

**SECURITIES INDUSTRY (FIDELITY FUNDS)  
AMENDMENT ACT, 1979, No. 181**

**New South Wales**



ANNO VICESIMO OCTAVO

**ELIZABETHÆ II REGINÆ**

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**Act No. 181, 1979.**

An Act to amend the Securities Industry Act, 1975, with respect to fidelity funds of stock exchanges and for other purposes.  
[Assented to, 18th December, 1979.]

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*Securities Industry (Fidelity Funds) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**1.** This Act may be cited as the "Securities Industry (Fidelity Short title. Funds) Amendment Act, 1979".

**2.** (1) Except as provided in subsections (2), (3) and (4), Commence-  
this Act shall commence on the date of assent to this Act. **ment.**

(2) Section 3 shall in its application to a provision of Schedule 1 commence or be deemed to have commenced on the day on which the provision commences or is deemed to have commenced, as the case may require.

(3) Section 4 and Schedule 1 (1) and (6) shall be deemed to have commenced on 26th September, 1979.

(4) Schedule 1 (3) shall be deemed to have commenced on 1st March, 1976.

**3.** The Securities Industry Act, 1975, is amended in the **Amendment**  
manner set forth in Schedule 1. **of Act No.**  
3, 1976.

**4.** The Companies Act, 1961, is amended by omitting from **Amendment**  
section 7 (9) the words "or a person" and by inserting instead the **of Act No.**  
words "by a person". **71, 1961.**  
**Sec. 7.**  
**(Admini-**  
**stration**  
**of Act.)**

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Saving.

5. (1) In this section—

“the later Act” means the Securities Industry Act, 1975, as deemed to be amended by subsection (2), but without any other amendments;

“the repealed Act” means the Securities Industry Act, 1970, with or without amendments;

“the 1978 Act” means the Securities Industry (Amendment) Act, 1978.

(2) For the purposes only of the definition of “the later Act” in subsection (1), the Securities Industry Act, 1975, shall be deemed to have been amended, on and from 1st March, 1976—

(a) by omitting from section 97 (1) (a) the words “who is liable, or would, but for section 93, be liable, to contribute to the fund” and by inserting instead the words “, being a member of the stock exchange when the loss is suffered,”;

(b) by omitting from section 97 (1) (b) the words “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” and by inserting instead the words “a person who, when the loss is suffered, is a partner in a member firm”;

(c) by omitting section 97 (8) and by inserting instead the following subsection :—

(8) Where—

(a) any money, securities, documents of title to securities or other property has or have been entrusted or received to or by a person who has at any time been, but has ceased to be, a member of a stock exchange or to or by an employee or servant of such a person;

(b) by reason of a defalcation, or the fraudulent misuse of the securities, documents of title or other property by the person referred to

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in paragraph (a), the person by or from whom the money, securities, documents of title or other property was or were so entrusted or received suffered pecuniary loss; and

- (c) the person suffering the pecuniary loss had, at the time the money, securities, documents of title or other property was or were so entrusted or received, reasonable grounds for believing and believed that the person referred to in paragraph (a) was a member of the stock exchange concerned,

the reference in this section to a member of a stock exchange includes a reference to the person referred to in paragraph (a).

(3) Notwithstanding the repeal of the repealed Act by the later Act—

- (a) where pecuniary loss has been suffered by any person, as provided by section 58 (1) of the repealed Act or as provided by section 97 (1) of the later Act, through a defalcation or fraudulent misuse of securities or documents of title or of other property that occurred before the day appointed and notified under section 1 (3) of the later Act, compensation therefor shall be deemed, on and from 1st March, 1976, to have been, and, to the extent that it has not been paid before the day appointed and notified under section 2 (2) of this Act, to be, payable out of the fidelity fund of the stock exchange concerned, referred to in section 97 (1) of the later Act, as amended by the 1978 Act, as if Part IX of the later Act applied to and in respect of the claim; and
- (b) where there has been a deficiency arising by reason of the available assets of a bankrupt being insufficient to satisfy debts arising from dealings in securities, as referred to in section 58 (2) of the repealed Act or section 97 (2) of the later Act, that occurred after the commencement of Part VII of the repealed Act and

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before the day appointed and notified under section 1 (3) of the later Act, the amount of that deficiency shall be deemed, on and from 1st March, 1976, to have been, and, to the extent that it has not been paid before the day appointed and notified under section 2 (2) of this Act, to be, payable out of the fidelity fund of the stock exchange concerned, referred to in section 97 (1) of the later Act as amended by the 1978 Act, as if Part IX of the later Act applied to and in respect of the payment.

(4) Where compensation is not payable under subsection (3) (a) or the amount of a deficiency is not able to be paid under subsection (3) (b) but, if the references in subsection (3) to Part IX of the later Act were references to Part VII of the repealed Act and Part VII of the repealed Act were amended as referred to in subsection (5), compensation would be payable under subsection (3) (a) or the amount of a deficiency would be able to be paid under subsection (3) (b), that compensation or amount shall be paid or payable out of the fidelity fund of the stock exchange concerned, referred to in section 97 (1) of the later Act, as amended by the 1978 Act.

(5) For the purposes of only subsection (4), Part VII of the repealed Act shall be deemed to be amended by omitting from section 58 (3) the words "two hundred and fifty thousand dollars" and by inserting instead the words "five hundred thousand dollars".

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Sec. 3.

SCHEDULE 1.

AMENDMENTS TO THE SECURITIES INDUSTRY ACT, 1975.

(1) Section 7 (1)—

Omit "or that other Act", insert instead " , any other Act or otherwise".

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE SECURITIES INDUSTRY ACT,  
1975—*continued.*

(2) Section 50 (1)—

Omit “the Commissioner”, insert instead “a Commissioner”.

(3) (a) Section 97 (1) (a)—

Omit “who is a sole trader and who is liable, or would, but for section 93, be liable, to contribute to the fund”, insert instead “who, when the loss is suffered, is a sole trader”.

(b) Section 97 (1) (b)—

Omit “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”, insert instead “a person who, when the loss is suffered, is a partner in a member firm”.

(c) Section 97 (8)—

Omit the subsection, insert instead :—

(8) Where—

- (a) any money, securities, documents of title to securities or other property has or have been entrusted or received to or by a person who has at any time been, but has ceased to be, a member of a stock exchange or to or by an employee or servant of such a person;
- (b) by reason of a defalcation, or the fraudulent misuse of the securities, documents of title or other property by the person referred to

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SCHEDULE 1—*continued.*AMENDMENTS TO THE SECURITIES INDUSTRY ACT,  
1975—*continued.*

in paragraph (a) or by an employee or servant of the person so referred to, the person by or from whom the money, securities, documents of title or other property was or were so entrusted or received suffered pecuniary loss; and

- (c) the person suffering the pecuniary loss had, at the time the money, securities, documents of title or other property was or were so entrusted or received, reasonable grounds for believing and believed that the person referred to in paragraph (a) was a member of the stock exchange concerned,

the reference in this section to a member of a stock exchange includes a reference to the person referred to in paragraph (a).

(4) (a) Section 124 (a)—

Omit “the Commissioner or the Commission”, insert instead “the Commission, a Commissioner, a person authorised as referred to in section 8 (1) or (4) or 30 (3) or (4) or a person nominated as referred to in section 10 (1) (a) or (b)”.

(b) Section 124 (a)—

Omit “his or its”, insert instead “its or his”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE SECURITIES INDUSTRY ACT,  
1975—*continued.*

(c) Section 124 (b)—

Omit “the Commissioner or the Commission” where firstly occurring, insert instead “the Commission, a Commissioner, a person authorised as referred to in section 8 (1) or (4) or 30 (3) or (4) or a person nominated as referred to in section 10 (1) (a) or (b)”.

(d) Section 124 (b)—

Omit “the Commissioner” where secondly occurring, insert instead “he”;

(e) Section 124 (b)—

Omit “the Commissioner or the Commission”, insert instead “him”.

(5) (a) Section 132 (1) (f)—

Omit “Commissioner”, insert instead “Commission”.

(b) Section 132 (1) (f)—

Omit “him”, insert instead “it”.

(6) Section 138 (2)–(6)—

Omit section 138 (2), insert instead :—

(2) The common seal of the Commission may be affixed to an instrument or writing by a Commissioner or by an officer or employee of the Commission authorised so to do either generally or in a particular case or class of



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SCHEDULE 1—*continued.*AMENDMENTS TO THE SECURITIES INDUSTRY ACT,  
1975—*continued.*

cases and the Commissioner or other person so authorised shall attest by his signature the fact and date of the seal being so affixed.

(3) Section 38 (II) of the Interpretation Act, 1897, does not apply to or in respect of the Commission.

(4) A Commissioner authorised to do so by the Commission may execute any document on behalf of the Commission.

(5) Where a Commissioner has been authorised, as referred to in subsection (4), to execute any document on behalf of the Commission, that document may be executed in the name and on behalf of that Commissioner by any person authorised in writing by that Commissioner to do so.

(6) A document purporting to be executed as referred to in subsection (4) or (5) shall be deemed to have been duly executed by the Commission unless it is proved that the person who executed it was not duly authorised as referred to in subsection (4) or (5), as the case may be, and shall be admissible in evidence in any proceedings in the same way as it would be if it had been executed by the Commission.

(7) Section 140 (2)—

Omit “the Commissioner”, insert instead “a Commissioner”.

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