

SECURITIES INDUSTRY ACT.

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

Act No. 35, 1970.

An Act to make provisions with respect to stock exchanges and stockbrokers and other persons dealing in securities; to create certain offences related to trading in securities; to constitute a Corporate Affairs Commission; and for purposes connected therewith. [Assented to, 8th April, 1970.]

BE

No. 35, 1970 **B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title. 1. This Act may be cited as the "Securities Industry Act, 1970".

**Commence-
ment.** 2. (1) This Part of this Act shall commence on the day on which this Act receives the Royal assent.

(2) Subject to subsection one of this section, this Act shall commence in accordance with subsection three of this section.

(3) The Governor may appoint, and notify by proclamation published in the Gazette, the day upon which a Part or provision of this Act shall commence and may, at different times, appoint different days for different Parts or provisions, and the Part or provision to which such a proclamation relates shall commence as specified therein.

**Division
into Parts.** 3. This Act is divided into Parts, as follows :—
 PART I.—PRELIMINARY—*ss.* 1–4.
 PART II.—CORPORATE AFFAIRS COMMISSION—*s.* 5.
 PART III.—STOCK EXCHANGES—*ss.* 6–8.
 PART IV.—LICENCES—*ss.* 9–20.
 PART V.—ACCOUNTS AND AUDIT—*ss.* 21–38.
 PART VI.—INVESTMENT OF STOCKBROKERS' TRUST FUNDS—*ss.* 39–45.
 PART VII.—FIDELITY FUNDS—*ss.* 46–69.
 PART VIII.—TRADING IN SECURITIES—*ss.* 70–75.
 PART IX.—GENERAL—*ss.* 76–78.

4.

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4. (1) In this Act, except to the extent that the context No. 35, 1970
or subject-matter otherwise indicates or requires—

“agent” in relation to a dealer includes a person who is Interpreta-
tion.
or at any time has been a banker of the dealer;

“auditor” means a registered company auditor within
the meaning of the Companies Act, 1961;

“business” in relation to a dealer means business of
dealing in securities;

“Commission” means the corporation constituted by
section five of this Act;

“Commissioner” means the Commissioner for Corporate
Affairs appointed under section five of this Act;

“committee” in relation to a stock exchange means the
persons for the time being in whom the management
of the stock exchange is vested;

“corresponding law” means Act or enactment of any
other State or a Territory of the Commonwealth
which the Governor declares by order published in
the Gazette to be a corresponding law for the
purposes of this Act;

“dealer” means person who carries on a business of
dealing in securities whether or not he carries on
any other business, but does not include an exempt
dealer;

“dealer’s representative” means person in the direct
employment of or acting for or by arrangement
with a dealer, not being an exempt dealer, who
performs for that dealer any of the functions of a
dealer (other than work ordinarily performed by
accountants, clerks or cashiers) whether his
remuneration is by way of salary, wages, commis-
sion or otherwise and, where the dealer is a
corporation, includes any director, member or
officer of the corporation who is not the holder of
a dealer’s licence and who performs for the
corporation any of those functions (whether or not
his remuneration is as aforesaid);

“dealing

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“dealing in securities” means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into—

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or
- (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;

“exempt dealer” means—

- (a) person who carries on a business of dealing in securities only through the holder of a dealer’s licence;
- (b) corporation that is declared by the Governor, pursuant to paragraph (b) of subsection seven of section thirty-eight of the Companies Act, 1961, to be an authorised dealer in the short term money market;
- (c) public statutory corporation constituted under a law of the Commonwealth or of a State;
- (d) the State Superannuation Board;
- (e) the Transport Retirement Board;

“investment adviser” means person who carries on a business of advising others concerning securities or who as part of a regular business issues or promulgates analyses or reports concerning securities; but does not include—

- (a) bank as defined in section five of the Banking Act 1959 of the Commonwealth as amended from time to time;

(b)

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- (b) corporation authorised by the law of any State or of a Territory of the Commonwealth to take in its own name a grant of probate or of letters of administration of the estate of a deceased person;
- (c) corporation registered under the law of the Commonwealth relating to life insurance;
- (d) solicitor or registered public accountant in public practice as such whose carrying on of that business is solely incidental to the practice of his profession;
- (e) dealer or exempt dealer whose carrying on of that business is solely incidental to the conduct of his business of dealing in securities; or
- (f) person who is the publisher of a newspaper registered under the law of the Commonwealth for transmission by post as a newspaper, where—
 - (i) in so far as the newspaper is distributed generally to the public, it is so distributed only to subscribers therefor, and purchasers thereof, for value;
 - (ii) the advice is given, or the analyses or reports issued or promulgated, only through that newspaper;
 - (iii) that person has no interest directly or indirectly in any security to which the advice, analysis or report relates;
 - (iv) that person receives no commission or other consideration for giving the advice, or issuing or promulgating the analyses or reports; and

(v)

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- (v) the advice is given, and the analyses and reports are issued or promulgated, solely as incidental to the conduct of that person's business as such a publisher.

“investment representative” means person in the direct employment of or acting for or by arrangement with an investment adviser, who performs for that investment adviser any of the functions of an investment adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise and, where the investment adviser is a corporation, includes any director, member or officer of the corporation who is not the holder of an investment adviser's licence and who performs for such corporation any of those functions (whether or not his remuneration is as aforesaid);

“licence” means—

- (a) a dealer's licence;
- (b) an investment adviser's licence; or
- (c) a representative's licence—

under Part IV of this Act;

“member firm” means firm which carries on a business of dealing in securities and is recognised as a member firm by a stock exchange;

“relevant authority” means—

- (a) in relation to a sole trader, the stock exchange of which the sole trader is a member;
- (b) in relation to a member firm, the stock exchange by which the firm is recognised; and

(c)

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(c) in relation to any other person the Com- No. 35, 1970 mission;

“representative” means dealer’s representative or an investment representative;

“rules” in relation to a stock exchange means rules governing the conduct of the stock exchange or the members thereof by whatever name called and wherever contained and includes rules contained in the memorandum of association and the articles of association of the stock exchange;

“securities” means debentures, funds, stocks, shares or bonds of any government or of any local government authority or of any body corporate or unincorporate and includes any right or option in respect thereof and any interest as defined in section seventy-six of the Companies Act, 1961;

“sole trader” means stockbroker who carries on a business of dealing in securities on his own account and not in partnership;

“stockbroker” means—

- (a) member of a stock exchange; or
- (b) partner in a member firm;

“stock exchange” means—

- (a) The Sydney Stock Exchange Limited; and
- (b) any other body corporate which has been approved by the Minister under section seven of this Act;

“stock market” means market, exchange or other place at which securities are regularly offered for sale, purchase or exchange;

“the

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“the State” means the State of New South Wales;

“trust account” means a trust account established under section twenty-three of this Act;

(2) The regulations may provide that, subject to any terms and conditions prescribed, all the provisions, or any of the provisions, of this Act—

- (a) shall not have effect in relation to any prescribed dealer who does not, or to any prescribed class of dealers who do not, deal in securities for or on behalf of any other person; or
- (b) shall have effect in relation to any such dealer or class of dealers to such extent as is prescribed; or
- (c) shall not have effect in relation to any prescribed investment adviser, or class of investment advisers, who have no interest, either directly or indirectly in any securities upon which he or they give advice and receive no commission or other consideration for giving that advice,

and this Act shall have effect accordingly.

(3) The regulations may provide that paragraph (d), (e) or (f) of the definition of “investment adviser” in subsection one of this section shall not apply, or shall cease to apply, or shall apply subject to specified terms and conditions, on and after a specified day (being a day that is not less than twenty-one days after the regulation takes effect) to or in respect of a specified person or a specified class of persons and that definition shall, in relation to that person or class of persons, be deemed, after that day, to have been modified to the extent of the operation of the regulations as from time to time in force.

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PART II.

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CORPORATE AFFAIRS COMMISSION.

5. (1) The Governor may, subject to this Act, appoint a Commissioner for Corporate Affairs who is hereby constituted a corporation sole under the corporate name of "Corporate Affairs Commission", with perpetual succession and an official seal.

Constitution
and powers
of Corporate
Affairs
Commission.

(2) The Commission is hereby charged with the administration of this Act and shall have, and may exercise, such powers, authorities, duties and functions as are conferred or imposed upon it by or under this or any other Act.

(3) The Commission may acquire, hold and dispose of real and personal property and shall be capable of suing and being sued in its corporate name.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to any document and shall presume that it was duly affixed.

(5) The Commissioner shall be appointed for a term, not exceeding seven years specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for re-appointment from time to time for a term, not exceeding seven years, specified in the instrument of his re-appointment.

(6) A person who is of or above the age of sixty-five years shall not be appointed as Commissioner or continue in that office.

(7) The Commissioner shall devote the whole of his time to the duties of his office and shall receive such salary and allowances as the Governor may from time to time determine.

(8) The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment by the Governor of the Commissioner and he shall not, in his capacity as Commissioner, be subject to the provisions of that Act during his term of office.

(9)

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No. 35, 1970 (9) The Commissioner shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if he engages during his term of office in any paid employment outside the duties of his office;
- (c) if he becomes bankrupt, compounds with his creditors or makes any assignment of his salary, allowances or estate for their benefit;
- (d) if he absents himself from duty for a period exceeding fourteen consecutive days except—
 - (i) on leave granted by the Minister;
 - (ii) through illness or other unavoidable cause; or
 - (iii) pursuant to a right preserved by subsection twelve of this section;
- (e) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958;
- (f) if he is convicted in the State of a felony or of a misdemeanour that is punishable by imprisonment for twelve months or upwards or if he is convicted elsewhere than in the State of an offence that, if committed in the State, would be a felony or a misdemeanour so punishable;
- (g) if he resigns his office by writing under his hand addressed to the Governor;
- (h) if he is removed from office by the Governor for misbehaviour or incompetence;
- (i) on the day on which he attains the age of sixty-five years.

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(10) A person who, immediately before his appointment as Commissioner is an officer of the Public Service and who ceases to be Commissioner from any cause whatever (otherwise than in pursuance of subsection nine (paragraph (g) excepted) or of this section) shall if he has not attained the age of sixty years be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Commissioner. No. 35, 1970

(11) Nothing in this section shall affect rights accrued or accruing under the Public Service Act, 1902, or the Superannuation Act, 1916, to a person appointed as Commissioner who was at any time before his appointment an officer of the Public Service or an employee within the meaning of the Superannuation Act, 1916.

(12) An officer of the Public Service or a person who is an employee within the meaning of the Superannuation Act, 1916, who is appointed as Commissioner shall continue to contribute to any fund or account and shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he were an officer within the meaning of the Public Service Act, 1902, or an employee within the meaning of the Superannuation Act, 1916, and for that purpose his service as Commissioner shall be deemed to be service for the purpose of those Acts.

(13) Where a Commissioner referred to in subsection twelve of this section contributes to a fund or account so referred to, the employer by whom he was employed immediately before his appointment as Commissioner shall pay to the State Superannuation Board such amounts as would have been payable if the Commissioner had remained an employee within the meaning of the Superannuation Act, 1916, and had continued to be employed by that employer at the same salary as that he receives as Commissioner.

(14) A Commissioner shall not be entitled, in respect of the same period of service, to a benefit under this Act and another Act.

(15)

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(15) The Governor may, under and in accordance with the Public Service Act, 1902, appoint and employ such officers and employees as may be necessary for the exercise and discharge by the Commission of its powers, authorities, duties and functions.

(16) Until the first appointment is made pursuant to subsection one of this section, the person for the time being holding or acting in the office of Registrar of Companies under the Companies Act, 1961, shall be deemed to be the Commissioner for Corporate Affairs but the provisions of subsections five, seven, eight and ten of this section shall not apply to or in respect of the Commissioner holding office pursuant to this subsection.

PART III.

STOCK EXCHANGES.

Establishment, &c., of stock markets.

6. A person shall not establish or maintain or assist in establishing or maintaining, or hold himself out as providing or maintaining, a stock market that is not the stock market of a stock exchange.

Penalty : First offence—one thousand dollars. Second or subsequent offence—five thousand dollars.

Power for Minister to approve as stock exchange.

7. Where application for approval of a body corporate as a stock exchange is made to the Minister in the prescribed form and manner, the Minister may in writing approve the body corporate as a stock exchange if he is satisfied—

- (a) that at least twenty members of the body will carry on business dealing in securities independently of and in competition with each other;
- (b) that the rules of the body make satisfactory provision—

- (i) for the exclusion from membership of persons who are not of good character and high business integrity;

(ii)

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- (ii) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of or failure to comply with the rules of the stock exchange or the provisions of this Act; No. 35, 1970
- (iii) with respect to the conditions under which securities may be listed for trading in the market proposed to be conducted by the body;
- (iv) with respect to the conditions governing dealings in securities by members;
- (v) with respect to the class or classes of securities that may be dealt in by members; and
- (vi) generally for the carrying on of the business of the stock exchange with due regard to the interests of the public; and
- (c) that the interests of the public will be served by the granting of his approval.

8. (1) Where an amendment is made, whether by way of rescission, alteration or addition, to the rules of a stock exchange the committee of the stock exchange shall forward written notice thereof to the Minister. Minister to be notified of amendments to rules.

(2) If notice in accordance with the provisions of subsection one of this section is not given within twenty-one days after an amendment is made to the rules of a stock exchange, the amendment shall cease to have force and effect.

(3) The Minister may, within twenty-one days after receipt of notice under subsection one of this section give notice to the stock exchange concerned that he disallows the whole or any specified part of the amendment to which the notice relates and thereupon the amendment shall, to the extent of the disallowance, cease to have force and effect.

(4) A notice under this section may be served personally or by post.

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PART IV.

LICENCES.

Application of Part. **9.** (1) The provisions of this Part do not apply to or in respect of an exempt dealer.

(2) Where a person would, but for this subsection, be liable to a penalty for not being the holder of a particular type of licence, he shall not be so liable—

- (a) until the expiration of the period of three months next succeeding the commencement of this Part; or
- (b) where, before the expiration of that period, he applies for that type of licence, until—
 - (i) he is issued with such a licence; or
 - (ii) his application is refused.

Dealer's licence. **10.** A person shall not carry on a business of dealing in securities or hold himself out as carrying on such a business unless he is the holder of a dealer's licence under this Part.

Investment adviser's licence. **11.** A person shall not act as an investment adviser or hold himself out to be an investment adviser unless he is the holder of an investment adviser's licence under this Part.

Representative's licence. **12.** A person shall not—

- (a) act as a dealer's representative unless he is the holder of a dealer's representative's licence under this Part; or
- (b) act as an investment representative unless he is the holder of an investment representative's licence under this Part.

13.

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13. (1) An application for a licence or for renewal of a licence shall be made to the Commission in the prescribed form and manner and shall be accompanied by the prescribed fee and, in the case of an application for renewal of a licence, shall be made not later than one month before the day on which the licence, if not renewed, would expire.

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Applications
for licence
or renewal.

(2) The Commission may require an applicant to supply it with any further information it considers necessary in relation to the application.

(3) The Commission shall not refuse to grant or renew a licence without first giving the applicant for the licence or renewal an opportunity of being heard.

14. The Commission shall grant or renew a dealer's licence or an investment adviser's licence if—

Commission
to grant
or renew
dealer's
licence or
investment
adviser's
licence in
certain
circum-
stances.

(a) after consideration—

(i) where the applicant is an individual—of the character and financial position of the applicant; or

(ii) where the applicant is a corporation—of the character of the directors and secretary of the corporation and of the corporation's financial position; and

(b) after consideration of the interests of the public, it is of opinion that the applicant is a fit and proper person to hold the licence applied for.

15. The Commission shall grant or renew a representative's licence if after consideration of the application it is of opinion that the applicant is a fit and proper person to hold the licence applied for.

Commission
to grant
or renew
representa-
tive's licence
in certain
circum-
stances.

16. (1) The Commission may grant or renew a licence subject to any conditions or restrictions it thinks fit.

Power to
Commission
to impose
conditions
or
restrictions.

(2)

No. 35, 1970 (2) A person who contravenes or fails to comply with any condition of or restriction applicable to his licence shall be guilty of an offence.

Security to be lodged in respect of dealer's licence. **17.** (1) Except in the case of a dealer who is a stockbroker, the Commission shall not grant or renew a dealer's licence unless there is lodged with it a security in the sum of ten thousand dollars in respect of the licence.

(2) A security required by this section shall be by cash deposit or by such other method as the Commission in any particular case allows.

(3) A security lodged under this section shall be applied by the Commission subject to and in accordance with the regulations.

(4) The regulations may provide that, subject to any terms and conditions prescribed, this section shall not apply to a person who is a stockbroker or dealer within the meaning of any corresponding law.

Period of licence. **18.** (1) Subject to subsection two of this section a licence shall expire one year after the date thereof.

(2) A licence that has been renewed in accordance with the provisions of this Part shall continue in force for a period of twelve months next succeeding the date upon which but for its renewal it would have expired.

Power to court to cancel licence, &c. **19.** (1) The holder of a licence may be summoned before a court of petty sessions consisting of a stipendiary magistrate sitting alone to show cause why his licence should not be cancelled and why he should not be disqualified either permanently or temporarily from holding such a licence—

(a) in the case of an individual, on the ground that he is not a fit and proper person to hold the licence ;
or

(b)

- (b) in the case of a corporation, on the ground that the corporation is not a fit and proper person to hold the licence or that any director or secretary of the corporation is not a fit and proper person to be a director or secretary (as the case may be) of a corporation holding such a licence. No. 35, 1970

(2) On being satisfied that a ground for cancellation of a licence has been established the court may order that the licence be cancelled and that the holder of the licence be disqualified either permanently or for such period as the court specifies from holding another such licence.

(3) The Commission shall, before giving effect to an order made under subsection two of this section—

- (a) await the expiration of the time for appeal; or
- (b) where an appeal is lodged, await the decision of the court on the appeal,

and, in the case referred to in paragraph (b) of this subsection, shall give effect to the decision of the court on the appeal.

20. (1) A person who is aggrieved by a decision of the Commission under this Part or by a decision of a court under section nineteen of this Act may within thirty days after that decision appeal to the District Court in accordance with rules of court. Appeal.

(2) Any appeal under this section shall be by way of re-hearing and the decision of the court shall be final and shall be given effect to by the Commission.

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Application
of Part.

PART V.

ACCOUNTS AND AUDIT.

21. (1) This Part—

(a) applies to and in relation to—

- (i) the business of a dealer who is a stockbroker within the meaning of this Act whether that business is carried on in the State or elsewhere; and
- (ii) the business of a dealer who is not a stockbroker within the meaning of this Act or of any corresponding law in so far as that business is carried on in the State; and

(b) does not apply to or in relation to the business of a dealer who is a stockbroker within the meaning of any corresponding law.

(2) In this Part, except to the extent that the context or subject-matter otherwise indicates or requires any reference to books, accounts, records, securities, trust accounts or business of or in relation to a dealer who carries on business in partnership shall be read and construed as a reference to books, accounts, records, securities, trust accounts or business (as the case requires) of or in relation to the partnership.

Accounts to
be kept by
dealers.

22. (1) A dealer shall keep or cause to be kept in written or printed form in the English language such accounting and other records as will sufficiently explain the transactions and financial position of his business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time and shall cause those records to be kept in such a manner as to enable them to be conveniently and properly audited.

(2) If accounting and other records are kept by a dealer at a place outside the State the dealer shall cause to be sent to and kept at a place in the State such statements and
returns

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returns with respect to the business dealt with in those records as will enable to be prepared true and fair profit and loss accounts and balance-sheet. No. 35, 1970

(3) Without affecting the generality of subsection one of this section, a dealer shall keep or cause to be kept—

- (a) a Bought and Sold Book recording the name of the buyer and seller respectively of every security bought or sold by the dealer in the course of his business;
- (b) a Scrip Receipt Book containing copies of acknowledgments of receipt of securities received by the dealer from clients for sale or safe custody and clearly showing the name or names in which the particular securities are registered;
- (c) a Cash Book containing entries of all amounts paid or received by the dealer in the course of his business;
- (d) a Journal;
- (e) a Ledger or Ledgers showing all transactions—
 - (i) with clients of the dealer;
 - (ii) with other dealers; and
 - (iii) in respect of nominal or private accounts;
- (f) a General Scrip Register recording the receipt and disposal by the dealer of all securities other than those dealt with in the Safe Custody Scrip Register;
- (g) a Safe Custody Scrip Register recording all securities held by the dealer for safe custody; and
- (h) an Underwriting Register recording all underwriting and sub-underwriting transactions entered into by the dealer.

(4) Every entry in a Safe Custody Scrip Register and in an Underwriting Register kept by a dealer shall be dated and initialled by the person making the entry.

(5)

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(5) For the purposes of this section any account or record required to be kept by a dealer may be kept either by making entries in a bound book or by recording the matters in question in any other manner.

(6) Where any account or record required by this section to be kept by a dealer is not kept by making entries in a bound book, the dealer shall take reasonable precautions for guarding against falsification and for facilitating discovery of any falsification.

Certain moneys received by dealers to be paid into a trust account.

23. (1) A dealer shall establish and keep in a bank or banks in the State one or more trust accounts designated or evidenced as such into which he shall pay—

- (a) all amounts (less any brokerage and other proper charges) which are received from or on account of any person (other than a stockbroker) for the purchase of securities and are not attributable to securities delivered to the dealer before or within three bank trading days after receipt of such amounts; and
- (b) all amounts (less any brokerage and other proper charges) which are received for or on account of any person (other than a stockbroker) from the sale of securities and are not paid to such person or as such person directs within three bank trading days after receipt of such amounts.

(2) Moneys required by this section to be paid into a trust account shall be so paid within three bank trading days after they are received by the dealer.

(3) A person who—

- (a) contravenes or fails to comply with any provision of this section shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars; or

(b)

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- (b) with intent to defraud contravenes or fails to comply with any provision of this section shall be guilty of an offence and liable on conviction on indictment to a penalty not exceeding one thousand dollars or to imprisonment for not more than two years or to both such penalty and imprisonment.

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(4) Notwithstanding anything in this section where any moneys required by this section to be paid into a trust account are received by a dealer in another State or in a Territory of the Commonwealth those moneys may be paid into a trust account established and kept by the dealer in a bank in that State or Territory.

24. A dealer shall not withdraw any moneys from a trust account except for the purpose of making a payment—
- (a) to the person entitled thereto;
 - (b) to a stock exchange in accordance with the provisions of section forty of this Act; or
 - (c) that is otherwise authorised by law.

Purposes for which money may be withdrawn from trust account.

25. Save as otherwise provided in this Part, moneys held in a trust account shall not be available for payment of the debts of a dealer or be liable to be paid or taken in execution under the order or process of any court.

Moneys in trust accounts not available for payment of debts, &c.

26. Nothing in this Part shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any moneys held in a trust account or against or upon any moneys received for the purchase of securities or from the sale of securities before such moneys are paid into a trust account.

Claims and liens not affected.

27. A dealer shall appoint an auditor to audit his accounts and where for any reason the auditor ceases to hold that office the dealer shall within fourteen days appoint another auditor.

Dealer to appoint auditor.

28.

No. 35, 1970 **28.** (1) A dealer shall on or before the thirty-first day of August in each year or before such later day as is specified under subsection two of this section lodge with the relevant authority an auditor's report, containing information on such matters as are prescribed, for the year ending on the preceding thirtieth day of June.

Dealer to lodge auditor's report.

(2) The relevant authority may for special and exceptional reasons grant an extension of time not exceeding four weeks for the lodging of a report under this section.

(3) If a dealer fails to comply with the provisions of subsection one of this section the relevant authority shall forthwith report the matter to the Minister.

29. Where in the performance of his duties as auditor for a dealer an auditor becomes aware of any matter which in his opinion may adversely affect the financial position of the dealer to a material extent or constitutes a breach of section twenty-two, twenty-three or twenty-four of this Act he shall within seven days send a report in writing on such matter to the relevant authority and a copy thereof to the dealer.

Auditor to send report to relevant authority in certain cases.

30. (1) If, after consideration of an auditor's report furnished under section twenty-nine of this Act, a relevant authority is not satisfied—

Report of auditor to be forwarded to Minister in certain cases.

- (a) that the financial position of the dealer in respect of whom the report is made is such as to enable him to meet all his commitments as a dealer; and
- (b) that the dealer has complied with the requirements of this Act,

the relevant authority shall, and for any other reason which the authority thinks proper may, forward the report to the Minister with any further report thereon which it thinks proper to make.

(2) It shall be a defence to any proceedings in defamation in respect of any statement made in a report by an auditor under subsection one of this section or in any further

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further report made under that subsection by a relevant authority if the defendant satisfies the court that the statement was made without malice. No. 35, 1970

31. (1) Where the Minister has received—

(a) a report under subsection three of section twenty-eight of this Act from a relevant authority; or

Power to
Minister
to appoint
independent
auditor.

(b) an auditor's report forwarded to him pursuant to section thirty of this Act by a relevant authority,

he may, if he is satisfied that it is in the interests of the dealer concerned, the dealer's clients or the public generally to do so, appoint in writing an independent auditor to examine, audit and report either generally or in relation to any particular matter upon the books, accounts and records of and securities held by the dealer.

(2) Where the Minister is of opinion that the whole or any part of the costs and expenses of an auditor appointed by him under this section should be borne by the dealer or relevant authority concerned, he may, by order in writing, direct the dealer or relevant authority to pay a specified amount, being the whole or part of those costs and expenses, within the time and in the manner specified.

(3) Where a dealer or relevant authority has failed to comply with an order of the Minister under subsection two of this section, the amount specified in the order may be recovered in a court of competent jurisdiction as a debt due to the Crown.

32. (1) Upon receipt of an application in writing from a person who alleges that a dealer has failed to account to him in respect of any moneys or securities held or received by that dealer for or on his behalf the Minister may appoint in writing an independent auditor to examine, audit and report either generally or in relation to any particular matter upon the books, accounts and records of and securities held by that dealer.

Power to
Minister
to appoint
independent
auditor
upon
application
of client.

(2)

No. 35, 1970 (2) Every application under subsection one of this section shall state—

- (a) particulars of the circumstances under which the dealer received the moneys or securities in respect of which he is alleged to have failed to account;
- (b) particulars of those moneys or securities and of the transactions of the applicant and the dealer relating thereto; and
- (c) such other particulars as are prescribed.

(3) Every statement in any such application shall be verified by a statutory declaration made by the applicant and shall, if made bona fide and without malice, be privileged.

(4) The Minister shall not appoint an independent auditor under subsection one of this section unless he is satisfied—

- (a) that the applicant has good reason for making the application; and
- (b) that it is expedient in the interests of the dealer or the applicant or the public generally that the books, accounts and records of and securities held by the dealer should be examined, audited and reported upon.

Auditor to report to Minister.

33. An auditor appointed by the Minister under section thirty-one or thirty-two of this Act shall, upon the conclusion of the examination and audit in respect of which he was appointed, make a report thereon to the Minister.

Powers of auditors.

34. An auditor appointed by the Minister to examine and audit the books, accounts and records of and securities held by a dealer may for the purpose of carrying out the examination and audit—

- (a) examine on oath the dealer concerned and, where the dealer carries on business in partnership, any of the members of the partnership and any of the dealer's servants and agents and any other auditor appointed under this Act in relation to those books, accounts, records and securities;

(b)

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- (b) employ such persons as he considers necessary; and No. 35, 1970
- (c) by instrument in writing under his hand authorise any person employed by him to do, in relation to the examination and audit, any act or thing that he could himself do in his capacity as auditor, except to examine any person on oath or to exercise the powers conferred by this paragraph.

35. Except for the purpose of carrying into effect the provisions of this Act or so far as may be required for the purpose of any proceedings, civil or criminal, an auditor appointed by the Minister under section thirty-one or thirty-two of this Act and an employee of any such auditor shall not communicate any matter which may come to his knowledge in the performance of his duties as such an auditor or employee to any person other than the Minister, the relevant authority in relation to the dealer concerned, any other person specified by the Minister or that relevant authority and, in the case of an employee, the auditor by whom he is employed.

As to right of auditors and employees to communicate certain matters.

36. (1) Upon request by an auditor appointed by the Minister under section thirty-one or thirty-two of this Act or by a person who produces a written authority in that behalf given under paragraph (c) of section thirty-four of this Act—

Books, accounts and records to be produced upon demand.

- (a) a dealer and, where the dealer carries on business in partnership, the other members of the partnership and the dealer's servants and agents shall produce any books, accounts and records of and securities held by the dealer relating to his business; and
- (b) an auditor appointed by a dealer shall produce any books, accounts and records held by him relating to the business of the dealer.

(2)

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No. 35, 1970

(2) A dealer and, where the dealer carries on business in partnership, the other members of the partnership and the dealer's servants and agents and any auditor appointed by the dealer shall answer all questions relevant to an examination and audit which are put to him by an auditor appointed by the Minister under section thirty-one or thirty-two of this Act or by a person who produces a written authority in that behalf given under paragraph (c) of section thirty-four of this Act.

Penalty: On conviction on indictment, two thousand dollars or imprisonment for two years, or both.

Penalty for destroying concealing or altering records or sending records or other property out of the State.

37. (1) A person who, with intent to defeat the purposes of this Part or with intent to prevent, delay or obstruct the carrying out of any examination and audit under this Part—

- (a) destroys, conceals or alters any book, account, record or document relating to the business of a dealer; or
- (b) sends or attempts to send or conspires with any other person to send out of the State any such book, account, record or document or any property of any description belonging to or in the disposition of or under the control of a dealer,

shall be guilty of an offence.

Penalty: On conviction on indictment, two thousand dollars or imprisonment for two years, or both.

(2) If in a prosecution for an offence under subsection one of this section it is proved that the person charged—

- (a) destroyed, concealed or altered any book, account, record or document aforesaid; or

(b)

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- (b) sent or attempted to send or conspired to send out of the State any such book, account, record or document or any property aforesaid, No. 35, 1970

the onus of proving that in so doing he did not act with intent to defeat the purposes of this Part or with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Part shall lie on him.

38. Nothing contained in this Part shall prevent the committee of a stock exchange imposing on the members of that stock exchange any further obligations or requirements which the committee thinks fit with respect to—

- (a) the audit of accounts;
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of accounts, books and records.

Right of committee to impose obligations, &c., on members not affected by this Part.

PART VI.

INVESTMENT OF STOCKBROKERS' TRUST FUNDS.

39. In this Part—

“prescribed day” means—

- (a) in relation to a stockbroker who was carrying on business as a stockbroker at the commencement of section twenty-three of this Act and is so carrying on business on the first day of July next succeeding that commencement—that first day of July; and
- (b) in relation to a stockbroker who commences to carry on business as a stockbroker after the commencement of section twenty-three of this Act and is so carrying on business on the first day of July next succeeding the day on which he commences so to carry on business—that first day of July;

Inter-pretation.

“relevant

No. 35, 1970

“relevant period” means—

- (a) in relation to a stockbroker referred to in paragraph (a) of the definition of “prescribed day” in this section—the period of twelve months ending on the thirtieth day of June next succeeding the commencement of section twenty-three of this Act; and
- (b) in relation to a stockbroker referred to in paragraph (b) of that definition—the period of twelve months ending on the thirtieth day of June next succeeding the day on which he commences to carry on business as a stockbroker.

Certain moneys to be deposited with stock exchange. cf. Act No. 22, 1898, s. 42A.

40. (1) A stockbroker shall, out of the moneys that are received by him or by any firm of which he is a member and are required to be dealt with in accordance with section twenty-three of this Act—

- (a) cause to be deposited with the stock exchange of which he is a member, or by which his firm is recognised, on or before the prescribed day for the stockbroker, an amount that is not less than the prescribed part of the lowest balance in his or the firm’s trust account during the relevant period for the stockbroker; and
- (b) thereafter, during each period of twelve months ending on the thirtieth day of June, cause to be kept deposited with that stock exchange an amount that is not at any time less than the prescribed part of the aggregate of—
 - (i) the amount that was the lowest balance in his, or the firm’s, trust account on any day during that period or the period of twelve months ending on the immediately preceding thirtieth day of June; and

(ii)

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- (ii) an amount that, on the day on which the lowest balance or aggregate is ascertained for the purposes of subparagraph (i) of this paragraph, was standing upon deposit by the stockbroker or firm with that stock exchange in accordance with this section. No. 35, 1970

(2) Where two or more trust accounts are kept under section twenty-three of this Act on any day by a stockbroker or member firm, the aggregate of the balances of those trust accounts on that day shall, for the purposes of subsection one of this section, be deemed to be the balance in the trust account of that stockbroker or that member firm on that day.

(3) The prescribed part of the amount, or aggregate of the amounts, referred to in subsection one of this section shall be one-third of that amount or aggregate, or such lesser fraction as may be prescribed.

(4) Nothing in this section requires a stockbroker—

- (a) to comply with paragraph (a) of subsection one of this section if the lowest balance referred to therein is less than three thousand dollars; or
- (b) to comply with paragraph (b) of that subsection if the aggregate amount referred to therein is less than three thousand dollars.

(5) Subject to subsection four of this section, where a stockbroker fails to comply with subsection one of this section he and, if he is a partner in a member firm, each of the partners in the firm, is guilty of an offence against this Act and liable to a penalty not exceeding five hundred dollars and a further penalty not exceeding one hundred dollars for every day during which the offence continues.

41. (1) All money deposited with a stock exchange pursuant to this Part shall be held by the stock exchange upon trust for the stockbroker or member firm on whose behalf it was deposited and shall be repaid to the stockbroker or member firm on demand.

Certain moneys to be held by stock exchange on trust.

cf. Act No. 22, 1898, s. 42B.

(2)

No. 35, 1970 (2) The fact that money referred to in subsection one of this section is repayable on demand does not affect the obligation of a stockbroker under section forty of this Act.

Investment of certain moneys by stock exchange. cf. Act No. 22, 1898, ss. 42B, 44A. **42.** (1) Until repayment thereof is demanded, money deposited with a stock exchange under section forty of this Act shall be invested by the stock exchange either on deposit with a bank in New South Wales bearing interest or upon loan to the Treasurer at a rate of interest not less than the maximum rate for the time being payable by a bank in New South Wales on a fixed deposit.

(2) The interest earned from investments made by a stock exchange under subsection one of this section shall be paid to the fidelity fund of the stock exchange established under Part VII of this Act.

As to deposits repaid. **43.** A deposit repaid pursuant to section forty-one of this Act shall be forthwith paid by the depositor into his trust account and if the deposit is not so paid the depositor, or where the depositor is a member firm each of the partners in the firm, shall be guilty of an offence.

Accounts of deposits. **44.** (1) A stock exchange shall establish and keep proper accounts of all deposits and shall, as soon as practicable after each quarter day, cause a balance-sheet to be made out as at that quarter day.

(2) The committee of a stock exchange shall appoint an auditor to audit the accounts of the stock exchange relating to deposits.

(3) The auditor appointed by the committee of a stock exchange shall regularly and fully audit the accounts of the stock exchange relating to deposits and shall audit each balance-sheet and cause it to be laid before the committee not later than one month after the balance-sheet is made out.

(4)

Securities Industry.

(4) In this section "quarter day" means the last day of March, June, September and December. No. 35, 1970

- 45.** Nothing done under this Part shall affect—
- (a) any claim or lien which a depositor has upon or in relation to any deposit; or
- (b) the rights or remedies of any person other than a depositor.
- Claims, &c.,
not
affected by
this Part.

PART VII.

FIDELITY FUNDS.

46. In this Part, except to the extent that the context or subject-matter otherwise indicates or requires— Interpreta-
tion.

"Court" means the Supreme Court of New South Wales;

"stock exchange" in relation to a fidelity fund means the stock exchange which established the fund.

47. (1) A stock exchange shall establish and keep a fidelity fund which shall be administered by the committee on behalf of the stock exchange. Establish-
ment of
fidelity
funds.

(2) The assets of a fidelity fund shall be the property of the stock exchange but shall be kept separate from all other property of the stock exchange for the purposes set out in this Part.

48.

No. 35, 1970 **48.** The fidelity fund of a stock exchange shall consist of—

Moneys
constituting
fidelity
fund.

- (a) all moneys paid to the stock exchange by stock-brokers in accordance with the provisions of this Part;
- (b) the interest on moneys invested by the stock exchange under section forty-two of this Act;
- (c) the interest and profits from time to time accruing from the investment of the fund;
- (d) all moneys paid to the fund by the stock exchange;
- (e) all moneys recovered by or on behalf of the stock exchange in the exercise of any right of action conferred by this Part;
- (f) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the stock exchange under section sixty-eight of this Act; and
- (g) all other moneys lawfully paid into the fund.

Fund to be
kept in
separate
bank
account.

49. All moneys forming part of a fidelity fund shall, pending the investment or application thereof in accordance with this Part, be paid or transferred into a bank in the State to the credit of a separate account.

Payments
out of fund.

50. Subject to this Part, there shall from time to time be paid out of the fidelity fund of a stock exchange as required and in such order as the committee of the stock exchange deems proper—

- (a) the amount of all claims, including costs, allowed by the committee or established against the stock exchange under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the committee of the rights, powers and authorities vested in it by this Part in relation to the fund;

(c)

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-
- (c) all premiums payable in respect of contracts of No. 35, 1970 insurance or indemnity entered into by the committee under section sixty-eight of this Act;
 - (d) the expenses incurred or involved in the administration of the fund including the salaries and wages of persons employed by the committee in relation thereto; and
 - (e) all other moneys payable out of the fund in accordance with the provisions of this Act.

51. (1) A stock exchange shall establish and keep proper ^{Accounts of fund.} accounts of its fidelity fund and shall before the thirty-first day of August in each year cause a balance-sheet in respect of those accounts to be made out as at the preceding thirtieth day of June.

(2) The committee of a stock exchange shall appoint an auditor to audit the accounts of the fidelity fund of the stock exchange.

(3) The auditor appointed by the committee of a stock exchange shall regularly and fully audit the accounts of the fidelity fund and shall audit each balance-sheet and cause it to be laid before the committee not later than one month after the balance-sheet was made out.

52. (1) The committee of a stock exchange may appoint a management ^{Management sub-committee.} sub-committee of not less than three and not more than five persons being members of the stock exchange, one at least being also a member of the committee of the stock exchange.

(2) The committee of a stock exchange may by resolution delegate to a sub-committee appointed by it under this section all or any of its powers, authorities, duties and functions under this Part (other than under this section, section fifty-five, subsections three, four and five of section fifty-eight and section sixty).

(3)

*Securities Industry.***No. 35, 1970**

(3) Any power, authority, duty or function delegated under this section may be exercised by members forming a majority of the sub-committee as if by this Part that power, authority, duty or function had been conferred on a majority of the members of the sub-committee.

(4) Any delegation under this section may at any time be rescinded or varied.

(5) The committee of a stock exchange may at any time remove any member of a sub-committee appointed by it under this section and may fill any vacancy in the sub-committee howsoever arising.

Contribu-
tions to
fund.

53. (1) A person shall not be admitted to membership of a stock exchange or to partnership in a member firm until he has paid to the stock exchange or, in the case of a member firm, the stock exchange by which the firm is recognised, as a contribution to its fidelity fund such amount being not less than one hundred dollars as is determined by the stock exchange.

(2) A stockbroker shall on or before the thirty-first day of March in each year pay to the stock exchange of which he is a member or, if he is a partner in a member firm, the stock exchange by which the firm is recognised as a contribution to its fidelity fund such amount, being not less than one hundred dollars as is determined by the stock exchange.

Provisions
if fund
exceeds
\$2,000,000.

54. (1) In the event of the fidelity fund of a stock exchange amounting to a sum exceeding two million dollars—

(a) every stockbroker who has made twenty annual contributions to the fund, and in respect of whom no payment from the fund has been made or (if any such payment has been made) the fund has been fully reimbursed, shall subject to subsection two of this section be freed and discharged from further annual contributions to the fund;

(b)

Securities Industry.

- (b) on the retirement from business of a stockbroker referred to in paragraph (a) of this subsection, the committee of the stock exchange of which he was a member or, where he was a partner in a member firm, the stock exchange by which the firm was recognised may, in its discretion, cause to be paid to him the total amount of annual contributions made by him to the fund or such proportion thereof as is for the time being determined by the committee either generally or in relation to the particular stockbroker, either with or without simple interest thereon at a rate not exceeding three per centum per annum; and
- (c) on the death of a stockbroker so referred to without any payment having been made to him under paragraph (b) of this subsection the committee may in its discretion make such a payment either to his legal representative or to his widow or any dependant or dependants.

(2) Any determination of a committee under paragraph (b) of subsection one of this section shall be in writing and may be in respect of all or any class of stockbrokers or any particular stockbroker.

(3) The committee of a stock exchange may by notice in writing published in the Gazette—

- (a) suspend the operation of paragraph (b) or (c) of subsection one of this section; or
- (b) revoke any such suspension,

but where the operation of one of those paragraphs is for the time being suspended the committee shall not suspend the operation of the other.

(4) If the amount of the fidelity fund of a stock exchange that exceeded two million dollars is reduced below the sum of one million dollars, the committee may determine that a stockbroker who has been freed and discharged from

payment

Securities Industry.

No. 35, 1970 payment under subsection one of this section shall again be required, to such extent as it thinks fit, to pay annual contributions under section fifty-three of this Act and the stockbroker shall thereupon be liable to make contributions in accordance with that determination.

Levy in addition to annual contributions.

55. (1) If at any time the fidelity fund of a stock exchange is not sufficient to satisfy the liabilities that are then ascertained of the stock exchange in relation thereto, the committee may impose on every stockbroker liable to contribute to that fund a levy of such amount as it thinks fit, not exceeding five hundred dollars, for payment into the fund.

(2) The amount of a levy under this section shall be paid within the time and in the manner specified by the committee either generally or in relation to any particular case.

(3) No stockbroker shall be required to pay by way of levy under this section more than five thousand dollars in the aggregate, or more than one thousand dollars in any period of twelve months.

Power to stock exchange to make advances to fund.

56. (1) A stock exchange may from time to time from its general funds give or advance on such terms as the committee thinks fit any sums of money to its fidelity fund.

(2) Any moneys advanced under subsection one of this section may from time to time be repaid from the fidelity fund to the general funds of the stock exchange.

Investment of fund.

57. Any moneys in a fidelity fund of a stock exchange that are not immediately required for its purposes may be invested by the committee of the stock exchange in any manner in which trustees are for the time being authorised by law to invest trust funds or upon deposit with any corporation that is declared by the Governor, pursuant to paragraph (b) of subsection seven of section thirty-eight of the Companies Act, 1961, to be an authorised dealer in the short term money market.

58.

Securities Industry.

58. (1) Subject to this Part a fidelity fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss—

No. 35, 1970

Application
of fund.

- (a) from any defalcation committed by a sole trader who is liable to contribute to that fund, whether or not he has been freed and discharged from payment under section fifty-four of this Act, or by any of his clerks or servants in relation to any money or other property which, whether before or after the commencement of this Act, in the course of or in connection with the sole trader's business—
- (i) was entrusted to or received by the sole trader or any of his clerks or servants for or on behalf of any other person; or
 - (ii) (the sole trader being in respect of the money or other property either the sole trustee or a trustee with another person) was entrusted to or received by the sole trader or any of his clerks or servants as trustee or for or on behalf of the trustees of the said money or property; or
- (b) from any defalcation committed by the partners or by any of the partners in a member firm who are liable to contribute to that fund, whether or not they have been freed and discharged from payment under section fifty-four of this Act, or by any of the clerks or servants of such a member firm in relation to any money or other property which, whether before or after the commencement of this Act, in the course of or in connection with the business of that firm—
- (i) was entrusted to or received by the partners or any of the partners or any of the firm's clerks or servants for or on behalf of any other person; or

(ii)

No. 35, 1970

- (ii) (the partners or any of the partners being in respect of the money or other property either the sole trustee or trustees or trustee or trustees with any other person or persons) was entrusted to or received by the partners or any of the partners or any of the firm's clerks or servants as trustee or trustees or for or on behalf of the trustees of the money or property.

(2) Where no right to compensation arises under paragraph (a) or (b) of subsection one of this section, a fidelity fund may, subject to this Part, be applied for the purpose of paying to the Official Receiver in Bankruptcy an amount not greater than the amount that he certifies is required to make up or reduce the total deficiency arising by reason of the available assets of a bankrupt sole trader or partner in a member firm being insufficient to satisfy the admitted claims, arising out of transactions in securities, of creditors of the sole trader or partner.

(3) Save as otherwise provided in this section the total amount that may be paid under this Part—

- (a) to all persons who suffer loss through defalcations by any sole trader and through defalcations by any of his clerks or servants;
- (b) to all persons who suffer loss through defalcations by the partners or any of the partners in a member firm and through defalcations by any of the firm's clerks or servants; or
- (c) to the Official Receiver in Bankruptcy,

shall not in any event exceed in respect of that sole trader or that member firm the sum of two hundred and fifty thousand dollars but for the purposes of this subsection any amount paid from a fidelity fund shall to the extent to which the fund is subsequently reimbursed therefor be disregarded.

(4)

Securities Industry.

(4) If after taking into account all ascertained or contingent liabilities of the fidelity fund of a stock exchange the committee of the stock exchange considers that the assets of the fund so permit the committee may from time to time by notice that it causes to be published in the Gazette increase the total amount which may be applied from that fund pursuant to the provisions of subsection three of this section and from the date of that publication until the notice is revoked or varied the amount specified in the notice shall be the maximum total amount which may be applied as aforesaid. No. 35, 1970

(5) A notice under subsection four of this section may be revoked or varied by the committee by notice published in the Gazette and a notice which is so varied shall have effect accordingly.

(6) If in any particular case after taking into account all ascertained or contingent liabilities of the fidelity fund of a stock exchange the committee of the stock exchange considers that the assets of the fund so permit the committee may apply out of the fund such sum in excess of the total amount limited by or under this section as the committee in its absolute discretion thinks fit in or towards the compensation of persons who have suffered pecuniary loss as provided in subsection one of this section or in making a payment under subsection two of this section.

(7) For the purposes of this section "sole trader" or "partner in a member firm" includes a person who has been, but at the time of any defalcation or bankruptcy in question has ceased to be, a sole trader or a partner in a member firm if, at the time of the defalcation or bankruptcy the person claiming compensation or, as the case may be, the creditor had reasonable grounds for believing that person to be a sole trader or a partner in a member firm.

59. (1) Subject to this Part every person who suffers pecuniary loss as provided in subsection one of section fifty-eight of this Act shall be entitled to claim compensation from the appropriate fidelity fund and to take proceedings in the Court as hereinafter provided against the stock exchange to establish the claim. As to claims
against
fund.

(2)

No. 35, 1970

(2) Subject to subsection three of this section, a person shall in no case have any claim against a fidelity fund in respect of—

- (a) a defalcation committed before the commencement of this Act; or
- (b) a defalcation in respect of money or other property which prior to the commission of the defalcation had in the due course of the administration of a trust ceased to be under the sole control of the sole trader concerned or in the case of a member firm of the partner or partners concerned.

(3) Upon the amalgamation of The Sydney Stock Exchange Members' Fidelity Guarantee Fund, maintained pursuant to the articles of association of The Sydney Stock Exchange Limited, with the fidelity fund of The Sydney Stock Exchange Limited established under this Act, the fidelity fund so established shall be liable, in the manner and to the extent provided by those articles of association before any amendment thereof required to enable the amalgamation to be effected, for claims against The Sydney Stock Exchange Members' Fidelity Guarantee Fund arising before that amalgamation.

(4) Subject to this Part the amount which any claimant shall be entitled to claim as compensation from a fidelity fund shall be the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source other than the fidelity fund in reduction of the loss.

(5) In addition to any compensation payable under this Part, interest shall be payable out of a fidelity fund concerned on the amount of the compensation, less any amount attributable to costs and disbursements, at the rate of five per centum per annum calculated from the day upon which the defalcation was committed and continuing until the day upon which the claim is satisfied.

Securities Industry.

60. (1) Where all persons submitting claims pursuant to section fifty-nine of this Act have been fully compensated in accordance with the provisions of this Part for the loss suffered by them as a result of a defalcation committed by a partner in a member firm any other partner in that firm who has made payment to any person in compensation for loss suffered by him from the defalcation shall be subrogated to the extent of that payment to all the rights and remedies of that person against the fidelity fund concerned if the committee of the stock exchange is of opinion having regard to all the circumstances that he was in no way a party to the defalcation and that he acted honestly and reasonably in the matter.

No. 35, 1970
Rights of
innocent
partner in
relation to
fund.

(2) If any partner in a member firm feels aggrieved by the opinion of a committee under subsection one of this section he may within twenty-eight days after receipt of notice thereof appeal to the Court in accordance with rules of court.

(3) An appellant shall, on the same day as he lodges notice of appeal with the Court, lodge a copy thereof with the secretary of the committee against whose opinion he is appealing.

(4) The Court shall inquire into and decide upon the appeal which shall be in the nature of a re-hearing and, if the Court is of opinion having regard to all the circumstances that the appellant was in no way a party to the defalcation and that he acted honestly and reasonably in the matter, it may direct that the appellant shall to the extent of any payment made by him be subrogated to all the rights and remedies in relation to the fidelity fund concerned of the person to whom he has made payment in compensation as aforesaid.

61. (1) The committee of a stock exchange may cause to be published in a daily newspaper published and circulating generally in the State a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than three months after publication of the notice, on or before which claims for compensation from the fidelity fund, of the stock exchange, in relation to the person specified in the notice, may be made.

Notice
calling for
claims
against
fund.

(2)

Securities Industry.

No. 35, 1970 (2) A claim against a fidelity fund in respect of a defalcation or bankruptcy shall be made in writing to the committee—

- (a) where a notice under subsection one of this section has been published, on or before the date specified in the notice; or
- (b) where no such notice has been published—within six months after the claimant became aware of the defalcation or, as the case may be, within six months after the bankruptcy,

and any claim which is not so made shall be barred unless the committee otherwise determines.

(3) No action for damages shall lie against a stock exchange or against any member or employee of a stock exchange or of a committee or management sub-committee by reason of any notice published in good faith and without malice for the purposes of this section.

Power to
committee
to settle
claims.

62. (1) The committee of a stock exchange may, subject to this Part, allow and settle any proper claim against the fidelity fund of the stock exchange at any time after the commission of the defalcation, or after the bankruptcy, in respect of which the claim arose.

(2) Subject to subsection three of this section, a person shall not commence proceedings under this Part against a stock exchange without leave of the committee of the stock exchange or of the Court unless—

- (a) the committee has disallowed his claim; and
- (b) the claimant has exhausted all relevant rights of action and other legal remedies for recovery of the money or other property in respect of which the defalcation was committed available against the sole trader or the partners in the member firm in relation to whom or to which the claim arose and all other persons liable in respect of the loss suffered by the claimant.

(3)

Securities Industry.

(3) A person who has been refused leave by a committee to commence proceedings against a stock exchange under this Part may, in accordance with rules of court, apply to the Court for that leave, and the Court may make such order in the matter as it thinks fit. No. 35, 1970

(4) A committee after disallowing (whether wholly or partly) any claim against a fidelity fund shall serve notice of the disallowance in the prescribed form on the claimant or his solicitor.

(5) No proceedings against a stock exchange in respect of a claim which has been disallowed by the committee of the stock exchange shall be commenced after the expiration of three months after service of notice of disallowance under subsection four of this section.

(6) In any proceedings brought to establish a claim against the fidelity fund of a stock exchange evidence of any admission or confession by or other evidence which would be admissible against the stockbroker or other person by whom it is alleged a defalcation was committed shall be admissible to prove the commission of the defalcation notwithstanding that the stockbroker or other person is not the defendant in or a party to those proceedings, and all defences which would have been available to that stockbroker or person shall be available to the stock exchange.

(7) The committee of a stock exchange or, where proceedings are brought to establish a claim against the fidelity fund of the stock exchange, the Court, if satisfied that the defalcation on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the defalcation has not been convicted or prosecuted therefor or that the evidence on which the committee or Court (as the case may be) acts would not be sufficient to establish the guilt of that person upon a trial in respect of the defalcation.

No. 35, 1970 **63.** (1) Where in any proceedings brought to establish a claim against the fidelity fund of a stock exchange the Court is satisfied that the defalcation on which the claim is founded was actually committed and that otherwise the claimant has a valid claim the Court shall by order—

Form of order of Court establishing claim.

- (a) declare the fact and the date of the defalcation and the amount of the claim; and
- (b) direct that the committee concerned allow the claim as so declared and deal with it in accordance with the provisions of this Part.

(2) Any proceedings brought to establish a claim against the fidelity fund of a stock exchange shall be by action at law against the stock exchange as for a debt due by the stock exchange and, in any such action, all defences that would have been available to the stockbroker in relation to whom the claim arose shall be available to the stock exchange, and all questions of costs shall be in the discretion of the Court.

Power to committee to require production of securities, &c.

64. The committee of a stock exchange may at any time and from time to time require any person to produce and deliver any securities, documents or statements of evidence necessary to support any claim made against the fidelity fund of the stock exchange or necessary for the purpose either of exercising its rights against a sole trader or the partners in a member firm or any other person concerned or of enabling criminal proceedings to be taken against any person in respect of a defalcation and, in default of delivery of any such securities, documents or statements of evidence, the committee may disallow any claim under this Part made by the person required to produce and deliver them.

Subrogation of stock exchange to rights, &c., of claimant upon payment from fund.

65. On payment out of its fidelity fund of any moneys in respect of any claim under this Part a stock exchange shall be subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss suffered by him from the defalcation on which the claim was based.

66.

Securities Industry.

66. No moneys or other property belonging to a stock exchange other than the fidelity fund shall be available for the payment of any claim under this Part whether the claim is allowed by the committee or is made the subject of an order of the Court. **No. 35, 1970**
Payment of claims only from fund.

67. (1) Where the amount at credit in the fidelity fund of a stock exchange is insufficient to pay the whole amount of all claims against it which have been allowed or in respect of which orders of the Court have been made, then the amount at credit in the fund shall, subject to subsection two of this section, be apportioned between the claimants in such manner as the committee thinks equitable, and any such claim so far as it then remains unpaid shall be charged against future receipts of the fund and paid out of the fund when moneys are available therein. **Provision where fund insufficient to meet claims or where claims exceed total amount payable.**

(2) Where the aggregate of all claims against the fidelity fund of a stock exchange which have been allowed or in respect of which orders of the Court have been made in relation to defalcations by or in connection with a sole trader or member firm exceeds the total amount which may pursuant to subsection two of section fifty-eight of this Act be paid under this Part in respect of that sole trader or member firm, that total amount shall be apportioned between the claimants in such manner as the committee of the stock exchange thinks equitable and, upon payment out of the fund of the said total amount in accordance with that apportionment all such claims and any orders relating thereto and all other claims which may thereafter arise or be made in respect of defalcations by or in connection with that sole trader or member firm shall be absolutely discharged.

68. (1) A stock exchange may in its discretion enter into any contract with any person or body of persons corporate or unincorporate carrying on fidelity insurance business in the State whereby the stock exchange will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under this Part. **Power to committee to enter into contracts of insurance.**

(2)

No. 35, 1970 (2) A contract referred to in subsection one of this section may be entered into in relation to stockbrokers generally, or in relation to any particular stockbroker or stockbrokers named therein, or in relation to stockbrokers generally with the exclusion of any particular stockbroker or stockbrokers named therein.

(3) No action shall lie against a stock exchange or against any member or servant of a stock exchange or committee of a stock exchange or against any member of a management sub-committee of a stock exchange for injury alleged to have been suffered by any stockbroker by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to him.

Application
of insurance
moneys.

69. No claimant against the fidelity fund of a stock exchange shall have any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this Part in respect of that contract, or have any right or claim with respect to any moneys paid by the insurer in accordance with any such contract.

PART VIII.

TRADING IN SECURITIES.

False trading
and markets. 70. A person shall not create or cause to be created or do anything which is calculated to create, a false or misleading appearance of active trading in any securities on any stock market in the State, or a false or misleading appearance with respect to the market for, or the price of, any securities.

Market
rigging
transactions.

71. (1) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, any transactions in any class of securities which have the effect of raising or lowering the price of securities of that class for the purpose of inducing the purchase or sale of securities of that class by others.

(2)

Securities Industry.

(2) It shall be a defence to a prosecution under sub-section one of this section if the defendant proves that he acted without malice and solely to further or protect his own lawful interests. No. 35, 1970

(3) A person shall not, in consideration or anticipation of a reward or benefit, circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities will or is likely to rise or fall because of any act that to his knowledge is or would be a contravention of subsection one of this section.

72. (1) A person shall not by means of purchases or sales of any securities involving no change in the beneficial ownership of those securities, or by any fictitious transactions or devices inflate, depress or cause fluctuations in, the market price of any securities. Affecting market price by fictions.

(2) A purchase or sale of securities involves no change in beneficial ownership within the meaning of subsection one of this section if a person who held an interest in the securities before the purchase or sale or a person associated with the first-mentioned person in relation to those securities holds an interest in the securities after the purchase or sale.

(3) In determining whether a person held or holds an interest within the meaning of subsection two of this section the provisions of section 6A of the Companies Act, 1961, shall be applied and in applying those provisions any reference to shares shall be read as a reference to securities.

(4) For the purposes of subsection two of this section a person is associated with another person in relation to securities if the first-mentioned person is—

(a) a corporation that by virtue of subsection five of section six of the Companies Act, 1961, is deemed to be related to that other person;

(b)

Securities Industry.

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- (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or likely to act in relation to the securities;
- (c) a person who is accustomed or likely to act in accordance with the directions, instructions or wishes of that other person in relation to the securities;
- (d) a body corporate that is, or the directors of which are, accustomed or likely to act in accordance with the directions, instructions or wishes of that other person in relation to the securities; or
- (e) a body corporate in accordance with the directions, instructions or wishes of which or of the directors of which that other person is accustomed or likely to act in relation to the securities.

False or misleading statements about marketable securities.

73. A person shall not with respect to any securities, make any statement or disseminate any information which at the time it is made or disseminated, he knows or has reasonable grounds for knowing is false or misleading in a material particular.

Offences and penalty.

74. A person who contravenes any of the provisions of this Part shall be guilty of an offence against this Act and liable, on conviction on indictment, to a penalty not exceeding ten thousand dollars or to imprisonment for not more than five years or to both such penalty and imprisonment.

Convicted persons liable to pay compensation.

75. A person who is convicted of an offence under this Part shall be liable to pay compensation to any person who has purchased or sold any securities at a price affected by the act or transaction the subject of the offence for the damage suffered by him as a result of that purchase or sale.

PART

PART IX.

No. 35, 1970

GENERAL.

76. (1) The Governor may make regulations for or with **Regulations.** respect to—

- (a) regulating advertisements relating to securities;
- (b) prescribing forms for the purposes of this Act;
- (c) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act;
- (d) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

(2) Save as otherwise expressly provided in this Act the regulations—

- (a) may be of general or specifically limited application; and
- (b) may impose a penalty of not more than two hundred dollars for any contravention thereof.

77. A person who is not a stockbroker within the meaning of this Act shall not take or use or by inference adopt the name or title of stockbroker or take or use or have attached to or exhibited at any place any name, title or description implying or tending to give rise to the belief that he is a stockbroker. **Restrictions on use of "stock-broker".**

78. (1) A person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and, where no penalty is expressly provided, shall be liable to a penalty not exceeding five hundred dollars. **Offences and penalty.**

(2)

No. 35, 1970
— (2) Where a person, being a corporation, is guilty of an offence against this Act any director, manager, secretary or other officer of the corporation who was knowingly a party to the offence shall also be guilty of that offence.

(3) Except where this Act otherwise provides, offences against this Act shall be punishable on summary conviction.