

**Reprint**  
**as at 1 December 2014**

**Securities Amendment Act 1996**

Public Act    1996 No 100  
Date of assent    2 September 1996

Securities Amendment Act 1996: repealed, on 1 December 2014, pursuant to section 4(1)(a) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).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 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.**

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## **An Act to amend the Securities Act 1978**

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

#### **1 Short Title and commencement**

- (1) This Act may be cited as the Securities Amendment Act 1996, and shall be read together with and deemed part of the Securities Act 1978 (hereinafter referred to as the principal Act).
- (2) Subject to subsections (3) and (4) of this section, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

- (3) Subject to subsection (4) of this section, this Act shall come into force on the 1st day of October 1997 if no Order in Council is made under subsection (2) of this section appointing a date that is earlier than that date as the date for the coming into force of this Act.
- (4) Sections 37 and 38 of this Act shall come into force on the date on which this Act receives the Royal assent.

## 2 Transitional provision relating to application of this Act

Notwithstanding the commencement of this Act, an offer of securities (within the meaning of section 2D of the principal Act (as inserted by section 4 of this Act)) that is made within 6 months after the commencement of this Act, may be made in accordance with either—

- (a) The principal Act as amended by this Act; or
- (b) The law in force immediately before the commencement of this Act,—

and the principal Act as amended by this Act or the law in force immediately before the commencement of this Act, as the case may be, shall apply in respect of any offer so made.

## 3 Interpretation

- (1) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **advertisement** (as inserted by section 2(1) of the Securities Amendment Act 1982 and amended by section 13(1) of the Reserve Bank of New Zealand Amendment Act 1995), and substituting the following definition:

“**Advertisement** has the meaning set out in section 2A of this Act”.

- (2) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **associated persons** (as amended by section YB 1 of the Income Tax Act 1994), and substituting the following definition:

“**Associated persons** or **persons associated with each other** are—

- “(a) Persons who are relatives within the meaning of the Income Tax Act 1994; or
- “(b) Persons who are partners to whom the Partnership Act 1908 applies; or

- “(c) Bodies corporate that consist substantially of the same members or shareholders or that 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 rights to vote attached to 25 percent or more of the voting securities of the body corporate; or
- “(e) A body corporate and a person who is a director of the body corporate.”.
- (3) Section 2(1) of the principal Act is hereby amended by inserting in the definition of the term **authorised advertisement**, after the words “section 38”, the words “or section 38AA”.
- (4) Section 2(1) of the principal Act is hereby amended by repealing the definitions of the terms **authorised life insurance company** (as inserted by section 42 of the Securities Amendment Act 1988) and **books and papers** or **books or papers**.
- (5) Section 2(1) of the principal Act is hereby amended by inserting, before the definition of the term “building society”, the following definition:

“**Bonus bond** means a unit in an approved unit trust within the meaning of section 3(1) of the Finance Act (No 2) 1990”.
- (6) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **debt security** (as amended by section 2(6) of the Securities Amendment Act 1982), and substituting the following definition:

“**Debt security** means any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property); and includes—

  - “(a) A debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and
  - “(b) An interest or right that is declared by regulations to be a debt security for the purposes of this Act; and
  - “(c) A renewal or variation of the terms or conditions of any such interest or right or of a security referred to in paragraph (a) or paragraph (b) of this definition;—

but does not include—”.

“(d) An interest in a contributory mortgage where the interest is offered by a contributory mortgage broker; or

“(e) Any such interest or right or a security referred to in paragraph (a) or paragraph (c) of this definition that is declared by regulations not to be a debt security for the purposes of this Act.”.

(7) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **distribute**, and substituting the following definitions:

“**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 a document in any form; and includes—

“(a) Any writing on or in any material; and

“(b) Information recorded or stored by means of a tape-recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and

“(c) A record, book, graph, or drawing; and

“(d) A photograph, film, negative, tape, disk, or other device in which one or more visual images are embodied or stored so as to be capable (with or without the aid of equipment) of being reproduced.”.

(8) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **equity security**, and substituting the following definition:

“**Equity security** means any interest in or right to a share in, or in the share capital of, a company; and includes—

“(a) A preference share, and company stock; and

“(b) A security that is declared by regulations to be an equity security for the purposes of this Act; and

“(c) A renewal or variation of the terms or conditions of any such interest or right or a security referred to in paragraph (a) or paragraph (b) of this definition;—

but does not include any such interest or right or a security referred to in paragraph (a) or paragraph (c) of this definition that is declared by regulations not to be an equity security for the purposes of this Act”.

- (9) Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term **Government department**, the following definitions:

“**Interest in a superannuation scheme** means an interest or right to participate in any capital, assets, earnings, or other property of a superannuation scheme; and includes—

“(a) Any interest or right that is declared by regulations to be an interest in a superannuation scheme for the purposes of this Act; and

“(b) Any renewal or variation of the terms or conditions of any such interest or right or a security referred to in paragraph (a) of this definition;—

but does not include any such interest or right, or a security referred to in paragraph (b) of this definition, that is declared by regulations not to be an interest in a superannuation scheme for the purposes of this Act

“**Investment statement** has the meaning set out in section 38C of this Act”.

- (10) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **issuer** (as substituted by section 2(8) of the Securities Amendment Act 1982), and substituting the following definition:

“**Issuer** means,—

“(a) In relation to an equity security or a debt security, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to an equity security or a debt security, or to a trust deed that relates to a debt security, the person on whose behalf any money paid in consideration of the allotment of the security is received:

“(b) In relation to a participatory security, or to an advertisement, investment statement, prospectus, or registered prospectus, or to a deed of participation that relates to a participatory security, the manager:

“(c) In relation to an interest in a contributory mortgage offered by a contributory mortgage broker, or to an advertisement that relates to such an interest, the contributory mortgage broker:

“(d) In relation to a unit in a unit trust, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to such a unit, the manager:

“(e) In relation to a life insurance policy, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to a life insurance policy, the life insurance company that is liable under the policy:

“(f) In relation to an interest in a superannuation scheme, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to such an interest, the superannuation trustee of the scheme:”.

(11) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **life insurance policy** (as inserted by section 42 of the Securities Amendment Act 1988), and substituting the following definition:

“**Life insurance policy** means a policy of life or endowment insurance, or a policy securing an annuity; and includes—

“(a) A policy of insurance that is declared by regulations to be a life insurance policy for the purposes of this Act; and

“(b) A renewal or variation of the terms or conditions of any such policy or a security referred to in paragraph (a) of this definition;—

but does not include any such policy, or a security referred to in paragraph (b) of this definition, or a term life insurance policy (within the meaning of regulations) that is declared by regulations not to be a life insurance policy for the purposes of this Act”.

(12) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **manager**, and substituting the following definition:

“**Manager**,—

“(a) In relation to a participatory security, means the person or persons acting in the promotion or management of the arrangement or scheme to which the security relates; and

“(b) In relation to a unit in a unit trust, has the same meaning as in section 2(1) of the Unit Trusts Act 1960:”.

(13) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **participatory security**, and substituting the following definition:

“**Participatory security** means any security other than—

“(a) An equity security; or

“(b) A debt security; or



“(c) A unit in a unit trust; or

“(d) An interest in a superannuation scheme; or

“(e) A life insurance policy.”.

(14) Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term **promoter**, the following definition:

“**Prospective investor**, in relation to a security, means any person who, under the terms of issue of the security, is eligible to subscribe for the security”.

(15) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **qualified auditor**, and substituting the following definitions:

“**Qualified auditor** has the meaning given to it by section 2C of this Act

“**Receive**, in relation to a document, information, or other matter, includes receive by any form of electronic or other means of communication in a manner that enables the recipient to readily store the document, information, or other matter in a permanent form and, with or without the aid of any equipment, to retrieve and read it”.

(16) Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term **Registrar**, the following definition:

“**Regulations** means regulations made under section 70 of this Act”.

(17) Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term **relative**, the following definition:

“**Scheme** means,—

“(a) In relation to a participatory security, the arrangement or scheme to which the security relates; and

“(b) In relation to an interest in a superannuation scheme, that superannuation scheme; and

“(c) In relation to a unit in a unit trust, that unit trust.”.

(18) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term **security**, and substituting the following definition:

“**Security** has the meaning set out in section 2D of this Act”.

(19) Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term **security holder**, the following definition:

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

(20) Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term **subscribe**, the following definitions:

“**Superannuation scheme** means a registered superannuation scheme within the meaning of section 2(1) of the Superannuation Schemes Act 1989

“**Superannuation trustee** has the same meaning as the term **trustees** has in the Superannuation Schemes Act 1989

“**Trust deed** means a trust deed required by section 33(2)(a) of this Act”.

(21) Section 2(1) of the principal Act is hereby amended by adding the following definitions:

“**Unit** means an interest or right to participate in any capital, assets, earnings, or other property of a unit trust; and includes—

“(a) Any interest or right that is declared by regulations to be a unit for the purposes of this Act; and

“(b) Any renewal or variation of the terms or conditions of any such interest or right;—

but does not include any such interest or right or a security referred to in paragraph (b) of this definition that is declared by regulations not to be a unit for the purposes of this Act

“**Unit trust** has the same meaning as in section 2(1) of the Unit Trusts Act 1960

“**Unit trustee** has the same meaning as the term **trustee** has in section 2(1) of the Unit Trusts Act 1960

“**Working day** means a day of the week other than—

“(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day; and

“(b) A day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year; and

“(c) If the 1st day of January in any year falls on a Friday, the following Monday; and

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

“**Writing** includes—

“(a) The recording of words in a permanent and legible form; and

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

and **written** has a corresponding meaning.”

(22) Section 2 of the principal Act is hereby amended by repealing subsection (2).

(23) The following enactments are hereby consequentially repealed:

(a) Subsections (1), (6), and (8) of section 2 of the Securities Amendment Act 1982:

(b) Section 42 of the Securities Amendment Act 1988:

(c) Section 13(1) of the Reserve Bank of New Zealand Amendment Act 1995.

#### 4 New sections inserted

The principal Act is hereby amended by inserting, after section 2, the following sections:

##### “2A Meaning of advertisement

“(1) In this Act, unless the context otherwise requires, **advertisement** means a form of communication—

“(a) That—

“(i) Contains or refers to an offer of securities to the public for subscription; or

“(ii) Is reasonably likely to induce persons to subscribe for securities of an issuer, being securities to which the communication relates and that have been, or are to be, offered to the public for subscription; and

“(b) That is authorised or instigated by, or on behalf of, the issuer of the securities or prepared with the co-operation of, or by arrangement with, the issuer of the securities; and

- “(c) That is to be, or has been, distributed to a person.
- “(2) The following are also advertisements:
  - “(a) A statement relating to an interest in a contributory mortgage required to be distributed to a person by regulations:
  - “(b) An investment statement.
- “(3) None of the following is an advertisement:
  - “(a) A registered prospectus:
  - “(b) A statement made in accordance with section 3(6) of this Act:
  - “(c) A statement or report made in accordance with section 3(7) of this Act:
  - “(d) A disclosure statement published by a registered bank under section 81 of the Reserve Bank of New Zealand Act 1989.
- “(4) A communication is an advertisement whether or not consideration is to be, or has been, paid for the distribution of the communication.
- “(5) The definition of the term **advertisement** in this section does not apply to the term **advertisement** in section 3(1)(c) of this Act.
- “(6) Where—
  - “(a) An advertisement within the meaning of this section appears in association with another advertisement that is not an advertisement within the meaning of this section; and
  - “(b) Both advertisements are authorised or instigated by, or on behalf of, the same person or prepared with the co-operation of, or by arrangement with, the same person,—those advertisements are deemed to be a single advertisement within the meaning of this section.
- “(7) Unless this Act or regulations provide otherwise, nothing in this Act or regulations limits the information, statements, and other matters that may be contained in an advertisement.

**“2B Meaning of due enquiry**

- “(1) For the purposes of this Act, a person who is required to make due enquiry about a matter does not fail to do so if—
- “(a) He or she receives information or advice about the matter from another person whom he or she believes on reasonable grounds is reliable and competent; and
  - “(b) The information or advice received—
    - “(i) Is of the same kind and standard as that which it would be reasonable to expect to be supplied in the ordinary course of management of businesses of the same kind to persons in the same kind of position; and
    - “(ii) Does not state or indicate that further information, advice, or investigation is or may be required; and
  - “(c) He or she has no reason to believe that the information or advice is or may be incorrect.
- “(2) Nothing in subsection (1) of this section limits the ways in which a person may make due enquiry about a matter.

**“2C Meaning of qualified auditor**

- “(1) For the purposes of this Act, a person is a qualified auditor only if—
- “(a) The person is a chartered accountant (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996); or
  - “(b) The person is an officer of the Audit Department authorised in writing by the Controller and Auditor-General to be an auditor for the purposes of this Act; or
  - “(c) The person is a member, fellow, or associate of an association of accountants constituted outside New Zealand where—
    - “(i) The association is, by notice in the *Gazette*, approved for the time being for the purposes of this Act by the Registrar; and
    - “(ii) The person is entitled to act as an auditor in the country, state, or territory in which the association is constituted; or

- “(d) The person, not being a person referred to in paragraph (c) of this subsection, is—
  - “(i) Entitled to act as an auditor in a country, state, or territory outside New Zealand; and
  - “(ii) Approved for the time being for the purposes of this Act by the Registrar by notice in the *Gazette*.
- “(2) None of the following persons is qualified for appointment as an auditor of the accounting or other records of an issuer of securities:
  - “(a) The issuer, or a principal officer, officer, or employee of the issuer:
  - “(b) A person who is a partner of or in the employment of a person specified in paragraph (a) of this subsection:
  - “(c) A body corporate.
- “(3) A person is not qualified for appointment as auditor of an issuer of securities if the person is, by virtue of subsection (2) of this section, disqualified for appointment as auditor of a person that is the issuer’s subsidiary or holding company or a subsidiary of the issuer’s holding company, or would be so disqualified if that person were a company.

**“2D Meaning of security**

- “(1) In this Act, unless the context otherwise requires, the term **security** means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and includes—
  - “(a) An equity security; and
  - “(b) A debt security; and
  - “(c) A unit in a unit trust; and
  - “(d) An interest in a superannuation scheme; and
  - “(e) A life insurance policy; and
  - “(f) Any interest or right that is declared by regulations to be a security for the purposes of this Act; and
  - “(g) Any renewal or variation of the terms or conditions of any such interest or right;—but does not include any such interest or right (other than a security referred to in paragraph (f) of this subsection) that is declared by regulations not to be a security for the purposes of this Act.

- “(2) Where the terms of a security require or allow the subscriber to pay separate amounts of money at different times, each such payment shall, for the purposes of this Act, be treated as payment for the same security as each other payment.”

## **5 Application of this Act**

- (1) Section 4(3) of the principal Act is hereby amended by inserting, after the word “trustee”, the words “, superannuation trustee, unit trustee,”.
- (2) Section 4 of the principal Act is hereby amended by adding the following subsection:
- “(4) Nothing in this section or in any other provision of this Act limits the Illegal Contracts Act 1970.”

## **6 Exemptions from this Act**

- (1) Section 5 of the principal Act is hereby amended by repealing subsections (2) and (2A) (as substituted by section 181(1) of the Reserve Bank of New Zealand Act 1989).
- (2) Section 5 of the principal Act is hereby further amended by repealing subsection (2B) (as inserted by section 181(4) of the Reserve Bank of New Zealand Act 1989).
- (3) Section 5 of the principal Act is hereby further amended by repealing subsection (2C) (as inserted by section 181(8) of the Reserve Bank of New Zealand Act 1989), and substituting the following subsections:
- “(2C) Nothing in sections 33(2), 37, 37A(1)(c) and (d), 39 to 44, 45 to 52, 54, and 54B(3) of this Act shall apply in respect of any debt security the issuer of which is a registered bank.
- “(2D) Nothing in sections 37A(1)(a) and 38C to 38F of this Act shall apply in respect of—
- “(a) An interest in a call debt security as defined in regulations made under this Act; or
- “(b) An interest in a call building society share as defined in regulations made under this Act; or
- “(c) An interest in a bonus bond.
- “(2E) Nothing in sections 37, 37A(1)(c), and 39 to 44 of this Act shall apply in respect of any interest in a small employer superannuation scheme as defined in regulations.

- “(2F) Subsection (2E) of this section shall expire on a date to be appointed by the Governor-General by Order in Council.”
- (4) Section 5(3) of the principal Act (as amended by section 5(4) of the Securities Amendment Act 1982) is hereby amended by omitting the expression “37A”, and substituting the expression “37A(1)(c) and (d) and (2)”.
- (5) Section 5(4) of the principal Act (as substituted by section 5(5) of the Securities Amendment Act 1982) is hereby amended by inserting, after the expression “37A,”, the expression “38C to 38F,”.
- (6) Subsections (1), (3), (4), (5), and (7) to (9) of section 181 of the Reserve Bank of New Zealand Act 1989 are hereby consequentially repealed.

#### **7 Previously allotted securities**

- (1) Section 6(1) of the principal Act (as substituted by section 2(1) of the Securities Amendment Act 1993) is hereby amended by omitting the expression “37 to 44”, and substituting the expression “37 to 38A, 38C to 44”.
- (2) Section 6 of the principal Act (as so substituted) is hereby amended by inserting, after subsection (2), the following subsection:
- “(2A) All the provisions of this Act shall apply in respect of a unit in a unit trust that has previously been allotted (whether in New Zealand or elsewhere) and that is being offered, sold, or otherwise disposed of to the public for subscription by the manager or unit trustee of the unit trust or by an associated person of that manager or unit trustee.”
- (3) Section 6(7) of the principal Act (as so substituted) is hereby amended by inserting, after the word “or”, the words “subsection (2A) or”.

#### **8 Term implied in certain offers of previously allotted securities**

- (1) Section 6A(1)(a) of the principal Act (as substituted by section 2 of the Securities Amendment Act 1994) is hereby amended by omitting the expression “37 to 44”, and substituting the expression “37 to 38A, 38C to 44”.



- (2) Section 6A(1)(b) of the principal Act (as so substituted) is hereby amended by omitting the words “subsection (2) or subsection (3)”, and substituting the words “any of subsections (2), (2A), or (3)”.

**9 Exemption for authorised life insurance companies**

- (1) The principal Act is hereby amended by repealing sections 7A and 7B (as inserted by section 44 of the Securities Amendment Act 1988).
- (2) Section 44 of the Securities Amendment Act 1988 is hereby consequentially repealed.

**10 Appeals to High Court on questions of law**

Section 26 of the principal Act is hereby amended by omitting from subsections (3), (4), and (7) the number **14** in each place where it appears, and substituting in each case the expression “10 working”.

**11 Restrictions on offer of securities to the public**

- (1) Section 33 of the principal Act is hereby amended by repealing subsection (1) (as substituted by section 13 of the Securities Amendment Act 1982), and substituting the following subsection:
- “(1) No security shall be offered to the public for subscription, by or on behalf of an issuer, unless—
- “(a) The offer is made in, or accompanied by, an authorised advertisement that is an investment statement that complies with this Act and regulations; or
- “(b) The offer is made in an authorised advertisement that is not an investment statement; or
- “(c) The offer is made in, or accompanied by, a registered prospectus that complies with this Act and regulations.”
- (2) Section 13 of the Securities Amendment Act 1982 is hereby consequentially repealed.

**12 Restrictions on distribution of prospectuses**

Section 34 of the principal Act (as substituted by section 14 of the Securities Amendment Act 1982) is hereby amended by adding the following subsection:

- “(2) A registered prospectus shall not be distributed by or on behalf of an issuer unless it is accompanied by,—
- “(a) If the registered prospectus refers to, but does not contain, financial statements registered under the Financial Reporting Act 1993, a copy of those financial statements; and
  - “(b) A copy of any documents registered under this Act for the purpose of extending the period during which allotments may be made under the registered prospectus.”

**13 Restrictions on door-to-door sales**

Section 35 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

- “(3) In this section, the term **securities** does not include life insurance policies or securities in any co-operative company or building society.”

**14 Void irregular allotments**

- (1) Section 37(2) of the principal Act (as substituted by section 15 of the Securities Amendment Act 1982) is hereby amended by inserting, after the words “participatory security”, the words “or a unit in a unit trust”.
- (2) Section 37(3) of the principal Act (as so substituted) is hereby amended by omitting the words “holds a written statement signed by”, and substituting the words “has received a written statement from”.

**15 Voidable irregular allotments**

- (1) Section 37A of the principal Act (as inserted by section 16 of the Securities Amendment Act 1982) is hereby amended by repealing subsection (1), and substituting the following subsections:
- “(1) No allotment of a security offered to the public for subscription shall be made if—

- “(a) The subscriber did not receive any investment statement relating to the security before subscribing for the security; or
- “(b) At the time of allotment, any investment statement or registered prospectus relating to the security is known by the issuer of the security, or any director of the issuer, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the investment statement or registered prospectus became so false or misleading as a result of a change of circumstances occurring after the date of the investment statement or registered prospectus); or
- “(c) The date of allotment would be more than,—
  - “(i) Where the registered prospectus relating to the security contains or refers to a balance sheet or interim balance sheet in accordance with regulations and no certificate has been registered in relation to that prospectus under subsection (1A) of this section, 9 months after the date of that balance sheet or interim balance sheet (whichever is the later); or
  - “(ii) Where the registered prospectus relating to the security contains or refers to a balance sheet (but not an interim balance sheet) in accordance with regulations and a certificate has been registered in relation to that prospectus under subsection (1A) of this section, 9 months after the date of that certificate; or
  - “(iii) In any other case, 6 months after the date of the registered prospectus; or
- “(d) In the case of an equity security, debt security, or participatory security, after the allotment, the total amount of securities allotted under the registered prospectus relating to the security would (after deducting, in the case of an allotment of debt securities, the total amount of debt securities of the issuer redeemed since the date of the registered prospectus) exceed the amount specified in

the registered prospectus as the maximum amount that will be so allotted.

- “(1A) For the purposes of subsection (1)(c) of this section, if no interim balance sheet is contained or referred to in a registered prospectus, an issuer may deliver to the Registrar for registration under this Act, and the Registrar shall register, a certificate that relates to the registered prospectus and that—
- “(a) Is signed on behalf of all the directors by at least 2 directors of the issuer (or, where the issuer has only 1 director, by that director); and
  - “(b) Is dated no later than 9 months after the date of the balance sheet contained or referred to in the registered prospectus; and
  - “(c) States that, in the opinion of all directors of the issuer after due enquiry by them,—
    - “(i) The financial position shown in the balance sheet referred to in paragraph (b) of this subsection has not materially and adversely changed during the period from the date of that balance sheet to the date of the certificate; and
    - “(ii) The registered prospectus is not, at the date of the certificate, false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances; and
  - “(d) Where the registered prospectus relates to equity securities, debt securities, or participatory securities, is accompanied by financial statements—
    - “(i) For the 6-month period from the date of the balance sheet referred to in paragraph (b) of this subsection; and
    - “(ii) Prepared in accordance with regulations as if they were required to be contained or referred to in a registered prospectus for those securities, except that they need not be audited.”
- (2) Section 37A(3) of the principal Act is hereby amended by omitting the words “wound up”, and substituting the words “in liquidation”.

**16 Meaning of authorised advertisement**

- (1) The principal Act is hereby amended by repealing section 38 (as substituted by section 17(1) of the Securities Amendment Act 1982 and amended by section 181(10) of the Reserve Bank of New Zealand Act 1989) and the heading above that section, and substituting the following heading and section:

*“Advertisements*

**“38 Meaning of authorised advertisement**

In this Act, the term **authorised advertisement** means,—

- “(a) In relation to an offer of securities to the public in respect of which an investment statement is required, an advertisement—

“(i) That is an investment statement that relates to the securities and that complies with this Act and regulations; or

“(ii) That refers to an investment statement that relates to the securities referred to in the advertisement and that complies with this Act and regulations:

- “(b) In any other case, an advertisement that complies with this Act and regulations.”

- (2) The following enactments are hereby consequentially repealed:

(a) Section 17 of the Securities Amendment Act 1982:

(b) Section 181(10) of the Reserve Bank of New Zealand Act 1989.

**17 New sections inserted**

The principal Act is hereby amended by inserting, after section 38A, the following sections:

**“38B Prohibition of advertisements**

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

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

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

“(c) Does not comply with this Act and regulations,—

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

- “(2) Without limiting subsection (1) of this section, where, at any time, the Commission is of the opinion that an advertisement that contains or refers to an offer of debt securities the issuer of which is a registered bank is inconsistent with the most recent disclosure statement published by the registered bank under section 81 of the Reserve Bank of New Zealand Act 1989, the Commission may make an order prohibiting the distribution of that advertisement or any advertisement which relates to the offer of securities.
- “(3) An order may be made on such terms and conditions as the Commission thinks fit.
- “(4) Where the Commission makes an order under this section,—
- “(a) It shall forthwith notify the issuer of the securities that the order has been made and the reasons for making it; and
- “(b) It may notify any other person that the order has been made and the reasons for making it.
- “(5) Every person who contravenes an order made under this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.
- “(6) It is a defence to a charge under subsection (5) of this section if the defendant proves that the advertisement was distributed—
- “(a) Without the defendant’s knowledge; or
- “(b) Without the defendant’s knowledge of the order.
- “(7) At any time after an order has been made under this section, the issuer of the securities to which the advertisement relates shall be entitled to appear and be represented before the Commission.
- “(8) The Commission, if it is satisfied that the order should not continue in force, may revoke the order.
- “(9) In this section, the term **advertisement** does not include an investment statement.

*“Investment statements*

**“38C Meaning of investment statement**

In this Act, the term **investment statement** means a written document that—

- “(a) Contains or refers to one or more offers of securities to the public for subscription; and
- “(b) States that it is an investment statement for the purposes of this Act.

**“38D Purpose of investment statement**

The purpose of an investment statement is to—

- “(a) Provide certain key information that is likely to assist a prudent but non-expert person to decide whether or not to subscribe for securities; and
- “(b) Bring to the attention of such a person the fact that other important information about the securities is available to that person in other documents.

**“38E Form and content of investment statement**

“(1) Every investment statement shall—

- “(a) Be in writing; and
- “(b) State, in a prominent place, the date as at which the investment statement is prepared; and
- “(c) Where a registered prospectus is required in respect of the securities referred to in the investment statement, refer to that registered prospectus and state the date of its registration; and
- “(d) Contain all information, statements, and other matters that it is required to contain by regulations.

“(2) An investment statement may relate to any or all of the following:

- “(a) One or more kinds of securities;
- “(b) One or more offers of or subscriptions for securities of a particular kind.

“(3) Unless this Act or regulations provide otherwise, nothing in this Act or in regulations limits the information, statements, or other matters that may be contained in an investment statement.

**“38F Suspension and prohibition of investment statement**

- “(1) Where, at any time, the Commission is of the opinion that an investment statement—
- “(a) Is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities to which it relates; or
  - “(b) Is inconsistent with any registered prospectus referred to in it; or
  - “(c) Does not comply with this Act and regulations,—  
the Commission may exercise either or both of the following powers in respect of the investment statement:
  - “(d) If it considers that suspension of the investment statement is desirable in the public interest, the Commission may make an order suspending the investment statement for a period not exceeding 14 days:
  - “(e) After giving the issuer of the investment statement not less than 7 days’ written notice of the meeting at which the matter will be considered by the Commission, the Commission may, at that meeting, make an order prohibiting the distribution of the investment statement.
- “(2) An order may be made on such terms and conditions as the Commission thinks fit.
- “(3) Where the Commission suspends an investment statement pursuant to this section,—
- “(a) It shall forthwith notify the issuer of the suspension and the reasons for it; and
  - “(b) None of the following persons shall, except for the purposes of paragraph (a) of this subsection or following prohibition of the distribution of the investment statement under this section, or in the course of any criminal proceedings, divulge or communicate to any other person the fact of the suspension or any matter relating to it:
    - “(i) A member of the Commission or an officer or employee of the Commission:
    - “(ii) A person appointed under section 21 of this Act.
- “(4) Subject to subsection (6) of this section, where an investment statement is suspended,—



- “(a) No allotment shall be made of any securities subscribed for whether before or after the suspension order is made:
  - “(b) All subscriptions received for such securities, not being subscriptions for securities which have been allotted before the suspension, shall be held in trust for the subscribers.
- “(5) The Commission, if it is satisfied that the suspension of an investment statement should not continue in force, may revoke the suspension.
- “(6) Subsection (4) of this section ceases to apply if—
  - “(i) The Commission revokes the suspension of an investment statement; or
  - “(ii) The period of suspension of an investment statement expires and the distribution of the investment statement has not been prohibited under this section.
- “(7) Where the Commission revokes the suspension of an investment statement pursuant to this section,—
  - “(a) It shall forthwith notify the issuer of the revocation of the suspension; and
  - “(b) None of the following persons shall, except for the purposes of paragraph (a) of this subsection or in the course of any criminal proceedings, divulge or communicate to any other person the fact of the revocation of the suspension or any matter relating to it:
    - “(i) A member of the Commission or an officer or employee of the Commission:
    - “(ii) A person appointed under section 21 of this Act.
- “(8) Where the Commission prohibits the distribution of an investment statement pursuant to this section,—
  - “(a) It shall forthwith notify the issuer of the prohibition and the reasons for it; and
  - “(b) It may notify any other person of the prohibition and the reasons for it.
- “(9) Subject to subsection (11) of this section, where the distribution of an investment statement is prohibited,—
  - “(a) No allotment shall be made of any securities subscribed for whether before or after the prohibition order is made:

- “(b) All subscriptions held in trust pursuant to subsection (4)(b) of this section shall forthwith be repaid to the subscribers entitled to them:
- “(c) All subscriptions received for securities pursuant to the investment statement, not being subscriptions for securities which have been allotted before the prohibition order was made and not being subscriptions required to be held in trust for the subscribers pursuant to subsection (4)(b) of this section, shall be held in trust for immediate repayment to the subscribers entitled to them.
- “(10) The Commission, if it is satisfied that the prohibition of the distribution of an investment statement should not continue in force, may revoke the prohibition.
- “(11) Subsection (9) of this section ceases to apply if the Commission revokes the prohibition of the distribution of an investment statement.
- “(12) Where the Commission revokes the prohibition of the distribution of an investment statement pursuant to this section, it shall forthwith notify the issuer of the revocation of the prohibition.
- “(13) Subject to subsection (14) of this section, if any subscriptions which are required to be repaid to the subscribers entitled to them are not so repaid within a month after the date of prohibition of the investment statement, the issuer and all the directors of the issuer shall be jointly and severally liable to repay the subscriptions with interest at a rate prescribed from time to time by regulations made under this Act from the date the subscriptions were received by or on behalf of the issuer.
- “(14) A director of an issuer shall not be liable to repay any subscriptions and interest pursuant to subsection (13) of this section if that director proves that the default in the repayment of the subscriptions was not due to any misconduct or negligence on his or her part.”

## **18 Form and content of prospectus**

Section 39 of the principal Act (as substituted by section 19 of the Securities Amendment Act 1982) is hereby amended by adding the following subsections:

- “(2) A prospectus or registered prospectus may form part of, or be combined with, any annual report or other document that is required by any enactment; and, in any such case, the provisions of this Act and of all regulations made under this Act shall apply to that annual report or other document.
- “(3) Unless this Act or regulations provide otherwise, nothing in this Act or in regulations made under this Act limits the information, statements, certificates, or other matters that may be contained in a prospectus or registered prospectus.”

**19 Suspension and cancellation of registration of registered prospectus**

- (1) Section 44 of the principal Act (as substituted by section 11 of the Securities Amendment Act 1986) is hereby amended by repealing subsection (2), and substituting the following subsection:
- “(2) Where the Commission suspends the registration of a registered prospectus pursuant to this section,—
- “(a) It shall forthwith notify the issuer named in the prospectus of the suspension and the reasons for it; and
- “(b) It may notify the Registrar of the suspension and the reasons for it; and
- “(c) None of the following persons shall, except for the purposes of paragraph (a) or paragraph (b) of this subsection or following cancellation of the registered prospectus under this section or in the course of any criminal proceedings, divulge or communicate to any person the fact of the suspension or any matter relating to it:
- “(i) A member of the Commission or an officer or employee of the Commission:
- “(ii) A person appointed under section 21 of this Act:
- “(iii) The Registrar.”
- (2) Section 44(3) of the principal Act (as so substituted) is hereby amended by omitting the words “subsection (4)”, and substituting the words “subsection (4A)”.
- (3) Section 44 of the principal Act (as so substituted) is hereby further amended by repealing subsection (4), and substituting the following subsections:

- “(4) The Commission, if it is satisfied that the suspension of the registration of a registered prospectus should not continue in force, may revoke the suspension.
- “(4A) Subsection (3) of this section ceases to apply if—
- “(i) The Commission revokes the suspension of registration of a registered prospectus; or
  - “(ii) The period of suspension of registration of a registered prospectus expires and the registration of that registered prospectus is not cancelled under this section.
- “(4B) Where the Commission revokes the suspension of the registration of a registered prospectus pursuant to this section,—
- “(a) It shall forthwith notify the issuer named in the prospectus of the revocation of the suspension; and
  - “(b) It may notify the Registrar of the revocation of the suspension; and
  - “(c) None of the following persons shall, except for the purposes of paragraph (a) or paragraph (b) of this subsection or in the course of any criminal proceedings, divulge or communicate to any other person the fact of the revocation of the suspension or any matter relating to it:
    - “(i) A member of the Commission or an officer or employee of the Commission:
    - “(ii) A person appointed under section 21 of this Act:
    - “(iii) The Registrar.”
- (4) Section 44(6)(b) of the principal Act (as so substituted) is hereby amended by omitting the word “on”, and substituting the word “in”.
- (5) Section 44(7) of the principal Act (as so substituted) is hereby amended by omitting the words “the rate of 10 percent per annum”, and substituting the words “a rate prescribed from time to time by regulations made under this Act”.

## **20 Prohibition of advertisements**

- (1) Section 44A of the principal Act (as substituted by section 49 of the Securities Amendment Act 1988, and amended by section 13(5) of the Reserve Bank of New Zealand Amendment Act 1995) is hereby repealed.

- (2) The following enactments are hereby consequentially repealed:
- (a) Section 49 of the Securities Amendment Act 1988:
  - (b) Section 13(5) of the Reserve Bank of New Zealand Amendment Act 1995.

**21 New heading inserted**

The principal Act is hereby amended by inserting, after section 44, the following heading:

“Contributory Mortgages”

**22 Powers and duties of persons appointed to act as broker**

Section 44C(4) of the principal Act (as inserted by section 24 of the Securities Amendment Act 1982) is hereby amended by omitting the words “books or records or”.

**23 Powers and duties of persons appointed to act as directors or secretary of nominee company**

Section 44D(2) of the principal Act (as inserted by section 24 of the Securities Amendment Act 1982) is hereby amended by omitting the words “books, records, or” in both places where they occur.

**24 New sections substituted**

The principal Act is hereby amended by repealing section 50, sections 51 and 52 (as amended by section 2 of the Company Law Reform (Transitional Provisions) Act 1994, and section 53 (as substituted by section 25 of the Securities Amendment Act 1982 and amended by section 2 of the Company Law Reform (Transitional Provisions) Act 1994), and substituting the following headings and sections:

*“Duties of auditors*

**“50 Duty of auditor to report to trustee or statutory supervisor**

- “(1)** Whenever the auditor of an issuer of debt securities or participatory securities offered to the public (being securities that are held by members of the public) furnishes to the issuer or its members or shareholders or the security holders any report, financial statements, certificate, or other document that is re-

quired by any Act or by any deed relating to the securities to be so furnished, the auditor shall forthwith send a copy to the trustee or statutory supervisor of the securities.

- “(2) Whenever, in the performance of the auditor’s duties, the auditor of an issuer of debt securities or participatory securities offered to the public (being securities that are held by members of the public) becomes aware of any matter that, in the auditor’s opinion, is relevant to the exercise or performance of the powers or duties of the trustee or statutory supervisor of the securities, the auditor shall, within 7 working days of becoming aware of the matter, send—
- “(a) To the issuer, a report in writing on the matter; and
- “(b) To the trustee or statutory supervisor, as the case may be, a copy of that report.
- “(3) The auditor of an issuer of debt securities or participatory securities offered to the public (being securities that are held by members of the public) shall from time to time, at the request of the trustee or statutory supervisor, furnish to the trustee or statutory supervisor such information or particulars relating to the issuer as are requested and are within the auditor’s knowledge and are, in the auditor’s opinion, relevant to the exercise or performance of the powers or duties of the trustee or statutory supervisor.
- “(4) Nothing in this section affects the duties or liability of a trustee or statutory supervisor.

**“50A Duty of auditor to report to unit trustee**

- “(1) Whenever the auditor of an issuer of units in a unit trust furnishes to the issuer any report, financial statements, certificate, or other documents required by any Act or any trust deed relating to the unit trust, the auditor shall forthwith send a copy to the unit trustee.
- “(2) Whenever, in the performance of the auditor’s duties, the auditor of a unit trust that has units held by members of the public becomes aware of any matter that, in the auditor’s opinion, is relevant to the exercise or performance of the powers or duties of the unit trustee, the auditor shall, within 7 working days of becoming aware of the matter, send—

- “(a) To the issuer of the units, a report in writing on the matter; and
- “(b) To the unit trustee, a copy of that report.
- “(3) The auditor of an issuer of units in a unit trust that has units held by members of the public shall from time to time, at the request of the unit trustee, furnish to the unit trustee such information or particulars relating to the issuer as are requested and are within the auditor’s knowledge and are, in the auditor’s opinion, relevant to the exercise or performance of the powers or duties of the unit trustee.
- “(4) Nothing in this section affects the duties or liability of an issuer of units in a unit trust or a unit trustee.

*“Obligations of issuers*

**“51 Issuers to keep registers of securities**

- “(1) Every issuer of securities offered to the public shall keep in New Zealand—
  - “(a) A register of all equity securities; and
  - “(b) Where the issuer is a company, a register of all debentures, debenture stock, bonds, notes, certificates of deposit, and convertible notes; and
  - “(c) A register of all participatory securities; and
  - “(d) A register of all units in unit trusts; and
  - “(e) A register of all interests in superannuation schemes; and
  - “(f) A register of all life insurance policies—  
of which it is the issuer.
- “(2) Every register kept for the purposes of this section shall contain, in respect of every security entered in it,—
  - “(a) The name and address of the holder; and
  - “(b) The date on which the security was allotted or transferred to the holder, as the case may be; and
  - “(c) The nature of the security; and
  - “(d) The amount of the security (if any); and
  - “(e) The due date of the security (if any); and
  - “(f) Such other particulars as are required to be entered in the register by regulations.

- “(3) Nothing in paragraphs (a) and (b) of subsection (2) of this section applies to bearer securities.
- “(4) No notice of any trust, expressed, implied, or constructive, shall be entered on a register kept under any of paragraphs (a) to (c), and (f) of subsection (1) of this section.
- “(5) Every register kept under this section is prima facie evidence of the matters required by this Act to be entered in it.
- “(6) Every issuer of securities offered to the public (other than securities that have been redeemed) shall ensure that every register kept by it under this section is audited at least once a year by a qualified auditor.
- “(7) Nothing in subsection (6) of this section applies to a superannuation scheme if, by virtue of section 13(2) of the Superannuation Schemes Act 1989, the annual accounts of the scheme need not be audited.
- “(8) If the auditor considers at any time that this section is not being complied with, the auditor shall forthwith advise the issuer and,—
  - “(a) In the case of equity securities, the security holders at their next meeting:
  - “(b) In the case of debt securities, the trustee:
  - “(c) In the case of participatory securities, the statutory supervisor:
  - “(d) In the case of units in a unit trust, the unit trustee.
- “(9) Every issuer shall send a notice to the Registrar of the place where its registers are kept and of any change in that place.
- “(10) Subsection (9) of this section does not apply to an issuer that is a company if the registers of the company are kept at its registered office.
- “(11) Nothing in this section derogates from the Life Insurance Act 1908 or the Companies Act 1955 or the Companies Act 1993.

**“52 Rights of inspection of registers of securities and to copies of registers and deeds**

- “(1) The registers kept under paragraphs (a) to (d) of section 51(1) of this Act shall, except when duly closed (but subject to such reasonable restrictions as the issuer may impose, so that not less than 2 hours in each day shall be allowed for inspection),



be open to the inspection of any holder of the securities without fee, and of any other person on payment of the prescribed fee.

- “(2) The registers kept under paragraphs (e) and (f) of section 51(1) of this Act shall, except when duly closed (but subject to such reasonable restrictions as the issuer may impose, so that not less than 2 hours in each day shall be allowed for inspection), be open to the inspection of a holder of securities in respect of the securities of that holder without fee.
- “(3) Any person may require a copy of a register kept under paragraphs (a) to (d) of section 51(1) of this Act, or any part of the register, on payment of the prescribed fee.
- “(4) A holder of securities may require a copy of that part of a register kept under paragraph (e) or paragraph (f) of section 51(1) of this Act that relates to the securities of that holder on payment of the prescribed fee.
- “(5) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the rules of the issuer or in the securities or any trust deed or deed of participation relating to the securities, during a period or periods not exceeding in aggregate 30 days in any year.
- “(6) Nothing in this section derogates from the Life Insurance Act 1908 or the Companies Act 1955 or the Companies Act 1993.

**“53 Issuers to keep proper accounting records**

- “(1) Every issuer of securities offered to the public (other than securities that have been redeemed) shall ensure that there are kept at all times accounting records that—
  - “(a) Correctly record and explain the transactions,—
    - “(i) In the case of an issuer of equity securities, debt securities, or life insurance policies, of the issuer; and
    - “(ii) In the case of an issuer of participatory securities, units in a unit trust, or interests in a superannuation scheme, of the scheme; and
  - “(b) Will at any time enable the financial position of the issuer or scheme, as the case may be, to be determined with reasonable accuracy; and

- “(c) Will enable the issuer to ensure that the financial statements of the issuer or scheme, as the case may be, comply with the Financial Reporting Act 1993 and any applicable regulations made under this Act; and
  - “(d) Will enable the financial statements of the issuer or scheme, as the case may be, to be readily and properly audited.
- “(2) The accounting records referred to in subsection (1) of this section must be kept in a manner that will enable the financial statements of the issuer or scheme, as the case may be, to be readily and properly audited.
- “(3) Without limiting subsection (1) of this section, accounting records kept under that subsection shall contain, in respect of the issuer or scheme concerned,—
- “(a) Entries of money received and spent each day and the matters to which those entries relate:
  - “(b) A record of the assets and liabilities of the issuer or scheme:
  - “(c) If the business of the issuer or scheme involves dealing in goods,—
    - “(i) A record of goods bought or sold, except goods sold for cash in the ordinary course of carrying on a retail business, that identifies the goods and buyers and sellers and relevant invoices; and
    - “(ii) A record of stock held at the end of the financial year together with records of any stocktakings during the year:
  - “(d) If the business of the issuer or scheme involves providing services, a record of services provided and relevant invoices.

**“53A Place where accounting records to be kept**

- “(1) Subject to subsection (2) of this section, accounting records required by section 53 of this Act shall be kept at the registered office of the issuer, if any, or at such other place as the directors of the issuer think fit.
- “(2) The accounting records may be kept at a place outside New Zealand only if there is sent to, and kept at a place in, New Zealand such documents in respect of the business dealt with

in those accounting records as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months and will enable to be prepared the financial statements of the issuer or scheme, and any document annexed to any of those documents giving information that is required by any enactment.

**“53B Accounting records to be in English**

Accounting records required by section 53 of this Act and the documents in respect of the business dealt with in those accounting records referred to in section 53A of this Act shall be kept either in written form in the English language or so as to enable the accounting records to be readily accessible and readily convertible into written form in the English language.

**“53C Period for which accounting records to be kept**

- “(1) Accounting records kept under section 53A of this Act, or copies of them, shall be retained by the issuer for a period of at least 7 years after the date they are made or the date of completion of the transaction to which they relate, whichever is the later.
- “(2) Nothing in subsection (1) of this section derogates from any other requirement to keep accounting records for a particular time.

**“53D Inspection of accounting records**

Every issuer shall make the accounting records required to be kept under section 53 of this Act and the documents in respect of the business dealt with in those accounting records referred to in section 53A of this Act available in written form in English at all reasonable times for inspection without charge by the directors of the issuer and by any trustee, statutory supervisor, or unit trustee and by other persons authorised or permitted to inspect the accounting records of the issuer or scheme.

**“53E Financial statements to be audited**

- “(1) Every issuer of equity securities or debt securities or life insurance policies offered to the public (other than securities that

have been redeemed) shall ensure that its financial statements are audited at least once a year by a qualified auditor.

- “(2) Every issuer of participatory securities offered to the public shall ensure that, if the statutory supervisor so requires, the financial statements relating to the arrangement or scheme to which the securities relate are audited at least once a year by a qualified auditor.
- “(3) Every issuer of units in a unit trust or interests in a superannuation scheme offered to the public shall ensure that the financial statements relating to the unit trust or superannuation scheme, as the case may be, are audited at least once a year by a qualified auditor.
- “(4) Nothing in subsection (3) of this section applies to a superannuation scheme if, by virtue of section 13(2) of the Superannuation Schemes Act 1989, the annual accounts of the scheme need not be audited.

**“53F Application of other Acts not affected**

Nothing in sections 53 to 53E of this Act derogates from the Companies Act 1955 or the Companies Act 1993 or any other enactment.”

**25 Consequential repeals**

The following enactments are hereby consequentially repealed:

- (a) Section 25 of the Securities Amendment Act 1982:
- (b) So much of Schedule 1 to the Company Law Reform (Transitional Provisions) Act 1994 as relates to sections 51 to 53 of the principal Act.

**26 Issuers to issue certificates evidencing securities**

Section 54(1) of the principal Act is hereby amended by omitting the words “a security”, and substituting the words “an equity security, a debt security, a unit, or a participatory security”.

**27 New sections inserted**

The principal Act is hereby amended by inserting, after section 54, the following sections:

**“54A Information to be sent periodically to security holders**

Every issuer of securities offered to the public for subscription shall send, or cause to be sent, to each security holder, at the times prescribed by regulations, the documents, information, and other matters required to be sent by those regulations.

**“54B Information to be disclosed by issuers on request**

- “(1) Every issuer of securities offered to the public shall, at the request of a security holder and on payment of any prescribed fee, send, or cause to be sent, to the security holder such documents, information, and other matters of a kind prescribed by regulations as are requested by the security holder.
- “(2) The documents, information, and other matters must be sent to the security holder as soon as practicable but, in any event, within 5 working days of the issuer receiving the request.
- “(3) Every issuer of securities offered to the public shall, upon the request of a security holder or a prospective investor for a copy of the registered prospectus relating to the securities, without fee, send, or cause to be sent, to that security holder or prospective investor,—
- “(a) A copy of that registered prospectus; and
  - “(b) A copy of any financial statements of the issuer or scheme concerned that have been registered under the Financial Reporting Act 1993 and that are referred to in the registered prospectus; and
  - “(c) A copy of any documents registered under this Act for the purpose of extending the period during which allotments may be made under the registered prospectus.
- “(4) The documents referred to in subsection (3) of this section must be sent to the security holder or prospective investor as soon as practicable but, in any event, within 5 working days of the issuer receiving the request.”

**28 Interpretation of provisions relating to advertisements, prospectuses, and registered prospectuses**

- (1) The principal Act is hereby amended by repealing section 55 (as substituted by section 26 of the Securities Amendment Act 1982) and substituting the following section:

“55

For the purposes of this Act,—

“(a) A statement included in an advertisement or registered prospectus is deemed to be untrue if—

“(i) It is misleading in the form and context in which it is included; or

“(ii) It is misleading by reason of the omission of a particular which is material to the statement in the form and context in which it is included:

“(b) A statement is deemed to be included in an advertisement or registered prospectus if it is—

“(i) Contained in the advertisement or registered prospectus; or

“(ii) Appears on the face of the advertisement or registered prospectus; or

“(iii) Contained in any financial statements, report, memorandum, or document that accompany, or are incorporated by reference or referred to in, or distributed with, the advertisement or registered prospectus:

“(c) A certificate registered under section 37A(1A) of this Act, and any financial statements that accompany that certificate, shall be deemed to be included in the registered prospectus to which the certificate relates.”

- (2) Section 26 of the Securities Amendment Act 1982 is hereby consequentially repealed.

**29 Civil liability for misstatements in advertisement or registered prospectus**

Section 56(3) of the principal Act (as substituted by section 27 of the Securities Amendment Act 1982) is hereby amended by

inserting, after the word “supervisor” in both places where it occurs, the words “or unit trustee”.

**30 Civil liability for misstatements by expert**

Section 57(2)(b) of the principal Act (as substituted by section 28 of the Securities Amendment Act 1982) is hereby amended by inserting, after the word “supervisor”, the words “or unit trustee”.

**31 Other offences**

Section 60(2) of the principal Act (as substituted by section 32 of the Securities Amendment Act 1982) is hereby amended by omitting the expression “and 53”, and substituting the expression “53 to 53E, 54A, and 54B”.

**32 Liability of officers and auditors of issuer**

Section 61 of the principal Act is hereby amended by inserting, after the word “association”, the words “or constitution”.

**33 Registrar’s powers of inspection**

(1) Section 67(1) of the principal Act is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

“(a) Require any issuer or promoter of securities offered to the public or any investment adviser or investment broker (within the meaning of the Investment Advisers (Disclosure) Act 1996), or any director, officer, or employee thereof, to produce for inspection any document kept by that person;

“(b) Require any person to produce for inspection any document that contains information relating to any money or other property that is managed, supervised, controlled, or held in trust by any such issuer, promoter, investment adviser, or investment broker;”.

(2) Paragraphs (c) and (d) of section 67(1) of the principal Act are hereby amended by omitting the words “book or paper or other” in both places where they occur.

**34 Appeals against Registrar's powers of inspection**

Section 68(1) of the principal Act is hereby amended by omitting the number "21", and substituting the expression "15 working".

**35 Appeals against other decisions of Registrar**

Section 69(1) of the principal Act (as amended by section 34 of the Securities Amendment Act 1982 and section 25(1) of the Official Information Amendment Act 1987) is hereby amended by omitting the number "21", and substituting the expression "15 working".

**36 Appeals from decisions under section 67A**

Section 69A(1) of the principal Act (as inserted by section 25(1) of the Official Information Amendment Act 1987) is hereby amended by omitting the number "21", and substituting the expression "15 working".

**37 Regulations and Orders in Council**

- (1) Section 70(1)(b) of the principal Act (as substituted by section 35 of the Securities Amendment Act 1982) is hereby amended by inserting, after the word "advertisements," in each place where it occurs, the words "investment statements,".
- (2) Section 70(1)(b)(iii) of the principal Act (as so substituted) is hereby amended by inserting, after the word "advertisement," the words "investment statement,".
- (3) Section 70(1)(c) of the principal Act (as so substituted) is hereby amended by inserting, after the word "advertisement," in each place where it occurs, the words ", investment statement,".
- (4) Section 70(1) of the principal Act is hereby amended by inserting, after paragraph (c) (as so substituted), the following paragraph:  
“(ca) Prescribing, in respect of securities offered to the public, the kinds of information that must be sent to security holders periodically or on request; and different kinds of information may be prescribed in respect of different kinds of securities:”.



- (5) Without limiting section 12 of the Acts Interpretation Act 1924, regulations that come into force on or after the commencement of this Act may be made under section 70 of the principal Act (as amended by this section) before the commencement of this Act as if this Act were in force for the purposes of making those regulations.

**38 Action taken by Working Group on Improved Product and Investment Adviser Disclosure**

Any action taken by or on behalf of the body of persons known as the Working Group on Improved Product and Investment Adviser Disclosure before the commencement of this Act in consulting with persons or organisations on proposed amendments to the Securities Regulations 1983 shall be deemed to have been taken by the Commission under, and for the purposes of, section 70(3)(a) of the principal Act before recommending, in connection with the commencement of this Act, the making of regulations under subsection (1) of that section (as amended by section 37 of this Act).

**39 Schedule 1 amended**

Schedule 1 to the principal Act (as amended by section 47(1) of the Financial Reporting Act 1993) is hereby amended by inserting, after the item relating to the Industrial and Provident Societies Act 1908, the following item:

“Investment Advisers (Disclosure) Act 1996.”

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## Eprint notes

### **1     *General***

This is an eprint of the Securities Amendment Act 1996 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)(a)

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