

**Reprint
as at 1 December 2014**



**Securities Markets Amendment
Act 2009**

Public Act 2009 No 54
Date of assent 23 November 2009
Commencement see section 2

Securities Markets Amendment Act 2009: repealed, on 1 December 2014,
pursuant to section 4(1)(b) of the Financial Markets (Repeals and Amendments)
Act 2013 (2013 No 70).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Securities Markets Amendment Act 2009.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Securities Markets Act 1988.
- 4 Interpretation**
(1) Section 2(1) is amended by repealing the definition of **business rules** and substituting the following definition:

- “**business rules** means the rules made by a registered exchange that govern the conduct of—
- “(a) business on any securities markets or futures markets operated by the registered exchange;
 - “(b) persons authorised to undertake trading activities on any securities markets or futures markets operated by the registered exchange”.
- (2) Section 2(1) is amended by repealing the definition of **conduct rules** and substituting the following definition:
- “**conduct rules** means,—
- “(a) in relation to a securities market, the business rules and listing rules of a registered exchange in relation to the securities market; and
 - “(b) in relation to a futures market, the business rules of a registered exchange in relation to the futures market”.
- (3) The definition of **futures contract** in section 2(1) is amended by omitting “section 37(1)” and substituting “section 37”.
- (4) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
- “**futures market** means a market, exchange, or other facility for trading in futures contracts”.
- (5) The definition of **listing rules** in section 2(1) is amended by omitting “securities” in each place where it appears and substituting in each case “registered”.
- (6) The definition of **operate** in section 2(1) is amended by inserting “or futures market” after “securities market”.
- (7) The definition of **registered exchange** in section 2(1) is amended by adding the following paragraph:
- “(d) a subsidiary of a registered exchange in respect of futures markets if the subsidiary operates a futures market”.
- (8) The definition of **registered exchange’s market** in section 2(1) is repealed and the following definition substituted:
- “**registered exchange’s securities market** means a securities market operated by a registered exchange”.
- (9) The definition of **securities exchange** in section 2(1) is repealed.

5 Part 2B heading substituted

The heading to Part 2B is repealed and the following heading substituted:

**“Part 2B
“Registered exchanges”.**

6 Power to exempt securities markets from this Part

- (1) The heading to section 36E is amended by inserting “**and futures markets**” after “**securities markets**”.
- (2) Section 36E is amended by repealing subsection (1) and substituting the following subsection:
“(1) The Minister may, by notice in the *Gazette*, exempt a securities market, class of securities markets, futures market, or class of futures markets from any provision or provisions of this Part.”

7 New section 36F substituted

Section 36F is repealed and the following section substituted:

“36F Registration of exchanges

- “(1) A body corporate may apply to become a registered exchange—
 - “(a) in respect of 1 or more securities markets; or
 - “(b) in respect of 1 or more securities markets and 1 or more futures markets; or
 - “(c) in respect of 1 or more futures markets, provided that the body corporate is already a registered exchange in respect of 1 or more securities markets.
- “(2) A body corporate may apply to become a registered exchange by delivering to the chief executive—
 - “(a) an application for registration in the form, and containing the information, required by the chief executive; and
 - “(b) a copy of the proposed conduct rules for the securities markets, securities markets and futures markets, or futures markets to which the application applies; and
 - “(c) any fees required by regulations made under section 49D and evidence of payment to the Commission of the fees, charges, or costs required to be paid to it by those regulations.

- “(3) The chief executive must register the body corporate as a registered exchange in respect of the securities markets, securities markets and futures markets, or futures markets to which the application applies, by entering the name of the body corporate in a register, after—
- “(a) receipt of the documents and fees referred to in subsection (2); and
 - “(b) approval of the proposed conduct rules under section 36O.”

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

- (1) The heading to section 36G is amended by omitting “**markets**” and substituting “**and futures markets in accordance**”.
- (2) Section 36G(1) is amended by inserting “and, if registered in respect of futures markets, each of its futures markets” after “securities markets”.

9 Required matters for conduct rules

Section 36H is amended by adding the following subsection as subsection (2):

- “(2) Conduct rules for a futures market must include rules (**business rules**) that govern the conduct of—
- “(a) business on that market; and
 - “(b) persons authorised to undertake trading activities on that market.”

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

Section 36J is amended by adding the following subsection:

- “(3) However, subsection (1) does not apply in respect of conduct rules for a futures market unless the registered exchange is registered in respect of both securities markets and futures markets under section 36F.”

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

- (1) Section 36N(1) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) the Minister is satisfied that the proposal relates to a securities market or futures market that is not operated by the registered exchange under its existing conduct rules (a **new market**); and”.

- (2) Section 36N is amended by repealing subsection (2) and substituting the following subsection:

- “(2) Before applying the approval process, the Minister must have regard to—

“(a) the integrity and effectiveness of securities markets, futures markets, or both (as the case may be) in New Zealand; and

“(b) the confidence of investors in securities markets, futures markets, or both (as the case may be) in New Zealand; and

“(c) the extent of the difference between existing markets operated by the registered exchange and the new market; and

“(d) the extent of the difference between the existing conduct rules and the proposed new conduct rules or changes.”

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

- (1) The heading to section 36P is amended by omitting “**securities**”.

- (2) Section 36P(1) is amended by inserting “or futures market” after “securities market”.

13 Conduct rules must be available for inspection

Section 36Q(1) is amended by inserting “or futures market” after “securities market”.

14 Registered exchange must give Commission material information given to market participants

Section 36ZG is amended by inserting “or futures market” after “securities market”.

15 Commission may give directions to registered exchanges

Section 36ZO(2) is amended by repealing paragraph (a) and substituting the following paragraph:

- “(a) direct a registered exchange to suspend trading of either or both of the following:
 - “(i) the securities, or a class of securities, of 1 or more public issuers:
 - “(ii) 1 or more futures contracts, or a class of futures contracts, traded on a futures market operated by the registered exchange; or”.

16 Grounds for other directions

Section 36ZQ is amended by repealing paragraph (a) and substituting the following paragraph:

- “(a) the direction is necessary in the public interest to protect people trading in either or both of the following:
 - “(i) the securities, or a class of securities, of 1 or more public issuers:
 - “(ii) 1 or more futures contracts, or a class of futures contracts, traded on a futures market operated by the registered exchange; but”.

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

Section 36ZR is amended by repealing subsection (1) and substituting the following subsection:

- “(1) A direction may be given under section 36ZO only if—
 - “(a) the Commission has given written notice to the registered exchange, and in the case of a direction to suspend the trading of securities or a class of securities, the public issuer or issuers concerned, of—
 - “(i) its opinion that the requirements of section 36ZP or 36ZQ are satisfied; and

- “(ii) the proposed terms of the direction; and
- “(iii) the reasons for its opinion; and
- “(b) after receiving the Commission’s notice, the registered exchange does not take, within the reasonable period stated in the notice,—
 - “(i) in the case of a proposed direction to suspend the trading of securities or a class of securities, action to prevent that trading; or
 - “(ii) in the case of a proposed direction to suspend the trading of futures contracts, or a class of futures contracts, action to prevent that trading; or
 - “(iii) in any other case, any other action that, in the Commission’s view, is adequate to assess the situation raised in the notice; and
- “(c) the Commission has had regard to any written submissions made to it by the registered exchange, and in the case of a direction to suspend the trading of securities or a class of securities, the public issuer or issuers concerned, within that notice period; and
- “(d) the Commission still considers that it is appropriate to give the direction to the registered exchange.”

18 Notice and opportunity to be heard and represented after Commission gives direction

Section 36ZT(a) is amended by omitting “the registered exchange and public issuer or issuers concerned” and substituting “the registered exchange, and in the case of a direction to suspend the trading of securities or a class of securities, the public issuer or issuers concerned,”.

19 Interpretation of terms used in this Part

- (1) The definition of **authorised futures exchange** in section 37(1) is amended by inserting the following paragraph after paragraph (a):

“(ab) a body corporate that is a registered exchange in respect of securities markets and futures markets whose conduct rules for futures markets have effect under section 36I.”.

- (2) The definition of **authorised futures exchange** in section 37(1) is amended by adding the following paragraph:
 - “(c) a subsidiary of a body corporate that is registered in respect of futures markets if the subsidiary’s conduct rules for futures markets have effect under section 36I.”
- (3) The definition of **commodity** in section 37(1) is amended by omitting “and a financial instrument” and substituting “, a financial instrument, and emissions units”.
- (4) Paragraph (e) of the definition of **futures contract** in section 37(1) is amended by inserting “Act or any” after “to which this”.
- (5) Paragraph (f) of the definition of **futures contract** in section 37(1) is amended by inserting “Act or any” after “to which this”.
- (6) Section 37(1) is amended by inserting the following definitions in their appropriate alphabetical order:
 - “**emissions units** means—
 - “(a) units as defined in section 4(1) of the Climate Change Response Act 2002; and
 - “(b) personal property that—
 - “(i) is created by, or in accordance with, any enactment (whether of New Zealand, another country, or any jurisdiction of any country), rule of law, contractual provision, or international treaty or protocol as—
 - “(A) one of a fixed number of units issued by reference to a specified amount of greenhouse gas; or
 - “(B) evidence of a specified amount of reductions, removals, avoidance, storage, sequestration, or any other form of mitigation of greenhouse gas emissions; and
 - “(ii) can be surrendered, retired, cancelled, or otherwise used to—
 - “(A) offset greenhouse gas emissions under, or otherwise comply with, any enactment (whether of New Zealand, another country, or any jurisdiction of any country),

rule of law, contractual provision, or international treaty or protocol; or

“(B) enable a person who surrenders, retires, cancels, or otherwise uses it to claim an environmental benefit

“**greenhouse gas** has the meaning set out in section 31 of the Climate Change Response Act 2002”.

- (7) Section 37(2) is amended by omitting “this Part of”.
- (8) Section 37(7) is amended by omitting “this Part of” in each place where it appears.

20 Dealers in futures contracts to be authorised

- (1) Section 38 is amended by repealing subsection (1) and substituting the following subsections:

“(1) No person may carry on the business of dealing in futures contracts unless that person—

“(a) is, or is a member of a class of persons that is, authorised by the Commission by notice in the *Gazette* to carry on the business of dealing in futures contracts; or

“(b) has been approved by an authorised futures exchange under its rules to carry on the business of dealing in futures contracts in accordance with the rules of that exchange.

“(1A) However, a person who receives approval under subsection (1)(b) may carry on the business of dealing in futures contracts only if that dealing is subject to the regulation and oversight of the authorised futures exchange that approved the person.”

- (2) Section 38(2) is amended by omitting “subsection (1)” and substituting “subsection (1)(a)”.

- (3) Section 38(3) is amended by omitting “this section” and substituting “subsection (1)(a)”.

- (4) Section 38 is amended by adding the following subsection:

“(4) For the purposes of subsection (1)(b), **rules**, in relation to an authorised futures exchange within the meaning of paragraph (ab) of the definition of authorised futures exchange in section 37(1), means conduct rules.”

21 Penalties for failing to comply with Part 2B

- (1) Section 43B(1) is amended by omitting “securities” and substituting “registered”.
- (2) Section 43B(2)(c) is amended by omitting “markets” and substituting “and futures markets in accordance”.
- (3) Section 43B(2)(d) is amended by omitting “securities”.

22 Further amendments to principal Act

Each of the provisions of the principal Act specified in Schedule 1 is amended by omitting “registered exchange’s market” in each place where it appears and substituting in each case “registered exchange’s securities market”.

23 Amendments to other enactments

- (1) Each of the provisions of each of the Acts specified in Part 1 of Schedule 2 is amended by omitting “registered exchange’s market” in each place where it appears and substituting in each case “registered exchange’s securities market”.
- (2) Each of the provisions of each of the regulations specified in Part 2 of Schedule 2 is amended by omitting “registered exchange’s market” in each place where it appears and substituting in each case “registered exchange’s securities market”.
- (3) In its continuing application under section 444 of the Insolvency Act 2006, section 72(2)(e) of the Insolvency Act 1967 must be read as if the reference to a registered exchange’s market was a reference to a registered exchange’s securities market.
- (4) Clause 28 of the Schedule of the Takeovers Code Approval Order 2000 is amended by repealing subclause (1) and substituting the following subclause:
 - “(1) Subject to subclause (2), an offeror must immediately send a written notice of any variation of the offeror’s offer to—
 - “(a) every offeree; and
 - “(b) the target company; and
 - “(c) the Panel; and

“(d) the registered exchange (if any voting securities of the target company are quoted on the registered exchange’s securities market).”

Schedule 1

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Further amendments to principal Act

Section 2(1)

Definition of **listed**

Paragraph (b) of the definition of **security**

Definition of **trading day**

Section 4(3)

Section 6(1)(b)

Section 19D

Section 35G(a)

Section 35G(b)

Section 48E(2)(b)

Section 48E(2)(c)

Schedule 2

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Amendments to other enactments**Part 1****Amendments to other Acts****Chateau Companies Act 1977 (1977 No 4)**

Section 9(2)(e)

Companies Act 1993 (1993 No 105)

Section 61(7)(b)

Dairy Industry Restructuring Act 2001 (2001 No 51)

Section 102(3)(a)

Section 102(3)(b)

Mackelvie Trust Act 1958 (1958 No 2 (P))

Section 7(2)

Section 7(3)

Methodist Charitable and Educational Trusts Act 1911 (1911 No 1 (L))

Section 30(1)(f)

National Heart Foundation of New Zealand Empowering Act 1970 (1970 No 3 (P))

Section 3(1)

Port Companies Act 1988 (1988 No 91)

Section 13

Securities Markets Amendment Act 2002 (2002 No 44)

Section 32(2)

Securities Transfer Act 1991 (1991 No 119)Definition of **stock exchange's market** in section 2

Part 1—*continued*

St John’s College Trusts Act 1972 (1972 No 6 (P))

Section 11(1)(c)

Takeovers Act 1993 (1993 No 107)

Definition of **quoted** in section 2(1)

Definition of **registered exchange’s market** in section 2(1)

Paragraph (a) of the definition of **specified company** in section 2(1)

Section 35(1)(b)

Section 35(3)(a)

Section 44V(c)

**Wellington Methodist Charitable and Educational Trusts Act
1916 (1916 No 13 (L))**

Section 31(1)(b)

Part 2

Amendments to regulations

**Securities Markets (Market Manipulation) Regulations 2007
(SR 2007/373)**

Definition of **market** in regulation 3(1)

Definition of **securities** in regulation 3(1)

Securities Regulations 1983 (SR 1983/121)

Definition of **registered exchange’s market** in regulation 2(1)

Heading to regulation 23

Regulation 23(1)(a)

Takeovers Code Approval Order 2000 (SR 2000/210)

Paragraph (a) of the definition of **code company** in rule 3(1) of the
Schedule

Definition of **registered exchange’s market** in rule 3(1) of the
Schedule

Rule 25(5)(c) of the Schedule

Rule 26(2)(c) of the Schedule

Part 2—*continued*

Takeovers Code Approval Order 2000 (SR 2000/210)—*continued*

Rule 45(2) of the Schedule

Rule 46(a)(ii)(C) of the Schedule

Rule 51 of the Schedule

Paragraph (a) of the definition of **annual report** in clause 18(6) of Schedule 2 of the Schedule

Paragraph (a) of the definition of **half-yearly report** in clause 18(6) of Schedule 2 of the Schedule

Reprints notes

1 *General*

This is a reprint of the Securities Markets Amendment Act 2009 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

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