

Reprint
as at 1 December 2014

**Securities Markets Amendment
Act 2006**

Public Act 2006 No 47
Date of assent 24 October 2006

Securities Markets Amendment Act 2006: repealed, on 1 December 2014,
pursuant to section 4(1)(b) of the Financial Markets (Repeals and Amendments)
Act 2013 (2013 No 70).

Contents

	Page
1 Title	11
2 Commencement	11
3 Principal Act amended	12
<i>Amendments to interpretation</i>	
4 New sections 2 to 6 substituted	12
2 Interpretation	12
3 What is material information in relation to public issuer	24

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

This Act is administered by the Ministry of Business, Innovation, and Employment.

3A	What is material information in relation to futures contract	25
4	What information is generally available to the market	25
5	Relevant interests in securities (basic rule)	26
5A	Extension of basic rule to powers or controls exercisable through trust, agreement, etc	26
5B	Extension of basic rule to interests held by other persons under control or acting jointly	27
6	Situations not giving rise to relevant interests	28
	<i>Insertion of new dealing misconduct provisions</i>	
5	New Part 1 substituted	29
	Part 1	
	Dealing misconduct	
	Subpart 1—Insider conduct and market manipulation prohibitions	
	<i>Insider conduct prohibited</i>	
8	Prohibition of insider conduct	29
8A	Who is information insider	29
8B	Meaning of inside information	29
8C	Information insider must not trade	29
8D	Information insider must not disclose inside information	30
8E	Information insider must not advise or encourage trading	30
8F	Criminal liability for insider conduct	30
	<i>When prohibition on insider conduct does not apply</i>	
9	Exception for trading required by enactment	30
9A	Exception for disclosure required by enactment	31
9B	Exceptions in respect of underwriting agreements	31
9C	Exception in case of knowledge of person's own intentions or activities	31
9D	Exception for agent executing trading instruction only	31
9E	Exceptions for takeovers	32
9F	Exception for redemption of units in unit trust	33
9G	Exception for Reserve Bank	33
	<i>Affirmative defences</i>	
10	Absence of knowledge of trading	34

10A	Inside information obtained by independent research and analysis	34
10B	Equal information	34
10C	Options and trading plans	35
10D	Chinese wall defence	35
	<i>Market manipulation</i>	
11	False or misleading statement or information	36
11A	Criminal liability for false or misleading statement or information	36
11B	False or misleading appearance of trading, etc	36
11C	Presumption as to false or misleading appearance of trading, etc	37
11D	Criminal liability for false or misleading appearance of trading, etc	38
	<i>Futures contracts</i>	
11E	Application of subpart 1 to insider conduct in relation to futures contract	38
	Subpart 2—General dealing misconduct prohibition	
	<i>General dealing misconduct prohibition</i>	
13	Misleading or deceptive conduct generally (for dealings in listed and non-listed securities)	39
	<i>Exceptions</i>	
14	Exceptions for takeovers	39
15	Exception for repurchase of shares by company	39
16	Exception for offers of securities to public	40
17	Exception for disclosure by investment advisers or brokers	40
	<i>Territorial scope</i>	
18	Territorial scope of general dealing misconduct prohibition	40
	<i>Liability under Fair Trading Act 1986</i>	
19	No liability under Fair Trading Act 1986 if not liable under this Part	40
	<i>Amendments to continuous disclosure by public issuers</i>	
6	New section 19PA inserted	40

	19PA No contravention of continuous disclosure provisions by person who takes reasonable steps to ensure public issuer complies	41
	<i>Amendments to disclosure of relevant interests by directors and officers of public issuers</i>	
7	New section 19SA inserted	41
	19SA Purpose of subpart	41
8	Public issuer must keep interests register	41
9	Inspection and copying of interests register	42
10	New section 19ZF substituted	42
	19ZF Offences relating to interests register	42
	<i>Amendments to disclosure of interests of substantial security holders in public issuers</i>	
11	New subpart 3 of Part 2 substituted	42
	Subpart 3—Disclosure of interests of substantial security holders in public issuers	
20	Purpose of subpart	42
21	Meaning of substantial security holder, substantial holding, and percentage	43
	<i>Event disclosure obligations</i>	
22	Persons must disclose if begin to have substantial holding	43
23	Substantial security holders must disclose if subsequent movement of 1% in holdings	44
24	Substantial security holders must disclose if subsequent changes in nature of relevant interests	44
25	Persons must disclose if cease to have substantial holding	44
26	What disclosure required	44
27	Form and method of disclosure	45
28	Public issuer must give acknowledgment of disclosure	45
29	How to ascertain total voting securities in class of public issuer's voting securities for purposes of disclosure	45
30	Exemption for persons with interest in other substantial security holders who comply	45
31	Exemption for trustee corporations and nominee companies	46

32	Conditions of exemption for trustee corporations and nominee companies	46
32A	Exemption for persons under control or acting jointly with trustee corporations and nominee companies	47
33	Extended time for disclosure for trustees, executors, and administrators	47
	<i>Required disclosure obligations</i>	
34	Commission may require persons to disclose to market relevant interests and powers to get relevant interests	47
35	Public issuer may require registered holder to disclose relevant interests to it	48
35A	Public issuer may require person who has relevant interest to disclose information to it	49
35B	Form and method of notice requiring disclosure	49
	<i>Offence</i>	
35BA	Offence for failure to comply with substantial holding disclosure obligation	49
	<i>Register and publication of substantial holdings</i>	
35C	Public issuers must maintain register of disclosures of substantial holdings	49
35D	Inspection and copying of substantial holdings register	50
35E	Offences relating to substantial holdings register	50
35F	Public issuers must publish information on substantial holdings	51
35G	Registered exchange must publish disclosures	51
35H	Offence for failing to publish information on substantial holdings or disclosures	52
35I	No liability for publication of substantial holdings	52
35J	Notice under this subpart not to affect incorporation of public issuer or constitute notice of trust	52
	<i>Insertion of new Part 4 on investment advisers and brokers and new Part 5 on enforcement and remedies</i>	
12	New Parts 4 and 5 substituted	52

Part 4

Investment advisers and brokers

Application of this Part

41	When investment advice given to public, etc	53
----	---------------------------------------------	----

Disclosure by investment advisers

41A	Investment advisers' disclosure obligation	53
41B	Investment adviser must disclose experience, qualifications, professional standing, etc	53
41C	Investment adviser must disclose certain criminal convictions, etc	54
41D	Investment adviser must disclose fees	55
41E	Investment adviser must disclose other interests and relationships	55
41F	Investment adviser must disclose details of securities about which advice given	56

Disclosure by investment brokers

41G	Investment brokers' disclosure obligation	56
41H	Investment broker must disclose certain criminal convictions, etc	56
41I	Investment broker must disclose procedures for dealing with investment money or investment property	57

Method of disclosure

41J	How disclosure must be made	58
-----	-----------------------------	----

Other requirements relating to disclosure

41K	Disclosure must not be misleading	58
41L	Disclosure of additional information	58
41M	No compliance with disclosure obligations if disclosure statement out of date	59
41N	Advertisement must refer to disclosure statement	60
41O	Advertisement must not be deceptive, misleading, or confusing	60

Offences

41P	Offence for failure to comply with disclosure obligation	60
41Q	Offence of deceptive, misleading, or confusing disclosure	60
41R	Offence of deceptive, misleading, or confusing advertisement	61

41S	Recommending, or receiving money for, acquisition of securities prohibited if offer for subscription illegal	61
41T	Defence of immateriality	62
	<i>Territorial scope of this Part</i>	
41U	Territorial scope	62
	<i>Miscellaneous</i>	
41V	No contracting out	63
41W	No liability under Fair Trading Act 1986 if not liable under this Part	63
	Part 5	
	Enforcement and remedies	
	Subpart 1—Commission’s enforcement powers	
	<i>Prohibition and corrective orders</i>	
42	When Commission may make prohibition and corrective orders	63
42A	Terms of prohibition and corrective orders	63
	<i>Disclosure orders</i>	
42B	When Commission may make disclosure orders	64
42C	Terms of disclosure orders	64
	<i>Temporary investment adviser and broker banning orders</i>	
42D	When Commission may make temporary banning orders for investment adviser or broker activities	65
42E	Terms of temporary banning order for investment adviser and broker activities	65
	<i>Process for Commission’s orders</i>	
42F	Commission must follow steps before making orders	66
42G	Commission may shorten steps for specified orders	67
42H	Commission must give notice after making orders	67
	<i>General provisions</i>	
42I	General provisions on Commission’s orders	68
42J	Offence of failing to comply with Commission’s orders	68

Subpart 2—Court’s enforcement powers

Injunctions

42K	What Court may injunct	68
42L	When Court may grant injunctions and interim injunctions	69
42M	Undertaking as to damages not required by Commission	69

Corrective orders

42N	When Court may grant corrective orders	69
42O	Terms of corrective orders	70

Disclosure orders

42P	When Court may make disclosure orders	70
42Q	Terms of disclosure orders	70

Subpart 3—Civil remedies

Overview of civil remedies

42R	Overview of civil remedies	71
42S	What are civil remedy provisions	71

Pecuniary penalty orders and declarations of contravention

42T	When Court may make pecuniary penalty orders and declarations of contravention	71
42U	Purpose and effect of declarations of contravention	72
42V	What declarations of contravention must state	72
42W	Maximum amount of pecuniary penalty	73
42X	Guidance for Court on how to determine gains made or losses avoided for purposes of maximum amount	73
42Y	Considerations for Court in determining pecuniary penalty	73
42Z	Court must order that recovery from pecuniary penalty be applied to Commission’s actual costs	74

Compensatory orders

42ZA	When Court may make compensatory orders	74
42ZB	Terms of compensatory orders	75

	<i>Civil remedy order for investment advisers' or brokers' disclosure obligations</i>	
42ZC	When Court may make civil remedy order for investment advisers' or brokers' disclosure obligations	75
42ZD	Terms of civil remedy order for investment advisers' or brokers' disclosure obligations	76
	<i>Other civil remedy orders</i>	
42ZE	When Court may make other civil remedy orders	76
42ZF	Terms of other civil remedy orders	77
	<i>Interrelationship of civil remedies</i>	
42ZG	More than 1 civil remedy order may be made for same conduct	77
42ZH	Only 1 pecuniary penalty order may be made for same conduct	78
	<i>General</i>	
42ZI	Standard of proof for civil remedies	78
42ZJ	Time limit for applying for civil remedies	78
	Subpart 4—Criminal offences and penalties	
	<i>Penalties for offences</i>	
43	Penalties for failing to comply with Part 1	79
43A	Penalties for failing to comply with Part 2	79
43B	Penalties for failing to comply with Part 2B	80
43C	Penalties for failing to comply with Part 3	80
43D	Penalties for failing to comply with Part 4	81
43E	Penalties for failing to comply with this Part	81
	Subpart 5—Other Court orders	
	<i>Management bans</i>	
43F	When Court may make management banning orders	82
43G	Terms of management banning orders	83
43H	Offence of contravening management banning order	83
43I	Persons automatically banned from management	83
43J	Only one management ban may be made for same conduct	84
	<i>Investment adviser or broker bans</i>	
43K	When Court may make banning orders for investment adviser or broker activities	84

	43L Terms of investment adviser or broker banning orders	85
	43M Offence of contravening investment adviser or broker banning order	85
	43N Persons automatically banned from investment adviser or broker activities	86
	43O General provisions for bans and banning orders	87
	<i>Orders to preserve assets to satisfy claims</i>	
	43P When Court may prohibit payment or transfer of money, securities, or other property	87
	43Q What orders may be made	88
	43R Interim orders	89
	43S Relationship with other law	90
	43T Offence	90
	Subpart 6—General	
	43U Time for laying information for summary offences	90
	43V Evidence not otherwise admissible	90
	43W Court may order payment of Commission’s costs	90
	43X Orders to secure compliance	91
	43Y Giving notice of applications for Court orders	91
	43Z General provisions as to Court’s orders	91
	43ZA Persons entitled to appear before Court	91
	43ZB Knowledge of matters presumed if employee or agent knows matters	91
	43ZC No pecuniary penalty and fine for same conduct	92
	<i>Amendments to exemption and regulation empowering provisions</i>	
13	New sections 48 to 49F and heading substituted	92
	<i>Exemptions granted and removed by Commission</i>	
	48 Exemptions granted by Commission	92
	48A Commission must notify reasons for exemption	93
	48B Commission may vary or revoke exemption	93
	48C Commission may designate persons as not exempt from disclosure obligations	93
	48D Requirements for Commission for designations of persons as not exempt	94
	<i>Regulations</i>	
	48E Regulations requiring continuous disclosure by public issuers	94

48F	Requirements for regulations replacing continuous disclosure listing rules	95
48G	Ongoing requirements for continuous disclosure regulations	96
49	Regulations concerning directors' and officers' disclosure obligations	97
49A	Regulations concerning substantial holding disclosure	98
49B	Regulations concerning dealing in futures contracts	99
49C	Regulations concerning investment advisers and brokers	100
49D	Other regulations	101
49E	Breach of exemption conditions	102
49F	Regulations or exemptions in respect of specified overseas jurisdictions	102
<i>Miscellaneous</i>		
14	Related amendments	102
15	Transitional provisions relating to new subpart 3 of Part 2 of principal Act	102
16	Transitional provision for existing offences and contravention	103
Schedule		104
Amendments related to Securities Markets Act 1988		

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Securities Markets Amendment Act 2006.

2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) One or more orders may be made bringing different provisions into force on different dates.

Section 2: Securities Markets Amendment Act 2006 brought into force, on 29 February 2008, by clause 2 of the Securities Markets Amendment Act 2006 Commencement Order 2007 (SR 2007/367).

3 Principal Act amended

This Act amends the Securities Markets Act 1988.

*Amendments to interpretation***4 New sections 2 to 6 substituted**

Sections 2 to 6A are repealed and the following sections are substituted:

“2 Interpretation

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

“**acquire**—

“(a) includes obtain by buying or subscribing; and

“(b) includes agree to acquire; but

“(c) in Part 3, has the meaning set out in section 37(1)

“**advertisement** means an advice advertisement, a broker advertisement, or a product advertisement

“**advice advertisement** means a form of communication that—

“(a) contains or refers to investment advice or is reasonably likely to induce persons to seek investment advice; and

“(b) is authorised or instigated by, or on behalf of, an investment adviser or prepared with the co-operation of, or by arrangement with, an investment adviser; and

“(c) is to be, or has been, distributed to a person

“**associated persons or persons associated with each other** has the meaning set out in subsection (2)

“**authorised advertisement** has the same meaning as in section 2(1) of the Securities Act 1978

“**authorised futures contract** has, in Part 3, the meaning set out in section 37(1)

“**authorised futures exchange** has the meaning set out in section 37(1)

“**broker advertisement** means a form of communication that—

“(a) refers to an investment broker or is reasonably likely to induce persons to seek an investment broker service; and

“(b) is authorised or instigated by, or on behalf of, an investment broker or prepared with the co-operation of, or by arrangement with, an investment broker; and

“(c) is to be, or has been, distributed to a person

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

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

“(a) business on securities markets operated by the securities exchange:

“(b) persons authorised to undertake trading activities on those securities markets

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

“**civil remedy order** has the meaning set out in section 42R

“**civil remedy provision** has the meaning set out in section 42S

“**class**, in relation to securities, means a class of securities having attached to them identical rights, privileges, limitations, and conditions

“**Commission** means the Securities Commission established under the Securities Act 1978

“**commodity** has, in Part 3, the meaning set out in section 37(1)

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

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

“**consideration** includes consideration other than money

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

“**continuous disclosure exemption** means,—

“(a) if section 19C does not apply to an exchange, an exemption or waiver of a continuous disclosure provision

or provisions of the registered exchange's listing rules;
or

“(b) if section 19C applies to an exchange, an exemption from a provision or provisions of regulations made under section 48E that apply to that exchange

“**continuous disclosure obligation** means section 19B or section 19C (whichever is applicable) and any listing rules or regulations with which either of those sections requires compliance

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

“**contravene** includes, in Part 5, in relation to a provision, prohibition, obligation, or exemption (a **provision**),—

“(a) a contravention of the provision; or

“(b) an attempt to contravene the provision; or

“(c) aiding, abetting, counselling, or procuring any other person to contravene the provision; or

“(d) inducing, or attempting to induce, any other person, whether by threats or promises or otherwise, to contravene the provision; or

“(e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention by any other person of the provision; or

“(f) conspiring with any other person to contravene the provision

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

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

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

“**deal**, in Part 3, in relation to a futures contract, has the meaning set out in section 37(5) and (6)

“**dealings in securities**, in subpart 2 of Part 1,—

“(a) means, in relation to the securities of a public issuer, any of the following steps:

“(i) acquiring or disposing of securities; or

- “(ii) offering securities for subscription and issuing and allotting securities; or
 - “(iii) underwriting securities; or
 - “(iv) anything that is preparatory to, or related to, any dealings in securities (for example, giving investment advice) unless an exception applies to those dealings under that subpart; and
- “(b) means, in relation to securities that are not listed on a registered exchange, any of the steps referred to in paragraph (a) taken in the course of business; but
- “(c) excludes any dealings exempted by regulations made under section 49D

“**director** means—

- “(a) in relation to a company, any person occupying the position of a director of the company by whatever name called:
- “(b) in relation to a partnership (other than a special partnership), any partner:
- “(c) in relation to a special partnership, any general partner:
- “(d) in relation to a body corporate or unincorporate, other than a company, partnership, or special partnership, any person occupying a position in the body that is comparable with that of a director of a company:
- “(e) in relation to any other person, that person

“**directors’ and officers’ disclosure obligation** means any of sections 19T to 19V and any regulations with which those sections require compliance

“**dispose of**—

- “(a) includes dispose of by selling, allotting, withdrawing from, or terminating; and
- “(b) includes agree to dispose of; but
- “(c) in Part 3, has the meaning set out in section 37(1)

“**distribute** includes—

- “(a) make available, publish, and circulate; and
- “(b) communicate by letter, newspaper, broadcasting, sound recording, television, cinematographic film, video, or any form of electronic or other means of communication

“**document** means any record of information; and includes—

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

“**encourage** includes incite, counsel, or procure

“**engaging in conduct** means doing or refusing to do an act, and includes—

- “(a) omitting to do an act; or
- “(b) making it known that an act will or will not be done

“**exemption** means, in Part 5, in respect of an obligation or provision, an exemption granted by or under this Act from that obligation or provision (for example, a continuous disclosure obligation exemption is an exemption from a continuous disclosure obligation), and a reference to a person **contravening or complying with an exemption** is to a person contravening or complying with a term or condition of that exemption

“**futures contract** has the meaning set out in section 37(1)

“**general dealing misconduct prohibition** means section 13

“**generally available to the market** has the meaning set out in section 4

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

“**information insider** has the meaning set out in section 8A

“**inside information** has the meaning set out in section 8B

“**insider conduct prohibition** means any of sections 8C to 8E

“**investment advice and advice**—

- “(a) mean a recommendation, opinion, or guidance given to a member of the public in relation to acquiring or disposing of (or not acquiring or disposing of) securities; and
- “(b) include any such recommendation, opinion, or guidance that is communicated by letter, newspaper, periodical, broadcasting, sound recording, television, cine-

matographic film, video, or any form of electronic or other means of communication; but—

- “(c) do not include—
 - “(i) any such recommendation, opinion, or guidance given by a person whose principal occupation is that of a journalist and that is given in that person’s capacity as a journalist; or
 - “(ii) any such guidance about the procedure for taking any of the steps referred to in paragraph (a); or
 - “(iii) any of the following:
 - “(A) a prospectus; or
 - “(B) an investment statement; or
 - “(C) an authorised advertisement; or
 - “(D) a bank disclosure statement; or
 - “(E) a document or documents issued in lieu of a prospectus or investment statement in accordance with an exemption under the Securities Act 1978

“**investment adviser and adviser**—

- “(a) mean a person (whether or not the person is also an investment broker) who, in the course of the person’s business or employment, gives investment advice; and
- “(b) if a person is giving investment advice in the course of his or her employment, include both that person and his or her employer; but
- “(c) do not include an issuer or a promoter or a trustee (within the meaning of the Securities Act 1978 or the Unit Trusts Act 1960) or a statutory supervisor (within the meaning of the Securities Act 1978), of the particular securities to which the advice relates; but do include an employee or agent of, or person otherwise associated with, that issuer, promoter, trustee, or statutory supervisor if the employee, agent, or person associated falls within paragraph (a); and
- “(d) do not include a person who only transmits investment advice relating to particular securities given by the issuer or a promoter or a trustee (within the meaning of the Securities Act 1978 or the Unit Trusts Act 1960) or

a statutory supervisor (within the meaning of the Securities Act 1978) of those securities; and

“(e) do not include—

“(i) the offeror or target company in a takeover offer made under the takeovers code:

“(ii) an independent adviser in the exercise of that person’s functions under the takeovers code

“**investment advisers’ disclosure obligations** means any of sections 41A to 41F and sections 41J to 41N and any regulations with which those sections require compliance, and **investment advisers’ obligations** means those sections and regulations and sections 41O and 41S

“**investment broker and broker**—

“(a) mean a person (whether or not the person is also an investment adviser) who, in the course of the person’s business or employment, receives investment money or investment property; and

“(b) if a person is receiving such investment money or investment property in the course of his or her employment, include both that person and his or her employer; but

“(c) do not include, in relation to a security to which the investment money or investment property relates,—

“(i) an issuer or a trustee (within the meaning of the Securities Act 1978 or the Unit Trusts Act 1960); or

“(ii) a nominated person of a trustee (within the meaning of the Unit Trusts Act 1960); or

“(iii) a nominee of a nominated person of a trustee (within the meaning of the Unit Trusts Act 1960); or

“(iv) a statutory supervisor (within the meaning of the Securities Act 1978); or

“(v) a security registrar appointed by the issuer; and

“(d) do not include a person who only transmits investment money or investment property to a person to whom paragraph (c) applies without being able to apply the money or property for any other purpose

“**investment brokers’ disclosure obligations** means any of sections 41G to 41N and any regulations with which those sections require compliance, and **investment brokers’ obligations** means those sections and regulations and sections 41O and 41S

“**investment brokers service** means the receipt of investment money or investment property by an investment broker

“**investment money and money**, in relation to an investment broker, mean any money received from, or on account of, a member of the public in relation to acquiring or disposing of securities

“**investment property and property**, in relation to an investment broker, mean security certificates or other valuable property received from, or on account of, a member of the public in relation to acquiring or disposing of securities

“**listed**, in relation to securities of a public issuer, means securities of the issuer that are approved for trading on the relevant registered exchange’s market (and, for the avoidance of doubt, securities do not cease to be listed merely because trading in those securities is suspended)

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

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

“**market manipulation prohibition** means either of sections 11 or 11B

“**material information** has the meaning set out in section 3, in relation to a public issuer, and in section 3A, in relation to a futures contract

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

“**non-listed securities** means securities that are not listed

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

“(a) means a person, however designated, who is concerned or takes part in the management of the public issuer’s business; but

“(b) excludes any persons (whether described as a class or otherwise) that are declared by regulations not to be officers for the purposes of this definition

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

“**prescribed** means prescribed by regulations made under this Act

“**principal officer**, in relation to a body corporate or other body, means—

“(a) a director of the body; or

“(b) a person in accordance with whose directions or instructions any or all of the directors of the body are accustomed to act (but a person is not a principal officer under this paragraph merely because the directors act on advice given by that person solely in a professional capacity)

“**product advertisement**—

“(a) means a form of communication that—

“(i) contains or refers to an offer of securities (including derivatives) to the public for subscription, or is reasonably likely to induce persons to subscribe for those securities, being securities to which the communication relates and that have been, or are to be, offered to the public for subscription; and

“(ii) is authorised or instigated by, or on behalf of, an investment adviser or prepared with the cooperation of, or by arrangement with, an investment adviser; and

“(iii) is to be, or has been, distributed to a person; but

“(b) does not include a prospectus or an advertisement as defined in sections 2(1) and 2A of the Securities Act 1978 respectively

“**public issuer** means—

“(a) a person who is a party to a listing agreement with a registered exchange:

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

“**registered bank** has, in Part 3, the meaning set out in section 37(1)

“**registered exchange** means,—

“(a) a body corporate registered under section 36F:

“(b) a body corporate that is treated as if it were registered as a registered exchange under section 36X(3):

“(c) a subsidiary of a registered exchange if the subsidiary operates a securities market

“**registered exchange’s market** means a securities market operated by a registered exchange

“**related** has the meaning set out in section 5B(2)

“**relevant event** means an event that results in a person having to disclose matters under sections 22 to 25

“**relevant interest** has the meaning set out in sections 5 to 5B

“**securities exchange** means a body corporate that operates a securities market

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

“**security**—

“(a) means—

“(i) any interest in, or right to participate in, any capital, assets, earnings, royalties, or other property of any person:

“(ii) 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):

“(iii) any renewal or variation of the terms or conditions of any existing security; but

- “(b) in subpart 1 of Part 1, means a security (as defined in paragraph (a)) that has been allotted and is listed on a registered exchange’s market or approved for trading on an authorised futures exchange; but excludes a previously allotted security to the extent that conduct in relation to that security is regulated by the Securities Act 1978 except section 6A; and
- “(c) in subpart 2 of Part 1, means a security (as defined in paragraph (a)) and includes a futures contract; but excludes a security exempted from Part 2 of the Securities Act 1978 under any of paragraphs (b) to (h) of section 5(1) of that Act; and
- “(d) in both subparts 1 and 2 of Part 1, also means—
- “(i) any form of beneficial interest in the security:
 - “(ii) the power to exercise, or control the exercise of, any right to vote attached to the security:
 - “(iii) the power to acquire or dispose of, or control the acquisition or disposition of, the security:
 - “(iv) any power which may exist or arise at any time under any trust, agreement, arrangement, or understanding relating to the security to do anything described in subparagraphs (i) to (iii); and
- “(e) in Part 4, means a security (as defined in paragraph (a)); but excludes—
- “(i) a security exempted from Part 2 of the Securities Act 1978 under any of paragraphs (b) to (h) of section 5(1) of that Act; and
 - “(ii) a call debt security as defined in regulations made under that Act; and
 - “(iii) a bank term deposit as defined in regulations made under this Act; and
- “(f) in Part 5 has, when applied in relation to a contravention of a provision, the same meaning as **security** has in that provision
- “**subsidiary** has the same meaning as in sections 5 and 6 of the Companies Act 1993
- “**substantial holding** has the meaning set out in section 21

“**substantial holding disclosure obligation** means any of sections 22 to 27, and 34 to 35A and any regulations with which those sections require compliance

“**substantial security holder** has the meaning set out in section 21

“**Takeovers Act** means the Takeovers Act 1993

“**takeovers code** means the takeovers code in force under the Takeovers Act

“**trade**, in subpart 1 of Part 1,—

“(a) means acquire or dispose of; but

“(b) does not include acquire, or dispose of, by inheritance or gift

“**trading day** means a day during which securities are traded on a registered exchange’s market

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

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

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

“**voting security**, in relation to a public issuer or other body,—

“(a) means a security of the public issuer or body that confers a right to vote at meetings of members or shareholders (whether or not there is any restriction or limitation on the number of votes that may be cast by or on behalf of the holder of the security); and

“(b) includes a security that is convertible into a security of that kind; but

“(c) excludes a security that confers only a right to vote that, under the conditions attached to the security, is exercisable only in 1 or more of the following circumstances:

“(i) during a period in which a dividend (or part of a dividend) in respect of the security is in arrears:

“(ii) on a proposal to reduce the capital of the public issuer or body:

“(iii) on a proposal that affects rights attached to the security:

- “(iv) on a proposal to put the public issuer or body into liquidation:
 - “(v) on a proposal for the disposal of the whole or a material part of the property, business, and undertaking of the public issuer or body:
 - “(vi) during the liquidation of the public issuer or body.
- “(2) For the purposes of this Act, unless the context otherwise requires, **associated persons** or **persons associated with each other** are—
- “(a) persons who are relatives within the meaning of the Income Tax Act 2004 or de facto partners; or
 - “(b) persons who are partners to whom the Partnership Act 1908 applies; or
 - “(c) bodies corporate that consist substantially of the same shareholders or are under the control of the same persons; or
 - “(d) a body corporate and a person who has the power, directly or indirectly, to exercise, or control the exercise of, the right to vote attached to 25% or more of the voting securities of the body corporate; or
 - “(e) a body corporate and a person who is a director or principal officer of the body corporate.
- “(3) Any term or expression that is defined in the Securities Act 1978 and used, but not defined, in this Act has the same meaning as in the Securities Act 1978.
- “(4) A term that is defined to have a meaning when used in a particular Part or provision of this Act has the same meaning when it is used in the definition of any other term used in that Part or provision.
- “3 **What is material information in relation to public issuer**
For the purposes of this Act, unless the context otherwise requires, **material information**, in relation to a public issuer but not in relation to a futures contract referred to in section 3A, is information that—
- “(a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of listed securities of the public issuer; and

“(b) relates to particular securities, a particular public issuer, or particular public issuers, rather than to securities generally or public issuers generally.

“3A **What is material information in relation to futures contract**

For the purposes of this Act, unless the context otherwise requires, **material information** in relation to a futures contract that is listed for trading on an authorised futures exchange is information that—

“(a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the value of the futures contract; and

“(b) relates to the particular futures contract, rather than to futures contracts generally.

“4 **What information is generally available to the market**

“(1) For the purposes of this Act, unless the context otherwise requires, information is **generally available to the market**—

“(a) if—

“(i) it is information that has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in relevant securities; and

“(ii) since it was made known, a reasonable period for it to be disseminated among those persons has expired; or

“(b) if it is likely that persons who commonly invest in relevant securities can readily obtain the information (whether by observation, use of expertise, purchase from other persons, or any other means); or

“(c) if it is information that consists of deductions, conclusions, or inferences made or drawn from either or both of the kinds of information referred to in paragraphs (a) and (b).

“(2) In this section, **relevant securities** means securities of a kind the price or (in the case of futures contracts) the value of which might reasonably be expected to be affected by the information.

“(3) Information that is notified in accordance with a continuous disclosure obligation is generally available to the market under subsection (1)(a) immediately on it being made available to participants in a registered exchange’s market (without limiting how quickly the reasonable period of dissemination in subsection (1)(a)(ii) may be satisfied in other cases).

“**5 Relevant interests in securities (basic rule)**

- “(1) A person has a **relevant interest** in a security if the person—
- “(a) is a registered holder of the security; or
 - “(b) is a beneficial owner of the security; or
 - “(c) has the power to exercise, or to control the exercise of, a right to vote attached to the security; or
 - “(d) has the power to acquire or dispose of, or to control the acquisition or disposition of, the security.
- “(2) It does not matter whether the power or control is express or implied, direct or indirect, legally enforceable or not, related to a particular security or not, exercisable presently or in the future, or exercisable alone or jointly with another person or persons (but a power to cast merely 1 of many votes is not, in itself, a joint power of this kind).
- “(3) It also does not matter whether or not the power or control is or can be made subject to restraint or restriction or is exercisable only on the fulfilment of a condition.
- “(4) If 2 or more persons can jointly exercise a power, each of them is taken to have that power.

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

- “(1) A person has a power or control referred to in section 5 if the power or control is, or may at any time be, exercised under, by virtue of, by means of, or as a result of a revocation or breach of, a trust, agreement, arrangement, or understanding (or any combination of them).
- “(2) It does not matter whether or not the trust, agreement, arrangement, or understanding is legally enforceable or whether or not the person is a party to it.

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

- “(1) A person (A) has the relevant interests in securities that another person (B) has if—
- “(a) B or B’s directors are accustomed or under an obligation (whether legally enforceable or not) to act in accordance with A’s directions, instructions, or wishes in relation to a power or control referred to in section 5; or
 - “(b) A has the power to exercise, or control the exercise of, the right to vote attached to 20% or more of the securities of B; or
 - “(c) A has the power to acquire or dispose of, or to control the acquisition or disposition of, 20% or more of the securities of B; or
 - “(d) A and B are related bodies corporate; or
 - “(e) A and B have an agreement, arrangement, or understanding to act in concert in relation to a power or control referred to in section 5.
- “(2) For the purposes of this Act, a body corporate (A) is **related** to another body corporate (B) if—
- “(a) B is A’s holding company or subsidiary within the meaning of sections 5 and 6 of the Companies Act 1993; or
 - “(b) more than half of A’s issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) is held by B and bodies corporate related to B (whether directly or indirectly, but other than in a fiduciary capacity); or
 - “(c) more than half of the issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) of each of A and B is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
 - “(d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; or

“(e) there is another body corporate to which A and B are both related.

“6 **Situations not giving rise to relevant interests**

“(1) A person (A) does not have a relevant interest in securities under sections 5 to 5B merely because—

“(a) the ordinary business of A consists of, or includes, the lending of money or the provision of financial services, or both, and A has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of A; or

“(b) A is authorised to undertake trading activities on a registered exchange’s market and A acts for another person to acquire or dispose of those securities on behalf of that person in the ordinary course of A’s business of carrying out those trading activities; or

“(c) A 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, and a copy of the resolution is deposited with the public issuer before the meeting; or

“(d) A is 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 A’s appointment is deposited with the public issuer before the meeting; or

“(e) A is a bare trustee of a trust to which the security is subject; or

“(f) A is a director of a body corporate and the body corporate has a relevant interest in the security; or

“(g) A is a member of a body corporate and the body corporate’s constitution gives the member pre-emptive rights on the transfer of the security, if all members have pre-emptive rights on the same terms.

“(2) Subsection (1)(a) to (g) does not apply to a person if the person is currently designated by the Commission, by notice in the *Gazette* under section 48C, as a person that is not exempt under that paragraph.

- “(3) For the purposes of subsection (1)(e), a trustee may be a bare trustee even if he or she is entitled as a trustee to be remunerated out of the income or property of the trust.”

Insertion of new dealing misconduct provisions

5 New Part 1 substituted

Part 1 is repealed and the following Part substituted:

“Part 1

“Dealing misconduct

“Subpart 1—Insider conduct and market manipulation prohibitions

“Insider conduct prohibited

“8 Prohibition of insider conduct

A person must not do any of the things set out in sections 8C to 8E if that person is an information insider of the public issuer.

“8A Who is information insider

“(1) A person is an information insider of a public issuer if that person—

“(a) has material information relating to the public issuer that is not generally available to the market; and

“(b) knows or ought reasonably to know that the information is material information; and

“(c) knows or ought reasonably to know that the information is not generally available to the market.

“(2) A public issuer may be an information insider of itself.

“8B Meaning of inside information

In this subpart, **inside information** means the information in respect of which a person is an information insider of the public issuer in question.

“8C Information insider must not trade

An information insider of a public issuer must not trade securities of the public issuer.

“8D Information insider must not disclose inside information

An information insider (A) of a public issuer must not directly or indirectly disclose inside information to another person (B) if A knows or ought reasonably to know or believes that B will, or is likely to,—

- “(a) trade securities of the public issuer; or
- “(b) if B is already a holder of those securities, continue to hold them; or
- “(c) advise or encourage another person (C) to trade or hold them.

“8E Information insider must not advise or encourage trading

An information insider (A) of a public issuer must not—

- “(a) advise or encourage another person (B) to trade or hold securities of the public issuer;
- “(b) advise or encourage B to advise or encourage another person (C) to trade or hold those securities.

“8F Criminal liability for insider conduct

A person who contravenes any of sections 8C to 8E commits an offence (*see* section 43 for the maximum penalty of 5 years’ imprisonment and a \$300,000 fine for an individual or a \$1,000,000 fine for a body corporate) if the person has actual knowledge—

- “(a) that the information is material information; and
- “(b) that the information is not generally available to the market; and
- “(c) in the case of a contravention of section 8D, of any of the matters set out in section 8D(a) to (c).

“When prohibition on insider conduct does not apply

“9 Exception for trading required by enactment

Section 8C does not apply to trading in securities that is required by an enactment.

“9A Exception for disclosure required by enactment

Section 8D does not apply to disclosure that is required by an enactment.

“9B Exceptions in respect of underwriting agreements

“(1) Section 8C does not apply to the acquisition of the securities of a public issuer under an underwriting or sub-underwriting agreement.

“(2) Section 8D does not apply if the inside information is disclosed to a person for the sole purpose of negotiating an underwriting or sub-underwriting agreement with that person in respect of the securities in question.

“(3) Section 8E does not apply if the advice or encouragement is given for the sole purpose of persuading the person to whom it is given to enter into an underwriting or sub-underwriting agreement in respect of the securities in question.

“9C Exception in case of knowledge of person’s own intentions or activities

“(1) A person (**A**) does not contravene section 8C merely because A trades the securities with the knowledge that A proposes to enter into, or has previously entered into, 1 or more transactions or agreements in relation to the securities or the public issuer or its business activities.

“(2) A person (**B**) does not contravene section 8E merely because B advises or encourages A to trade or hold securities when B has knowledge acquired in the course of acting as A’s adviser that A proposes to enter into, or has previously entered into, 1 or more transactions or agreements in relation to the securities or the public issuer or its business activities.

“(3) In subsection (2), **adviser** means an adviser acting in a professional capacity, and includes an adviser such as a lawyer, an accountant, or an investment adviser, but is not limited to those persons.

“9D Exception for agent executing trading instruction only

Section 8C does not apply in the case of a person (**A**) if—

- “(a) in trading the securities A was acting on behalf of another person (B); and
- “(b) A traded the securities on B’s specific instruction; and
- “(c) before trading, A did not disclose inside information to B; and
- “(d) A did not advise or encourage B to instruct A to trade.

“9E Exceptions for takeovers

- “(1) Section 8C does not apply to—
 - “(a) trading that results from a takeover offer under the takeovers code; or
 - “(b) trading in compliance with regulations made under section 49D(1)(b); or
 - “(c) entering into an agreement to acquire or dispose of securities at a fixed price under a future takeover offer that complies with the takeovers code; or
 - “(d) the acquisition or disposal of securities in performance of an agreement to acquire or dispose of those securities at a fixed price under a future takeover offer that complies with the takeovers code.
- “(2) Section 8D does not apply to the following conduct:
 - “(a) subject to the conditions in subsection (3), disclosure of inside information to a prospective offeror or its advisers under a prospective takeover offer under the takeovers code:
 - “(b) subject to the conditions in subsection (3), disclosure of inside information to encourage competing bona fide offers to be made in competition with a takeover offer under the takeovers code:
 - “(c) subject to the conditions in subsection (3), disclosure of inside information by a prospective offeror or its advisers under a prospective takeover offer under the takeovers code for the purpose of forming a consortium to make a takeover offer:
 - “(d) disclosure of inside information to an independent adviser to enable that adviser to make a report required by the takeovers code.
- “(3) The conditions referred to in subsection (2) are—

- “(a) the recipient of the information is bound by a confidentiality agreement in respect of the information; and
 - “(b) the purpose of the conduct is to enable or encourage the recipient to make a takeover offer or to participate in a takeover offer.
- “(4) Section 8E does not apply to advice or encouragement—
- “(a) by the directors of a company that is the target company under a takeover offer under the takeovers code, to the extent that the advice or encouragement is given to the company’s shareholders and relates to trading or holding their securities; or
 - “(b) by a prospective offeror under a prospective takeover offer under the takeovers code for the purpose of forming a consortium to make a takeover offer.
- “(5) A person (**A**) does not contravene section 8D or section 8E merely because A, in relation to a takeover offer or prospective takeover offer under the takeovers code, discloses inside information to another person (**B**) or advises B to trade or hold securities of the public issuer when A has that inside information, or is an information insider, only through acting as B’s adviser in relation to the takeover offer or prospective takeover offer.
- “(6) In subsection (5), **adviser** means an adviser acting in a professional capacity, and includes an adviser such as a lawyer, an accountant, or an investment adviser, but is not limited to those persons.
- “**9F Exception for redemption of units in unit trust**
Section 8C does not apply to the redemption of units in a unit trust if the redemption price for each unit is calculated by reference to the underlying value of the assets of the financial business or undertaking of the scheme.
- “**9G Exception for Reserve Bank**
Section 8C does not apply to trading by the Reserve Bank of New Zealand in securities issued by the Reserve Bank of New Zealand or by the Crown.

*“Affirmative defences***“10 Absence of knowledge of trading**

In any proceeding against a person (A) for contravention of section 8C, it is a defence if A proves on a balance of probabilities that A did not know, and could not reasonably be expected to know, that A traded the securities.

“10A Inside information obtained by independent research and analysis

- “(1) In any proceeding against a person (A) for contravention of section 8C or section 8D, it is a defence if A proves on a balance of probabilities that the inside information was obtained by research and analysis, and was not obtained directly or indirectly from the public issuer concerned.
- “(2) In any proceeding against a person (A) for contravention of section 8E, it is a defence if A proves on a balance of probabilities that A encouraged or advised on the basis of inside information obtained by research and analysis, and not obtained directly or indirectly from the public issuer concerned.
- “(3) In subsections (1) and (2), **research** means planned investigation undertaken to gain new knowledge and understanding.

“10B Equal information

- “(1) In any proceeding against a person (A) for contravention of section 8C, it is a defence if A proves on a balance of probabilities that the opposite party to the transaction knew, or ought reasonably to have known, the same inside information as A before entering into the transaction.
- “(2) In any proceeding against a person (A) for contravention of section 8D, it is a defence if A proves on a balance of probabilities that the other person knew, or ought reasonably to have known, the same inside information as A before it was disclosed.
- “(3) In any proceeding against a person (A) for contravening section 8D or section 8E by disclosing inside information to another person (B) or by advising B to trade or hold securities of the public issuer, it is a defence if A proves on a balance of probabilities that A has that inside information, or is an infor-

mation insider, only through acting as B's adviser in relation to trading or holding those securities.

- “(4) In subsection (3), **adviser** means an adviser acting in a professional capacity, and includes an adviser such as a lawyer, an accountant, or an investment adviser, but is not limited to those persons.

“**10C Options and trading plans**

- “(1) In any proceeding against a person (A) for contravention of section 8C, it is a defence if A proves on a balance of probabilities that—
- “(a) A traded the securities under a fixed trading plan or under options with a fixed exercise price; and
 - “(b) A entered into the trading plan, or acquired the options, as the case may be,—
 - “(i) before A obtained the inside information; and
 - “(ii) without any intent to evade section 8C.
- “(2) A **fixed trading plan** is a trading plan that—
- “(a) is fixed for a period of time; and
 - “(b) gives the investor no right to withdraw before the end of that period; and
 - “(c) is not subject to any influence by the investor as to trading decisions after the plan has begun.

“**10D Chinese wall defence**

- “(1) In any proceeding against a person (A) for contravention of any of sections 8C to 8E, it is a defence if A proves on a balance of probabilities that—
- “(a) arrangements existed that could reasonably be expected to ensure that no individual who took part in the active decision received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and
 - “(b) no individual who took part in the active decision received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and
 - “(c) every individual who had the information and every individual who took part in the active decision acted in

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

- “(2) In subsection (1), **active decision** means the decision to trade the securities or disclose the inside information or advise or encourage, as the case may be.

“Market manipulation

“**11 False or misleading statement or information**

A person must not make a statement or disseminate information if—

- “(a) a material aspect of the statement or information is false or the statement or information is materially misleading; and
- “(b) the person knows or ought reasonably to know that a material aspect of the statement or information is false or that the statement or information is materially misleading; and
- “(c) the statement or information is likely to—
- “(i) induce a person to trade in the securities of a public issuer; or
- “(ii) have the effect of increasing, reducing, maintaining, or stabilising the price for trading in those securities; or
- “(iii) induce a person to vote for, or vote against, a transaction, or to abstain from voting in respect of that transaction.

“**11A Criminal liability for false or misleading statement or information**

A person who contravenes section 11 commits an offence (*see* section 43 for the maximum penalty of 5 years’ imprisonment and a \$300,000 fine for an individual or a \$1,000,000 fine for a body corporate) if the person has actual knowledge that the statement or information is false in a material aspect or is materially misleading.

“**11B False or misleading appearance of trading, etc**

A person must not do, or omit to do, anything if—

- “(a) the act or omission will have, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance—
 - “(i) with respect to the extent of active trading in the securities of a public issuer; or
 - “(ii) with respect to the supply of, demand for, price for trading in, or value of those securities; and
- “(b) the person knows or ought reasonably to know that the person’s act or omission will, or is likely to have, that effect.

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

- “(1) A person (A) is presumed to contravene section 11B if A is directly or indirectly a party to trading in the securities of a public issuer from which no change in beneficial ownership results.
- “(2) A person (A) is also presumed to contravene section 11B if—
 - “(a) A has made an offer to trade the securities of a public issuer; and
 - “(b) either A or, to A’s knowledge, A’s associate, has made or proposes to make an opposite offer (the **opposite offer**) to trade securities of the public issuer; and
 - “(c) the opposite offer substantially matches A’s offer as to the number and price of the securities.
- “(3) There is no presumption under subsection (1) or subsection (2), and it is a defence in any proceeding against A for contravention of section 11B, if A proves, on a balance of probabilities, that the trading in securities occurred, or the offer to trade was made, for a legitimate reason.
- “(4) There is no presumption under subsection (1), and it is a defence in any proceeding against A for contravention of section 11B, if A proves, on a balance of probabilities, that—
 - “(a) in trading the securities A was acting on behalf of another person; and
 - “(b) A did not know, and ought not reasonably to have known, when trading the securities that no change in beneficial ownership would result.

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

A person who contravenes section 11B commits an offence (*see* section 43 for the maximum penalty of 5 years’ imprisonment and a \$300,000 fine for an individual or a \$1,000,000 fine for a body corporate) if the person has actual knowledge that the act or omission will have, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance—

- “(a) with respect to the extent of active trading in the securities of a public issuer; or
- “(b) with respect to the supply of, demand for, price for trading in, or value of those securities.

“Futures contracts

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

This subpart applies, with the following modifications and exceptions, to insider conduct in relation to a futures contract that is listed on an authorised futures exchange:

- “(a) the term **information insider of a public issuer** must be read as information insider in relation to a futures contract:
- “(b) the term **information insider of the public issuer** must be read as information insider in relation to the futures contract:
- “(c) the term **material information relating to the public issuer** must be read as material information relating to—
 - “(i) the futures contract; or
 - “(ii) the underlying commodity, index, or asset that is the subject of the futures contract; or
 - “(iii) the issuer of a security underlying the futures contract:
- “(d) the term **security** must be read as futures contract:
- “(e) the term **trade the securities of the public issuer** must be read as trade the futures contract:
- “(f) the term **trade or hold securities of the public issuer** must be read as trade or hold the futures contract:

“(g) section 8A(2) must be read as **A public issuer of a security underlying a futures contract may be an information insider in relation to that futures contract:**

“(h) all other necessary modifications.

“Subpart 2—General dealing misconduct
prohibition

“*General dealing misconduct prohibition*

“**13 Misleading or deceptive conduct generally (for dealings in listed and non-listed securities)**

“(1) A person must not engage in conduct, in relation to any dealings in securities, that is misleading or deceptive or likely to mislead or deceive.

“(2) To make the position clear, this section applies more broadly than the rest of this Part and so applies to securities whether listed or non-listed and to all dealings in securities (not only trading).

“*Exceptions*

“**14 Exceptions for takeovers**

“(1) Sections 11 and 13 do not apply to conduct in relation to a takeover offer for securities under the takeovers code or to conduct under that offer to the extent that the conduct is regulated by the code or the Takeovers Act 1993.

“(2) For the purposes of subsection (1), **conduct in relation to a takeover offer** means conduct following the public announcement by a person of an intention to make the offer, whether or not the offer has already begun and whether or not the offer proceeds, and includes conduct incidental or preliminary to a takeover that is regulated by the takeovers code.

“**15 Exception for repurchase of shares by company**

Section 13 does not apply to conduct in relation to the acquisition or redemption by a company of its shares under the Companies Act 1993 to the extent that the conduct is regulated by that Act.

“16 Exception for offers of securities to public

Section 13 does not apply to conduct in relation to an offer of securities to the public for subscription under the Securities Act 1978 or to conduct in relation to the issue or allotment of those securities to the extent that the conduct is regulated by that Act.

“17 Exception for disclosure by investment advisers or brokers

Section 13 does not apply to conduct in relation to a disclosure under Part 4 or to conduct in relation to an advice advertisement, a broker advertisement, or a product advertisement to the extent that that conduct is regulated by Part 4.

*“Territorial scope***“18 Territorial scope of general dealing misconduct prohibition**

Section 13 applies to—

- “(a) conduct in New Zealand; and
- “(b) conduct outside New Zealand by any person resident, incorporated, or carrying on business in New Zealand to the extent that that conduct relates to dealings in securities that occur (in part or otherwise) within New Zealand.

*“Liability under Fair Trading Act 1986***“19 No liability under Fair Trading Act 1986 if not liable under this Part**

A court hearing a proceeding brought against a person under the Fair Trading Act 1986 must not find that person liable for conduct that is regulated by this Part if that person would not be liable for that conduct under this Part.”

*Amendments to continuous disclosure by public issuers***6 New section 19PA inserted**

The following section is inserted after section 19P:

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

A person (A) does not, in relation to the contravention by a public issuer of a continuous disclosure obligation or a term or condition of a continuous disclosure exemption, contravene that obligation or term or condition if A proves on the balance of probabilities that—

- “(a) A took all steps (if any) that were reasonable in the circumstances to ensure that the public issuer complied with the obligation or term or condition; and
- “(b) after doing so, A believed on reasonable grounds that the public issuer was complying with the obligation or term or condition.”

Amendments to disclosure of relevant interests by directors and officers of public issuers

7 New section 19SA inserted

The following section is inserted before section 19T:

“19SA Purpose of subpart

The purpose of this subpart is to promote good corporate governance, and to deter and assist in the monitoring of insider conduct and market manipulation, by—

- “(a) ensuring that information about directors’ and officers’ trading activities in public issuers is available to participants in New Zealand’s securities markets; and
- “(b) enabling the dates of trades to be checked against the dates at which material information became generally available to the market.”

8 Public issuer must keep interests register

Section 19Z is amended by repealing subsection (2) and substituting the following subsections:

- “(2) The interests register must be kept at—
 - “(a) the registered office of the public issuer; or
 - “(b) any other place in New Zealand, of which notice is given in accordance with subsection (2A).

“(2A) If the interests register is not kept at the public issuer’s registered office, or the place at which it is kept is changed, the public issuer must give written notice to the Registrar of Companies of the place at which it is kept within 10 working days of its first being kept elsewhere or of its being moved.”

9 Inspection and copying of interests register

Section 19ZA is amended by repealing subsection (4) and substituting the following subsection:

- “(4) A person may require a copy of, or extract from, an interests register to be sent to that person—
- “(a) within 5 working days after the person has made a request in writing for the copy or extract; and
 - “(b) if the person has paid a reasonable copy and administration fee determined by the public issuer.”

10 New section 19ZF substituted

Section 19ZF is repealed and the following section substituted:

“19ZF Offences relating to interests register

- “(1) A person who fails, without reasonable excuse, to comply with section 19Z(1) or (2) commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).
- “(2) If a person fails, without reasonable excuse, to provide a copy of, or extract from, an interests register in accordance with a request under section 19ZA, the person commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).”

*Amendments to disclosure of interests of
substantial security holders in public issuers*

11 New subpart 3 of Part 2 substituted

Subpart 3 of Part 2 is repealed and the following subpart substituted:

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

“20 Purpose of subpart

The purpose of this subpart is to promote an informed market, and to deter insider conduct, market manipulation, and

secret dealings in potential takeover bids, by ensuring that participants in New Zealand's securities markets have access to information concerning the identity and trading activities of persons who are, or may at any time be, entitled to control or influence the exercise of significant voting rights in a public issuer.

“21 Meaning of substantial security holder, substantial holding, and percentage

- “(1) A person is a **substantial security holder** in a public issuer for the purposes of this Act if that person has a substantial holding in that public issuer.
- “(2) A person has a **substantial holding** in a public issuer for the purposes of this Act if that person has a relevant interest in listed voting securities that comprise 5% or more of a class of listed voting securities of the public issuer.
- “(3) A person has a separate substantial holding for the purposes of this Act for each class in respect of which the person has a substantial holding under subsection (2).
- “(4) The percentage of securities that a person has in a class, for the purposes of this subpart, is calculated as follows:

$$\left(\frac{\text{number held}}{\text{total}} \right) \times 100$$

if—

number held is the number of securities, in that class, in which the person has a relevant interest

total is the total number of securities in that class.

“Event disclosure obligations

“22 Persons must disclose if begin to have substantial holding

- “(1) A person who begins to have a substantial holding (or another substantial holding for another class) in a public issuer must disclose that fact in accordance with sections 26 and 27.
- “(2) The disclosure must be given as soon as the person knows, or ought to know, that the person has the substantial holding.

“23 Substantial security holders must disclose if subsequent movement of 1% in holdings

- “(1) A substantial security holder in a public issuer must disclose, in accordance with sections 26 and 27, any movement of 1% or more in the substantial holding.
- “(2) There is a movement of 1% or more in a substantial holding if—
- “(a) there is a change in the number of securities held by the substantial security holder (where **number held** has the same meaning as in section 21(4)); and
 - “(b) the percentage worked out using the formula in section 21(4) increases or decreases by 1 or more percentage points from the percentage last disclosed under this sub-part in relation to the substantial holding.
- “(3) The disclosure must be given as soon as the person knows, or ought to know, that that movement has occurred.

“24 Substantial security holders must disclose if subsequent changes in nature of relevant interests

- “(1) A substantial security holder in a public issuer must disclose, in accordance with sections 26 and 27, any change in the nature of any relevant interest in the substantial holding.
- “(2) The disclosure must be given as soon as the person knows, or ought to know, of the change.

“25 Persons must disclose if cease to have substantial holding

- “(1) A person who ceases to have a substantial holding (or any of the person’s substantial holdings) in a public issuer must disclose that fact in accordance with sections 26 and 27.
- “(2) The disclosure must be given as soon as the person knows, or ought to know, that the person has ceased to have a substantial holding.

“26 What disclosure required

- “(1) A person must disclose the matters required to be disclosed under any of sections 22 to 25 or section 34 to—
- “(a) the public issuer; and

“(b) every registered exchange by which the securities of the public issuer are listed.

“(2) The person must also disclose, as required by regulations made under section 49A, any further matters relating to that matter, the relevant event, or the substantial holding that are required by those regulations.

“(3) The disclosure must also be accompanied by, or have annexed, anything required by regulations made under section 49A.

“**27 Form and method of disclosure**

The person must give the disclosure in accordance with any regulations made under section 49A (which may govern the form and method of the disclosure).

“**28 Public issuer must give acknowledgment of disclosure**

Every public issuer must, at the request of a person by whom disclosure is given to it under this subpart, give to that person an acknowledgment of the disclosure in the manner required by regulations made under section 49A.

“**29 How to ascertain total voting securities in class of public issuer’s voting securities for purposes of disclosure**

“(1) For the purposes of this subpart, a person may assume that the total number of securities of a public issuer in a class most recently published by the following methods is correct:

“(a) in a document published by a public issuer and distributed to the holders of that class of securities; or

“(b) on a website maintained by the relevant registered exchange.

“(2) Subsection (1) does not apply if that person knows that number is not correct.

“**30 Exemption for persons with interest in other substantial security holders who comply**

A person (A) need not comply with any of sections 22 to 25 in relation to a substantial holding in a public issuer if—

- “(a) another person (**B**) is required to comply, and does comply, with that section in relation to the same public issuer; and
- “(b) A has that substantial holding merely for 1 or more of the following reasons:
 - “(i) A has a power to exercise, or control the exercise of, the right to vote attached to 20% or more of the securities of B (*see* section 5B(1)(b));
 - “(ii) A has a power to acquire or dispose of, or control the acquisition or disposition of, 20% or more of the securities of B (*see* section 5B(1)(c));
 - “(iii) A and B are related bodies corporate (*see* section 5B(1)(d)).

“31 Exemption for trustee corporations and nominee companies

- “(1) A person (**A**) need not comply with any of sections 22 to 25 in relation to 1 or more substantial holdings in 1 or more public issuers if—
 - “(a) A has that substantial holding merely because A acts for another person in the ordinary course of business as a trustee corporation or a nominee company; and
 - “(b) A has opted in to this exemption by written notice to the Commission (and not withdrawn the notice by further written notice to the Commission).
- “(2) Subsection (1) does not apply if A is currently designated by the Commission, by notice in the *Gazette* under section 48C, as a person that is not exempt under this section.

“32 Conditions of exemption for trustee corporations and nominee companies

- “(1) A person (**A**) to whom section 31(1) applies must—
 - “(a) keep under continuing review the transactions of all persons for whom A holds listed voting securities in A’s name; and
 - “(b) inform the public issuer of the securities and the registered exchange by which those securities are listed if section 22 or section 25 applies to any of those persons; and

“(c) inform that registered exchange if it exercises, or proposes to exercise, in its own right any voting rights in respect of 5% or more of a class of listed voting securities of a public issuer.

“(2) Every person who, without reasonable excuse, fails to comply with subsection (1) commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).

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

“(1) A person (A) need not comply with any of sections 22 to 25 in relation to 1 or more substantial holdings in 1 or more public issuers if A has that substantial holding merely because A has, under section 5B, the relevant interests in securities that a trustee corporation or a nominee company that is exempt in relation to that substantial holding under section 31 has.

“(2) Subsection (1) does not apply if A is currently designated by the Commission, by notice in the *Gazette* under section 48C, as a person that is not exempt under this section.

“**33 Extended time for disclosure for trustees, executors, and administrators**

If a person is required to comply with sections 22, 23, or 25 merely because the person is the trustee of a testamentary trust or the executor or administrator of the estate of a deceased person,—

“(a) the time limit for disclosure in that section does not apply; and

“(b) the disclosure must instead be given before the expiry of 14 days after the grant of administration under the Administration Act 1969.

“Required disclosure obligations

“**34 Commission may require persons to disclose to market relevant interests and powers to get relevant interests**

“(1) The Commission may, by written notice given after having regard to the purpose of this subpart, require a person to disclose all (or any class of)—

- “(a) relevant interests that the person has in securities of the public issuer; or
 - “(b) powers that the person has or may at any time have to acquire a relevant interest in securities of the public issuer.
- “(2) It does not matter whether the securities referred to in subsection (1)(a) and (b) are voting securities or not, listed or non-listed, or issued or yet to be issued.
- “(3) The person must disclose the information required under subsection (1) in accordance with sections 26 and 27 as soon as the person receives the notice.
- “(4) Whether or not a person has a power referred to in subsection (1) must be determined in the same way as sections 5 to 5B determine whether or not a person has a relevant interest (and for this purpose every reference in those sections to a relevant interest must be read as including a reference to a power to acquire a relevant interest).
- “35 Public issuer may require registered holder to disclose relevant interests to it**
- “(1) A public issuer may, by written notice, require a person who is registered as the holder of listed voting securities in that public issuer to disclose—
- “(a) the name and address of every person who has a relevant interest in those listed voting securities and the nature of that interest; and
 - “(b) to the extent that that registered holder is unable to supply any of that information in relation to a person having a relevant interest in those listed voting securities, other particulars that will, or are likely to, assist in identifying that person and the nature of that interest.
- “(2) That registered holder must disclose that information in writing to the public issuer as soon as the holder receives the notice.

“35A Public issuer may require person who has relevant interest to disclose information to it

- “(1) A public issuer may, by written notice, require a person who the public issuer believes has, or may have, a relevant interest in listed voting securities in that public issuer to disclose the information the public issuer specifies for the purpose of assisting the public issuer to ascertain who is, or may be, a substantial security holder in the public issuer.
- “(2) That relevant interest holder must disclose that information in writing to the public issuer as soon as the holder receives the notice.

“35B Form and method of notice requiring disclosure

The notice requiring disclosure under section 34, 35, or 35A must be given in accordance with the regulations (if any) made under section 49A (which may govern the form and method in which the notice must be given).

“Offence

“35BA Offence for failure to comply with substantial holding disclosure obligation

Every person who knows or ought to know information that the person is required to disclose under any of sections 22 to 25 and 34 to 35A, and who fails to disclose that information in accordance with a substantial holding disclosure obligation, commits an offence (*see* section 43A for the maximum penalty of a \$30,000 fine).

“Register and publication of substantial holdings

“35C Public issuers must maintain register of disclosures of substantial holdings

- “(1) The public issuer must keep a register for the disclosures given to it under this subpart (and must include a disclosure in the register on receiving it).
- “(2) Subsection (1) does not apply to disclosures made under section 35 or section 35A which do not reveal a substantial holding.

- “(3) The disclosures must be kept in the register in alphabetical order and with a chronological index.
- “(4) The register must be kept at—
- “(a) the registered office of the public issuer; or
 - “(b) any other place in New Zealand, of which notice is given in accordance with subsection (5).
- “(5) If the register is not kept at the public issuer’s registered office, or the place at which it is kept is changed, the public issuer must give written notice to the Registrar of Companies of the place at which it is kept within 10 working days of its first being kept elsewhere or its being moved.
- “(6) This section and section 35D do not derogate from the Companies Act 1993 or any other enactment.

“35D Inspection and copying of substantial holdings register

- “(1) The register required under section 35C must be kept open for inspection by any person.
- “(2) The register must be open for inspection between the hours of 9 am and 5 pm on each working day during the inspection period.
- “(3) In subsection (2), **inspection period** means the period commencing on the third working day after the day on which notice of intention to inspect is served on the public issuer by the person concerned and ending with the eighth working day after the day of service.
- “(4) A person may require a copy of, or extract from, a register to be sent to that person—
- “(a) within 5 working days after the person has made a request in writing for the copy or extract; and
 - “(b) if the person has paid a reasonable copy and administration fee determined by the public issuer.

“35E Offences relating to substantial holdings register

- “(1) Every person who, without reasonable excuse, fails to comply with a requirement of section 35C or section 35D commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).

“(2) If a person fails, without reasonable excuse, to provide a copy of, or extract from, the register kept under section 35C in accordance with a request under section 35D, the person commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).

“**35F Public issuers must publish information on substantial holdings**

“(1) Every public issuer must, in accordance with this section, send out a notice stating—

“(a) the names of all persons who, according to the register kept under section 35C, are substantial security holders in the public issuer, at the record date; and

“(b) the number and class of listed voting securities of the public issuer that, according to the register, form part of each substantial holding in the public issuer at the record date; and

“(c) the total number in each class of the public issuer’s listed voting securities at the record date.

“(2) The notice must be sent—

“(a) for public issuers that are companies (other than overseas companies within the meaning of the Companies Act 1993), to each shareholder with or in—

“(i) the annual report sent under section 209 of the Companies Act 1993; or

“(ii) if the shareholder has elected not to receive an annual report, the financial statements or summary financial statements sent under section 210 of that Act; and

“(b) for every other public issuer, to every holder of its listed voting securities not later than 30 June in each year.

“(3) The **record date** is a date stated in the notice that is not earlier than 3 months before the notice is sent.

“**35G Registered exchange must publish disclosures**

A registered exchange must—

“(a) notify each disclosure given to it under this subpart to the registered exchange’s market as soon as practicable after receiving it; and

“(b) publish that disclosure on its website soon after notifying it to the registered exchange’s market.

“35H Offence for failing to publish information on substantial holdings or disclosures

“(1) A public issuer who, without reasonable excuse, fails to comply with a requirement of section 35F commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).

“(2) A registered exchange who, without reasonable excuse, fails to comply with a requirement of section 35G commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).

“35I No liability for publication of substantial holdings

No public issuer is liable for any false or misleading information published under section 35F if the information was derived by the issuer under this subpart and the issuer did not know that the information was false or misleading.

“35J Notice under this subpart not to affect incorporation of public issuer or constitute notice of trust

“(1) Nothing in, or done under, this subpart—

“(a) affects the incorporation of a public issuer; or

“(b) limits section 92, 93, or 94 of the Companies Act 1993.

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

*Insertion of new Part 4 on investment advisers
and brokers and new Part 5 on enforcement and
remedies*

12 New Parts 4 and 5 substituted

(1) Sections 41 to 43 and the Part 4 heading are repealed and the following Parts substituted:

“Part 4

“Investment advisers and brokers

“Application of this Part

“41 When investment advice given to public, etc

For the purpose of this Part, in determining whether investment advice is given to the public or investment money or investment property is received from the public, section 3 of the Securities Act 1978 (which relates to the construction of references to offering securities to the public), except section 3(2)(a)(iia), applies as if every reference in that section to an offer of securities were a reference to the giving of investment advice or receiving of investment money or investment property, as the case may be.

“Disclosure by investment advisers

“41A Investment advisers’ disclosure obligation

“(1) An investment adviser must not give investment advice to a member of the public unless the adviser has first made disclosure to that person in accordance with—

“(a) sections 41B to 41F; and

“(b) any requirements specified by regulations made under section 49C.

“(2) However, the requirement in subsection (1) that disclosure must be made before investment advice is given does not apply to the extent that—

“(a) disclosure subsequent to investment advice is permitted by regulations made under section 49C; and

“(b) the disclosure is made in accordance with those regulations.

“41B Investment adviser must disclose experience, qualifications, professional standing, etc

An investment adviser must disclose—

“(a) the following information in relation to any qualifications of the adviser that are relevant to the giving of investment advice:

“(i) the nature of the qualifications; and

“(ii) when those qualifications were obtained; and

- “(iii) a brief description of the extent to which the adviser has kept up to date the knowledge gained in obtaining those qualifications; and
- “(b) a brief description of the adviser’s experience as an investment adviser; and
- “(c) whether the adviser is a member of a professional body that is relevant to the provision of investment advice; and
- “(d) whether the adviser has professional indemnity insurance, and the nature and scope of that insurance; and
- “(e) whether dispute resolution facilities are available to the adviser’s clients.

“41C Investment adviser must disclose certain criminal convictions, etc

- “(1) An investment adviser must disclose whether, during the period of 5 years before the investment advice is given, the investment adviser—
 - “(a) has been convicted of an offence under this Act or the Securities Act 1978, or of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961); or
 - “(b) was a principal officer of a body corporate, if a body corporate committed an offence referred to in paragraph (a), when the body corporate committed the offence; or
 - “(c) has been adjudicated bankrupt; or
 - “(d) has been prohibited by an Act or by a court from taking part in the management of a company or a business; or
 - “(e) has been the subject of an adverse finding by a court in any proceeding that has been taken against the investment adviser in the adviser’s professional capacity; or
 - “(f) has been expelled from, or has been prohibited from being a member of, a professional body.
- “(2) In the case of an investment adviser that is a body corporate or unincorporated, the investment adviser must also—
 - “(a) make disclosure under subsection (1) for each principal officer of the investment adviser; and
 - “(b) disclose whether, during the period of 5 years before the investment advice is given, the investment adviser has been placed in statutory management or receivership.

“41D Investment adviser must disclose fees

An investment adviser must disclose the nature and level of the fee that the adviser will charge the person to whom the adviser gives investment advice.

“41E Investment adviser must disclose other interests and relationships

“(1) An investment adviser must disclose whether or not the adviser or an associated person has, or will or may have, any interest or relationship that a reasonable person would find reasonably likely to influence the adviser in giving the investment advice.

“(2) This includes an obligation to disclose—

“(a) any relevant remuneration as defined in subsection (4); and

“(b) whether the adviser is an associated person of, or has any other financial or other relationship with, any person connected with the investment; and

“(c) a relationship with any other person (other than a professional body) who may reasonably be expected to influence the provision or content of the investment advice; and

“(d) any other direct or indirect pecuniary or other interest in giving the investment advice.

“(3) An investment adviser must disclose the following information:

“(a) the nature and extent of the interest or relationship; and

“(b) in the case of remuneration, to the extent practicable, the amount or rate of the remuneration and the name of the person from whom the remuneration has been, or will or may be, received.

“(4) In this section,—

“**relevant remuneration** means any remuneration that the adviser or an associated person has received, or will or may receive, directly or indirectly, from a person other than the investor in connection with the giving of the investment advice or a transaction resulting from the giving of the advice

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

“**41F Investment adviser must disclose details of securities about which advice given**

An investment adviser must disclose—

- “(a) the types of securities about which the adviser gives advice; and
- “(b) if the adviser gives advice only about securities of a particular issuer or particular issuers, a statement to this effect and the name of each of the issuers concerned.

“Disclosure by investment brokers

“**41G Investment brokers’ disclosure obligation**

An investment broker must not receive investment money or investment property from a member of the public unless the broker has first made disclosure to that person in accordance with—

- “(a) sections 41H and 41I; and
- “(b) any requirements specified by regulations made under section 49C.

“**41H Investment broker must disclose certain criminal convictions, etc**

- “(1) An investment broker must disclose whether, during the period of 5 years before the investment money or investment property is received, the investment broker—
 - “(a) has been convicted of an offence under this Act or the Securities Act 1978, or of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961); or
 - “(b) was a principal officer of a body corporate, if a body corporate committed an offence referred to in paragraph (a), when the body corporate committed the offence; or
 - “(c) has been adjudicated bankrupt; or
 - “(d) has been prohibited by an Act or by a court from taking part in the management of a company or a business; or

- “(e) has been the subject of an adverse finding by a court in any proceeding taken against the broker in the broker’s professional capacity; or
 - “(f) has been expelled from, or has been prohibited from being a member of, a professional body.
- “(2) In the case of an investment broker that is a body corporate or unincorporated, the investment adviser must also—
- “(a) make disclosure under subsection (1) for each principal officer of the investment broker; and
 - “(b) disclose whether, during the period of 5 years before the investment money or investment property is received, the investment broker has been placed in statutory management or receivership.

“41I Investment broker must disclose procedures for dealing with investment money or investment property

- “(1) An investment broker must disclose a brief description of the procedures of the broker (or, if the broker is acting in the course of his or her employment, of the employer) relating to the receipt and disbursement of the money or receipt and distribution of the property by the broker, including—
- “(a) how payment or delivery of money or delivery of property should be made to the broker; and
 - “(b) whether or not the money or property received by the broker will be held on trust for the investor, and will be so held until it is disbursed or distributed in accordance with the investor’s instructions; and
 - “(c) what records will be kept by the broker in relation to the money or property, whether the investor has access to those records, and the terms of that access; and
 - “(d) whether or not the receipt, holding, and disbursement of the money and the receipt, holding, and distribution of the property, by the broker will be audited by an auditor and, if so, the name of the auditor; and
 - “(e) the extent, if any, to which the broker can use the money or property for the benefit of the broker or any other person; and
 - “(f) any other information that must be disclosed under regulations made under this Act.

- “(2) For the purposes of subsection (1)(d), **auditor** means a person who would, if the broker were an issuer of securities, be a qualified auditor within the meaning of section 2C of the Securities Act 1978.

“Method of disclosure

“41J How disclosure must be made

- “(1) Disclosure under this Part must be made in a disclosure statement.
- “(2) The disclosure statement must—
- “(a) be in writing; and
 - “(b) state when it was prepared; and
 - “(c) in the case of an investment adviser or an investment broker, other than an employee of an investment adviser or investment broker, state the name, address, and business telephone number of the investment adviser or the investment broker concerned; and
 - “(d) in the case of an investment adviser or an investment broker who is an employee of an investment adviser or an investment broker, state the name of that employee; and
 - “(e) be either received by the investor, or delivered or sent to the investor, at the investor’s last known address or an address (including an electronic address) specified by the investor for this purpose; and
 - “(f) comply with any regulations prescribing the form or the contents of the statement.

“Other requirements relating to disclosure

“41K Disclosure must not be misleading

Disclosure under this Part must not be deceptive, misleading, or confusing at the time that it is made.

“41L Disclosure of additional information

- “(1) A disclosure statement may be accompanied by disclosure of additional information.
- “(2) Additional information that accompanies a disclosure statement must not be deceptive, misleading, or confusing.

“41M No compliance with disclosure obligations if disclosure statement out of date

- “(1) An investment adviser or an investment broker who has previously given a member of the public a disclosure statement does not comply with their respective disclosure obligations under this Part if the disclosure statement is out of date when—
- “(a) the investment adviser gives that person investment advice; or
 - “(b) the investment broker receives investment money or investment property from that person.
- “(2) The disclosure statement is out of date if—
- “(a) since the date of the disclosure statement there has been a material change in any matter that must be disclosed in the disclosure statement; and
 - “(b) a reasonable person in the position of the person receiving advice or engaging the investment broker would consider that the change would materially affect any of the following decisions by that person:
 - “(i) in the case of disclosure by an investment adviser, a decision—
 - “(A) to proceed to be given investment advice by that adviser; or
 - “(B) to proceed with investment advice already given by the adviser; or
 - “(C) about the weight that the person gives to investment advice by that adviser:
 - “(ii) in the case of an investment broker, a decision—
 - “(A) to proceed with the receipt of investment money or investment property by that broker; or
 - “(B) to postpone or countermand the investment of investment money or investment property already received by that broker but not yet invested.
- “(3) Subsection (1) does not apply if, before the investment advice is given or the investment money or investment property is received, as the case may be, the investment adviser or the investment broker gives the person concerned—
- “(a) a new disclosure statement that is up to date; or

“(b) additional written information that, when read with the original disclosure statement, updates the disclosure statement.

“41N Advertisement must refer to disclosure statement

Any advertisement by an investment adviser or an investment broker advertising that person’s services as an investment adviser or investment broker must state that a disclosure statement is available, on request and free of charge.

“41O Advertisement must not be deceptive, misleading, or confusing

An advertisement must not be deceptive, misleading, or confusing.

“Offences

“41P Offence for failure to comply with disclosure obligation

Every person who is aware or ought reasonably to be aware of information that the person must disclose under an investment advisers’ or investment brokers’ disclosure obligation, and who fails to disclose that information in accordance with this Part, commits an offence (*see* section 43D for the maximum penalty of a \$100,000 fine for an individual or a \$300,000 fine for a body corporate).

“41Q Offence of deceptive, misleading, or confusing disclosure

“(1) An investment adviser or an investment broker who makes disclosure that contravenes section 41K or 41L commits an offence (*see* section 43D for the maximum penalty of a \$100,000 fine for an individual or a \$300,000 fine for a body corporate).

“(2) However, the adviser or the broker does not commit an offence under subsection (1) if the adviser or the broker proves that, at the time when the disclosure was made, the adviser or the broker believed on reasonable grounds that the disclosure was not deceptive, misleading, or confusing.

“(3) The defence in subsection (2) does not prevent the Commission from making a prohibition or corrective order under section 42 or a disclosure order under section 42B, or the Court

from granting an injunction under section 42K, or making a corrective order under section 42N or a disclosure order under section 42P.

“41R Offence of deceptive, misleading, or confusing advertisement

- “(1) An investment adviser or an investment broker commits an offence (*see* section 43D for the maximum penalty of a fine of \$300,000 and \$10,000 per day in the case of a continuing offence) if an advertisement—
- “(a) contravenes section 41O; and
 - “(b) has been distributed to a person; and
 - “(c) was—
 - “(i) authorised or instigated by, or on behalf of, the adviser or the broker; or
 - “(ii) prepared with the co-operation of, or by arrangement with, the adviser or the broker.
- “(2) However, the adviser or the broker does not commit an offence under subsection (1) if the adviser or the broker proves that, at the time when the advertisement was distributed, the adviser or the broker believed on reasonable grounds that the advertisement was not deceptive, misleading, or confusing.
- “(3) The defence in subsection (2) does not prevent the Commission from making a prohibition or corrective order under section 42 or a disclosure order under section 42B, or the Court from granting an injunction under section 42K, or making a corrective order under section 42N or a disclosure order under section 42P.

“41S Recommending, or receiving money for, acquisition of securities prohibited if offer for subscription illegal

- “(1) An investment adviser must not recommend to a member of the public that that person acquire securities, and an investment broker must not receive investment money from a member of the public in respect of the acquisition of securities, if—
- “(a) when the securities were or are offered for subscription, the offer was or is illegal; and
 - “(b) the illegality has not been remedied; and

- “(c) the adviser or the broker knows or ought to know that, when the securities were or are offered for subscription, the offer was or is illegal.
- “(2) A person who contravenes subsection (1) commits an offence (*see* section 43D for the maximum penalty of a fine of \$300,000 and \$10,000 per day in the case of a continuing offence).

“41T Defence of immateriality

It is a defence to a charge of contravening any of sections 41P to 41 S if the contravention was in respect of matters that, in the opinion of the Court dealing with the charge, were immaterial.

“Territorial scope of this Part

“41U Territorial scope

- “(1) This Part applies to investment advice offered to, or an investment brokers service performed for, or an investment adviser’s or investment broker’s advertisement received by, a person in New Zealand, regardless of—
 - “(a) where any resulting investment occurs:
 - “(b) where any investment money or investment property is received:
 - “(c) where the adviser or broker is resident, is incorporated, or carries on business.
- “(2) For the purposes of this Part, advice is offered, or an advertisement is made, to a person in New Zealand if the advice or the advertisement is received by a person in New Zealand, unless the adviser or broker shows that it took all reasonable steps to ensure that members of the public in New Zealand do not receive the advice or the advertisement.
- “(3) Sections 41O and 41S apply to investment advice offered to, or an investment brokers service performed for, or an advertisement made to, a person outside New Zealand by a person who is resident, is incorporated, or carries on business, in New Zealand.

“Miscellaneous

“41V No contracting out

The provisions of this Part have effect no matter what any agreement may say.

“41W No liability under Fair Trading Act 1986 if not liable under this Part

- “(1) A court hearing a proceeding brought against a person under the Fair Trading Act 1986 must not find that person liable for conduct that is regulated by this Part if that person would not be liable for that conduct under this Part.
- “(2) Except as provided in subsection (1), nothing in this Part affects the liability of a person under any other law or enactment.

“Part 5

“Enforcement and remedies

“Subpart 1—Commission’s enforcement powers

“Prohibition and corrective orders

“42 When Commission may make prohibition and corrective orders

The Commission may make a prohibition order or a corrective order, or both, in accordance with this subpart if it is satisfied that, by engaging in any conduct, a person has contravened, or would contravene,—

- “(a) a market manipulation prohibition or exemption or the general dealing misconduct prohibition:
- “(b) an investment advisers’ or brokers’ obligation or exemption:
- “(c) section 36A(1) (no holding out as securities exchange unless registered) or an exemption from that section:
- “(d) section 37A(1) (no holding out as futures exchange unless authorised) or an exemption from that section.

“42A Terms of prohibition and corrective orders

- “(1) A prohibition order may prohibit or restrict the making of any statement or distributing of any document by or on behalf of

the person for the purpose of preventing a contravention or further contravention of the relevant prohibition, obligation, or exemption.

- “(2) A corrective order may direct the person in contravention to publish, at the person’s own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order.

“Disclosure orders

“42B When Commission may make disclosure orders

The Commission may make a disclosure order in accordance with this subpart if it is satisfied that a person has contravened—

- “(a) a continuous disclosure obligation or exemption:
- “(b) a directors’ and officers’ disclosure obligation or exemption:
- “(c) a substantial holding disclosure obligation or exemption:
- “(d) an investment advisers’ or brokers’ disclosure obligation or exemption.

“42C Terms of disclosure orders

A disclosure order may order the person—

- “(a) to disclose in accordance with the order information for the purpose of securing compliance with the relevant obligation or exemption:
- “(b) to publish, at the person’s own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order.

*“Temporary investment adviser and broker
banning orders*

**“42D When Commission may make temporary banning orders
for investment adviser or broker activities**

The Commission may make a temporary banning order against a person in accordance with this subpart if the Commission is satisfied that—

- “(a) the person has persistently contravened section 13 (general dealing misconduct prohibition), Part 4 (investment advisers and brokers), or the Securities Act 1978; or
- “(b) the person has been prohibited in an overseas jurisdiction from carrying on activities that the Commission is satisfied are substantially similar to any of the activities referred to in section 42E.

**“42E Terms of temporary banning order for investment adviser
and broker activities**

A temporary banning order may prohibit or restrict the person from doing all or any of the following things, without the leave of the Commission, for a period stated in the order of 14 days or less:

- “(a) giving investment advice to, or receiving investment money or investment property from, the public:
- “(b) acting as a director or promoter of, or in any way, whether directly or indirectly, being concerned or taking part in the management of, any incorporated or unincorporated body that is an investment adviser or an investment broker (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand):
- “(c) acting as an employee or agent of an investment adviser or an investment broker in a capacity that allows the person to take part in the giving of investment advice to, or receiving investment money or investment property from, the public.

*“Process for Commission’s orders***“42F Commission must follow steps before making orders**

- “(1) The Commission may make an order under this subpart only if it first takes the following steps:
- “(a) gives the person to whom the order is directed written notice of—
 - “(i) the nature of the alleged contravention; and
 - “(ii) the proposed terms of the order; and
 - “(iii) the reasons for the proposed order; and
 - “(b) also gives that written notice to the relevant registered exchange, in the case of a disclosure order for a contravention of a continuous disclosure obligation or exemption; and
 - “(c) gives that notice at least—
 - “(i) 24 hours before the Commission makes the order, in the case of an order specified in section 42G; or
 - “(ii) 48 hours before the Commission makes the order, in the case of any other disclosure order; or
 - “(iii) 7 days before the Commission makes the order, in the case of any other prohibition or corrective order; and
 - “(d) gives each person to whom notice of the order must be given an opportunity to make written submissions within that notice period; and
 - “(e) also gives each of those persons an opportunity to have the matter determined following a meeting of the Commission after the expiry of that notice period and the opportunity to be heard and represented by counsel at that meeting (but this paragraph does not apply to an order specified in section 42G); and
 - “(f) has regard to any written submissions made to it within that notice period and (if applicable) written or oral submissions made at a meeting of the Commission.
- “(2) However, the Commission may shorten these steps in accordance with section 42G for an order specified in that section.

“42G Commission may shorten steps for specified orders

- “(1) If the Commission thinks it necessary or desirable in the public interest for any of the orders set out in subsection (3) to be made more urgently than section 42F permits, it—
- “(a) may give less than 24 hours’ notice before it makes the order, and the notice may be oral, not written; and
 - “(b) may give persons an opportunity to make only oral submissions, not written, to a member, officer, or employee of the Commission (as the Commission determines).
- “(2) However, the Commission must include in the notice under that section the reasons for acting urgently and must otherwise comply with the steps set out in that section.
- “(3) The orders are—
- “(a) a prohibition or corrective order for a contravention of a market manipulation prohibition or exemption or the general dealing misconduct prohibition:
 - “(b) a prohibition or corrective order for an investment advisers’ or brokers’ obligation or exemption if that order is stated to apply for a period of 14 days or less:
 - “(c) a disclosure order for a contravention of a continuous disclosure obligation or exemption:
 - “(d) a temporary banning order.

“42H Commission must give notice after making orders

- “(1) If the Commission makes an order under this subpart, the Commission—
- “(a) must, as soon as is reasonably practicable, give written notice to the person to whom the order is directed of—
 - “(i) the terms of the order; and
 - “(ii) the reasons for the order; and
 - “(b) must also give that written notice to the relevant registered exchange, in the case of a disclosure order for a contravention of a continuous disclosure obligation or exemption; and
 - “(c) may also give notice to any other person of those matters.
- “(2) The Commission must also, as soon as practicable after the making of a temporary banning order, give notice on its website (and may give public notice by any other means also) of

the name of the person against whom the order is made and the period or dates for which the ban applies.

“General provisions

“42I General provisions on Commission’s orders

- “(1) The Commission may make an order under this subpart on the terms and conditions that the Commission thinks fit.
- “(2) The Commission may vary an order in the same way as it may make the order under this subpart.
- “(3) The Commission may revoke an order or suspend an order on the terms and conditions it thinks fit.
- “(4) An order made under this subpart is subject to appeal only in accordance with section 69P of the Securities Act 1978.

“42J Offence of failing to comply with Commission’s orders

- “(1) A person who contravenes an order made by the Commission under this subpart commits an offence (*see* section 43E for the maximum penalty of a \$30,000 fine).
- “(2) No person may be convicted of an offence against subsection (1) if—
 - “(a) the person proves that the contravention occurred without the person’s knowledge or without the person’s knowledge of the order; or
 - “(b) the contravention was in respect of matters that, in the Court’s opinion, were immaterial; or
 - “(c) the Court thinks that the contravention, in the circumstances of the case, ought reasonably to be excused.

“Subpart 2—Court’s enforcement powers

“Injunctions

“42K What Court may injunct

The Court may, on application by the Commission or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention of a provision of this Act.

“42L When Court may grant injunctions and interim injunctions

- “(1) The Court may grant an injunction restraining a person from engaging in conduct of a particular kind if—
- “(a) it is satisfied that the person has engaged in conduct of that kind; or
 - “(b) it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- “(2) The Court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- “(3) Subsections (1)(a) and (2) apply whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- “(4) Subsections (1)(b) and (2) apply whether or not the person has previously engaged in conduct of that kind or there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.

“42M Undertaking as to damages not required by Commission

- “(1) If the Commission applies to the Court for the grant of an interim injunction under this subpart, the Court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.
- “(2) However, in determining the Commission’s application for the grant of an interim injunction, the Court must not take into account that the Commission is not required to give an undertaking as to damages.

“Corrective orders

“42N When Court may grant corrective orders

The Court may, on application by the Commission or any other person, make a corrective order if it is satisfied that a person has contravened—

- “(a) a market manipulation prohibition or exemption or the general dealing misconduct prohibition:

- “(b) an investment advisers’ or brokers’ obligation or exemption:
- “(c) section 36A(1) (no holding out as securities exchange unless registered) or an exemption from that section:
- “(d) section 37A(1) (no holding out as futures exchange unless authorised) or an exemption from that section.

“42O Terms of corrective orders

A corrective order may direct the person in contravention to publish, at the person’s own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order.

“Disclosure orders

“42P When Court may make disclosure orders

The Court may, on application by the Commission or any other person, make a disclosure order if it is satisfied that a person has contravened—

- “(a) a continuous disclosure obligation or exemption:
- “(b) a substantial holding disclosure obligation or exemption:
- “(c) an investment advisers’ or brokers’ disclosure obligation or exemption.

“42Q Terms of disclosure orders

A disclosure order may order—

- “(a) the person in contravention to disclose in accordance with the order information for the purpose of securing compliance with the relevant obligation or exemption:
- “(b) the person in contravention to publish, at the person’s own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order.

“Subpart 3—Civil remedies

“*Overview of civil remedies*

“42R Overview of civil remedies

- “(1) The following remedies (**civil remedy orders**) are available for a contravention of a civil remedy provision (except if otherwise provided) under this subpart:
- “(a) a pecuniary penalty order and declaration of contravention (on application by the Commission only):
 - “(b) a compensatory order:
 - “(c) a specific civil remedy order under section 42ZC:
 - “(d) other civil remedy orders under section 42ZE.
- “(2) This section is a guide only to the general scheme and effect of this subpart.

“42S What are civil remedy provisions

In this subpart, a **civil remedy provision** is—

- “(a) an insider conduct prohibition or exemption:
- “(b) a market manipulation prohibition or exemption:
- “(c) the general dealing misconduct prohibition:
- “(d) a continuous disclosure obligation or exemption:
- “(e) a substantial holding disclosure obligation or exemption:
- “(f) an investment advisers’ or brokers’ obligation or exemption.

“*Pecuniary penalty orders and declarations of contravention*

“42T When Court may make pecuniary penalty orders and declarations of contravention

- “(1) If the Commission applies for a pecuniary penalty order against a person under this Act, the Court—
- “(a) must determine whether the person has contravened a civil remedy provision; and
 - “(b) must make a declaration of contravention (*see* sections 42U and 42V) if satisfied that the person has contravened a civil remedy provision; and
 - “(c) may order the person to pay a pecuniary penalty that the Court considers appropriate to the Crown (*see* sections

42W to 42Y) if satisfied that the person has contravened a civil remedy provision and that the contravention—

- “(i) materially prejudices the interests of acquirers or disposers of the securities or relevant interests involved; or
- “(ii) materially prejudices the public issuer or, if the public issuer is a body corporate, its members; or
- “(iii) is likely to materially damage the integrity or reputation of any of New Zealand’s securities markets; or
- “(iv) is otherwise serious.

“(2) However, the Court must not make a declaration of contravention or a pecuniary penalty order under this section for a contravention of—

- “(a) section 13 (general dealing misconduct prohibition); or
- “(b) an investment advisers’ or broker’s disclosure obligation or exemption.

“42U Purpose and effect of declarations of contravention

“(1) The purpose of a declaration of contravention is to enable an applicant for a compensatory order or other civil remedy order under section 42ZE to rely on the declaration of contravention in the proceedings for that order, and not be required to prove the contravention.

“(2) Accordingly, a declaration of contravention is conclusive evidence of the matters that must be stated in it under section 42V.

“42V What declarations of contravention must state

A declaration of contravention must state the following:

- “(a) the Court that made the declaration; and
- “(b) the civil remedy provision to which the contravention relates or, if the contravention is of an exemption, both the term or condition contravened and the civil remedy provision to which the exemption relates; and
- “(c) the person who engaged in the contravention; and
- “(d) the conduct that constituted the contravention and, if a transaction constituted the contravention, the transaction; and

- “(e) the public issuer to which the conduct related (if relevant).

“42W Maximum amount of pecuniary penalty

- “(1) The maximum amount of a pecuniary penalty for a contravention of an insider conduct prohibition or market manipulation prohibition is the greater of—
 - “(a) the consideration for the transaction that constituted the contravention (if any); or
 - “(b) 3 times the amount of the gain made, or the loss avoided, by the person in carrying out the conduct (*see* section 42X for guidance); or
 - “(c) \$1,000,000.
- “(2) The maximum amount of a pecuniary penalty for a contravention of any other civil remedy provision is \$1,000,000.

“42X Guidance for Court on how to determine gains made or losses avoided for purposes of maximum amount

- “(1) For the purposes of section 42W(1)(b),—
 - “(a) a person makes a gain if the person acquires a security in a public issuer for less than its value:
 - “(b) a person avoids a loss if the person disposes of a security in a public issuer for more than its value.
- “(2) In this case, the gain made or loss avoided is the difference between the consideration paid or received (as the case may be) and the value the security would have had at the time of the sale if, —
 - “(a) in the case of a contravention of an insider conduct prohibition, the material information had been generally available to the market; or
 - “(b) in the case of a contravention of a market manipulation prohibition, the conduct, statement, or information had not been misleading, deceptive, or false.

“42Y Considerations for Court in determining pecuniary penalty

In determining an appropriate pecuniary penalty, the Court must have regard to all relevant matters, including—

- “(a) any purpose and criteria stated in this Act that apply to the civil remedy provision; and
- “(b) the nature and extent of the contravention; and
- “(c) the likelihood, nature, and extent of any damage to the integrity or reputation of any of New Zealand’s securities markets because of the contravention; and
- “(d) the nature and extent of any loss or damage suffered by a person referred to in section 42T(1)(c)(i) or (ii), or gains made or losses avoided by the person in contravention, because of the contravention; and
- “(e) the circumstances in which the contravention took place; and
- “(f) whether or not the person in contravention has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct; and
- “(g) the relationship of the parties to the transaction constituting the contravention.

“42Z Court must order that recovery from pecuniary penalty be applied to Commission’s actual costs

If the Court orders that a person pay a pecuniary penalty, and the proceedings were brought (in whole or in part) by the Commission, the Court must also order that the penalty must be applied first to pay the Commission’s actual costs in bringing the proceedings.

“Compensatory orders

“42ZA When Court may make compensatory orders

- “(1) The Court may make a compensatory order, on application by the Commission or any other person, if the Court is satisfied that—
 - “(a) there is a contravention of a civil remedy provision; and
 - “(b) a person (the **aggrieved person**) has suffered, or is likely to suffer, loss or damage because of the contravention.
- “(2) The Court may make a compensatory order whether or not the aggrieved person is a party to the proceedings.

- “(3) However, the Court must not make a compensatory order under this section for a contravention of an investment advisers’ and brokers’ disclosure obligation or exemption.

“42ZB Terms of compensatory orders

If section 42ZA applies, the Court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce that loss or damage, including an order (without limitation) to—

- “(a) direct the person in contravention to pay to the aggrieved person the amount of the loss or damage:
- “(b) direct the person in contravention to refund money or return property to the aggrieved person:
- “(c) if a contract has been entered into between the person in contravention and the aggrieved person,—
- “(i) vary the contract or any collateral arrangement as specified in the order and, if the Court thinks fit, declare the contract or arrangement to have had effect as so varied on and after a date before the order was made, as specified in the order:
- “(ii) cancel the contract and, if the Court thinks fit, declare the cancellation to have had effect on and after a date before the order was made, as specified in the order:
- “(iii) require the person in contravention to take any action the Court thinks fit to reinstate the parties as near as may be possible to their former positions.

*“Civil remedy order for investment advisers’ or
brokers’ disclosure obligations*

**“42ZC When Court may make civil remedy order for
investment advisers’ or brokers’ disclosure obligations**

- “(1) The Court may make a civil remedy order described in section 42ZD against an investment adviser or investment broker, on application by an entitled person, if the Court is satisfied that—
- “(a) the adviser or broker has contravened an investment advisers’ or brokers’ disclosure obligation or exemption; and

- “(b) if the adviser or broker had complied with that obligation or exemption, a reasonable person in the position of the entitled person would have—
 - “(i) not used that adviser or proceeded with investment advice given by that adviser; or
 - “(ii) not used that broker or paid or delivered investment money or investment property to that broker; or
 - “(iii) acted in a way that was materially different from the way the entitled person acted in relation to the advice or services of the adviser or broker.
- “(2) An **entitled person** is any person who has received investment advice from that investment adviser or whose investment money or investment property has been paid or delivered to that investment broker.
- “(3) It does not matter whether or not the investment adviser or investment broker has previously contravened an investment advisers’ or brokers’ disclosure obligation or exemption, or whether or not the entitled person has suffered any loss as a result of the contravention.

“42ZD Terms of civil remedy order for investment advisers’ or brokers’ disclosure obligations

- “(1) A civil remedy order under section 42ZC may order the investment adviser or investment broker to pay to the entitled person an amount determined by the Court.
- “(2) The maximum amount of a civil remedy order under subsection (1) is,—
 - “(a) in the case of an individual, \$100,000; and
 - “(b) in the case of a body corporate, \$300,000.

“Other civil remedy orders

“42ZE When Court may make other civil remedy orders

- “(1) The Court may, on application by the Commission or any other person, make a civil remedy order described in section 42ZF if the Court is satisfied on reasonable grounds that a person has contravened or intends to contravene a civil remedy provision.

“(2) However, the Court must not make a civil remedy order of that kind for a contravention of a continuous disclosure obligation or exemption or an investment advisers’ or brokers’ obligation or exemption.

“42ZF Terms of other civil remedy orders

A civil remedy order under section 42ZE may—

- “(a) restrain the exercise of rights attaching to securities, or the exercise of relevant interests, or declare an exercise of those rights or relevant interests to be void and of no effect:
- “(b) restrain the issue or allotment of securities or restrain any distribution due in relation to securities:
- “(c) restrain the acquisition or disposal of securities or of relevant interests or restrain the registration of any transfer of that kind:
- “(d) direct the disposal of securities or of relevant interests (including the person or class of person to which they must, or must not, be disposed of) and direct the payment of the proceeds of any disposal:
- “(e) require securities to be forfeited and require the public issuer to cancel the forfeited securities:
- “(f) cancel an agreement for the acquisition or disposal of securities or relevant interests.

“Interrelationship of civil remedies

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

The Court may make a civil remedy order of one kind against a person even though the Court has made another civil remedy order of a different kind against the person for the same conduct.

Examples

The Court may make a compensatory order and a pecuniary penalty order for the same conduct.

The Court may make a civil remedy order requiring forfeiture of securities and declaring a previous exercise of voting rights attaching to those securities to be void.

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

If conduct by a person constitutes a contravention of 2 or more civil remedy provisions, proceedings may be brought against that person for the contravention of any one or more of the provisions, but no person is liable to more than one pecuniary penalty order for the same conduct.

“General

“42ZI Standard of proof for civil remedies

The proceedings under this subpart are civil proceedings and the usual rules of the Court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

“42ZJ Time limit for applying for civil remedies

- “(1) An application for a pecuniary penalty order, a civil remedy order under section 42ZC, or other civil remedy order under section 42ZE may be made at any time within 3 years after the date on which the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.
- “(2) The usual time limits apply to all applications for other civil remedy orders.
- “(3) However, an application for a compensatory order in respect of the contravention may be made at any time within 6 months after the date on which a declaration of contravention is made, even if the usual time limit has expired.

“Subpart 4—Criminal offences and penalties

“*Penalties for offences*

“**43 Penalties for failing to comply with Part 1**

“(1) A person who commits an offence against any of the sections set out in subsection (2) is liable on conviction on indictment to—

“(a) in the case of an individual, imprisonment for a term not exceeding 5 years or a fine not exceeding \$300,000, or to both:

“(b) in the case of a body corporate, a fine not exceeding \$1,000,000.

“(2) The sections are—

“(a) section 8F (criminal liability for insider conduct):

“(b) section 11A (criminal liability for false or misleading statement or information):

“(c) section 11D (criminal liability for false or misleading appearance of trading, etc).

“**43A Penalties for failing to comply with Part 2**

“(1) A person who commits an offence against any of the following sections is liable on summary conviction to a fine not exceeding \$30,000:

“(a) section 19ZD (offence for failure to comply with directors’ and officers’ disclosure obligation):

“(b) section 35BA (offence for failure to comply with substantial holding disclosure obligation).

“(2) A person who commits an offence against any of the following sections is liable on summary conviction to a fine not exceeding \$10,000:

“(a) section 19ZF (offences relating to directors’ and officers’ interests register):

“(b) section 32 (conditions of exemption for trustee corporations and nominee companies):

“(c) section 35E (offences relating to substantial holdings register):

“(d) section 35H (offence for failing to publish information on substantial holdings or disclosures).

“43B Penalties for failing to comply with Part 2B

- “(1) A person who commits an offence against section 36ZX (offence for failing to comply with monitoring of securities exchange provisions) is liable on summary conviction to a fine not exceeding \$30,000.
- “(2) A person who commits an offence against any of the following sections is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs:
- “(a) section 36A(1) (no holding out as securities exchange unless registered):
 - “(b) section 36B(1) (no operation of securities markets unless registered (if restriction applies)):
 - “(c) section 36G(1) (registered exchange must operate securities markets with conduct rules that include required matters and have effect):
 - “(d) section 36P(1) (registered exchange must not operate new securities market if proposed conduct rules or changes not approved):
 - “(e) section 36Z (offence for breach of terms or conditions of authorisation).
- “(3) A person who commits an offence against section 36Q(1) (conduct rules must be available for public inspection) is liable on summary conviction to a fine not exceeding \$5,000.
- “(4) A person who commits an offence against section 36U(1)(a) (effect of exceeding control limit) is liable on summary conviction to a fine not exceeding \$1,000 for every day or part of a day during which the contravention occurs.

“43C Penalties for failing to comply with Part 3

- “(1) A person who commits an offence under section 39 (contravention of section 38 an offence) is liable on conviction on indictment,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both:
 - “(b) in the case of a body corporate, to a fine not exceeding \$300,000.

- “(2) A person who commits an offence against any of the following sections is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs:
- “(a) section 37A(1) (no holding out as futures exchange unless authorised):
 - “(b) section 37B(1) (no operation of futures markets unless authorised (if restriction applies)).

“43D Penalties for failing to comply with Part 4

- “(1) A person who commits an offence against either of the following sections is liable on summary conviction to a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued:
- “(a) section 41R (offence of deceptive, misleading, or confusing advertisement):
 - “(b) section 41S (recommending, or receiving money for, illegal offer).
- “(2) A person who commits an offence against either of the sections set out in subsection (3) is liable on summary conviction to a fine not exceeding,—
- “(a) in the case of an individual, \$100,000; or
 - “(b) in the case of a body corporate, \$300,000.
- “(3) The sections are—
- “(a) section 41P (offence for failure to comply with disclosure obligation):
 - “(b) section 41Q (offence of deceptive, misleading, or confusing disclosure).

“43E Penalties for failing to comply with this Part

- “(1) An individual who commits an offence against either of the following sections is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both:
- “(a) section 43H (offence of contravening management banning order):
 - “(b) section 43I (persons automatically banned from management).

- “(2) A person who commits an offence against any of the sections set out in subsection (3) is liable on conviction on indictment,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both;
- “(b) in the case of a body corporate, to a fine not exceeding \$300,000.
- “(3) The sections are—
- “(a) section 43M (offence of contravening investment adviser or broker banning order);
- “(b) section 43N (persons automatically banned from investment adviser or broker activities);
- “(c) section 43T (offence of contravening orders to preserve assets to satisfy claims).
- “(4) A person who commits an offence against section 42J (offence of failing to comply with Commission’s orders) is liable on summary conviction to a fine not exceeding \$30,000.

“Subpart 5—Other Court orders

“*Management bans*

“43F When Court may make management banning orders

- “(1) The Court may, on application by an entitled person, make a management banning order against a person (A) if—
- “(a) A has been convicted of an offence against Part 1 (dealing misconduct) or a pecuniary penalty order has been made against A for a contravention of that Part; or
- “(b) A has, while a director of an incorporated or unincorporated body,—
- “(i) persistently contravened this Act, the Companies Act 1993, the Securities Act 1978, the Takeovers Act 1993, or the takeovers code; or
- “(ii) if the incorporated or unincorporated body has so contravened, persistently failed to take all reasonable steps to obtain compliance with those Acts or the code; or
- “(c) A has been prohibited in an overseas jurisdiction from carrying on activities that the Court is satisfied are sub-

stantially similar to any of the activities referred to in section 43G in connection with a contravention of any law relating to the trading of securities.

- “(2) An **entitled person** is—
- “(a) the Commission;
 - “(b) the Registrar of Companies;
 - “(c) an incorporated or unincorporated body that—
 - “(i) A is a director of at the time of the application; or
 - “(ii) A was a director of at the time of the ground that triggers the making of the order under subsection (1):
 - “(d) the liquidator of an incorporated or unincorporated body referred to in paragraph (c);
 - “(e) a person who is, or has been, a holder of securities (and, for this purpose, **security** has the same meaning as in the Securities Act 1978) or creditor of an incorporated or unincorporated body referred to in paragraph (c).

“**43G Terms of management banning orders**

A management banning order may, for a period stated in the order of 10 years or less, prohibit or restrict the person (without the leave of the Court) from being a director or promoter of, or in any way (whether directly or indirectly) being concerned or taking part in the management of, an incorporated or unincorporated body (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand).

“**43H Offence of contravening management banning order**

An individual who acts in contravention of a management banning order under section 43F commits an offence (*see* section 43E for the maximum penalty of 3 years’ imprisonment and a \$100,000 fine).

“**43I Persons automatically banned from management**

- “(1) This section applies to a person if the person has been convicted of an offence against Part 1 (dealing misconduct) or a pecuniary penalty order has been made against the person for a contravention of that Part.

- “(2) The person must not, for the period of 5 years after the conviction or making of the order (without the leave of the Court) be a director or promoter of, or in any way (whether directly or indirectly) be concerned or take part in the management of, an incorporated or unincorporated body (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand).
- “(3) An individual who acts in contravention of this section commits an offence (*see* section 43E for the maximum penalty of 3 years’ imprisonment and a \$100,000 fine).

“**43J Only one management ban may be made for same conduct**
If conduct by a person constitutes grounds for making an order under any 1 or more of section 43F of this Act, section 60A of the Securities Act 1978, section 44F of the Takeovers Act 1993, and section 383 of the Companies Act 1993, proceedings may be brought against that person under any 1 or more of those provisions, but no person is liable to more than 1 order under those provisions for the same conduct.

“Investment adviser or broker bans

“**43K When Court may make banning orders for investment adviser or broker activities**

The Court may, on application by the Commission or any other person, make an investment adviser or broker banning order against a person if the Court is satisfied that—

- “(a) the person has been convicted of an offence against Part 1 (dealing misconduct) or a pecuniary penalty order has been made against the person for a contravention of that Part; or
- “(b) the person has been convicted of an offence against section 41R (offence of deceptive, misleading, or confusing advertisement) or section 41S (recommending, or receiving money for, illegal offer) or a pecuniary penalty order has been made against the person for a contravention of either of those sections; or
- “(c) the person has been convicted of an offence against any of sections 58, 59, or 59A of the Securities Act 1978

or a pecuniary penalty order has been made against the person under that Act; or

- “(d) the person has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
- “(e) the person has persistently contravened section 13 (general dealing misconduct prohibition), Part 4 (investment advisers and brokers), or the Securities Act 1978; or
- “(f) the person has been prohibited in an overseas jurisdiction from carrying on activities that the Court is satisfied are substantially similar to any of the activities referred to in section 43L.

“43L Terms of investment adviser or broker banning orders

An investment adviser or broker banning order may prohibit or restrict the person from doing all or any of the following things, without the leave of the Court, for a period stated in the order of 10 years or less:

- “(a) giving investment advice to, or receiving investment money or investment property from, the public:
- “(b) being a director or promoter of, or in any way, whether directly or indirectly, being concerned or taking part in the management of, any incorporated or unincorporated body that is an investment adviser or an investment broker (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand):
- “(c) being an employee or agent of an investment adviser or an investment broker in a capacity that allows the person to take part in the giving of investment advice to, or receiving investment money or investment property from, the public.

“43M Offence of contravening investment adviser or broker banning order

A person who acts in contravention of an investment adviser or a broker banning order under section 43K commits an offence (*see* section 43E for the maximum penalty of 3 years' imprisonment).

onment and a \$100,000 fine for an individual or a \$300,000 fine for a body corporate).

“43N Persons automatically banned from investment adviser or broker activities

- “(1) This section applies to a person if—
- “(a) the person has been convicted of an offence against Part 1 (dealing misconduct) or a pecuniary penalty order has been made against the person for a contravention of that Part; or
 - “(b) the person has been convicted of an offence against section 41R (offence of deceptive, misleading, or confusing advertisement) or section 41S (recommending, or receiving money for, illegal offer) or a pecuniary penalty order has been made against the person for a contravention of either of those sections; or
 - “(c) the person has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961.
- “(2) The person must not, for the period of 5 years after the conviction or making of the order, without the leave of the Court,—
- “(a) give investment advice to, or receive investment money or investment property from, the public:
 - “(b) be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, any incorporated or unincorporated body that is an investment adviser or an investment broker (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand):
 - “(c) be an employee or agent of an investment adviser or an investment broker in a capacity that allows the person to take part in the giving of investment advice to, or receiving investment money or investment property from, the public.
- “(3) A person who acts in contravention of this section commits an offence (*see* section 43E for the maximum penalty of 3 years’ imprisonment and a \$100,000 fine for an individual or a \$300,000 fine for a body corporate).

“43O General provisions for bans and banning orders

- “(1) The Registrar of the Court must, as soon as practicable after the making of a banning order by a Court under this Part,—
- “(a) give notice to the Registrar of Companies and the Commission that the order has been made; and
 - “(b) give notice in the *Gazette* of the name of the person against whom the order is made and the period or dates for which the ban applies.
- “(2) A person intending to apply for the leave of the Court to override a ban imposed by or under section 43F, 43I, 43K, or 43N must give to the Commission not less than 10 working days’ written notice of that person’s intention to apply.
- “(3) The Commission, and any other person that the Court thinks fit, may attend and be heard at the hearing of the application.

“Orders to preserve assets to satisfy claims

“43P When Court may prohibit payment or transfer of money, securities, or other property

- “(1) This section applies if—
- “(a) an investigation is being carried out under this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or
 - “(b) a prosecution has begun against a person for a contravention of this Act; or
 - “(c) a civil proceeding has begun against a person under this Act.
- “(2) The Court may, on application by the Commission or by an aggrieved person, make 1 or more of the orders listed in section 43Q if the Court considers it necessary or desirable to do so for the purpose of protecting the interests of an aggrieved person.
- “(3) In this section and section 43Q,—
- “**aggrieved person** means any person to whom a relevant person is liable
 - “**liable** means liable, or may be or become liable, to pay money (whether in respect of a debt, by way of damages or compensation, or otherwise) or to account for securities or other property

“**relevant person** means a person referred to in subsection (1).

“Compare: Section 1323(1), Corporations Act 2001 (Aust.)

“**43Q What orders may be made**

“(1) The orders that may be made under section 43P are—

- “(a) an order prohibiting the relevant person from transferring, charging, or otherwise dealing with money, securities, or other property held or controlled by the relevant person:
- “(b) an order prohibiting a person who is indebted to the relevant person or to an associated person of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed:
- “(c) an order prohibiting a person holding money, securities, or other property, on behalf of the relevant person, or on behalf of an associated person of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities, or other property, is or are held:
- “(d) an order prohibiting the taking or sending out of New Zealand by a person of money of the relevant person or of an associated person of the relevant person:
- “(e) an order prohibiting the taking, sending, or transfer by a person of securities or other property of the relevant person, or of an associated person of the relevant person from a place in New Zealand to a place outside New Zealand (including the transfer of securities from a register in New Zealand to a register outside New Zealand):
- “(f) an order requiring the relevant person, or any person holding money, securities, or other property on behalf of the relevant person or an associated person if the relevant person, to pay or transfer money, securities, or other property to a specified person to be held on trust pending determination of the investigation, prosecution, or civil proceeding:

- “(g) an order appointing,—
 - “(i) if the relevant person is a natural person, a receiver or trustee, having any powers that the Court orders, of the property or of part of the property of that person; or
 - “(ii) if the relevant person is a body corporate, a receiver or receiver and manager, having any powers that the Court orders, of the property or of part of the property of that person:
 - “(h) if the relevant person is a natural person, an order requiring that person to deliver up to the Court his or her passport and any other documents that the Court thinks fit:
 - “(i) if the relevant person is a natural person, an order prohibiting that person from leaving New Zealand, without the consent of the Court.
- “(2) A reference in subsection (1)(e) or (g) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example,—
- “(a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
 - “(b) in a fiduciary capacity.
- “(3) An order may be expressed to operate for a specified period or until the order is discharged by a further order under this section.
- “Compare: Section 1323(1), (2A), (6), Corporations Act 2001 (Aust.)

“43R Interim orders

- “(1) If an application is made to the Court for an order under section 43P, the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- “(2) The Court must not require the applicant or any other person, as a condition of granting an interim order under this section, to give an undertaking as to damages.

“(3) In determining an application for the grant of an interim order, the Court must not take into account that the applicant is not required to give an undertaking as to damages.

“Compare: Section 1323(3), (4), Corporations Act 2001 (Aust.)

“**43S Relationship with other law**

“(1) Nothing in sections 43P to 43R affects the powers that the Court has apart from those sections.

“(2) This section has effect subject to the Insolvency Act 1967.

“Compare: Section 1323(7), (8) Corporations Act 2001 (Aust.)

“**43T Offence**

A person commits an offence who contravenes an order by the Court under section 43Q or section 43R that is applicable to the person (*see* section 43E for the maximum penalty of 3 years’ imprisonment and a \$100,000 fine for an individual or a \$300,000 fine for a body corporate).

“Compare: Section 1323(9), (10), Corporations Act 2001 (Aust.)

“Subpart 6—General

“**43U Time for laying information for summary offences**

“(1) Any information for an offence against this Act punishable on summary conviction may be laid at any time within 3 years after the date of the offence.

“(2) Subsection (1) applies despite section 14 of, or anything else to the contrary in, the Summary Proceedings Act 1957.

“**43V Evidence not otherwise admissible**

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

“**43W Court may order payment of Commission’s costs**

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

“43X Orders to secure compliance

The Court may, for the purpose of securing compliance with any other order it makes under this Part, direct a person to do or refrain from doing a specified act.

“43Y Giving notice of applications for Court orders

Before making an order under this Part, the Court may direct the person making the application for the order to—

- “(a) give notice of the application to those persons the Court thinks fit:
- “(b) publish notice of the application in the manner the Court thinks fit.

“43Z General provisions as to Court’s orders

- “(1) An order under this Part may be made on the terms and conditions the Court thinks fit.
- “(2) The Court may revoke, vary, or suspend an order made under this Part on the terms and conditions the Court thinks fit.

“43ZA Persons entitled to appear before Court

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

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

“43ZB Knowledge of matters presumed if employee or agent knows matters

In any proceedings under this Act, it is presumed, in the absence of proof to the contrary, that a person knew, at a material time, of any matter if, at that time, an employee or agent of that

person knew of the matter in his or her capacity as employee or agent.

“43ZC No pecuniary penalty and fine for same conduct

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine under this Act for the same conduct.”

- (2) The Investment Advisers (Disclosure) Act 1996 is consequentially repealed.

*Amendments to exemption and regulation
empowering provisions*

13 New sections 48 to 49F and heading substituted

Sections 48 and 49 are repealed and the following heading and sections substituted:

*“Exemptions granted and removed by
Commission*

“48 Exemptions granted by Commission

- “(1) The Commission may, in its discretion and on the terms and conditions (if any) that it thinks fit, by notice in the *Gazette*,—
- “(a) exempt any transaction, class of transactions, class of persons, or class of relevant interests, acquisitions, or disposals from compliance with any directors’ and officers’ disclosure obligation or obligations:
- “(b) exempt any person or class of persons, any transaction or class of transactions, or any class of relevant interests, substantial holdings, or relevant events from compliance with any substantial holding disclosure obligation or obligations:
- “(c) exempt any person or class of persons, any transaction or class of transactions, or any class of investment advice (for example, advice given by telephone) or investment brokers services from compliance with any investment advisers’ or investment brokers’ disclosure obligation or obligations:
- “(d) exempt any person or class of persons from compliance with any requirement of the Futures Industry (Client Funds) Regulations 1990 or regulations that replace them, provided that the Commission is satisfied that

there are adequate alternative safeguards for preserving client money and client property.

“(2) The exemption has effect according to its tenor.

“48A Commission must notify reasons for exemption

“(1) The Commission’s reasons for granting an exemption (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.

“(2) However, the Commission may defer notifying or not notify the reasons for granting an exemption if the Commission is satisfied that it is proper to do so on the ground of commercial confidentiality.

“48B Commission may vary or revoke exemption

“(1) The Commission may vary the exemption in the same way as it may grant the exemption under section 48.

“(2) The Commission may revoke the exemption by notice in the *Gazette*.

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

“(1) The Commission may, by notice in the *Gazette*, designate a person as a person that is not exempt under section 6(1)(a) to (g) (in relation to either subpart 2 or subpart 3 of Part 2) or under section 31 or section 32A.

“(2) The Commission may exercise that power if it is satisfied that the exemption is being used for purposes of circumventing, evading, or defeating the purpose of the subpart that will (in whole or part) apply as a result of the designation, taking into account the nature, substance, and economic effect of the interest or relationship or other facts (and not the mere form).

“(3) The Commission may, by notice in the *Gazette*, revoke a designation.

“(4) A notice under this section has effect according to its tenor.

“(5) A notice under this section takes effect from the date stated in the notice (which must not be earlier than the date of the *Gazette* notice).

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

- “(1) Before designating a person as not exempt under section 48C, the Commission must—
- “(a) do everything reasonably possible on its part to advise the person of the proposed designation; and
 - “(b) give the person a reasonable opportunity to make submissions to the Commission on the proposal.
- “(2) Subsection (1) does not apply to a designation if the Commission considers that it is desirable in the public interest for the exemption to be removed urgently.
- “(3) Failure to comply with subsection (1) does not invalidate the designation.
- “(4) The Commission must list on its website all persons that are currently designated (and may also publicly notify them by any other means).

*“Regulations***“48E Regulations requiring continuous disclosure by public issuers**

- “(1) The Governor-General may, on the recommendation of the Minister in accordance with section 48F or section 48G, make regulations for the purpose of providing, under section 19C, for continuous disclosure by public issuers of material information that is not generally available to the market.
- “(2) Those regulations may—
- “(a) declare that section 19C applies to a registered exchange;
 - “(b) contain requirements for the purpose of requiring public issuers that are parties to listing agreements with that exchange to notify information about events or matters as they arise (being material information that is not generally available to the market) for the purpose of that information being made available to participants in the registered exchange’s market;
 - “(c) determine the form in which, how, and when that information must be made available to participants in the

registered exchange's market, or provide who may determine any of these matters:

- “(d) determine the form of, method of, and any additional details required with, the notification of that information, or provide who may determine any of these matters:
 - “(e) exempt (on terms and conditions, if any) persons, classes of persons, information, and classes of information from compliance with any provision or provisions of the regulations:
 - “(f) provide for a specified person or persons to exempt (on terms and conditions, if any) persons, classes of persons, information, and classes of information from compliance with any provision or provisions of the regulations, and to vary and revoke those exemptions:
 - “(g) provide for a specified person or persons to carry out functions under the regulations, and the powers and procedures of that person or persons:
 - “(h) require fees and charges to be paid in connection with the performance or exercise of a function or power referred to in paragraph (f) or paragraph (g), and prescribe those fees and charges or a means by which they may be calculated or ascertained:
 - “(i) provide for transitional provisions.
- “(3) A failure to comply with section 48F(3) or section 48G(2)(b) to (d) does not invalidate any regulations made under this section.

“48F Requirements for regulations replacing continuous disclosure listing rules

- “(1) This section applies if the Minister proposes to recommend regulations to declare that section 19C applies to a registered exchange.
- “(2) The Minister may make a recommendation under section 48E if the Minister—
 - “(a) has had regard to the purpose of subpart 1 of Part 2, the criteria stated in section 19A, and any other matters he or she considers relevant; and

- “(b) is satisfied that, over time, the continuous disclosure provisions of the registered exchange’s listing rules, or the registered exchange’s administration of those provisions, has not achieved the purpose of that subpart.
- “(3) The Minister must, before making that recommendation,—
- “(a) give at least 3 months’ written notice of the proposed recommendation, and of the Minister’s reasons for his or her opinion under subsection (2)(b), to—
- “(i) the Commission; and
- “(ii) the relevant registered exchange; and
- “(iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposal; and
- “(b) have regard to any submissions made by those persons within the notice period given; and
- “(c) give at least 14 days’ written notice to the persons in paragraph (a), and in the *Gazette*, of his or her decision to do so and of the Minister’s reasons for his or her opinion under subsection (2)(b).

“48G Ongoing requirements for continuous disclosure regulations

- “(1) This section applies if the Minister proposes to recommend regulations to amend, revoke, or replace regulations made under section 48E.
- “(2) The Minister must, before making a recommendation under section 48E,—
- “(a) have regard to the purpose of subpart 1 of Part 2, the criteria stated in section 19A, and any other matters he or she considers relevant; and
- “(b) give written notice of the proposed recommendation to—
- “(i) the Commission; and
- “(ii) the relevant registered exchange; and
- “(iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposal; and
- “(c) have regard to any submissions made by those persons within the notice period given; and

“(d) give at least 14 days’ written notice to the persons in paragraph (b), and in the *Gazette*, of his or her decision to do so.

“**49 Regulations concerning directors’ and officers’ disclosure obligations**

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (2), make regulations for the purpose of—

“(a) declaring any persons (whether described as a class or otherwise) not to be officers for the purpose of the definition of **officer** in section 2:

“(b) prescribing further matters relating to a relevant interest, or acquisition or disposal of a relevant interest, that must be disclosed by directors and officers under subpart 2 of Part 2, which may include (without limitation):

“(i) the nature of the relevant interest:

“(ii) the number and class of securities to which the relevant interest relates or related:

“(iii) the date of the disclosure obligation becoming applicable, or the date of the acquisition or disposal:

“(iv) the consideration paid or received for the acquisition or disposal:

“(v) details as to the circumstances in which the acquisition or disposal occurred:

“(vi) the date of the last disclosure by the director or officer:

“(c) determining when the disclosure in paragraph (b) is required (including by requiring disclosure only on request) and prescribing the form of or for, and the method of, disclosure, or providing for the relevant registered exchange to determine that form or method and for the way in which it must do so:

“(d) exempting (on terms and conditions, if any) classes of persons, classes of transactions, or classes of relevant interests, acquisitions, or disposals from compliance with any directors’ and officers’ disclosure obligation or obligations.

“(2) The Minister must consult with the Commission before making a recommendation under subsection (1).

“49A Regulations concerning substantial holding disclosure

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (3), make regulations for the purpose of—

“(a) prescribing further matters relating to a matter, a relevant event, or a substantial holding, that must be disclosed under subpart 3 of Part 2, which may include (without limitation):

“(i) the nature of the relevant interests in the substantial holding (including before and after the relevant event in the case of sections 23 and 24):

“(ii) the number, nominal value (if any), and class of securities in which the person has or had the substantial holding (including before and after the relevant event in the case of sections 23 and 24):

“(iii) the date of the relevant event:

“(iv) the terms and conditions (including consideration) of the transaction giving rise to the relevant event:

“(v) details as to the circumstances in which the relevant event occurred:

“(vi) the date of the last disclosure by the person under that subpart in respect of the substantial holding:

“(vii) information relating to the relevant event or substantial holding and concerning other persons who have made disclosures under that subpart:

“(b) prescribing the documents, certificates, and statements that must accompany or be annexed to those disclosures:

“(c) determining when disclosure of the further matters referred to in paragraph (a) is required (including by requiring disclosure only on request):

“(d) prescribing the form of or for, and the method of, disclosure under that subpart (and of any other acknowledgments or notices required by the subpart), or providing for the relevant registered exchange to determine

that form or method and providing for the way in which it must do so:

- “(e) exempting (on terms and conditions, if any) classes of persons, classes of transactions, or classes of relevant interests, substantial holdings, or relevant events from compliance with any substantial holding disclosure obligation or obligations.
- “(2) The further matters prescribed for disclosures required by section 22 or 25 may differ according to whether section 15(1)(a), (b), or (d) of the Securities Markets Amendment Act 2006 (which contains transitional provisions) applies to the disclosure or not.
- “(3) The Minister must consult with the Commission before making a recommendation under subsection (1).

“49B Regulations concerning dealing in futures contracts

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, in accordance with subsection (3), make regulations for the purpose of—
 - “(a) regulating the business and operations of authorised futures exchanges:
 - “(b) regulating the carrying on of the business of dealing in futures contracts and prescribing requirements that must be met by persons dealing in those contracts including requirements relating to the disclosure of financial and other information and the appointment and duties of trustees:
 - “(c) regulating the receipt of money and property from clients by persons dealing in futures contracts and the application of that money and property:
 - “(d) prescribing requirements relating to the deposit of that money and property in separate clients’ funds accounts or safe custody, as the case may be:
 - “(e) specifying the duties and obligations of those dealers in relation to clients’ funds accounts including obligations to make payments into those accounts:
 - “(f) providing for the protection of money deposited in clients’ funds accounts and the investment of that

money and property deposited in safe custody from claims against persons dealing in futures contracts:

- “(g) providing for the Commission to carry out functions under the regulations, and its powers and procedures in doing so.
- “(2) Without limiting subsection (1), regulations made under that subsection may also apply to persons acting on behalf of an authorised futures exchange in the same way that they apply to the authorised futures exchange.
- “(3) The Minister must consult with the Commission before making a recommendation under subsection (1).

“49C Regulations concerning investment advisers and brokers

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (2), make regulations for the purpose of—
 - “(a) prescribing any further information that must be disclosed under section 41A or section 41G;
 - “(b) prescribing any further contents of the disclosure statement and the method of disclosure under Part 4;
 - “(c) requiring an investment adviser to—
 - “(i) have a minimum level of professional indemnity insurance, and prescribing the amount of that minimum level; or
 - “(ii) give an undertaking that the adviser has adequate professional indemnity insurance for the protection of the persons to whom the adviser gives investment advice;
 - “(d) exempting (on terms and conditions, if any) any person or class of persons, any class of transactions, or any class of investment advice (for example, advice given by telephone) or investment brokers services from compliance with any investment advisers’ or investment brokers’ disclosure obligation or obligations;
 - “(e) prescribing how information disclosed in a disclosure statement must be set out;
 - “(f) prescribing a form for use as a disclosure statement.
- “(2) The Minister must consult with the Commission before making a recommendation under subsection (1).

“49D Other regulations

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (3), make regulations for the purpose of—
- “(a) exempting (on terms and conditions, if any) anything from being dealings in securities for the purposes of the general dealing misconduct prohibition:
 - “(b) exempting (on terms and conditions, if any) conduct from being—
 - “(i) insider conduct, that is conduct that would otherwise fall within section 8C or section 8D or section 8E:
 - “(ii) market manipulation, that is conduct that would otherwise fall within section 11 or section 11B:
 - “(c) requiring information to be provided in a notice under section 36ZD:
 - “(d) prescribing fees and charges to be paid for the purposes of this Act, or a means by which fees and charges may be calculated or ascertained:
 - “(e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- “(2) Without limiting subsection (1)(d), regulations made under that paragraph may—
- “(a) authorise the Commission to require payment of fees and charges—
 - “(i) in connection with the exercise by the Commission of any power or function conferred on it by or under this Act:
 - “(ii) on an application to the Commission to exercise any power or function conferred on it by or under this Act:
 - “(iii) from a person for advice provided by the Commission to the Minister on the exercise of the Minister’s powers or functions in connection with that person under this Act:
 - “(b) authorise the Commission to require payment of any costs incurred by the Commission.

“(3) The Minister must consult with the Commission before making a recommendation under subsection (1).

“**49E Breach of exemption conditions**

The breach of a term or condition of an exemption provided by regulations made under this Act or by notice under section 48 is a breach of the obligation for which the exemption applies.

“**49F Regulations or exemptions in respect of specified overseas jurisdictions**

Without limiting sections 48 to 49D, exemptions made under those sections or under regulations made under those sections may extend to all, or classes of, persons, transactions, or other matters in relation to specified overseas jurisdictions.”

Miscellaneous

14 Related amendments

The enactments specified in the Schedule are amended in the manner set out in that schedule.

15 Transitional provisions relating to new subpart 3 of Part 2 of principal Act

- (1) The following transitional provisions apply to the commencement of new subpart 3 of Part 2 (**commencement**):
- (a) a person who, immediately before commencement, was a substantial security holder under old section 20 of the principal Act is not required to disclose that fact (or any of their existing substantial holdings) by new section 22 (but *see* paragraph (e));
 - (b) a person who begins to have a substantial holding only as a result of the commencement of new subpart 3 of Part 2 (for example, because of changes to the meaning of substantial security holder) must disclose that fact in accordance with new section 22 (except that disclosure is not required until the expiry of 14 days after commencement);
 - (c) new sections 23 and 24 apply only to a movement or change that occurs on or after commencement:

- (d) a person who ceases to have a substantial holding only as a result of the commencement of new subpart 3 of Part 2 must disclose that fact in accordance with new section 25 (except that disclosure is not required until the expiry of 14 days after commencement);
 - (e) old subpart 3 and the rest of the Securities Markets Act 1988 continues to apply as they did immediately before commencement for the purposes of any disclosure required by old subpart 3 before commencement.
- (2) In this section, **new section** or **new subpart** means the section or subpart inserted by section 11 of this Act, and **old section** or **old subpart** means the section or subpart as they were immediately before commencement.

16 Transitional provision for existing offences and contravention

- (1) This section applies to an offence committed under, or a contravention of,—
- (a) subpart 3 of Part 2 of the principal Act, or the Securities (Substantial Security Holders) Regulations 1997, before the commencement of section 11; and
 - (b) the Investment Advisers (Disclosure) Act 1996 before the commencement of section 12(2); and
 - (c) the rest of the principal Act and any other regulations in force under it, (other than the subpart and regulations specified in paragraph (a)) before the commencement of this section.
- (2) The enactments referred to in subsection (1) continue to have effect as if they had not been amended, repealed, or revoked by this subpart for the purpose of—
- (a) investigating an offence or contravention to which this section applies:
 - (b) commencing or completing proceedings for an offence or contravention to which this section applies:
 - (c) imposing a penalty or other remedy, or making an order, in relation to an offence or contravention to which this section applies.
-

Schedule
Amendments related to Securities
Markets Act 1988

s 14

Part 1
Related amendments to Securities Markets
Act 1988 (1988 No 234)

Securities Markets Act 1988 (1988 No 234)

Section 19B(1)(d): omit “section 19Q” and substitute “section 48E”

Section 19C: omit “section 19Q” in both places where it occurs and substitute in each case “section 48E”.

Sections 19E to 19S and the headings above sections 19G, 19K, and 19Q: repeal.

Sections 19ZB and 19ZC and the heading above section 19ZB: repeal.

Heading after section 19ZC: repeal and substitute:

“**Offences**”.

Section 19ZD(1): add “(see section 43A for the maximum penalty of a \$30,000 fine)”.

Section 19ZD(2): repeal.

Section 19ZE: repeal.

Section 36A(3): omit “and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs” and substitute “(see section 43B for the maximum penalty of a \$10,000 fine per day)”.

Section 36B(2): omit “and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs” and substitute “(see section 43B for the maximum penalty of a \$10,000 fine per day)”.

Section 36F(1)(c): omit “section 49” and substitute “section 49D”.

Section 36G(2): omit “and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs” and substitute “(see section 43B for the maximum penalty of a \$10,000 fine per day)”.

Section 36T: add the following subsection:

“(4) In this section,—

“(a) a person is an **associated person** of another person if—

Part 1—*continued*

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

Section 36P(2): omit “and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs” and substitute “(see section 43B for the maximum penalty of a \$10,000 fine per day)”.

Section 36Q(2): omit “and is liable on summary conviction to a fine not exceeding \$5,000” and substitute “(see section 43B for the maximum penalty of a \$5,000 fine)”.

Section 36U(2): omit “and is liable on summary conviction to a fine not exceeding \$1,000 for every day or part of a day during which the contravention continues” and substitute “(see section 43B for the maximum penalty of a \$1,000 fine per day)”.

Section 36Z: omit “and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs” and substitute “(see section 43B for the maximum penalty of a \$10,000 fine per day)”.

Sections 36ZA to 36ZC and the heading above section 36ZA: repeal.

Section 36ZF(1)(d) and (2): omit “section 49” and substitute in each case “section 49D”.

Section 36ZM(1)(c): omit “section 19Q” and substitute “section 48E”.

Section 36ZO(4): omit “Part 3” and substitute “section 69P”.

Part 1—*continued*

Section 36ZX(2): repeal and substitute:

“(2) *See* section 43B for the maximum penalty of a \$30,000 fine.”

Section 37A(3): omit “and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs” and substitute “(*see* section 43C for the maximum penalty of a \$10,000 fine per day)”.

Section 37B(2): omit “and is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs” and substitute “(*see* section 43C for the maximum penalty of a \$10,000 fine per day)”.

Section 39: repeal and substitute:

“39 Contravention of section 38 an offence

Every person who contravenes section 38 commits an offence (*see* section 43C for the maximum penalties of 3 years imprisonment and a \$100,000 fine for an individual and a \$300,000 fine for a body corporate).”

Insert above section 44:

“Part 6

“Miscellaneous

“General provisions”.

Part 2

Related amendments to other Acts

Construction Contracts Act 2002 (2002 No 46)

Section 7(1)(a)(ii): omit “section 5(7)” and substitute “section 5B(2)”

Section 7(3): omit “section 5” and substitute “sections 5 to 5B”.

Section 7(3)(b): omit “that section” and substitute “those sections”.

Electricity Industry Reform Act 1998 (1998 No 88)

Section 9(2): omit “section 5” and substitute “sections 5 to 5B”.

Section 9(2)(b): omit “that section” and substitute “those sections”.

Section 12(1)(a)(ii): omit “section 5(7)” and substitute “section 5B(2)”.

Part 2—*continued*

Section 70(2)(h): omit “providing for any matter currently referred to in sections 30 to 35A of the Securities Markets Act 1988” and substitute “providing for the Court to make orders directing disclosure, compensatory orders, or other orders described in section 42ZF of the Securities Markets Act 1988, who may apply for the orders, and related matters”.

Judicature Act 1908 (1908 No 89)

Section 24B(1)(e): add “or the Securities Markets Act 1988”.

Maori Reserved Land Amendment Act 1997 (1997 No 101)

Section 8(5)(c): omit “section 5” and substitute “sections 5 to 5B”.

Securities Act (1978 No 103)

Definition of **investment advice** in section 5(2CF): omit “Investment Advisers (Disclosure) Act 1996” and substitute “Securities Markets Act 1988”.

Schedule 1: omit the item “Investment Advisers (Disclosure) Act 1996” and insert in its appropriate alphabetical order the item “Securities Markets Act 1988 Part 4”.

Sharebrokers Act 1908 (1908 No 176)

Section 6(1)(c): repeal and substitute:

“(c) a sharebroker has been convicted of an offence against Part 1 (dealing misconduct) of the Securities Markets Act 1988 or a pecuniary penalty order has been made against the person for a contravention of that Part,—”.

Part 2—*continued*

Summary Proceedings Act 1957 (1957 No 87)

Part 2 of the First Schedule: insert in its appropriate alphabetical order:

Securities Markets Act 1988	8F	criminal liability for insider conduct
	11A	criminal liability for false or misleading statement or information
	11D	criminal liability for false or misleading appearance of trading, etc
	39	dealers in futures contracts must be authorised
	43H	offence of contravening management banning order
	43I	persons automatically banned from management
	43M	offence of contravening investment adviser or broker banning order
	43N	persons automatically banned from investment adviser or broker activities
	43T	offence of contravening order to preserve assets

Part 3

Related amendments to regulations

Securities (Substantial Security Holders) Regulations 1997 (SR 1997/110)

Revoke.

Part 3—*continued*

**Securities Markets (Disclosure of Relevant Interests by
Directors and Officers) Regulations 2003 (SR 2003/382)**

Regulation 19: revoke.

Regulation 21: revoke and substitute:

**“21 Exemption for directors or officers who disclose
substantial holdings**

A director or officer who has, or who acquires or disposes of, a relevant interest in a security does not have to disclose that fact under section 19T of the Act if—

- “(a) the director or officer must make a disclosure under section 22, 23, or 25 of the Act in relation to a substantial holding in the public issuer of the security to which the relevant interest relates or related; and
 - “(b) the disclosure under that section concerns the same relevant interest; and
 - “(c) the director or officer discloses in accordance with that section; and
 - “(d) it is stated in the disclosure made in accordance with that section that the director or officer is a director or officer of the public issuer.”
-

Eprint notes

1 *General*

This is an eprint of the Securities Markets Amendment Act 2006 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 4(1)(b)

Securities Markets Amendment Act 2006 Commencement Order 2007 (SR 2007/367)
