 32).

5A Extension of basic rule to powers or controls exercisable through trust, agreement, etc

5B Extension of basic rule to interests held by other persons under control or acting jointly

6 Relevant interests to be disregarded in certain cases

- (1) For the purposes of Part 2 of this Act, notwithstanding section 5 of this Act, no account shall be taken of a relevant interest of a person in a voting security or other security if—
- (a) The ordinary business of the person who has the relevant interest consists of, or includes, the lending of money or the provision of financial services, or both, and that person—
 - (i) Has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of that person; and
 - (ii) Has been designated by the Commission, by notice in the *Gazette*, as a person to whom this paragraph applies or is a member of a class of persons designated by the Commission, by notice in the *Gazette*, as a class of persons to which this paragraph applies, as the case may be, and that designation has not been revoked by the Commission; or
 - (b) That person has the relevant interest by reason only of acting for another person to acquire or dispose of that security on behalf of the other person in the ordinary course of business of a sharebroker and that person—
 - (i) Is a member of a stock exchange; or
 - (ii) Has been designated by the Commission, by notice in the *Gazette*, as a person to whom this paragraph applies and that designation has not been revoked by the Commission; or
 - (c) That person has the relevant interest by reason only that he or she has been authorised by resolution of the directors or other governing body of a body corporate to act as its representative at a particular meeting of mem-

- bers, or class of members, of a public issuer, and a copy of the resolution is deposited with the public issuer not less than 48 hours before the meeting; or
- (d) That person has the relevant interest solely by reason of being appointed as a proxy to vote at a particular meeting of members, or of a class of members, of the public issuer and the instrument of that person's appointment is deposited with the public issuer not less than 48 hours before the meeting; or
- (e) That person—
- (i) Is a trustee corporation or a nominee company; and
 - (ii) Has the relevant interest by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee company; and
 - (iii) Has been designated by the Commission, by notice in the *Gazette*, as a person to whom this paragraph applies and that designation has not been revoked by the Commission; or
- (f) The person has the relevant interest by reason only that the person is a bare trustee of a trust to which the security is subject.
- (2) For the purposes of subsection (1)(f) of this section, a trustee may be a bare trustee notwithstanding that he or she is entitled as a trustee to be remunerated out of the income or property of the trust.

Subsection (1) was amended, as from 1 December 2002, by section 7(1) Securities Markets Amendment Act 2002 (2002 No 44) by inserting the words “or other security” after the words “voting security” in the first place where they occur.

Subsection (1) was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words “subpart 3 of Part 2” for the words “Part 2 of this Act”.

Subsection (1)(b)(i) was substituted, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (1)(f) was amended, as from 1 December 2002, by section 7(2) Securities Markets Amendment Act 2002 (2002 No 44) by omitting the word “voting”.

6A Application of Part 1 to Reserve Bank of New Zealand

Nothing in section 7 or section 11 of this Act applies to the purchase or sale by the Reserve Bank of New Zealand of securities issued by the Reserve Bank of New Zealand or by the Crown.

Section 6A was inserted, as from 1 February 1990, by section 184 Reserve Bank of New Zealand Act 1989 (1989 No 157).

6B Act binds the Crown

This Act binds the Crown.

Section 6B was inserted, as from 1 December 2002, by section 8 Securities Markets Amendment Act 2002 (2002 No 44).

Part 1
Insider trading

7 Liability of insider who deals in securities of a public issuer

- (1) An insider of a public issuer who has inside information about the public issuer and who—
 - (a) Buys securities of the public issuer from any person; or
 - (b) Sells securities of the public issuer to any person—is liable to the persons referred to in subsection (2) of this section.
- (2) The persons to whom the insider is liable are—
 - (a) In a case where the insider buys securities of the public issuer, any person from whom the securities are bought for any loss incurred by that person in selling them to the insider;
 - (b) In a case where the insider sells securities of the public issuer, any person to whom the securities are sold for any loss incurred by that person in buying them from the insider;
 - (c) The public issuer for—
 - (i) The amount of any gain made or loss avoided by the insider in buying or selling the securities; and
 - (ii) Any amount which the Court considers to be an appropriate pecuniary penalty.

- (3) The maximum amount for which an insider is liable under paragraphs (a), (b) and (c)(i) of subsection (2) of this section, combined, shall not exceed the greater of those separate amounts for which the insider is liable.
- (4) The amount of any pecuniary penalty shall not exceed—
 - (a) The consideration for the securities; or
 - (b) Three times the amount of the gain made or the loss avoided by the insider in buying or selling the securities—whichever is the greater.

8 Exceptions to section 7

- (1) No action shall be brought against a director, or company secretary, or employee of a public issuer under section 7 of this Act if—
 - (a) The securities are sold or purchased in that person's own name or in the name, or on behalf, of that person's spouse or child; and
 - (b) In selling or buying the securities that person complies with a procedure operated by the public issuer for ensuring that no director, company secretary or employee who has inside information about the securities of the public issuer uses that information in selling or buying securities of the public issuer for personal gain; and
 - (c) The procedure is approved by the Commission by notice in the *Gazette* in relation to—
 - (i) Public issuers generally; or
 - (ii) Public issuers generally other than any specified public issuer; or
 - (iii) Any specified public issuer; and
 - (d) The Commission has not withdrawn that approval.
- (2) No action shall be brought against an insider under section 7 of this Act in respect of the purchase of securities which results from—
 - (a) A take-over offer made by the insider in accordance with section 4 of the Companies Amendment Act 1963; or
 - (b) An offer made by the insider pursuant to any takeovers code that is in force the Takeovers Act 1993,—

as the case may be.

- (3) No action shall be brought against an insider under section 7 of this Act, in relation to the sale or purchase of securities in a public issuer, if—
- (a) Arrangements existed to ensure that no individual who took part in the decision to buy or sell the securities received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and
 - (b) No individual who took part in the decision to buy or sell the securities received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and
 - (c) every individual who had the information and every individual who took part in the decision to buy or sell the securities acted in accordance with the arrangements referred to in paragraph (a).
- (4) An insider is not liable under section 7 in relation to the insider buying or selling non-listed securities in a co-operative company if—
- (a) the insider is a transacting shareholder of the company; and
 - (b) the insider buys or sells the securities in the ordinary course of business.
- (5) For the avoidance of doubt and for the purposes of subsection (4), an insider is not acting outside the ordinary course of business merely because the insider buys or sells non-listed securities in the company in connection with the buying or selling of a business or business assets.

Subsection (2) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsection (2)(b) was amended, as from 1 December 2002, by section 38 Takeovers Amendment Act 2002 (2002 No 45) by omitting the words “Section 28 of”

Subsection (3)(b) was amended, as from 3 May 2001, by section 6(1) Securities Amendment Act 2001 (2001 No 25) by adding the expression “; and”.

Subsection (3)(c) was inserted, as from 3 May 2001, by section 6(1) Securities Amendment Act 2001 (2001 No 25).

Subsections (4) and (5) were inserted, as from 1 December 2002, by section 9 Securities Markets Amendment Act 2002 (2002 No 44).

8A Who is information insider**8B Meaning of inside information****8C Information insider must not trade****8D Information insider must not disclose inside information****8E Information insider must not advise or encourage trading****8F Criminal liability for insider conduct****9 Liability of insider for tipping about securities of a public issuer**

- (1) An insider of a public issuer who has inside information about the public issuer and who—
- (a) Advises or encourages any person to—
 - (i) Buy or sell securities of the public issuer; or
 - (ii) Advise or encourage any other person to buy or sell securities of the public issuer; or
 - (b) Communicates the information, or causes the information to be disclosed, to a person knowing or believing that person or another person will, or is likely to,—
 - (i) Buy or sell securities of the public issuer; or
 - (ii) Advise or encourage another person to buy or sell securities of the public issuer—is liable to the persons referred to in subsection (2) of this section.
- (2) The persons to whom the insider is liable are—
- (a) Any person who sells securities of the public issuer to a person who is advised or encouraged by the insider to buy securities of the public issuer for any loss incurred by that person:
 - (b) Any person who buys securities of the public issuer from a person who is advised or encouraged by the insider to sell securities of the public issuer for any loss incurred by that person:

- (c) Any person who sells securities of the public issuer to a person referred to in subsection (1)(a)(ii) of this section who is advised or encouraged to buy the securities for any loss incurred by that person:
 - (d) Any person who buys securities of the public issuer from a person referred to in subsection (1)(a)(ii) of this section who is advised or encouraged to sell the securities for any loss incurred by that person:
 - (e) Any person who sells securities of the public issuer to a person referred to in subsection (1)(b)(i) or (ii) of this section for any loss incurred by that person:
 - (f) Any person who buys securities of the public issuer from a person referred to in subsection (1)(b)(i) or (ii) of this section for any loss incurred by that person:
 - (g) The public issuer for—
 - (i) Any consideration or benefit received by the insider; and
 - (ii) Any gains made, or losses avoided, by the persons referred to in subsection (2) of this section in buying the securities from or selling them to the persons to whom the insider is liable; and
 - (iii) Any amount which the Court considers to be an appropriate pecuniary penalty.
- (3) The maximum amount for which an insider is liable under paragraphs (a) to (f) and (g)(i) and (ii) of subsection (2) of this section, combined, shall not exceed the greater of the separate amounts for which the insider is liable.
- (4) The amount of any pecuniary penalty shall not exceed—
- (a) The combined total consideration for the securities paid or received by the persons referred to in subsection (2) of this section in buying them from or selling them to the persons to whom the insider is liable; or
 - (b) Three times the combined amounts of the gains made, or the losses avoided, by those persons—
- whichever is the greater.

- 9A Exception for disclosure required by enactment**
- 9B Exceptions in respect of underwriting agreements**
- 9C Exception in case of knowledge of person's own intentions or activities**
- 9D Exception for agent executing trading instruction only**
- 9E Exceptions for takeovers**
- 9F Exception for redemption of units in unit trust**
- 9G Exception for Reserve Bank**
- 10 Exception to section 9**
 - (1) No action shall be brought under section 9 of this Act against an insider which does an act to which that section applies in relation to the securities of a public issuer if—
 - (a) Arrangements existed to ensure that no individual who took part in that act received, or had access to, the inside information or was influenced, in relation to that act, by an individual who had the information; and
 - (b) No individual who took part in the act received, or had access to, the inside information or was influenced, in relation to that act, by an individual who had the information; and
 - (c) every individual who had the information and every individual who took part in the decision to buy or sell the securities acted in accordance with the arrangements referred to in paragraph (a).
 - (2) An insider is not liable under section 9 in relation to advising or encouraging any person to buy or sell non-listed securities in a co-operative company if—
 - (a) the person is a transacting shareholder of the company; and
 - (b) the person buys or sells the securities in the ordinary course of business.

- (3) An insider is not liable under section 9 in relation to communicating information or causing information to be disclosed to any person knowing or believing that the person will, or is likely to, buy or sell non-listed securities in a co-operative company if—
- (a) the person is a transacting shareholder of the company; and
 - (b) the person buys or sells the securities in the ordinary course of business.
- (4) For the avoidance of doubt and for the purposes of subsections (2) and (3), a person is not acting outside the ordinary course of business merely because the person buys or sells non-listed securities in the company in connection with the person buying or selling a business or business assets.

Subsection (1)(b) was amended, as from 3 May 2001, by section 6(2) Securities Amendment Act 2001 (2001 No 25) by adding the expression “and”.

Subsection (1)(c) was inserted, as from 3 May 2001, by section 6(2) Securities Amendment Act 2001 (2001 No 25).

Subsections (2) to (4) were inserted, as from 1 December 2002, by section 10 Securities Markets Amendment Act 2002 (2002 No 44).

10A Inside information obtained by independent research and analysis

10B Equal information

10C Options and trading plans

10D Chinese wall defence

11 Liability of insider who deals in securities of another public issuer

- (1) An insider of a public issuer who has inside information about another public issuer and who—
- (a) Buys securities of that other public issuer from any person; or
 - (b) Sells securities of that other public issuer to any person—

is liable to the persons referred to in subsection (2) of this section.

- (2) The persons to whom the insider is liable are—
 - (a) In a case where the insider buys securities of that other public issuer, any person from whom the securities are bought for any loss incurred by that person in selling them to the insider:
 - (b) In a case where the insider sells securities of that other public issuer, any person to whom the securities are sold for any loss incurred by that person in buying them from the insider:
 - (c) The public issuer in relation to which the insider is an insider for—
 - (i) The amount of any gain made or loss avoided by the insider in buying or selling the securities; and
 - (ii) Any amount which the Court considers to be an appropriate pecuniary penalty.
- (3) The maximum amount for which an insider is liable under paragraphs (a), (b) and (c)(i) of subsection (2) of this section, combined, shall not exceed the greater of the separate amounts for which the insider is liable.
- (4) The amount of any pecuniary penalty shall not exceed—
 - (a) The consideration for the securities; or
 - (b) Three times the amount of the gain made or the loss avoided by the insider in buying or selling the securities,—whichever is the greater.

11A Criminal liability for false or misleading statement or information

11B False or misleading appearance of trading, etc

11C Presumption as to false or misleading appearance of trading, etc

11D Criminal liability for false or misleading appearance of trading, etc

11E Application of subpart 1 to insider conduct in relation to futures contract

12 Exceptions to section 11

- (1) No action shall be brought against an insider under section 11 of this Act in respect of the purchase of securities which results from—
 - (a) A take-over offer made by the insider in accordance with section 4 of the Companies Amendment Act 1963; or
 - (b) An offer made by the insider pursuant to any takeovers code that is in force under the Takeovers Act 1993,—as the case may be.
- (2) No action shall be brought against an insider under section 11 of this Act, in relation to the sale or purchase of securities in a public issuer, if—
 - (a) Arrangements existed to ensure that no individual who took part in the decision to buy or sell the securities received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had that inside information; and
 - (b) No individual who took part in the decision to buy or sell the securities received, or had access to, the inside information or was influenced, in relation to the decision, by an individual who had the information; and
 - (c) every individual who had the information and every individual who took part in the decision to buy or sell the

securities acted in accordance with the arrangements referred to in paragraph (a).

- (3) No action shall be brought against an insider under section 11(2)(c) of this Act in relation to the sale or purchase of securities in a public issuer if the public issuer in relation to which that person is an insider consents to the sale or purchase.

Subsection (1) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsection (1)(b) was amended, as from 1 December 2002, by section 38 Takeovers Amendment Act 2002 (2002 No 45) by omitting the words “Section 28 of”

Subsection (2)(b) was amended, as from 3 May 2001, by section 6(3) Securities Amendment Act 2001 (2001 No 25) by adding the expression “; and”.

Subsection (2)(c) was inserted, as from 3 May 2001, by section 6(3) Securities Amendment Act 2001 (2001 No 25).

13 Liability of insider for tipping about securities of another public issuer

- (1) An insider of a public issuer who has inside information about another public issuer and who—
- (a) Advises or encourages any person to—
 - (i) Buy or sell securities of that other public issuer; or
 - (ii) Advise or encourage any other person to buy or sell securities of that other public issuer; or
 - (b) Communicates the information, or causes the information to be disclosed, to a person knowing or believing that person or another person will, or is likely to,—
 - (i) Buy or sell securities of that other public issuer; or
 - (ii) Advise or encourage any other person to buy or sell securities of that other public issuer—

is liable to the persons referred to in subsection (2) of this section.
- (2) The persons to whom the insider is liable are—
- (a) Any person who sells securities of the other public issuer to a person who is advised or encouraged by the insider to buy securities of that public issuer for any loss incurred by that person:

- (b) Any person who buys securities of that other public issuer from a person who is advised or encouraged by the insider to sell securities of that public issuer for any loss incurred by that person:
 - (c) Any person who sells securities of that other public issuer to a person referred to in subsection (1)(a)(ii) of this section who is advised or encouraged to buy the securities for any loss incurred by that person:
 - (d) Any person who buys securities of that other public issuer from a person referred to in subsection (1)(a)(ii) of this section who is advised or encouraged to sell the securities for any loss incurred by that person:
 - (e) Any person who sells securities of that other public issuer to a person referred to in subsection (1)(b)(i) or (ii) of this section for any loss incurred by that person:
 - (f) Any person who buys securities of that other public issuer from a person referred to in subsection (1)(b)(i) or (ii) of this section for any loss incurred by that person:
 - (g) The public issuer in relation to which the insider is an insider for—
 - (i) Any consideration or benefit received by the insider; and
 - (ii) Any gains made, or losses avoided, by the persons referred to in subsection (2) of this section in buying the securities from or selling the securities to the persons to whom the insider is liable; and
 - (iii) Any amount which the Court considers to be an appropriate pecuniary penalty.
- (3) The maximum amount for which an insider is liable under paragraphs (a) to (f) and (g)(i) and (ii) of subsection (2) of this section, combined, shall not exceed the greater of the separate amounts for which the insider is liable.
- (4) The amount of any pecuniary penalty shall not exceed—
- (a) The combined total consideration for the securities paid or received by the persons referred to in subsection (2) of this section in buying them from or selling them to the persons to whom the insider is liable; or

- (b) Three times the combined amounts of the gains made, or the losses avoided, by those persons— whichever is the greater.

14 Exception to section 13

No action shall be brought under section 13 of this Act against an insider which does an act to which that section applies in relation to the securities of a public issuer if—

- (a) Arrangements existed to ensure that no individual who took part in the act received, or had access to, the inside information or was influenced, in relation to the act, by an individual who had the inside information; and
- (b) No individual who took part in the act received, or had access to, the inside information or was influenced, in relation to the act, by an individual who had the inside information; and
- (c) every individual who had the information and every individual who took part in the decision to buy or sell the securities acted in accordance with the arrangements referred to in paragraph (a).

Paragraph (b) was amended, as from 3 May 2001, by section 6(4) Securities Amendment Act 2001 (2001 No 25) by adding the expression “; and”.

Paragraph (c) was inserted, as from 3 May 2001, by section 6(4) Securities Amendment Act 2001 (2001 No 25).

15 Certain terms defined in relation to extent of liability of insider

- (1) For the purposes of this Part of this Act,—
 - (a) A person who sells a security in a public issuer for less than its value incurs a loss equal to the difference between the value of the security and the consideration receivable:
 - (b) A person who buys a security in a public issuer for more than its value incurs a loss equal to the difference between the consideration payable and the value of the security:
 - (c) A person who buys a security in a public issuer for less than its value makes a gain equal to the difference be-

tween the value of the security and the consideration payable:

- (d) A person who sells a security in a public issuer for more than its value avoids a loss equal to the difference between the consideration receivable and the value of the security.
- (2) In this section **value**, in relation to a security in a public issuer, means the value the security would have had at the time of the sale or purchase if the inside information known to the insider about the public issuer was publicly available.

16 Pecuniary penalties

In determining the amount of any pecuniary penalty under this Part of this Act the Court shall have regard to all relevant matters, including—

- (a) The nature and extent of the dealing in the securities by the insider:
- (b) The extent of the gains made, or losses avoided, by the insider or others:
- (c) The nature and extent of any previous liability of the insider under this Part of this Act:
- (d) The relationship of the parties to the transaction or transactions giving rise to the insider's liability.

17 Shareholders may require public issuer to obtain legal advice

- (1) A person to whom this section applies who considers that a public issuer has, or may have, a cause of action against an insider under this Part of this Act may, with the prior approval of the Commission, by notice in writing, require the public issuer to obtain an opinion from a barrister or solicitor approved by the Commission on the question whether or not the public issuer has a cause of action against the insider.
- (1A) The Commission must give its approval under subsection (1) if it is satisfied that—
- (a) there is a serious issue to be determined in relation to the question of whether or not the public issuer has a cause of action against the insider; and

- (b) the barrister or solicitor who is to provide the opinion is independent and suitably qualified.
- (2) This section applies to—
 - (a) A holder of securities of the public issuer:
 - (b) A person who was a holder of securities of the public issuer at the time the securities in the public issuer, or other public issuer, were bought or sold.
- (3) The public issuer, shall, on receiving a notice under this section, give all information relating to the matter in its possession or available to it, to the barrister or solicitor who shall, after considering—
 - (a) Any representations made by the person who has required the matter to be referred to him or her and the public issuer; and
 - (b) The information made available to him or her; and
 - (c) Any other relevant matters,—advise the public issuer whether the public issuer has a cause of action against the insider under this Part of this Act.
- (4) A copy of the barrister's or solicitor's opinion shall be given by the public issuer to—
 - (a) The Commission:
 - (b) The person who required the public issuer to obtain it:
 - (c) Any holder of securities of the public issuer and any person who was a holder of securities of the public issuer when the securities in the public issuer were bought or sold, on the request of that holder of securities or person.
- (4A) Any confidential communications between the solicitor or barrister and any other person for the purposes of establishing whether the public issuer has a cause of action against the insider, are protected by absolute privilege.
- (5) The public issuer shall pay the barrister's or solicitor's fees.

Section 17 was amended, as from 3 May 2001, by section 6(5) Securities Amendment Act 2001 (2001 No 25) by substituting the words "holder of securities" for the word "member" wherever it occurs.

Subsection (1A) was inserted, as from 1 December 2002, by section 11 Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (4A) was inserted, as from 3 May 2001, by section 6(6) Securities Amendment Act 2001 (2001 No 25).

18 Shareholders may exercise public issuer's right of action

- (1) The right of action of a public issuer against an insider may, with the leave of the Court, be exercised by—
 - (a) A holder of securities of the public issuer; or
 - (b) A person who was a holder of securities of the public issuer at the time the securities in the public issuer, or any other public issuer, were sold or purchased.
- (2) The Court shall give leave to bring an action unless it is satisfied that—
 - (a) The public issuer does not have an arguable case against the insider; or
 - (b) There is good reason for not bringing the action.
- (3) In any case where a proceeding has been commenced by a public issuer against an insider—
 - (a) A holder of securities of the public issuer; or
 - (b) A person who was a holder of securities of the public issuer at the time the securities in the public issuer, or other public issuer, were bought or sold,—may, with the leave of the Court, take over the conduct of the proceeding.
- (4) The Court shall give leave to take over the conduct of a proceeding unless it is satisfied that—
 - (a) The public issuer is conducting the proceeding in a proper manner; or
 - (b) There is good reason for not continuing the proceeding.
- (5) The public issuer shall pay the costs of a person to whom leave is given under this section in bringing or continuing a proceeding against an insider irrespective of the result, and, if costs are awarded against that person, shall also pay those costs.
- (6) The Court may make an order requiring the public issuer or the directors to provide information or assistance in relation to a proceeding brought or taken over under this section.

Section 18 heading was substituted, as from 1 December 2002, by section 12(1) Securities Markets Amendment Act 2002 (2002 No 44).

Section 18 was amended, as from 3 May 2001, by section 6(5) Securities Amendment Act 2001 (2001 No 25) by substituting the words “holder of securities” for the word “member” wherever it occurs.

Subsection (6) was inserted, as from 1 December 2002, by section 12(2) Securities Markets Amendment Act 2002 (2002 No 44).

18A Commission may exercise public issuer's right of action

- (1) The Commission may exercise a public issuer's right of action against an insider in accordance with section 18B if it considers that it is in the public interest to do so.
- (2) In conducting proceedings under this section, the Commission must act in the public interest, but (subject to that duty) may take into account the interests of the public issuer.

Sections 18A to 18E were inserted, as from 1 December 2002, by section 13 Securities Markets Amendment Act 2002 (2002 No 44).

18B Requirements for Commission exercising public issuer's right of action

- (1) The Commission may commence proceedings under section 18A without the leave of the Court only if—
 - (a) the public issuer or another person has not yet commenced proceedings in exercise of that right of action; and
 - (b) the Commission gives written notice of its intention to bring proceedings to the public issuer; and
 - (c) within 10 working days of the Commission giving that notice, the public issuer does not—
 - (i) commence proceedings in exercise of that right of action; or
 - (ii) give written notice to the Commission that it objects to the Commission bringing the proceedings or controlling the conduct of the proceedings.
- (2) The Commission may, with the leave of the Court,—
 - (a) commence proceedings under section 18A if the public issuer objects under subsection (1)(c)(ii); or
 - (b) take over proceedings under section 18A if proceedings have been commenced by the public issuer or another person in exercise of that right of action.
- (3) The Court must give leave if it is satisfied that it is in the public interest for—
 - (a) the proceedings to be brought or continued; and
 - (b) the Commission, rather than the public issuer or other person, to control the conduct of the proceedings.

Sections 18A to 18E were inserted, as from 1 December 2002, by section 13 Securities Markets Amendment Act 2002 (2002 No 44).

18C Procedural requirements for leave to exercise public issuer's right of action

- (1) An applicant for leave under section 18 or section 18B must serve notice of an application for leave,—
 - (a) under section 18, on the public issuer; and
 - (b) under section 18B, on the public issuer and, if another person is controlling the conduct of proceedings, on that person.
- (2) In relation to that application for leave, the public issuer and any other person who is controlling the conduct of proceedings—
 - (a) may appear and be heard; and
 - (b) must inform the Court whether or not the public issuer or other person intends to bring, continue, or discontinue proceedings.

Sections 18A to 18E were inserted, as from 1 December 2002, by section 13 Securities Markets Amendment Act 2002 (2002 No 44).

18D Powers of Court for proceedings exercising public issuer's right of action

- (1) The Court may make any order it thinks fit in relation to proceedings brought or taken over under section 18 or section 18A, including (without limitation) giving directions for the conduct of the proceedings.
- (2) If the Commission proposes to commence proceedings under section 18A, the Court may grant interim relief on the application of the Commission, whether or not the Commission has given the required notice, obtained leave, or satisfied any other requirements for its exercise of a public issuer's right of action.
- (3) The Court may grant that interim relief on the conditions it thinks fit, including (without limitation) conditions as to the giving of notice or making of an application for leave.

Sections 18A to 18E were inserted, as from 1 December 2002, by section 13 Securities Markets Amendment Act 2002 (2002 No 44).

18E Proceedings must not be settled, compromised, or discontinued without approval

- (1) A public issuer must not settle, compromise, or discontinue any proceedings that it has commenced against an insider without the approval of the Court.
- (2) A person must not settle, compromise, or discontinue any proceedings that it has commenced or taken over under section 18 or section 18A without the approval of the Court.

Sections 18A to 18E were inserted, as from 1 December 2002, by section 13 Securities Markets Amendment Act 2002 (2002 No 44).

19 Distribution of amount recovered by public issuer from insider

- (1) Any money recovered by a public issuer from an insider shall be held by the public issuer on trust for distribution in accordance with the directions of the Court.
- (1A) Subsection (1) applies regardless of—
 - (a) whether or not proceedings have been commenced; or
 - (b) whether the money recovered from the insider is recovered by means of a judgment, a settlement, or a compromise; or
 - (c) whether the right of action is exercised by the public issuer, a member of the public issuer, a person who was a member of the public issuer, or the Commission.
- (2) The Court may direct that the amount recovered shall—
 - (a) Be distributed or paid to—
 - (i) Any other person who has obtained a judgment against the insider in respect of the same transaction:
 - (ii) Any other person who satisfies the Court that that person could obtain a judgment against the insider in respect of the same transaction:
 - (iii) Any holder of securities of the public issuer:
 - (iv) Any person who, at the time the securities were bought or sold, was a holder of securities of the public issuer:
 - (v) the Commission:
 - (b) Be retained by the public issuer.

- (3) The Court must distribute the amount recovered in the following order of priority:
- (a) if the proceedings were conducted (in whole or part) by the Commission, in paying its costs in conducting the proceedings; and
 - (b) then, if a person other than the public issuer has obtained a judgment against the insider (or satisfies the Court that the person could obtain judgment in a claim against the insider) in relation to the same transaction, in satisfying that judgment (or claim); and
 - (c) then, as the Court thinks fit, to or among any of the persons referred to in subsection (2) or in accordance with subsection (4).
- (4) The Court may, where it considers that the amount recovered, or any part of it, should not be distributed or retained by the public issuer, in accordance with subsection (2) of this section, direct that the amount recovered or any such part of it shall be paid or applied for charitable purposes in accordance with a scheme approved by the Court.
- (5) In giving a direction under this section the Court shall ensure that no part of any money recovered by the public issuer is paid to or for the benefit of the insider.

Subsection (1A) was inserted, as from 1 December 2002, by section 14(1) Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (2)(a)(i) was amended, as from 1 December 2002, by section 14(2) Securities Markets Amendment Act 2002 (2002 No 44) by omitting the word “also”.

Subsection (2)(a)(iii) and (iv) were amended, as from 3 May 2001, by section 6(5) Securities Amendment Act 2001 (2001 No 25) by substituting the words “holder of securities” for the word “member”.

Subsection (2)(a)(v) was inserted, as from 1 December 2002, by section 14(3) Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (3) was substituted, as from 1 December 2002, by section 14(4) Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (4) was amended, as from 1 December 2002, by section 14(4) Securities Markets Amendment Act 2002 (2002 No 44) by omitting the words “prepared by the public issuer and”.

Part 2

Disclosure

This heading was substituted, as from 1 December 2002, by section 15 Securities Markets Amendment Act 2002 (2002 No 44). It previously read “Disclosure of interests of substantial security holders in public issuers”.

Subpart 1—Continuous disclosure by public issuers

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

Purpose of this subpart

19A Purpose of this subpart

- (1) The purpose of this subpart is to provide for appropriate continuous disclosure by public issuers of material information that is not generally available to the market.
- (2) The following criteria are relevant to the implementation of that purpose (without limiting other relevant criteria):
 - (a) providing an appropriate level of protection for investors;
 - (b) seeking to maintain the integrity and international competitiveness of the New Zealand listed markets;
 - (c) ensuring that the benefits resulting from the continuous disclosure regime justify the costs, including the following costs:
 - (i) the value that a public issuer gives up if the information is not kept confidential; and
 - (ii) compliance costs for public issuers and registered exchanges in disclosing the information;
 - (d) ensuring reasonable consistency and predictability in the application of the continuous disclosure regime;
 - (e) avoiding unfair advantages resulting from inappropriate disclosure of information to some, but not all, investors;
 - (f) recognising the importance to the New Zealand listed markets of attracting and retaining public issuers;
 - (g) recognising the desirability of an effectively functioning framework of co-regulation of listed markets by registered exchanges and the Commission:

- (h) recognising the importance of maintaining international best practices for continuous disclosure in listed markets:
- (i) any principles applying to the co-ordination of business law between Australia and New Zealand set out in any agreement or memorandum of understanding between the Governments of New Zealand and Australia.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

Continuous disclosure obligation

19B Public issuers must disclose in accordance with listing rules if continuous disclosure listing rules apply

- (1) A public issuer must notify information in accordance with the continuous disclosure provisions of the listing rules of a registered exchange if—
 - (a) the public issuer is a party to a listing agreement with that exchange; and
 - (b) the public issuer has information that those continuous disclosure provisions require it to notify; and
 - (c) the information is material information that is not generally available to the market; and
 - (d) No regulations under section 19Q declare that section 19C applies to that exchange.
- (2) Subsection (1) does not affect or limit the situations in which action can be taken (other than under this Act) for a failure to comply with provisions of the listing rules of a registered exchange.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19C Public issuers must disclose in accordance with regulations if continuous disclosure regulations apply

A public issuer must notify information in accordance with the continuous disclosure provisions of regulations made under section 19Q if—

- (a) regulations under section 19Q declare that this section applies to a registered exchange; and

- (b) the public issuer is a party to a listing agreement with that exchange; and
- (c) the public issuer has information that those continuous disclosure provisions require it to notify; and
- (d) the information is material information that is not generally available to the market.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19D What are continuous disclosure provisions

For the purposes of this Act, **continuous disclosure provisions** means provisions that require a public issuer that is a party to a listing agreement with a registered exchange to notify information about events or matters as they arise for the purpose of that information being made available to participants in the registered exchange's market.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19E What is material information

- (1) For the purposes of this Act, **material information**, in relation to a public issuer, is information that—
 - (a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price or value of listed securities of the public issuer; and
 - (b) relates to particular securities, a particular public issuer, or particular public issuers, rather than to securities generally or public issuers generally.
- (2) For the purposes of subsection (1), a reasonable person would be taken to expect information to have a material effect on the price or value of listed securities of a public issuer if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to buy or sell those listed securities.
- (3) For the avoidance of doubt, subsection (2) does not limit what information a reasonable person would expect to have that effect.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19F What information is generally available to the market

- (1) For the purposes of this Act, information is **generally available to the market** if—
- (a) it is information that—
 - (i) has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in relevant securities; and
 - (ii) since it was made known, a reasonable period for it to be disseminated among those persons has expired; or
 - (b) it is likely that persons who commonly invest in relevant securities can readily obtain the information (whether by observation, use of expertise, purchase from other persons, or any other means); or
 - (c) it is information that consists of deductions, conclusions, or inferences made or drawn from either or both of the kinds of information referred to in paragraphs (a) and (b).
- (2) In this section, **relevant securities** means securities of a kind the price or value of which might reasonably be expected to be affected by the information.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

Enforcement by Commission

19G Commission may make orders requiring disclosure or corrective statements

- (1) The Commission may make an order under subsection (2)—
- (a) if it is satisfied that a public issuer has contravened a continuous disclosure obligation or a term or condition of a continuous disclosure exemption; and
 - (b) in accordance with sections 19H and 19I.
- (2) The Commission may order the public issuer—

- (a) to disclose information in accordance with the order for the purpose of securing compliance with that continuous disclosure obligation or the term or condition of that continuous disclosure exemption:
 - (b) to publish, at the public issuer's own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order.
- (3) The order may be made on the terms and conditions the Commission thinks fit.
- (4) The Commission may vary the order in the same way as it may make the order under this section.
- (5) The Commission may revoke the order or suspend the order on the terms and conditions it thinks fit.
- (6) The order is subject to appeal only in accordance with Part 3 of the Securities Act 1978.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19H Notice and submissions on Commission's orders

- (1) An order may be made under section 19G only if—
 - (a) the Commission gives the public issuer concerned and the relevant registered exchange at least 24 hours' written notice before making the order of—
 - (i) the nature of the alleged contravention; and
 - (ii) the proposed terms of the order; and
 - (iii) the reasons for the proposed order; and
 - (b) the Commission gives those persons an opportunity to make written submissions within that notice period; and
 - (c) the Commission has regard to any written submissions made to it within that notice period.
- (2) If an order is made under section 19G, the Commission—
 - (a) must, as soon as reasonably practicable, give written notice to the public issuer concerned and the relevant registered exchange of—
 - (i) the terms of the order; and
 - (ii) the reasons for the order; and
 - (b) may also give notice to any other person of those matters.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19I Limited notice and submissions for urgent orders

If the Commission thinks it necessary or desirable in the public interest for the order to be made more urgently than section 19H permits,—

- (a) it may give less than 24 hours' notice before it makes the order and the notice and submissions may be oral, not written; but
- (b) it must include in that notice the reasons for acting urgently and must otherwise comply with that section.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19J Offence for failure to comply with Commission orders

- (1) Every person who contravenes an order made under section 19G commits an offence and is liable on summary conviction to a fine not exceeding \$30,000.
- (2) No person may be convicted of an offence against subsection (1) if—
 - (a) the person proves that the contravention occurred without the person's knowledge of the order; or
 - (b) the contravention was in respect of matters that, in the Court's opinion, were immaterial or the Court thinks that the contravention, in the circumstances of the case, ought reasonably to be excused.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

Enforcement—Civil remedies

19K Court may make orders requiring disclosure or corrective statements

- (1) The Court may make an order under subsection (2), on the application of the Commission or any other person, if it is satisfied that a public issuer has contravened a continuous disclosure obligation or a term or condition of a continuous disclosure exemption.

- (2) The Court may order—
- (a) the public issuer to disclose information in accordance with the order for the purpose of securing compliance with that continuous disclosure obligation or the term or condition of that continuous disclosure exemption:
 - (b) the public issuer to publish, at the public issuer's own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order:
 - (c) for the purpose of securing compliance with any other order under this section, a person to do or refrain from doing a specified act.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19L Court may impose pecuniary penalties

- (1) The Court may make an order under subsection (2), on the application of the Commission, if it is satisfied that a public issuer has contravened a continuous disclosure obligation or a term or condition of a continuous disclosure exemption.
- (2) The Court may order the public issuer to pay to the Crown the pecuniary penalty that the Court determines to be appropriate, but not exceeding \$300,000.
- (3) In determining an appropriate penalty under this section, the Court must have regard to all relevant matters, including—
 - (a) the purpose of this subpart and the criteria stated in section 19A; and
 - (b) the nature and extent of the contravention; and
 - (c) the nature and extent of any loss or damage suffered by any person as a result of the contravention; and
 - (d) the circumstances in which the contravention took place; and
 - (e) whether or not the person has previously been found by the Court in proceedings under this subpart to have engaged in any similar conduct.
- (4) The proceedings under this section are civil proceedings, and the usual rules of the Court and rules of evidence for civil proceedings apply (including the standard of proof).

- (5) An application under subsection (1) may be made at any time within 3 years after the date on which the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19M Court may make compensatory orders

- (1) The Court may make an order under subsection (2) if it is satisfied, on the application of the Commission or any other person, that—
- (a) a public issuer has contravened a continuous disclosure obligation or a term or condition of a continuous disclosure exemption; and
 - (b) a person has suffered, or is likely to suffer, loss or damage because of the contravention.
- (2) The Court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce that loss or damage, including an order (without limitation) to—
- (a) direct the public issuer to pay to the aggrieved person the amount of the loss or damage;
 - (b) direct the public issuer to refund money or return property to the aggrieved person;
 - (c) if a contract has been entered into between the public issuer and the aggrieved person,—
 - (i) vary the contract or any collateral arrangement as specified in the order and, if the Court thinks fit, declare the contract or arrangement to have had effect as so varied on and after a date before the order was made, as specified in the order;
 - (ii) cancel the contract and, if the Court thinks fit, declare the cancellation to have had effect on and after a date before the order was made, as specified in the order;
 - (iii) require the public issuer to take any action the Court thinks fit to reinstate the parties as nearly as may be in their former positions:

- (d) for the purpose of securing compliance with any other order under this section, direct a person to do or refrain from doing a specified act.
- (3) The Court may make an order under this section whether or not the aggrieved person is a party to the proceedings.
- (4) An application under subsection (1) may be made at any time within 3 years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.

Subpart 1 (comprising sections 19A to 19S) were inserted as from 1 December 2002 by section 16 Securities Markets Amendment Act 2002 (2002 No 44). It previously read “Disclosure of interests of substantial security holders in public issuers”

19N Court may order payment of costs

If the Commission brings proceedings under this subpart and the Court makes any order against a person under this subpart, the Court may also order that person to pay the Commission’s costs and expenses in conducting the proceedings.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19O General provisions as to Court’s orders

- (1) Before making an order under this subpart, the Court may direct the person making the application for the order to—
 - (a) give notice of the application to those persons the Court thinks fit;
 - (b) publish notice of the application in the manner the Court thinks fit.
- (2) An order under this subpart may be made on the terms and conditions the Court thinks fit.
- (3) The Court may revoke, vary, or suspend an order made under this subpart on the terms and conditions the Court thinks fit.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19P Persons entitled to appear before Court

The following persons are entitled to appear and be heard at the hearing of an application to the Court under this subpart:

- (a) the applicant:
- (b) the public issuer:
- (c) a person who alleges that he or she has suffered, or is likely to suffer, loss or damage because of an alleged contravention:
- (d) the Commission:
- (e) the relevant registered exchange:
- (f) a person directed to be given notice of the application:
- (g) with the leave of the Court, any other person.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19PA No contravention of continuous disclosure provisions by person who takes reasonable steps to ensure public issuer complies

Regulations requiring continuous disclosure

19Q Regulations requiring continuous disclosure

- (1) The Governor-General may, on the recommendation of the Minister in accordance with section 19R or section 19S, make regulations for the purpose of providing, under section 19C, for continuous disclosure by public issuers of material information that is not generally available to the market.
- (2) Those regulations may—
 - (a) declare that section 19C applies to a registered exchange:
 - (b) contain requirements for the purpose of requiring public issuers that are parties to listing agreements with that exchange to notify information about events or matters as they arise (being material information that is not generally available to the market) for the purpose of that information being made available to participants in the registered exchange's market:
 - (c) determine the form in which, how, and when that information must be made available to participants in the registered exchange's market, or provide who may determine any of these matters:

- (d) determine the form of, method of, and any additional details required with, the notification of that information, or provide who may determine any of these matters:
 - (e) exempt (on terms and conditions, if any) persons, classes of persons, information, and classes of information from compliance with any provision or provisions of the regulations:
 - (f) provide for a specified person to exempt (on terms and conditions, if any) persons, classes of persons, information, and classes of information from compliance with any provision or provisions of the regulations, and to vary and revoke those exemptions:
 - (g) provide for a specified person or persons to carry out functions under the regulations, and the powers and procedures of that person or persons:
 - (h) require fees and charges to be paid in connection with the performance or exercise of a function or power referred to in paragraph (f) or paragraph (g), and prescribing those fees and charges or a means by which they may be calculated or ascertained:
 - (i) provide for transitional provisions.
- (3) A failure to comply with section 19R(3) or section 19S(2)(b) to (d) does not invalidate any regulations made under this section.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19R Requirements for regulations replacing continuous disclosure listing rules

- (1) This section applies if the Minister proposes to recommend regulations to declare that section 19C applies to a registered exchange.
- (2) The Minister may make a recommendation under section 19Q if the Minister—
 - (a) has had regard to the purpose of this subpart, the criteria stated in section 19A, and any other matters he or she considers relevant; and
 - (b) is satisfied that, over time, the continuous disclosure provisions of the registered exchange's listing rules, or

the registered exchange's administration of those provisions, has not achieved the purpose of this subpart.

- (3) The Minister must, before making that recommendation,—
- (a) give at least 3 months' written notice of the proposed recommendation, and of the Minister's reasons for his or her opinion under subsection (2)(b), to—
 - (i) the Commission; and
 - (ii) the relevant registered exchange; and
 - (iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposal; and
 - (b) have regard to any submissions made by those persons within the notice period given; and
 - (c) give at least 14 days' written notice to the persons in paragraph (a), and in the *Gazette*, before making the recommendation of his or her decision to do so and of the Minister's reasons for his or her opinion under subsection (2)(b).

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

19S Ongoing requirements for continuous disclosure regulations

- (1) This section applies if the Minister proposes to recommend regulations to amend, revoke, or replace regulations made under section 19Q.
- (2) The Minister must, before making a recommendation under section 19Q,—
 - (a) have regard to the purpose of this subpart, the criteria stated in section 19A, and any other matters he or she considers relevant; and
 - (b) give written notice of the proposed recommendation to—
 - (i) the Commission; and
 - (ii) the relevant registered exchange; and
 - (iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposal; and

- (c) have regard to any submissions made by those persons within the notice period given; and
- (d) give at least 14 days' written notice to the persons in paragraph (b), and in the *Gazette*, before making the recommendation of his or her decision to do so.

Subpart 1 (comprising sections 19A to 19S) was inserted, as from 1 December 2002, by section 16 Securities Markets Amendment Act 2002 (2002 No 44).

Subpart 2—Disclosure of relevant interests by directors and officers of public issuers

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

Directors' and officers' disclosure obligations

19SA Purpose of subpart

19T Directors and officers of public issuers must disclose relevant interests and dealings in relevant interests

- (1) A director or officer of a public issuer who has a relevant interest in a security of the public issuer or a related body corporate must disclose that fact, in accordance with section 19U, within 5 trading days of this section becoming applicable as a result of—
 - (a) the listing of the public issuer; or
 - (b) the person's appointment as a director or officer; or
 - (c) the commencement of this section.
- (2) A director or officer of a public issuer who acquires or disposes of a relevant interest in a security of the public issuer or a related body corporate must disclose that fact, in accordance with section 19U, within 5 trading days of the acquisition or disposal.
- (3) This section is subject to sections 19U to 19Y.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

19U What disclosure required

- (1) The director or officer must disclose the relevant interest, acquisition, or disposal—
 - (a) to the registered exchange with which the public issuer is listed; and
 - (b) in the interests register of the public issuer kept under this subpart.
- (2) The director or officer must also disclose, as required by regulations made under section 49, any further matters relating to the relevant interest, acquisition, or disposal required by those regulations.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

19V Form and method of disclosure

The director or officer must disclose the relevant interest, acquisition, or disposal in accordance with any regulations made under section 49 (which may govern the form and method of the disclosure).

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

19W Disclosure obligation applies for 6 months after ceasing to hold office

A person is treated as a director or officer for the purposes of this subpart for 6 months after that person ceases to be a director or officer, and must continue to comply with this subpart for that period.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

Exemptions

19X Exemptions for directors or officers of co-operative companies

- (1) A director or officer of a co-operative company who has a relevant interest in a non-listed security of that company does not have to disclose that fact under section 19T if—

- (a) the director or officer is a transacting shareholder of the company; and
 - (b) the interest was acquired by the director or officer in the ordinary course of business.
- (2) A director or officer of a co-operative company who acquires or disposes of a relevant interest in a non-listed security of that company does not have to disclose that fact under section 19T if—
- (a) the director or officer is a transacting shareholder of the company; and
 - (b) the director or officer acquires or disposes of the interest in the ordinary course of business.
- (3) For the avoidance of doubt and for the purposes of subsections (1) and (2), a person is not acting outside the ordinary course of business merely because the person acquires or disposes of non-listed securities in the company in connection with the person acquiring or disposing of a business or business assets.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

19Y Exemptions granted by Commission or regulations

The directors' and officers' disclosure obligations are subject to any exemptions granted by the Commission under section 48 or provided in regulations made under section 49.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

Interests register

19Z Public issuer must keep interests register

- (1) A public issuer must keep an interests register for disclosures under this subpart.
 - (2) The interests register must be kept in New Zealand at—
 - (a) the registered office of the public issuer; or
 - (b) the office of the public issuer's share registrar; or
 - (c) the principal place of business of the public issuer.
- (2A)

- (3) The interests register may be the same interests register as that kept under section 189(1)(c) of the Companies Act 1993.
- (4) This section and section 19ZA do not derogate from the Companies Act 1993.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). See clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

19ZA Inspection and copying of interests register

- (1) The interests register must be kept open for inspection by any person.
- (2) The interests register must be open for inspection between the hours of 9 am and 5 pm on each working day during the inspection period.
- (3) In subsection (2), inspection period means the period commencing on the third working day after the day on which notice of intention to inspect is served on the public issuer by the person concerned and ending with the eighth working day after the day of service.
- (4) A person may require a copy of, or extract from, an interests register to be sent to him or her—
 - (a) within 5 working days after he or she has made a request in writing for the copy or extract; and
 - (b) if he or she has paid a reasonable copy and administration fee determined by the public issuer.

Compare: 1993 No 105 ss 217, 218

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). See clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

Enforcement—Civil remedies

19ZB Commission may make orders requiring disclosure

- (1) The Commission may make an order under subsection (2)—
 - (a) if it is satisfied that a person has contravened a directors' and officers' disclosure obligation or a term or condition of an exemption from a directors' and officers' disclosure obligation; and
 - (b) in accordance with section 19ZC.

- (2) The Commission may order the person to disclose information in accordance with the order for the purpose of securing compliance with that directors' and officers' disclosure obligation or the term or condition of that exemption.
- (3) The order may be made on the terms and conditions the Commission thinks fit.
- (4) The Commission may vary the order in the same way as it may make the order under this section.
- (5) The Commission may revoke the order or suspend the order on the terms and conditions it thinks fit.
- (6) The order is subject to appeal only in accordance with Part 3 of the Securities Act 1978.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

19ZC Notice, submissions, and opportunity to be heard and represented on Commission's orders

- (1) An order may be made under section 19ZB only if—
 - (a) the Commission gives the person to whom the order is directed at least 48 hours' written notice before making the order of—
 - (i) the nature of the alleged contravention; and
 - (ii) the proposed terms of the order; and
 - (iii) the reasons for the proposed order; and
 - (b) the Commission gives that person an opportunity to—
 - (i) make written submissions within that notice period; and
 - (ii) have the matter determined following a meeting of the Commission within that notice period; and
 - (iii) be heard and represented by counsel at that meeting; and
 - (c) the Commission has regard to any written submissions made to it within that notice period and written or oral submissions made at that meeting.
- (2) If an order is made under section 19ZB, the Commission—
 - (a) must, as soon as reasonably practicable, give written notice to the person to whom the order is directed of—
 - (i) the terms of the order; and

- (ii) the reasons for the order; and
- (b) may also give notice to any other person of those matters.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

Enforcement—Offences

19ZD Offence for failure to comply with directors' and officers' disclosure obligation

- (1) Every person who is aware or ought reasonably to be aware of information that the person is required to disclose under section 19T, and who fails to disclose that information in accordance with a directors' and officers' disclosure obligation, commits an offence.
- (2) Every person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$30,000.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

19ZE Offence for failure to comply with Commission orders

- (1) Every person who contravenes an order made under section 19ZB commits an offence and is liable on summary conviction to a fine not exceeding \$30,000.
- (2) No person may be convicted of an offence against subsection (1) if—
 - (a) the person proves that the contravention occurred without the person's knowledge of the order; or
 - (b) the contravention was in respect of matters that, in the Court's opinion, were immaterial or the Court thinks that the contravention, in the circumstances of the case, ought reasonably to be excused.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

19ZF Offence relating to interest register

- (1) If a person fails, without reasonable excuse, to provide a copy of, or extract from, an interests register in accordance with a request under section 19ZA, the person commits an offence.
- (2) Every person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$5,000.

Subpart 2 (comprising sections 19T to 19ZF) was inserted, as from 3 May 2004, by section 16 Securities Markets Amendment Act 2002 (2002 No 44). *See* clause 2 Securities Markets Act Commencement Order 2004 (SR 2004/21).

Subpart 3—Disclosure of interests of substantial security holders in public issuers

This heading was inserted, as from 1 December 2002, by section 17 Securities Markets Amendment Act 2002 (2002 No 44).

**20 Substantial security holders to notify relevant interests
in public issuers**

- (1) Every person who, on the commencement of this section, is a substantial security holder in a public issuer, shall give notice that the person is a substantial security holder in the public issuer to—
 - (a) The public issuer; and
 - (b) every registered exchange by which the securities of the public issuer are listed.
- (2) Every notice under subsection (1) of this section shall—
 - (a) Be in the prescribed form; and
 - (b) Contain the prescribed information; and
 - (c) Be accompanied by, or have annexed, such documents, certificates, and statements as may be prescribed; and
 - (d) Be given in the prescribed manner; and
 - (e) Be given within 14 days after the commencement of this section.
- (3) Every person who, after the commencement of this section, becomes a substantial security holder in a public issuer shall give notice that the person is a substantial security holder in the public issuer to—
 - (a) The public issuer; and
 - (b) every registered exchange by which the securities of the public issuer are listed.

- (4) Every notice under subsection (3) of this section shall—
- (a) Be in the prescribed form; and
 - (b) Contain the prescribed information; and
 - (c) Be accompanied by, or have annexed, such documents, certificates, and statements as may be prescribed; and
 - (d) Be given in the prescribed manner; and
 - (e) Be given as soon as the person knows, or ought to know, that the person is a substantial security holder in the public issuer.

Subsection (1)(b) was substituted, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (2)(b) was substituted, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44).

21 Substantial security holders to notify changes in relevant interests in public issuers

- (1) Where—
- (a) There is a change in the total number of voting securities of a public issuer in which a substantial security holder has a relevant interest; and
 - (b) The difference between the number of such securities immediately after the change and the number of securities required to be stated in the last notice given by the substantial security holder to the public issuer under this subpart is equal to 1 percent or more of the total number of issued voting securities of the public issuer—
- the substantial security holder shall give notice of the change to—
- (c) The public issuer; and
 - (d) every registered exchange by which the securities of the public issuer are listed.
- (2) Every notice under subsection (1) of this section shall—
- (a) Be in the prescribed form; and
 - (b) Contain the prescribed information; and
 - (c) Be accompanied by, or have annexed, such documents, certificates, and statements as may be prescribed; and
 - (d) Be given in the prescribed manner; and
 - (e) Be given as soon as the person knows, or ought to know, of the change.

- (3) Where a person ceases to be a substantial security holder in a public issuer that person shall give notice that that person has ceased to be a substantial security holder in the public issuer to—
- (a) The public issuer; and
 - (b) every registered exchange by which the securities of the public issuer are listed.
- (4) Every notice under subsection (3) of this section shall—
- (a) Be in the prescribed form; and
 - (b) Contain the prescribed information; and
 - (c) Be accompanied by, or have annexed, such documents, certificates, and statements as may be prescribed; and
 - (d) Be given in the prescribed manner; and
 - (e) Be given as soon as the person knows, or ought to know, that the person has ceased to be a substantial security holder in the public issuer.

Subsection (1)(b) was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44), by substituting the words “this subpart” for the words “this part of this Act”

Subsection (1)(d) was substituted, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (3)(b) was substituted, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44).

22 Substantial security holders to notify changes in nature of relevant interests

- (1) Where there is any change in the nature of any relevant interest held by a substantial security holder in the voting securities of a public issuer the substantial security holder shall give notice of the change to—
- (a) The public issuer; and
 - (b) every registered exchange by which the securities of the public issuer are listed.
- (2) Every notice under subsection (1) of this section shall—
- (a) Be in the prescribed form; and
 - (b) Contain the prescribed information; and
 - (c) Be accompanied by, or have annexed, such documents, certificates, and statements as may be prescribed; and
 - (d) Be given in the prescribed manner; and

- (e) Be given as soon as the substantial security holder knows, or ought to know, of the change.

Subsection (1)(b) was substituted, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44).

23 Additional provisions relating to notices by substantial security holders

- (1) If a person becomes a substantial security holder in a public issuer, or there is a change in the total number of voting securities in a public issuer held by any person, solely by reason of the fact that that person is the trustee of a testamentary trust or the executor or administrator of the estate of a deceased person, the notice need not be given until 14 days after the grant of administration under the Administration Act 1969.
- (2) A person who would, but for this subsection, have to comply with any of sections 20, 21, or 22 of this Act does not have to comply with any of those sections if—
 - (a) The requirement to comply arises by reason only of the fact that by virtue of the application of any of paragraphs (b), (c), (d), or (e) of subsection (2) of section 5 of this Act that person, as well as another person, is a substantial security holder in a public issuer; and
 - (b) That other person complies.
- (3) A person who would, but for this subsection, have to comply with any of sections 20, 21, or 22 of this Act does not have to comply with any of those sections if—
 - (a) The requirement to comply arises by reason only of the fact that that person is related to another person who is required to comply with any of those sections; and
 - (b) That other person complies.
- (4) Every public issuer shall, at the request of a person by whom a notice is given, give to that person an acknowledgment of the notice in the prescribed manner.

24 Means of ascertaining total voting securities of public issuer

For the purposes of this subpart, the most recent statement contained in a document published by a public issuer and distributed to the holders of its voting securities of the total num-

ber of voting securities issued by that public issuer may be taken by a person to be the total number of voting securities issued by it unless that person knows that number is not correct and knows the correct number.

Section 24 was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44), by substituting the words “this subpart” for the words “this part of this Act”.

25 Public issuers to maintain file of notices

- (1) Every public issuer shall maintain a file in which it shall place, on receipt, in alphabetical order and with a chronological index, every notice given to it under sections 20, 21, and 22 of this Act and any information supplied to it under sections 28 and 29 of this Act.
- (2) The file shall be kept in New Zealand at—
 - (a) The registered office of the public issuer; or
 - (b) The office of the public issuer’s share registrar; or
 - (c) The principal place of business of the public issuer.
- (3) The file shall be open for at least 2 hours in each trading day to the inspection—
 - (a) Of any holder of securities of the public issuer;
 - (b) On payment of the prescribed fee, of any other person.
- (4) Any person is entitled, on payment of the prescribed fee, to a copy of the file, or a copy of a notice or other information filed in it.
- (5) Nothing in subsections (1) to (3) of this section derogates from any provision of the Companies Act 1993 or any other enactment.
- (6) Every person who fails to comply with a requirement of this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Subsection (1) was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by substituting the expression “29” for the expression “32”.

Subsection (5) was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by inserting the words “or the Companies Act 1993”.

Subsection (5) was amended, as from 15 April 2004, by section 5 Securities Markets Amendment Act 2004 (2004 No 32) by omitting the words “the Companies Act 1955 or”.

26 Public issuers to publish identity of substantial security holders

- (1) Every public issuer that is a company (but not an overseas company) must send a note stating the following matters to each shareholder with the annual report or notice sent under section 209 of the Companies Act 1993:
 - (a) the names of all persons who, according to the file kept under section 25 of this Act, are substantial security holders in the public issuer, as at a date not earlier than 3 months before the annual report or notice is sent under section 209 of the Companies Act 1993; and
 - (b) the number of voting securities of the public issuer in which, according to the file, each substantial security holder has a relevant interest as at that date; and
 - (c) the total number of issued voting securities of the public issuer as at that date.
- (2) Every other public issuer shall, not later than the 30th day of June in each year, send to every holder of its voting securities in New Zealand a notice showing, as at a date specified in the notice (but not a date earlier than 3 months before the date the notice is sent)—
 - (a) The names of all persons who, according to the file kept by it under section 25 of this Act, are substantial security holders of the public issuer; and
 - (b) The number of voting securities of the public issuer in which, according to the file, each substantial security holder has a relevant interest; and
 - (c) The total number of issued voting securities of the public issuer.
- (3) No civil or criminal proceedings lie against a public issuer for false or misleading information contained in the note required by subsection (1) of this section, or the notice required by subsection (2) of this section, as the case may be, if the information was derived by the public issuer under this subpart and the public issuer did not know that the information was false or misleading.
- (4) A public issuer who fails to comply with a requirement of this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Subsection (1) was amended, as from 1 October 1997, by section 8 Securities Amendment Act 1997 (1997 No 16) by substituting the words “statement of financial position” for the words “balance sheet”.

Subsection (1) was amended, as from 15 April 2004, by section 6(1) Securities Markets Amendment Act 2004 (2004 No 32) by substituting the words “must send a note stating the following matters to each shareholder with the annual report sent under section 209 of the Companies Act 1993 or the financial statements or summary financial statements sent under section 210 of that Act:” for the words “shall, in a note accompanying its statement of financial position laid before the public issuer in general meeting, state—”.

Subsection (1)(a) was amended, as from 15 April 2004, by section 6(2) Securities Markets Amendment Act 2004 (2004 No 32) by substituting the words “annual report is sent under section 209 of the Companies Act 1993 or the financial statements or summary financial statements are sent under section 210 of that Act” for the words “statement of financial position is laid before the public issuer in general meeting”.

Subsection (1) was substituted, as from 18 June 2007, by section 16(2) Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

Subsection (3) was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44), by substituting the words “this subpart” for the words “this part of this Act”.

27 Notice under this subpart not to affect incorporation of public issuer or constitute notice of trust

- (1) Nothing in, or done pursuant to, this subpart—
 - (a) Affects the incorporation of a public issuer; or
 - (b)
 - (c) limits sections 92, 93, or 94 of the Companies Act 1993.
- (2) A public issuer, is not, by virtue of anything done for the purposes of this subpart, affected with notice of, or put on enquiry as to, the rights of any person in relation to any securities.

The heading to section 27 was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the word “subpart” for the words “part”.

Section 27 was amended as from 1 December 2002 by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words “this subpart” for the words “this part of this Act” in both places where they occur.

Subsection (1) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsection (1)(b) was repealed, as from 15 April 2004, by section 7(1) Securities Markets Amendment Act 2004 (2004 No 32).

Subsection (1)(c) was amended, as from 15 April 2004, by section 7(2) Securities Markets Amendment Act 2004 (2004 No 32) by inserting the word “limits” before the word “sections”.

28 Public issuer may require disclosure of relevant interests

- (1) A public issuer may, and at the written request of a holder of securities or holders of securities of the public issuer holding in aggregate not less than 5 percent of the voting securities of the public issuer shall, by written notice, to a person who is registered as the holder of voting securities in that public issuer, require that person to disclose to the public issuer—
 - (a) The name and address of every person who holds a relevant interest in those voting securities and the nature of that interest; and
 - (b) To the extent that the registered holder is unable to supply any of the information referred to in paragraph (a) of this subsection in relation to a person holding a relevant interest, such other particulars as will, or are likely to, assist in identifying that person and the nature of that interest.
- (2) The notice shall be in the prescribed form or to like effect.
- (3) A registered holder of voting securities in a public issuer to whom a notice is given under this section shall disclose to the public issuer the information referred to immediately and in writing.

Subsection (1) was amended, as from 3 May 2001, by section 6(5) Securities Amendment Act 2001 (2001 No 25) by substituting the words “holder of securities” for the word “member”.

29 Public issuer may require person who holds relevant interest to disclose information

- (1) A public issuer may, and at the written request of a holder of securities or holders of securities of the public issuer holding in aggregate not less than 5 percent of the voting securities of the public issuer shall, by written notice, to any person who the public issuer believes has, or may have, a relevant interest in voting securities of the public issuer, require that person, for the purpose of assisting the public issuer to ascertain who is, or may be, a substantial security holder, to supply such information as it may specify.
- (2) The notice shall be in the prescribed form or to like effect.

- (3) A person to whom a notice is given under this section shall supply to the public issuer the information required immediately and in writing.

Subsection (1) was amended, as from 3 May 2001, by section 6(5) Securities Amendment Act 2001 (2001 No 25) by substituting the words “holder of securities” for the word “member”.

30 Jurisdiction of Court to make certain orders

Where—

- (a) There are reasonable grounds to suspect that a substantial security holder has not complied with sections 20, 21, or 22 of this Act in relation to a public issuer; or
- (b) A person has not complied with section 28 or section 29 of this Act in relation to a public issuer; or
- (c) There are reasonable grounds to suspect that, in a case where a notice has been given under section 28 of this Act, the identity of every person who has a relevant interest in the voting securities of a public issuer and the nature of that interest have not been disclosed—

the Court may, on the application of a person referred to in section 31 of this Act, make 1 or more of the orders referred to in section 32 of this Act.

31 Persons who may apply

The persons who may apply for an order are—

- (a) The Commission;
- (b) The public issuer;
- (c) A holder of securities in the public issuer;
- (d) A person who sold or purchased securities in the public issuer at a time when a substantial security holder had not complied with section 20 or section 21 or section 22 of this Act;
- (e) A person who has made—
 - (i) A take-over offer in accordance with section 4 of the Companies Amendment Act 1963 for securities of the public issuer; or
 - (ii) An offer for securities of the public issuer pursuant to any takeovers code that is in force under the Takeovers Act 1993,—

at a time when a substantial security holder had not complied with sections 20 to 22 of this Act (whether or not the offer has been accepted):

- (f) With the leave of the Court, any other person.

Paragraph (e) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Paragraph (e)(ii) was amended, as from 1 December 2002, by section 38 Takeovers Amendment Act 2002 (2002 No 45) by omitting the words “Section 28 of”.

32 Orders

- (1) The Court may make any of the following orders on an application under section 30 of this Act,—
- (a) An order directing a substantial security holder to comply with section 20 or section 21 or section 22 of this Act:
 - (b) An order directing any person to comply with a notice under section 28 or section 29 of this Act:
 - (c) An order directing any person named in the order to identify the persons who have relevant interests in any voting securities of the public issuer and the nature of those interests:
 - (d) An order prohibiting the exercise of such period as the Court thinks fit of any right to vote attaching to any voting securities of the public issuer:
 - (e) An order directing the public issuer not to make payment, or to defer making payment for such period as the Court thinks fit, of any sum or sums due from the public issuer in respect of any voting securities:
 - (f) An order directing the public issuer not to register the transfer or transmission of all or any voting securities:
 - (g) An order prohibiting the public issuer from issuing any securities in addition to, or in substitution for, or in replacement of, any voting securities:
 - (h) An order restraining a substantial security holder from disposing of all or any voting securities of the public issuer or any relevant interest in them:
 - (i) An order restraining a person who is, or who is entitled to be, registered as the holder of any voting securities

- of the public issuer from disposing of all or any voting securities or any relevant interest in them:
- (j) An order directing the disposal of any voting securities of the public issuer or any relevant interest in them:
 - (k) An order directing the forfeiture of any voting securities of the public issuer:
 - (l) An order declaring that the exercise of voting or other rights attaching to any voting securities of the public issuer is void and of no effect:
 - (m) For the purposes of securing compliance with any other order made under this subsection, an order directing the public issuer, or any other person, to do or refrain from doing a specified act.
- (2) An order under subsection (1) of this section may be made on such terms and conditions as the Court thinks fit.
- (3) Without limiting subsection (2) of this section, an order made under subsection (1)(j) of this section may require—
- (a) That the voting securities are, or any interest in them is, disposed of within a time specified by the Court:
 - (b) That neither the voting securities are, nor any interest in them is, disposed of to any specified person or class of persons:
 - (c) That the voting securities are, or any interest in them is, disposed of in a manner and on terms specified by the Court:
 - (d) That the proceeds of any disposition are—
 - (i) Applied towards the costs of the application; or
 - (ii) Paid in such amounts and to such persons as the Court specifies.
- (4) Before making an order under subsection (1) of this section the Court may direct that—
- (a) Notice of the application for the order is given to such persons as it thinks fit; and
 - (b) Notice of the application is published in such manner as it thinks fit.
- (5) The following persons are entitled to appear and be heard at the hearing of an application—
- (a) The applicant:
 - (b) The substantial security holder:

- (c) The registered holder of the voting securities:
 - (d) The public issuer:
 - (e) A person directed to be given notice of the application:
 - (f) With the leave of the Court, any other person.
- (6) An order under subsection (1) of this section may be revoked, varied or suspended and on such terms and conditions, as the Court thinks fit.

32A Exemption for persons under control or acting jointly with trustee corporations and nominee companies

33 Obligations of public issuer where order made to forfeit shares

- (1)
- (2)
- (3) Where the Court makes an order under section 32(1)(k) of this Act for the forfeiture of voting securities in a public issuer that is a company, that public issuer shall immediately cancel the securities.

Subsection (1) was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by inserting the words “registered under the Companies Act 1955”.

Subsections (1) and (2) were repealed, as from 15 April 2004, by section 8(1) Securities Markets Amendment Act 2004 (2004 No 32).

Subsection (3) was inserted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsection (3) was amended, as from 15 April 2004, by section 8(2) Securities Markets Amendment Act 2004 (2004 No 32) by substituting the words “that is a company” for the words “which is a company registered under the Companies Act 1993”.

34 Liability of substantial security holder for failure to notify relevant interest

- (1) In any case where a person sells any securities in a public issuer to a substantial security holder in that public issuer who has not complied with section 20 or section 21 or section 22 of this Act, the Court may make an order directing the substantial security holder to pay to that person the amount by which the value of the securities exceeds the price payable.

- (2) In any case where a person buys any securities in a public issuer from a substantial security holder in that public issuer who has not complied with section 20 or section 21 or section 22 of this Act, the Court may make an order directing the substantial security holder to pay to that person the amount by which the price payable exceeds the value of the securities.
- (3) If—
- (a) A person sells securities in a public issuer to, or buys securities in a public issuer from, a person who is not a substantial security holder in the public issuer; and
 - (b) At the time of the transaction a substantial security holder in that public issuer had not complied with section 20 or section 21 or section 22 of this Act—
- the Court may, on application by that person—
- (c) Where the securities are sold, make an order directing the substantial security holder to pay to the seller the amount by which the value of the securities exceeds the price payable:
 - (d) Where the securities are purchased, make an order directing the substantial security holder to pay to the purchaser the amount by which the price payable exceeds the value of the securities.
- (4) For the purposes of this section the value of securities shall be taken as—
- (a) In a case to which subsection (1) or subsection (3)(c) of this section applies, if the substantial security holder or a body corporate related to it makes a take-over offer (within the meaning of the Companies Amendment Act 1963), or makes an offer pursuant to any takeovers code that is in force under the Takeovers Act 1993, as the case may be, for the securities of the public issuer within 6 months of any purchase by it or a person referred to in subsection (3)(c) of this section, as the case may be,—
 - (i) The value of the consideration offered; or
 - (ii) The value that would be determined in accordance with paragraph (b) of this subsection—whichever is the higher:
 - (b) In any other case, the value the securities would have had at the time of the sale or purchase if the notice had

been given or the information that would have been included in the notice had become publicly available, as the case may be, on that date.

- (5) No application may be made under this section at any time later than—
- (a) Three years after the date on which the obligation of the substantial security holder to give notice under section 20 or section 21 or section 22 of this Act first arose; or
 - (b) One year after the notice was given—
- whichever is the earlier.
- (6) In any proceedings under this section if the Court is satisfied that the failure by a substantial security holder to comply with section 20 or section 21 or section 22 of this Act—
- (a) Was not deliberate; and
 - (b) Should be excused—
- the Court may, if it thinks fit—
- (c) Make an order directing that no order may be made against the substantial security holder under this section; or
 - (d) Make an order reducing the maximum liability of the substantial security holder under this section to an amount specified by the Court.

Subsection (4)(a) was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by inserting the words “, or makes an offer pursuant to any takeovers code that is in force under section 28 of the Takeovers Act 1993, as the case may be,”.

Subsection (4)(a) was amended, as from 1 December 2002, by section 38 Takeovers Amendment Act 2002 (2002 No 45) by omitting the words “Section 28 of”

35 Knowledge of relevant interest presumed

In any proceedings under this subpart, it shall be presumed in the absence of proof to the contrary, that a person knew, at a material time, of the existence of a relevant interest in voting securities in a public issuer or of a fact or matter concerning the existence of a relevant interest in the securities if, at that time, an employee or agent of that person knew in his or her capacity as employee or agent of the existence of the relevant interest or of a fact or matter concerning the existence of it.

Section 35 was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words “this subpart” for the words “this part of this Act”.

35A Evidence not otherwise admissible

[Repealed]

Section 35A was inserted, as from 28 July 1997, by section 10(1) Securities Amendment Act (No 2) 1997 (1997 No 54).

Section 35A was repealed, as from 1 December 2002, by section 18 Securities Markets Amendment Act 2002 (2002 No 44).

- 35B Form and method of notice requiring disclosure**
- 35BA Offence for failure to comply with substantial holding disclosure obligation**
- 35C Public issuers must maintain register of disclosures of substantial holdings**
- 35D Inspection and copying of substantial holdings register**
- 35E Offences relating to substantial holdings register**
- 35F Public issuers must publish information on substantial holdings**
- 35G Registered exchange must publish disclosures**
- 35H Offence for failing to publish information on substantial holdings or disclosures**
- 35I No liability for publication of substantial holdings**
- 35J Notice under this subpart not to affect incorporation of public issuer or constitute notice of trust**
- 36 Regulations for purpose of this subpart**
- (1) The Governor-General may from time to time, by Order in Council, on the recommendation of the Minister in accordance with subsection (6), make regulations prescribing—
- (a) The form of notices required under this subpart:
 - (b) The information that shall be contained in such notices:
 - (c) The documents, certificates, and statements that shall accompany or be annexed to such notices:
 - (d) The manner in which such notices shall be given and acknowledged:
 - (e) Fees payable for the purposes of section 25(3)(b) of this Act.

- (2) Without limiting subsection (1)(b) of this section, regulations prescribing the information that shall be contained in notices under section 20 of this Act may prescribe information relating to—
- (a) The number, nominal value (if any), and class of voting securities of a public issuer in which a relevant interest is held:
 - (b) The nature of the relevant interest:
 - (c) The terms and conditions, including consideration, of acquisition of the relevant interest:
 - (d) Other persons who have given notice under this subpart in relation to the voting securities.
- (3) Without limiting subsection (1)(b) of this section, regulations prescribing the information that shall be contained in notices under section 21(1) of this Act may prescribe information relating to—
- (a) The number, nominal value (if any), and class of voting securities of a public issuer in which a relevant interest is held before and after the change:
 - (b) The nature of the relevant interest before and after the change:
 - (c) The terms and conditions, including consideration, of any transaction from which the change results.
- (4) Without limiting subsection (1)(b) of this section, regulations prescribing the information that shall be contained in notices under section 21(3) of this Act may prescribe information relating to—
- (a) The number, nominal value (if any), and class of voting securities of the public issuer in which the person referred to in that subsection had a relevant interest as a substantial security holder and the nature of that relevant interest:
 - (b) The number, nominal value, and class of voting securities of the public issuer (if any) in which that person has a relevant interest and the nature of that interest:
 - (c) The terms and conditions, including consideration, of any transaction as a result of which that person ceased to be a substantial security holder.

- (5) Without limiting subsection (1)(b) of this section, regulations prescribing the information that shall be contained in notices under section 22 of this Act may prescribe information relating to—
- (a) The number, nominal value (if any), and class of voting securities of the public issuer in which the relevant interest is held:
 - (b) The nature of the change:
 - (c) The terms and conditions, including consideration, of any transaction from which the change results.
- (6) The Minister must consult with the Commission before making a recommendation under subsection (1).

The heading to section 36 was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words “this subpart” for the words “this part of this Act”.

Subsection (1) was amended, as from 1 December 2002, by section 19(1) Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words “on the recommendation of the Minister in accordance with subsection (6)” for the words “in accordance with the recommendation of the Commission”.

Subsections (1)(a) and (2)(d) were amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words “this subpart” for the words “this part of this Act”.

Subsections (2)(a), (3)(a), (4)(a), and (5)(a) were amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by inserting the words “(if any)”.

Subsection (6) was substituted, as from 1 December 2002, by section 19(2) Securities Markets Amendment Act 2002 (2002 No 44).

Part 2B

Securities exchanges

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Subpart 1—Registration, conduct, and control of exchanges

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Restrictions on activities relating to securities exchanges unless registered under this subpart

36A No holding out as securities exchange unless registered under this subpart

- (1) No person may, in connection with carrying on business in New Zealand,—
 - (a) use a style or title including the words “stock exchange” or “securities exchange”; or
 - (b) state or imply, or permit a statement or implication, that—
 - (i) the person is a registered securities exchange or authorised securities exchange; or
 - (ii) a securities market that the person operates is regulated under New Zealand law.
- (2) Subsection (1) does not apply to—
 - (a) a registered exchange; or
 - (b) a subsidiary of a registered exchange.
- (3) Every person who acts in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36B No operation of securities markets unless registered under this subpart (if restriction applies)

- (1) No person to whom this section applies may operate a securities market in New Zealand unless that person is—
 - (a) a registered exchange; or
 - (b) a subsidiary of a registered exchange.
- (2) Every person who acts in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36C Power to apply and remove restriction on operating securities markets

- (1) The Minister may, by notice in the *Gazette*,—
 - (a) declare, in accordance with section 36D, that section 36B applies to a person:
 - (b) declare that section 36B ceases to apply to a person.
- (2) The notice may include any exemption granted under section 36E.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36D Criteria and process for applying restriction on operating securities markets

- (1) The Minister may declare that section 36B applies to a person only if he or she is satisfied that the result of that section not applying to the person is likely to be detrimental to—
 - (a) the integrity or effectiveness of securities markets in New Zealand; or
 - (b) the confidence of investors in securities markets in New Zealand.
- (2) The Minister must, before making the declaration,—
 - (a) give at least 2 months' written notice of the proposed declaration, and of the Minister's reasons for his or her opinion under subsection (1), to—
 - (i) the person to whom it is proposed to apply section 36B; and
 - (ii) the Commission; and
 - (iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposed declaration; and
 - (b) have regard to any submissions made by those persons within the notice period given; and
 - (c) before making the declaration, give at least 14 days' written notice to the persons referred to in paragraph (a), and in the *Gazette*, of his or her intention to do so and of the reasons for his or her opinion under subsection (1).
- (3) A failure to comply with subsection (2) does not invalidate any notice published under section 36C.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36E Power to exempt securities markets from this Part

- (1) The Minister may, by notice in the *Gazette*, exempt a securities market, or class of securities markets, from any provision or provisions of this Part.
- (2) The exemption may be on any terms or conditions that the Minister thinks fit.
- (3) The exemption has effect according to its tenor.
- (4) In determining whether or not to grant an exemption, the Minister must seek the advice of the Commission.
- (5) The Minister may vary an exemption in the same way as the exemption may be granted under this section.
- (6) The Minister may, by notice in the *Gazette*, revoke an exemption granted under this section.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Registration of exchanges

36F Registration of exchanges

- (1) Any body corporate may apply to become a registered exchange by delivering to the chief executive—
 - (a) an application for registration in the form, and containing the information, required by the chief executive; and
 - (b) a copy of the proposed conduct rules for securities markets to be operated by the body corporate; and
 - (c) any fees required by regulations made under section 49 and evidence of payment to the Commission of the fees, charges, or costs required to be paid to it by those regulations.
- (2) The chief executive must register the body corporate as a registered exchange, by entering the name of the body corporate in a register, after—
 - (a) receipt of the documents and fees referred to in subsection (1); and
 - (b) approval of the proposed conduct rules under section 36O.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Conduct rules of registered exchanges

36G Registered exchange must operate securities markets with conduct rules that include required matters and have effect

- (1) A registered exchange must operate each of its securities markets in accordance with conduct rules for that market that—
 - (a) include the required matters set out in section 36H; and
 - (b) have effect under section 36I.
- (2) A registered exchange that acts in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36H Required matters for conduct rules

Conduct rules for a securities market must—

- (a) include rules (**listing rules**) that—
 - (i) require each person whose securities are listed on that market to be a party to a listing agreement with the registered exchange; and
 - (ii) relate to the governance of those persons; and
 - (iii) relate to the entry into, and revocation of, those listing agreements; and
- (b) include rules (**business rules**) that govern the conduct of—
 - (i) business on that market; and
 - (ii) persons authorised to undertake trading activities on that market.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36I When conduct rules have no effect

A conduct rule, or part of a conduct rule, has no effect in contract or for the purposes of section 36G if—

- (a) it has not been—

- (i) provided to the chief executive on registration and approved under section 36O; or
- (ii) subsequently provided to the Minister under section 36J; or
- (b) it has been provided to the Minister under section 36J but a period of 15 working days has not expired after it was received by the Minister; or
- (c) it has been disallowed under section 36L; or
- (d) the Minister has applied the approval process to it under section 36N and it has not been approved.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36J Registered exchange must provide proposed new conduct rules and changes to Minister

- (1) A registered exchange must provide a proposed new conduct rule or a proposed change to an existing conduct rule to the Minister before making that rule or change.
- (2) A **change**, in relation to a conduct rule for the purposes of this subpart, includes an amendment to, and a revocation or cancellation of, the conduct rule.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36K Disallowance process applies unless approval process applied

- (1) The disallowance process in section 36L applies to a proposed new conduct rule or change provided to the Minister under section 36J.
- (2) However, the Minister may, under section 36N, apply the approval process under section 36O instead.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36L Disallowance process for proposed conduct rules and changes

- (1) The Minister may, by notice in the *Gazette* within 40 working days after receiving a proposed conduct rule or change under section 36J, disallow all or part of that proposed rule or change.

- (2) The Minister must not disallow all or part of the proposed conduct rule or change unless the Minister is satisfied that—
 - (a) it is in the public interest to do so; or
 - (b) the proposal affects the continuous disclosure provisions of the listing rules and the changed continuous disclosure provisions do not achieve the purpose of subpart 1 of Part 2 (after having regard to that purpose, the criteria stated in section 19A, and any other matters that he or she considers relevant).
- (3) In determining whether or not to disallow all or part of the proposed conduct rule or change, the Minister must seek the advice of the Commission.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36M Effect of disallowance

- (1) A conduct rule or a change to a conduct rule (or part of a rule or change) that is disallowed has no effect in contract or for the purposes of section 36G on and from—
 - (a) the date of the notice in the *Gazette* ; or
 - (b) any later date specified for this purpose in that notice.
- (2) A disallowance does not affect the validity of anything done before the disallowance takes effect.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36N Determination on whether or not to apply approval process to proposed conduct rules and changes

- (1) The approval process in section 36O applies to a proposed new conduct rule or change if—
 - (a) the Minister is satisfied that the proposal relates to a securities market that is not operated by the registered exchange under its existing conduct rules (a **new securities market**); and
 - (b) the Minister is satisfied it is in the public interest to apply the approval process; and
 - (c) the Minister applies the approval process by written notice to the registered exchange within 15 working days

- after receipt of the proposed conduct rule or change under section 36J.
- (2) Before applying the approval process, the Minister must have regard to—
 - (a) the integrity and effectiveness of securities markets in New Zealand; and
 - (b) the confidence of investors in securities markets in New Zealand; and
 - (c) the extent of the difference between existing securities markets operated by the registered exchange and the new securities market; and
 - (d) the extent of the difference between the existing conduct rules and the proposed new conduct rules or changes.
 - (3) In determining whether or not to apply the approval process, the Minister must seek the advice of the Commission.
 - (4) The notice applying the approval process must describe the new securities market referred to in subsection (1)(a).

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36O Approval process for proposed conduct rules and changes

- (1) The Governor-General may, by Order in Council on the recommendation of the Minister, approve a proposed conduct rule or change provided under section 36F or section 36J.
- (2) The Minister must recommend that a proposed conduct rule or change be approved unless the Minister is satisfied that—
 - (a) it is not in the public interest to do so; or
 - (b) the listing rules for the securities market to which the proposed conduct rule or change relates do not achieve the purpose of subpart 1 of Part 2 (after having regard to that purpose, the criteria stated in section 19A, and any other matters that he or she considers relevant).
- (3) In determining whether or not to recommend that the proposed conduct rules or changes be approved, the Minister must seek the advice of the Commission.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36P Registered exchange must not operate new securities market if proposed conduct rules or changes not approved

- (1) A registered exchange must not operate a securities market described in a notice given under section 36N unless the proposed conduct rules or changes to which that notice relates are approved under section 36O.
- (2) A registered exchange that acts in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36Q Conduct rules must be available for public inspection

- (1) A registered exchange that operates a securities market must ensure that a copy of the conduct rules for that market are available for public inspection, free of charge and during normal office hours, at the office of that registered exchange.
- (2) A registered exchange that fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36R Application of Acts relating to regulations to conduct rules

To avoid doubt, conduct rules are not regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989 or for any other purpose.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Control limits for registered exchanges

36S Power to impose control limits on registered exchanges

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing, altering, or revoking a control limit (which is the highest per-

centage of voting rights in the body corporate that may be held or controlled by any person) for a body corporate that—

- (a) is, or may be, a registered exchange; or
 - (b) is a holding company of a body corporate referred to in paragraph (a).
- (2) A control limit does not apply to a body corporate before its registration, or its subsidiary's registration, as a registered exchange.
- (3) The Minister must not make a recommendation for the purposes of subsection (1) unless he or she has consulted the body corporate and is satisfied that it is in the public interest to do so.
- (4) For the purposes of this section and the rest of the subpart—
control, in relation to a voting right, means having, directly or indirectly, effective control of the voting right
voting right means a currently exercisable right to cast a vote at meetings of members or shareholders of a body corporate, not being a right to vote that is exercisable only in 1 or more of the following circumstances
- (a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the security that confers the voting right is in arrears or some other default exists:
 - (b) on a proposal that affects rights attached to the security that confers the voting right:
 - (c) during the liquidation of the body corporate:
 - (d) in respect of a special, immaterial, or remote matter that is inconsequential to control of the body corporate.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36T Control limit not to be exceeded

- (1) No person may hold or control voting rights in a body corporate that exceed any control limit for that body corporate that applies under regulations made under section 36S(1) except in accordance with an approval under section 36V.
- (2) For the purposes of this section, voting rights held or controlled by an associated person of a person must be treated as voting rights held or controlled by that person.

- (3) Subsection (1) does not apply to any voting rights in a body corporate held or controlled by a person to the extent that those rights were held or controlled by that person before the control limit was imposed or decreased, as the case may be.

(4)

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36U Effect of exceeding control limit

- (1) Every person who contravenes section 36T(1) must—
- (a) take the steps that are necessary to ensure that the person is no longer in contravention of that subsection at the end of 90 days after the date of first contravention; and
 - (b) while he or she contravenes that subsection, not exercise or control the exercise of any voting rights that exceed the control limit.
- (2) Every person who contravenes subsection (1)(a) commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 for each day or part of a day during which the contravention continues.
- (3) An exercise of voting rights by or under the control of a person in contravention of subsection (1)(b) is of no effect, and must be disregarded by the person responsible for counting the votes concerned.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36V Application for approval to exceed control limit

- (1) A person may apply to the chief executive for approval for any person or class of persons to exceed a control limit for a body corporate that applies under regulations made under section 36S.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve an application under subsection (1) and specify the terms and conditions (if any) applying to the approval.
- (3) The Minister may not make a recommendation for the purposes of subsection (2) unless,—

- (a) if the body corporate is not the applicant or 1 of the applicants for the approval, he or she has consulted the body corporate on the application at least 30 days before making the recommendation; and
 - (b) he or she is satisfied that it is in the public interest to make the recommendation.
- (4) An approval granted under subsection (2)—
- (a) may have retrospective effect; but
 - (b) is of no effect if any term or condition of the approval has not been complied with.
- (5) An approval granted under subsection (2) is for the purposes of the control limit only, and not for the purposes of any other enactment.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36W Revocation or amendment of approval

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
- (a) revoke an approval granted under section 36V; or
 - (b) vary, revoke, or suspend any term or condition of such an approval.
- (2) The Minister may not make a recommendation for the purposes of subsection (1) unless—
- (a) he or she has consulted the person to whom the approval was granted and the body corporate concerned; and
 - (b) he or she is satisfied that it is in the public interest to make the recommendation.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Overseas exchanges

36X Overseas exchanges

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
- (a) authorise a body corporate to, in connection with carrying on business in New Zealand, do the things otherwise prohibited by section 36A(1); and

- (b) specify the terms and conditions (if any) applying to the authorisation.
- (2) The Minister may not make a recommendation for the purposes of subsection (1) unless he or she is satisfied that it is in the public interest to do so, having regard to the regulatory regime that applies to that body corporate in any other country in connection with its operation of a securities market.
- (3) For the purposes of this Act and any other enactment (other than sections 36F to 36W), every body corporate that is authorised under subsection (1) must be treated as if it were registered as a registered exchange under section 36F.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36Y Revocation or amendment of authorisation

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
 - (a) revoke an authorisation granted under section 36X(1); or
 - (b) vary, revoke, or suspend any term or condition of such an authorisation.
- (2) The Minister may not make a recommendation for the purposes of subsection (1) unless—
 - (a) he or she has consulted the body corporate concerned; and
 - (b) he or she is satisfied that it is in the public interest to make the recommendation.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36Z Offence for breach of terms or conditions of authorisation

Every person who acts in contravention of a term or condition of an authorisation granted under section 36X commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

*Enforcement of prohibition of certain statements
relating to exchanges*

36ZA Commission may make orders prohibiting statements relating to exchanges or requiring corrective statements

- (1) The Commission may make an order under subsection (2)—
 - (a) if it is satisfied that a person has acted in contravention of section 36A(1); and
 - (b) in accordance with section 36ZB.
- (2) The Commission may make an order—
 - (a) prohibiting or restricting the making of any statement or distribution of any document by, or on behalf of, that person for the purpose of preventing further contravention of that section by that person:
 - (b) directing that person to publish, at that person's own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order.
- (3) The order may be made on the terms and conditions that the Commission thinks fit.
- (4) The Commission may vary the order in the same way as it may make the order under this section.
- (5) The Commission may revoke the order or suspend the order on the terms and conditions it thinks fit.
- (6) The order is subject to appeal only in accordance with Part 3 of the Securities Act 1978.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZB Notice, submissions, and opportunity to be heard and represented on Commission's orders

- (1) An order may be made under section 36ZA only if—
 - (a) the Commission gives the person to whom the order is directed at least 7 days' written notice before making the order of—
 - (i) the nature of the alleged contravention; and
 - (ii) the proposed terms of the order; and
 - (iii) the reasons for the proposed order; and
 - (b) the Commission gives that person an opportunity to—

- (i) make written submissions within that notice period; and
 - (ii) have the matter determined following a meeting of the Commission within that notice period; and
 - (iii) be heard and represented by counsel at that meeting; and
 - (c) the Commission has regard to any written submissions made to it within that notice period and written or oral submissions made at that meeting.
- (2) If an order is made under section 36ZA, the Commission—
- (a) must, as soon as reasonably practicable, give written notice to the person to whom the order is directed of—
 - (i) the terms of the order; and
 - (ii) the reasons for the order; and
 - (b) in the case of an order prohibiting or restricting the making of statements or distribution of documents, must give that person an opportunity to be heard and represented by counsel at a meeting of the Commission after the order is made; and
 - (c) may also give notice to any other person of the matters in paragraph (a).

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZC Offence for contravening prohibition order

- (1) Every person who contravenes an order made under section 36ZA commits an offence and is liable on summary conviction to a fine not exceeding \$30,000.
- (2) It is a defence to a charge under subsection (1) if the defendant proves that the statement was made, or document was distributed,—
 - (a) without the defendant's knowledge; or
 - (b) without the defendant's knowledge of the order.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Subpart 2—Monitoring of securities markets

Notification of disciplinary actions and suspected contraventions

36ZD Registered exchange must notify Commission of disciplinary actions and suspected contraventions

A registered exchange must notify the Commission, in accordance with sections 36ZE and 36ZF, if—

- (a) the exchange takes any disciplinary action for a contravention of its conduct rules against any person;
- (b) the exchange knows or suspects that a person has committed, is committing, or is likely to commit a significant contravention of—
 - (i) the exchange's conduct rules; or
 - (ii) this Act, the Securities Act 1978, the Takeovers Act 1993, or any enactment made under any of those Acts.

Part 2B (comprising sections to 36ZX) was inserted as from 1 December 2002 by section 20 Securities Markets Amendment Act 2002 (2002 No 44)

36ZE When notification required

The registered exchange must give the notice under section 36ZD immediately after taking the disciplinary action or knowing or suspecting the person has committed, is committing, or is likely to commit the significant contravention.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZF Details and method of notification

- (1) The notice under section 36ZD must include—
 - (a) the person's name and contact details; and
 - (b) if it relates to a disciplinary action, the grounds for, nature of, and reasons for the action taken; and
 - (c) if it relates to a known or suspected contravention, the facts supporting the registered exchange's view and to which obligation the known or suspected contravention relates; and
 - (d) any other information required by regulations under section 49 or by the Commission under section 36ZK.

- (2) The registered exchange must give the notice in the form and by the method required by any regulations made under section 49.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Disclosure of material information

36ZG Registered exchange must give Commission material information given to market participants

If a registered exchange makes material information available to participants, or any class of participants, of a securities market operated by the exchange, the exchange must also give that information to the Commission in accordance with sections 36ZH to 36ZJ.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZH When disclosure of material information required

The registered exchange must give the information under section 36ZG to the Commission immediately after giving it to market participants.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZI Form and method of disclosure

The registered exchange must give the information under section 36ZG to the Commission in the same form and by the same method as it gives that information to market participants.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Waiver of notification and disclosure obligations

36ZJ Waiver of notification and disclosure obligations

- (1) Sections 36ZD to 36ZI do not apply to the extent that the Commission—
- (a) waives its entitlement to any notice or information or class or classes of notices or information; or

- (b) agrees with the registered exchange a different time, form, or method of notification or disclosure.
- (2) A waiver or agreement under this section must be in writing.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

General information and assistance provisions

36ZK Registered exchange must give Commission or Takeovers Panel other information and assistance on request

- (1) A registered exchange must give to the Commission or the Takeovers Panel (or any person authorised by the Commission or Takeovers Panel) information, assistance, and access to the exchange's facilities if the Commission or Takeovers Panel reasonably requests it to carry out its functions.
- (2) The Commission or Takeovers Panel must require that information, assistance, or access by notice in writing to the registered exchange.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZL Power to disclose further information

- (1) A registered exchange may provide to the Commission any information that the exchange considers may assist the Commission in the performance of the Commission's functions.
- (2) A registered exchange may provide to the Takeovers Panel any information that the exchange considers may assist the Takeovers Panel in the performance of its functions.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Notice and submissions on continuous disclosure determinations

36ZM Registered exchange must give notice and have regard to submissions on continuous disclosure determinations

- (1) This section and section 36ZN apply to a determination by a registered exchange if—
 - (a) the determination exempts from, waives, or determines the meaning of a continuous disclosure provision of its

- listing rules (or varies or revokes a determination of that kind); and
- (b) that continuous disclosure provision relates to material information that is not generally available to the market; and
 - (c) No regulations under section 19Q declare that section 19C applies to that exchange.
- (2) The registered exchange must—
- (a) give the Commission no less than 2 trading days' written notice before making the determination of—
 - (i) the proposed terms of the determination; and
 - (ii) the reasons for the proposed determination; and
 - (b) have regard to any written submissions made to it by the Commission within that notice period; and
 - (c) must, as soon as reasonably practicable after making the determination, give written notice to the Commission of—
 - (i) the terms of the determination; and
 - (ii) the reasons for the determination.
- (3) A failure to comply with this section or section 36ZN does not affect the validity of a determination.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZN Limited notice and submissions for urgent determinations

If the registered exchange thinks it necessary or desirable in the public interest for a determination to be made more urgently than section 36ZM(2) permits,—

- (a) it may give less than 2 trading days' notice before it makes the determination and the notice and submissions may be oral, not written; but
- (b) it must include in that notice the reasons for acting urgently and must otherwise comply with that subsection.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

*Directions to exchanges***36ZO Commission may give directions to registered exchanges**

- (1) The Commission may give a direction under subsection (2) in accordance with sections 36ZP to 36ZT.
- (2) The Commission may, for up to 21 days,—
 - (a) direct a registered exchange to suspend trading of the securities, or a class of securities, of 1 or more public issuers; or
 - (b) give the registered exchange any other direction in relation to that trading.
- (3) For the avoidance of doubt, the Commission may not use its power to direct the registered exchange to amend the conduct rules or direct the registered exchange on the making of a determination on the conduct rules.
- (4) The direction is subject to appeal only in accordance with Part 3 of the Securities Act 1978.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZP Grounds for continuous disclosure direction

- (1) A direction on the grounds in this section is a **continuous disclosure direction**.
- (2) A direction may be given under section 36ZO in accordance with sections 36ZR to 36ZT if the Commission—
 - (a) has regard to the purpose of subpart 1 of Part 2, the criteria stated in section 19A, and any other matters it considers relevant; and
 - (b) is satisfied that 1 of the following grounds applies:
 - (i) a public issuer has contravened a continuous disclosure obligation or a term or condition of a continuous disclosure exemption; or
 - (ii) a determination by a registered exchange to which section 36ZM applies does not achieve the purpose of subpart 1 of Part 2; or
 - (iii) the registered exchange's administration of the continuous disclosure provisions of its listing rules does not achieve the purpose of subpart

- 1 of Part 2 (and section 19C does not apply to the exchange); or
- (iv) if section 19C applies to a registered exchange, a continuous disclosure exemption (other than an exemption contained in regulations) does not achieve the purpose of subpart 1 of Part 2; or
 - (v) if section 19C applies to a registered exchange, the administration of the continuous disclosure provisions of regulations does not achieve the purpose of subpart 1 of Part 2; and
- (c) is also satisfied that the direction is necessary or desirable in the public interest to protect people trading the securities or the class of securities and that there is no more appropriate course of action to address the situation.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZQ Grounds for other directions

A direction may also be given under section 36ZO in accordance with sections 36ZR to 36ZT if the Commission is satisfied that—

- (a) the direction is necessary in the public interest to protect people trading the securities, or the class of securities, of 1 or more public issuers; but
- (b) it is not a matter to which the purpose of subpart 1 of Part 2 is relevant.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZR Notice, opportunity for exchange to act, and submissions before Commission gives directions

- (1) A direction may be given under section 36ZO only if—
- (a) the Commission has given written notice to the registered exchange and public issuer or issuers concerned of—
 - (i) its opinion that the requirements of section 36ZP or section 36ZQ are satisfied; and
 - (ii) the proposed terms of the direction; and

- (iii) the reasons for its opinion; and
 - (b) after receiving the Commission's notice, the registered exchange does not take, within the reasonable period stated in the notice,—
 - (i) in the case of a proposed direction to suspend trading of the securities, action to prevent that trading; or
 - (ii) in any other case, any other action that, in the Commission's view, is adequate to address the situation raised in the advice; and
 - (c) the Commission has had regard to any written submissions made to it by the registered exchange and public issuer or issuers concerned within that notice period; and
 - (d) the Commission still considers that it is appropriate to give the direction to the registered exchange.
- (2) A **reasonable period** in subsection (1)(b) is, in the case of a continuous disclosure direction, 2 trading days (or any longer time the Commission wishes to allow) and, in the case of any other direction, any longer time that is reasonable in the circumstances.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZS Limited notice and submissions for urgent continuous disclosure directions

If the Commission thinks it necessary or desirable in the public interest for a continuous disclosure direction to be made more urgently than section 36ZR permits,—

- (a) it may give less than 2 trading days' notice before it gives the direction and the notice and submissions may be oral, not written; but
- (b) it must include in that notice the reasons for acting urgently and must otherwise comply with that section.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZT Notice and opportunity to be heard and represented after Commission gives direction

If a direction is given under section 36ZO, the Commission—

- (a) must, as soon as reasonably practicable, give written notice to the registered exchange and public issuer or issuers concerned of—
 - (i) its opinion that the requirements of section 36ZP or section 36ZQ are satisfied; and
 - (ii) the terms of the direction; and
 - (iii) the reasons for its opinion; and
- (b) must give those persons an opportunity to be heard and represented by counsel at a meeting of the Commission after the direction is given; and
- (c) may also give notice to any other person of the matters in paragraph

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZU Effect of directions to exchanges

- (1) A direction under section 36ZO has effect for the period specified in it (which may be up to 21 days) and, during that period, the registered exchange must comply with the direction and must not allow any trading to take place contrary to it.
- (2) If the registered exchange fails to comply with the direction or the Commission considers that the direction should have effect for a period longer than 21 days, it may apply to the Court for, and the Court may make, an order that the registered exchange comply with the direction for the period that the Court thinks fit.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

36ZV Provisions as to directions

- (1) The Commission may vary a direction under section 36ZO in the same way as it may make that direction.
- (2) The Commission may revoke a direction under section 36ZO by giving written notice to the registered exchange.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

*Contracting out or modification of continuous
disclosure process requirements*

36ZW Contracting out or modification of continuous disclosure process requirements

- (1) The Commission and a registered exchange may, by agreement in writing, contract out of, or modify, any of the requirements of sections 36ZM, 36ZN, and 36ZR to 36ZT.
- (2) For that purpose, the registered exchange may agree to waive or modify obligations under those sections that are owed to public issuers that are parties to listing agreements with the exchange.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Offence

36ZX Offence

- (1) A registered exchange commits an offence if it intentionally or recklessly—
 - (a) fails to give a notice, provide information, give assistance, or provide access as required by or under this subpart; or
 - (b) contravenes section 36ZM; or
 - (c) fails to comply with a direction under section 36ZO.
- (2) A registered exchange that commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$30,000.

Part 2B (comprising sections 36A to 36ZX) was inserted, as from 1 December 2002, by section 20 Securities Markets Amendment Act 2002 (2002 No 44).

Part 3
Dealing in futures contracts

37 Interpretation of terms used in this Part

- (1) In this Part of this Act, unless the context otherwise requires,—
Acquire, in relation to a futures contract, includes enter into and take an assignment of; and **acquires** and **acquisition** have corresponding meanings

Authorised dealer in foreign exchange*[Repealed]*

Authorised dealer in foreign exchange: this definition was repealed, as from 3 June 1998, by section 2(1)(a) Securities Amendment Act 1998 (1998 No 59).

[Repealed]

Authorised futures contract means a futures contract which is—

- (a) Made on, or effected through, an authorised futures exchange; or
- (b) Made on, or effected through, a futures exchange in a country other than New Zealand which is authorised by the laws of that country to operate as a futures exchange, by a person referred to in section 38(1) of this Act; or
- (c) Which is a futures contract of a class in which a person referred to in section 38(1) of this Act is authorised to deal:

Authorised futures contract: paragraph (b) of this definition was amended, as from 3 June 1998, by section 2(1)(b) Securities Amendment Act 1998 (1998 No 59) by omitting the words “paragraph (a) or paragraph (b) of”.

Authorised futures contract: paragraph (c) of this definition was amended by section 2(1)(c) Securities Amendment Act 1998 (1998 No 59) by omitting the expression “paragraph (b) of”.

authorised futures exchange means—

- (a) a body corporate that is declared by the Commission to be an authorised futures exchange for the purposes of this Part;
- (b) a subsidiary of an authorised futures exchange if the subsidiary conducts a market or exchange in New Zealand for trading in futures contracts.

Authorised futures exchange: this definition was substituted, as from 1 December 2002, by section 21(1) Securities Markets Amendment Act 2002 (2002 No 44).

Commodity means any type of goods; and includes foreign currency and a financial instrument

Dispose of, in relation to a futures contract, includes—

- (a) In the case of a futures contract described in paragraph (d) of the definition of that term, assign and exercise;
- (b) In the case of any other futures contract, discharge obligations under;—

and **disposes** and **disposition** have corresponding meanings

Futures contract means—

- (a) An agreement under which one party agrees to deliver to another party at a specified future time a specified commodity or a quantity of a specified commodity at a price which is fixed when the agreement is made but under which it is contemplated or understood that the obligations of the parties may be satisfied by means other than actual delivery:
- (b) An agreement under which each party has either—
 - (i) An obligation to pay a sum of money to the other or to credit the account of the other with payment of a sum of money; or
 - (ii) A right to receive payment, or a credit, of a sum of money from the other—
depending on whether at a future date the value or price of a specified commodity calculated in a manner specified by, or in accordance with, the agreement is greater or less than the value or price agreed upon by the parties when the agreement was made:
- (c) An agreement under which each party has either—
 - (i) An obligation to pay a sum of money to the other or to credit the account of the other with payment of a sum of money; or
 - (ii) A right to receive payment, or a credit, of a sum of money from the other—
depending on whether at a future date the value or level of a specified index calculated in a manner specified by, or in accordance with, the agreement is greater or less than the value or level agreed upon by the parties when the agreement was made:
- (d) An option or right to assume, at a specified price or value, or within a specified period, or by a specified date, rights and obligations under an agreement of a kind described in a preceding paragraph:
- (e) An agreement, option or right which is declared by the Commission, in accordance with this section, to be an agreement, option or right to which this Part of this Act applies:

- (f) An agreement, option or right which is of a class of agreements, options or rights declared by the Commission, in accordance with this section, to be a class to which this Part of this Act applies:

Registered bank has the same meaning as in section 2 of the Reserve Bank of New Zealand Act 1989.

Registered bank: this definition was amended, as from 3 June 1998, by section 2(1)(d) Securities Amendment Act 1998 (1998 No 59) by substituting the expression “1989” for the expression “1964”.

- (2) For the purposes of this Part of this Act, none of the following agreements or contracts is a futures contract:
- (a) A currency swap agreement to which a registered bank is a party:
 - (b) An interest rate swap agreement to which a registered bank is a party:
 - (c) A forward exchange rate contract to which a registered bank is a party:
 - (d) A forward interest rate contract to which a registered bank is a party.
- (3) An agreement or option of the kind described in paragraphs (a), (b), (c), (d), (e), or (f) of the definition of the term **futures contract** in subsection (1) of this section is a futures contract whether or not it—
- (a) Has any other effect; or
 - (b) Contains any other provisions; or
 - (c) Is capable of being varied or discharged before the time fixed for performance.
- (4) For the purposes of the definition of the term **futures contract** in subsection (1) of this section, **party**, in relation to an agreement, includes—
- (a) An assignee:
 - (b) A nominee:
 - (c) A successor in title:
 - (d) If the party to the agreement is an agent, the principal.
- (5) For the purposes of this Part of this Act, a person deals in a futures contract if that person—
- (a) Acquires or disposes of the futures contract on behalf of another person; or

- (b) Offers to acquire or dispose of the futures contract on behalf of another person; or
 - (c) On behalf of another person induces, or attempts to induce, a person, to acquire or dispose of the futures contract; or
 - (d) Advises or assists a person in connection with the acquisition or disposition of the futures contract; or
 - (e) Does any other act or engages in conduct declared by the Commission by notice in the *Gazette* to constitute dealing in a futures contract for the purposes of this Part of this Act.
- (6) For the purposes of subsection (5)(d) of this section a person shall not be regarded as giving advice or assistance to any person in connection with the acquisition or disposition of a futures contract by reason only that that person gives that advice or assistance in a professional capacity as a solicitor or a chartered accountant.
- (7) The Commission may, by notice in the *Gazette*, declare—
- (a) An agreement, option, or right to be an agreement, option, or right to which this Part of this Act applies:
 - (b) A class of agreements, options, or rights to be a class of agreements, options, or rights to which this Part of this Act applies.
- (8) The Commission may, on the terms and conditions (if any) that it thinks fit, by notice in the *Gazette*, declare a body corporate that conducts, or proposes to conduct, a market or exchange in New Zealand for trading in futures contracts to be an authorised futures exchange for the purposes of this Part of this Act.
- (8A) A notice under subsection (8) may include any authorisation given under section 38.
- (9) The Commission may, by notice in the *Gazette*, declare any act or conduct to constitute dealing in a futures contract for the purposes of this Part of this Act.
- (10) The Commission may, by notice in the *Gazette*, vary or revoke any declaration made under this section.

Subsection (2) was amended, as from 3 June 1998, by section 2(2) Securities Amendment Act 1998 (1998 No 59) by omitting the words “an authorised dealer in foreign exchange or” wherever they occur.

Subsection (8) was amended, as from 1 December 2002, by section 21(2) Securities Markets Amendment Act 2002 (2002 No 44) by inserting the words “, on the terms and conditions (if any) that it thinks fit” after the word “may”.

Subsection (8A) was inserted, as from 1 December 2002, by section 21(3) Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (10) was inserted, as from 3 June 1998, by section 2(3) Securities Amendment Act 1998 (1998 No 59).

37A No holding out as futures exchange unless authorised under this Part

- (1) No person may, in connection with carrying on business in New Zealand,—
 - (a) use a style or title including the words “futures exchange” or “futures market”; or
 - (b) state or imply, or permit a statement or implication, that—
 - (i) the person is an authorised futures exchange; or
 - (ii) a market or exchange in New Zealand that the person conducts for trading in futures contracts is regulated under New Zealand law.
- (2) Subsection (1) does not apply to—
 - (a) an authorised futures exchange; or
 - (b) a subsidiary of an authorised futures exchange.
- (3) Every person who acts in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs.

Sections 37A to 37D were inserted, as from 1 December 2002, by section 4(2) Securities Markets Amendment Act 2002 (2002 No 44).

37B No operation of futures markets unless authorised under this Part (if restriction applies)

- (1) No person to whom this section applies may conduct a market or exchange in New Zealand for trading in futures contracts unless that person is—
 - (a) an authorised futures exchange; or
 - (b) a subsidiary of an authorised futures exchange.
- (2) Every person who acts in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine

not exceeding \$10,000 for every day or part of a day during which the contravention occurs.

Sections 37A to 37D were inserted, as from 1 December 2002, by section 4(2) Securities Markets Amendment Act 2002 (2002 No 44).

37C Power to apply and remove restriction on operating futures markets

- (1) The Minister may, by notice in the *Gazette*,—
 - (a) declare, in accordance with section 37D, that section 37B applies to a person:
 - (b) declare that section 37B ceases to apply to a person:
 - (c) exempt a market or exchange for trading in futures contracts, or a class of markets or exchanges of that kind, from the declaration.
- (2) An exemption under subclause (1)(c) may be on any terms or conditions that the Minister thinks fit.
- (3) An exemption has effect according to its tenor.
- (4) In determining whether or not to grant an exemption, the Minister must seek the advice of the Commission.
- (5) The Minister may vary an exemption in the same way as the exemption may be granted under this section.
- (6) The Minister may, by notice in the *Gazette*, revoke an exemption granted under this section.

Sections 37A to 37D were inserted, as from 1 December 2002, by section 4(2) Securities Markets Amendment Act 2002 (2002 No 44).

37D Criteria and process for applying restriction on operating futures markets

- (1) The Minister may declare that section 37B applies to a person only if he or she is satisfied that the result of that section not applying to the person is likely to be detrimental to—
 - (a) the integrity or effectiveness of futures markets in New Zealand; or
 - (b) the confidence of investors in futures markets in New Zealand.
- (2) The Minister must, before making the declaration,—
 - (a) give at least 2 months' written notice of the proposed declaration, and of the Minister's reasons for his or her opinion under subsection (1), to—

- (i) the person to whom it is proposed to apply section 37B; and
 - (ii) the Commission; and
 - (iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposed declaration; and
 - (b) have regard to any submissions made by those persons within the notice period given; and
 - (c) before making the declaration, give at least 14 days' written notice to the persons referred to in paragraph (a), and in the *Gazette*, of his or her intention to do so and of the reasons for his or her opinion under subsection (1).
- (3) A failure to comply with subsection (2) does not invalidate any notice published under section 37C.

Sections 37A to 37D were inserted, as from 1 December 2002, by section 4(2) Securities Markets Amendment Act 2002 (2002 No 44).

38 Dealers in futures contracts to be authorised

- (1) No person shall carry on the business of dealing in futures contracts unless that person is, or is a member of a class of persons that is, authorised by the Commission by notice in the *Gazette* to carry on the business of dealing in futures contracts.
- (2) For the purposes of subsection (1) of this section, any authorisation may be for—
- (a) Specified futures contracts:
 - (b) A specified class or specified classes of futures contracts:
 - (c) Futures contracts generally:
 - (d) Futures contracts generally other than—
 - (i) Specified futures contracts:
 - (ii) A specified class or specified classes of futures contracts—
- and may be on such terms and conditions as the Commission thinks fit.
- (3) The Commission may, by notice in the *Gazette*, vary or revoke, in whole or in part, any authorisation given under this section.

Subsection (1) was substituted, as from 2 September 1996, by section 3(1) Sharebrokers Amendment Act 1996 (1996 No 144).

Subsection (2) was amended, as from 2 September 1996, by section 3(2) Share-brokers Amendment Act 1996 (1996 No 144) by omitting the words “paragraph (b) of”.

Subsection (3) was inserted, as from 3 June 1998, by section 2(4) Securities Amendment Act 1998 (1998 No 59).

39 Contravention of section 38 an offence

Every person who contravenes section 38 of this Act commits an offence and is liable on summary conviction—

- (a) In the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both;
- (b) In the case of a body corporate, to a fine not exceeding \$300,000.

40 Effect of certain laws on authorised futures contracts and other contracts

- (1) Nothing in the Gambling Act 2003 applies to, or in respect of,—
 - (a) An authorised futures contract; or
 - (b) An agreement or a contract of the kind described in section 37(2).
- (2) Without limiting subsection (1), a contract referred to in that subsection is not a gaming or wagering contract for the purposes of any enactment or rule of law.
- (3) A contravention of this Part does not affect the validity or enforceability of a contract referred to in subsection (1).

Section 40 was substituted, as from 28 July 1997, by section 10(2) Securities Amendment Act (No 2) 1997 (1997 No 54).

Subsection (1) was amended, as from 1 July 2004, by section 374 Gambling Act 2003 (2003 No 51) by substituting the words “Gambling Act 2003” for the words “Gaming and Lotteries Act 1977”. See sections 376 and 377 of that Act for the savings and transitional provisions. See clause 2(3) Gambling Act Commencement Order 2003 (SR 2003/384).

41 Regulations for purposes of this Part

- (1) The Governor-General may from time to time, by Order in Council, on the recommendation of the Minister in accordance with subsection (2), make regulations for all or any of the following purposes:

- (a) Regulating the business and operations of authorised futures exchanges:
 - (b) Regulating the carrying on of the business of dealing in futures contracts and prescribing requirements that shall be met by persons dealing in those contracts including requirements relating to the disclosure of financial and other information and the appointment and duties of trustees:
 - (c) Regulating the receipt of money and property from clients by persons dealing in futures contracts and the application of that money and property:
 - (d) Prescribing requirements relating to the deposit of such money and property in separate clients' funds accounts or safe custody, as the case may be:
 - (e) Specifying the duties and obligations of such dealers in relation to clients' funds accounts including obligations to make payments into those accounts:
 - (f) Providing for the protection of money deposited in clients' funds accounts and the investment thereof and property deposited in safe custody from claims against persons dealing in futures contracts.
 - (g) providing for the Commission to carry out functions under the regulations, and its powers and procedures in doing so.
- (1A) Without limiting subsection (1), regulations made under that subsection may also apply to persons acting on behalf of an authorised futures exchange in the same way that they apply to the authorised futures exchange.
- (2) The Minister must consult with the Commission before making a recommendation under subsection (1).

Subsection (1) was amended, as from 1 December 2002, by section 23(1) Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words "on the recommendation of the Minister in accordance with subsection (2)" for the words "in accordance with the recommendation of the Commission".

Subsection (1)(g) was inserted, as from 1 December 2002, by section 23(2) Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (1A) was inserted, as from 1 December 2002, by section 23(3) Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (2) was substituted, as from 1 December 2002, by section 23(4) Securities Markets Amendment Act 2002 (2002 No 44).

Part 4

Miscellaneous

Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).

- 41A Investment advisers' disclosure obligation**
- 41B Investment adviser must disclose experience, qualifications, professional standing, etc**
- 41C Investment adviser must disclose certain criminal convictions, etc**
- 41D Investment adviser must disclose fees**
- 41E Investment adviser must disclose other interests and relationships**
- 41F Investment adviser must disclose details of securities about which advice given**
- 41G Investment brokers' disclosure obligation**
- 41H Investment broker must disclose certain criminal convictions, etc**
- 41I Investment broker must disclose procedures for dealing with investment money or investment property**
- 41J How disclosure must be made**
- 41K Disclosure must not be misleading**
- 41L Disclosure of additional information**
- 41M No compliance with disclosure obligations if disclosure statement out of date**

- 41N Advertisement must refer to disclosure statement**
- 41O Advertisement must not be deceptive, misleading, or confusing**
- 41P Offence for failure to comply with disclosure obligation**
- 41Q Offence of deceptive, misleading, or confusing disclosure**
- 41R Offence of deceptive, misleading, or confusing advertisement**
- 41S Recommending, or receiving money for, acquisition of securities prohibited if offer for subscription illegal**
- 41T Defence of immateriality**
- 41U Territorial scope**
- 41V No contracting out**
- 41W No liability under Fair Trading Act 1986 if not liable under this Part**
- 42 Jurisdiction of Courts in New Zealand**
The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than proceedings for offences against this Act.
Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).
- 42A Terms of prohibition and corrective orders**
- 42B When Commission may make disclosure orders**
- 42C Terms of disclosure orders**

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- 42D When Commission may make temporary banning orders for investment adviser or broker activities**
 - 42E Terms of temporary banning order for investment adviser and broker activities**
 - 42F Commission must follow steps before making orders**
 - 42G Commission may shorten steps for specified orders**
 - 42H Commission must give notice after making orders**
 - 42I General provisions on Commission's orders**
 - 42J Offence of failing to comply with Commission's orders**
 - 42K What Court may injunct**
 - 42L When Court may grant injunctions and interim injunctions**
 - 42M Undertaking as to damages not required by Commission**
 - 42N When Court may grant corrective orders**
 - 42O Terms of corrective orders**
 - 42P When Court may make disclosure orders**
 - 42Q Terms of disclosure orders**
 - 42R**
 - 42S What are civil remedy provisions**

- 42T When Court may make pecuniary penalty orders and declarations of contravention**
- 42U Purpose and effect of declarations of contravention**
- 42V What declarations of contravention must state**
- 42W Maximum amount of pecuniary penalty**
- 42X Guidance for Court on how to determine gains made or losses avoided for purposes of maximum amount**
- 42Y Considerations for Court in determining pecuniary penalty**
- 42Z Court must order that recovery from pecuniary penalty be applied to Commission's actual costs**
- 42ZA When Court may make compensatory orders**
- 42ZB Terms of compensatory orders**
- 42ZC When Court may make civil remedy order for investment advisers' or brokers' disclosure obligations**
- 42ZD Terms of civil remedy order for investment advisers' or brokers' disclosure obligations**
- 42ZE When Court may make other civil remedy orders**
- 42ZF Terms of other civil remedy orders**
A civil remedy order under section 42ZE may—
- (a) restrain the exercise of rights attaching to securities, or the exercise of relevant interests, or declare an exercise of those rights or relevant interests to be void and of no effect:

- (b) restrain the issue or allotment of securities or restrain any distribution due in relation to securities:
- (c) restrain the acquisition or disposal of securities or of relevant interests or restrain the registration of any transfer of that kind:
- (d) direct the disposal of securities or of relevant interests (including the person or class of person to which they must, or must not, be disposed of) and direct the payment of the proceeds of any disposal:
- (e) require securities to be forfeited and require the public issuer to cancel the forfeited securities:
- (f) cancel an agreement for the acquisition or disposal of securities or relevant interests.

42ZG More than 1 civil remedy order may be made for same conduct

42ZH Only 1 pecuniary penalty order may be made for same conduct

42ZI Standard of proof for civil remedies

42ZJ Time limit for applying for civil remedies

43 Evidence not otherwise admissible

In the exercise of its jurisdiction under this Act, the Court may receive in evidence any statement, document, or information that would not be otherwise admissible that may in its opinion assist it to deal effectively with the matter.

Compare: 1988 No 234 s 35A

Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).

43A Penalties for failing to comply with Part 2

43B Penalties for failing to comply with Part 2B

43C Penalties for failing to comply with Part 3

- 43D Penalties for failing to comply with Part 4**
- 43E Penalties for failing to comply with this Part**
- 43F When Court may make management banning orders**
- 43G Terms of management banning orders**
- 43H Offence of contravening management banning order**
- 43I Persons automatically banned from management**
- 43J Only one management ban may be made for same conduct**
- 43K When Court may make banning orders for investment adviser or broker activities**
- 43L Terms of investment adviser or broker banning orders**
- 43M Offence of contravening investment adviser or broker banning order**
- 43N Persons automatically banned from investment adviser or broker activities**
- 43O General provisions for bans and banning orders**
- 43P When Court may prohibit payment or transfer of money, securities, or other property**
- 43Q What orders may be made**
- 43R Interim orders**
- 43S Relationship with other law**

43T Offence**43U Time for laying information for summary offences****43V Evidence not otherwise admissible****43W Court may order payment of Commission's costs****43X Orders to secure compliance****43Y Giving notice of applications for Court orders****43Z General provisions as to Court's orders****43ZA Persons entitled to appear before Court****43ZB Knowledge of matters presumed if employee or agent knows matters****43ZC No pecuniary penalty and fine for same conduct****44 Commission may exercise powers under Securities Act 1978**

- (1) The Commission may exercise any of its powers under the Securities Act 1978 in performing its functions under this Act, and Part 3 of that Act applies to its decisions and proceedings under this Act.
- (2) This section is for the avoidance of doubt.

Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).

45 Actions of other persons on behalf of registered exchanges

- (1) If a person acts on behalf of a registered exchange,—
 - (a) this Act applies to that person in the same way as it would apply to the registered exchange if it were acting itself (with any necessary modifications); and

- (b) the registered exchange is also responsible under this Act for the acts of the person as if it were acting itself (with any necessary modifications).
- (2) Subsection (1) applies except as expressly provided by this Act.

Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).

46 Protection for acting on Commission directions

A registered exchange, or an officer or employee of a registered exchange, is not liable for any act done or omitted to be done by that person in compliance with a direction by the Commission under section 36ZO.

Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).

47 Protection from liability for registered exchanges and others

- (1) A registered exchange is not liable for anything it may do or fail to do in the course of the exercise or intended exercise of its functions or duties under Part 2 or Part 2B, unless it is shown that it acted in bad faith or without reasonable care.
- (2) An officer, an employee, or a person acting on behalf of a registered exchange is not liable for anything he or she may do or say or fail to do or say in the course of the exercise or intended exercise of the registered exchange's functions or duties under Part 2 or Part 2B, unless it is shown that he or she acted in bad faith.

Part 4 (comprising sections 42 to 49) and the preceding heading was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).

48 Exemptions granted by Commission

- (1) The Commission may, in its discretion and on the terms and conditions (if any) that it thinks fit, by notice in the *Gazette*,—
 - (a) exempt any transaction, class of transactions, class of persons, or class of relevant interests, acquisitions, or disposals from compliance with any directors' and officers' disclosure obligation or obligations:

- (b) exempt any person or class of persons or any transaction or class of transactions from compliance with any provision or provisions of subpart 3 of Part 2 or of regulations made under section 36.
- (2) The exemption has effect according to its tenor.
- (3) The Commission's reasons for granting an exemption (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.
- (4) However, the Commission may defer notifying or not notify the reasons for granting an exemption if the Commission is satisfied that it is proper to do so on the ground of commercial confidentiality.
- (5) The Commission may vary the exemption in the same way as it may grant the exemption under this section.
- (6) The Commission may revoke the exemption by notice in the *Gazette*.

Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).

Subsection (1)(a) was amended, as from 15 April 2004, by section 9(1) Securities Markets Amendment Act 2004 (2004 No 32) by substituting the words "transaction, class of transactions, class of persons," for the words "class of persons".

Subsection (1)(b) was amended, as from 15 April 2004, by section 9(2) Securities Markets Amendment Act 2004 (2004 No 32) by inserting the words "or any transaction or class of transactions" after the words "person or class of persons".

48A Commission must notify reasons for exemption

48B Commission may vary or revoke exemption

48C Commission may designate persons as not exempt from disclosure obligations

48D Requirements for Commission for designations of persons as not exempt

48E Regulations requiring continuous disclosure by public issuers

48F Requirements for regulations replacing continuous disclosure listing rules

48G Ongoing requirements for continuous disclosure regulations

49 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (3), make regulations for the purpose of—
- (a) declaring any class or classes of persons not to be officers for the purposes of this Act:
 - (b) prescribing further matters relating to a relevant interest, or acquisition or disposal of a relevant interest, that must be disclosed by directors and officers under subpart 2 of Part 2, which may include (without limitation):
 - (i) the nature of the relevant interest:
 - (ii) the number and class of securities to which the relevant interest relates or related:
 - (iii) the date of the disclosure obligation becoming applicable, or the date of the acquisition or disposal:
 - (iv) the consideration paid or received for the acquisition or disposal:

- (v) details as to the circumstances in which the acquisition or disposal occurred:
 - (vi) the date of the last disclosure by the director or officer:
 - (c) determining when the disclosure in paragraph (b) is required (including by requiring disclosure only on request) and prescribing the form of or for, and the method of, that disclosure:
 - (d) exempting (on terms and conditions, if any) classes of persons or classes of relevant interests, acquisitions, or disposals from compliance with any directors' and officers' disclosure obligation or obligations:
 - (e) requiring information to be provided in a notice under section 36ZD:
 - (f) prescribing fees and charges to be paid for the purposes of this Act, or a means by which fees and charges may be calculated or ascertained:
 - (g) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Without limiting subsection (1)(f), regulations made under that paragraph may—
- (a) authorise the Commission to require payment of fees and charges—
 - (i) in connection with the exercise by the Commission of any power or function conferred on it by or under this Act:
 - (ii) on an application to the Commission to exercise any power or function conferred on it by or under this Act:
 - (iii) from a person for advice provided by the Commission to the Minister on the exercise of the Minister's powers or functions in connection with that person under this Act:
 - (b) authorise the Commission to require payment of any costs incurred by the Commission.
- (3) The Minister must consult with the Commission before making a recommendation under subsection (1).

Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).

49A Regulations concerning substantial holding disclosure

49B Regulations concerning dealing in futures contracts

49C Regulations concerning investment advisers and brokers

49D Other regulations

49E Breach of exemption conditions

49F Regulations or exemptions in respect of specified overseas jurisdictions

50

Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).

51

Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).

52

Part 4 (comprising sections 42 to 49) was inserted, as from 1 December 2002, by section 24 Securities Markets Amendment Act 2002 (2002 No 44).