

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 24 November 1988.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Right Hon. Geoffrey Palmer

SECURITIES LAW REFORM

ANALYSIS

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A BILL INTITULED

An Act to provide remedies against insider trading in the securities of public issuers, to require the disclosure of beneficial and other interests in the securities of public issuers, to regulate dealing in futures contracts, and for those and other purposes, to amend the Securities Act 1978 and other enactments

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

1. Short Title and commencement—(1) This Act may be cited as the Securities Law Reform Act 1988.

(2) Subject to subsection (3) of this section, this Act shall come into force on the date on which it receives the Royal assent.

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(3) Parts II and III of this Act shall come into force on the 1st day of January 1989.

New

(3) Part II (except section 35A), Part III (except section 39AA), and sections 39A, 40, 40A, and 51 of this Act shall come into force on the 1st day of July 1989.

2. This section, sections 3 to 7, and Parts I, II, III, and IV to be read with Securities Act 1978—This section, sections 3 to 7, and Parts I, II, III, and IV of this Act shall be read

together with and deemed part of the Securities Act 1978* (in those Parts referred to as the principal Act).

3. Interpretation—In this Act, unless the context otherwise requires,—

- 5 “Buy” includes purchase, and acquire, and agree to buy, purchase, or acquire, and “buyer” has a corresponding meaning:
- “Commission” means the Securities Commission established under the principal Act:
- 10 “Company” means a company within the meaning of the Companies Act 1955 or an overseas company within the meaning of that Act:
- “Consideration” includes consideration other than money:
- 15 “Court” means the High Court and includes a Judge of that Court:
- “Director” means—
- (a) In relation to a company, any person occupying the position of a director of the company by whatever name called:
- 20 (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:
- 25 (e) In relation to any other person, that person:
- 30 “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:
- 35 “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:
- 40 “Prescribed” means prescribed by regulations made under the authority of the principal 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: 5

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: 10

“Public issuer” means a company or person that is, or that was at any time, a party to a listing agreement with a stock exchange: 15

“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 20

(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: 25

“Stock exchange” means the New Zealand Stock Exchange; and includes a stock exchange registered under the Sharebrokers Act 1908:

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

New

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“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 stock exchange:

New

5 “Trustee corporation” means the Public Trustee 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.”

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10 “Voting security” in relation to a public issuer, means a security of the public issuer which confers a right to vote at general meetings of members of the public issuer (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:

15 (a) During a period in which a dividend (or part of a dividend) in respect of the security is in arrears:

20 (b) On a proposal to reduce the capital of the public issuer:

(c) On a proposal that affects rights attached to the security:

25 (d) On a proposal to wind up the public issuer:

(e) On a proposal for the disposal of the whole of the property, business, and undertaking of the public issuer:

30 (f) During the winding up of the public issuer; and includes a security which, in accordance with the terms of the security, is convertible into a security of that kind.

New

35 “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 general meetings of members (whether or not there is any restriction or

New

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: 5

(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: 10

(c) On a proposal that affects rights attached to the security:

(d) On a proposal to wind up the public issuer or body:

(e) On a proposal for the disposal of the whole of the property, business, and undertaking of the public issuer or body: 15

(f) During the winding up 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. 20

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4. Meaning of “insider”—(1) For the purposes of Part I of this Act “insider” in relation to a public issuer, means— 25

(a) The public issuer:

(b) A principal officer:

(c) In the case of a company, the company secretary:

(d) An employee:

(e) A substantial security holder: 30

(f) A person who receives inside information in confidence from a person described in any of paragraphs (a) to (e) of this subsection about the public issuer or another public issuer:

(g) A person who is a principal officer, company secretary, employee or substantial security holder of a person described in paragraph (f) of this subsection: 35

(h) A person who receives inside information in confidence from a person described in paragraph (f) or paragraph (g)

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of this subsection about the public issuer or another public issuer:

5 (i) A person who is a principal officer, company secretary, employee or substantial security holder of a person described in **paragraph (h)** of this subsection.

(2) For the purposes of **subsection (1)** of this section where inside information is given in confidence to a person who is a principal officer, company secretary, or employee of any
10 person, that information shall be deemed to have also been given in confidence to the person of which he or she is a principal officer, company secretary, or employee.

(3) For the purposes of this Act, a person who was, at any time, an insider of a public issuer because that person was a
15 principal officer, company secretary, or employee, 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.

New

20 **4. Meaning of “insider”**—(1) For the purposes of Part I of this Act, “insider” in relation to a public issuer, means—

(a) The public issuer:

25 (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:

30 (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
35 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:

New

(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. 5

(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. 10

(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. 15 20

(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. 25

(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. 30 35

5. Extended meaning of “security”—For the purposes of Part I 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:
- 5 (f) Any power which may exist or arise at any time under any trust, agreement, arrangement, or understanding relating to a security to—
 - 10 (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
 - 15 (iv) Control the acquisition or disposition of a security by any person.

6. Meaning of “relevant interest”—(1) For the purposes of this Act a person has a relevant interest in a voting security (whether or not that person is the registered holder of it) if that person—

- 20 (a) Is a beneficial owner of the voting security; or
- (b) Has the power to exercise any right to vote attached to the voting security; or
- (c) Has the power to control the exercise of any right to vote attached to the voting security; or
- 25 (d) Has the power to acquire or dispose of the voting security; or
- (e) Has the power to control the acquisition or disposition of the voting security by another person; or
- 30 (f) Under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the voting 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 voting security; or
 - 35 (ii) May at any time have the power to control the exercise of any right to vote attached to the voting security; or
 - (iii) May at any time have the power to acquire or dispose of, the voting security; or
 - 40 (iv) May at any time have the power to control the acquisition or disposition of the voting security by another person.

(2) Where a person has a relevant interest in a voting 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 voting security; or 5
 - (ii) The control of the exercise of any right to vote attached to the voting security; or
 - (iii) The acquisition or disposition of the voting security; or 10
 - (iv) The exercise of the power to control the acquisition or disposition of the voting 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 voting securities of that person; or 15
- (c) Another person has the power to control the exercise of the right to vote attached to 20 percent or more of the voting securities of that person; or
- (d) Another person has the power to acquire or dispose of 20 percent or more of the voting securities of that person; or 20
- (e) Another person has the power to control the acquisition or disposition of 20 percent or more of the voting securities of that person— 25
- that other person also has a relevant interest in the voting security.
- (3) A body corporate or other body has a relevant interest in a voting security in which another body corporate that is related to that body corporate or other body has a relevant interest. 30
- (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 voting security regardless of whether the power— 35
- (a) Is expressed or implied:
 - (b) Is direct or indirect:
 - (c) Is legally enforceable or not:
 - (d) Is related to a particular voting security or not:
 - (e) Is subject to restraint or restriction or is capable of being made subject to restraint or restriction: 40
 - (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. 45

(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.

5 (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.

10 (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 section 158 of the Companies Act 1955; or

15 (b) More than half in nominal value of its equity share capital (as defined in section 158 (5) of that Act) 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

20 (c) More than half in nominal value of the equity share capital (as defined in section 158 (5) of that Act) of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

25 (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

30 (e) There is another body corporate to which both bodies corporate are related.

7. Relevant interests to be disregarded in certain cases—(1) For the purposes of Part II of this Act, notwithstanding section 6 of this Act, no account shall be taken of a relevant interest of a person in a voting security if—

35 *Struck Out*

(a) The ordinary business of the person who has the relevant interest consists of or includes lending money and that person—

40 (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 in

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connection with the lending of money, not being a transaction entered into with an associated person; and

(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

New

(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 members, or class of members, of a public issuer, *the person is an officer or director of that body*

corporate), and a copy of the resolution is deposited with the public issuer not less than 48 hours before the meeting; or

- 5 (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

10 *New*

(dd) That person:

- (i) Is a trustee corporation or a nominee company; and
 15 (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
 20 (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

(e) The person has the relevant interest by reason only that the person is a bare trustee of a trust to which the voting security is subject.

- 25 (2) For the purposes of subsection (1) (e) 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.

PART I

30 INSIDER TRADING

8. 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
 35 (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: 5

(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. 10

(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. 15

(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— 20

whichever is the greater.

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9. Exceptions to section 8—(1) Section 8 of this Act does not apply to the sale or purchase of securities in a public issuer by an insider who is a director, secretary, or employee (but not a substantial security holder) of the public issuer if— 25

(a) The securities are sold or purchased in the insider's own name, or in the name, or on behalf, of his or her spouse or child; and

(b) The Commission has, by notice in the *Gazette*, declared the public issuer to be an approved public issuer for the purposes of this section; and 30

(c) In the case of a company incorporated under the Companies Act 1955, particulars of the transaction are registered under **section 195** of that Act. 35

(2) The Commission shall not declare a public issuer to be an approved public issuer for the purposes of this section unless it is satisfied that proper procedures exist and are applied by the public issuer to prohibit persons who have inside information about the securities of the public issuer or other public issuers from dealing in those securities. 40

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(3) **Section 8** of this Act does not apply to the purchase of securities which results from a take-over offer made by an insider in accordance with section 4 of the Companies Amendment Act 1963.

(4) **Section 8** of this Act does not apply to the sale or purchase of securities in a public issuer by a person who is an insider if—

(a) That section would, but for this subsection, apply by reason only that a director, secretary, or employee of the insider, has inside information about the public issuer; and

(b) The director, secretary, or employee, took no part in the decision to buy or sell the securities; and

(c) Arrangements existed to ensure that any person who took part in the decision to buy or sell the securities did not receive the information, or advice relating to the sale or purchase, from that director, secretary, or employee; and

(d) No person who took part in the decision to buy or sell the securities received that information or advice.

New

9. Exceptions to section 8—(1) No action shall be brought against a director, or company secretary, or employee of a public issuer under **section 8** 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

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| <p>(iii) Any specified public issuer; and</p> <p>(d) The Commission has not withdrawn that approval.</p> <p>(2) No action shall be brought against an insider under section 8 of this Act in respect of the purchase of securities which results from a take-over offer made by the insider in accordance with section 4 of the Companies Amendment Act 1963.</p> <p>(3) No action shall be brought against an insider under section 8 of this Act, in relation to the sale or purchase of securities in a public issuer, if—</p> <p>(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</p> <p>(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.</p> | <p>5</p> <p>10</p> <p>15</p> |
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- 10. 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 | 25 |
| (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 | 30 |
| (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— | 35 |
| (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 | 40 |

sell securities of the public issuer for any loss incurred by that person:

- 5 (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:
 - 10 (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:
 - 15 (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
 - 20 (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
 - 25 (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.
 - 30 (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
 - 35 (b) Three times the combined amounts of the gains made, or the losses avoided, by those persons—
- whichever is the greater.

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11. **Exception to section 10**—An insider who does an act of the kind described in **section 10 (1)** of this Act is not liable under that section if—

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- (a) That section would, but for this section, apply by reason only that a director or secretary or employee of the insider, has inside information about the public issuer; and 5
- (b) The director, secretary or employee, took no part in the act described; and
- (c) Arrangements existed to ensure that any person who took part in the act did not receive the information, or advice relating to the securities from that director, or secretary or employee; and 10
- (d) No person who took part in the act received that information or advice.

New

- 11. Exception to section 10**—No action shall be brought under section 10 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— 15
- (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 20
- (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. 25

12. Liability of insider of public issuer 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— 30

- (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. 35
- (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.

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- 13. Exceptions to section 12—**(1) Section 12 of this Act does not apply to the purchase of securities which results from a take-over offer made by the insider in accordance with section 4 of the Companies Amendment Act 1963.
- (2) Section 12 of this Act does not apply to the sale or purchase by a person who is an insider of a public issuer of securities in another public issuer if—
- (a) That section would, but for this subsection, apply by reason only that a director or secretary or employee of the insider has inside information about the other public issuer; and
 - (b) The director, or secretary or employee, took no part in the decision to buy or sell the securities; and
 - (c) Arrangements existed to ensure that any person who took part in the decision to buy or sell the securities did not receive the information, or advice relating to the sale or purchase, from that director, or secretary or employee; and

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- (d) No person who took part in the decision to buy or sell the securities received that information or advice.
- (3) **Section 12 (2) (c)** of this Act does not apply if the public issuer has consented to the sale or purchase of the securities. 5

New

13. Exceptions to section 12—(1) No action shall be brought against an insider under **section 12** of this Act in respect of the purchase of securities which results from a take-over offer made by the insider in accordance with section 4 of the Companies Amendment Act 1963. 10

(2) No action shall be brought against an insider under **section 12** 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 15 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 20 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.
- (3) No action shall be brought against an insider under **section 12 (2) (c)** of this Act in relation to the sale or purchase of 25 securities in a public issuer if the public issuer in relation to which that person is an insider consents to the sale or purchase.

14. 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— 30

- (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 35 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—
5 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
10 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
15 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:
- 20 (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
25 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 of any loss incurred by that person:
- 30 (g) The public issuer in relation to which the insider is an
insider for—
- (i) Any consideration or benefit received by the
insider; and
- 35 (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.
- 40 (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.

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15. Exception to section 14—An insider who does an act of the kind described in section 14 (1) of this Act is not liable under that section if—

- (a) That section would, but for this subsection, apply by reason only that a director or secretary or employee of the insider has inside information about the other public issuer; and
- (b) The director, or secretary, or employee, took no part in the act described; and
- (c) Arrangements existed to ensure that any person who took part in the act did not receive the information, or advice relating to the securities from that director, or secretary or employee; and
- (d) No person who took part in the act received that information or advice.

New

15. Exception to section 14—No action shall be brought under section 14 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.

16. Certain terms defined in relation to extent of liability of insider—(1) For the purposes of this Part of this Act,—

- 5 (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 received:
- 10 (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 paid and the value of the security:
- 15 (c) A person who buys a security in a public issuer for less than its value makes a gain equal to the difference between the value of the security and the consideration paid:
- (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 received and the value of the security.

20 (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.

17. 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—

- 25 (a) The nature and extent of the dealing in the securities by the insider:
- 30 (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.

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18. Shareholders may require public issuer to obtain opinion from Queen’s Counsel—(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, by notice in writing, require the public issuer to obtain from a Queen’s Counsel an opinion on the question

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whether or not the public issuer has a cause of action against the insider.

(2) This section applies to—

(a) A member of the public issuer: 5

(b) A person who was a member 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 a Queen's Counsel who shall, after considering— 10

(a) Any representations made by the person who has required the matter to be referred to him or her and the public issuer; and 15

(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 Queen's Counsel's opinion shall be given by the public issuer to— 20

(a) The person who required the public issuer to obtain it:

(b) Any member of the public issuer and any person who was a member of the public issuer when the securities in the public issuer were bought or sold, on the request of that member or person. 25

(5) The public issuer shall pay the Queen's Counsel's fees.

New

18. 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. 30 35

(2) This section applies to—

(a) A member of the public issuer:

New

- (b) A person who was a member of the public issuer at the time the securities in the public issuer, or other public issuer, were bought or sold.
- 5 (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—
- 10 (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,—
- 15 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;
- 20 (c) Any member of the public issuer and any person who was a member of the public issuer when the securities in the public issuer were bought or sold, on the request of that member or person.
- (5) The public issuer shall pay the barrister's or solicitor's
- 25 fees.

- 19. Proceedings by shareholders—**(1) The right of action of a public issuer against an insider may, with the leave of the Court, be exercised by—
- 30 (a) A member of the public issuer; or
- (b) A person who was a member 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—
- 35 (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—
- 40 (a) A member of the public issuer; or

- (b) A person who was a member 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. 5
- (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. 10
- (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. 15

20. 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.

- (2) The Court may direct that the amount recovered shall— 20
- (a) Be distributed or paid to—
- (i) Any other person who has also obtained a judgment against the insider in respect of the same transaction:
- (ii) Any other person who satisfies the Court that 25
 that person could obtain a judgment against the insider in respect of the same transaction:
- (iii) Any member of the public issuer:
- (iv) Any person who, at the time the securities were bought or sold, was a member of the public issuer: 30
- (b) Be retained by the public issuer.
- (3) Where the judgment obtained by the public issuer against the insider is obtained in relation to a transaction in respect of which another person—
- (a) Has also obtained a judgment against the insider; or 35
- (b) Satisfies the Court that that person could obtain judgment in a claim against the insider—
- the Court shall, in giving directions for the distribution of the amount recovered by the public issuer, give priority to satisfying that judgment or claim before distribution or 40
 payment to any other person.
- (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 prepared by the public issuer and approved by the Court.

- 5 (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.

PART II

10 DISCLOSURE OF INTERESTS OF SUBSTANTIAL SECURITY HOLDERS
IN PUBLIC ISSUERS

21. **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
15 substantial security holder in the public issuer to—

- (a) The public issuer; and
- (b) Any stock exchange on which the securities of the public issuer are listed.

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20 (2) Every notice under subsection (1) of this section shall be—
(a) In the prescribed form; and
(b) Given in the prescribed manner; and
(c) Given within 14 days after the commencement of this section.

New

25 (2) Every notice under subsection (1) of this section shall—
(a) Be in the prescribed form; and
(b) Contain the prescribed information; and
30 (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.

35 (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) Any stock exchange on which the securities of the public issuer are listed.

Struck Out

- (4) Every notice under **subsection (2)** of this section shall be— 5
 - (a) In the prescribed form; and
 - (b) Given in the prescribed manner; and
 - (c) Given as soon as the person knows, or ought to know, that the person is a substantial security holder in the public issuer. 10

New

- (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 15
 - (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. 20

22. 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 25
 - (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 Part of this Act is equal to 1 percent or more of the total number of issued voting securities of the public issuer— 30
- the substantial security holder shall give notice of the change to— 35
- (c) The public issuer; and
 - (d) Any stock exchange on which the securities of the public issuer are listed.

Struck Out

- (2) Every notice under **subsection (1)** of this section shall be—
 - (a) In the prescribed form; and
 - (b) Given in the prescribed manner; and
 - 5 (c) Given as soon as the person knows, or ought to know, of the change.

New

- (2) Every notice under **subsection (1)** of this section shall—
 - (a) Be in the prescribed form; and
 - 10 (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
 - 15 (e) Be given as soon as the person knows, or ought to know, of the change.

- (3) Where there is a change in the total number of voting securities of a public issuer which results in a person who was, immediately before the change, a substantial security holder, ceasing to be a substantial security holder, that person shall give notice that the person has ceased to be a substantial security holder in the public issuer to—
 - (a) The public issuer; and
 - 20 (b) Any stock exchange on which the securities of the public issuer are listed.
 - 25

Struck Out

- (4) Every notice under **subsection (3)** of this section shall be—
 - (a) In the prescribed form; and
 - (b) Given in the prescribed manner; and
 - 30 (c) 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.

New

- (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.

- 23. 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) Any stock exchange on which the securities of the public issuer are listed.

Struck Out

- (2) Every notice under **subsection (1)** of this section shall be—
- (a) In the prescribed form; and
 - (b) Given in the prescribed manner; and
 - (c) Given as soon as the substantial security holder knows, or ought to know, of the change.

New

- (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.

24. 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.

10 *Struck Out*

(2) A person who would, but for this subsection, have to comply with any of sections 21, 22, or 23 of this Act by reason only that that person is related to another person who has a relevant interest in the voting securities of a public issuer, does not have to comply with any of those sections if the person to whom that person is related complies.

New

(2) A person who would, but for this subsection, have to comply with any of sections 21, 22, or 23 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 6 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.

(2A) A person who would, but for this subsection, have to comply with any of sections 21, 22, or 23 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.

(3) 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.

25. Means of ascertaining total voting securities of public issuer—For the purposes of this Part of this Act, 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 number 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. 5

26. 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 21, 22, and 23 of this Act and any information supplied to it under sections 29 and 32 of this Act. 10

(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 15
- (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. 20

(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 1955 or any other enactment. 25

(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.

27. Public issuers to publish identity of substantial security holders—(1) Every public issuer that is a company (but not an overseas company) shall, in a note accompanying its balance sheet laid before the public issuer in general meeting, state— 30

- (a) The names of all persons who, according to the file kept under section 26 of this Act, are substantial security holders in the public issuer, as at a date not earlier than 3 months before the balance sheet is laid before the public issuer in general meeting; and 35

- (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 40

(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 26** 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 Part of this Act 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.

28. Notice under this Part not to affect incorporation of public issuer or constitute notice of trust—(1) Nothing in, or done pursuant to, this Part of this Act—

(a) Affects the incorporation of a public issuer; or

(b) Limits sections 125, 125A, or 125B of the Companies Act 1955.

(2) A public issuer, is not, by virtue of anything done for the purposes of this Part of this Act, affected with notice of, or put on enquiry as to, the rights of any person in relation to any securities.

29. Public issuer may require disclosure of relevant interests—(1) A public issuer may, and at the written request

of a member or members 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 (*immediately and in writing*) 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 5 (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. 10

New

(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. 15

29A. Public issuer may require person who holds relevant interest to disclose information—(1) A public issuer may, and at the written request of a member or members of the public issuer holding in aggregate not less than 5 percent of the voting securities of the public issuer shall, by 20 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. 25

(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.

30. Jurisdiction of Court to make certain orders— 30
Where—

- (a) There are reasonable grounds to suspect that a substantial security holder has not complied with sections 21, 22, or 23 of this Act in relation to a public issuer; or
- (b) A person has not complied with section 29 or section 29A of 35 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 29 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:
- 10 (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 21 or section 22 or section 23 of this Act:
- 15 (e) A person who has made a take-over offer in accordance with section 4 of the Companies Amendment Act 1963 for securities of the public issuer at a time when a substantial security holder had not complied with section 21 or section 22 or section 23 of this Act (whether or not the offer has been accepted):
- 20 (f) With the leave of the Court, any other person.

32. Orders—(1) The Court may make any of the following orders on an application under section 30 of this Act,—

- 25 (a) An order directing a substantial security holder to comply with section 21 or section 22 or section 23 of this Act:
- (b) An order directing any person to comply with a notice under 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:
- 30 (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:
- 35 (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:
- 40 (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: 5
- (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: 10
- (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. 15
- (2) An order under **subsection (1)** of this section may be made on such terms and conditions as the Court thinks fit. 20
- (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: 25
 - (c) That the voting securities are, or any interest in them is, disposed of in a manner and on terms specified by the Court: 30
 - (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— 35
 - (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. 40
- (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: 45

- (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
 5 revoked, varied or suspended and on such terms and
 conditions, as the Court thinks fit.

- 33. Obligations of public issuer where order made to
 forfeit shares**—(1) Where the Court makes an order under
section 32 (1) (k) of this Act for the forfeiture of voting securities in
 10 a public issuer which is a company, that public issuer shall—
- (a) Immediately cancel the securities; and
 - (b) Deduct from its paid-up capital account a sum equal to
 the aggregate amount of paid-up capital credited to
 those securities; and
 - 15 (c) Transfer to an account called the “forfeited shares
 reserve” a sum equal to the amount deducted from
 the paid-up capital account.
- (2) Amounts standing to the credit of the forfeited shares
 reserve shall not be applied or disposed of except—
- 20 (a) In paying up unissued shares of the public issuer to be
 issued to its members (not being members *(having)*
 who had relevant interests in the voting securities
 forfeited) as fully paid bonus shares; or
 - 25 (b) By way of distribution to members (not being members
(having) who had relevant interests in the voting
 securities forfeited) of the public issuer on a winding
 up.

- 34. Liability of substantial security holder for failure to
 notify relevant interest**—(1) In any case where a person sells
 30 any securities in a public issuer to a substantial security holder
 in that public issuer who has not complied with **section 21** or
section 22 or **section 23** 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
 35 price paid.
- (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 21** or **section 22** or **section 23** of
 this Act, the Court may make an order directing the substantial
 40 security holder to pay to that person the amount by which the
 price paid 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 21** or **section 22** or **section 23** 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 paid;
- (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 paid 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) 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 21** or **section 22** or **section 23** 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 21** or **section 22** or **section 23** 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
5 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.

35. Knowledge of relevant interest presumed—In any
10 proceedings under this Part of this Act, 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,
15 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.

New

- 35A. Regulations for purpose of this Part of this Act**—
- 20 (1) The Governor-General may from time to time, by Order in
Council, in accordance with the recommendation of the
Commission, make regulations prescribing—
 - (a) The form of notices required under this Part of this Act:
 - (b) The information that shall be contained in such notices:
 - 25 (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 26 (3) (b)** of this Act.
 - 30 (2) Without limiting **subsection (1) (b)** of this section, regulations
prescribing the information that shall be contained in notices
under **section 21** of this Act may prescribe information relating
to—
 - 35 (a) The number, nominal value, 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:
 - 40 (d) Other persons who have given notice under this Part of
this Act in relation to the voting securities.

New

- (3) 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— 5
- (a) The number, nominal value, and class of voting securities of a public issuer in which a relevant interest is held before and after the change (if any):
 - (b) The nature of the relevant interest before and after the change (if any): 10
 - (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 23 of this Act may prescribe information relating to— 15
- (a) The number, nominal value, and class of voting securities of the public issuer in which the relevant interest is held:
 - (b) The nature of the change: 20
 - (c) The terms and conditions, including consideration, of any transaction from which the change results.
- (5) The provisions of section 70 (3) of the principal Act, including the provisos, shall apply in relation to any recommendation by the Commission. 25

PART III

DEALING IN FUTURES CONTRACTS

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- 36. Interpretation of terms used in this Part—**(1) In this Part of this Act, unless the context otherwise requires,— 30
- “Acquire”, in relation to a futures contract, includes enter into and take an assignment of;—
and “acquires” and “acquisition” have corresponding meanings:
- “Authorised futures exchange” means a body corporate 35
which is declared by the Commission to be an authorised futures exchange for the purposes of this Part of this Act:

Struck Out

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

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

5 (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;—

10 and “disposes” and “disposition” have corresponding meanings:

“Futures contract” means—

15 (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 will be satisfied by means other than actual delivery and payment of the purchase price:

20 (b) An agreement under which each party has either—

25 (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

30 (ii) A right to receive payment, or a credit, of a sum of money from the other— depending on whether at a future date a specified commodity is worth more or less than it was on the date when the agreement was made and which is quantified by reference to the respective values of the commodity at those dates:

35 (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

40 (ii) A right to receive payment, or a credit, of a sum of money from the other— depending on whether at a future date an index figure is more or less than the index

Struck Out

- figure on the date when the agreement was made and which is quantified by reference to the respective index figures on those dates: 5
- (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: 10
- (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 section applies:
- (f) An agreement, option or right which is of a class 15
of agreements, options or rights declared by the Commission, in accordance with this section, to be a class to which this section applies.
- (2) An agreement of the kind described in paragraphs (a), (b) or (c) of subsection (1) of this section is a futures contract whether or not it— 20
- (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. 25
- (3) For the purposes of this section “party” in relation to an agreement, includes—
- (a) An assignee:
- (b) A nominee:
- (c) A successor in title: 30
- (d) If the party to the agreement is an agent, the principal.
- (4) 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 35
- (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 40
- (d) Advises or assists a person in connection with the acquisition or disposition of the futures contract; or

Struck Out

- (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.
- 5 (5) The Commission may, by notice in the *Gazette*, declare a body corporate that conducts 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.
- 10 (6) 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.

New

- 36. Interpretation of terms used in this Part—**(1) In this Part of this Act, unless the context otherwise requires,—
- 15 “Acquire”, in relation to a futures contract, includes enter into and take an assignment of;—
and “acquires” and “acquisition” have corresponding meanings:
- 20 “Authorised dealer in foreign exchange” has the same meaning as in section 2 of the Reserve Bank of New Zealand Act 1964:
- “Authorised futures contract” means a futures contract which is—
- 25 (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
- 30 a futures exchange, by a person referred to in paragraph (a) or paragraph (b) or paragraph (c) of section 37 of this Act; or
(c) Which is a futures contract of a class in which a person referred to in paragraph (b) or paragraph (c) of section
- 35 37 of this Act is authorised to deal:
- “Authorised futures exchange” means a body corporate which is declared by the Commission to be an authorised futures exchange for the purposes of this Part of this Act:

New

“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 5 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 10 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 15 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: 20

(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 25

(ii) A right to receive payment, or a credit, or 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 30 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— 35

(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— 40

depending on whether at a future date the value or level of a specified index calculated in a manner

New

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:

5 (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:

10 (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:

15 (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 1964.

20 (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 an authorised dealer in foreign exchange or a registered bank is a party:

25 (b) An interest rate swap agreement to which an authorised dealer in foreign exchange or a registered bank is a party:

(c) A forward exchange rate contract to which an authorised dealer in foreign exchange or a registered bank is a party:

30 (d) A forward interest rate contract to which an authorised dealer in foreign exchange or a registered bank is a party.

35 (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

40 (c) Is capable of being varied or discharged before the time fixed for performance.

New

(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: 5

(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— 10

(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 15

(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. 20

(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. 25

(7) The Commission may, by notice in the *Gazette*, declare— 30

(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. 35

(8) The Commission may, 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. 40

New

(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.

5

Struck Out

37. Dealers in futures contracts to be authorised—No person shall carry on the business of dealing in futures contracts unless—

- 10 (a) That person is a member of an authorised futures exchange; or
- (b) That person complies with regulations made under this Act relating to the carrying on of that business; or
- (c) That person is authorised by the Commission to carry on the business of dealing in futures contracts.

15

New

37. Dealers in futures contracts to be authorised—
(1) No person shall carry on the business of dealing in futures contracts unless—

- 20 (a) That person is a member of an authorised futures exchange; or
- (b) That person is authorised by the Commission by notice in the *Gazette* to carry on the business of dealing in futures contracts.

25 (2) For the purposes of paragraph (b) 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;
- 30 (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.

38. Contravention of section 37 and offence—Every person who contravenes **section 37** 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: 5
- (b) In the case of a body corporate, to a fine not exceeding \$300,000.

Struck Out

39. Gaming and Lotteries Act 1977 not to apply to futures contracts—Nothing in the Gaming and Lotteries Act 1977 applies to, or in respect of, a futures contract. 10

New

39. Effect of certain laws on authorised futures contracts—(1) Nothing in the Gaming and Lotteries Act 1977 applies to, or in respect of, an authorised futures contract. 15

(2) Without limiting **subsection (1)** of this section, an authorised futures contract is not a gaming or wagering contract for the purposes of any enactment or rule of law.

(3) A contravention of this Part of this Act does not affect the validity or enforceability of an authorised futures contract. 20

39AA. Regulations for purposes of this Part—(1) The Governor-General may from time to time, by Order in Council, in accordance with the recommendation of the Commission, make regulations for all or any of the following purposes: 25

- (a) Regulating the business and operations of authorised futures exchanges: 25
- (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: 30
- (c) Regulating the receipt of money and property from clients by persons dealing in futures contracts and the application of that money and property: 35

New

- (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:
- 5 (e) Specifying the duties and obligations of such dealers in relation to client's 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
- 10 property deposited in safe custody from claims against persons dealing in futures contracts.
- (2) The provisions of section 70 (3) of the principal Act, including the provisos, shall apply in relation to any recommendation by the Commission.

15

PART IV

AMENDMENTS TO SECURITIES ACT 1978

New

- 39A. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term
- 20 "advertisement", the following definition:
- "Authorised life insurance company" means a life insurance company which is declared by the Commission by notice in the *Gazette* to be an authorised life insurance company for the purposes of
- 25 this Act:".
- (2) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term "labour share", the following definitions:
- "Life insurance company" means any person or
- 30 association of persons, whether incorporated or unincorporated, which, in the course of business issues, or is liable under, life insurance policies:
- "Life insurance policy" means a policy of life or endowment insurance and a policy securing an
- 35 annuity:".

Struck Out

40. Commission's power to exempt—Section 5 (5) of the principal Act is hereby amended by inserting after the words "Part II", the words "or Part II of the Securities Law Reform Act 1988".

5

New

40. Exemptions from this Act—(1) Section 5 (1) of the principal Act is hereby amended by repealing paragraph (a).

(2) Section 5 (5) of the principal Act is hereby amended by inserting after the expression "Part II", the words "or Part II of the Securities Law Reform Act 1988".

40A. New sections inserted relating to life insurance companies—The principal Act is hereby amended by inserting after section 7, the following sections:

"7A. Exemption for authorised life insurance companies—(1) Nothing in sections 33 (2), 33 (3), 35, 37, 37A, 39 to 44, and 44B to 54 of this Act shall apply in respect of any life insurance policy issued by an authorised life insurance company in accordance with its authorisation.

"(2) The Commission may, by notice in the *Gazette*, declare a life insurance company to be an authorised life insurance company for the purposes of this Act.

"(3) An authorisation may be for—

"(a) Specified life insurance policies:

"(b) A specified class or specified classes of life insurance policy:

"(c) Life insurance policies generally:

"(d) Life insurance policies generally other than—

"(i) Specified life insurance policies:

"(ii) A specified class or specified classes of life insurance policy—

and may be on such terms and conditions as the Commission thinks fit.

"(4) The Commission may, by notice in the *Gazette*, vary or revoke any authorisation.

"(5) Before issuing any notice the Commission shall do everything reasonably possible on its part to advise all persons

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New

and organisations, who in its opinion will be affected by the proposed notice, of the proposed terms of it; and give such persons and organisations a reasonable opportunity to make
5 submissions to the Commission.

“(6) **Subsection (5)** of this section shall not apply in respect of any particular notice if the Commission considers that it is desirable in the public interest that the notice be made
urgently.

10 “(7) Failure to comply with **subsection (5)** of this section shall in no way affect the validity of any notice made under this section.

“7B. **Terms and conditions of authorisation**—The terms and conditions of authorisation of a life insurance company
15 may include terms and conditions—

“(a) Requiring the company to observe standards for the carrying on of life insurance business prescribed or approved by the Commission:

20 “(b) Requiring the company to publish in such manner and at such times as may be specified by the Commission financial statements, which the Commission may require to be audited, containing such information as the Commission may specify.”

41. Functions of Commission—Section 10 of the
25 principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) To co-operate with any securities commission or other similar body in any other country and for that purpose, but without limiting this function, to
30 communicate, or make arrangements for communicating, information obtained by the Commission in the performance of its functions and powers, confidential or not, to that commission or body which the Commission considers may assist that commission or body in the performance of its
35 functions.”

New

41AA. Commission may take evidence for overseas commission or body—The principal Act is hereby amended by inserting after section 18, the following section:

“18A. (1) Where any securities commission or other body in any other country with functions corresponding to those of the Commission requests the Commission to inquire into any matter related to the functions of that commission or body, the Commission may, at any meeting of the Commission, subject to subsection (2) of this section, receive in evidence any statement, document, information or matter that in the Commission’s opinion is likely to assist the Commission in complying with that commission’s or body’s request. 5 10

“(2) The Commission shall not comply with a request under subsection (1) of this section unless— 15

“(a) The Commission is satisfied that compliance with the request will not substantially affect the performance of its other functions under this Act; and

“(b) The Commission has recommended to the Minister that the request be complied with; and 20

“(c) The Minister accepts the recommendation.

“(3) For the purposes of this section the Commission may take evidence on oath and for that purpose a member of the Commission or an officer or employee of it may administer an oath. 25

“(4) For the purposes of this section a member of the Commission may by order under the seal of the Commission served on the person, summon any person to appear before the Commission to give evidence as to the matter to which the request relates, and require any witness to produce to the Commission all or any books or papers in his or her possession or control relative to the matter. Every summons under this section shall be served either by delivering it to the person summoned or by leaving it at his or her usual place of abode or business at least 24 hours before his or her attendance is required. 30 35

“(5) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering and, if the Commission thinks fit, verifying by oath, a written statement. 40

New

“(6) Where any person has appeared as a witness before the Commission pursuant to a summons in that behalf, or has given evidence before the Commission, whether pursuant to a
5 summons or not, the Commission may, if it thinks fit, order any sum to be paid to that witness on account of his or her expenses, not exceeding the amount that would be payable to him or her if his or her attendance has been as a witness for the
10 the time being in force for the payment of witnesses for the Crown in criminal cases.

“(7) Evidence taken by the Commission under this section shall be transmitted to the securities commission or body on whose behalf the request was made in such manner as the
15 Commission thinks fit.”

41A. Money to be appropriated by Parliament for purposes of this Act—The principal Act is hereby amended by repealing section 31, and substituting the following section:

“31. Subject to **section 70A** of this Act, all fees, salaries,
20 allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.”

41B. Authorised advertisements—(1) Section 38 of the principal Act (as substituted by section 17 of the Securities
25 Amendment Act 1982 and amended by section 12 (2) of the Reserve Bank of New Zealand Amendment Act 1986) is hereby amended by repealing the proviso and substituting the following proviso:

“Provided that paragraphs (a) to (c) of this section shall not
30 apply in respect of any advertisement relating only to securities exempted from certain provisions of this Act by virtue of subsections (2A), (3), and (4) of section 5 and **subsection (1) of section 7A** of this Act.”

(2) Section 12 (2) of the Reserve Bank of New Zealand
35 Amendment Act 1986 is hereby consequentially repealed.

41C. Prohibition of advertisements—The principal Act is hereby amended by repealing section 44A (as inserted by section 24 of the Securities Amendment Act 1982), and substituting the following section:

New

“44A. (1) Where, at any time, the Commission is of the opinion that an advertisement—

“(a) Is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities to which it relates; or 5

“(b) Is inconsistent with any registered prospectus referred to in it; or

“(c) Does not comply with this Act and regulations made under this Act— 10

the Commission may make an order prohibiting the distribution of that advertisement or any advertisement which relates to the offer of securities.

“(2) An order may be made on such terms and conditions as the Commission thinks fit. 15

“(3) Where the Commission makes an order under this section—

“(a) It shall forthwith notify the issuer of the securities that the order has been made and the reasons for making it; and 20

“(b) It may notify any other person that the order has been made and the reasons for making it.

“(4) Every person who contravenes an order made under this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000. 25

“(5) It is a defence to a charge under subsection (4) of this section if the defendant proves that the advertisement was distributed—

“(a) Without the defendant’s knowledge; or

“(b) Without the defendant’s knowledge of the order. 30

“(6) At any time after an order has been made under this section, the issuer of the securities to which the advertisement relates shall be entitled to appear and be represented before the Commission, and the Commission, if it is satisfied that the order should not continue in force, may revoke the order. 35

42. Disclosure of information relating to inspection—

The principal Act is hereby amended by repealing section 67A (as inserted by section 25 (1) of the Official Information Amendment Act 1987) and substituting the following section: 40

“67A. (1) A person authorised by the Registrar for the purposes of section 67 (1) of this Act shall not make a record of, divulge, or communicate to any person, any information acquired in exercising the powers conferred by that subsection

5 except—

“(a) In accordance with subsection (5) of that section; or

“(b) For the purposes of this Act or any of the Acts listed in the First Schedule to this Act; or

“(c) In the course of any criminal proceedings.

10 “(2) Any person so authorised who contravenes subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

“(3) Notwithstanding anything in the Official Information Act 1982, the Registrar may refuse to disclose any information in his or her possession obtained in making, or acquired as a result of, an inspection under section 67 (1) of this Act until the purpose for which the inspection is carried out has been satisfied.

20 “(4) Notwithstanding anything in the Official Information Act 1982, where any person requests the Registrar or the Minister or the Commission to disclose whether an inspection under section 67 (1) of this Act is, or is proposed to be, or has been, carried out, the Registrar or, as the case may require, the Minister or the Commission, shall not be required to disclose 25 that information under the Official Information Act 1982 unless the disclosure of that information would not be likely to prejudice the commercial position of any company or person, and there is no other good reason for withholding that information under that Act.”

30

Struck Out

43. Regulations and Orders in Council—Section 70 (1) of the principal Act is hereby amended by inserting, after paragraph (h), the following paragraphs:

35 “(ha) Prescribing the information that shall be contained in any notice required under Part II of the Securities Law Reform Act 1988 and the manner in which the notice is to be given and acknowledged:

40 “(hb) Regulating the carrying on of the business of dealing in futures contracts and prescribing requirements including requirements relating to the disclosure of financial and other information and for the

Struck Out

appointment of trustees that shall be met by persons dealing in those contracts:".

New

43. Regulations and Orders in Council—(1) Section 70 of the principal Act (as amended by section 12 of the Securities Amendment Act 1986) is hereby amended by repealing subsections (3A) and (4). 5

(2) Section 12 of the Securities Amendment Act 1986 is hereby consequentially repealed. 10

43A. Fees and charges—The principal Act is hereby amended by inserting after section 70 the following section:

"70A. (1) The Governor-General may from time to time, by Order in Council, make regulations—

"(a) Prescribing the amount to be paid on the registration of a prospectus under section 42 of this Act and different amounts may be prescribed in respect of different amounts of securities being offered; and 15

"(b) Prescribing the amount to be paid on the registration of a memorandum of amendments to a registered prospectus under section 43 of this Act and in the case of amendments increasing the amount of the securities being offered different amounts may be prescribed in respect of increases of different amounts. 20 25

"(2) The Governor-General may from time to time, by Order in Council, make regulations prescribing fees and charges to be paid for the purposes of this Act.

"(3) Without limiting subsection (2) of this section, regulations may be made under that subsection— 30

"(a) Prescribing fees and charges which the Commission may require to be paid to it—

"(i) In connection with the exercise by the Commission of any power or function conferred on it by this Act: 35

"(ii) On an application to the Commission to exercise any power or function conferred on it by this Act:

New

“(b) Authorising the Commission to require payment of any costs incurred by the Commission.”

PART V

5 AMENDMENTS TO SHAREBROKERS ACT 1908

44. This Part to be read with Sharebrokers Act 1908—

This Part of this Act shall be read together with and deemed part of the Sharebrokers Act 1908* (in this Part referred to as the principal Act).

*R.S. Vol. 11, p. 337

10 **45. Cancellation of sharebrokers licence—**(1) The principal Act is hereby amended by repealing section 6 (as amended by section 2 (2) (e) and (f) of the Sharebrokers Amendment Act 1957) and substituting the following section:

“6. (1) Where—

15 “(a) A sharebroker has been convicted of any crime involving dishonesty as defined in section 2 (1) of the Crimes Act 1961; or

“(b) A sharebroker has, within the preceding 3 years, been guilty of misconduct or any improper practice; or

20 “(c) A judgment has been obtained against a sharebroker in a proceeding under Part I of the Securities Law Reform Act 1988 as an insider (within the meaning of that Part of that Act)—

a District Court Judge, exercising jurisdiction in the District
25 Court in which the licence was granted, may suspend or cancel the sharebroker’s licence.

“(2) Any person may apply under this section to have a sharebrokers licence suspended or cancelled.

30 “(3) Not less than 10 days notice of intention to apply shall be given to the sharebroker.

“(4) At the hearing of the application the applicant and the sharebroker may give evidence and call witnesses.”

(2) Paragraphs (e) and (f) of subsection (2) of section 2 of the Sharebrokers Amendment Act 1957 are hereby consequentially
35 repealed.

PART VI

AMENDMENTS TO COMPANIES ACT 1955

46. This Part to be read with Companies Act 1955—

This Part of this Act shall be read together with and deemed part of the Companies Act 1955* (in this Part referred to as the principal Act). 5

*R.S. Vol. 15, p. 89; 1985, No. 80; 1986, No. 80; 1987, No. 133

47. Disclosure of information relating to inspection—

The principal Act is hereby amended by repealing section 9AA (as inserted by section 25 (1) of the Official Information Amendment Act 1987) and substituting the following section: 10

“9AA. (1) A person authorised by the Registrar for the purposes of section 9A (1) of this Act shall not make a record of, divulge, or communicate to any person, any information acquired in exercising the powers conferred by that subsection except— 15

“(a) In accordance with subsections (5) and (6) of that section; or

“(b) For the purposes of this Act; or

“(c) In the course of any criminal proceedings.

“(2) A person so authorised who contravenes subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$1,000. 20

“(3) Notwithstanding anything in the Official Information Act 1982, the Registrar, any Deputy Registrar, District Registrar, Assistant Registrar, and the Secretary for Justice, may refuse to disclose any information in his or her possession obtained in making, or acquired as a result of, an inspection under section 9A (1) of this Act until the purpose for which the inspection is carried out has been satisfied. 25

“(4) Notwithstanding anything in the Official Information Act 1982, where any person requests the Registrar, any Deputy Registrar, District Registrar, Assistant Registrar, or the Secretary for Justice, to disclose whether an inspection under section 9A (1) of this Act is being, or is proposed to be, or has been, carried out, as the case may require, the Registrar, Deputy Registrar, District Registrar, Assistant Registrar, or the Secretary for Justice shall not be required to disclose that information under the Official Information Act 1982 unless the disclosure of that information would not be likely to prejudice the commercial position of any company or person, and there is no other good reason for withholding that information under that Act. 30 35 40

“(5) In this section, ‘company’ includes an overseas company.”

48. Certain persons prohibited from managing companies—(1) The principal Act is hereby amended by
5 repealing section 188A (as substituted by section 8 (1) of the
Companies Amendment Act 1980) and substituting the
following section:

“188A. (1) Where—

10 “(a) A person has been convicted on indictment of any
offence in connection with the promotion,
formation, or management of a company; or

“ (b) A person has been convicted of an offence under any of
sections 461 to 461D of this Act or of any crime
involving dishonesty as defined in section 2 (1) of the
15 Crimes Act 1961; or

“ (c) A judgment has been obtained in an action under Part I
of the Securities Law Reform Act 1988 against a
person as an insider (within the meaning of that Part
of that Act)—

20 that person shall not, during the period of 5 years after the
conviction or the judgment be a director or promoter of, or in
any way whether directly or indirectly be concerned or take
part in the management of, a company, unless that person first
obtains the leave of the Court which may be given on such
25 terms and conditions as the Court thinks fit.

“(2) A person intending to apply for the leave of the Court
under this section shall give to the Registrar not less than 10
days’ notice of that person’s intention to apply.

30 “(3) The Registrar, and such other persons as the Court
thinks fit, may attend and be heard at the hearing of any
application under this section.

“(4) If any person acts in contravention of this section, or of
any order made under this section, that person shall be liable
on conviction on indictment to imprisonment for a term not
35 exceeding 2 years, or on summary conviction to imprisonment
for a term not exceeding 6 months, or to a fine not exceeding
\$5,000, or to both.

“(5) In this section, the term “company” includes an overseas
company that has a place of business in New Zealand.”

40 (2) Section 8 (2) of the Companies Amendment Act 1980 is
hereby consequentially repealed.

49. Power to restrain certain persons from managing companies—(1) Section 189 (1) of the Companies Act 1955 (as

substituted by section 8 (1) of the Companies Amendment Act 1980) is hereby amended by omitting from subparagraph (iii) of paragraph (c) the word “company—”, and substituting the words “company; or”.

(2) Section 189 (1) of the Companies Act 1955 (as so substituted) is hereby further amended by inserting, after paragraph (c) (as amended by subsection (1) of this section), the following paragraph:

“(d) A judgment has been obtained in an action under Part I of the Securities Law Reform Act 1988 against a person as an insider (within the meaning of that Part of that Act)—”.

New

(3) Section 189 of the principal Act is hereby amended by inserting after subsection (4) the following subsection:

“(4A) The Registrar of the Court shall, as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made and the Registrar shall give notice in the *Gazette* of the name of the person against whom the order is made.”

50. Certain persons may be prohibited from managing companies by Registrar—The principal Act is hereby amended by inserting, after section 189 (as amended by section 49 of this Act), the following section:

- “189A. (1) This section applies to a company—
- “(a) That has been wound up, or is being wound up, because of its inability to pay its debts as and when they became due;
- “(b) That has ceased to carry on business because of its inability to pay its debts as and when they became due;
- “(c) In respect of which execution is returned unsatisfied in whole or in part;
- “(d) In respect of the property of which a receiver, or a receiver and manager, has been appointed by a court or pursuant to the powers contained in an instrument, whether or not the appointment has been terminated;
- “(e) In respect of which, or the property of which, a person has been appointed as a receiver and manager, or a

judicial manager, or a statutory manager, or as a manager, or to exercise control, under or pursuant to any enactment, whether or not the appointment has been terminated:

5 “(f) That has entered into a compromise or arrangement with its creditors.

“(2) The Registrar may, by notice in writing given to a person, prohibit that person from being an officer or promoter of a company, or being concerned in, or taking part (whether
10 directly or indirectly) in the management of, any company during such period not exceeding 5 years after the date of the notice as is specified in the notice. Every such notice shall be published in the *Gazette*.

“(3) The power conferred by subsection (2) of this section may
15 be exercised in relation to a person who the Registrar is satisfied was, within a period of 5 years before a notice was given to that person under subsection (4) of this section (whether that period commenced before or after the commencement of this section), an officer of, or concerned in, or a person who
20 took part in, the management of, a company to which this section applies if the Registrar is also satisfied that the manner in which the affairs of it were managed was wholly or partly responsible for the company being a company to which this section applies.

25 *Struck Out*

“~~(4) The Registrar shall not exercise the power conferred by subsection (2) of this section unless—~~

“~~(a) Not less than 14 days’ notice of the fact that the Registrar intends to consider the exercise of it is given to the person; and~~

30 “~~(b) The Securities Commission, after considering the information in the Registrar’s possession and any representations made by the person concerned to the Registrar, confirms the Registrar’s decision to exercise the power.~~

35

New

40 “(4) The Registrar shall not exercise the power conferred by subsection (2) of this section unless—

New

- “(a) Not less than 14 days’ notice of the fact that the Registrar intends to consider the exercise of it is given to the person and the Registrar considers any representations made by the person; and 5
- “(b) The Securities Commission, after considering the information in the Registrar’s possession, any representations made by the person concerned to the Registrar, and if the Commission thinks fit, any representations made by that person to the Commission, authorises the Registrar to exercise the power. 10

“(5) No person to whom a notice under **subsection (2)** of this section applies shall be an officer, or promoter of, any company, or be concerned or take part (whether directly or indirectly) in, the management of, any company. 15

“(6) Where a person to whom the Registrar has issued a notice under **subsection (2)** of this section appeals against the issue of the notice under section 9B of this Act or otherwise seeks judicial review of the notice, the notice shall remain in full force and effect pending the determination of the appeal or review, as the case may be. 20

“(7) The Registrar may, by notice in writing to any person to whom a notice under **subsection (2)** of this section has been given,— 25

“(a) Revoke that notice; or

“(b) Exempt that person from the notice in relation to any specified company or companies.

Every such notice shall be published in the *Gazette*.

“(8) Every person to whom a notice under **subsection (2)** of this section is given who fails to comply with the notice commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$5,000. 30

“(9) In this section ‘company’ includes an overseas company that has a place of business in New Zealand.” 35

Struck Out

51. Register of shareholdings—(1) The principal Act is hereby amended by repealing section 195 (as amended by

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section 11 of the Companies Amendment Act 1966 and section 15 of the Companies Amendment Act 1982) and substituting the following section:

- 5 “195. (1) Every company shall keep a register of the shares or debentures which are held by or in trust for every director, officer, or employee of the company, or of which he or she has the right to become the holder, in—
- “(a) The company;
- 10 “(b) The company’s holding company;
- “(c) Every subsidiary of the company;
- “(d) Every subsidiary of the company’s holding company.
- “(2) The register need not include shares in a body corporate which is the wholly owned subsidiary of another body
- 15 corporate if the shares held by the director, officer, or employee are held as a nominee for that other body corporate.
- “(3) The register shall—
- “(a) State the number and nominal value of the shares or debentures; and
- 20 “(b) Describe them.
- “(4) In the case of shares or debentures acquired or disposed of after the commencement of this section, the register shall also show—
- “(a) The date of any agreement relating to their acquisition
- 25 or disposition; and
- “(b) The consideration for the transaction.
- “(5) The register shall also show the nature and extent of the rights or interests of a director, officer, or employee in or over the shares or debentures if he or she requires that information
- 30 to be disclosed.
- “(6) A company is not affected with notice of, or put on inquiry as to, the rights of any person in or over any shares or debentures by reason of anything done for the purposes of this section.
- 35 “(7) The register shall be—
- “(a) Kept at the company’s registered office; and
- “(b) Open to inspection during business hours (subject to such reasonable restrictions as the company may impose in its articles or in general meeting, so that
- 40 not less than 2 hours in each day are allowed for inspection) by—

Struck Out

- “(i) A member or debenture holder:
 “(ii) A person acting on behalf of the Registrar.
 “(8) The Registrar is entitled to be supplied with a copy of the register or part of it. 5
 “(9) A person who attends the company’s annual general meeting is entitled to inspect the register at the meeting.
 “(10) If—
 “(a) A requirement of this section is not complied with; or
 “(b) A person who is entitled to inspect the register is 10
 prevented from doing so; or
 “(c) The Registrar is not supplied with a copy of, or extract from, the register within a reasonable time—
 the company and every officer of the company who is in default commits an offence and is liable on summary conviction 15
 to a fine not exceeding \$1,000 and also to a further fine of \$100 for each day the default continues.
 “(11) If—
 “(a) A person entitled to inspect the register is prevented 20
 from doing so; or
 “(b) The Registrar is not supplied with a copy of, or extract from, the register within a reasonable time—
 the Court may, on his or her application, order the company to allow the inspection or supply a copy of the register or extract 25
 from it.
 “(12) For the purposes of this section a director, officer, or employee of a company is deemed to hold, or to have an interest or right in or over, shares or debentures if another body corporate holds them, or has an interest or rights in or over them, and either— 30
 “(a) That body corporate, or its directors, are accustomed or required to act in accordance with that person’s directions or instructions; or
 “(b) That person is entitled to exercise or control the exercise of one-third or more of the voting power at any 35
 general meeting of it.”
 (2) The following enactments are hereby consequentially repealed—
 (a) Section 11 of the Companies Amendment Act 1966:
 (b) Section 15 of the Companies Amendment Act 1982. 40

New

51. New sections substituted—The principal Act is hereby amended by repealing section 195 (as amended by section 11 of the Companies Amendment Act 1966 and section 15 of the
5 Companies Amendment Act 1982), and substituting the following sections:

“195. **Officers to notify shareholdings**—(1) Every officer of a company shall give notice in writing to the company of the shares and debentures held by, or in trust for, that officer, or of
10 which that officer has the right to become the holder, or in which that officer has directly or indirectly any interest, in—

“(a) The company;

“(b) The company’s holding company;

“(c) Every subsidiary of the company;

15 “(d) Every subsidiary of the company’s holding company.

“(2) In the case of shares or debentures—

“(a) Which are acquired after the commencement of this section; or

20 “(b) In relation to which the officer acquires a right to become the holder after the commencement of this section; or

“(c) In which the officer acquires an interest after the commencement of this section—

25 the notice shall specify the date of any agreement for the acquisition of the shares or debentures, or the right or interest, as the case may be, and the consideration.

“(3) In the case of shares or debentures—

“(a) Which are disposed of after the commencement of this section; or

30 “(b) In relation to which the officer disposes of a right to become the holder after the commencement of this section; or

“(c) In which the officer disposes of an interest after the commencement of this section—

35 the officer shall give notice in writing to the company specifying the date of any agreement for the disposition of the shares or debentures, or the right or interest, as the case may be, and the consideration.

40 “(4) A notice is not required under this section in relation to shares or debentures in a body corporate which is the wholly owned subsidiary of another body corporate if the shares are

New

held by the officer, or the officer has the right to become the holder, or the interest is held, as the case may be, as nominee for that other body corporate.

“(5) A company is not affected with notice of, or put on inquiry as to, the rights of any person in or over any shares or debentures by reason of any thing done for the purposes of this section. 5

“(6) For the purposes of this section, an officer of a company is deemed to hold, or to have an interest or right in or over, shares or debentures if another body corporate holds them, or has an interest or rights in or over them, and either— 10

“(a) That body corporate, or its directors, are accustomed or required to act in accordance with that person’s directions or instructions; or 15

“(b) That person is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of it.”

“(6) Every officer of a company 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. 20

“195A. **Register of officers’ shareholdings**—(1) Every company shall keep a register in which shall be entered in relation to each officer of the company, the particulars contained in notices given by the officer under section 195 of this Act. 25

“(2) The register shall be—

“(a) Kept at the company’s registered office; and

“(b) Open to inspection during business hours (subject to such reasonable restrictions as the company may impose in its articles or in general meeting, so that not less than 2 hours in each day are allowed for inspection) by— 30

“(i) A member or debenture holder:

“(ii) A person acting on behalf of the Registrar. 35

“(3) The Registrar is entitled to be supplied with a copy of the register or part of it.

“(4) A person who attends the company’s annual general meeting is entitled to inspect the register at the meeting.

“(5) If— 40

“(a) A requirement of this section is not complied with; or

New

- “(b) A person who is entitled to inspect the register is prevented from doing so; or
- 5 “(c) The Registrar is not supplied with a copy of, or extract from, the register within a reasonable time—
the company and every officer of the company who is in default commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 and also to a further fine of \$100 for each day the default continues.
- 10 “(6) If—
 “(a) A person entitled to inspect the register is prevented from doing so; or
 “(b) The Registrar is not supplied with a copy of, or extract from, the register within a reasonable time—
- 15 the Court may, on his or her application, order the company to allow the inspection or supply a copy of the register or extract from it.
 (2) The following enactments are hereby consequentially repealed:
- 20 (a) Section 11 of the Companies Amendment Act 1966;
 (b) Section 15 of the Companies Amendment Act 1982.