

**SECURITIES INDUSTRY (APPLICATION OF LAWS) ACT,
1981, No. 61**

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 61, 1981.

An Act relating to the securities industry in New South Wales. [Assented to, 28th May, 1981.]

Securities Industry (Application of Laws).

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 :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Securities Industry (Application of Laws) Act, 1981".

Commencement.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), 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.

Division into Parts.

3. This Act is divided into Parts as follows :—

PART I.—PRELIMINARY—ss. 1–5.

PART II.—APPLICATION OF LAWS—ss. 6–15.

PART III.—TRANSITIONAL PROVISIONS—ss. 16–36.

Securities Industry (Application of Laws).

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

“Agreement” means the agreement made on 22nd December, 1978, between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected;

“Commission” or “National Commission” means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth;

“Ministerial Council” means the Ministerial Council for Companies and Securities established by the Agreement;

“State Commission” means the Corporate Affairs Commission continued in existence by the Corporate Affairs Commission Act, 1981;

“the applied provisions” means the provisions applying by reason of sections 6 and 7;

“the Commonwealth Act” means the Securities Industry Act 1980 of the Commonwealth.

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

(3) The provisions of the Interstate Corporate Affairs Agreement do not apply to or with respect to the applied provisions or the administration of the applied provisions.

(4) In this Act, a reference to the commencement of this Act is a reference to the commencement of this Act except sections 1 and 2.

Securities Industry (Application of Laws).

Interpretation of Securities Industry (New South Wales) Code.

5. The Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, applies to the Securities Industry (New South Wales) Code.

PART II.

APPLICATION OF LAWS.

Application of Securities Industry Act.

6. Subject to this Act, the provisions of the Commonwealth Act (other than sections 1, 2 and 3) apply—

- (a) as if amended as set out in Schedule 1; and
- (b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

as laws of New South Wales.

Application of Securities Industry Regulations.

7. Subject to this Act, the provisions of regulations in force for the time being under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) apply—

- (a) as if amended as set out in Schedule 2; and
- (b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

as regulations made under the provisions applying by reason of section 6.

Securities Industry (Application of Laws).

Fees payable.

8. (1) There shall be paid to the State Commission, for and on behalf of the State, for or in respect of—

- (a) the lodgment of documents with the National Commission under the applied provisions;
- (b) the registration of documents under the applied provisions or the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (c) the production by the National Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the issuing of documents or copies of documents, the granting of licences, consents or approvals or the doing of other acts or things by the Ministerial Council or the National Commission under the applied provisions; and
- (e) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions,

such fees (if any) as are prescribed by regulations in force for the time being under the Securities Industry (Fees) Act 1980 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, expressions used had the same respective meanings as in the applied provisions.

(2) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of the lodgment of a document with the National Commission and the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.

Securities Industry (Application of Laws).

(3) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of any matter involving the doing of any act or thing by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act or thing until the fee has been paid.

(4) This section has effect notwithstanding anything contained in the applied provisions.

(5) Nothing in this section prevents the State Commission for and on behalf of the State from—

- (a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section; or
- (b) refunding in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.

(6) In this section, unless the contrary intention appears, expressions used have the same respective meanings as in the applied provisions.

Amendment of regulations pursuant to Agreement.

9. (1) Where, under the Agreement, the Ministerial Council approves a proposed amendment of regulations in force for the time being under the Commonwealth Act or the Securities Industry (Fees) Act 1980 of the Commonwealth and, upon the expiration of six months after the date on which the Ministerial Council so approved, the amendment has not been made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason, the Governor may make regulations in accordance with the proposed amendment approved by the Ministerial Council amending the provisions of regulations applying by reason of section 7 or the regulations referred to in section 8, as the case may be.

Securities Industry (Application of Laws).

(2) Regulations made by the Governor under subsection (1) may amend Schedule 2 or 3, as the case may be, and that Schedule as so amended shall be Schedule 2 or 3, as the case may be, to this Act.

(3) In this Act—

- (a) a reference to provisions of regulations applying by reason of section 7 includes a reference to provisions as so applying as amended in accordance with this section; and
- (b) a reference to fees prescribed by regulations under the Securities Industry (Fees) Act 1980 of the Commonwealth includes a reference to those regulations as amended in accordance with this section.

Publication of Securities Industry (New South Wales) Code.

10. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2 and 3), amended as set out in Schedule 1 and in operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

- (a) shall include the headings and sections set out in Schedule 4;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the “Securities Industry (New South Wales) Code”.

Securities Industry (Application of Laws).

(3) A document that is or purports to be a copy of the Securities Industry (New South Wales) Code that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Commonwealth Act applying by reason of section 6 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

Publication of Securities Industry (New South Wales) Regulations.

11. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) amended as set out in Schedule 2 and in operation, or to come into operation, in New South Wales.

- (2) A document published under subsection (1)—
- (a) shall include the headings and provisions set out in Schedule 5;
 - (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
 - (c) shall include a statement of the date on which the Minister authorized the publication; and
 - (d) may be cited as the “Securities Industry (New South Wales) Regulations”.

(3) A document that is or purports to be a copy of the Securities Industry (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions applying by reason of section 7 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

Securities Industry (Application of Laws).

Publication of Securities Industry (Fees) Regulations.

12. (1) The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the Securities Industry (Fees) Act 1980 of the Commonwealth amended as set out in Schedule 3 and in operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

- (a) shall include the headings and provisions set out in Schedule 6;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the "Securities Industry (Fees) (New South Wales) Regulations".

(3) A document that is or purports to be a copy of the Securities Industry (Fees) (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Schedule to regulations referred to in section 8 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

Publication of provisions of amended Code or regulations.

13. (1) The Minister may from time to time authorize the publication by the Government Printer of a document setting out—

- (a) provisions that by reason of—
 - (i) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and
 - (ii) the operation of section 6 (including the operation, if applicable, of Schedule 1),apply, or will apply, as laws of New South Wales;

Securities Industry (Application of Laws).

- (b) provisions that by reason of—
 - (i) regulations under the Commonwealth Act; and
 - (ii) the operation of section 7 (including the operation, if applicable, of Schedule 2),apply, or will apply, as regulations made under the provisions applying by reason of section 6; or
- (c) fees that by reason of—
 - (i) regulations under the Securities Industry (Fees) Act 1980 of the Commonwealth; and
 - (ii) the operation of section 8 (including the operation, if applicable, of Schedule 3),are, or will be, payable under that section.

(2) A document published under subsection (1) shall include a notification of the date, or dates, on which the provisions or fees set out in the document came, or come, into operation in New South Wales.

(3) A document that has been or purports to have been published in accordance with this section is prima facie evidence of provisions or fees referred to in subsection (1) set out in the document.

Interpretation of references to the applied provisions.

14. (1) Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under this or any other Act or in any other document made by or under the authority of, or for the purposes of, a law of New South Wales—

- (a) a reference to the Securities Industry (New South Wales) Code is a reference to the provisions of the Commonwealth Act applying by reason of section 6;
- (b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying;

Securities Industry (Application of Laws).

- (c) a reference to the Securities Industry (New South Wales) Regulations is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 7;
- (d) a reference to a provision of those regulations is a reference to the corresponding provision of the regulations in force under the Commonwealth Act as so applying;
- (e) a reference to the Securities Industry (Fees) (New South Wales) Regulations is a reference to the Schedule to regulations prescribing fees under the Securities Industry (Fees) Act 1980 of the Commonwealth as referred to in section 8; and
- (f) a reference to a provision of that Schedule is a reference to the corresponding provision of the Schedule to regulations in force under that Act as referred to in section 8.

(2) In subsection (1), "provision" includes Part, Division, section, sub-section, paragraph, sub-paragraph, Schedule, form, regulation, clause, sub-clause or other division.

Amendment of certain provisions in accordance with approval of Ministerial Council.

15. Where, under the Agreement, the Ministerial Council—

- (a) approves—
 - (i) a proposed amendment of the Commonwealth Act;
 - (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);
 - (iii) a proposed amendment of the Securities Industry (Fees) Act 1980 of the Commonwealth; or
 - (iv) regulations proposed to be made under that Act (whether or not amending other regulations);
 and

Securities Industry (Application of Laws).

(b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a), the Governor may make regulations amending Schedule 1, 2 or 3 or section 8, as the case may be, in accordance with that approval, and that Schedule or section as so amended shall be Schedule 1, 2 or 3 or section 8, as the case may be, of this Act.

PART III.

TRANSITIONAL PROVISIONS.

Exclusion of Securities Industry Act, 1975, &c.

16. (1) The provisions applying by reason of section 6 operate to the exclusion of the provisions of the Securities Industry Act, 1975, and the Companies Act, 1961, in relation to acts, matters and things in relation to which the first-mentioned provisions apply.

(2) The provisions of subsection (1) do not, unless the contrary intention appears—

- (a) revive anything not in force or existing at the time at which the exclusion of the provisions of the Securities Industry Act, 1975, and the Companies Act, 1961, takes effect;
- (b) affect the previous operation of either of those Acts or anything duly done or suffered under either of those Acts;
- (c) affect any right, privilege, obligation or liability acquired or incurred under either of those Acts;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against either of those Acts; or

Securities Industry (Application of Laws).

- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (1) had not been enacted.

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

- (a) the provisions of section 8 of the Securities Industry Act, 1975, and of any regulations prescribing fees for the purposes of that Act; and
- (b) any other provisions of that Act that are necessary for the effectual operation of the provisions mentioned in paragraph (a),

continue in force, but it is not a contravention of section 8 (5) of that Act as so continuing in force to divulge or communicate information to the Commission or to a person authorized by the Commission to receive the information.

General provisions.

17. Unless the contrary intention appears in this Act or in the Securities Industry (New South Wales) Code—

- (a) all persons, things and circumstances appointed or created by or under the Securities Industry Act, 1975, or existing or continuing under that Act immediately before the commencement of this Act shall, under and subject to this Act, the Securities Industry (New South Wales) Code and the Companies Act, 1961, continue to have the same status, operation and effect as they respectively would have had if this Act had not been enacted; and

Securities Industry (Application of Laws).

- (b) in particular and without affecting the generality of paragraph (a), this Act does not disturb the continuity of status, operation or effect of any order, rule, regulation, scale of fees, deed, agreement, direction, instrument, document, register, registration, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, entered into, accrued, incurred, existing, pending or acquired by or under the Securities Industry Act, 1975, before the commencement of this Act.

References to Securities Industry Act, 1975.

18. A reference in an Act or document to a provision of the Securities Industry Act, 1975, shall, unless the contrary intention appears, be construed as a reference to the provision as contained with or without modification in the Securities Industry (New South Wales) Code.

Proceedings by or against State Commission to be proceedings by or against National Commission.

19. (1) Where, before the commencement of this Act, a proceeding under the Securities Industry Act, 1975, had been commenced by or against the State Commission, the proceeding may be continued by or against the National Commission.

(2) Where, but for the enactment of this Act, a proceeding under the Securities Industry Act, 1975, could have been commenced by or against the State Commission, the proceeding may be commenced by or against the National Commission.

(3) Where, but for the enactment of this Act, a proceeding could have been commenced in relation to an offence against section 51 of the Securities Industry Act, 1975, the proceeding may, notwithstanding section 127 (1) of that Act, be commenced by the National Commission or, with the consent of the Ministerial Council, by any other person.

Securities Industry (Application of Laws).

Power of Minister to consent to institution of proceedings.**20.** Where—

- (a) the institution of the particular proceeding under the Securities Industry Act, 1975, was subject to the consent of the Minister; and
- (b) the proceeding was not instituted before the commencement of this Act but may be instituted after that commencement by reason of the operation of section 16,

the enactment of this Act does not affect the power of the Minister to consent to the institution of the proceeding.

Registers, funds, deposits and accounts.

21. (1) Any register, fund, deposit or account kept immediately before the commencement of this Act under any provision of the Securities Industry Act, 1975, shall be deemed to be part of a register, fund, deposit or account kept under the corresponding provision of the Securities Industry (New South Wales) Code.

(2) Where, under subsection (1), a register is to be deemed to form part of a register kept under section 89 of the Securities Industry (New South Wales) Code, the register shall, unless notice of change of place at which it is kept is given under section 90 of that Code, be kept at the place at which, under the Securities Industry Act, 1975, it was required to be kept immediately before the commencement of this Act.

(3) A person to whom section 89 of the Securities Industry (New South Wales) Code applies at the commencement of this Act who did not, immediately before that commencement, keep a register under Part VII of the Securities Industry Act, 1975, shall—

- (a) give the notice referred to in section 90 (2) of that Code within one month after that commencement; and

Securities Industry (Application of Laws).

- (b) give the notice notwithstanding that during that time he has ceased to be a person to whom section 89 of that Code applies.

Order of Court.

22. An order made by the Court under section 12 of the Securities Industry Act, 1975, or under a corresponding previous enactment and in force immediately before the commencement of this Act shall be deemed to be an order made by the Court under section 14 of the Securities Industry (New South Wales) Code.

Investigations.

23. (1) Division 2 of Part II of the Securities Industry (New South Wales) Code applies to and in relation to an investigation to which Division 2 of Part II of the Securities Industry Act, 1975, applied immediately before the commencement of this Act and so applies as if the inspector appointed to carry out the investigation was appointed, and the investigation is being carried out, pursuant to a direction given by the Minister in the exercise of a power under section 16 (1) of the Securities Industry (New South Wales) Code otherwise than in response to a request made by the Commission under section 16 (4) of that Code.

(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 to which Division 2 of Part II of the Securities Industry Act, 1975, applied immediately before that commencement, that act, matter or thing shall have the same status, operation and effect in relation to the completion of the investigation after that commencement as if that act, matter or thing had been done or had arisen after that commencement.

(3) In particular and without affecting the generality of subsection (2), an order, application, examination, deposition, writ, summons, proceeding, record, note or report made, effected, issued or given in relation to an investigation to which Division

Securities Industry (Application of Laws).

2 of Part II of the Securities Industry Act, 1975, applied immediately before the commencement of this Act shall have the same status, operation and effect in relation to the investigation after that commencement as if the order, application, examination, deposition, writ, summons, proceeding, record, note or report had been made, effected, issued or given after that commencement.

Licences.

24. (1) A licence under Part IV of the Securities Industry Act, 1975, and in force immediately before the commencement of this Act continues in force as if it were a licence issued by the Commission under Part IV of the Securities Industry (New South Wales) Code and, where the licence was so granted subject to a condition that the holder of the licence lodges with the State Commission a bond as referred to in section 40 (2) (c) of that Act, a bond so lodged and held by the State Commission immediately before the commencement of this Act shall be deemed to have been approved by the National Commission under section 51 (2) (d) of that Code and to be lodged with the local authority under that section, and that bond is a bond for the purposes of that Code and also continues to be subject to any claim in respect of it as if this Act had not been enacted.

(2) Where security was lodged under section 17 of the Securities Industry Act, 1970, in respect of the issue of a licence and that security was retained by the State Commission after that Act was repealed that security shall be and be deemed always to have been a bond lodged with and approved by the State Commission as a condition of a licence under the Securities Industry Act, 1975, while it is so retained.

(3) Where, before the commencement of this Act, a licence under the Securities Industry Act, 1975, was suspended and the period of the suspension had not expired or been removed before that commencement, the licence shall, for the purpose of this Act, be deemed to be a licence issued under the Securities Industry (New South Wales) Code and suspended by the Commission under that Code for a period that, subject to this Act,

Securities Industry (Application of Laws).

expires at the time at which, immediately before the commencement of this Act, the first-mentioned suspension would have expired.

Statements by licensees.

25. (1) A person who was the holder of a licence within the meaning of the Securities Industry Act, 1975, shall, in relation to a prescribed year, lodge with the Commission a statement in such form and containing such information as was prescribed for the purposes of section 44 of that Act by regulations in force under that Act immediately before the commencement of this Act.

(2) The statement referred to in subsection (1) shall be lodged within the period of two months or in the case of a body corporate, three months after the commencement of this Act.

(3) In this section, "prescribed year" means, in relation to a person, the whole or part of a year ending before the commencement of this Act, being a year or part of a year which commenced on the date, or on the anniversary of the date, on which a licence was granted to the person under the Securities Industry Act, 1975, and in respect of which the person did not lodge a statement under section 44 of that Act.

Accounts.

26. (1) A dealer within the meaning of the Securities Industry Act, 1975, who carried on a business of dealing in securities before the commencement of this Act shall, in relation to a prescribed financial year—

- (a) 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 were prescribed in that regard for the purposes of section 64 (2) of the Securities Industry Act, 1975, by regulations in force under that Act immediately before the commencement of this Act; and

Securities Industry (Application of Laws).

- (b) lodge the account and balance sheet with the Commission within the period of two months (or, in the case of a body corporate, three months) after the commencement of this Act together with an auditor's report containing the information and matters prescribed in that regard for the purposes of section 64 (2) of that Act by regulations in force under that Act immediately before the commencement of this Act.

(2) The Commission may, on application by a dealer and his auditor before the expiration of the period of two months or, as the case requires, the period of three months referred to in subsection (1) or, if that period has been extended pursuant to an approval or approvals previously given under this subsection, before the expiration of the period as so extended, approve an extension or further extension of the period, and such an approval may be given subject to such conditions (if any) as the Commission imposes.

(3) Where an approval under subsection (2) in relation to a dealer is given subject to conditions, the dealer shall comply with those conditions.

(4) In this section, "prescribed financial year" in relation to a dealer means—

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

being a year or financial year during which the dealer carried on business as a dealer and in respect of which he would, but for the enactment of this Act, have been required to lodge a profit and loss account and balance sheet under the Securities Industry Act, 1975, but did not so do before the commencement of this Act.

Securities Industry (Application of Laws).

Annual fee.

27. (1) A person who, by reason of section 24, is the holder of a licence under the Securities Industry (New South Wales) Code shall, in respect of a year commencing before, and expiring after, the commencement of this Act in respect of which, but for the enactment of this Act, he would have been required to pay a prescribed fee under section 43 of the Securities Industry Act, 1975, pay that fee to the State Commission for and on behalf of the State at the time when, or during the period within which, he would, but for the enactment of this Act, have been required to pay that fee.

(2) Where a person pays a fee under subsection (1) in respect of a year, he is not required to pay a fee in respect of the lodgment of a statement under section 56 of the Securities Industry (New South Wales) Code in respect of that year.

(3) The State Commission may, in its discretion, extend, or further extend, the time for paying a fee under this section.

Orders relating to dealer's bank accounts.

28. (1) An order made by the Court under section 69 of the Securities Industry Act, 1975, and in force immediately before the commencement of this Act shall be deemed to be an order made by the Court under section 83 of the Securities Industry (New South Wales) Code.

(2) Nothing in subsection (1) requires a banker to disclose an account to the Commission, or permit the Commission to make a copy of, or take an extract from, an account where the banker has, under section 70 of the Securities Industry Act, 1975, disclosed that account to the State Commission or permitted the State Commission to make a copy of, or take an extract from, that account.

Securities Industry (Application of Laws).

Investment of deposits with stock exchanges.

29. (1) A deposit received by a stock exchange under section 81 of the Securities Industry Act, 1975, and held by the stock exchange immediately before the commencement of this Act shall be deemed to have been received by the stock exchange under section 95 of the Securities Industry (New South Wales) Code.

(2) Where, under section 83 of the Securities Industry Act, 1975, or a corresponding previous enactment, an amount had been deposited with the Treasurer, that amount is repayable on demand.

Accounts of deposits.

30. (1) A stock exchange shall, within one month after the commencement of this Act, cause a balance sheet to be made out as at each prescribed quarter day in relation to the accounts of deposits received by it under Part VIII of the Securities Industry Act, 1975.

(2) A registered company auditor within the meaning of the Companies Act, 1961, appointed by the stock exchange to audit its accounts relating to deposits shall audit the accounts to which each balance sheet under subsection (1) relates 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.

(3) 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 is so laid before the committee.

(4) In this section, "prescribed quarter day" means a quarter day within the meaning of the Securities Industry Act, 1975, occurring before the commencement of this Act and in relation to which the stock exchange was required to give but did not give a report and balance sheet to the State Commission under section 84 of that Act.

Securities Industry (Application of Laws).

Accounts of fidelity fund.

31. (1) A stock exchange shall, within one month after the commencement of this Act, cause a balance sheet in respect of the accounts of its fidelity fund to be made out as at each prescribed day.

(2) A registered company auditor within the meaning of the Companies Act, 1961, appointed by the stock exchange to audit the accounts of its fidelity fund shall audit the accounts to which each balance sheet under subsection (1) relates 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.

(3) 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 is so laid before the committee.

(4) In this section, "prescribed day" means any 30th June occurring before the commencement of this Act and in relation to which the stock exchange was required to give but did not give a report and balance sheet to the State Commission under section 90 of the Securities Industry Act, 1975.

Fidelity funds.

32. (1) Where, immediately before the commencement of this Act, there is an amount in the fidelity fund of a stock exchange kept under Part IX of the Securities Industry Act, 1975, that amount shall form part of the fidelity fund of the stock exchange under Part IX of the Securities Industry (New South Wales) Code.

(2) Where the whole or any part of an amount referred to in subsection (1) is, immediately before the commencement of this Act, invested under section 96 of the Securities Industry Act, 1975, the amount, or part, shall be deemed to be invested under section 110 of the Securities Industry (New South Wales) Code.

Securities Industry (Application of Laws).

(3) Where the compensation or the amount of a deficiency that would, but for the coming into operation of this Act, have been payable in respect of—

- (a) a defalcation or fraudulent misuse of property that occurred before the commencement of this Act; or
- (b) dealings in securities that occurred before that commencement,

from a fidelity fund of a stock exchange kept under Part IX of the Securities Industry Act, 1975, is greater than the compensation or amount that would be payable in the circumstances under the Securities Industry (New South Wales) Code, the compensation or amount to be paid from the fidelity fund of the stock exchange under Part IX of the Securities Industry (New South Wales) Code shall be calculated as if this Act had not come into operation.

Order of Court establishing claim on fidelity fund.

33. An order made by the Court under section 102 of the Securities Industry Act, 1975, and in force immediately before the commencement of this Act shall be deemed to be an order made by the Court under section 116 of the Securities Industry (New South Wales) Code.

Preservation of records.

34. (1) The provisions of section 136 (1) and (2) of the Securities Industry (New South Wales) Code apply to and in relation to a register and an accounting or other record in relation to a business carried on by a person, being a register or record that the person was, before the commencement of this Act, required by section 120 of the Securities Industry Act, 1975, to preserve for a specified period.

Securities Industry (Application of Laws).

(2) Notwithstanding subsection (1), the provisions of section 136 (1) and (2) of the Securities Industry (New South Wales) Code do not apply to or in relation to a contract note or copy of a contract note received or issued by a dealer who, at the time of the receipt or issue, was a member of a stock exchange if the matters referred to in section 51 (2) of the Securities Industry Act, 1975, in relation to the contract note were recorded—

(a) by the stock exchange; or

(b) subject to such conditions, if any, as the State Commission may have imposed, by the dealer,

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

(3) Notwithstanding subsection (1), the provisions of section 136 (1) and (2) of the Securities Industry (New South Wales) Code do not apply in relation to an accounting record where the last day of the accounting period to which the record relates occurred at least five years before the commencement of this Act.

Offences.

35. The provisions of sections 125, 126, 127 and 131 of the Securities Industry Act, 1975, apply to and in respect of a contravention of or failure to comply with the provisions of section 21, 25, 26, 27, 30 or 31 of this Act as if a reference in those first-mentioned sections to the Securities Industry Act, 1975, were a reference to section 21, 25, 26, 27, 30 or 31 of this Act.

Court may resolve difficulties.

36. (1) Where any difficulty arises in the application to a particular matter of any of the provisions of the Securities Industry (New South Wales) Code or the Securities Industry Act, 1975, by reason of the operation of this Part, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.

Securities Industry (Application of Laws).

(2) An order made under subsection (1) has effect notwithstanding anything contained in the Securities Industry (New South Wales) Code, the Securities Industry Act, 1975, or this Act.

(3) In subsection (1) "Court" means the Supreme Court of New South Wales.

SCHEDULE 1.

(Sec. 6.)

The provisions of the Commonwealth Act apply as if—

1. Unless inconsistent with another provision of this Schedule—
 - (a) for the words "*Companies Ordinance 1962*" in the Commonwealth Act (wherever occurring) there were substituted the words "*Companies Act, 1961*" or the words "*Companies Act, 1961*," whichever are applicable;
 - (b) for the words "the Territory" in the Commonwealth Act (wherever occurring) there were substituted the words "New South Wales";
 - (c) for the words "law of a State or of another Territory" in the Commonwealth Act (wherever occurring) there were substituted the words "law of a State other than New South Wales or of a Territory";
 - (d) for the words "this Act" in the Commonwealth Act (wherever occurring except where occurring in conjunction with the words "commencement of") there were substituted the words "this Code";
 - (e) for the words "commencement of this Act" in the Commonwealth Act (wherever occurring) there were substituted the words "commencement of the *Securities Industry (Application of Laws) Act, 1981*" or the words "commencement of the *Securities Industry (Application of Laws) Act, 1981*," whichever are applicable.

2. (1) In section 4 (1) of the Commonwealth Act—
 - (a) after the definition of "banker's books" there were inserted the following definition:—

"Banking Act 1959" means the *Banking Act 1959* of the Commonwealth as amended and in force for the time being;

Securities Industry (Application of Laws).

SCHEDULE 1—*continued.*

- (b) after the definition of “banking corporation” there were inserted the following definition:—
- “*Bankruptcy Act 1966*” means the *Bankruptcy Act 1966* of the Commonwealth as amended and in force for the time being;
- (c) after the definition of “committee” there were inserted the following definition:—
- “Commonwealth Minister” means the Minister of State for the Commonwealth for the time being administering the *Securities Industry Act 1980* of the Commonwealth as amended and in force for the time being;
- (d) in the definition of “exempt dealer”—
- (i) the word “or” at the end of paragraph (c) were repealed;
- (ii) after paragraph (d) there were inserted the following word and paragraph:—
- or
- (e) a person who, as Public Trustee, carries on a business of dealing in securities by reason of his powers under the *Public Trustee Act, 1913*;
- (e) after the definition of “licence” there were inserted the following definition :—
- “*Life Insurance Act 1945*” means the *Life Insurance Act 1945* of the Commonwealth as amended and in force for the time being;
- (f) after the definition of “member firm” there were inserted the following definitions:—
- “Minister” means the Minister of State for New South Wales for the time being administering the *Securities Industry (Application of Laws) Act, 1981*;
- “*National Companies and Securities Commission Act 1979*” means the *National Companies and Securities Commission Act 1979* of the Commonwealth as amended and in force for the time being;
- (g) after the definition of “registered company auditor” there were inserted the following definition:—
- “regulations” means the provisions applying as regulations made under this Code by reason of section 7 of the *Securities Industry (Application of Laws) Act, 1981*;

Securities Industry (Application of Laws).

SCHEDULE 1—*continued.*

- (h) after the definition of “securities” there were inserted the following definition:—

“*Securities Industry (New South Wales) Code*” or “Code” means the provisions applying by reason of section 6 of the *Securities Industry (Application of Laws) Act, 1981*;

- (i) for the definition of “stock exchange” there were substituted the following definition:—

“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 Ministerial Council under section 38;

- (j) for the definition of “trust account” there were substituted the following definition:—

“trust account” means a trust account opened and maintained under section 73 of this Code, or under section 59 of the *Securities Industry Act, 1975*, or under a corresponding previous enactment;

- (2) In section 4 (7) of the Commonwealth Act for the words “that Ordinance” there were substituted the words “that Act”.

3. In section 8 (1A) of the Commonwealth Act—

- (a) for paragraph (a) there were substituted the following paragraph:—

(a) for the purpose of the performance of a function or the exercise of a power by the Commission under a Code that is a relevant Code for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*; or

- (b) for sub-paragraph (i) of paragraph (b) there were substituted the following sub-paragraph:—

(i) a contravention of, or failure to comply with, a provision of a relevant Code referred to in paragraph (a); or

4. In section 9 (1) of the Commonwealth Act for the words “Australian Federal Police” there were substituted the words “police force of New South Wales”.

Securities Industry (Application of Laws).

SCHEDULE 1—*continued.*

5. In section 12 (3A) (d) and (e) of the Commonwealth Act for the matter "*Act 1980*" there were substituted the words "*(New South Wales Code)*".

6. For paragraph (a) of the definition of "relevant authority" in section 15 (1) of the Commonwealth Act there were substituted the following paragraphs:—

- (a) in the case of a direction given by the Commonwealth Minister other than a direction that has been approved by the Ministerial Council under sub-section 16 (6)—the Commonwealth Minister;
- (aa) in the case of a direction given by the Minister other than a direction that has been approved by the Ministerial Council under sub-section 16 (6)—the Minister; or

7. In section 16 of the Commonwealth Act—

- (a) in sub-section (2) for the words "the Minister" (where twice occurring) there were substituted the words "the Commonwealth Minister";
- (b) in sub-sections (4) and (6) for the words "the Minister" there were substituted the words "the Minister or the Commonwealth Minister".

8. In section 17 (6) and (8) of the Commonwealth Act after the word "*Gazette*" there were inserted the words "and *Government Gazette*".

9. Section 19 (2) of the Commonwealth Act were repealed.

10. Section 20 of the Commonwealth Act were repealed.

11. In section 30 of the Commonwealth Act—

- (a) in sub-section (4) for the word "Commonwealth" there were substituted the word "State";
- (b) for paragraph (b) of sub-section (5) there were substituted the following paragraph:—
 - (b) the Ministerial Council or the Minister, as the case may be, receives—
 - (i) a certificate of the Attorney General stating that the publication of the report would be prejudicial to the administration of justice in the State;

Securities Industry (Application of Laws).

SCHEDULE 1—continued.

- (ii) a certificate of the Attorney-General of the Commonwealth stating that the publication of the report would be prejudicial to the administration of justice in a Territory (not being the Northern Territory) specified in the certificate; or
- (iii) a certificate of the Attorney-General of another State or of the Northern Territory stating that the publication of the report would be prejudicial to the administration of justice in that State or Territory; and

12. After section 30 (9) of the Commonwealth Act there were inserted the following sub-section :—

(10) Nothing in this section operates to diminish the protection afforded to witnesses by the *Evidence Act*, 1898.

13. In section 43 (1), section 44, section 45 (1) and section 46 of the Commonwealth Act for the words "After the expiration of 3 months after the date of commencement of this Act, a person" there were substituted the words "A person".

14. For section 51 (10) of the Commonwealth Act there were substituted the following sub-section :—

(10) In this section, "local authority" means the Corporate Affairs Commission continued in existence by the *Corporate Affairs Commission Act*, 1981.

15. After section 54 (6) of the Commonwealth Act there were inserted the following sub-section :—

(7) The particulars that, immediately before the commencement of the *Securities Industry (Application of Laws) Act*, 1981, were in, or were deemed to form part of, the register kept under section 41 of the *Securities Industry Act*, 1975, shall be deemed to form part of the Register of Licence Holders.

Securities Industry (Application of Laws).

SCHEDULE 1—*continued.*

16. For section 60 (5) of the Commonwealth Act there were substituted the following sub-section:—

(5) A person disqualified or deemed to be disqualified, either permanently or for a period, from holding a licence—

(a) by reason of an order of a court under section 47 of the *Securities Industry Act, 1975*, or under a corresponding previous enactment; or

(b) under the corresponding law of a State other than New South Wales or of a Territory by reason of an order of a court under that corresponding law or by reason of the operation of a provision of that corresponding law,

shall, while he is so disqualified or deemed to be disqualified, be deemed to be disqualified from holding a licence under this Code.

17. In sections 75 (2) (c), 75 (3) (c) and 75 (6) of the Commonwealth Act for the words “this Act” there were substituted the words “this Code or Part III of the *Securities Industry (Application of Laws) Act, 1981*,”.

18. For section 81 of the Commonwealth Act there were substituted the following section:—

81. An auditor has qualified privilege in respect of defamatory matter published by him in so far as the defamatory matter is so published in the course of, and relates to, his duties as an auditor.

19. In section 107 (1) (a) (ii) of the Commonwealth Act after the word “fund” there were inserted the words “(whether under this Part or Part IX of the *Securities Industry Act, 1975*, or under a corresponding previous enactment)”.

20. In section 112 (2) (a) of the Commonwealth Act for the words “this Act” there were substituted the words “Part VII of the *Securities Industry Act, 1970*”.

21. In section 114 (1) of the Commonwealth Act—

(a) for the words “any State or other Territory” there were substituted the words “any State other than New South Wales or in any Territory”;

(b) for the words “that State or other Territory” there were substituted the words “that other State or Territory”.

22. In section 145 of the Commonwealth Act for the words “a State or in another Territory” there were substituted the words “a State other than New South Wales or in a Territory”.

Securities Industry (Application of Laws).

SCHEDULE 1—*continued.*

23. Section 150 of the Commonwealth Act were repealed.

24. For section 151 of the Commonwealth Act there were substituted the following section:—

151. (1) Rules of court may be made under the *Supreme Court Act, 1970*, with respect to proceedings, and the practice and procedure, of the Court under this Code and, in particular, with respect to costs of, and incidental to, any such proceedings.

(2) Sub-section (1) does not limit the rule-making powers conferred by the *Supreme Court Act, 1970*.

SCHEDULE 2.

(Sec. 7.)

The provisions of regulations in force for the time being under the Commonwealth Act apply as if in those regulations—

1. For the words “the Act” (wherever occurring) there were substituted the words “the Code”.

2. For the words “*Securities Industry Act 1980*” (wherever occurring) there were substituted the words “*Securities Industry (New South Wales) Code*”.

3. For the words “*Companies Ordinance 1962*” (wherever occurring) there were substituted the words “*Companies Act, 1961*” or the words “*Companies Act, 1961,*” whichever are applicable.

4. For the words “Supreme Court of the Australian Capital Territory” (wherever occurring) there were substituted the words “Supreme Court of New South Wales”.

5. For the words “the Territory” (wherever occurring) there were substituted the words “New South Wales”.

Securities Industry (Application of Laws).

SCHEDULE 3.

(Sec. 8.)

The provisions of regulations in force for the time being under the *Securities Industry (Fees) Act* 1980 of the Commonwealth apply as if in those regulations—

1. For the words “the Act” (wherever occurring) there were substituted the words “the *Securities Industry (New South Wales) Code*”.

SCHEDULE 4.

(Sec. 10.)

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 10:—

SECURITIES INDUSTRY (NEW SOUTH WALES) CODE
RELATING TO THE SECURITIES INDUSTRY IN NEW SOUTH WALES

PART I—PRELIMINARY

1. This Code may be cited as the *Securities Industry (New South Wales) Code*.
 2. This Code comes into operation on the day on which the *Securities Industry (Application of Laws) Act*, 1981, commences.
 3. This Code shall be read and construed together with the agreement made on 22 December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected and has effect subject to and in accordance with—
 - (a) the *Securities Industry (Application of Laws) Act*, 1981; and
 - (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act*, 1981.
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Securities Industry (Application of Laws).

SCHEDULE 5.

(Sec. 11.)

The following headings and provisions shall be included in the publication under section 11 of the provisions of regulations in force for the time being under the Commonwealth Act:—

SECURITIES INDUSTRY (NEW SOUTH WALES) REGULATIONS

1. (1) These regulations may be cited as the *Securities Industry (New South Wales) Regulations*.

(2) These regulations shall come into operation on the day on which the *Securities Industry (Application of Laws) Act, 1981*, commences.

(3) These regulations have effect subject to and in accordance with—

(a) the *Securities Industry (Application of Laws) Act, 1981*; and

(b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*.

SCHEDULE 6.

(Sec. 12.)

The following headings and provisions shall be included in the publication under section 12 of the Schedule to regulations in force for the time being prescribing fees under the *Securities Industry (Fees) Act 1980* of the Commonwealth:—

SECURITIES INDUSTRY (FEES) (NEW SOUTH WALES) REGULATIONS

1. These regulations may be cited as the *Securities Industry (Fees) (New South Wales) Regulations*.

2. These regulations shall come into operation on the day on which the *Securities Industry (Application of Laws) Act, 1981*, commences.

Securities Industry (Application of Laws).

SCHEDULE 6—*continued.*

3. These regulations have effect subject to and in accordance with—
- (a) the *Securities Industry (Application of Laws) Act, 1981*; and
 - (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*.
4. The fees payable for the purposes of section 8 of the *Securities Industry (Application of Laws) Act, 1981*, are the fees specified in the Schedule in relation to the respective matters so specified.

SCHEDULE

FEEs
