

SECURITIES INDUSTRY ACT.

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 3, 1976.

An Act to consolidate and amend the law with respect to the regulation and control of trading in securities, the licensing of persons dealing in securities and the establishment and administration by stock exchanges of fidelity funds. [Assented to, 7th January, 1976.]

BE

Securities Industry.

BE it enacted by the Queen's Most Excellent Majesty, by **No. 3, 1976**
 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.

1. (1) This Act may be cited as the "Securities Industry Act, 1975". Short title and commencement.

(2) This section and section 2 commence on the date of assent to this Act.

(3) Except as provided in subsection (2), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

2. This Act is divided, as follows :—

Division of Act.

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—ADMINISTRATION—*ss.* 7–26.

DIVISION 1.—*General*—*ss.* 7–15.

DIVISION 2.—*Investigations*—*ss.* 16–26.

PART III.—STOCK EXCHANGES—*ss.* 27–31.

PART IV.—LICENCES—*ss.* 32–49.

PART V.—CONDUCT OF SECURITIES BUSINESS—*ss.* 50–54.

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PART VI.—ACCOUNTS AND AUDIT—*ss.* 55–72.PART VII.—REGISTERS OF INTERESTS IN SECURITIES—*ss.* 73–80.PART VIII.—DEPOSITS WITH STOCK EXCHANGES—*ss.* 81–85.PART IX.—FIDELITY FUNDS—*ss.* 86–108.PART X.—TRADING IN SECURITIES—*ss.* 109–116.PART XI.—MISCELLANEOUS—*ss.* 117–132.PART XII.—THE CORPORATE AFFAIRS COMMISSION—*ss.* 133–144.

SCHEDULES.

Repeals,
savings and
transitional
provisions.

3. (1) Each Act specified in Column 1 of Schedule 1 is, to the extent specified opposite that Act in Column 2 of Schedule 1, repealed.

(2) Schedule 2 has effect.

Interpre-
tation.

4. (1) In this Act unless the contrary intention appears—

“arbitrage transaction” means a purchase or sale of securities effected in the ordinary course of trading on a stock market together with an offsetting sale or purchase of those securities effected at the same time, or at as nearly the same time as practicable, in the ordinary course of trading on another stock market for the purpose of obtaining a profit from the difference between the prices of those securities in the two stock markets;

“banker’s

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“banker’s books” means—

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- (a) books of a banker;
- (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a banker; and
- (c) securities or documents of title to securities in the possession or under the control of a banker whether by way of pledge or otherwise;

“books” includes any account, deed, writing or document and any other record of information however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

“business rules” in relation to a body corporate that maintains or provides, or proposes to maintain or provide, a stock market, means rules, regulations or by-laws—

- (a) governing the activities or conduct of the body corporate or of its members; or
- (b) governing the activities or conduct of other persons in relation to that stock market—

being rules, regulations or by-laws made by the body corporate or contained in the memorandum of association or the articles of association of the body corporate;

“Commission” means the Corporate Affairs Commission constituted under Part XII;

“Commissioner”

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“Commissioner” means the Commissioner for Corporate Affairs holding office under Part XII;

“committee”, in relation to a stock exchange, being a body corporate, means the committee of management, board of directors or other governing authority of the stock exchange;

“corresponding law” means a law of another State or of a Territory of the Commonwealth, being a law in respect of which a declaration referred to in subsection (10) is in force;

“Court” means the Supreme Court of New South Wales;

“dealer” means—

(a) a person who carries on a business of dealing in securities; or

(b) two or more persons who together carry on a business of dealing in securities—

whether or not that business is part of, or is carried on in conjunction with, any other business;

“dealers licence” means a dealers licence granted under Part IV;

“dealer’s representative” means a person who is employed by, or acts for or by arrangement with a dealer, other than an exempt dealer, in connection with a business of dealing in securities carried on by the dealer;

“dealer’s

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“dealer’s representatives licence” means a dealer’s No. 3, 1976
representatives licence granted under Part IV;

“dealing”, in relation to securities, means (whether as principal or agent) acquiring, disposing of, subscribing for or underwriting securities or making or offering to make or inducing or attempting to induce a person to make or to offer to make an agreement—

- (a) for or with respect to acquiring, disposing of, subscribing for or underwriting securities; or
- (b) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for or underwrites the securities or to any of the parties to the agreement in relation to securities;

“declared law” means a law of a participating State, being a law in respect of which a declaration referred to in subsection (9) (b) is in force;

“director” includes a person occupying the position of a director of a body corporate by whatever name called and includes a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act;

“exempt dealer” means—

- (a) a corporation that is declared, pursuant to section 38 (7) (b) of the Companies Act, 1961, to be an authorised dealer in the short term money market;

(b)

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- (b) a body corporate that is incorporated within the Commonwealth and is a public authority or an instrumentality or agency of the Crown in right of any State or the Commonwealth;
- (c) a person who carries on a business of dealing in securities by reason that he is an official receiver or trustee within the meaning of the Bankruptcy Act 1966 of the Commonwealth;
- (d) a person who carries on a business of dealing in securities by reason that he is a receiver or a receiver and manager or other person appointed by a court to carry on that business;
- (e) subject to subsection (2), a person who is a personal representative of a deceased dealer and carries on a business of dealing in securities by reason of his appointment as such a personal representative;
- (f) a person who, as Master or Protective Commissioner within the meaning of the Mental Health Act, 1958, carries on a business of dealing in securities by reason of his powers under that Act; and
- (g) a body corporate that carries on, or holds itself out as carrying on, a business of dealing in debentures of that body corporate but does not carry on a business of dealing in any other securities;

“investment

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“investment adviser” means a person who carries on a No. 3, 1976 business of advising other persons, or in the course of a business carried on by him, issues or publishes analyses or reports concerning securities, but does not include—

- (a) a bank within the meaning of section 5 of the Banking Act 1959 of the Commonwealth or a bank constituted under a law of a State;
- (b) a body corporate authorised by a law of a State or Territory of the Commonwealth to take in its own name a grant of probate of the will of a deceased person or of letters of administration of the estate of a deceased person;
- (c) a body corporate registered under the law of the Commonwealth relating to life insurance;
- (d) a solicitor or accountant in public practice as such whose carrying on of that business is solely incidental to the practice of his profession; or
- (e) a person who is the proprietor or publisher of a newspaper or periodical that is generally available to the public otherwise than only on subscription who, only in such a newspaper or periodical of which he is the proprietor or publisher, advises other persons concerning securities or issues or publishes analyses or reports concerning securities, not being the proprietor or publisher of a newspaper or periodical whose principal or only object is to advise other persons concerning securities or to issue or publish analyses or reports concerning securities;

“investment

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“investment advisers licence” means an investment advisers licence granted under Part IV;

“investment representative” means a person who is employed by, or acts for or by arrangement with, an investment adviser, other than an investment adviser who is the holder of a dealers licence or is an exempt dealer, in connection with a business carried on by the investment adviser of advising other persons, or in the course of which analyses or reports are issued or published, concerning securities;

“investment representatives licence” means an investment representatives licence granted under Part IV;

“licence” means—

- (a) a dealers licence;
- (b) a dealer’s representatives licence;
- (c) an investment advisers licence; or
- (d) an investment representatives licence;

“listing rules”, in relation to a stock exchange, means rules governing or relating to—

- (a) the admission to, or removal from, the list of the stock exchange of bodies corporate, governments, unincorporate bodies or other persons for the purposes of the quotation by the stock exchange of securities of bodies corporate, governments, unincorporate bodies or other persons and for other purposes; or
- (b) the activities or conduct of bodies corporate, governments, unincorporate bodies and other persons who are admitted to that list,

whether

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whether those rules—

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- (c) are made by the stock exchange or are contained in the memorandum of association, or the articles of association, of the stock exchange; or
- (d) are made by another person and adopted by the stock exchange;

“marketable parcel” in relation to the disposal or acquisition of securities by a member of a stock exchange means a marketable parcel of those securities within the meaning of the business rules or listing rules of that stock exchange;

“member” in relation to a stock exchange means a person who is—

- (a) a member of the stock exchange who carries on a business of dealing in securities on his own account and not in partnership; or
- (b) a partner in a partnership that carries on a business of dealing in securities and is recognised by the stock exchange as a member firm;

“member firm”, in relation to a stock exchange, means a partnership that carries on a business of dealing in securities and is recognised by the stock exchange as a member firm;

“odd lot”, in relation to securities, means a number of securities other than a marketable parcel or a multiple of a marketable parcel of securities;

“officer”, in relation to a body corporate, includes—

- (a) a director, secretary or employee of the body corporate;

(b)

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- (b) a receiver and manager of the undertaking or any part of the undertaking of the body corporate appointed under a power contained in an instrument;
- (c) an official manager or a deputy official manager of the body corporate; and
- (d) a liquidator of the body corporate appointed in a voluntary winding up of the body corporate;

“participating State” means a State or Territory of the Commonwealth in respect of which a declaration referred to in subsection (9) (a) is in force;

“quarter day” means 31st March, 30th June, 30th September or 31st December;

“recognised dealer” means, subject to subsection (3), a person who is the holder of a dealers licence under a declared law of a participating State or under a corresponding previous law of that State;

“recognised dealer’s representative” means, subject to subsection (4), a person who is the holder of a dealer’s representatives licence under a declared law of a participating State or under a corresponding previous law of that State;

“recognised investment adviser” means, subject to subsection (3), a person who is the holder of an investment advisers licence under a declared law of a participating State or under a corresponding previous law of that State;

“recognised investment representative” means, subject to subsection (4), a person who is the holder of an investment representatives licence under a declared law of a participating State or under a corresponding previous law of that State;

“recognised

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“recognised licensee” means, subject to subsections (3) No. 3, 1976 and (4), a person who is a recognised dealer, recognised dealer’s representative, recognised investment adviser or recognised investment representative;

“representatives licence” means a dealer’s representatives licence or an investment representatives licence;

“securities” means—

- (a) debentures, stocks or bonds granted, issued or proposed to be issued by a government;
- (b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate or unincorporate;
- (c) any right or option in respect of any such debentures, stocks, shares, bonds or notes; or
- (d) an interest as defined in section 76 of the Companies Act, 1961;

“share” has the same meaning as in the Companies Act, 1961;

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

“stock exchange” means—

- (a) The Sydney Stock Exchange Limited;
- (b) Stock Exchange of Newcastle Limited; or
- (c) any other body corporate that is approved by the Minister under section 28;

“stock market” means a market, exchange or other place (whether or not in the State) at which, or a facility by means of which, securities are regularly offered for sale, purchase or exchange;

“trust

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“trust account” means a trust account opened and maintained under section 59 or a corresponding previous enactment;

“underwrite” includes sub-underwrite.

(2) A person who is a personal representative of a deceased dealer and carries on a business of dealing in securities by reason of his appointment as such a personal representative is an exempt dealer until the expiration of the period of six months after the date of the death of the dealer or until he is discharged or removed as such a personal representative or until the final distribution of the estate of the dealer, whichever first occurs.

(3) For the purposes of this Act, a person, being the holder of a dealers licence or an investment advisers licence under a law of a participating State, is not a recognised licensee unless—

- (a) in the case of a natural person, not being a partner in a firm, he is ordinarily resident in that State;
- (b) in the case of a natural person who is a partner in a firm, the principal place of business of the firm is in that State; or
- (c) in the case of a body corporate, the body corporate was incorporated in that State.

(4) For the purposes of this Act, a person, being the holder of a representatives licence under a law of a participating State, is not a recognised licensee unless the dealer or investment adviser by whom he is employed or for or by arrangement with whom he acts holds a licence as a dealer or investment adviser under a law of that State.

(5) In determining for the purposes of this Act whether a person carries on a business, or holds himself out as carrying on a business, of dealing in securities, regard shall not be had to an act done on behalf of the person by the holder of a dealers licence or by an exempt dealer or by a recognised dealer.

(6)

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(6) The provisions of section 12 (2) of the Companies Act, 1961, do not apply to or in respect of documents filed or lodged with the Commission under this Act. **Com- No. 3, 1976**

(7) In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended from time to time and to an Act passed in substitution for that Act.

(8) A reference to a body corporate in relation to securities includes a reference to a government, unincorporate body or other person that issues or makes available those securities.

(9) The Governor may by order declare—

- (a) a State or Territory of the Commonwealth to be a participating State for the purposes of this Act if—
- (i) the Interstate Corporate Affairs Agreement within the meaning of the Companies Act, 1961, has been signed on behalf of that State or Territory; and
 - (ii) there are in force in that State or Territory laws relating to the securities industry that, in the opinion of the Governor enable that State or Territory to have uniformity in administration and to enter into reciprocal arrangements as a participating State in accordance with the provisions of clause 2 (1) of that agreement; and
- (b) any law of that State or Territory to be a declared law for the purposes of this Act.

(10) The Governor may by order declare a law of another State or of a Territory of the Commonwealth to be a corresponding law for the purposes of this Act.

No. 3, 1976 **5.** (1) Subject to this section, a person has an interest in securities if he has any legal or equitable interest in those securities.
Interests in securities.

(2) Where a person—

- (a) has entered into a contract to purchase securities;
- (b) has a right, otherwise than by reason of having an interest under a trust, to have securities transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (c) has a right to acquire securities, or an interest in securities, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
- (d) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members) to exercise or control the exercise of a right attached to securities, not being securities of which he is the registered holder—

that person shall be deemed to have an interest in those securities.

(3) Where—

- (a) a take-over offer within the meaning of Part VIb of the Companies Act, 1961, or an enactment of another State or of a Territory of the Commonwealth that corresponds to that Part has been accepted in respect of a share, whether or not the take-over offer is subject to a condition; or

(b)

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- (b) an offer in respect of a share has been made in pursuance of an invitation within the meaning of that Part or such an enactment whether or not the offer is subject to a condition—

the person who made the take-over offer or issued the invitation, as the case may be, shall be deemed to have an interest in that share.

(4) Where the property subject to a trust consists of or includes securities and a person knows or ought reasonably to know—

- (a) that he has an interest under the trust; and
 (b) that the property subject to the trust consists of or includes those securities—

he shall be deemed to have an interest in those securities.

(5) Where a body corporate has an interest in securities and—

- (a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to those securities; or
 (b) a person is, persons associated with a person are, or a person and persons associated with him are, in a position to cast, or control the casting of, not less than three-twentieths of the maximum number of votes that might be cast at a general meeting of the body corporate—

that person shall be deemed to have an interest in those securities.

(6) A person shall not be deemed not to have an interest in securities by reason only that he has the interest in the securities jointly with another person.

(7)

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No. 3, 1976 (7) It is immaterial for the purposes of determining whether a person has an interest in securities, that the interest cannot be related to particular debentures, stocks, shares, bonds or notes or interests as defined in section 76 of the Companies Act, 1961.

(8) There shall be disregarded—

- (a) an interest in securities if the interest is that of a person who holds the securities as bare trustee;
- (b) an interest in securities of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in securities, being an interest held by him by reason of his holding a prescribed office; and
- (d) a prescribed interest in securities, being an interest of such person, or of the persons included in such class of persons, as is prescribed.

(9) An interest in securities shall not be disregarded by reason only of—

- (a) its remoteness; or
- (b) the manner in which it arose.

Associated persons.

6. (1) For the purposes of this Act, the following persons are associated with a person :—

- (a) a person who carries on a business of dealing in securities in partnership with the person ;
- (b) subject to subsection (2), a person who is a partner of the person otherwise than by reason that he carries on a business of dealing in securities in partnership with the person;

(c)

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- (c) a trustee of a trust in relation to which the person No. 3, 1976 benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (d) a person who is a director of a body corporate that carries on a business of dealing in securities of which the person is also a director;
- (e) subject to subsection (2), a person who is a director of a body corporate of which the person is a director, not being a body corporate that carries on a business of dealing in securities;
- (f) a corporation that by virtue of section 6 (5) of the Companies Act, 1961, is deemed to be related to the person;
- (g) a person in accordance with whose directions, instructions or wishes the person is accustomed, or is under an obligation, whether formal or informal, to act, in relation to the securities;
- (h) a person who is accustomed, or is under an obligation, whether formal or informal, to act, in accordance with the directions, instructions, or wishes of the person in relation to the securities;
- (i) a body corporate that is, or the directors of which are, accustomed, or are under an obligation, whether formal or informal, to act, in accordance with the directions, instructions or wishes of the person in relation to the securities; or
- (j) a body corporate in accordance with the directions, instructions, or wishes of which or of the directors of which the person is accustomed, or is under an obligation, whether formal or informal, to act, in relation to the securities.

(2)

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(2) Where, in proceedings under this Act, it is alleged that a person referred to in subsection (1) (b) or (e) was associated with another person at a particular time, that person shall be deemed not to have been so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) For the purposes of this Act, where two or more persons constitute a dealer, a person is associated with the dealer if he is associated with any of those persons.

PART II.—ADMINISTRATION.

DIVISION 1.—*General.*

Performance
of certain
functions,
&c., by
authorised
person.

7. (1) Except as otherwise expressly provided by this Act or any other Act, a power, authority, duty or function conferred or imposed by this Act or that other Act on the Commissioner or the Commission may be exercised or performed by a person authorised by the Commissioner or the Commission to exercise or perform that power, authority, duty or function.

(2) Without limiting the generality of subsection (1), a reference to the Commissioner or the Commission in subsection (3) or in section 8, 9, 30, 70, 78, 79, 118, 124 or 132 includes a reference to any person who is or has been authorised by the Commissioner or the Commission to perform a relevant power, authority, duty or function conferred or imposed by this Act on the Commissioner or the Commission.

(3) In the exercise or performance of its powers, authorities, duties and functions under this Act in relation to any of the matters referred to in clause 2 (1) of the Interstate Corporate Affairs Agreement within the meaning of the Companies Act, 1961, the Commission shall have regard to any determinations made by the Interstate Corporate Affairs Commission constituted under that agreement.

8.

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8. (1) For the purpose of ascertaining whether a person who is, or at any time has been, a dealer, an investment adviser, a dealer's representative or an investment representative is complying or has complied with the provisions of this Act that are or were applicable to him in that capacity and, where such a person is or was the holder of a licence, the conditions or restrictions (if any) subject to which the licence was granted, the Commissioner may inspect and make copies of or take extracts from any—

Inspection
of books,
&c., of
licensees
and others.

- (a) books, required by this Act or, in the case of a person who is or was the holder of a licence, by the conditions and restrictions to which the licence is or has been subject, to be kept by that person; and
- (b) banker's books, and the books of a dealer in so far as they relate to the business carried on by the first-mentioned person in his capacity as a dealer, an investment adviser, a dealer's representative or an investment representative.

(2) A person shall not make an inspection under this section unless he has made a declaration in the prescribed form to the effect that he will not make, except for the purposes of this Act or in the course of criminal proceedings or proceedings under this Act or the Companies Act, 1961, a record of, or divulge or communicate to another person, any information that he acquires by reason of the making of the inspection.

(3) Where, under a provision of a declared law of a participating State corresponding to this section, a person is authorised to inspect any books or banker's books required by or under that declared law to be kept by a person, the first-mentioned person—

- (a) shall have the same powers in the State in relation to any such books or banker's books in the State as he would have had if he had been authorised under subsection (1), the reference in that subsection to this Act were a reference to that declared law, the reference in that subsection to a licence were a

reference

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reference to a licence within the meaning of that declared law and the books or banker's books were books or banker's books referred to in that subsection; and

- (b) shall not exercise those powers in the State unless he has made a declaration under a provision of a declared law of the participating State corresponding to subsection (2).

(4) The powers that a person has under the declared law of a participating State that, by reason of subsection (3), may be exercised in New South Wales, may be exercised by the Commissioner or a person authorised by him where, in any particular case, the corresponding interstate officer of the participating State has authorised the Commission or person so to do.

(5) A person who—

- (a) makes an inspection under this section before he has made a declaration referred to in subsection (2) or (3); or
- (b) except for the purposes of this Act or in the course of criminal proceedings or proceedings under this Act or the Companies Act, 1961, after making such a declaration makes a record of or divulges or communicates to another person any information that he has acquired by reason of the making of the inspection—

is guilty of an offence and liable to a penalty not exceeding \$200.

(6) It is not an offence under subsection (5) to divulge or communicate information to the holder of a prescribed office.

(7) In this section, "prescribed office" means an office held under the law of a State or Territory of the Commonwealth that is declared by the regulations to be a prescribed office for the purposes of this section.

*Securities Industry.***9.** The Commission may require—

- (a) a dealer;
- (b) a recognised dealer;
- (c) an authorised trustee corporation within the meaning of the Marketable Securities Act, 1971; or
- (d) a person whom the Commission has reasonable cause to believe has acquired or disposed of securities as trustee for, or for or on behalf of, another person—

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Disclosure
to Commis-
sion.

to disclose to the Commission, in relation to any acquisition or disposal of securities, the name of the person from or to or through whom or on whose behalf the securities were acquired or disposed of and the nature of the instructions given to the person referred to in paragraph (a), (b), (c) or (d) in respect of the acquisition or disposal.

10. (1) If, on an application made by the Commission to the Court, there is shown to be reasonable cause to believe that a person has committed an offence in connection with dealing in securities and that evidence of the commission of an offence is to be found in any banker's books or in any books of or under the control of a dealer, investment adviser, dealer's representative or investment representative, whether or not those books or any of them relate to the business of a dealer, investment adviser, dealer's representative or investment representative, an order may be made—

Production
and inspec-
tion of
books where
offence
suspected.
Vic., s. 5c.
N.S.W.,
s. 5D.

- (a) authorising the Commissioner or a person nominated by the Commission and named in the order to inspect those books or any of them and make copies thereof or take extracts therefrom for the purpose of investigating and obtaining evidence of the offence;

or**(b)**

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(b) requiring a person who is specified in the order to produce to the Commissioner or a person so nominated and named in the order, at a place specified in the order, those books or such of them as are so specified in order to enable the Commissioner or that person to inspect them and make copies of them or take extracts from them for the purpose of investigating and obtaining evidence of the offence.

(2) An order under this section may not require books to be produced at a place other than the place of business of the person named in the order unless the Court is satisfied that the books are not required in the conduct of the business or that there are special reasons requiring the books to be produced at some other place.

(3) An appeal does not lie against an order or decision of the Court on or in relation to an application under this section.

Investigation of certain matters.

11. Where the Commission has reason to suspect that a person has committed an offence under a provision of this Act or has been guilty of fraud or of an offence against any other law with respect to dealing in securities, the Commission may make such investigation as the Commission thinks expedient for the due administration of this Act.

Power of Court to make certain orders.
Vic., s. 5B.
N.S.W., s. 5F.

12. (1) Where—

(a) on the application of the Commission, it appears to the Court that a person has committed an offence under this Act or any other Act or law relating to trading or dealing in securities or has contravened the conditions or restrictions of a licence or the business rules of a stock exchange or is about to do an act with respect to trading or dealing in securities that, if done, would be such an offence or contravention; or

(b)

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- (b) on the application of a stock exchange, it appears to the Court that a person has contravened the business rules of the stock exchange—

the Court may, without prejudice to any orders it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders, namely :—

- (c) in the case of persistent or continuing breaches of this Act or any other Act or law relating to trading or dealing in securities or the conditions or restrictions of a licence—an order restraining a person from carrying on a business of dealing in securities, acting as an investment adviser or as a dealer's representative or investment representative, or from holding himself out as so carrying on business or so acting;
- (d) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;
- (e) an order appointing a receiver of the property of a dealer or of property that is held by a dealer for or on behalf of another person, whether on trust or otherwise;
- (f) an order declaring a contract relating to securities to be void or voidable;
- (g) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; and
- (h) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) The Court shall, before making an order under subsection (1), satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice a person.

(3)

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(3) The Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(4) A person appointed by order of the Court under subsection (1) as a receiver of the property of a dealer—

- (a) may require the dealer to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property as may reasonably be required;
- (b) may acquire and take possession of any property of which he has been appointed receiver;
- (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the dealer might lawfully have dealt with the property; and
- (d) has such other powers in respect of the property as the Court specifies in the order.

(5) In subsections (1) (e) and (4), “property” in relation to a dealer includes money, securities and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with a business of dealing in securities carried on by the dealer.

(6) A person shall not contravene or fail to comply with—

- (a) an order under subsection (1) that is applicable to him; or
- (b) a requirement of a receiver appointed by order of the Court under subsection (1).

Penalty : \$2,000 or imprisonment for one year or both.

(7)

Securities Industry.

(7) Subsection (6) does not affect the powers of the No. 3, 1976 Court in relation to the punishment of contempts of the Court.

(8) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

13. (1) Subject to this section, a person appointed or employed for the purposes of this Act, or authorised to discharge any function of the Commissioner or the Commission or any function on behalf of the Commissioner or the Commission shall not, except to the extent necessary to perform his official duties, or discharge such a function, either directly or indirectly, whether before or after he ceases to be so appointed, employed or authorised, make a record of, or divulge or communicate to any person, any information that is gained by or conveyed to him by reason of his being so appointed, employed or authorised, or make use of any such information, for any purpose other than the discharge of his official duties or the discharge of that function.

Penalty : \$2,000 or imprisonment for one year or both.

(2) Nothing in subsection (1) precludes a person from producing a document to a court in the course of criminal proceedings or proceedings under this Act or the Companies Act, 1961, or from divulging or communicating to a court in the course of such proceedings any matter or thing coming under his notice in the performance of his official duties or in discharging a function referred to in that subsection.

(3) Where the regulations prescribe for the purposes of this section an office held under the law of the State or of the Commonwealth or of another State or a Territory of the Commonwealth, it is not a contravention of subsection (1) to divulge or communicate to the holder of that office information connected with the duties of the office.

14.

No. 3, 1976

Restriction
on dealings
by officers.

14. (1) Subject to subsection (2), a person who is or has been the Commissioner or is or has been a person appointed or employed for the purposes of this Act or is or has been authorised to discharge any function of the Commissioner or the Commission or any function on behalf of the Commissioner or the Commission and has, by reason that he is or was the Commissioner or is or was so appointed, employed or authorised, information that is not generally available but, if it were, would be likely materially to affect the price of any securities shall not deal in, or cause or procure any other person to deal in, those securities.

Penalty : \$10,000 or imprisonment for five years.

(2) Where a person to whom subsection (1) applies is in possession of information as mentioned in subsection (1) and deals in any securities in contravention of that subsection, he is liable to compensate any other party to the transaction for any loss sustained by that party by reason of any difference between the price at which the securities were dealt in in that transaction and the price at which they would be likely to have been dealt in in such a transaction at the time the first-mentioned transaction took place if the information had been generally available.

(3) The provisions of section 114 (3), (4), (5), (6) and (7) apply to and with respect to a liability to pay compensation under subsection (2) as if a reference in those provisions to section 114 (1) or (2) were a reference to subsection (2) of this section.

Employees,
&c., to
report
certain facts
to
Commis-
sioner.

15. (1) A person appointed or employed for the purposes of this Act or authorised to discharge any function of the Commissioner or the Commission or any function on behalf of the Commissioner or the Commission, who, in the course of his official duties or the discharge of the function, is required to consider any matter relating to—

(a) securities in which he has an interest;

(b)

Securities Industry.

(b) securities of the same class as securities in which he No. 3, 1976
has an interest; or

(c) a person or body—

- (i) with whom, or with which, he has been employed or associated; or
- (ii) of whom, or of which, he is or has been a client; or
- (iii) who was, or which was, a client of a person or body with whom, or with which, he was employed or associated—

shall forthwith so inform the Commissioner in writing.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding one year or both.

DIVISION 2.—Investigations.

16. In this Division, unless the contrary intention Interpre-
appears— tation.

“inspector” means an inspector appointed under this Division;

“prescribed person” means a person suspected or believed by an inspector, on reasonable grounds, to be capable of giving information concerning any matter being, or to be, investigated by the inspector pursuant to this Division.

17.

No. 3, 1976
 Appoint-
 ment of
 inspectors.
 N.S.W.,
 s. 5DA.

17. (1) The Minister, where it appears to him to be in the public interest to do so, by instrument in writing—

- (a) may appoint a person as an inspector to investigate any matters concerning dealing in securities and to report on the investigation in such manner as the Minister directs; and
- (b) may revoke any such appointment.

(2) The Minister shall, in an instrument appointing an inspector, specify—

- (a) full particulars of the terms and conditions to which the appointment is subject; and
- (b) the matters into which an investigation is to be made.

(3) Where—

- (a) under a law of another State or of a Territory of the Commonwealth corresponding to this Division, a person has been appointed to investigate matters concerning dealing in securities; and
- (b) the Minister is satisfied that in connection with that investigation it is expedient that an investigation be made into those matters in the State—

the Minister may, by instrument in writing appoint that person an inspector to investigate those matters in the State or, if the Minister is of the opinion that an investigation ought not to be made into all those matters, into such of those matters as he is satisfied ought to be investigated and specifies in the instrument.

(4) Where, under subsection (3), the Minister may appoint a person to investigate matters concerning dealing in securities in the State, he may by instrument in writing declare

that

Securities Industry.

that that person shall have such of the powers of an inspector appointed under subsection (1) in relation to the investigation subject to such terms and conditions as the Minister specifies in the instrument as if that person had been appointed an inspector under subsection (1) and upon that declaration that person shall have those powers. No. 3, 1976

(5) Where two or more inspectors have been appointed, whether by the same instrument or by different instruments, to investigate matters concerning dealing in securities, each of those inspectors may exercise his powers or perform his functions under this Division independently of the other inspector or inspectors.

(6) The Minister may, at any time by notice in writing given to an inspector, vary particulars or matters specified in the instrument of appointment, being particulars or matters referred to in subsection (2).

(7) Nothing in this or any other Act prevents the appointment of the Commission as an inspector and where the Commission is so appointed, any reference in this Act that includes an inspector includes the Commission.

(8) Section 20 (1) (a), in its application to the Commission as an inspector, shall be deemed to be amended by omitting the words “, the power to administer oaths, and the power to examine on oath”.

18. (1) An inspector may, by notice in the prescribed form given in the prescribed manner, require a prescribed person— Powers of inspectors.

- (a) to produce to the inspector such books relating to a matter to which his investigation relates as are in the custody or under the control of that person;
- (b) to give to the inspector all reasonable assistance in connection with the investigation; and
- (c) to appear before the inspector for examination on oath—

and may administer an oath to that person.

(2)

Securities Industry.

No. 3, 1976

(2) Where books are produced to an inspector under this section the inspector may take possession of the books for such period as he considers necessary for the purposes of his investigation, and during that period he shall permit a person who would be entitled to inspect any of those books if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(3) A prescribed person shall not—

- (a) refuse or fail to comply with a requirement of an inspector under subsection (1) to the extent to which that person is able to comply with it;
- (b) in purported compliance with such a requirement knowingly furnish information that is false or misleading in a material particular; or
- (c) when appearing before an inspector for examination in pursuance of such a requirement—
 - (i) make a statement that is false or misleading in a material particular; or
 - (ii) refuse or fail to take an oath.

Penalty: \$1,000.

(4) A duly qualified legal practitioner acting for a prescribed person—

- (a) may attend an examination of that person; and
- (b) may, to the extent that the inspector permits—
 - (i) address the inspector; and
 - (ii) examine that person—in relation to matters in respect of which the inspector has questioned him.

(5)

Securities Industry.

(5) A prescribed person is not excused from answering a question put to him by an inspector on the ground that the answer might tend to incriminate him but, where that person claims, before answering the question, that the answer might incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (3) or in relation to a charge of perjury in respect of the answer. No. 3, 1976

(6) A person who complies with a requirement of an inspector under subsection (1) does not incur a liability to any person by reason only of that compliance.

(7) A person who is required to attend for examination under this section is entitled to such allowances and expenses as are prescribed.

(8) Where an inspector is satisfied that a prescribed person has failed without lawful excuse to comply with a requirement of the inspector to the extent to which the person is able to comply with it, the inspector may certify the failure by writing under his hand to the Court.

(9) Where an inspector gives a certificate under subsection (8), the Court may inquire into the case and, if it is satisfied that the prescribed person to whom the certificate relates has failed without lawful excuse to comply with a requirement of the inspector to the extent to which he is able to comply with it—

- (a) may order the prescribed person to comply with that requirement within such period as is fixed by the Court; or
- (b) may punish the prescribed person in the same manner as if he had been guilty of contempt of the Court and if it sees fit, also make an order under paragraph (a).

(10)

No. 3, 1976

(10) An investigation under this Division shall, for the purposes of Part IV of the Evidence Act, 1898, be deemed to be a legal proceeding.

Notes of
examina-
tion.

19. (1) An inspector may cause notes of an examination made by him under this Division to be recorded in writing and to be read to or by the person examined, and may require that person to sign the notes and, subject to this section, notes signed by that person may be used in evidence in legal proceedings against him.

(2) A copy of the notes signed by a prescribed person shall be furnished by the inspector, without charge, to that person on request made by that person in writing.

(3) Notes made pursuant to this section that relate to a question the answer to which a prescribed person has claimed might tend to incriminate him may not be used as evidence in criminal proceedings other than proceedings under section 18 (3) or in relation to a charge of perjury in respect of the answer.

(4) Nothing in this section affects or limits the admissibility of other written evidence or of oral evidence.

(5) The Minister may give a copy of notes made pursuant to this section to a duly qualified legal practitioner who satisfies the Minister that he is acting for a person who is conducting, or is, in good faith, contemplating, legal proceedings in respect of any matters into which an investigation is made by an inspector under this Division.

(6) A duly qualified legal practitioner to whom a copy of notes is given under subsection (5) shall not use the notes otherwise than in connection with the institution or preparation of, and in the course of, legal proceedings, and shall not publish or communicate for any other purpose the notes or any part of the contents of them to any other person.

Penalty : \$200.

(7)

Securities Industry.

(7) Where a report is made under this Division, No. 3, 1976 notes that are recorded pursuant to this section in relation to that report shall be furnished with the report.

20. (1) An inspector may, by instrument in writing—
- (a) delegate all or any of his powers or functions under this Division (except this power of delegation, the power to administer oaths, and the power to examine on oath); and
- (b) vary or revoke a delegation given by him.

Delegation
of powers,
&c., by
inspector.

(2) A power or function delegated by an inspector may be exercised or performed by the delegate in accordance with the instrument of delegation as in force from time to time.

(3) A delegate shall, at the request of a prescribed person, produce the instrument of delegation for inspection.

(4) A delegation under this section by an inspector of a power or function does not prevent the exercise of the power or the performance of the function by the inspector.

21. (1) Subject to subsection (2), the Minister shall, unless in his opinion there is good reason for not divulging the contents of the report, give a copy of a report made to him under this Division to each person to whom, in the opinion of the Minister, the report ought to be given by reason that it relates to the affairs of that person to a material extent.

Report of
inspector.

(2) Subject to subsection (3), the Minister shall not give a copy of a report under this Division to a person if the Minister believes that legal proceedings that have been, or that in his opinion might be, instituted might be unduly prejudiced by giving the report to that person.

(3)

No. 3, 1976

(3) The Court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Division may order that a copy of the report be given to that person.

(4) The Minister may, if he is of the opinion that it is in the public interest to do so, cause the whole or any part of a report under this Division to be printed and published.

(5) If from a report under this Division or from the notes of an examination under this Division, it appears to the Minister that an offence may have been committed by a person and that a prosecution ought to be instituted, the Minister shall cause a prosecution to be instituted and prosecuted.

(6) Where it appears to the Minister that a prosecution ought to be instituted, he may, by notice in writing given before or after the institution of a prosecution in accordance with subsection (5), require a person whom he suspects or believes on reasonable grounds to be capable of giving information concerning any matter to which the prosecution relates (not being a person who is or, in the opinion of the Minister, is likely to be a defendant in the proceedings or is or has been a solicitor acting for such a person) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(7) Where a person to whom a notice has been given under subsection (6) fails to comply with a requirement specified in the notice the Court may, on the application of the Minister, direct that person to comply with the requirement.

(8) If from a report under this Division, or from the notes of an examination under this Division, the Minister is of the opinion that proceedings ought in the public interest to be brought by a person for the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with the matters to which the investigation relates or for the

recovery

Securities Industry.

recovery of property of that person, the Minister may cause No. 3, 1976 proceedings to be brought accordingly in the name of that person.

22. An inspector may, when making a report to the Minister under this Division, give to the Minister books of which he has taken possession under section 18 and the Minister—

- (a) may retain the books for such period as he considers to be necessary to enable a decision to be made as to whether or not legal proceedings ought to be instituted as a result of the investigation;
- (b) may retain the books for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;
- (c) may permit other persons to inspect the books while they are in his possession;
- (d) may permit the use of the books for the purposes of legal proceedings instituted as a result of the investigation; and
- (e) shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the Minister to inspect at all reasonable times such of the books as that person would be so entitled to inspect.

23. An inspector shall not require disclosure by a duly qualified legal practitioner of a privileged communication made to such a practitioner in that capacity except as regards the name and address of his client.

24.

No. 3, 1976
 Expenses of
 investiga-
 tion.
 N.S.W.,
 s. 5DB.

24. (1) Subject to this section, the expenses of and incidental to an investigation by an inspector appointed under section 17 (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of a person under section 21 (8)) shall be defrayed out of moneys provided by Parliament for the purpose.

(2) An application referred to in subsection (3) may be made to a court by or on behalf of the Minister—

(a) in the course of proceedings in that court instituted by the Minister in the name of a person under section 21 (8); or

(b) upon, or within 28 days after, a conviction or judgment by a court in proceedings certified by the Minister, for the purposes of the application, to have been instituted as a result of an investigation by an inspector appointed under this Division—

and the court may make such order with respect to the application and its subject-matter as it thinks fit.

(3) The application that may be made under subsection (2) is an application for one or more of the following orders, namely :—

(a) that a specified person pay the whole, or a specified part, of the expenses of and incidental to the investigation that led to the proceedings;

(b) where expenses have been paid under subsection (1), that a specified person pay the expenses or reimburse the Crown to the extent of the payment; or

(c) that a specified person pay, or reimburse the Crown in respect of, the remuneration of any servant of the Crown concerned with the investigation.

(4)

Securities Industry.

(4) Where the Minister is of the opinion that the whole or any part of the expenses of or incidental to an investigation by an inspector appointed under section 17 (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of a person under section 21 (8)) should be paid by a person to whose affairs the investigation relates, the Minister may by order direct that person to pay a specified amount, being the whole or part of the expenses, within the time and in the manner specified. No. 3, 1976

(5) Where a person has failed to comply with an order of the Minister under subsection (4), proceedings may be taken in a court of competent jurisdiction to recover the amount in question as a debt due to the Crown.

25. (1) A person who—

(a) conceals, destroys, mutilates or alters a book relating to a matter that is the subject of investigation by an inspector under this Division; or

(b) sends, attempts to send or conspires with another person to send, such a book out of the State—

Concealing,
&c., of
books
relating to
securities.
N.S.W.,
s. 5DC.

is guilty of an offence and liable to a penalty not exceeding \$5,000 or to imprisonment for a period not exceeding two years.

(2) It is a defence to a prosecution under this section to prove that the person charged did not act with intent to defeat the purposes of this Division or to delay or obstruct the carrying out of an investigation under this Division.

26. (1) Where an investigation is being made under this Division and it appears to the Minister that facts concerning securities to which the investigation relates cannot be ascertained because a prescribed person has failed or refused Power of
Minister to
make certain
orders.
N.S.W.,
s. 5DD.

to

No. 3, 1976 to comply with a requirement of an inspector, the Minister may, by order published in the Gazette, make one or more of the following orders, namely :—

- (a) an order restraining a specified person from disposing of an interest in specified securities;
- (b) an order restraining a specified person from acquiring an interest in specified securities;
- (c) an order restraining the exercise of voting or other rights attached to specified securities;
- (d) an order directing a person who is registered as the holder of securities in respect of which an order under this section is in force to give notice in writing of that order to any person whom he knows to be entitled to exercise a right to vote attached to those securities;
- (e) an order directing a body corporate not to make payment, except in the course of winding up, of a sum due from the body corporate in respect of specified securities;
- (f) an order directing a body corporate not to register the transfer or transmission of specified securities;
or
- (g) an order directing a body corporate not to issue shares to a person who holds shares in the body corporate by reason of his holding shares in the body corporate or in pursuance of an offer made to such a person by reason of his holding shares in the body corporate.

(2) A copy of an order under subsection (1) and of any order by which it is revoked or varied shall be served—

- (a) where it relates to specified securities—
 - (i) on the body corporate by which the securities were issued or made available;

(ii)

Securities Industry.

- (ii) where the securities are rights or options, No. 3, 1976
 on the body corporate against which the
 right or option is, or would be, enforceable;
 or
- (iii) on the body corporate that will issue or
 make available the securities; and
- (b) where it relates to a body corporate, on the body
 corporate.

(3) Where an order made under subsection (1) is
 in force, a person aggrieved by the order may apply to the
 Court for revocation of the order, and the Court may, if it is
 satisfied that it is reasonable to do so, revoke the order and
 any order by which it has been varied.

(4) A person shall not contravene or fail to comply
 with an order under subsection (1).

Penalty : \$1,000. Default penalty: \$200.

(5) A prosecution under this section shall not be
 instituted without the consent in writing of the Minister.

PART III.—STOCK EXCHANGES.

27. A person shall not establish, maintain or provide, or Establish-
 assist in establishing, maintaining or providing, or hold himself ment, &c.,
 out as maintaining or providing, a stock market that is not of stock
 the stock market of a stock exchange. markets.

Penalty : \$5,000.

N.S.W., s. 6.
 Vic., s. 6.
 W.A., s. 7.

28. (1) A body corporate that proposes to establish, Power of
 maintain or provide a stock market may apply in the Minister to
 prescribed form and manner to the Minister for approval as a approve
 stock exchange. stock

(2) exchange.
 N.S.W., s. 7.
 Vic., s. 7.
 W.A., s. 8.

No. 3, 1976

(2) The Minister may, in writing, approve as a stock exchange a body corporate that makes an application under subsection (1) if he is satisfied—

(a) that the business rules of the body corporate make satisfactory provision—

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

(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 business rules of the proposed stock exchange or the provisions of this Act;

(iii) with respect to the conditions under which securities may be listed for trading in the stock market of the proposed stock exchange;

(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 with by members; and

(vi) generally for the carrying on of the business of the proposed stock exchange with due regard to the interests of the public;

(b) that the body corporate has made or adopted listing rules and, where the listing rules are adopted, has made provision to the effect that an amendment to the listing rules made by another person is of no effect until the body corporate adopts the amendment;

(c)

Securities Industry.

- (c) that the listing rules made or adopted by the body No. 3, 1976 corporate make satisfactory provision—
- (i) with respect to conditions under which securities may be traded on the stock market of the proposed stock exchange; and
 - (ii) generally for the protection of the interests of the public; and
- (d) that the interests of the public will be served by the granting of his approval.

29. (1) Where—

- (a) an amendment is made by way of rescission, alteration or addition, to the business rules of a stock exchange; or
- (b) an amendment, by way of rescission alteration or addition, to the listing rules is made or adopted by the stock exchange—

Minister to be notified of amendments to rules.
N.S.W., s. 8.
Vic., s. 8.
W.A., s. 9.

the stock exchange shall, forthwith after the making or adoption of the amendment, give written notice of the amendment to the Minister.

(2) A notice under subsection (1) shall—

- (a) set forth the text of the amendment;
- (b) specify the date on which the amendment was made or adopted; and
- (c) contain an explanation of the purpose and effect of the amendment.

(3) If the notice required to be given by subsection (1) is not given within 21 days after the amendment is made or adopted, the amendment ceases to have effect.

(4)

No. 3, 1976

(4) The Minister may, within 21 days after the receipt by him of a notice under this section, give notice to the stock exchange that he disallows the whole or a specified part of the amendment to which the notice relates, and thereupon the amendment, to the extent of the disallowance, ceases to have effect.

**Stock
exchanges
to provide
assistance to
Commissioner and
Commission.**

30. (1) A stock exchange shall provide such assistance to the Commissioner and the Commission as the Commissioner and the Commission reasonably require for the performance of their functions and duties.

(2) Where a stock exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the stock exchange, it shall forthwith give to the Commission in writing particulars of the name of the member, the reason for and nature of the action taken, the amount of the fine (if any) and the period of the suspension (if any).

(3) The Commissioner is entitled at all reasonable times to full and free access for any of the purposes of this Act to the trading floor of a stock market maintained or provided by a stock exchange and to all books kept by the stock exchange and may make copies of, or take extracts from, any such books.

(4) A person who refuses or fails without lawful excuse to allow the Commissioner access in accordance with subsection (3) to the trading floor of a stock market maintained or provided by a stock exchange or to books kept by a stock exchange or otherwise hinders, obstructs or delays the Commissioner in the exercise of his powers under that subsection is guilty of an offence and is liable to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding six months.

(5) In this section, "trading floor", in relation to a stock market maintained or provided by a stock exchange, means any place or facility maintained or provided by the

stock

Securities Industry.

stock exchange for the sale, purchase or exchange of securities No. 3, 1976
by members of the stock exchange, or by members and other
persons.

31. Where any person who is under an obligation to observe, enforce or give effect to the business rules or listing rules of a stock exchange fails to observe, enforce or give effect to any of those business rules or listing rules, as the case may be, the Court may, on the application of the Commission or of a person aggrieved by the failure and after giving to the person against whom the order is sought an opportunity of being heard, make an order giving directions to the last-mentioned person concerning the observance or enforcement of, or the giving effect to, those business rules or listing rules.

Court may
order
observance
or enforce-
ment of
business
rules of
or listing
rules of
stock
exchange.

PART IV.—LICENCES.

32. (1) A person shall not carry on a business of dealing in securities (whether or not that business is part of, or is carried on in conjunction with, any other business) or hold himself out as carrying on such a business unless he is the holder of a dealers licence or is a recognised dealer.

Dealers
licence.
N.S.W.,
ss. 9, 10.
Vic., s. 9.
W.A., s. 10.

Penalty : \$2,000 or imprisonment for one year, or both.

(2) Subsection (1) does not apply to or in relation to an exempt dealer.

33. A person who is employed by, or acts for or by arrangement with, a dealer (not being an exempt dealer) shall not do an act on behalf of the dealer in relation to a business of dealing in securities carried on by the dealer (other than an act in the course of work of a kind ordinarily performed by accountants, clerks or cashiers) unless the first-mentioned person—

Dealer's
representa-
tives.

(a) is the holder of a dealers licence ;

(b) is a recognised dealer; or

(c)

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(c) is the holder of a dealer's representatives licence or of a corresponding licence under a declared law of a participating State or under a corresponding previous law of that State and the dealer is named in that licence as a dealer on whose behalf the first-mentioned person may act.

Penalty : \$1,000 or imprisonment for six months.

Investment
advisers.

34. (1) A person shall not act as, or hold himself out to be, an investment adviser unless he is the holder of an investment advisers licence or is a recognised investment adviser.

Penalty : \$2,000 or imprisonment for one year, or both.

(2) Subsection (1) does not apply to or in relation to the holder of a dealers licence, an exempt dealer or a recognised dealer.

Investment
representatives.

35. A person who is employed by, or acts for or by arrangement with, an investment adviser (not being a holder of a dealers licence or an exempt dealer) in connection with a business carried on by the investment adviser of advising other persons or in the course of which the investment adviser issues or publishes analyses or reports concerning securities, shall not do an act on behalf of the investment adviser in connection with that business (other than an act in the course of work of a kind ordinarily performed by accountants, clerks or cashiers) unless the first-mentioned person—

- (a) is the holder of a dealers licence or an investment advisers licence;
- (b) is a recognised dealer or recognised investment adviser; or
- (c) is the holder of an investment representatives licence or of a corresponding licence under a declared law of a participating State or under a corresponding

previous

Securities Industry.

previous law of that State and the investment adviser is named in that licence as an investment adviser on whose behalf the first-mentioned person may act. No. 3, 1976

Penalty : \$1,000 or imprisonment for six months.

36. (1) A person may apply to the Commission for a dealers licence or an investment advisers licence. Application for grant of licence.

(2) A natural person may apply to the Commission for a dealer's representatives licence in which the holder of a dealers licence is, or two or more such holders are, named as a dealer or as dealers on whose behalf the person may act.

(3) A natural person may apply to the Commission for an investment representatives licence in which the holder of an investment advisers licence is, or two or more such holders are, named as an investment adviser or as investment advisers on whose behalf the person may act.

(4) An application for the grant of a licence shall be made in the prescribed form and manner and shall be accompanied by the prescribed fee.

(5) The Commission may require an applicant to supply the Commission with such further information as the Commission considers necessary in relation to the application.

37. Subject to section 49 and the regulations, where an application is duly made for the grant of a dealers licence or an investment advisers licence and the Commission, after consideration of the character and financial position of the applicant and, if the applicant is a body corporate, the character of each of the directors of the body corporate and of the secretary of the body corporate and after consideration Grant of dealers licence or investment advisers licence. N.S.W., s. 14. Vic., s. 14. W.A., s. 15 (1).

of

No. 3, 1976 of the interests of the public, is of the opinion that the applicant is a fit and proper person to hold the licence to which the application relates, the Commission shall grant the application.

Grant of
representatives
licence.
N.S.W.,
s. 15.
Vic., s. 15.
W.A., s.
15 (2).

38. (1) Subject to section 49 and the regulations, where an application is duly made for the grant of a dealer's representatives licence or an investment representatives licence and the Commission is of the opinion that the applicant is a fit and proper person to hold the licence to which the application relates and to act on behalf of the holder or holders of dealers licences or investment advisers licences, as the case may be, named in the application, the Commission shall grant the application.

(2) A dealer's representatives licence shall specify the person, being the holder of a dealers licence, or two or more such persons, on whose behalf the holder of the dealer's representatives licence may act.

(3) An investment representatives licence shall specify the person, being the holder of an investment advisers licence, or two or more such persons, on whose behalf the holder of the investment representatives licence may act.

Change of
principals
of repre-
sentative.

39. (1) The holder of a representatives licence may make application to the Commission in the prescribed form and manner for a variation of the name or names of holders of dealers licences or investment advisers licences, as the case may be, on whose behalf he may act.

(2) Where an application is duly made under subsection (1), the Commission may, if of the opinion that the applicant is a fit and proper person to act on behalf of the holder or holders of dealers licences or investment advisers licences, as the case may be, named in the application, vary the licence by including a name in or deleting a name from, or both including a name in and deleting a name from, the

name

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name or names specified in the licence as holders of dealers No. 3, 1976
 licences or investment advisers licences, as the case may be,
 on whose behalf the applicant may act.

40. (1) A licence is subject to—

- (a) such conditions and restrictions as are prescribed;
and
- (b) subject to section 49, such conditions and restrictions as the Commissioner imposes when granting the licence or at any time during which the licence is in force.

Conditions
to which
licence is
subject.

(2) Without limiting the generality of subsection (1), conditions and restrictions referred to in subsection (1) (b)—

- (a) may include conditions and restrictions relating to the limitation of the liability that may be incurred by the holder of a dealers licence in connection with a business of dealing in securities;
- (b) may include conditions and restrictions relating to the incurring and disclosure of liabilities arising otherwise than in connection with a business of dealing in securities; and
- (c) may include a condition that the holder of a dealers licence or an investment advisers licence lodges with the Commission a bond approved by the Commission for such amount not exceeding \$20,000 as is approved by the Commission.

(3) Subject to section 49, the Commission may, at any time, revoke or vary conditions or restrictions imposed by the Commission under subsection (1) (b).

(4) Where the Commission imposes, or varies or revokes, conditions or restrictions under this section in relation to a licence granted to a member of a stock exchange, the Commission shall inform the stock exchange and, if the member is a partner in a member firm, the member firm.

41.

No. 3, 1976 **41.** (1) The Commission shall keep a Register of Licence Holders for the purposes of this Act.

Register of
licence
holders.

Vic., s. 18A.
N.S.W.,
s. 18A.
W.A., s. 21.

(2) The Commission shall enter in the Register of Licence Holders—

(a) in relation to the holder of a dealers licence or an investment advisers licence—

- (i) the name of the holder of the licence;
- (ii) where the holder is a body corporate—the names of the directors and secretary of the body corporate;
- (iii) the date on which the licence was granted;
- (iv) the address of the principal place of business at which the holder of the licence carries on the business to which the licence relates and the addresses of other places (if any) at which that business is carried on; and
- (v) where such a business is carried on under a name or style other than the name of the holder of the licence—the name or style under which the business is carried on;

(b) in relation to the holder of a representatives licence—

- (i) the name of the holder of the licence;
- (ii) the date on which the licence was granted;
- (iii) the name of, and the address of the principal place of business of, each dealer or investment adviser named in the licence as a person on whose behalf the holder of the licence may act; and

(iv)

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(iv) where the business of any such dealer or investment adviser is carried on under a name or style other than the name of the dealer or investment adviser—the name or style under which the business is carried on; and

(c) in relation to the holder of any licence—

- (i) particulars of any suspension of the licence;
- (ii) such other matters as are prescribed.

(3) Where a person ceases to be the holder of a licence, the Commission shall remove from the Register of Licence Holders the name of the person and any other particulars entered in the Register in relation to the person.

(4) A person may, on payment of the prescribed fee, inspect and make copies of or take extracts from the Register of Licence Holders.

(5) The particulars that are in the register kept under section 18A of the Securities Industry Act, 1970, immediately before the commencement of this Act shall be deemed to form part of the Register of Licence Holders under this section.

(6) The Commission may enter in the Register of Licence Holders particulars of recognised licensees of which the Commission has been notified by, or on behalf of, a Commissioner under a declared law, being particulars of—

- (a) the name of the recognised licensee;
- (b) the date (if known) on which the recognised licensee became a recognised licensee; and
- (c) such other matters as are prescribed.

(7)

No. 3, 1976 — (7) Where the Commission is notified by or on behalf of a Commissioner under a declared law or becomes aware that a person whose name is entered in the Register of Licence Holders as a recognised licensee has ceased to be a licensee under that declared law the Commission shall remove from the Register the name of the person and any other particulars entered in the Register in relation to the person.

**Notification
of change in
particulars.**

42. Where—

- (a) the holder of a dealers licence ceases to carry on the business to which the licence relates;
- (b) the holder of an investment advisers licence ceases to act as, or hold himself out to be, an investment adviser;
- (c) the holder of a representatives licence ceases to be employed or act in connection with the business carried on by a dealer or an investment adviser named in the licence, as the case may be, and the licence has not been varied under section 39; or
- (d) a change occurs in any matter particulars of which are required by section 41 (2) (a) or (b) to be entered in the Register of Licence Holders in relation to the holder of a licence—

the holder of the licence shall, not later than 21 days after the occurrence of the event concerned, give to the Commission, in the prescribed form, particulars in writing of the event concerned.

Annual fee.

43. The holder of a licence shall, in each year at the time when or during the period within which he is required to lodge a statement referred to in section 44 with the Commission, pay to the Commission the prescribed fee.

44.

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44. (1) The holder of a licence shall lodge with the Commission, in respect of each year or part of a year during which the licence is in force, a statement containing such information as is prescribed.

No. 3, 1976
—
Annual
statement
to be
lodged with
Commission.

(2) The statement referred to in subsection (1) shall be lodged by the holder of the licence—

- (a) where the licence is a dealers licence—during the period within which an auditor's report referred to in section 64 is required to be lodged with the Commission;
- (b) where the licence is an investment advisers licence—within the period of one month immediately before the anniversary of the date on which the licence was granted; and
- (c) where the licence is a representatives licence—on a prescribed date in each year or within a prescribed period after that date.

45. The Commission may, on the application of the holder of a licence, in its discretion, extend, or further extend, the time for paying a fee under section 43 or lodging a statement under section 44.

Commission
may extend
time for
paying fee
or lodging
statement.

46. (1) Where—

- (a) the holder of a licence, being a natural person—
 - (i) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or any part of his property for their benefit;

Revocation
and
suspension
of licences.

(ii)

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- (ii) is convicted of an offence involving fraud or dishonesty punishable by imprisonment for a period of or exceeding three months; or
 - (iii) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (b) the holder of a licence, being a body corporate—
- (i) is commenced to be wound up, is under official management or has ceased to carry on business;
 - (ii) is a body corporate in respect of the property of which a receiver and manager has been appointed whether by the Court or otherwise; or
 - (iii) has entered into a compromise or scheme of arrangement with its creditors;
- (c) the holder of a licence fails to comply with the provisions of section 43 or 44; or
- (d) the holder of a licence requests the Commission to revoke the licence—

the Commission may revoke the licence.

(2) Where a director or secretary or a person concerned in the management of a body corporate that is the holder of a dealers licence or an investment advisers licence, contravenes or fails to comply with this Act by reason that he does not hold a licence or a licence held by such a director, secretary or person is suspended, the Commission may revoke the licence held by the body corporate.

(3)

(3) If, in a case to which subsection (1) (a) or (b) or subsection (2) applies, the Commission considers it desirable to do so, the Commission may, instead of revoking a licence, suspend the licence for a specified period and may at any time remove such a suspension. No. 3, 1976

(4) Where a dealers licence or an investment advisers licence is revoked or suspended, the holder of a representatives licence in which a person who is or was the holder of the dealers licence or investment advisers licence is named as a person on whose behalf the holder of the representatives licence may act, shall not, where the first-mentioned licence is revoked, act on behalf of that person or, where the first-mentioned licence is suspended, shall not so act during the period of the suspension.

Penalty : \$1,000 or imprisonment for six months.

47. (1) Subject to section 49, if—

(a) the holder of a licence contravenes or fails to comply with a condition or restriction applicable in respect of the licence (not being a condition or restriction referred to in section 43 or 44) ; or

Revocation
and suspen-
sion of
licences.

(b) the Commissioner is satisfied that—

(i) the holder of the licence is not a fit and proper person to hold the licence ; or

(ii) where the holder of the licence is a body corporate, a director or secretary of the body corporate or a person concerned with the management of the body corporate is not a fit and proper person to be a director or secretary of, or a person concerned with the management of, a body corporate holding the licence—

the Commission may revoke the licence.

(2)

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(2) If in a case to which subsection (1) (a) applies the Commission considers it desirable to do so, the Commission may, instead of revoking a licence, suspend the licence for a specified period and may at any time remove such a suspension.

(3) Where the Commission revokes a licence under subsection (1), it may make application to the District Court for an order disqualifying the person who was the holder of the licence from holding a licence either permanently or during such period as the District Court specifies in the order.

(4) Where an application is made under subsection (3), the District Court may make such order as it thinks fit or refuse to make an order and, where it makes an order, may at any time revoke or vary the order.

(5) A person disqualified either permanently or for a particular period from holding a licence by reason of an order of a court under section 19 of the Securities Industry Act, 1970, shall be deemed to be disqualified under this Act from holding a licence during the period specified in the order.

Holder of
licence to
be deemed
not to be
holder
while
licence
suspended.

48. The holder of a licence shall, for the purposes of sections 32, 33, 34 and 35, be deemed not to be the holder of a licence during any period during which the licence is suspended.

Opportunity
for hearing.

49. (1) The Commission shall not—

- (a) refuse to grant a licence otherwise than under subsection (2);
- (b) revoke or suspend a licence otherwise than under section 46; or

(c)

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- (c) impose conditions or restrictions in respect of a licence or vary conditions or restrictions applicable in respect of a licence—

unless the Commission has afforded the applicant or holder of the licence an opportunity to appear at a hearing before the Commission and make submissions and give evidence to the Commission in relation to the matter.

(2) The Commission shall not grant a licence to a person during a period during which that person is, by reason of section 47 (3) or (5), disqualified from holding a licence or is, by reason of a provision of a declared law corresponding to section 47 (3) or (5), disqualified from holding a licence under that declared law.

PART V.—CONDUCT OF SECURITIES BUSINESS.

50. (1) A person who is the holder of a licence shall not represent or imply, or knowingly permit to be represented or implied, in any manner to a person that the abilities or qualifications of the holder of the licence have in any respect been approved by the Commissioner or the Commission.

Certain representation prohibited.
Vic., s. 20N.
N.S.W., s. 20H.
W.A., s. 34.

(2) The statement that a person is the holder of a licence is not a contravention of this section.

51. (1) A dealer (not being an exempt dealer) shall, in respect of a transaction of sale or purchase of securities (not being a transaction entered into in the ordinary course of business at a stock market of a stock exchange between members of that stock exchange), forthwith give to the person for whom the dealer entered into the transaction or, where the dealer entered into the transaction as principal, to the person with whom the dealer entered into the transaction a contract note that complies with subsection (2).

Issue of contract notes.
Vic., s. 20I.
N.S.W., s. 20I.
W.A., s. 35.

(2)

No. 3, 1976 (2) A contract note given by a dealer under subsection (1) shall include—

- (a) the name or style under which the dealer carries on his business as a dealer and the address of the principal place at which he so carries on business;
- (b) where the dealer is dealing as principal with a person who is not the holder of a dealers licence, a statement that he is so acting;
- (c) the name of the person to whom the dealer gives the contract note;
- (d) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business at a stock market, a statement to that effect;
- (e) the number, or amount and description, of the securities that are the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of the consideration;
- (h) a statement—
 - (i) specifying each stock exchange (including a stock exchange within the meaning of a declared law) of which he is a member;
 - (ii) where he is a member of a stock exchange or of a stock exchange within the meaning of a declared law—specifying the amount of the commission charged;
 - (iii) where he is not a member of a stock exchange or of a stock exchange within the meaning of a declared law—specifying the amount and rate of commission charged;
and
 - (iv)

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(iv) where he is a member of a stock exchange or ^{No. 3, 1976} of a stock exchange within the meaning of a declared law and the rate of commission charged is not the rate fixed by the relevant stock exchange—specifying the rate of commission charged;

- (i) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and
- (j) if an amount is to be added to or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the first-mentioned amount and the nature of the benefit.

(3) A dealer shall not include in a contract note given under subsection (1), as the name of the person with or for whom he has entered into the transaction, a name that he knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.

(4) A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person—

- (a) dealing or entering into a transaction on behalf of a person associated with him;
- (b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or
- (c) where he carries on business as a dealer in partnership—dealing in securities on behalf of a body corporate in which his interest and the interests of his partners together constitute a controlling interest.

(5)

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(5) For the purposes of this section, a transaction takes place in the ordinary course of business at a stock market if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.

(6) Notwithstanding the provisions of section 6, a person is not associated with another person for the purposes of this section by reason only that he is—

- (a) a partner of the other person otherwise than by reason that he carries on a business of dealing in securities in partnership with the other person;
- (b) a director of a body corporate that carries on a business of dealing in securities of which the other person is also a director; or
- (c) a director of a body corporate of which the other person is a director, not being a body corporate that carries on a business of dealing in securities.

Certain persons to disclose certain interests in securities. Vic., s. 20J. W.A., s. 36.

52. (1) Where a person who is a dealer (not being an exempt dealer), investment adviser, dealer's representative or investment representative sends circulars or other similar written communications in which he makes a recommendation, whether expressly or by implication, with respect to securities or a class of securities, the first-mentioned person shall cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any interest in, or in the acquisition or disposal of, those securities or securities included in that class that the first-mentioned person or a person associated with him has, or ought reasonably to know that he has, at the date on which the first-mentioned person last sends the circular or other communication.

(2)

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(2) For the purposes of subsection (1)—

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- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;
- (b) without limiting the generality of the foregoing, a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
- (c) notwithstanding the provisions of section 6, a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that he is—
 - (i) a partner of the other person otherwise than by reason that he carries on a business of dealing in securities in partnership with the other person;
 - (ii) a director of a body corporate that carries on a business of dealing in securities of which the other person is also a director; or
 - (iii) a director of a body corporate of which the other person is a director, not being a body corporate that carries on a business of dealing in securities—

unless the person and the other person are acting jointly, or otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(3)

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(3) Where—

- (a) a person has subscribed for or purchased securities for the purpose of offering all or any of them to the public for purchase; and
- (b) the person offers any of those securities for purchase—

the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(4) Where—

- (a) securities have been offered for subscription or purchase; and
- (b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase any of those securities under an underwriting agreement by reason that some or all of the securities have not been subscribed for, or purchased—

the person shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities (otherwise than in the ordinary course of trading on a stock market) or make a recommendation in respect of those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will or may be required to acquire, under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(5)

(5) A person who is a dealer (other than an exempt dealer), investment adviser, dealer's representative or investment representative shall not send to a person a letter, circular or other similar written communication to which subsection (1), (3) or (4) applies unless the letter, circular or other communication—

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- (a) if the first-mentioned person is a natural person who does not carry on business in partnership—is signed by that person;
- (b) if the first-mentioned person is a natural person who carries on business in partnership—is signed by a partner in the partnership in the name of the partner or of the partnership; or
- (c) if the first-mentioned person is a body corporate—is signed by a director, manager or secretary of the body corporate.

(6) Where a person who is a dealer (other than an exempt dealer), investment adviser, dealer's representative or investment representative sends to a person a letter, circular or other similar written communication to which subsection (1), (3) or (4) applies, the first-mentioned person shall—

- (a) if he is a member of a stock exchange—thereupon send a copy of the letter, circular or other communication to that stock exchange; or
- (b) if he is not a member of a stock exchange—thereupon give a copy of the letter, circular or other communication to the Commission.

(d)

(7)

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(7) A stock exchange to which a copy of a letter, circular or other communication is sent under subsection (6) shall preserve that copy for the period of seven years next after the day on which the stock exchange receives the copy.

(8) A copy of a letter, circular or other written communication sent by a person to a stock exchange or given to the Commission in accordance with subsection (6) shall be a copy that is signed—

- (a) if that person is a natural person who does not carry on business in partnership—by that person;
- (b) if that person is a natural person who carries on business in partnership—by a partner in the partnership in his own name; or
- (c) if that person is a body corporate—by a director, manager or secretary of the body corporate.

(9) A reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer or acquire securities.

(10) For the purposes of this section, a letter, circular or other similar written communication sent to a person shall—

- (a) if it is signed by a person in partnership—be deemed to have been sent by each of the partners in the partnership; or

(b)

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- (b) if it is signed by a director, manager or secretary of a body corporate—be deemed to have been sent by the body corporate. No. 3, 1976

Penalty : \$1,000 or imprisonment for six months.

53. (1) A dealer shall not, as principal, deal in any securities with a person who is not a dealer unless he first informs the person with whom he is dealing that he is acting in the transaction as principal and not as agent. Dealings as principal.
Vic., s. 20K.
N.S.W.,
s. 20K.

(2) A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person—

- (a) dealing or entering into a transaction on behalf of a person associated with him;
- (b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or
- (c) where he carries on business as a dealer in partnership—dealing in the securities on behalf of a body corporate in which his interest and the interests of his partners together constitute a controlling interest.

(3) A dealer who as principal enters into a transaction of sale or purchase of securities with a person who is not a dealer shall state in the contract note that he is acting in the transaction as principal and not as agent.

(4)

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 (4) Subject to subsection (5) and the regulations, a dealer who as principal (otherwise than by reason only that he is dealing or entering into a transaction on behalf of a person associated with him) enters into a transaction of sale or purchase of securities with a person who is not a dealer shall not charge that person brokerage, commission or any other fee in respect of the transaction.

(5) Subsection (4) does not apply to a dealer who, as principal, enters into a transaction of sale or purchase of securities under an approved deed within the meaning of Division 5 of Part IV of the Companies Act, 1961, with a person who is not a dealer and charges brokerage, commission or another fee in respect of the transaction in accordance with the provisions of the approved deed.

(6) Where a dealer fails to comply with subsection (1), (3) or (4) in respect of a contract for the sale of securities by him the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the dealer not later than fourteen days after the receipt of the contract note and, where a dealer fails to comply with subsection (1), (3) or (4) in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner, rescind the contract.

Penalty: \$1,000 or imprisonment for six months.

Short
 selling.
 N.S.W.,
 s. 20L.
 Vic., s. 20L.
 W.A., s. 78.

54. (1) Subject to this section and the regulations, a person shall not sell securities to a purchaser unless, at the time he sells them—

(a) he has or, where he is selling as agent, his principal has; or

(b)

- (b) he believes on reasonable grounds that he, or where he is selling as agent, his principal has— No. 3, 1976

a presently exercisable and unconditional right to vest the securities in the purchaser.

Penalty : For a first offence, \$1,000 or imprisonment for six months; for a second or subsequent offence, \$5,000 or imprisonment for two years, or both.

(2) For the purposes of subsection (1)—

- (a) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person; and
- (b) a right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of another person to secure the repayment of money.

(3) Subsection (1) does not apply in relation to—

- (a) a sale of securities by the holder of a dealers licence or a recognised dealer who is a member of a stock exchange and specialises in transactions relating to odd lots of securities being a sale made by him as principal solely for the purpose of—
- (i) accepting an offer to purchase an odd lot of securities; or

(ii)

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- (ii) disposing of a parcel of securities that is less than one marketable parcel of securities by means of the sale of one marketable parcel of those securities;
- (b) a sale of securities as part of an arbitrage transaction;
- (c) a sale of securities by a person who before the time of sale has entered into a contract to purchase those securities and who has a right to have those securities vested in him that is conditional only upon all or any of the following :—
 - (i) payment of the consideration in respect of the purchase;
 - (ii) the receipt by him of a proper instrument of transfer in respect of the securities;
 - (iii) the receipt by him of the documents that are, or are documents of title to, the securities; or
- (d) a sale of securities where—
 - (i) the person who sold the securities is not associated with the body corporate that issued or made available the securities;
 - (ii) arrangements are made before the time of the sale that will enable delivery of securities of the class sold to be made to the purchaser within three business days after the date of the transaction effecting the sale; and
 - (iii) if the sale is effected on the stock market maintained or provided by a stock exchange—
 - (A) the price per unit in respect of the sale is not below the price at which the immediately preceding ordinary sale was effected; and
 - (B)

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(B) the price per unit is above the price at which the immediately preceding ordinary sale was effected unless the price at which the immediately preceding ordinary sale was effected was higher than the next preceding different price at which an ordinary sale had been effected—

and the stock exchange is immediately informed that the sale has been made short in accordance with this subparagraph.

(4) A person who requests a holder of a dealers licence or a recognised dealer to effect a sale of securities to which subsection (1) would apply but for subsection (3) (b) or (d) shall, at the time of making the request, inform the holder of the licence or recognised dealer that the sale is a short sale.

(5) A person, who on a stock market that is maintained or provided by a stock exchange, effects, whether as principal or agent, a sale of securities to which subsection (1) would apply but for subsection (3) (b) or (d) shall cause to be endorsed on any document evidencing the sale that is given to the person who, whether as principal or agent, purchases the securities a statement that the sale was a short sale.

PART VI.—ACCOUNTS AND AUDIT.

55. In this Part, unless the contrary intention appears, a reference to a book, security, trust account or business of or in relation to a dealer who carries on business in partnership shall be read as a reference to such a book, security, trust account or business of or in relation to the partnership.

56.

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Application
of Part.

56. This Part applies to and in relation to the holder of a dealers licence and to the business of dealing in securities carried on by the holder of a dealers licence, whether in the State or elsewhere but does not apply to or in relation to a recognised dealer or to the business carried on by a recognised dealer.

Accounts to
be kept by
dealers.
N.S.W.,
s. 22.
Vic., s. 22.
W.A., s. 39.

57. (1) A dealer shall—

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the business of dealing in securities carried on by him;
- (b) keep his accounting records in such a manner as will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and
- (c) keep his accounting records in such a manner as will enable profit and loss accounts and balance sheets of the business of dealing in securities carried on by him to be conveniently and properly audited.

Penalty : \$1,000 or imprisonment for six months.

(2) A dealer shall be deemed not to have complied with subsection (1) in relation to records unless those records—

- (a) are kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language;

(b)

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(b) are kept in sufficient detail to show particulars of—

- (i) all moneys received or paid by the dealer, including moneys paid to, or disbursed from, a trust account;
- (ii) all purchases and sales of securities made by the dealer, the charges and credits arising from them, and the names of the buyer and seller, respectively, of each of those securities;
- (iii) all income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid, by the dealer;
- (iv) all the assets and liabilities (including contingent liabilities) of the dealer;
- (v) all securities that are the property of the dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by some other person, whether or not they are held as security against loans or advances;
- (vi) all securities that are not the property of the dealer and for which the dealer or any nominee controlled by the dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances made to the dealer;
- (vii) all purchases and sales of options made by the dealer and all fees (being option moneys) arising from them;

(viii)

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- (viii) all arbitrage transactions entered into by the dealer; and
- (ix) all underwriting transactions entered into by the dealer;
- (c) are kept in sufficient detail to show separately particulars of every transaction by the dealer;
- (d) specify the day on which or the period during which each transaction by the dealer took place; and
- (e) contain copies of acknowledgments of the receipt of securities or of documents of title to securities received by the dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.

(3) Without affecting the operation of subsection (2) a dealer shall keep records in sufficient detail to show separately particulars of all transactions by the dealer with, or for the account of—

- (a) clients of the dealer, excluding, where the dealer carries on business in partnership, the partners of the firm;
- (b) the dealer himself, or, where the dealer carries on business in partnership, the partners of the firm;
- (c) other dealers carrying on business in the State;
- (d) dealers outside the State; and
- (e) employees of the dealer.

(4)

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(4) An entry in the accounting and other records of a dealer required to be kept in accordance with this section, and any matter recorded by a stock exchange in relation to a member pursuant to section 120 (3), shall be deemed to have been made by, or with the authority of, the dealer or member. No. 3, 1976

(5) Where a record required by this section to be kept is not kept in writing in the English language, the dealer shall, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.

(6) Notwithstanding any other provision of this section, a dealer shall not be deemed to have failed to keep a record referred to in subsection (1) by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business other than dealing in securities that is carried on by him.

(7) If accounting or 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 particulars 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 sheets.

58. (1) Where a dealer receives for safe custody documents that are, or are documents of title to, securities, being documents that are the property of another person (in this subsection referred to as the "client") and for which the dealer or a nominee controlled by the dealer is accountable, the dealer shall forthwith—

(a) if the documents are not registered in the name of the client by the body corporate by which the securities were issued or made available and the client does not make a request as mentioned in paragraph (b) or (c)—cause them to be so registered;

(b)

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- (b) if the client requests that the documents be registered by the body corporate by which the securities were issued or made available in the name of a nominee controlled by the dealer—cause them to be so registered ; or
- (c) if the client requests that the documents be deposited in safe custody with the dealer's bankers—cause them to be so deposited.

(2) A dealer shall not deposit as security for a loan or advance made to the dealer documents that are, or are documents of title to, securities, being documents that are the property of another person (in this subsection referred to as the "client") and for which the dealer or a nominee controlled by the dealer is accountable, unless an amount is owed to the dealer by the client in connection with a transaction entered into on behalf of the client, and the dealer—

- (a) gives a written notice to the client identifying the documents and stating that he intends to deposit them as security for a loan or advance made to the dealer ; and
- (b) deposits the documents as security for a loan or advance made to the dealer that does not exceed the amount owed to the dealer on the day of the deposit by the client in connection with a transaction entered into on his behalf by the dealer.

(3) Where—

- (a) a dealer has given a notice to a person as mentioned in subsection (2) and has deposited the documents referred to in the notice as security for a loan or advance; and
- (b) the person has paid the amount owed by him to the dealer—

the dealer shall withdraw the documents from deposit forthwith after he receives the amount so owed to him.

(4)

Securities Industry.

(4) Where a dealer deposits as security for a loan No. 3, 1976 or advance made to the dealer documents that are, or are documents of title to, securities, being documents that are the property of another person and for which the dealer or a nominee controlled by the dealer is accountable, the dealer shall, at the expiration of three months after the day on which the documents are deposited, and at the expiration of each subsequent period of three months, if the documents are still maintained on deposit, send to the other person written notice to that effect.

Penalty : \$5,000 or imprisonment for two years.

59. (1) A dealer shall open and maintain with a bank Dealers' trust accounts. or banks in the State an account or accounts designated as a trust account or as trust accounts.

(2) A dealer shall pay into such an account all moneys held by him in trust for a client not later than the next day on which the bank is open for business following the day on which they are received by the dealer.

(3) Notwithstanding subsection (1), where moneys that are required by this section to be paid into a trust account are received by a dealer in a place outside the State, the dealer may pay those moneys into a trust account maintained by the dealer in that place.

(4) For the purposes of subsection (2), all moneys received by a dealer from a client otherwise than in respect of brokerage and other proper charges or in payment or part payment for securities delivered to the dealer before the moneys are received shall be deemed to be held in trust for that client.

(5)

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(5) Subsection (2) does not apply to or in relation to a cheque, bank cheque, bank draft or money order made payable to or to the order of a specified person or bearer (not being a cheque, bank cheque, bank draft or money order in which the payee is the dealer, a partner of the dealer or the firm in which the dealer is a partner) received from or on behalf of a client with instructions, express or implied, that the cheque, bank cheque, bank draft or money order is to be delivered to the person to whom it is payable.

(6) A person who contravenes or fails to comply with a provision of this section that is applicable to him is guilty of an offence.

(7) A person who, with intent to defraud, contravenes or fails to comply with a provision of this section that is applicable to him is guilty of an offence and is liable to a penalty not exceeding \$5,000 or to imprisonment for a period not exceeding two years, or both.

Purposes for which money may be withdrawn from a trust account.

60. (1) A dealer shall not withdraw moneys from a trust account except for the purpose of—

- (a) making a payment to, or in accordance with the directions of, a person entitled to the moneys;
- (b) making a payment to a stock exchange in accordance with the provisions of section 81;
- (c) defraying brokerage and other proper charges;
- (d) paying to the dealer moneys to which he is entitled, being moneys that were paid into a trust account but were not required to be so paid; or

(e)

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- (e) making a payment that is otherwise authorised by No. 3, 1976 law.

Penalty : \$1,000 or imprisonment for six months.

(2) Except as otherwise provided in this Part, moneys held in a trust account are not available for payment of the debts of a dealer or liable to be paid or taken in execution under the order or process of a court.

(3) Nothing in this Part takes away or affects a lawful claim or lien that a person has against or on any moneys held in a trust account or against or on any moneys received for the purchase of securities or from the sale of securities before those moneys are paid into a trust account.

(4) A dealer is not guilty of an offence against subsection (1) by reason only that he withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been paid into the account but that has not been paid, and has not been refused payment, by the banker on which it is drawn.

(5) Where a dealer withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been paid into the account but that has not been paid by the banker on which it is drawn and the banker later refuses payment of the cheque, the dealer shall forthwith pay into the trust account by cash or bank cheque an amount equal to the first-mentioned amount.

(6) Where a dealer fails to comply with subsection (5)—

- (a) he is guilty of an offence against this Act and liable to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding six months; and

(b)

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- No. 3, 1976 (b) where the dealer is a member of a stock exchange the failure shall, for the purposes of Part IX be deemed to be a defalcation by the dealer.

Appointment of auditor by dealer. **61.** (1) Within one month after a person becomes the holder of a dealers licence he shall appoint a person or persons or a firm or firms or any combination thereof as auditor or auditors to audit his accounts.

(2) A person shall not—

- (a) consent to be appointed as auditor of a dealer;
- (b) act as auditor of a dealer; or
- (c) prepare a report required by this Act to be prepared by an auditor of a dealer—

if the person—

- (d) is not a registered company auditor within the meaning of section 5 of the Companies Act, 1961;
- (e) is indebted in an amount exceeding \$2,000 to the dealer; or
- (f) is a partner or employee of the dealer.

(3) A firm shall not—

- (a) consent to be appointed as auditor of a dealer;
- (b) act as auditor of a dealer; or

(c)

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- (c) prepare a report required by this Act to be prepared No. 3, 1976
by an auditor of a dealer—

unless—

- (d) at least one member of the firm is ordinarily resident
in a State or Territory of the Commonwealth;
- (e) all the members of the firm ordinarily so resident are
registered company auditors within the meaning of
section 5 of the Companies Act, 1961;
- (f) no member of the firm is indebted in an amount
exceeding \$2,000 to the dealer; and
- (g) no member of the firm is a partner or employee
of the dealer.

(4) The appointment of a firm as auditor of a dealer
shall be taken to be the appointment of all persons who are
members of the firm, whether resident in a State or Territory
of the Commonwealth or not, at the date of the appointment.

(5) Where a firm has been appointed as auditor of a
dealer and the members constituting the firm change by
reason of the death, retirement or withdrawal of a member
or by reason of the admission of a new member, the firm as
newly constituted shall, if it is not disqualified from acting
as auditor of the dealer by virtue of subsection (3), be
deemed to be appointed under subsection (1) as auditor of
the dealer and that appointment shall be taken to be an
appointment of all persons who are members of the firm as
newly constituted.

(3)

(6)

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(6) If, in contravention of this section, a firm consents to be appointed or acts as auditor of a dealer or prepares a report required by this Act to be prepared by an auditor of a dealer, each member of the firm is guilty of an offence.

(7) A person shall not—

- (a) if he has been appointed auditor of a dealer—wilfully disqualify himself while the appointment continues from acting as auditor of the dealer; or
- (b) if he is a member of a firm that has been appointed auditor of a dealer—wilfully disqualify the firm while the appointment continues from acting as auditor of the dealer.

(8) An auditor of a dealer shall hold office until death, until removal or resignation from office in accordance with section 62 or until ceasing to be capable of acting as auditor by reason of subsection (2) or (3).

(9) Within 14 days after a vacancy occurs in the office of an auditor of a dealer, if there is no surviving or continuing auditor of the dealer, the dealer shall appoint a person or persons or a firm or firms or any combination thereof to fill the vacancy.

(10) While a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(11) A dealer shall not appoint a person or firm as auditor of the dealer unless that person or firm has, before the appointment, consented by notice in writing given to the dealer to act as auditor and has not withdrawn his or its consent by notice in writing given to the dealer.

(12)

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(12) A report or notice made or given by a firm appointed as auditor of a dealer for the purposes of this Part shall be signed in the firm name and in his own name by a member of the firm who is a registered company auditor within the meaning of section 5 of the Companies Act, 1961. No. 3, 1976

(13) Where a person or firm is appointed as an auditor under subsection (1) (not being an appointment that is deemed to be made by virtue of subsection (5)), the dealer shall within 14 days after the appointment lodge with the Commission a notice in writing stating that he has made the appointment and specifying the name of the person or firm.

62. (1) A dealer may if he has received the consent of the Commission remove an auditor of the dealer from office. Removal
and resigna-
tion of
auditors.

(2) An auditor of a dealer may, by notice in writing given to the dealer, resign as auditor of the dealer if—

- (a) he has, by notice in writing given to the Commission, applied for consent to his resignation and, at or about the same time as he gave notice to the Commission, notified the dealer in writing of his application to the Commission; and
- (b) he has received the consent of the Commission.

(3) The Commission shall, as soon as practicable after receiving a notice from an auditor under subsection (2), notify the auditor and the dealer whether he consents to the resignation of the auditor.

(4) A statement made by an auditor in an application to the Commission, under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application—

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence against section 119; and

(b)

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- (b) may not be made the ground of a prosecution (other than a prosecution for an offence against section 119), action or suit against the auditor—

and a certificate of the Commission that the statement was made in the application or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.

(5) Subject to subsection (6) and to any order of the District Court under subsection (8), the resignation of an auditor takes effect—

- (a) on the date (if any) specified for the purpose in the notice of resignation;
- (b) on the date on which the Commission consents to the resignation; or
- (c) on the date (if any) fixed by the Commission for the purpose—

whichever last occurs.

(6) Where, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, by reason of the provisions of section 61 (3) (d), of acting as auditor of a dealer, the member so retiring or withdrawing shall, if not disqualified from acting as auditor of the dealer, be deemed to be the auditor of the dealer until he obtains the consent of the Commission to his retirement or withdrawal.

(7) Within fourteen days after the receipt of a notice of resignation from an auditor of a dealer or, where an auditor of a dealer is removed from office, within fourteen days after the removal, the dealer shall lodge a notice of the resignation or removal in accordance with the prescribed form with the Commission.

(8)

Securities Industry.

(8) A person aggrieved by the refusal of consent **No. 3, 1976** by the Commission to the removal or resignation of an auditor of a dealer may, within one month after the date of refusal, appeal to the District Court from the refusal and thereupon the District Court may confirm or reverse the refusal and may make such further order in the matter as to it seems proper.

63. The reasonable fees and expenses of an auditor of a dealer are payable by the dealer. **Fees and expenses of auditors.**

64. (1) In this section—

“financial year”, in relation to a dealer, means—

**Dealers’
accounts.
Vic., s. 28.
N.S.W.,
s. 28.**

- (a) where the dealer is not a body corporate—the year ending on the 30th day of June; and
- (b) where the dealer is a body corporate—the financial year of the body corporate within the meaning of the Companies Act, 1961;

“prescribed day”, in relation to a financial year of a dealer, means—

- (a) where the dealer is not a body corporate—the day that is two months after the end of that financial year; or
- (b) where the dealer is a body corporate—the day that is three months after the end of that financial year—

or where, in either case, an extension of time is approved pursuant to subsection (3), the day on which the extended time expires.

(2)

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(2) A dealer shall, in respect of each financial year, other than a financial year that ended before the date of commencement of this Act or ended on or after that date but before the date on which the dealer commenced to carry on business as a dealer, prepare a true and fair profit and loss account and balance sheet on the basis of such accounting principles (if any) and containing such information and matters as are prescribed and lodge them with the Commission before the prescribed day for that financial year, together with an auditor's report containing the prescribed information and matters.

(3) The Commission may approve an extension of the period of two months or, as the case may require, the period of three months, referred to in the definition of "prescribed day" in subsection (1) where an application for the extension is made by the dealer and his auditor, and such an approval may be given subject to such conditions, if any, as the Commission thinks fit to impose.

(4) Where an approval under subsection (3) in relation to a dealer is given subject to conditions, the dealer shall comply with those conditions.

Auditor to report to Commission in certain cases.

65. (1) Where an auditor, in the performance of his duties as auditor of a dealer, becomes aware of a prescribed matter he shall, within seven days after becoming aware of that matter, lodge with the Commission a written report on the matter and send a copy of the report to the dealer and to each stock exchange of which the dealer is a member.

(2) In this section, "prescribed matter" means a matter that, in the opinion of the auditor—

- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the dealer to meet his obligations as a dealer; or
- (b) constitutes or may constitute a breach of section 57, 58, 59 or 60 or Part VIII.

66.

Securities Industry.

66. (1) Where, in relation to a dealer who is a member No. 3, 1976 of a stock exchange, the stock exchange becomes aware of a prescribed matter, the stock exchange shall, as soon as practicable after becoming aware of the matter, lodge with the Commission a written report on the matter and send a copy of the report to the dealer. Certain matters to be reported to the Commission.

(2) In this section, "prescribed matter", in relation to a dealer, means a matter that, in the opinion of the stock exchange concerned—

- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the dealer to meet his obligations as a dealer; or
- (b) constitutes or may constitute a breach of section 57, 58, 59 or 60 or Part VIII.

67. An auditor has qualified privilege in respect of any defamatory matter published by him in so far as the defamatory matter is so published in the course of, and relates to, the exercise or performance by the auditor of his functions or duties under this Act. Defamation.

68. Nothing in this Part prevents a stock exchange imposing on members of that stock exchange any obligations or requirements (not being obligations or requirements inconsistent with this Act) that the stock exchange thinks fit with respect to— Right of stock exchange to impose obligations, &c., on members not affected by this Part.

- (a) the audit of accounts (including the audit of accounts by an auditor appointed by the stock exchange);
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of books.

69.

No. 3, 1976 **69.** Where the Commission shows to the satisfaction of the Court—

Power of Court to restrain dealings with dealer's bank accounts. W.A., s. 55.

- (a) that there are reasonable grounds for believing that there is a deficiency in a trust account of a person who is or has been a dealer;
- (b) that there has been undue delay, or unreasonable refusal, on the part of a person who is or has been a dealer, in paying, applying or accounting for trust moneys as required by this Act;
- (c) that a person who is or has been a dealer has not paid moneys into a trust account as provided by section 59; or
- (d) where a business of dealing in securities is carried on, was carried on or was last carried on, as the case may be, by a person otherwise than in partnership—
 - (i) that the dealers licence of that person has been revoked or suspended;
 - (ii) that that person is incapable, by reason of physical or mental infirmity, of managing his affairs;
 - (iii) that that person has ceased to carry on a business of dealing in securities; or
 - (iv) that the death has occurred of that person—

the Court may make an order restraining dealings in respect of all or any of the bank accounts of that person, subject to such terms and conditions as the Court may see fit to impose.

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70. Where an order made under section 69 is directed to a banker, the banker shall— No. 3, 1976

- Duty of bank manager to make full disclosure. W.A., s. 57.**
- (a) disclose to the Commission every account kept at the bank in the name of the person to whom the order relates, and any account that the banker reasonably suspects is held or kept at the bank for the benefit of that person; and
 - (b) permit the Commission to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker's books relating to that person.

71. Where an order is made under section 69, the Court may, on the application of the Commission or of a person affected by the order, make further orders— Power of Court to make further orders and give directions. W.A., s. 58.

- (a) dealing with such ancillary matters as the Court considers necessary or desirable;
- (b) directing that all or any of the moneys in an account affected by an order so made be paid by the bank to the Commission or a person nominated by the Commission, on such terms and conditions as the Court thinks fit; and
- (c) discharging or varying the order.

72. (1) An order made under section 71 may include directions to the person to whom the moneys are paid directing that that person— Power of Court to make order relating to payment of moneys.

- (a) shall cause the moneys to be paid into a separate trust account;

(b)

- No. 3, 1976
- (b) is authorised to prepare a scheme for distributing the moneys to persons who claim to be entitled thereto, during a period of six months after the Commission or that other person receives the moneys, and who satisfy the Commission or that other person that they are so entitled; or
- (c) where the moneys received are insufficient to pay all proved claims may, notwithstanding any rule of law to the contrary, apportion the moneys among the claimants in proportion to their proved claims and show in the scheme how the moneys are so apportioned.

(2) Where a person prepares a scheme for a distribution of moneys pursuant to subsection (1), he shall apply to the Court for approval of the scheme and for directions in respect of it.

(3) The Court may give such directions as to the moneys held in a separate trust account pursuant to subsection (1), as to the persons to whom and in what amounts the whole or any portion of those moneys shall be paid, and as to the payment of the balance of the moneys, if any, remaining in the account, as the Court thinks fit.

PART VII.—REGISTERS OF INTERESTS IN SECURITIES.

Interpre-
tation.
Vic., s. 20A.
N.S.W.,
s. 20A.
W.A., s. 24.

73. (1) In this Part—
“financial journalist” means a person who, not being the holder of a licence, in the course of his business or employment contributes advice, or prepares analyses or reports, concerning securities for publication in a newspaper or periodical.

(2) In this Part, a reference to securities is a reference to securities that are securities of a body corporate that is a public company under the law of a State or Territory of the Commonwealth or securities that are quoted or dealt in at a stock market in a State or Territory of the Commonwealth.

(3)

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(3) A reference in this Part to the Register, in relation to a person to whom this Part applies, is a reference to the Register required to be maintained by him under section 75 (1). No. 3, 1976

(4) If—

- (a) there is in force a certificate in writing issued by or on behalf of a stock exchange certifying that a member of that stock exchange is recognised by the stock exchange as specialising in transactions relating to odd lots of securities; and
- (b) the member concerned enters into a transaction in relation to an odd lot of securities—

this Part does not apply in relation to any interest in securities acquired by him as a result of that transaction or in relation to any change in his interest in any securities effected by that transaction.

74. (1) This Part applies to and in relation to a person who is the holder of a licence or a financial journalist. Application
of Part.

(2) A financial journalist who maintains a register under the provisions of a declared law corresponding to this Part is not required to maintain a Register under this Part.

75. (1) A person to whom this Part applies shall maintain a Register, in accordance with the prescribed form or in the prescribed manner, for the purpose of this Part and shall keep the Register at the place in the State of which he gives notice to the Commission under section 76. Register
to be
maintained.

(2) Where—

- (a) a person becomes a person to whom this Part applies; and

(b)

No. 3, 1976

(b) the person is aware when he becomes such a person that he has an interest in securities—

he shall, within seven days after the day on which he becomes such a person, if he has not already done so, cause to be entered, as prescribed, in the Register particulars of those securities and of the nature of his interest in those securities.

(3) Where a person to whom this Part applies becomes aware that he has an interest in securities he shall, within seven days after the day on which he becomes so aware, cause to be entered, as prescribed, in the Register particulars of those securities and of the nature of his interest in those securities.

(4) Where there is a change in the interest of a person to whom this Part applies in securities, he shall, within seven days after the day on which he becomes aware of the change, cause particulars of the change to be entered in the Register.

(5) For the purposes of this section, where a person to whom this section applies commences or ceases to have an interest in securities, there shall be deemed to be a change in the interest of that person in those securities.

(6) Where a person to whom this section applies is required by this section to enter in the Register particulars of any securities and of the nature of his interest in those securities, or particulars of a change in his interest in any securities, the particulars to be so entered shall include—

(a) the date on which he commenced or ceased to have the interest or on which the change occurred ;

(b) the number of securities to which the interest relates or related ;

(c)

Securities Industry.

- (c) if the interest was acquired or disposed of or the change occurred for valuable consideration—the amount of the consideration and, if the consideration did not consist wholly of money, the nature of the part of the consideration that did not consist of money; and
- (d) if the securities are not registered in the name of the first-mentioned person—the name of the person who is registered as the holder of the securities or, if any other person is entitled to become registered as the holder of the securities, the name of that other person.

Penalty : \$1,000 or imprisonment for six months.

76. (1) An applicant for a licence shall, as part of his application for the grant of the licence, give notice in writing to the Commission of the place in the State at which he will keep the Register.

(2) A financial journalist shall, within fourteen days after he commences to maintain the Register, give notice in writing to the Commission stating—

- (a) the place in the State at which he keeps the Register;
- (b) the name and business address of his employer (if any); and
- (c) the newspapers and periodicals to which he contributes.

(3) Where there is a change in the place in the State at which the holder of a licence or a financial journalist keeps the Register, he shall immediately give notice in writing to the Commission of the new place at which the Register is kept.

(4)

Securities Industry.

No. 3, 1976

(4) A Register kept by a person to whom this Part applies under Division 2 of Part IV of the Securities Industry Act, 1970, shall be deemed to be a Register kept under this Part and, unless notice of a change of place at which it is kept is given under this section, shall be kept at the place at which, under that Act, it was required to be kept immediately before the commencement of this Act.

(5) A person to whom this Part applies at the date of commencement of this Act who did not, immediately before that date, keep a Register under Division 2 of Part IV of the Securities Industry Act, 1970, shall—

- (a) give the notice referred to in subsection (1) or (2) within one month after that date; and
- (b) give such a notice notwithstanding that during that time he has ceased to be a person to whom this Part applies.

Defences.
Vic., s. 20D.
W.A., s. 27.

77. (1) It is a defence to a prosecution for failing to comply with section 75 or 76 if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that—

- (a) he was not so aware on the date of the information or summons;
- (b) he became so aware less than fourteen days before the date of the information or summons; or
- (c) he became so aware not less than fourteen days before the date of the information or summons and complied with the relevant section within fourteen days after becoming so aware.

(2)

Securities Industry.

(2) For the purposes of this Part, a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence relating to securities of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master's or principal's interest in the relevant securities, was aware at that time. No. 3, 1976

78. (1) The Commission may require a person to whom this Part applies to produce for inspection the Register required to be kept pursuant to section 75 and the Commission may make copies of or take extracts from the Register. Power of Commission to require production of Register.

(2) A person who, when required to do so under subsection (1), fails to produce a Register for inspection or fails to allow a person to make a copy of or take extracts from the Register is guilty of an offence against this Act. Vic., s. 20F.
N.S.W., s. 20F.
W.A., s. 29.

79. (1) The Commission may, by notice in writing, require the proprietor or publisher of a newspaper or periodical to supply the Commission with— Power of Commission to require certain information to be supplied to the Commission.

- (a) the name and address of the person who contributed any advice specified in the notice or prepared any analysis or report so specified; or
- (b) the names and addresses of all persons who, during a period specified in the notice, contributed any advice or prepared any analysis or report concerning securities— Vic., s. 20E.
N.S.W., s. 20E.
W.A., s. 28.

being advice, or an analysis or a report, published in a newspaper owned or published by that proprietor or publisher.

(2) A proprietor or publisher of a newspaper or periodical who wilfully fails to comply with a notice under subsection (1) is guilty of an offence.

No. 3, 1976 **80.** The Commission may supply a copy of a Register or of an extract from a Register to any person who, in the opinion of the Commission, should in the public interest be informed of the matters disclosed in the Register or extract.

Power of Commission to supply copy of Register.
N.S.W., s. 20g.
Vic., s. 20g.
W.A., s. 30.

PART VIII.—DEPOSITS WITH STOCK EXCHANGES.

81. (1) Each sole trader and each member firm shall lodge and maintain a deposit as required by this Part with the stock exchange of which the sole trader is a member or by which the firm is recognised.

Deposits to be lodged by sole traders and member firms.

(2) A deposit referred to in subsection (1) is payable out of moneys in a trust account kept by the sole trader or member firm.

(3) An amount paid from a trust account as, or as part of, a deposit lodged with a stock exchange under this Part continues to be money in that trust account notwithstanding that it is so lodged.

(4) Where a sole trader or member firm fails to comply with subsection (1), the sole trader or each partner in the member firm (as the case may be) is guilty of an offence and liable to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding one year.

82. (1) The deposit required to be lodged and maintained by a sole trader or member firm under section 81 is an amount equal to two-thirds (or, where a lesser proportion is prescribed, that proportion) of the lowest balance in the

Deposit to be proportion of certain balances.
N.S.W. s. 40.
Vic. s. 40.

trust

Securities Industry.

trust account maintained by the sole trader or member firm during the period of three months ending on the quarter day last past. No. 3, 1976

(2) Where a sole trader or member firm maintains two or more trust accounts, the amount of the deposit required to be lodged by the sole trader or member firm under section 81 shall be determined as if a reference in subsection (1) to the balance in the trust account at any time were a reference to the aggregate of the balances at that time in the trust accounts maintained by that sole trader or member firm.

(3) Nothing in this Part requires the lodging or maintaining of a deposit where, but for this subsection, the amount of the deposit would be less than \$3,000.

83. (1) Where a stock exchange receives a deposit from a sole trader or member firm under section 81, the stock exchange holds the deposit upon trust for the sole trader or member firm and shall invest the deposit—

Deposits to
be invested
by stock
exchange.
N.S.W.,
s. 42.
Vic., s. 42.

- (a) on interest bearing term deposit in a bank within the meaning of the Banking Act 1959 of the Commonwealth or in a bank constituted by a law of the State; or
- (b) on interest bearing deposit with the Treasurer at a rate from time to time that is not less than the maximum rate of interest from time to time payable on amounts on interest bearing deposit in the Commonwealth Savings Bank.

(2) An amount deposited with the Treasurer under subsection (1) or a corresponding previous enactment is repayable on demand.

(3)

Securities Industry.

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(3) A stock exchange shall pay moneys received by way of interest in respect of amounts invested under subsection (1) into the fidelity fund established by it pursuant to Part IX.

(4) The stock exchange shall on demand being made by a sole trader or member firm who has lodged a deposit with the stock exchange, pay to the sole trader or member firm an amount deposited with the stock exchange under section 81 or a corresponding previous enactment.

(5) A sole trader or member firm shall pay an amount received from the stock exchange under subsection (4) into a trust account maintained by the sole trader or member firm under section 59.

(6) Where a sole trader or member firm fails to comply with subsection (5), the sole trader or each partner in the member firm (as the case may be) is guilty of an offence and is liable to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding one year.

(7) The fidelity fund of a stock exchange shall guarantee the repayment by the stock exchange of the amount of a deposit received from a sole trader or member firm.

Accounts of
deposits.
N.S.W., s.
44.
Vic., s. 44.

84. (1) A stock exchange shall establish and keep proper accounts of all deposits received by the stock exchange under this Part and shall, within one month after each quarter day, cause a balance sheet to be made out as at that quarter day.

(2) A stock exchange shall appoint a registered company auditor within the meaning of section 5 of the Companies Act, 1961, to audit its accounts relating to deposits.

(3)

Securities Industry.

(3) An auditor appointed by a stock exchange shall audit the accounts relating to deposits received by the stock exchange and each balance sheet and shall cause a report on the accounts and balance sheet to be laid before the committee of the stock exchange not later than one month after the balance sheet is made out. No. 3, 1976

(4) A stock exchange shall give to the Commission a copy of each report laid before the committee of the stock exchange under this section and of the balance sheet to which the report relates within fourteen days after the report was so laid before the committee.

85. Nothing done under this Part affects—

- (a) a claim or lien that a sole trader or member firm has on or in relation to a deposit; or
- (b) the rights or remedies of a person other than a sole trader or member firm.

Claims, &c.,
not affected
by this
Part.
N.S.W.,
s. 45.
Vic., s. 45.

PART IX.—FIDELITY FUNDS.

86. (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 of a stock exchange are the property of the stock exchange, but shall be kept separately from all other property and shall be held in trust for the purposes set out in this Part.

N.S.W.,
s. 47.
W.A., s. 60.

87. The fidelity fund of a stock exchange shall consist of—

Moneys
constituting
fidelity fund.

- (a) the amount in the fidelity fund established by the stock exchange under the Securities Industry Act, 1970, immediately before the commencement of this Act or, where the stock exchange had no such

N.S.W.,
s. 48.
Vic. s. 48.
W.A., s. 61.

fund,

No. 3, 1976

- fund, an amount of not less than \$100,000, to be paid to the credit of the fund by the stock exchange on the establishment of the fund;
- (b) moneys paid to the stock exchange by sole traders or member firms in accordance with the provisions of this Part;
 - (c) the interest on moneys invested by the stock exchange under Part VIII;
 - (d) the interest and profits from time to time accruing from the investment of the fidelity fund;
 - (e) moneys paid into the fidelity fund by the stock exchange;
 - (f) moneys recovered by or on behalf of the stock exchange in the exercise of a right of action conferred by this Part;
 - (g) moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the stock exchange under section 107; and
 - (h) all other moneys lawfully paid into the fund.

Fund to be kept in separate bank account.
N.S.W., s. 49.
Vic., s. 49.

88. The moneys in a fidelity fund shall, until they are invested or applied in accordance with this Part, be paid into a separate account in a bank in the State.

Payments out of fund.
N.S.W., s. 50.
Vic., s. 50.
W.A., s. 63.

89. Subject to this Part, there shall be paid out of the fidelity fund of a stock exchange 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)

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- (b) all legal and other expenses incurred in investigating No. 3, 1976 or defending claims made under this Part or incurred in relation to the fund or in the exercise by the stock exchange or the committee of the rights, powers, and authorities vested in it by this Part in relation to the fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the stock exchange under section 107;
- (d) the expenses incurred in the administration of the fund, including the salaries and wages of persons employed by the stock exchange or the committee in relation to the fund; and
- (e) all other moneys payable out of the fund in accordance with the provisions of this Act.

90. (1) A stock exchange shall establish and keep proper accounts of its fidelity fund and shall, before the 31st day of August in each year, cause a balance sheet in respect of those accounts to be made out as at the preceding 30th day of June.

Accounts
of fund.
N.S.W.,
s. 51.
Vic., s. 51.
W.A., s. 64.

(2) A stock exchange shall appoint a registered company auditor within the meaning of section 5 of the Companies Act, 1961, to audit the accounts of the fidelity fund.

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

(4) A stock exchange shall give to the Commission a copy of each report laid before the committee of the stock exchange under this section and of the balance sheet to which the report relates within fourteen days after the report was so laid before the committee.

Securities Industry.

No. 3, 1976 **91.** (1) A majority of the members of a committee of a stock exchange may appoint a management sub-committee of not less than three and not more than five, persons, being members of the stock exchange, at least one of whom is also a member of the committee.

Management sub-committee.
N.S.W.,
s. 52.
Vic., s. 52.

(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, and discretions under a provision of this Part (other than this section, section 94, section 97 (5), (6) or (7) or section 99).

(3) A power, authority or discretion delegated under subsection (2) may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred by this Part on a majority of the members of the sub-committee.

(4) A delegation under this section may at any time be varied or revoked.

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

92. (1) A person shall not be admitted to membership of a stock exchange or to a partnership in a member firm recognised by a stock exchange unless he has paid to the stock exchange, as a contribution to its fidelity fund, such amount, being not less than \$500, as is determined by the stock exchange.

Contributions to fund.
N.S.W.,
s. 53.
Vic., s. 53.

(2) A person who is a member of a stock exchange shall, on or before the 31st day of March in each year, pay to the stock exchange as a contribution to its fidelity fund, such amount, being not less than \$100, as is determined by the stock exchange.

93.

Securities Industry.

93. (1) Where the amount in a fidelity fund of a stock exchange exceeds \$2,000,000 or such lesser amount as is prescribed—

No. 3, 1976
 Provisions
 where fund
 exceeds
 \$2,000,000.
 N.S.W.,
 s. 54.
 Vic., s. 54.

(a) a person —

- (i) who is a member of the stock exchange;
- (ii) who has made twenty or more annual contributions to the fund (whether under this Part or any corresponding previous enactment); and
- (iii) in respect of whom a payment from the fund has not been made or, if such a payment has been made, has been repaid to the fund—

is not, subject to this section, required to make further annual contributions to the fund;

- (b) on the retirement from business of any such person the committee may, in its discretion, pay to him the total amount of the annual contributions made by him to the fund or such proportion of those contributions as is for the time being determined by the committee either generally or in relation to the particular person, either with or without simple interest at a rate not exceeding three per centum per annum; and
- (c) on the death of any such person without any payment having been made to him under paragraph (b), the committee may, in its discretion, make such a payment either to his personal representative or to his widow or to any dependant.

(2) A determination of the committee under subsection (1) (b) shall be in writing and may be in respect of any person or any class of persons.

(3)

No. 3, 1976 (3) The stock exchange may, by notice in writing published in the Gazette—

(a) suspend the operation of subsection (1) (b) or (c); or

(b) revoke any such suspension—

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

(4) Where the amount in a fidelity fund is, by reason of payments made out of the fund, less than \$1,000,000 or such lesser amount as is prescribed, the stock exchange may determine that a person who by reason of subsection (1) is not required to make annual contributions to the fund shall again be required, to such extent as it thinks fit, to make annual contributions under section 92.

(5) A person to whom a determination under subsection (4) applies is liable to make contributions in accordance with the determination.

Levy in addition to annual contributions. N.S.W., s. 55. Vic., s. 55.

94. (1) If at any time the amount of a fidelity fund is insufficient to pay all amounts that, at that time, are required to be paid under section 89, the stock exchange may impose on each person who is liable to contribute to the fund a levy of such amount as it thinks fit for payment into the fund.

(2) The amount of such a levy shall be paid within the time and in the manner specified by the stock exchange either generally or in relation to a particular case.

(3) A person is not required to pay by way of levy under this section more than \$5,000 in the aggregate or more than \$1,000 in any period of twelve months.

95.

Securities Industry.

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

No. 3, 1976
Power of stock exchange to make advances to fund.
N.S.W., s. 56.
Vic., s. 56.

(2) Moneys that are advanced under subsection (1) may at any time be repaid from the fidelity fund to the general funds of the stock exchange.

96. Moneys in a fidelity fund that are not immediately required for its purposes may be invested by the stock exchange in any manner in which trustees are for the time being authorised by law to invest trust funds or on deposit with a corporation that is declared, pursuant to section 38 (7) (b) of the Companies Act, 1961, to be an authorised dealer in the short term money market.

Investment of fund.
N.S.W., s. 57.
Vic., s. 57.

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

Application of fund.
N.S.W., s. 58.
Vic., s. 58.
W.A., s. 65.

(a) by reason of a defalcation, or fraudulent misuse of securities or documents of title to securities or of other property, by a member of the stock exchange who is liable, or would, but for section 93, be liable, to contribute to the fund or by an employee or servant of such a member in respect of money, securities, documents of title to securities or other property that, in the course of or in connection with that member's business of dealing in securities, was entrusted to or received by the member or an employee or servant of the member (whether before or after the commencement of this Act)—

(i) for or on behalf of another person; or

(ii) by reason that the member was a trustee of the money, securities, documents of title or other property; or

(b)

Securities Industry.

No. 3, 1976

(b) by reason of a defalcation, or fraudulent misuse of securities or documents of title to securities or of other property, by a partner in a member firm recognised by the stock exchange any of the partners in which are liable, or would, but for section 93, be liable, to contribute to the fund, or by an employee or servant of such a firm, in respect of money, securities, documents of title to securities or other property that, in the course of or in connection with the firm's business of dealing in securities, was entrusted to or received by a partner in the firm or an employee or servant of the firm (whether before or after the commencement of this Act)—

(i) for or on behalf of another person ; or

(ii) by reason that the firm, or a partner in the firm, was a trustee of the money, securities, documents of title or other property.

(2) Where a right to compensation does not arise under subsection (1), a fidelity fund may, subject to this Part, be applied for the purpose of paying to an official receiver, trustee or controlling trustee within the meaning of the Bankruptcy Act 1966 of the Commonwealth 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, being a member of a stock exchange or a partner in a member firm recognised by a stock exchange, being insufficient to satisfy the debts proved in the bankruptcy by creditors of the bankrupt, arising from dealings in securities.

(3) Except as otherwise provided in the following provisions of this section, the amount that may be paid under this Part—

(a) to a person who suffers pecuniary loss as referred to in subsection (1); or

(b)

Securities Industry.

- (b) to a person to whom a payment may be made under No. 3, 1976 subsection (2)—

shall not exceed in respect of a member of a stock exchange or member firm recognised by a stock exchange the sum of \$500,000.

(4) For the purposes of calculating the sum referred to in subsection (3) an amount that is paid from a fidelity fund shall, to the extent to which that amount is repaid to the fund, be disregarded.

(5) If a stock exchange considers, having regard to the ascertained or contingent liabilities of the fidelity fund, that the assets of the fund so permit, the stock exchange may, by notice published in the Gazette, increase the total amount that may be applied from the fund pursuant to subsection (3), and from the date of the publication of the notice until the notice is revoked or varied the amount specified in the notice is the total amount that may be applied as provided by this section.

(6) A notice under subsection (5) may be revoked or varied by the stock exchange by notice published in the Gazette, and a notice that is so varied has effect accordingly.

(7) If a stock exchange, having regard to the ascertained or contingent liabilities of the fidelity fund, considers that the assets of the fund so permit, the stock exchange may apply out of the fund such sums in excess of the amount limited by or under this section as the stock exchange, in its discretion, thinks fit in or towards the compensation of persons who have suffered pecuniary loss as referred to in subsection (1) or making a payment under subsection (2).

(8)

No. 3, 1976

(8) For the purposes of this section, a reference to a member of a stock exchange includes a reference to a person who was but has ceased to be such a member if a person, at the time he suffered pecuniary loss, had reasonable grounds for believing and did believe the first-mentioned person to be such a member.

Claims
against the
fund.
N.S.W.,
s. 59.
Vic., s. 59.
W.A., s. 66.

98. (1) Subject to this Part, a person who suffers pecuniary loss as referred to in section 97 (1) is entitled to claim compensation from the fidelity fund of the relevant stock exchange and to take proceedings in the Court as provided in this Part against the stock exchange to establish that claim.

(2) A person does not have a claim against a fidelity fund of a stock exchange in respect of—

- (a) pecuniary loss suffered before the commencement of Part VII of the Securities Industry Act, 1970;
or
- (b) pecuniary loss in respect of money or other property suffered after the money or property had, in due course of the administration of a trust, ceased to be under the sole control of a member of the stock exchange or of a partner or partners in a member firm recognised by the stock exchange.

(3) Subject to this Part, the amount that a claimant is entitled to claim as compensation from a fidelity fund of a stock exchange is 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 a source other than the fund in reduction of the loss.

(4)

Securities Industry.

(4) In addition to any compensation that is payable under this Part, interest is payable out of the fidelity fund 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 and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied. No. 3, 1976

99. (1) Where all persons who have submitted claims pursuant to section 98 have been fully compensated in accordance with the provisions of this Part for pecuniary loss as referred to in section 97 (1) suffered in relation to money or other property entrusted to or received by a partner in a member firm recognised by a stock exchange, any other partner in that firm who has made payment to a person in compensation for loss suffered by him in relation to that money or property shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of that person against the fidelity fund if the committee, having regard to all the circumstances, determines that he was in no way a party to the loss and that he acted honestly and reasonably in the matter. Rights of innocent partner in relation to fund.
N.S.W., s. 60.
Vic., s. 60.
W.A., s. 67.

(2) If a partner in a member firm feels aggrieved by the determination of a committee under subsection (1), he may, within the time prescribed by rules of court appeal to the Court against the determination.

(3) The appellant shall on the day on which he commences proceedings in the Court by way of appeal, lodge a copy of the originating process with the stock exchange that made the determination appealed against.

(4) If the Court is of opinion having regard to all the circumstances that the appellant was not a party to the defalcation or fraudulent misuse of securities or documents of title to the securities or of other property from which the

pecuniary

- No. 3, 1976

 pecuniary loss arose and that he acted honestly and reasonably in the matter it may order that the appellant shall, to the extent of any payment made by him, be subrogated to the rights and remedies, in relation to the fidelity fund of the relevant stock exchange, of the person to whom he made such a payment.

Notice
 calling
 for claims
 against fund.
 N.S.W.,
 s. 61.
 Vic., s. 61.
 W.A., s. 68.

100. (1) A stock exchange may cause to be published in a daily newspaper circulating generally in the State (and if, in another State or Territory of the Commonwealth, that newspaper does not circulate generally, in a newspaper that does so circulate in that State or Territory), a notice in the prescribed form specifying a date, not being earlier than three months after the publication of the notice, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.

(2) A claim for compensation from a fidelity fund of a stock exchange in respect of a pecuniary loss shall be made in writing to the stock exchange—

- (a) where a notice under subsection (1) 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 pecuniary loss—

and a claim that is not so made is barred unless the stock exchange otherwise determines.

Power of
 committee
 to settle
 claims.
 N.S.W.,
 s. 62.
 Vic., s. 62.
 W.A., s. 69.

101. (1) Subject to this Part, a committee may allow and settle a proper claim for compensation from a fidelity fund of a stock exchange at any time after the occurrence of the pecuniary loss in respect of which the claim arose.

(2)

Securities Industry.

(2) Subject to subsection (3), a person shall not commence proceedings under this Part against a stock exchange without leave of the committee unless—

- (a) the committee has disallowed his claim; and
- (b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money, securities, documents of title to securities or other property in respect of which the pecuniary loss occurred, being rights and remedies that are available against the member of the stock exchange in relation to whom the claim arose and all other persons who are liable in respect of the loss suffered by the claimant.

(3) A person who has been refused leave by the committee of a stock exchange under subsection (2) may apply to the Court for leave to commence proceedings against the stock exchange and the Court may make such order in the matter as it thinks fit.

(4) A committee, after disallowing, whether wholly or partly, a claim for compensation from a fidelity fund of a stock exchange, shall serve notice of the disallowance in the prescribed form on the claimant or his solicitor.

(5) Proceedings against a stock exchange in respect of a claim that has been disallowed by a committee shall not be commenced after the expiration of three months after the service of the notice of disallowance referred to in subsection (4).

(6) In proceedings brought to establish a claim, evidence of an admission or confession by, or other evidence that would be admissible against, the person against whom a defalcation or fraudulent misuse of property is alleged is admissible to prove the defalcation or fraudulent misuse notwithstanding that the person is not the defendant in or a party to those proceedings, and all defences that would have been available to that person are available to the stock exchange.

(7)

No. 3, 1976

(7) The committee or, where proceedings are brought to establish a claim, the Court, if satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim, may allow the claim and act accordingly, notwithstanding that the person against whom the defalcation or fraudulent misuse of property is alleged has not been convicted or prosecuted 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 on a criminal trial in respect of the defalcation or fraudulent misuse of property.

Form of
order of
Court
establishing
claim.
N.S.W.,
s. 63.
Vic., s. 63.
W.A., s. 70.

102. Where in proceedings brought to establish a claim the Court is satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim and that otherwise the claimant has a valid claim the Court shall, by order—

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

Power of
committee
to require
production
of securities,
&c.
N.S.W.,
s. 64.
Vic., s. 64.
W.A., s. 71.

103. The committee of a stock exchange may at any time require a person to produce and deliver any securities, documents or statements of evidence necessary to support a claim made or necessary for the purpose either of exercising its rights against a member of the stock exchange or a partner or the partners in a member firm recognised by the stock exchange or any other person or of enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property, and in default of delivery of any such securities, documents or statements of evidence by the first-mentioned person, the committee may disallow any claim by him under this Part.

104.

Securities Industry.

104. On payment out of a fidelity fund of a stock exchange of any moneys in respect of a claim under this Part, the stock exchange shall be deemed to 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 or fraudulent misuse of property.

No. 3, 1976
Subrogation
of stock
exchange to
rights, &c.,
of claimant
on payment
from fund.
N.S.W.,
s. 65.
Vic., s. 65.

105. Money or other property belonging to a stock exchange, other than the fidelity fund, is not available for the payment of a claim under this Part, whether the claim is allowed by the committee or is made the subject of an order of the Court.

Payment of
claims only
from fund.
N.S.W.,
s. 66.
Vic. s. 66.

106. (1) Where the amount in a fidelity fund of a stock exchange is insufficient to pay the whole of the amount of all claims against it that have been allowed or in respect of which orders of the Court have been made, the amount in the fund shall, subject to subsection (2), be apportioned between the claimants in such manner as the committee thinks equitable, and such a claim so far as it then remains unpaid shall be deemed to 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.
N.S.W.,
s. 67.
Vic., s. 67.

(2) Where the aggregate of all claims that have been allowed or in respect of which orders of the Court have been made in relation to defalcations or fraudulent misuses of property by or in connection with a member of a stock exchange or partner in a member firm recognised by a stock exchange, exceeds the total amount that may, pursuant to section 97, be paid under this Part in respect of that member or partner the total amount shall be apportioned between the claimants in such manner as the committee thinks equitable, and on payment out of the fund of that total amount in accordance with that apportionment all such claims and any orders relating thereto and all other claims against the fund that may thereafter arise or be made in respect of those defalcations or fraudulent misuses of property are discharged.

107.

No. 3, 1976 **107.** (1) A stock exchange may, in its discretion, enter into a contract with a person carrying on fidelity insurance business whereby the stock exchange will be insured or indemnified to the extent and in the manner provided by the contract against liability in respect of claims under this Part.

Power of stock exchange to enter into contracts of insurance or indemnity.

N.S.W., s. 68.
Vic., s. 68.

(2) Such a contract may be entered into in relation to members of the stock exchange generally, or in relation to particular members named therein, or in relation to members generally with the exclusion of particular members named therein.

(3) An action does not lie against a stock exchange or against a member or servant of a stock exchange or committee or against a member of a management sub-committee for damage alleged to have been suffered by a member of the stock exchange by reason of the publication in good faith of a statement that a contract entered into under this section does or does not apply with respect to him.

Application of insurance moneys. **108.** A claimant against a fidelity fund of a stock exchange does not have a right of action against a person with whom a contract of insurance or indemnity is made under this Part in respect of such a contract or a right or claim with respect to any moneys paid by the insurer in accordance with such a contract.

N.S.W., s. 69.
Vic., s. 69.

PART X.—TRADING IN SECURITIES.

False trading and market rigging transactions. **109.** (1) A person shall not create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a stock market in the State, or a false or misleading appearance with respect to the market for, or the price of, any such securities.

N.S.W., s. 70.
Vic., s. 70.

(2)

Securities Industry.

(2) A person shall not, by means of purchases or sales of any securities that do not involve a 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. **No. 3, 1976**

(3) Without affecting the generality of subsections (1) and (2), a person who—

- (a) effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;
- (b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
- (c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price—

shall be deemed to have created a false or misleading appearance of active trading in securities on a stock market.

(4)

No. 3, 1976

(4) It is a defence to a prosecution of a person for an offence under this section in respect of acts referred to in subsection (3) done by him if the person proves that he did the acts for a purpose other than the purpose of creating a false or misleading appearance of active trading in securities on a stock market.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

False or misleading statements, &c.
Q'land, s. 94.

110. A person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising or lowering the market price of securities if, when he makes the statement or disseminates the information—

- (a) he does not care whether the statement or information is true or false; or
- (b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Fraudulently inducing persons to deal in securities.

111. A person shall not—

- (a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts; or

(c)

Securities Industry.

- (c) by the reckless making or publishing (dishonestly or otherwise) of any statement, promise or forecast that is misleading, false or deceptive—

induce or attempt to induce another person to deal in securities.

112. (1) A person who is, or at any time in the preceding six months has been, connected with a body corporate shall not deal in any securities of that body corporate if by reason of his so being, or having been, connected with that body corporate he is in possession of information that is not generally available but, if it were, would be likely materially to affect the price of those securities.

Prohibition
of dealings
in securities
by insiders.
cf. N.S.W.,
s. 75A.

(2) A person who is, or at any time in the preceding six months has been, connected with a body corporate shall not deal in any securities of any body corporate if by reason of his so being, or having been, connected with the first-mentioned body corporate he is in possession of information that—

- (a) is not generally available but, if it were, would be likely materially to affect the price of those securities; and
- (b) relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and securities of the other.

(3) Where a person is in possession of any such information as is mentioned in subsection (1) or (2) that if generally available would be likely materially to affect the price of securities but is not precluded by either of those subsections from dealing in those securities, he shall not deal in those securities if—

- (a) he has obtained the information, directly or indirectly, from another person and knows that that other person is then himself precluded by subsection (1) or (2) from dealing in those securities; and

(c)

(b)

No. 3, 1976

(b) when the information was so obtained, he was associated with that other person or had with him an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities by himself and that other person or either of them.

(4) A person shall not, at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities, cause or procure any other person to deal in those securities.

(5) A person shall not, at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities by reason of his being in possession of any information, communicate that information to any other person if—

- (a) a stock exchange permits trading of those securities on the stock market maintained or provided by that stock exchange; and
- (b) he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing, or causing or procuring another person to deal, in those securities.

(6) Without prejudice to subsection (3) but subject to subsection (7), a body corporate shall not deal in any securities at a time when any officer of that body corporate is precluded by subsection (1), (2) or (3) from dealing in those securities.

(7) A body corporate is not precluded by subsection (6) from entering into a transaction at any time by reason only of information in the possession of a director or officer of that body corporate if—

- (a) the decision to enter into the transaction was taken on its behalf by a person other than the director or officer;

(b)

Securities Industry.

-
- (b) it had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to him by a person in possession of the information; and
- (c) the information was not so communicated and such advice was not so given.

(8) For the purposes of this section, a person is connected with a body corporate if, being an individual—

- (a) he is an officer of that body corporate or of a related body corporate;
- (b) he is a substantial shareholder within the meaning of Division 3A of Part IV of the Companies Act, 1961, in that body corporate or in a related body corporate; or
- (c) he occupies a position that may reasonably be expected to give him access to information of a kind to which subsections (1) and (2) apply by virtue of—
- (i) any professional or business relationship existing between himself (or his employer or a corporation of which he is an officer) and that body corporate or a related body corporate; or
 - (ii) his being an officer of a substantial shareholder within the meaning of Division 3A of Part IV of the Companies Act, 1961, in that body corporate or in a related body corporate.

(9)

Securities Industry.

No. 3, 1976

(9) This section does not preclude the holder of a dealers licence from dealing in securities, or units of securities, in a body corporate, being securities or units that are permitted by a stock exchange to be traded on the stock market maintained or provided by that stock exchange, if—

- (a) the holder of the licence enters into the transaction concerned as agent for another person in pursuance of a specific instruction by that other person to effect that transaction;
- (b) the holder of the licence has not given any advice to the other person in relation to dealing in securities, or units of securities, of that class in that body corporate; and
- (c) the other person is not associated with the holder of the licence.

(10) Where a prosecution is instituted against a person for an offence by reason that the person was in possession of certain information and entered into a transaction in contravention of this section, it is a defence if the person satisfies the Court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.

(11) For the purposes of this section, the question whether bodies corporate are related to each other shall be determined in the same manner as the question whether corporations, within the meaning of the Companies Act, 1961, are related to each other would be determined under that Act.

Penalties.

113. A person who contravenes section 109, 110, 111 or 112 is guilty of an indictable offence and is punishable, on conviction—

- (a) in the case of a person not being a body corporate—
by a fine not exceeding \$10,000 or imprisonment for a period not exceeding five years; or

(b)

Securities Industry.

- (b) in the case of a person being a body corporate— No. 3, 1976
by a fine not exceeding \$50,000.

114. (1) Where—

Compensa-
tion for
loss, &c.

- (a) a person who is in possession of any such information as is mentioned in section 112 (1) or (2) in respect of any securities deals in those securities in contravention of section 112 (1), (2) or (3), or causes or procures another person to deal in those securities in contravention of section 112 (4); or
- (b) a person being a body corporate deals in securities in contravention of section 112 (6) at a time when an officer of the body corporate was in possession of any such information as is mentioned in section 112 (1) or (2)—

that person is liable —

- (c) to compensate any other party to the transaction who was not in possession of that information for any loss sustained by that party by reason of any difference between the price at which the securities were dealt in in that transaction and the price at which they would be likely to have been dealt in in such a transaction at the time the first-mentioned transaction took place if that information had been generally available; and
- (d) to account to the body corporate that issued or made available those securities for any profit accruing to the first-mentioned person from dealing in those securities.

(2) A person who contravenes section 109, 110 or 111 is liable to pay compensation to any other person who, in a transaction for the sale or purchase of securities, entered into with the first-mentioned person or with a person acting for or on behalf of the first-mentioned person, suffers loss by reason of the difference between the price at which the securities were

(b)

dealt

No. 3, 1976 dealt in in that transaction and the price at which they would be likely to have been dealt in in such a transaction at the time the first-mentioned transaction took place if the contravention had not occurred.

(3) The amount of compensation for which a person is liable under subsection (1) or (2) or for which a person is liable to account under subsection (1) is—

- (a) the amount of the loss sustained by the person claiming the compensation or the amount of the profit referred to in subsection (1) (d), as the case may be; or
- (b) the amount of that loss or profit less the total of the amounts (if any) that the first-mentioned person has been found by a court to be liable to pay to any other person under this Part or under section 124 (3) (a) of the Companies Act, 1961, by reason of the same act or transaction—

whichever is the lesser.

(4) For the purposes of subsection (3), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

(5) An action under this section for recovery of a loss or profit shall not be commenced after the expiration of two years after the date of completion of the transaction in which the loss or profit occurred.

(6)

Securities Industry.

(6) The Commission may, if the Commission ^{No. 3, 1976} considers it to be in the public interest to do so, bring an action in the name of and for the benefit of the body corporate or other person for recovery of a loss or profit referred to in subsection (1) or (2).

(7) Nothing in subsection (1) or (2) affects any liability that a person may incur under any other law.

115. (1) A dealer shall not, except as permitted by subsection (2), enter into, as principal or on behalf of a person associated with him, a transaction of purchase or sale of securities of a body corporate that are permitted to be traded on the stock market maintained or provided by a stock exchange if a client of the dealer who is not associated with the dealer has instructed the dealer to purchase or sell, respectively, securities of the body corporate of the same class and the dealer has not complied with the instruction.

Penalty : \$1,000 or imprisonment for six months.

(2) Subsection (1) does not apply in relation to the entering into of a transaction by a dealer as principal or on behalf of a person associated with him if—

- (a) the instructions from the client of the dealer required the purchase or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be purchased or sold and the dealer has been unable to purchase or sell the securities by reason of those conditions; or
- (b) the transaction is entered into in prescribed circumstances.

116.

Securities Industry.

No. 3, 1976 **116.** (1) A person who is a dealer or an investment adviser and an employee of that person shall not, as principals, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

Dealings by
employees of
holders of
licences.

(2) A person who is a partner in a partnership that carries on a business of dealing in securities or a business of advising other persons concerning securities and an employee of the partnership shall not, as principals, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

(3) A person who is a partner in a partnership that carries on a business in the course of which advice is given, or analyses or reports are issued or published, concerning securities and an employee of the partnership shall not, as principals, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

(4) A person who is a dealer or an investment adviser shall not give credit to a person who is employed by that person if—

- (a) the credit is given for the purpose of enabling or assisting the second-mentioned person to purchase or subscribe for any securities; or
- (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of purchasing or subscribing for securities.

(5) A person who is a partner in a partnership that carries on a business of dealing in securities shall not give credit to a person who is employed by the partnership if—

- (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to purchase or subscribe for any securities; or
- (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of purchasing or subscribing for securities.

(6)

Securities Industry.

(6) A person who is a partner in a partnership that No. 3, 1976 carries on a business in the course of which advice is given, or analyses or reports are issued or published, concerning securities shall not give credit to a person who is employed by the partnership if—

- (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to purchase or subscribe for any securities; or
- (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of purchasing or subscribing for securities.

(7) A person who is an employee of a sole trader or member firm in connection with a business of dealing in securities carried on by the sole trader or member firm shall not, as principal, purchase or agree to purchase any securities or units of securities unless the sole trader or member firm acts as the agent of the person in respect of the transaction.

Penalty : \$1,000 or imprisonment for six months.

PART XI.—MISCELLANEOUS.

117. A person who is not—

- (a) a member of a stock exchange; or
- (b) a person who is a member of, or is a partner in a partnership that is recognised as a member firm by, a stock exchange within the meaning of a declared law—

Restrictions
on use of
expression
"stock-
broker" or
"share-
broker".

shall not take or use, or by inference adopt, the name or title of stockbroker or sharebroker or take or use or have attached to or exhibited at any place a name, title or description implying or tending to the belief that he is a stockbroker or a sharebroker.

118.

No. 3, 1976 **118.** A person aggrieved by the refusal of the Commission to grant a licence or by the revocation of a licence under section 47 or by any other act or decision of the Commission may appeal to the District Court which may confirm the refusal, revocation, act or decision or give such directions in the matter as seem proper or otherwise determine the matter but this subsection does not apply to an act or decision of the Commission—

Appeal.
Vic., s. 20.

- (a) in respect of which a provision in the nature of an appeal or review is expressly provided in this Act; or
- (b) which is declared by this Act to be conclusive or final or is embodied in a document declared by this Act to be conclusive evidence of an act, matter or thing.

False or misleading statements.
Vic., s. 15A.
N.S.W., s. 15A.
W.A., s. 16.

119. (1) A person shall not, in, or in connection with, an application for a licence, make a statement that is false or misleading in a material particular knowing it to be false or misleading or wilfully omit to state any matter or thing without which the application is misleading in a material respect.

(2) A person shall not lodge with the Commission for the purposes of this Act a document that contains a statement that to his knowledge is false or misleading.

Penalty : \$1,000 or imprisonment for six months.

Preservation and disposal of records, &c.

120. (1) A person who is required by a provision of this Act to maintain, make, or keep a register or any accounting or other record in relation to a business carried on by him shall preserve that register or record for the prescribed period, whether or not he ceases to carry on that business before the expiration of that period.

(2)

Securities Industry.

(2) The prescribed period for the purposes of No. 3, 1976 subsection (1) is—

- (a) in relation to a register or a record other than an accounting record, the period of five years next after the day on which the last entry was made therein; or
- (b) in relation to an accounting record, the period of five years next after the last day of the accounting period to which the record relates.

(3) Subsections (1) and (2) do not apply to or in relation to a contract note or copy of a contract note received or issued by a dealer who is a member of a stock exchange if the matters referred to in section 51 (2) in relation to the contract note are recorded—

- (a) by the stock exchange; or
- (b) subject to such conditions, if any, as the Commission may impose, by the dealer—

in a manner approved by the Commission and the record of those matters is retained for not less than five years.

(4) Subject to the Archives Act, 1960, the Commission may, if of the opinion that it is no longer necessary or desirable to retain it, destroy or otherwise dispose of any document that is given to or lodged with the Commission under or for the purposes of this Act and that has been in the possession of the Commission for such period as is prescribed for the purposes of this subsection, either generally or in relation to a particular document or class of documents.

121. (1) Where a person—

- (a) conceals, destroys, mutilates or alters a book relating to the business carried on by a dealer or required under this Act to be kept by the holder of a licence or by a financial journalist within the meaning of Part VII; or

Concealing,
&c., of books
relating to
securities.

(b)

No. 3, 1976 (b) sends, attempts to send or conspires with another person to send such a book out of the State—

and as a result, a purpose of this Act is defeated or an examination, investigation or audit under this Act is prevented, delayed or obstructed, the first-mentioned person is guilty of an offence and liable to a penalty not exceeding \$2,000 or to imprisonment for a period not exceeding one year.

(2) In a prosecution of a person for an offence under subsection (1), it is a defence if the person proves that he did not act with intent to defeat the purposes of this Act or to prevent, delay or obstruct the carrying out of an examination, investigation or audit under this Act.

Falsification
of records.

122. Where matter that is used or intended to be used in connection with the keeping of a book required to be kept under this Act or a record referred to in section 120 is recorded or stored by means of a mechanical device, an electronic device or any other device in an illegible form, a person who wilfully—

- (a) records, or stores by means of that device matter that he knows to be false or misleading in a material particular;
- (b) destroys, removes or falsifies matter that is recorded or stored by means of that device; or
- (c) fails to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter—

is guilty of an offence and is liable to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding six months or both.

123.

Securities Industry:

123. A person required by this Act to keep a book or record shall take reasonable precautions for guarding against falsification of the book or record and for facilitating discovery of any falsification.

No. 3, 1976

Precautions
against
falsification
of records.

124. A person shall not—

Miscel-
laneous
offences.

- (a) obstruct or hinder the Commissioner or the Commission in the exercise or performance of any of his or its powers, authorities, duties or functions under this Act; or
- (b) fail to produce to the Commissioner or the Commission any books that the Commissioner has, pursuant to any of the provisions of this Act, required that person to produce for inspection by the Commissioner or the Commission; or
- (c) fail to comply with a requirement of the Commission under section 9.

125. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence.

General
penalty.
N.S.W.,
s. 78.

(2) A person who is guilty of an offence under this Act for which a specific penalty is not prescribed by another provision of this Act is liable to a penalty not exceeding \$500.

Vic., s. 77.
W.A., s. 82.

126. Where a body corporate is guilty of an offence against this Act any officer of the body corporate who was knowingly a party to the commission of the offence is also guilty of that offence.

Offences
by bodies
corporate.

127. (1) Proceedings for an offence against a provision of this Act (other than section 51) may be taken by the Commission or, with the consent of the Minister, by any other person.

Proceedings
by whom
and when
to be
taken.

Vic., s. 78.

(2)

No. 3, 1976 (2) Notwithstanding anything in any Act, proceedings for an offence against a provision of this Act, punishable summarily may be brought within three years after the time at which the offence is alleged to have been committed or, with the consent of the Minister, at any later time.

Indictable offences and summary offences. **128.** (1) An offence against this Act punishable by imprisonment for a period exceeding two years is an indictable offence.

(2) An offence against this Act that is not an indictable offence shall be prosecuted summarily.

Certain persons to assist in prosecutions. **129.** (1) Where a prosecution has been instituted or the Minister or the Commission is of the opinion that a prosecution in respect of an offence against this Act ought to be instituted against a person (in this section referred to as "the defendant") the Minister or the Commission—

- (a) if the defendant is an individual, may require any person who is or was a partner, servant or agent of the defendant; or
- (b) if the defendant is a body corporate, may require any person who is or was an officer or a servant, or an agent, of the defendant—

to assist in the prosecution, and a person who is so required shall give all assistance in connection with the prosecution that that person is reasonably able to give.

(2) The Minister or the Commission shall not make such a requirement as is mentioned in subsection (1) of a person who, in the opinion of the Minister or the Commission, is or is likely to be a defendant in the proceedings.

(3)

Securities Industry

(3) If a person to whom subsection (1) (a) or (b) No. 3, 1976 relates fails to give assistance as required by that subsection he is guilty of an offence and, without affecting any penalty to which he may be liable for the offence, the Court may, on the application of the Minister, order that person to comply with the requirement within such time, and in such manner, as the Court may order.

(4) In this section, "agent", in relation to the defendant includes a banker of the defendant and a person employed as an auditor by the defendant, whether that person is a servant or an officer of the defendant or not.

130. (1) If, in the State, a person does an act or omits to do an act and that person, if he had done that act or had omitted to do that act in another State or in a Territory of the Commonwealth, would have been guilty of an offence against the law of that State or Territory that corresponds to a provision of this Act, that person is guilty of an offence against that provision of this Act. Reciprocity in relation to offences. Vic. s. 79. W.A., s. 83.

(2) Where an act or omission constitutes an offence both under this Act and under a law of another State or of a Territory of the Commonwealth that corresponds to a provision of this Act and the offender has been punished under that law, he is not liable to be punished in respect of the offence against this Act.

131. (1) Where the expression "Default penalty" and figures specifying the amount of the default penalty appear in or at the foot of a section, or subsection of a section, of this Act, being a section or subsection a contravention of which is an offence or which provides that a person is in specified circumstances guilty of an offence, a person who has been convicted of that offence is guilty of a further offence Default penalty.

if

Securities Industry.

No. 3, 1976 if the offence continues after he has been so convicted and is punishable, upon conviction for the further offence, by a penalty, not exceeding the amount of the default penalty specified, for each day during which the offence continues.

(2) Where an offence is committed by a person by reason of his failure to comply with a provision of this Act by or under which he is required to do anything within a particular period, that person commits the further offence referred to in subsection (1) while the failure to do that thing continues notwithstanding that that period has expired.

Regulations. 132. (1) The Governor may make regulations for or with respect to—

- (a) prescribing forms for the purposes of this Act;
- (b) prescribing fees to be paid in respect of matters or things required for the purposes of this Act;
- (c) the conditions and restrictions to which licences are to be subject;
- (d) the publication of advertisements offering the services of dealers or investment advisers or offering securities for purchase or sale, and the form and content of those advertisements;
- (e) the form and content of balance sheets and profit and loss accounts required by this Act to be prepared by dealers;
- (f) the furnishing to the Commissioner of information in addition to, or in variation of, the information contained in a prescribed form lodged with him;
- (g) the manner in which, the persons by whom, and the directions in accordance with which the prescribed forms, or any of them, shall or may be signed, prepared or completed, and the regulation generally of the signing, preparation and completion of those forms or any of them;

(h)

Securities Industry.

(h) the times within which information required to be furnished to the Commission pursuant to this Act shall be so furnished; and

(i) generally prescribing any matters or things authorised or required to be prescribed under this Act.

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

(a) do not have effect in relation to a specified person or to a person who is a member of a specified class of persons—

(i) who is or may be a dealer or investment adviser by reason only of his doing anything that is incidental to another business;

(ii) who does not deal in securities for or on behalf of any other person; or

(iii) who is a dealer or investment adviser by reason only of the entering into by him of any specified transaction or class of transactions;

(b) do not have effect in relation to the representative of a person referred to in paragraph (a);

(c) have effect in relation to a person referred to in paragraph (a) or (b) to such extent as is prescribed; or

(d) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or class of persons.

(3)

No. 3, 1976

(3) Except as otherwise expressly provided in this Act, the regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

(4) Regulations for the purposes of section 18 (7) may be made by reference to a scale of expenses for witnesses who attend before the Court.

PART XII.—THE CORPORATE AFFAIRS COMMISSION.

Appoint-
ment and
incorpora-
tion of Com-
missioner.

133. (1) The Governor may, subject to this Act, appoint a Commissioner for Corporate Affairs who is hereby incorporated as a corporation sole with the corporate name "Corporate Affairs Commission".

(2) The Commission—

- (a) has perpetual succession;
- (b) shall have an official seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) may, subject to this Act, purchase, exchange, take or lease, hold, dispose of by way of lease or sale, and otherwise deal with property;
- (e) may do and suffer all other things that corporations may, by law, do and suffer and that are necessary for or incidental to the purposes for which it is constituted;
- (f) has the powers, authorities, duties and functions conferred or imposed on it by or under this or any other Act; and
- (g) is, for the purposes of any Act, a statutory body representing the Crown.

(3)

Securities Industry.

(3) The seal of the Commission shall not be affixed to any instrument or writing except in the presence of the Commissioner or Deputy Commissioner or of some other person who is authorised by or under this Act to affix the seal to the instrument or writing and the Commissioner or other person so authorised shall attest by his signature the fact and date of the seal being so affixed. No. 3, 1976

(4) All courts and persons acting judicially—

- (a) shall take judicial notice of the seal of the Commission that has been affixed to an instrument or writing; and
- (b) shall, until the contrary is proved, presume that the seal was properly affixed.

134. (1) The Commissioner shall be appointed for a term, not exceeding 7 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 7 years, specified in the instrument of his re-appointment. a Terms, &c.,
of appoint-
ment of
Commis-
sioner.

(2) A person who is of or above the age of 65 years shall not be appointed as Commissioner or continue in that office.

(3) The Commissioner shall not, during his term of office, engage in any paid employment outside the duties of his office except with the approval of the Governor, and shall receive such salary and allowances as the Governor may from time to time determine.

(4) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment by the Governor of the Commissioner and the Commissioner is not subject to the provisions of that Act during his term of office as Commissioner.

(5)

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(5) The Commissioner shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if without the approval of the Governor he engages during his term of office in any paid employment outside the duties of his office;
- (c) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation;
- (d) if he becomes a bankrupt, applies to take the benefit of any laws for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his estate for their benefit;
- (e) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (f) 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 section 135;
- (g) if he is convicted in the State of a felony or 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 misdemeanour so punishable;
- (h)

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- (h) if he is removed from office by the Governor for No. 3, 1976 misbehaviour or incompetence;
- (i) on the day on which he attains the age of 65 years.

(6) The Governor may remove a Commissioner from office on the ground of misbehaviour or incompetence.

(7) Where a Commissioner who, immediately before his appointment as Commissioner, was an officer of the Public Service, ceases to be Commissioner otherwise than pursuant to subsection (5) (paragraph (c) excepted) he shall, if he has not attained the age of 60 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.

135. (1) In this section "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act. Preservation of certain rights.

(2) Subject to subsection (3) and to the terms of his appointment, where a Commissioner was, immediately before his appointment as Commissioner—

- (a) an officer of the Public Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by an Act that he retain any rights accrued or accruing to him as an officer or employee,

he—

- (e) shall retain any rights accrued or accruing to him as such an officer, member, contributor or person;

(f)

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- (f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Commissioner; and
- (g) shall be entitled to receive any deferred or extended leave or any payment, pension or gratuity, as if he had continued to be such an officer, member, contributor or person during his service as Commissioner, and—
- (h) his service as Commissioner shall be deemed to be service as an officer, member or employee for the purpose of any law under which he continues to contribute or by which that entitlement is conferred; and
- (i) he shall be deemed to be an officer or employee of the Crown, and the Crown shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this section.

(3) Where a Commissioner—

- (a) would, but for this subsection, be entitled under subsection (2) to contribute to a superannuation scheme, or to receive any payment, pension or gratuity under a superannuation scheme; and
- (b) becomes a contributor to another superannuation scheme (whether upon his appointment as Commissioner or at any later time while he holds office as Commissioner)—

he ceases to be so entitled and the provisions of subsection (2) (i) cease to apply to or in respect of him.

(4) Subsection (3) does not operate to prevent the payment to a Commissioner upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased by reason of his resignation to be an officer or employee for the purposes of that scheme.

(5)

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(5) A Commissioner shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act. No. 3, 1976

136. (1) The Governor may, under and in accordance with the Public Service Act, 1902, appoint a Deputy Commissioner for Corporate Affairs who, as an officer of the Commission, may exercise and discharge any power, authority, duty or function conferred or imposed on the Commissioner and the Commission by or under this Act (section 139 (1) excepted) or any other Act. Deputy Commissioner and Assistant Commissioners.

(2) If the Commissioner is absent from duty or if there is a vacancy in the office of Commissioner, the Deputy Commissioner may, if the Governor so directs, be paid such allowances during the period of that absence or vacancy as the Governor specifies when giving the direction.

(3) The Governor may, under and in accordance with the Public Service Act, 1902, appoint Assistant Commissioners for Corporate Affairs who, as officers of the Commission, shall assist the Commissioner in the exercise and discharge of the powers, authorities, duties and functions conferred or imposed on the Commissioner and the Commission by or under this Act or any other Act.

(4) If both the Commissioner and the Deputy Commissioner are absent from duty or if there is a vacancy in the office both of Commissioner and Deputy Commissioner, the powers, authorities, duties and functions of the Commissioner and the Commission may, if the Governor so directs, by order published in the Gazette, be exercised and discharged by an Assistant Commissioner specified in the order and subsection (2) applies to that Assistant Commissioner as if he were the Deputy Commissioner.

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No. 3, 1976 **137.** (1) 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 or discharge by the Commission of its powers, authorities, duties and functions.

Officers
of the
Commission.

(2) An officer or employee under subsection (1) is in this Act referred to as an officer or employee of the Commission.

138. (1) Section 7 does not extend to the function conferred on the Commission by section 139 (1).

Authority
of officers
to act.

(2) The official seal of the Commission may be affixed to an instrument or writing by an officer or employee of the Commission authorised so to do either generally or in a particular case or class of cases.

139. (1) Subject to this section, the Commission is charged with the administration of this Act.

Administra-
tion of Act.

(2) The Commission shall, as and when directed by the Minister so to do, report to the Minister with respect to the policy the Commission is pursuing or proposes to pursue in the exercise or discharge of its powers, authorities, duties and functions or such of them as are specified by the Minister when giving the direction.

(3) The Commission shall observe and carry out any direction given by the Minister on a matter of policy.

140. (1) Except where otherwise expressly provided by or under this or any other Act, all money payable to the Commission under this or any other Act shall be collected and received by the Commission on account of, and shall be paid into, the Consolidated Revenue Fund.

Disposal
of moneys
by the
Commission.

(2)

Securities Industry.

(2) The accounts of the Commission shall be audited by the Auditor-General who shall have, in respect thereof, all the powers conferred on the Auditor-General by any law for the time being in force relating to the audit of public accounts, and the Audit Act, 1902, shall apply to the Commissioner, the Commission and the officers and employees of the Commission in the same manner as it applies to accounting officers of public departments.

141. The Commission shall, as soon as practicable after the thirty-first day of December in each year, submit to the Minister for presentation to Parliament a report on the exercise and discharge by the Commission, during the year ended on that day, of the powers, authorities, duties and functions conferred or imposed upon the Commission by or under this or any other Act.

142. After the commencement of this Act, a reference in any Act, by-law, regulation, ordinance, statutory instrument or other instrument to—

- (a) the Registrar as defined by the Companies Act, 1961, immediately before the commencement of section 13 of the Securities Industry (Amendment) Act, 1971; or
- (b) the Corporate Affairs Commission constituted by the Securities Industry Act, 1970,

shall be construed as a reference to the Corporate Affairs Commission constituted by this Act.

143. The Companies Act, 1961, is amended—

- (a) by omitting from the definition of "Commission" in section 5 (1) the words "Securities Industry Act, 1970" and by inserting instead the words "Securities Industry Act, 1975";

(b)

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- No. 3, 1976
—
- (b) by omitting from the definition of “Commissioner” in section 5 (1) the words “appointed under the Securities Industry Act, 1970” and by inserting instead the words “holding office under the Securities Industry Act, 1975”.

Amendment
of Act No.
11, 1962.

144. The Business Names Act, 1962, is amended—

Sec. 4.
(Interpreta-
tion.)

- (a) by omitting from the definition of “Commission” in section 4 (1) the words “Securities Industry Act, 1970” and by inserting instead the words “Securities Industry Act, 1975”;
- (b) by omitting from the definition of “Commissioner” in section 4 (1) the words “appointed under the Securities Industry Act, 1970” and by inserting instead the words “holding office under the Securities Industry Act, 1975”.
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SCHEDULE 1.

No. 3, 1976

Sec. 3.

Column 1.		Column 2.
Year and Number of Act.	Short title of Act.	Extent of repeal.
1970, No. 35..	Securities Industry Act, 1970.	The whole Act.
1970, No. 52..	Supreme Court Act, 1970.	So much of the Second Schedule as relates to Act No. 35, 1970.
1971, No. 11..	Securities Industry (Amendment) Act, 1971.	Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 22 and 24.
1971, No. 61..	Companies (Amendment) Act, 1971.	Section 29.
1972, No. 70..	New South Wales Retirement Benefits Act, 1972.	Section 72.

SCHEDULE 2.

Sec. 3.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule "repealed Act" means the Securities Industry Act, 1970.

2. An authority given under section 5 (22) of the repealed Act in relation to a power, authority, duty or function shall, to the extent to which it was in force immediately before the commencement of this Act, be deemed to be an authority duly given under section 7 for the exercise or performance of that power, authority, duty or function.

3. (1) Where, immediately before the commencement of this Act, a person held office as an inspector appointed under section 5DA of the repealed Act to investigate any matters concerning trading or dealing in securities, this Act applies to and in respect of the inspector and his appointment and to the investigation and related matters in the same way as it would apply if the inspector had been appointed pursuant to section 17 to investigate those matters and to report on the investigation in such manner as the Minister directs.

(2)

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(2) Where, before the commencement of this Act, an act, matter or thing had been done, or had arisen, in the course of an investigation by an inspector appointed under section 5DA of the repealed Act to make the investigation, the act, matter or thing shall, if the investigation had not been completed before that commencement, have the same status, operation and effect in relation to the completion of the investigation after that commencement as it would have if it were done or had arisen after that commencement.

4. (1) A stock exchange that, immediately before the commencement of this Act, was a stock exchange within the meaning of the repealed Act shall, within two months after that commencement—

- (a) make or adopt listing rules; and
- (b) furnish to the Minister a copy of those listing rules.

(2) The Minister may, not later than four months after the commencement of this Act, give notice to the stock exchange that he disallows the whole or a specified part of any listing rules a copy of which was furnished to him under subclause (1) and thereupon the listing rules, to the extent of the disallowance, cease to have effect.

5. (1) Subject to this clause, a person who, immediately before the commencement of this Act, was the holder of a licence within the meaning of the repealed Act shall, until—

- (a) the date of the expiration of one year after the date of the licence or, if the date of that expiration is less than three months after the commencement of this Act, the expiration of three months after that commencement; or
- (b) the licence is revoked—

whichever first occurs, be deemed to be the holder of a licence, corresponding to the first-mentioned licence, granted under Part IV.

(2) During the period of three months mentioned in subclause (1), this Act applies to and with respect to a licence that, under that subclause is to be deemed to have been granted under Part IV as if that person were the holder of a licence granted under Part IV and the licence were such a licence.

(3) A licence that, under this clause, is to be deemed to have been granted under Part IV is subject to the conditions and restrictions to which it was subject immediately before the commencement of this Act and to such other conditions and restrictions as may be prescribed or imposed under section 40.

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6. (1) The person who, immediately before the commencement of No. 3, 1976 this Act, held office as Commissioner for Corporate Affairs—

- (a) continues in that office under this Act;
- (b) so continues in office upon the same terms and conditions as those upon which he was appointed Commissioner under the repealed Act;
- (c) so continues in office for the residue of the term of office for which he was so appointed; and
- (d) is eligible for appointment under section 133 with effect from the expiration of that term of office.

(2) For the purposes of any Act, service as Commissioner under the repealed Act shall be deemed to be service as Commissioner under this Act.

7. The repeals effected by this Act do not affect the continuity of the corporation constituted by section 5 (1) of the repealed Act and that corporation continues as the corporation constituted by section 133.

8. Subject to the Public Service Act, 1902, a person who, immediately before the commencement of this Act, held office as Deputy Commissioner for Corporate Affairs or Assistant Commissioner for Corporate Affairs continues in that office after that commencement.
