

**Reprint  
as at 1 October 2011**



**Securities Markets Act 1988**

Public Act    1988 No 234  
Date of assent    21 December 1988  
Commencement    see section 1

Act name: substituted, on 1 December 2002, by section 4(1) of the Securities Markets Amendment Act 2002 (2002 No 44).

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Ministry of Economic Development.**

**Part 1**  
**Dealing misconduct**

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prohibitions

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**Title** *[Repealed]*

Title: repealed, on 1 December 2002, by section 3 of the Securities Markets Amendment Act 2002 (2002 No 44).

*[Repealed]***1 Short Title and commencement**

- (1) This Act is the Securities Markets Act 1988.
- (2) Except as provided in subsection (3), this Act shall come into force on the date on which it receives the Royal assent.
- (3) Part 2 (except section 36), Part 3 (except section 41), and sections 42 to 44 shall come into force on 1 July 1989.

Section 1(1): substituted, on 1 December 2002, by section 4(2) of the Securities Markets Amendment Act 2002 (2002 No 44).



## 2 Interpretation

(1) In this Act, unless the context otherwise requires,—

**acquire**—

- (a) includes obtain by buying or subscribing; and
- (b) includes agree to acquire; but
- (c) in Part 3, has the meaning set out in section 37(1)

**associated persons** or **persons associated with each other** has the meaning set out in subsection (2)

**authorised advertisement** has the same meaning as in section 2(1) of the Securities Act 1978

**authorised futures contract** has, in Part 3, the meaning set out in section 37(1)

**authorised futures exchange** has the meaning set out in section 37(1)

**authorised futures market** has the meaning set out in section 37(1)

**business** includes any profession, trade, or undertaking, whether or not carried on with the intention of making a pecuniary profit

**business rules** means the rules of a registered exchange for a registered market that relate to the matters set out in section 36H(1)(b), in the case of a securities market, or section 36H(2), in the case of a futures market

**change**, in relation to the market rules for a registered market, has the meaning set out in section 36J(2)

**chief executive** means the chief executive of the department that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**civil remedy order** has the meaning set out in section 42R

**civil remedy provision** has the meaning set out in section 42S

**class**, in relation to securities, means a class of securities having attached to them identical rights, privileges, limitations, and conditions

**commodity** has, in Part 3, the meaning set out in section 37(1)

**company** means a company, or an overseas company, within the meaning of section 2(1) of the Companies Act 1993

**consideration** includes consideration other than money

**continuous disclosure direction** has the meaning set out in section 36ZP

**continuous disclosure exemption** means,—

- (a) if section 19C does not apply to an exchange, an exemption or waiver of a continuous disclosure provision or provisions of the registered exchange's listing rules; or
- (b) if section 19C applies to an exchange, an exemption from a provision or provisions of regulations made under section 48E that apply to that exchange

**continuous disclosure obligation** means section 19B or section 19C (whichever is applicable) and any listing rules or regulations with which either of those sections requires compliance

**continuous disclosure provisions** has the meaning set out in section 19D

**contravene** includes, in Part 5, in relation to a provision, prohibition, obligation, or exemption (a **provision**),—

- (a) a contravention of the provision; or
- (b) an attempt to contravene the provision; or
- (c) aiding, abetting, counselling, or procuring any other person to contravene the provision; or
- (d) inducing, or attempting to induce, any other person, whether by threats or promises or otherwise, to contravene the provision; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention by any other person of the provision; or
- (f) conspiring with any other person to contravene the provision

**control**, in subpart 1B of Part 2B, has the meaning set out in section 36S

**co-operative company** means a company that is registered as a co-operative company under the Co-operative Companies Act 1996

**court** means, in relation to any matter, the court before which the matter is to be determined

**deal**, in Part 3, in relation to a futures contract, has the meaning set out in section 37(5) and (6)

**dealings in securities**, in subpart 2 of Part 1,—

- (a) means, in relation to securities listed on a registered market, any of the following steps:
  - (i) acquiring or disposing of securities (and, in the case of a futures contract, these steps include acquiring or disposing of as defined in section 37(1)); or
  - (ii) offering securities for subscription and issuing and allotting securities; or
  - (iii) underwriting securities; or
  - (iv) anything that is preparatory to, or related to, any dealings in securities (for example, giving investment advice) unless an exception applies to those dealings under that subpart; and
- (b) means, in relation to securities that are not listed on a registered market, any of the steps referred to in paragraph (a) taken in the course of business; but
- (c) excludes any dealings exempted by regulations made under section 49D

**director** means—

- (a) in relation to a company, any person occupying the position of a director of the company by whatever name called:
- (b) in relation to a partnership (other than a special partnership or limited partnership), any partner:
- (c) in relation to a special partnership or limited partnership, any general partner:
- (d) in relation to a body corporate or unincorporate, other than a company, partnership, or special partnership or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company:
- (e) in relation to any other person, that person

**directors' and officers' disclosure obligation** means any of sections 19T to 19V and any regulations with which those sections require compliance

**dispose of—**

- (a) includes dispose of by selling, allotting, withdrawing from, or terminating; and
- (b) includes agree to dispose of; but
- (c) in Part 3, has the meaning set out in section 37(1)

**distribute** includes—

- (a) make available, publish, and circulate; and
- (b) communicate by letter, newspaper, broadcasting, sound recording, television, cinematographic film, video, or any form of electronic or other means of communication

**document** means any record of information; and includes—

- (a) anything on which there is writing or any image; and
- (b) information recorded by means of any article or device (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device; and
- (c) material subsequently derived from information recorded by that means

**encourage** includes incite, counsel, or procure**engaging in conduct** means doing or refusing to do an act, and includes—

- (a) omitting to do an act; or
- (b) making it known that an act will or will not be done

**exchange participant** means any of the following:

- (a) a public issuer;
- (b) a person authorised by a registered exchange to undertake trading activities on, or otherwise participate in, a registered market

**exemption** means, in Part 5, in respect of an obligation or provision, an exemption granted by or under this Act from that obligation or provision (for example, a continuous disclosure obligation exemption is an exemption from a continuous disclosure obligation), and a reference to a person **contravening or complying with an exemption** is to a person contravening or complying with a term or condition of that exemption

**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

**futures contract** has the meaning set out in section 37

**futures market** means a market, exchange, or other facility for trading in futures contracts

**general dealing misconduct prohibition** means section 13

**generally available to the market** has the meaning set out in section 4

**holding company** has the same meaning as in sections 5 and 6 of the Companies Act 1993

**information insider** has the meaning set out in section 8A

**inside information** has the meaning set out in section 8B

**insider conduct prohibition** means any of sections 8C to 8E

**issuer** has the meaning set out in section 2(1) of the Securities Act 1978

**listed**, in relation to securities of a public issuer, means securities of the issuer that are approved for trading on a registered market (and, for the avoidance of doubt, securities do not cease to be listed merely because trading in those securities is suspended)

**listing rules** means the rules of a registered exchange for a registered market that relate to the matters set out in section 36H(1)(a)

**market manipulation prohibition** means either of sections 11 or 11B

**market rules** means the following rules for a registered market:

- (a) in relation to a securities market, the business rules and listing rules of a registered exchange for the securities market; and
- (b) in relation to a futures market, the business rules of a registered exchange for the futures market

**material information** has the meaning set out in section 3, in relation to a public issuer, and in section 3A, in relation to a futures contract

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**non-listed securities** means securities that are not listed

**officer**, for the purposes of Part 2 in relation to a public issuer,—

- (a) means a person, however designated, who is concerned or takes part in the management of the public issuer's business; but
- (b) excludes any persons (whether described as a class or otherwise) that are declared by regulations not to be officers for the purposes of this definition

**operate**, in relation to a securities market or futures market, includes control the operation of that market

**prescribed** means prescribed by regulations made under this Act

**principal officer**, in relation to a body corporate or other body, means—

- (a) a director of the body; or
- (b) a person in accordance with whose directions or instructions any or all of the directors of the body are accustomed to act (but a person is not a principal officer under this paragraph merely because the directors act on advice given by that person solely in a professional capacity)

**product advertisement**—

- (a) means a form of communication that—
  - (i) contains or refers to an offer of securities (including derivatives) to the public for subscription, or is reasonably likely to induce persons to subscribe for those securities, being securities to which the communication relates and that have been, or are to be, offered to the public for subscription; and
  - (ii) is authorised or instigated by, or on behalf of, an investment adviser or prepared with the co-operation of, or by arrangement with, an investment adviser; and
  - (iii) is to be, or has been, distributed to a person; but
- (b) does not include a prospectus or an advertisement as defined in sections 2(1) and 2A of the Securities Act 1978 respectively

**public issuer** means—

- (a) a person who is a party to a listing agreement with a registered exchange in relation to a registered market (and includes a registered exchange that is listed on its own registered market):
- (b) a person to whom paragraph (a) previously applied, in respect of any action or event or circumstance to which this Act applied at that time

**registered bank** has, in Part 3, the meaning set out in section 37(1)

**registered exchange** means any of the following:

- (a) a person that holds a market registration under section 36F:
- (b) a subsidiary of a person to which paragraph (a) applies (if the subsidiary operates the registered market):
- (c) a person that is treated as if it were a registered exchange under section 36ZY(4)

**registered exchange's securities market** means a securities market that is a registered market

**registered market** means any of the following:

- (a) a securities or futures market that is registered under section 36F:
- (b) a securities or futures market that is treated as if it were a registered market under section 36ZY(4)

**related** has the meaning set out in section 5B(2)

**relevant event** means an event that results in a person having to disclose matters under sections 22 to 25

**relevant interest** has the meaning set out in sections 5 to 5B

**securities market** means a market, exchange, or other facility for trading securities

**security**—

- (a) means—
  - (i) any interest in, or right to participate in, any capital, assets, earnings, royalties, or other property of any person:
  - (ii) any interest in, or right to be paid, money that is, or is to be, deposited with, lent to, or otherwise

- owing by, any person (whether or not the interest or right is secured by a charge over any property):
- (iii) any renewal or variation of the terms or conditions of any existing security; but
  - (b) in subpart 1 of Part 1, means a security (as defined in paragraph (a)) that has been allotted and is listed on a registered market or approved for trading on an authorised futures market; but excludes a previously allotted security to the extent that conduct in relation to that security is regulated by the Securities Act 1978 except section 6A; and
  - (c) in subpart 2 of Part 1, means a security (as defined in paragraph (a)) and includes a futures contract; but excludes a security exempted from Part 2 of the Securities Act 1978 under any of paragraphs (b) to (h) of section 5(1) of that Act; and
  - (d) in both subparts 1 and 2 of Part 1, also means—
    - (i) any form of beneficial interest in the security;
    - (ii) the power to exercise, or control the exercise of, any right to vote attached to the security;
    - (iii) the power to acquire or dispose of, or control the acquisition or disposition of, the security;
    - (iv) any power which may exist or arise at any time under any trust, agreement, arrangement, or understanding relating to the security to do anything described in subparagraphs (i) to (iii); and
  - (e) *[Repealed]*
  - (f) in Part 5 has, when applied in relation to a contravention of a provision, the same meaning as security has in that provision

**subsidiary** has the same meaning as in sections 5 and 6 of the Companies Act 1993

**substantial holding** has the meaning set out in section 21

**substantial holding disclosure obligation** means any of sections 22 to 27, and 34 to 35A and any regulations with which those sections require compliance

**substantial security holder** has the meaning set out in section 21

**Takeovers Act** means the Takeovers Act 1993



**takeovers code** means the takeovers code in force under the Takeovers Act

**trade**, in subpart 1 of Part 1,—

- (a) means acquire or dispose of; but
- (b) does not include acquire, or dispose of, by inheritance or gift

**trading day** means a day during which securities are traded on a registered market

**transacting shareholder** has the same meaning as in section 4 of the Co-operative Companies Act 1996

**trustee corporation** means Public Trust or the Māori Trustee or any corporation authorised by any Act to administer the estates of deceased persons and other trust estates

**unsolicited offer** has the meaning set out in section 48DA(1)

**unsolicited offer obligation** means any provision of any regulations made under section 48DB that is stated by those regulations to be an unsolicited offer obligation

**voting right**, in subpart 1 of Part 2B, has the meaning set out in section 36S

**voting security**, in relation to a public issuer or other body,—

- (a) means a security of the public issuer or body that confers a right to vote at meetings of members or shareholders (whether or not there is any restriction or limitation on the number of votes that may be cast by or on behalf of the holder of the security); and
- (b) includes a security that is convertible into a security of that kind; but
- (c) excludes a security that confers only a right to vote that, under the conditions attached to the security, is exercisable only in 1 or more of the following circumstances:
  - (i) during a period in which a dividend (or part of a dividend) in respect of the security is in arrears;
  - (ii) on a proposal to reduce the capital of the public issuer or body;
  - (iii) on a proposal that affects rights attached to the security;
  - (iv) on a proposal to put the public issuer or body into liquidation:

- (v) on a proposal for the disposal of the whole or a material part of the property, business, and undertaking of the public issuer or body:
  - (vi) during the liquidation of the public issuer or body.
- (2) For the purposes of this Act, unless the context otherwise requires, **associated persons** or **persons associated with each other** are—
  - (a) persons who are relatives within the meaning of the Income Tax Act 2004 or de facto partners; or
  - (b) persons who are partners to whom the Partnership Act 1908 applies; or
  - (c) bodies corporate that consist substantially of the same shareholders or are under the control of the same persons; or
  - (d) a body corporate and a person who has the power, directly or indirectly, to exercise, or control the exercise of, the right to vote attached to 25% or more of the voting securities of the body corporate; or
  - (e) a body corporate and a person who is a director or principal officer of the body corporate.
- (3) Any term or expression that is defined in the Securities Act 1978 and used, but not defined, in this Act has the same meaning as in the Securities Act 1978.
- (4) A term that is defined to have a meaning when used in a particular Part or provision of this Act has the same meaning when it is used in the definition of any other term used in that Part or provision.
- (5) For the purposes of this Act and every other enactment, unless the context otherwise requires, a person is a party to a listing agreement with a registered exchange if the person is party to that listing agreement in respect of a registered market of the registered exchange (or, in the case of a registered exchange, if the exchange is listed on its own registered market, whether or not under a listing agreement).

Section 2: substituted, on 29 February 2008, by section 4 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 2(1) **advertisement**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **advice advertisement**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **authorised futures market**: inserted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **broker advertisement**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **business rules**: substituted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **change**: inserted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **Commission**: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 2(1) **conduct rules**: repealed, on 1 May 2011, by section 4(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **control**: amended, on 1 May 2011, by section 4(3) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **dealings in securities** paragraph (a): amended, on 1 May 2011, by section 4(4) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **dealings in securities** paragraph (a)(i): amended, on 1 May 2011, by section 4(5) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **dealings in securities** paragraph (b): amended, on 1 May 2011, by section 4(6) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **director** paragraph (b): amended, on 2 May 2008, by section 121(4) of the Limited Partnerships Act 2008 (2008 No 1).

Section 2(1) **director** paragraph (c): amended, on 2 May 2008, by section 121(4) of the Limited Partnerships Act 2008 (2008 No 1).

Section 2(1) **director** paragraph (d): amended, on 2 May 2008, by section 121(4) of the Limited Partnerships Act 2008 (2008 No 1).

Section 2(1) **exchange participant**: inserted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **FMA**: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 2(1) **futures contract**: amended, on 24 November 2009, by section 4(3) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 2(1) **futures market**: inserted, on 24 November 2009, by section 4(4) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 2(1) **investment advice** and **advice**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **investment adviser** and **adviser**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **investment advisers' disclosure obligations** and **investment advisers' obligations**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **investment broker** and **broker**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **investment brokers' disclosure obligations** and **investment brokers' obligations**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **investment brokers' service**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **investment money** and **money**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **investment property** and **property**: repealed, on 1 July 2011, by section 164(2) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **issuer**: inserted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **listed**: amended, on 1 May 2011, by section 4(7) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **listing rules**: substituted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **market rules**: inserted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **operate**: amended, on 24 November 2009, by section 4(6) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 2(1) **public issuer** paragraph (a): amended, on 1 May 2011, by section 4(8) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **public issuer** paragraph (b): substituted, on 1 May 2011, by section 4(9) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **registered exchange**: substituted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **registered exchange's market**: repealed, on 24 November 2009, by section 4(8) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 2(1) **registered exchange's securities market**: inserted, on 24 November 2009, by section 4(8) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 2(1) **registered exchange's securities market**: amended, on 1 May 2011, by section 4(10) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **registered market**: inserted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **securities exchange**: repealed, on 24 November 2009, by section 4(9) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 2(1) **security** paragraph (b): amended, on 1 May 2011, by section 4(11) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **security** paragraph (e): repealed, on 1 July 2011, by section 164(3) of the Financial Advisers Act 2008 (2008 No 91).

Section 2(1) **trading day**: amended, on 1 May 2011, by section 4(12) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **trustee corporation**: amended, on 1 July 2009, pursuant to section 30(2)(a) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 2(1) **unsolicited offer**: inserted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(1) **unsolicited offer obligation**: inserted, on 1 May 2011, by section 4(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 2(5): added, on 1 May 2011, by section 4(13) of the Securities Markets Amendment Act 2011 (2011 No 7).

### 3 What is material information in relation to public issuer

For the purposes of this Act, unless the context otherwise requires, **material information**, in relation to a public issuer but not in relation to a futures contract referred to in section 3A, is information that—

- (a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of listed securities of the public issuer; and
- (b) relates to particular securities, a particular public issuer, or particular public issuers, rather than to securities generally or public issuers generally.

Section 3: substituted, on 29 February 2008, by section 4 of the Securities Markets Amendment Act 2006 (2006 No 47).

### 3A What is material information in relation to futures contract

For the purposes of this Act, unless the context otherwise requires, **material information** in relation to a futures contract that is listed for trading on an authorised futures market is information that—

- (a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the value of the futures contract; and
- (b) relates to the particular futures contract, rather than to futures contracts generally.

Section 3A: inserted, on 29 February 2008, by section 4 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 3A: amended, on 1 May 2011, by section 5 of the Securities Markets Amendment Act 2011 (2011 No 7).

### 4 What information is generally available to the market

- (1) For the purposes of this Act, unless the context otherwise requires, information is **generally available to the market**—

- (a) if—
    - (i) it is information that has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in relevant securities; and
    - (ii) since it was made known, a reasonable period for it to be disseminated among those persons has expired; or
  - (b) if it is likely that persons who commonly invest in relevant securities can readily obtain the information (whether by observation, use of expertise, purchase from other persons, or any other means); or
  - (c) if it is information that consists of deductions, conclusions, or inferences made or drawn from either or both of the kinds of information referred to in paragraphs (a) and (b).
- (2) In this section, **relevant securities** means securities of a kind the price or (in the case of futures contracts) the value of which might reasonably be expected to be affected by the information.
- (3) Information that is notified in accordance with a continuous disclosure obligation is generally available to the market under subsection (1)(a) immediately on it being made available to participants in a registered exchange's securities market (without limiting how quickly the reasonable period of dissemination in subsection (1)(a)(ii) may be satisfied in other cases).

Section 4: substituted, on 29 February 2008, by section 4 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 4(3): amended, on 24 November 2009, by section 22 of the Securities Markets Amendment Act 2009 (2009 No 54).

## 5 Relevant interests in securities (basic rule)

- (1) A person has a **relevant interest** in a security if the person—
- (a) is a registered holder of the security; or
  - (b) is a beneficial owner of the security; or
  - (c) has the power to exercise, or to control the exercise of, a right to vote attached to the security; or
  - (d) has the power to acquire or dispose of, or to control the acquisition or disposition of, the security.

- (2) It does not matter whether the power or control is express or implied, direct or indirect, legally enforceable or not, related to a particular security or not, exercisable presently or in the future, or exercisable alone or jointly with another person or persons (but a power to cast merely one of many votes is not, in itself, a joint power of this kind).
- (3) It also does not matter whether or not the power or control is or can be made subject to restraint or restriction or is exercisable only on the fulfilment of a condition.
- (4) If 2 or more persons can jointly exercise a power, each of them is taken to have that power.

Section 5: substituted, on 29 February 2008, by section 4 of the Securities Markets Amendment Act 2006 (2006 No 47).

**5A Extension of basic rule to powers or controls exercisable through trust, agreement, etc**

- (1) A person has a power or control referred to in section 5 if the power or control is, or may at any time be, exercised under, by virtue of, by means of, or as a result of a revocation or breach of, a trust, agreement, arrangement, or understanding (or any combination of them).
- (2) It does not matter whether or not the trust, agreement, arrangement, or understanding is legally enforceable or whether or not the person is a party to it.

Section 5A: inserted, on 29 February 2008, by section 4 of the Securities Markets Amendment Act 2006 (2006 No 47).

**5B Extension of basic rule to interests held by other persons under control or acting jointly**

- (1) A person (A) has the relevant interests in securities that another person (B) has if—
  - (a) B or B's directors are accustomed or under an obligation (whether legally enforceable or not) to act in accordance with A's directions, instructions, or wishes in relation to a power or control referred to in section 5; or
  - (b) A has the power to exercise, or control the exercise of, the right to vote attached to 20% or more of the securities of B; or

- (c) A has the power to acquire or dispose of, or to control the acquisition or disposition of, 20% or more of the securities of B; or
  - (d) A and B are related bodies corporate; or
  - (e) A and B have an agreement, arrangement, or understanding to act in concert in relation to a power or control referred to in section 5.
- (2) For the purposes of this Act, a body corporate (**A**) is **related** to another body corporate (**B**) if—
  - (a) B is A's holding company or subsidiary within the meaning of sections 5 and 6 of the Companies Act 1993; or
  - (b) more than half of A's issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) is held by B and bodies corporate related to B (whether directly or indirectly, but other than in a fiduciary capacity); or
  - (c) more than half of the issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) of each of A and B is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
  - (d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; or
  - (e) there is another body corporate to which A and B are both related.

Section 5B: inserted, on 29 February 2008, by section 4 of the Securities Markets Amendment Act 2006 (2006 No 47).

## **6 Situations not giving rise to relevant interests**

- (1) A person (**A**) does not have a relevant interest in securities under sections 5 to 5B merely because—
  - (a) the ordinary business of A consists of, or includes, the lending of money or the provision of financial services, or both, and A has the relevant interest only as security



- given for the purposes of a transaction entered into in the ordinary course of the business of A; or
- (b) A is authorised to undertake trading activities on a registered market and A acts for another person to acquire or dispose of those securities on behalf of that person in the ordinary course of A's business of carrying out those trading activities; or
  - (c) A has been authorised by resolution of the directors or other governing body of a body corporate to act as its representative at a particular meeting of members, or class of members, of a public issuer, and a copy of the resolution is deposited with the public issuer before the meeting; or
  - (d) A is appointed as a proxy to vote at a particular meeting of members, or of a class of members, of the public issuer and the instrument of A's appointment is deposited with the public issuer before the meeting; or
  - (e) A is a bare trustee of a trust to which the security is subject; or
  - (f) A is a director of a body corporate and the body corporate has a relevant interest in the security; or
  - (g) A is a member of a body corporate and the body corporate's constitution gives the member pre-emptive rights on the transfer of the security, if all members have pre-emptive rights on the same terms.
- (2) Subsection (1)(a) to (g) does not apply to a person if the person is currently designated by the FMA, by notice in the *Gazette* under section 48C, as a person that is not exempt under that paragraph.
- (3) For the purposes of subsection (1)(e), a trustee may be a bare trustee even if he or she is entitled as a trustee to be remunerated out of the income or property of the trust.

Section 6: substituted, on 29 February 2008, by section 4 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 6(1)(b): amended, on 1 May 2011, by section 6 of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 6(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**6A Application of Part 1 to Reserve Bank of New Zealand***[Repealed]*

Section 6A: repealed, on 29 February 2008, by section 4 of the Securities Markets Amendment Act 2006 (2006 No 47).

**6B Act binds the Crown**

This Act binds the Crown.

Section 6B: inserted, on 1 December 2002, by section 8 of the Securities Markets Amendment Act 2002 (2002 No 44).

**Part 1  
Dealing misconduct**

Part 1: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**Subpart 1—Insider conduct and market  
manipulation prohibitions**

Subpart 1 heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Insider conduct prohibited*

Heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**7 Liability of insider who deals in securities of a public issuer***[Repealed]*

Section 7: repealed, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**8 Prohibition of insider conduct**

A person must not do any of the things set out in sections 8C to 8E if that person is an information insider of the public issuer.

Section 8: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**8A Who is information insider**

- (1) A person is an **information insider** of a public issuer if that person—

- (a) has material information relating to the public issuer that is not generally available to the market; and
  - (b) knows or ought reasonably to know that the information is material information; and
  - (c) knows or ought reasonably to know that the information is not generally available to the market.
- (2) A public issuer may be an information insider of itself.

Section 8A: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **8B Meaning of inside information**

In this subpart, **inside information** means the information in respect of which a person is an information insider of the public issuer in question.

Section 8B: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **8C Information insider must not trade**

An information insider of a public issuer must not trade securities of the public issuer.

Section 8C: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **8D Information insider must not disclose inside information**

An information insider (**A**) of a public issuer must not directly or indirectly disclose inside information to another person (**B**) if A knows or ought reasonably to know or believes that B will, or is likely to,—

- (a) trade securities of the public issuer; or
- (b) if B is already a holder of those securities, continue to hold them; or
- (c) advise or encourage another person (**C**) to trade or hold them.

Section 8D: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **8E Information insider must not advise or encourage trading**

An information insider (**A**) of a public issuer must not—

- (a) advise or encourage another person (**B**) to trade or hold securities of the public issuer:
- (b) advise or encourage B to advise or encourage another person (**C**) to trade or hold those securities.

Section 8E: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **8F Criminal liability for insider conduct**

A person who contravenes any of sections 8C to 8E commits an offence (*see* section 43 for the maximum penalty of 5 years' imprisonment and a \$300,000 fine for an individual or a \$1,000,000 fine for a body corporate) if the person has actual knowledge—

- (a) that the information is material information; and
- (b) that the information is not generally available to the market; and
- (c) in the case of a contravention of section 8D, of any of the matters set out in section 8D(a) to (c).

Section 8F: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### *When prohibition on insider conduct does not apply*

Heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **9 Exception for trading required by enactment**

Section 8C does not apply to trading in securities that is required by an enactment.

Section 9: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **9A Exception for disclosure required by enactment**

Section 8D does not apply to disclosure that is required by an enactment.

Section 9A: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**9B Exceptions in respect of underwriting agreements**

- (1) Section 8C does not apply to the acquisition of the securities of a public issuer under an underwriting or sub-underwriting agreement.
- (2) Section 8D does not apply if the inside information is disclosed to a person for the sole purpose of negotiating an underwriting or sub-underwriting agreement with that person in respect of the securities in question.
- (3) Section 8E does not apply if the advice or encouragement is given for the sole purpose of persuading the person to whom it is given to enter into an underwriting or sub-underwriting agreement in respect of the securities in question.

Section 9B: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**9C Exception in case of knowledge of person's own intentions or activities**

- (1) A person (**A**) does not contravene section 8C merely because A trades the securities with the knowledge that A proposes to enter into, or has previously entered into, 1 or more transactions or agreements in relation to the securities or the public issuer or its business activities.
- (2) A person (**B**) does not contravene section 8E merely because B advises or encourages A to trade or hold securities when B has knowledge acquired in the course of acting as A's adviser that A proposes to enter into, or has previously entered into, 1 or more transactions or agreements in relation to the securities or the public issuer or its business activities.
- (3) In subsection (2), **adviser** means an adviser acting in a professional capacity, and includes an adviser such as a lawyer, an accountant, or an investment adviser, but is not limited to those persons.

Section 9C: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**9D Exception for agent executing trading instruction only**

Section 8C does not apply in the case of a person (**A**) if—

- (a) in trading the securities A was acting on behalf of another person (**B**); and

- (b) A traded the securities on B's specific instruction; and
- (c) before trading, A did not disclose inside information to B; and
- (d) A did not advise or encourage B to instruct A to trade.

Section 9D: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

## **9E Exceptions for takeovers**

- (1) Section 8C does not apply to—
  - (a) trading that results from a takeover offer under the takeovers code; or
  - (b) trading in compliance with regulations made under section 49D(1)(b); or
  - (c) entering into an agreement to acquire or dispose of securities at a fixed price under a future takeover offer that complies with the takeovers code; or
  - (d) the acquisition or disposal of securities in performance of an agreement to acquire or dispose of those securities at a fixed price under a future takeover offer that complies with the takeovers code.
- (2) Section 8D does not apply to the following conduct:
  - (a) subject to the conditions in subsection (3), disclosure of inside information to a prospective offeror or its advisers under a prospective takeover offer under the takeovers code:
  - (b) subject to the conditions in subsection (3), disclosure of inside information to encourage competing bona fide offers to be made in competition with a takeover offer under the takeovers code:
  - (c) subject to the conditions in subsection (3), disclosure of inside information by a prospective offeror or its advisers under a prospective takeover offer under the takeovers code for the purpose of forming a consortium to make a takeover offer:
  - (d) disclosure of inside information to an independent adviser to enable that adviser to make a report required by the takeovers code.
- (3) The conditions referred to in subsection (2) are—

- (a) the recipient of the information is bound by a confidentiality agreement in respect of the information; and
  - (b) the purpose of the conduct is to enable or encourage the recipient to make a takeover offer or to participate in a takeover offer.
- (4) Section 8E does not apply to advice or encouragement—
  - (a) by the directors of a company that is the target company under a takeover offer under the takeovers code, to the extent that the advice or encouragement is given to the company's shareholders and relates to trading or holding their securities; or
  - (b) by a prospective offeror under a prospective takeover offer under the takeovers code for the purpose of forming a consortium to make a takeover offer.
- (5) A person (**A**) does not contravene section 8D or section 8E merely because A, in relation to a takeover offer or prospective takeover offer under the takeovers code, discloses inside information to another person (**B**) or advises B to trade or hold securities of the public issuer when A has that inside information, or is an information insider, only through acting as B's adviser in relation to the takeover offer or prospective takeover offer.
- (6) In subsection (5), **adviser** means an adviser acting in a professional capacity, and includes an adviser such as a lawyer, an accountant, or an investment adviser, but is not limited to those persons.

Section 9E: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

## **9F Exception for redemption of units in unit trust**

Section 8C does not apply to the redemption of units in a unit trust if the redemption price for each unit is calculated by reference to the underlying value of the assets of the financial business or undertaking of the scheme.

Section 9F: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**9G Exception for Reserve Bank**

Section 8C does not apply to trading by the Reserve Bank of New Zealand in securities issued by the Reserve Bank of New Zealand or by the Crown.

Section 9G: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Affirmative defences*

Heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**10 Absence of knowledge of trading**

In any proceeding against a person (A) for contravention of section 8C, it is a defence if A proves on a balance of probabilities that A did not know, and could not reasonably be expected to know, that A traded the securities.

Section 10: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**10A Inside information obtained by independent research and analysis**

- (1) In any proceeding against a person (A) for contravention of section 8C or section 8D, it is a defence if A proves on a balance of probabilities that the inside information was obtained by research and analysis, and was not obtained directly or indirectly from the public issuer concerned.
- (2) In any proceeding against a person (A) for contravention of section 8E, it is a defence if A proves on a balance of probabilities that A encouraged or advised on the basis of inside information obtained by research and analysis, and not obtained directly or indirectly from the public issuer concerned.
- (3) In subsections (1) and (2), **research** means planned investigation undertaken to gain new knowledge and understanding.

Section 10A: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**10B Equal information**

- (1) In any proceeding against a person (A) for contravention of section 8C, it is a defence if A proves on a balance of probab-



ities that the opposite party to the transaction knew, or ought reasonably to have known, the same inside information as A before entering into the transaction.

- (2) In any proceeding against a person (A) for contravention of section 8D, it is a defence if A proves on a balance of probabilities that the other person knew, or ought reasonably to have known, the same inside information as A before it was disclosed.
- (3) In any proceeding against a person (A) for contravening section 8D or section 8E by disclosing inside information to another person (B) or by advising B to trade or hold securities of the public issuer, it is a defence if A proves on a balance of probabilities that A has that inside information, or is an information insider, only through acting as B's adviser in relation to trading or holding those securities.
- (4) In subsection (3), **adviser** means an adviser acting in a professional capacity, and includes an adviser such as a lawyer, an accountant, or an investment adviser, but is not limited to those persons.

Section 10B: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### 10C Options and trading plans

- (1) In any proceeding against a person (A) for contravention of section 8C, it is a defence if A proves on a balance of probabilities that—
  - (a) A traded the securities under a fixed trading plan or under options with a fixed exercise price; and
  - (b) A entered into the trading plan, or acquired the options, as the case may be,—
    - (i) before A obtained the inside information; and
    - (ii) without any intent to evade section 8C.
- (2) A **fixed trading plan** is a trading plan that—
  - (a) is fixed for a period of time; and
  - (b) gives the investor no right to withdraw before the end of that period; and
  - (c) is not subject to any influence by the investor as to trading decisions after the plan has begun.

Section 10C: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **10D Chinese wall defence**

- (1) In any proceeding against a person (**A**) for contravention of any of sections 8C to 8E, it is a defence if A proves on a balance of probabilities that—
- (a) arrangements existed that could reasonably be expected to ensure that no individual who took part in the active decision received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and
  - (b) no individual who took part in the active decision received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information; and
  - (c) every individual who had the information and every individual who took part in the active decision acted in accordance with the arrangements referred to in paragraph (a).
- (2) In subsection (1), **active decision** means the decision to trade the securities or disclose the inside information or advise or encourage, as the case may be.

Section 10D: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### *Market manipulation*

Heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **11 False or misleading statement or information**

A person must not make a statement or disseminate information if—

- (a) a material aspect of the statement or information is false or the statement or information is materially misleading; and
- (b) the person knows or ought reasonably to know that a material aspect of the statement or information is false

- or that the statement or information is materially misleading; and
- (c) the statement or information is likely to—
- (i) induce a person to trade in the securities of a public issuer; or
  - (ii) have the effect of increasing, reducing, maintaining, or stabilising the price for trading in those securities; or
  - (iii) induce a person to vote for, or vote against, a transaction, or to abstain from voting in respect of that transaction.

Section 11: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **11A Criminal liability for false or misleading statement or information**

A person who contravenes section 11 commits an offence (*see* section 43 for the maximum penalty of 5 years' imprisonment and a \$300,000 fine for an individual or a \$1,000,000 fine for a body corporate) if the person has actual knowledge that the statement or information is false in a material aspect or is materially misleading.

Section 11A: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **11B False or misleading appearance of trading, etc**

A person must not do, or omit to do, anything if—

- (a) the act or omission will have, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance—
- (i) with respect to the extent of active trading in the securities of a public issuer; or
  - (ii) with respect to the supply of, demand for, price for trading in, or value of those securities; and
- (b) the person knows or ought reasonably to know that the person's act or omission will, or is likely to have, that effect.

Section 11B: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**11C Presumption as to false or misleading appearance of trading, etc**

- (1) A person (A) is presumed to contravene section 11B if A is directly or indirectly a party to trading in the securities of a public issuer from which no change in beneficial ownership results.
- (2) A person (A) is also presumed to contravene section 11B if—
  - (a) A has made an offer to trade the securities of a public issuer; and
  - (b) either A or, to A's knowledge, A's associate, has made or proposes to make an opposite offer (the **opposite offer**) to trade securities of the public issuer; and
  - (c) the opposite offer substantially matches A's offer as to the number and price of the securities.
- (3) There is no presumption under subsection (1) or subsection (2), and it is a defence in any proceeding against A for contravention of section 11B, if A proves, on a balance of probabilities, that the trading in securities occurred, or the offer to trade was made, for a legitimate reason.
- (4) There is no presumption under subsection (1), and it is a defence in any proceeding against A for contravention of section 11B, if A proves, on a balance of probabilities, that—
  - (a) in trading the securities A was acting on behalf of another person; and
  - (b) A did not know, and ought not reasonably to have known, when trading the securities that no change in beneficial ownership would result.

Section 11C: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**11D Criminal liability for false or misleading appearance of trading, etc**

A person who contravenes section 11B commits an offence (*see* section 43 for the maximum penalty of 5 years' imprisonment and a \$300,000 fine for an individual or a \$1,000,000 fine for a body corporate) if the person has actual knowledge that the act or omission will have, or is likely to have, the effect of creating, or causing the creation of, a false or misleading appearance—

- (a) with respect to the extent of active trading in the securities of a public issuer; or
- (b) with respect to the supply of, demand for, price for trading in, or value of those securities.

Section 11D: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

### *Futures contracts*

Heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

## **11E Application of subpart 1 to insider conduct in relation to futures contract**

This subpart applies, with the following modifications and exceptions, to insider conduct in relation to a futures contract that is listed on an authorised futures market:

- (a) the term **information insider of a public issuer** must be read as information insider in relation to a futures contract:
- (b) the term **information insider of the public issuer** must be read as information insider in relation to the futures contract:
- (c) the term **material information relating to the public issuer** must be read as material information relating to—
  - (i) the futures contract; or
  - (ii) the underlying commodity, index, or asset that is the subject of the futures contract; or
  - (iii) the issuer of a security underlying the futures contract:
- (d) the term **security** must be read as futures contract:
- (e) the term **trade the securities of the public issuer** must be read as trade the futures contract:
- (f) the term **trade or hold securities of the public issuer** must be read as trade or hold the futures contract:
- (g) section 8A(2) must be read as “A public issuer of a security underlying a futures contract may be an information insider in relation to that futures contract”:
- (h) all other necessary modifications.

Section 11E: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 11E: amended, on 1 May 2011, by section 7 of the Securities Markets Amendment Act 2011 (2011 No 7).

## Subpart 2—General dealing misconduct prohibition

Subpart 2 heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

### *General dealing misconduct prohibition*

Heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

## 12 Exceptions to section 11

*[Repealed]*

Section 12: repealed, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

## 13 Misleading or deceptive conduct generally (for dealings in listed and non-listed securities)

- (1) A person must not engage in conduct, in relation to any dealings in securities, that is misleading or deceptive or likely to mislead or deceive.
- (2) To make the position clear, this section applies more broadly than the rest of this Part and so applies to securities whether listed or non-listed and to all dealings in securities (not only trading).

Section 13: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

### *Exceptions*

Heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

## 14 Exceptions for takeovers

- (1) Sections 11 and 13 do not apply to conduct in relation to a takeover offer for securities under the takeovers code or to con-

duct under that offer to the extent that the conduct is regulated by the code or the Takeovers Act 1993.

- (2) For the purposes of subsection (1), **conduct in relation to a takeover offer** means conduct following the public announcement by a person of an intention to make the offer, whether or not the offer has already begun and whether or not the offer proceeds, and includes conduct incidental or preliminary to a takeover that is regulated by the takeovers code.

Section 14: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**15 Exception for repurchase of shares by company**

Section 13 does not apply to conduct in relation to the acquisition or redemption by a company of its shares under the Companies Act 1993 to the extent that the conduct is regulated by that Act.

Section 15: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**16 Exception for offers of securities to public**

Section 13 does not apply to conduct in relation to an offer of securities to the public for subscription under the Securities Act 1978 or to conduct in relation to the issue or allotment of those securities to the extent that the conduct is regulated by that Act.

Section 16: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**17 Exception for disclosure by investment advisers or brokers**

*[Repealed]*

Section 17: repealed, on 1 July 2011, by section 50 of the Financial Advisers Amendment Act 2010 (2010 No 40).

*Territorial scope*

Heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**18 Territorial scope of general dealing misconduct prohibition**

Section 13 applies to—

- (a) conduct in New Zealand; and
- (b) conduct outside New Zealand by any person resident, incorporated, or carrying on business in New Zealand to the extent that that conduct relates to dealings in securities that occur (in part or otherwise) within New Zealand.

Section 18: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**18A Commission may exercise public issuer's right of action**

*[Repealed]*

Section 18A: repealed, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**18B Requirements for Commission exercising public issuer's right of action**

*[Repealed]*

Section 18B: repealed, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**18C Procedural requirements for leave to exercise public issuer's right of action**

*[Repealed]*

Section 18C: repealed, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**18D Powers of court for proceedings exercising public issuer's right of action**

*[Repealed]*

Section 18D: repealed, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**18E Proceedings must not be settled, compromised, or discontinued without approval**

*[Repealed]*

Section 18E: repealed, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).



*Liability under Fair Trading Act 1986*

Heading: inserted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19 No liability under Fair Trading Act 1986 if not liable under this Part**

A court hearing a proceeding brought against a person under the Fair Trading Act 1986 must not find that person liable for conduct that is regulated by this Part if that person would not be liable for that conduct under this Part.

Section 19: substituted, on 29 February 2008, by section 5 of the Securities Markets Amendment Act 2006 (2006 No 47).

**Part 2  
Disclosure**

Part 2 heading: substituted, on 1 December 2002, by section 15 of the Securities Markets Amendment Act 2002 (2002 No 44).

**Subpart 1—Continuous disclosure by public  
issuers**

Subpart 1: inserted, on 1 December 2002, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

*Purpose of this subpart*

Heading: inserted, on 1 December 2002, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

**19A Purpose of this subpart**

- (1) The purpose of this subpart is to provide for appropriate continuous disclosure by public issuers of material information that is not generally available to the market.
- (2) The following criteria are relevant to the implementation of that purpose (without limiting other relevant criteria):
  - (a) promoting fair, orderly, and transparent listed markets:
  - (b) providing an appropriate level of protection for investors:
  - (c) ensuring that the benefits resulting from the continuous disclosure regime justify the costs, including the following costs:

- (i) the value that a public issuer gives up if the information is not kept confidential; and
- (ii) compliance costs for public issuers and registered exchanges in disclosing the information:
- (d) ensuring reasonable consistency and predictability in the application of the continuous disclosure regime:
- (e) avoiding unfair advantages resulting from inappropriate disclosure of information to some, but not all, investors:
- (f) recognising the importance to the New Zealand listed markets of attracting and retaining exchange participants and maintaining international competitiveness:
- (g) *[Repealed]*
- (h) recognising the importance of maintaining international best practices for continuous disclosure in listed markets:
- (i) any principles applying to the co-ordination of business law between Australia and New Zealand set out in any agreement or memorandum of understanding between the Governments of New Zealand and Australia.

Section 19A: inserted, on 1 December 2002, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 19A(2)(a): substituted, on 1 May 2011, by section 8(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 19A(2)(b): substituted, on 1 May 2011, by section 8(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 19A(2)(f): substituted, on 1 May 2011, by section 8(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 19A(2)(g): repealed, on 1 May 2011, by section 8(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

### *Continuous disclosure obligation*

Heading: inserted, on 1 December 2002, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

## **19B Public issuers must disclose in accordance with listing rules if continuous disclosure listing rules apply**

- (1) A public issuer must notify information in accordance with the continuous disclosure provisions of the listing rules of a registered exchange if—

- (a) the public issuer is a party to a listing agreement with that exchange; and
  - (b) the public issuer has information that those continuous disclosure provisions require it to notify; and
  - (c) the information is material information that is not generally available to the market; and
  - (d) no regulations under section 48E declare that section 19C applies to that exchange.
- (2) Subsection (1) does not affect or limit the situations in which action can be taken (other than under Part 5) for a failure to comply with provisions of the listing rules of a registered exchange.

Section 19B: inserted, on 1 December 2002, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 19B(1)(d): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 19B(2): amended, on 1 May 2011, by section 9 of the Securities Markets Amendment Act 2011 (2011 No 7).

**19C Public issuers must disclose in accordance with regulations if continuous disclosure regulations apply**

A public issuer must notify information in accordance with the continuous disclosure provisions of regulations made under section 48E if—

- (a) regulations under section 48E declare that this section applies to a registered exchange; and
- (b) the public issuer is a party to a listing agreement with that exchange; and
- (c) the public issuer has information that those continuous disclosure provisions require it to notify; and
- (d) the information is material information that is not generally available to the market.

Section 19C: inserted, on 1 December 2002, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 19C: amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 19C(a): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19D What are continuous disclosure provisions**

For the purposes of this Act, **continuous disclosure provisions** means provisions that require a public issuer that is a party to a listing agreement with a registered exchange to notify information about events or matters as they arise for the purpose of that information being made available to participants in the registered exchange's securities market.

Section 19D: inserted, on 1 December 2002, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 19D: amended, on 24 November 2009, by section 22 of the Securities Markets Amendment Act 2009 (2009 No 54).

**19E What is material information**

*[Repealed]*

Section 19E: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19F What information is generally available to the market**

*[Repealed]*

Section 19F: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Enforcement by Commission*

*[Repealed]*

Heading: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19G Commission may make orders requiring disclosure or corrective statements**

*[Repealed]*

Section 19G: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19H Notice and submissions on Commission's orders**

*[Repealed]*

Section 19H: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19I Limited notice and submissions for urgent orders**

*[Repealed]*

Section 19I: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19J Offence for failure to comply with Commission orders**

*[Repealed]*

Section 19J: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Enforcement—Civil remedies*

*[Repealed]*

Heading: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19K Court may make orders requiring disclosure or corrective statements**

*[Repealed]*

Section 19K: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19L Court may impose pecuniary penalties**

*[Repealed]*

Section 19L: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19M Court may make compensatory orders**

*[Repealed]*

Section 19M: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19N Court may order payment of costs**

*[Repealed]*

Section 19N: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19O General provisions as to court's orders**

*[Repealed]*

Section 19O: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19P Persons entitled to appear before court***[Repealed]*

Section 19P: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19PA No contravention of continuous disclosure provisions by person who takes reasonable steps to ensure public issuer complies**

A person (A) does not, in relation to the contravention by a public issuer of a continuous disclosure obligation or a term or condition of a continuous disclosure exemption, contravene that obligation or term or condition if A proves on the balance of probabilities that—

- (a) A took all steps (if any) that were reasonable in the circumstances to ensure that the public issuer complied with the obligation or term or condition; and
- (b) after doing so, A believed on reasonable grounds that the public issuer was complying with the obligation or term or condition.

Section 19PA: inserted, on 29 February 2008, by section 6 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Regulations requiring continuous disclosure**[Repealed]*

Heading: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19Q Regulations requiring continuous disclosure***[Repealed]*

Section 19Q: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19R Requirements for regulations replacing continuous disclosure listing rules***[Repealed]*

Section 19R: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19S Ongoing requirements for continuous disclosure regulations**

*[Repealed]*

Section 19S: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**Subpart 2—Disclosure of relevant interests  
by directors and officers of public issuers**

Subpart 2: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

*Directors' and officers' disclosure obligations*

Heading: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

**19SA Purpose of subpart**

The purpose of this subpart is to promote good corporate governance, and to deter and assist in the monitoring of insider conduct and market manipulation, by—

- (a) ensuring that information about directors' and officers' trading activities in public issuers is available to participants in New Zealand's securities markets; and
- (b) enabling the dates of trades to be checked against the dates at which material information became generally available to the market.

Section 19SA: inserted, on 29 February 2008, by section 7 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19T Directors and officers of public issuers must disclose relevant interests and dealings in relevant interests**

- (1) A director or officer of a public issuer who has a relevant interest in a security of the public issuer or a related body corporate must disclose that fact, in accordance with section 19U, within 5 trading days of this section becoming applicable as a result of—
  - (a) the listing of the public issuer; or
  - (b) the person's appointment as a director or officer; or
  - (c) the commencement of this section.

- (2) A director or officer of a public issuer who acquires or disposes of a relevant interest in a security of the public issuer or a related body corporate must disclose that fact, in accordance with section 19U, within 5 trading days of the acquisition or disposal.
- (3) This section is subject to sections 19U to 19Y.  
Section 19T: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

#### **19U What disclosure required**

- (1) The director or officer must disclose the relevant interest, acquisition, or disposal—
  - (a) to the registered exchange with which the public issuer is listed; and
  - (b) in the interests register of the public issuer kept under this subpart.
- (2) The director or officer must also disclose, as required by regulations made under section 49, any further matters relating to the relevant interest, acquisition, or disposal required by those regulations.

Section 19U: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

#### **19V Form and method of disclosure**

The director or officer must disclose the relevant interest, acquisition, or disposal in accordance with any regulations made under section 49 (which may govern the form and method of the disclosure).

Section 19V: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

#### **19W Disclosure obligation applies for 6 months after ceasing to hold office**

A person is treated as a director or officer for the purposes of this subpart for 6 months after that person ceases to be a director or officer, and must continue to comply with this subpart for that period.

Section 19W: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).



### *Exemptions*

Heading: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

#### **19X Exemptions for directors or officers of co-operative companies**

- (1) A director or officer of a co-operative company who has a relevant interest in a non-listed security of that company does not have to disclose that fact under section 19T if—
  - (a) the director or officer is a transacting shareholder of the company; and
  - (b) the interest was acquired by the director or officer in the ordinary course of business.
- (2) A director or officer of a co-operative company who acquires or disposes of a relevant interest in a non-listed security of that company does not have to disclose that fact under section 19T if—
  - (a) the director or officer is a transacting shareholder of the company; and
  - (b) the director or officer acquires or disposes of the interest in the ordinary course of business.
- (3) For the avoidance of doubt and for the purposes of subsections (1) and (2), a person is not acting outside the ordinary course of business merely because the person acquires or disposes of non-listed securities in the company in connection with the person acquiring or disposing of a business or business assets.

Section 19X: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

#### **19Y Exemptions granted by FMA or regulations**

The directors' and officers' disclosure obligations are subject to any exemptions granted by the FMA under section 48 or provided in regulations made under section 49.

Section 19Y: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 19Y heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 19Y: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

*Interests register*

Heading: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

**19Z Public issuer must keep interests register**

- (1) A public issuer must keep an interests register for disclosures under this subpart.
- (2) The interests register must be kept at—
  - (a) the registered office of the public issuer; or
  - (b) any other place in New Zealand, of which notice is given in accordance with subsection (2A).
- (2A) If the interests register is not kept at the public issuer's registered office, or the place at which it is kept is changed, the public issuer must give written notice to the Registrar of Companies of the place at which it is kept within 10 working days of its first being kept elsewhere or of its being moved.
- (3) The interests register may be the same interests register as that kept under section 189(1)(c) of the Companies Act 1993.
- (4) This section and section 19ZA do not derogate from the Companies Act 1993.

Section 19Z: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 19Z(2): substituted, on 29 February 2008, by section 8 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 19Z(2A): inserted, on 29 February 2008, by section 8 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19ZA Inspection and copying of interests register**

- (1) The interests register must be kept open for inspection by any person.
- (2) The interests register must be open for inspection between the hours of 9 am and 5 pm on each working day during the inspection period.
- (3) In subsection (2), **inspection period** means the period commencing on the third working day after the day on which notice of intention to inspect is served on the public issuer by the person concerned and ending with the eighth working day after the day of service.

- (4) A person may require a copy of, or extract from, an interests register to be sent to that person—
- (a) within 5 working days after the person has made a request in writing for the copy or extract; and
  - (b) if the person has paid a reasonable copy and administration fee determined by the public issuer.

Compare: 1993 No 105 ss 217, 218

Section 19ZA: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 19ZA(4): substituted, on 29 February 2008, by section 9 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Enforcement—Civil remedies*  
*[Repealed]*

Heading: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19ZB Commission may make orders requiring disclosure**  
*[Repealed]*

Section 19ZB: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19ZC Notice, submissions, and opportunity to be heard and represented on Commission's orders**  
*[Repealed]*

Section 19ZC: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Offences*

Heading: substituted, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19ZD Offence for failure to comply with directors' and officers' disclosure obligation**

- (1) Every person who is aware or ought reasonably to be aware of information that the person is required to disclose under section 19T, and who fails to disclose that information in accordance with a directors' and officers' disclosure obligation, commits an offence (*see* section 43A for the maximum penalty of a \$30,000 fine).

(2) *[Repealed]*

Section 19ZD: inserted, on 3 May 2004, by section 16 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 19ZD(1): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 19ZD(2): repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19ZE Offence for failure to comply with Commission orders**

*[Repealed]*

Section 19ZE: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**19ZF Offences relating to interests register**

- (1) A person who fails, without reasonable excuse, to comply with section 19Z(1) or (2) commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).
- (2) If a person fails, without reasonable excuse, to provide a copy of, or extract from, an interests register in accordance with a request under section 19ZA, the person commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).

Section 19ZF: substituted, on 29 February 2008, by section 10 of the Securities Markets Amendment Act 2006 (2006 No 47).

**Subpart 3—Disclosure of interests of  
substantial security holders in public issuers**

Subpart 3: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**20 Purpose of subpart**

The purpose of this subpart is to promote an informed market, and to deter insider conduct, market manipulation, and secret dealings in potential takeover bids, by ensuring that participants in New Zealand's securities markets have access to information concerning the identity and trading activities of persons who are, or may at any time be, entitled to control or influence the exercise of significant voting rights in a public issuer.

Section 20: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**21 Meaning of substantial security holder, substantial holding, and percentage**

- (1) A person is a **substantial security holder** in a public issuer for the purposes of this Act if that person has a substantial holding in that public issuer.
- (2) A person has a **substantial holding** in a public issuer for the purposes of this Act if that person has a relevant interest in listed voting securities that comprise 5% or more of a class of listed voting securities of the public issuer.
- (3) A person has a separate substantial holding for the purposes of this Act for each class in respect of which the person has a substantial holding under subsection (2).
- (4) The percentage of securities that a person has in a class, for the purposes of this subpart, is calculated as follows:

$$\left( \frac{\text{number held}}{\text{total}} \right) \times 100$$

if—

**number held** is the number of securities, in that class, in which the person has a relevant interest

**total** is the total number of securities in that class.

Section 21: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Event disclosure obligations*

Heading: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**22 Persons must disclose if begin to have substantial holding**

- (1) A person who begins to have a substantial holding (or another substantial holding for another class) in a public issuer must disclose that fact in accordance with sections 26 and 27.
- (2) The disclosure must be given as soon as the person knows, or ought to know, that the person has the substantial holding.

Section 22: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**23 Substantial security holders must disclose if subsequent movement of 1% in holdings**

- (1) A substantial security holder in a public issuer must disclose, in accordance with sections 26 and 27, any movement of 1% or more in the substantial holding.
- (2) There is a movement of 1% or more in a substantial holding if—
  - (a) there is a change in the number of securities held by the substantial security holder (where **number held** has the same meaning as in section 21(4)); and
  - (b) the percentage worked out using the formula in section 21(4) increases or decreases by 1 or more percentage points from the percentage last disclosed under this sub-part in relation to the substantial holding.
- (3) The disclosure must be given as soon as the person knows, or ought to know, that that movement has occurred.

Section 23: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**24 Substantial security holders must disclose if subsequent changes in nature of relevant interests**

- (1) A substantial security holder in a public issuer must disclose, in accordance with sections 26 and 27, any change in the nature of any relevant interest in the substantial holding.
- (2) The disclosure must be given as soon as the person knows, or ought to know, of the change.

Section 24: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**25 Persons must disclose if cease to have substantial holding**

- (1) A person who ceases to have a substantial holding (or any of the person's substantial holdings) in a public issuer must disclose that fact in accordance with sections 26 and 27.
- (2) The disclosure must be given as soon as the person knows, or ought to know, that the person has ceased to have a substantial holding.

Section 25: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**26 What disclosure required**

- (1) A person must disclose the matters required to be disclosed under any of sections 22 to 25 or section 34 to—
  - (a) the public issuer; and
  - (b) every registered exchange by which the securities of the public issuer are listed.
- (2) The person must also disclose, as required by regulations made under section 49A, any further matters relating to that matter, the relevant event, or the substantial holding that are required by those regulations.
- (3) The disclosure must also be accompanied by, or have annexed, anything required by regulations made under section 49A.

Section 26: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**27 Form and method of disclosure**

The person must give the disclosure in accordance with any regulations made under section 49A (which may govern the form and method of the disclosure).

Section 27: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**28 Public issuer must give acknowledgment of disclosure**

Every public issuer must, at the request of a person by whom disclosure is given to it under this subpart, give to that person an acknowledgment of the disclosure in the manner required by regulations made under section 49A.

Section 28: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**29 How to ascertain total voting securities in class of public issuer's voting securities for purposes of disclosure**

- (1) For the purposes of this subpart, a person may assume that the total number of securities of a public issuer in a class most recently published by the following methods is correct:
  - (a) in a document published by a public issuer and distributed to the holders of that class of securities; or
  - (b) on a website maintained by the relevant registered exchange.

- (2) Subsection (1) does not apply if that person knows that number is not correct.

Section 29: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**30 Exemption for persons with interest in other substantial security holders who comply**

A person (A) need not comply with any of sections 22 to 25 in relation to a substantial holding in a public issuer if—

- (a) another person (B) is required to comply, and does comply, with that section in relation to the same public issuer; and
- (b) A has that substantial holding merely for 1 or more of the following reasons:
  - (i) A has a power to exercise, or control the exercise of, the right to vote attached to 20% or more of the securities of B (*see* section 5B(1)(b));
  - (ii) A has a power to acquire or dispose of, or control the acquisition or disposition of, 20% or more of the securities of B (*see* section 5B(1)(c));
  - (iii) A and B are related bodies corporate (*see* section 5B(1)(d)).

Section 30: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**31 Exemption for trustee corporations and nominee companies**

- (1) A person (A) need not comply with any of sections 22 to 25 in relation to 1 or more substantial holdings in 1 or more public issuers if—
- (a) A has that substantial holding merely because A acts for another person in the ordinary course of business as a trustee corporation or a nominee company; and
  - (b) A has opted in to this exemption by written notice to the FMA (and not withdrawn the notice by further written notice to the FMA).
- (2) Subsection (1) does not apply if A is currently designated by the FMA, by notice in the *Gazette* under section 48C, as a person that is not exempt under this section.



Section 31: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 31(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 31(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**32 Conditions of exemption for trustee corporations and nominee companies**

- (1) A person (A) to whom section 31(1) applies must—
  - (a) keep under continuing review the transactions of all persons for whom A holds listed voting securities in A's name; and
  - (b) inform the public issuer of the securities and the registered exchange by which those securities are listed if section 22 or section 25 applies to any of those persons; and
  - (c) inform that registered exchange if it exercises, or proposes to exercise, in its own right any voting rights in respect of 5% or more of a class of listed voting securities of a public issuer.
- (2) Every person who, without reasonable excuse, fails to comply with subsection (1) commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).

Section 32: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**32A Exemption for persons under control or acting jointly with trustee corporations and nominee companies**

- (1) A person (A) need not comply with any of sections 22 to 25 in relation to 1 or more substantial holdings in 1 or more public issuers if A has that substantial holding merely because A has, under section 5B, the relevant interests in securities that a trustee corporation or a nominee company that is exempt in relation to that substantial holding under section 31 has.
- (2) Subsection (1) does not apply if A is currently designated by the FMA, by notice in the *Gazette* under section 48C, as a person that is not exempt under this section.

Section 32A: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 32A(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**33 Extended time for disclosure for trustees, executors, and administrators**

If a person is required to comply with sections 22, 23, or 25 merely because the person is the trustee of a testamentary trust or the executor or administrator of the estate of a deceased person,—

- (a) the time limit for disclosure in that section does not apply; and
- (b) the disclosure must instead be given before the expiry of 14 days after the grant of administration under the Administration Act 1969.

Section 33: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Required disclosure obligations*

Heading: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**34 FMA may require persons to disclose to market relevant interests and powers to get relevant interests**

- (1) The FMA may, by written notice given after having regard to the purpose of this subpart, require a person to disclose all (or any class of)—
  - (a) relevant interests that the person has in securities of the public issuer; or
  - (b) powers that the person has or may at any time have to acquire a relevant interest in securities of the public issuer.
- (2) It does not matter whether the securities referred to in subsection (1)(a) and (b) are voting securities or not, listed or non-listed, or issued or yet to be issued.
- (3) The person must disclose the information required under subsection (1) in accordance with sections 26 and 27 as soon as the person receives the notice.
- (4) Whether or not a person has a power referred to in subsection (1) must be determined in the same way as sections 5 to 5B

determine whether or not a person has a relevant interest (and for this purpose every reference in those sections to a relevant interest must be read as including a reference to a power to acquire a relevant interest).

Section 34: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 34 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 34(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**35 Public issuer may require registered holder to disclose relevant interests to it**

- (1) A public issuer may, by written notice, require a person who is registered as the holder of listed voting securities in that public issuer to disclose—
  - (a) the name and address of every person who has a relevant interest in those listed voting securities and the nature of that interest; and
  - (b) to the extent that that registered holder is unable to supply any of that information in relation to a person having a relevant interest in those listed voting securities, other particulars that will, or are likely to, assist in identifying that person and the nature of that interest.
- (2) That registered holder must disclose that information in writing to the public issuer as soon as the holder receives the notice.

Section 35: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**35A Public issuer may require person who has relevant interest to disclose information to it**

- (1) A public issuer may, by written notice, require a person who the public issuer believes has, or may have, a relevant interest in listed voting securities in that public issuer to disclose the information the public issuer specifies for the purpose of assisting the public issuer to ascertain who is, or may be, a substantial security holder in the public issuer.

- (2) That relevant interest holder must disclose that information in writing to the public issuer as soon as the holder receives the notice.

Section 35A: substituted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**35B Form and method of notice requiring disclosure**

The notice requiring disclosure under section 34, 35, or 35A must be given in accordance with the regulations (if any) made under section 49A (which may govern the form and method in which the notice must be given).

Section 35B: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Offence*

Heading: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**35BA Offence for failure to comply with substantial holding disclosure obligation**

Every person who knows or ought to know information that the person is required to disclose under any of sections 22 to 25 and 34 to 35A, and who fails to disclose that information in accordance with a substantial holding disclosure obligation, commits an offence (*see* section 43A for the maximum penalty of a \$30,000 fine).

Section 35BA: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Register and publication of substantial holdings*

Heading: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**35C Public issuers must maintain register of disclosures of substantial holdings**

- (1) The public issuer must keep a register for the disclosures given to it under this subpart (and must include a disclosure in the register on receiving it).

- (2) Subsection (1) does not apply to disclosures made under section 35 or section 35A which do not reveal a substantial holding.
- (3) The disclosures must be kept in the register in alphabetical order and with a chronological index.
- (4) The register must be kept at—
  - (a) the registered office of the public issuer; or
  - (b) any other place in New Zealand, of which notice is given in accordance with subsection (5).
- (5) If the register is not kept at the public issuer's registered office, or the place at which it is kept is changed, the public issuer must give written notice to the Registrar of Companies of the place at which it is kept within 10 working days of its first being kept elsewhere or its being moved.
- (6) This section and section 35D do not derogate from the Companies Act 1993 or any other enactment.

Section 35C: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

### **35D Inspection and copying of substantial holdings register**

- (1) The register required under section 35C must be kept open for inspection by any person.
- (2) The register must be open for inspection between the hours of 9 am and 5 pm on each working day during the inspection period.
- (3) In subsection (2), **inspection period** means the period commencing on the third working day after the day on which notice of intention to inspect is served on the public issuer by the person concerned and ending with the eighth working day after the day of service.
- (4) A person may require a copy of, or extract from, a register to be sent to that person—
  - (a) within 5 working days after the person has made a request in writing for the copy or extract; and
  - (b) if the person has paid a reasonable copy and administration fee determined by the public issuer.

Section 35D: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**35E Offences relating to substantial holdings register**

- (1) Every person who, without reasonable excuse, fails to comply with a requirement of section 35C or section 35D commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).
- (2) If a person fails, without reasonable excuse, to provide a copy of, or extract from, the register kept under section 35C in accordance with a request under section 35D, the person commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).

Section 35E: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**35F Public issuers must publish information on substantial holdings**

- (1) Every public issuer must, in accordance with this section, send out a notice stating—
  - (a) the names of all persons who, according to the register kept under section 35C, are substantial security holders in the public issuer, at the record date; and
  - (b) the number and class of listed voting securities of the public issuer that, according to the register, form part of each substantial holding in the public issuer at the record date; and
  - (c) the total number in each class of the public issuer's listed voting securities at the record date.
- (2) The notice must be sent—
  - (a) for public issuers that are companies (other than overseas companies within the meaning of the Companies Act 1993), to each shareholder with or in—
    - (i) the annual report sent under section 209 of the Companies Act 1993; or
    - (ii) the notice sent under that section; and
  - (b) for every other public issuer, to every holder of its listed voting securities not later than 30 June in each year.
- (3) The **record date** is a date stated in the notice that is not earlier than 3 months before the notice is sent.

Section 35F: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 35F(2)(a)(ii): substituted, on 29 February 2008, by section 16(3) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

**35G Registered exchange must publish disclosures**

A registered exchange must—

- (a) notify each disclosure given to it under this subpart to the relevant registered market as soon as practicable after receiving it; and
- (b) publish that disclosure on its website soon after notifying it to the relevant registered market.

Section 35G: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 35G(a): amended, on 1 May 2011, by section 10 of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 35G(b): amended, on 1 May 2011, by section 10 of the Securities Markets Amendment Act 2011 (2011 No 7).

**35H Offence for failing to publish information on substantial holdings or disclosures**

- (1) A public issuer who, without reasonable excuse, fails to comply with a requirement of section 35F commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).
- (2) A registered exchange who, without reasonable excuse, fails to comply with a requirement of section 35G commits an offence (*see* section 43A for the maximum penalty of a \$10,000 fine).

Section 35H: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**35I No liability for publication of substantial holdings**

No public issuer is liable for any false or misleading information published under section 35F if the information was derived by the issuer under this subpart and the issuer did not know that the information was false or misleading.

Section 35I: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

**35J Notice under this subpart not to affect incorporation of public issuer or constitute notice of trust**

- (1) Nothing in, or done under, this subpart—
  - (a) affects the incorporation of a public issuer; or

- (b) limits section 92, 93, or 94 of the Companies Act 1993.
- (2) A public issuer is not, by virtue of anything done for the purposes of this subpart, affected with notice of, or put on inquiry as to, the rights of any person in relation to any securities.

Section 35J: inserted, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

### **36 Regulations for purpose of this subpart**

*[Repealed]*

Section 36: repealed, on 29 February 2008, by section 11 of the Securities Markets Amendment Act 2006 (2006 No 47).

## **Part 2B Registered markets**

Part 2B: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Part 2B heading: substituted, on 1 May 2011, by section 11 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **Subpart 1—Registration of markets**

Subpart 1: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Subpart 1 heading: amended, on 1 May 2011, by section 12 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### *Restrictions on activities relating to securities exchanges unless registered under this subpart*

Heading: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

### **36A No holding out as securities exchange unless registered under this subpart**

- (1) No person may, in connection with carrying on business in New Zealand,—
- (a) use a style or title including the words “stock exchange” or “securities exchange”; or
  - (b) state or imply, or permit a statement or implication, that—



- (i) the person is a registered securities exchange or authorised securities exchange; or
  - (ii) a securities market that the person operates is regulated under New Zealand law.
- (2) Subsection (1)(a) and (b)(i) do not apply to—
  - (a) a registered exchange; or
  - (b) a subsidiary of a registered exchange.
- (2A) Subsection (1)(b)(ii) does not apply to—
  - (a) a registered exchange in respect of its registered market; or
  - (b) a subsidiary of a registered exchange in respect of the exchange's registered market.
- (3) Every person who acts in contravention of subsection (1) commits an offence (*see* section 43B for the maximum penalty of a \$10,000 fine per day).

Section 36A: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36A(2): substituted, on 1 May 2011, by section 13 of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36A(2A): inserted, on 1 May 2011, by section 13 of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36A(3): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

### **36B No operation of securities markets unless registered under this subpart (if restriction applies)**

- (1) No person to whom this section applies may operate a securities market in New Zealand unless that person is—
  - (a) a registered exchange; or
  - (b) a subsidiary of a registered exchange.
- (2) Every person who acts in contravention of subsection (1) commits an offence (*see* section 43B for the maximum penalty of a \$10,000 fine per day).

Section 36B: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36B(2): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**36C Power to apply and remove restriction on operating securities markets**

- (1) The Minister may, by notice in the *Gazette*,—
  - (a) declare, in accordance with section 36D, that section 36B applies to a person:
  - (b) declare that section 36B ceases to apply to a person.
- (2) The notice may include any exemption granted under section 36E.

Section 36C: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

**36D Criteria and process for applying restriction on operating securities markets**

- (1) The Minister may declare that section 36B applies to a person only if he or she is satisfied that the result of that section not applying to the person is likely to be detrimental to—
  - (a) the integrity or effectiveness of securities markets in New Zealand; or
  - (b) the confidence of investors in securities markets in New Zealand.
- (2) The Minister must, before making the declaration,—
  - (a) give at least 2 months' written notice of the proposed declaration, and of the Minister's reasons for his or her opinion under subsection (1), to—
    - (i) the person to whom it is proposed to apply section 36B; and
    - (ii) the FMA; and
    - (iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposed declaration; and
  - (b) have regard to any submissions made by those persons within the notice period given; and
  - (c) before making the declaration, give at least 14 days' written notice to the persons referred to in paragraph (a), and in the *Gazette*, of his or her intention to do so and of the reasons for his or her opinion under subsection (1).
- (3) A failure to comply with subsection (2) does not invalidate any notice published under section 36C.

Section 36D: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36D(2)(a)(ii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**36E Power to exempt securities markets and futures markets from Part 2 and this Part**

- (1) The Minister may, by notice in the *Gazette*, exempt a securities market, class of securities markets, futures market, or class of futures markets from any provision or provisions of Part 2 and this Part.
- (2) The exemption may be on any terms or conditions that the Minister thinks fit.
- (2A) The Minister must, in considering whether to grant an exemption, have regard to—
  - (a) the nature of the relevant securities or futures market, or class of securities or futures markets; and
  - (b) the likely effect of the proposed exemption on the integrity or effectiveness of securities or futures markets in New Zealand; and
  - (c) the likely effect of the proposed exemption on the confidence of investors in securities or futures markets in New Zealand; and
  - (d) whether there are public benefits from the securities or futures market, or class of securities or futures markets, being operated under the proposed exemption; and
  - (e) any other matters he or she considers relevant.
- (3) The exemption has effect according to its tenor.
- (4) In determining whether or not to grant an exemption, the Minister must seek the advice of the FMA.
- (5) The Minister may vary an exemption in the same way as the exemption may be granted under this section.
- (6) The Minister may, by notice in the *Gazette*, revoke an exemption granted under this section.

Section 36E: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36E heading: amended, on 1 May 2011, by section 14(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36E heading: amended, on 24 November 2009, by section 6(1) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 36E(1): substituted, on 24 November 2009, by section 6(2) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 36E(1): amended, on 1 May 2011, by section 14(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36E(2A): inserted, on 1 May 2011, by section 14(3) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36E(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### *How to obtain registration of market*

Heading: substituted, on 1 May 2011, by section 15 of the Securities Markets Amendment Act 2011 (2011 No 7).

## **36F Application for market registration**

- (1) A body corporate may apply for a market registration for—
  - (a) 1 or more securities markets; or
  - (b) 1 or more securities markets and 1 or more futures markets; or
  - (c) 1 or more futures markets, if the body corporate already holds a market registration for a securities market.
- (2) The applicant for a market registration must deliver to the FMA—
  - (a) an application for registration in the form, and containing the information, required by the FMA, but which must—
    - (i) include a copy of any proposed new market rules, or proposed changes to existing market rules, for the relevant market (the **proposed market rules**); and
    - (ii) identify any existing market rules that it proposes to apply to the relevant market; and
  - (b) any fees required to be paid to the FMA by regulations made under section 49D.
- (3) The FMA must grant the applicant a market registration, by written notice to the applicant, after—
  - (a) receipt of the documents referred to in subsection (2); and

- (b) receipt of any fees, charges, and costs required to be paid to the FMA by regulations made under section 49D; and
- (c) approval, under sections 36K and 36L, of the proposed market rules provided under subsection (2)(a)(i) for the market.

Section 36F: substituted, on 1 May 2011, by section 15 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36FA Notification of market registration**

- (1) A notice of market registration under section 36F(3)—
  - (a) must identify the market registered and the person that holds the market registration under that section (the **registered exchange**); and
  - (b) must identify the proposed market rules approved for the market (if any), and must identify the existing market rules that apply to the market (if any), but need not incorporate them; and
  - (c) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 (but not for the purposes of the Acts and Regulations Publication Act 1989); and
  - (d) must, as soon as practicable after it is given, be—
    - (i) published on an Internet site maintained by or on behalf of the FMA; and
    - (ii) notified in the *Gazette*.
- (2) A notice of market registration may relate to more than 1 market.

Section 36FA: inserted, on 1 May 2011, by section 15 of the Securities Markets Amendment Act 2011 (2011 No 7).

### *Restrictions on registered exchanges*

Heading: inserted, on 1 May 2011, by section 15 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36FB No operation by registered exchange of unregistered market**

- (1) No registered exchange may operate in New Zealand a securities or futures market for which it does not hold a market registration under this Part or an authorisation under Part 3

(but *see* section 36E, under which a market may be exempted from this section).

- (2) Every person who acts in contravention of subsection (1) commits an offence (*see* section 43B(2) for the maximum penalty of a \$10,000 fine per day).

Section 36FB: inserted, on 1 May 2011, by section 15 of the Securities Markets Amendment Act 2011 (2011 No 7).

### Subpart 1A—Market rules

Subpart 1A heading: inserted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **36FC Purpose and criteria applying under this subpart**

- (1) The purpose of this subpart is to provide for the approval of the market rules, and changes to the market rules, to apply to registered markets under contract between a registered exchange and the exchange participants.
- (2) The following criteria are relevant to the implementation of that purpose (without limiting other relevant criteria):
- (a) promoting fair, orderly, and transparent securities and futures markets:
  - (b) providing an appropriate level of protection for investors:
  - (c) recognising the importance to securities and futures markets of attracting and retaining exchange participants and maintaining international competitiveness:
  - (d) encouraging growth and innovation in New Zealand's securities and futures markets:
  - (e) recognising the importance of maintaining international best practices in New Zealand's securities and futures markets:
  - (f) recognising New Zealand's obligations under any international convention, international agreement, or international arrangement to which the Government of New Zealand is a party.
- (3) The FMA must determine the weight to be given to each criterion in relation to the rules for any particular market, having regard to the nature of that market.

Section 36FC: inserted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

*Key requirements*

Heading: substituted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36G Registered markets must be operated under market rules that comply with this subpart**

- (1) A registered exchange must operate each of its registered markets in accordance with market rules for that market that—
  - (a) include the required matters set out in section 36H; and
  - (b) have effect under section 36I.
- (2) A registered exchange that acts in contravention of subsection (1) commits an offence (*see* section 43B(2) for the maximum penalty of a \$10,000 fine per day).

Compare: 1988 No 234 s 36G

Section 36G: substituted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36H Required matters for market rules**

- (1) Market rules for a securities market must—
  - (a) include rules (**listing rules**) that—
    - (i) relate to the approval of persons for the purpose of enabling securities issued by those persons to be traded on the securities market; and
    - (ii) require those persons to be party to a listing agreement with the registered exchange and relate to the entry into, and revocation of, those listing agreements; and
    - (iii) relate to the governance of those persons; and
    - (iv) relate to the conduct or activities of those persons in relation to that market or to securities traded on that market; and
    - (v) relate to the monitoring and enforcement of those rules; and
  - (b) include rules (**business rules**) that—

- (i) relate to the authorisation of persons to undertake trading activities on, or otherwise participate in, the securities market; and
  - (ii) relate to the conduct or activities of those persons in relation to the securities market; and
  - (iii) govern the conduct of business on the securities market; and
  - (iv) relate to the monitoring and enforcement of those rules.
- (2) Market rules for a futures market must include rules (**business rules**) that—
  - (a) relate to the authorisation of persons to undertake trading activities on, or otherwise participate in, the futures market; and
  - (b) relate to the conduct or activities of those persons in relation to the futures market; and
  - (c) govern the conduct of business on the futures market; and
  - (d) relate to the monitoring and enforcement of those rules.

Compare: 1988 No 234 s 36H

Section 36H: substituted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36I When market rules have effect**

A market rule, or part of a market rule, for a registered market has no effect, either in contract or for the purposes of section 36G, until it has been approved by the FMA under section 36L.

Section 36I: substituted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### *Process for approving proposed market rules and changes to market rules*

Heading: inserted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36IA Application of process for approving proposed market rules and changes**

Sections 36K and 36L apply to proposed market rules provided to the FMA by an applicant under section 36F and pro-



posed changes to market rules provided to the FMA by a registered exchange under section 36J.

Section 36IA: inserted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36J Registered exchange must provide proposed changes to FMA**

- (1) A registered exchange must provide any proposed change to its market rules for a registered market to the FMA before making that change.
- (2) A **change**, in relation to the market rules for a registered market for the purposes of this subpart, includes a new market rule and an amendment to, and a revocation or cancellation of, an existing market rule.

Compare: 1988 No 234 s 36J

Section 36J: substituted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36K Approval process for proposed market rules and changes**

- (1) The FMA must, within the approval period, by written notice to the applicant for registration or the registered exchange,—
  - (a) approve the proposed market rules or change provided under section 36F or section 36J (*see* section 36L); or
  - (b) extend the approval period; or
  - (c) decline to approve the proposed market rules or change.
- (2) The approval period is 40 working days, or (if extended under subsection (1)(b)) 60 working days, after the FMA receives the proposed market rules or change.
- (3) The revision by the applicant or registered exchange of the proposed market rules or change during the approval period in response to comments by the FMA, and the resubmittal of the revised proposed market rules or change, does not result in the commencement of a new approval period under this section.
- (4) A notice under this section—
  - (a) must identify the market rules, change, or changes to which it relates, but need not incorporate them; and
  - (b) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 (but not for the purposes of the Acts and Regulations Publication Act 1989); and

- (c) must, as soon as practicable after it is given, be—
    - (i) published on an Internet site maintained by or on behalf of the FMA; and
    - (ii) notified in the *Gazette*.
- (5) A separate notice under this section of the decision to approve rules is not needed if there is a notice of market registration under section 36FA that notifies approval of these rules.
- (6) The FMA's reasons for a decision under subsection (1)(b) or (c) must be published together with the decision.

Section 36K: substituted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36L Approval of proposed market rules and changes**

- (1) The FMA must approve the proposed market rules or a change provided to it under this Part unless the FMA is satisfied that—
  - (a) it is not in the public interest to do so after having had regard to—
    - (i) the consistency of the rules or change with the obligations under section 36Y; and
    - (ii) the criteria stated in section 36FC and any other matters that it considers relevant; or
  - (b) (if the rules include listing rules or the change affects listing rules) the listing rules, or the listing rules as changed, for the market will not achieve the purpose of subpart 1 of Part 2, after having regard to—
    - (i) that purpose; and
    - (ii) the criteria stated in section 19A; and
    - (iii) any other matters that the FMA considers relevant.
- (2) The FMA must, in considering whether to approve proposed market rules provided under section 36F, take into account any existing market rules that the applicant proposes to also apply to the relevant market.

Section 36L: substituted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

### *Power to request changes to market rules*

Heading: inserted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36M Power for FMA to request changes to market rules on certain matters**

- (1) The FMA may, if it considers it necessary or desirable to promote any of the criteria set out in section 36FC or the meeting of any of the obligations set out in section 36Y, request a registered exchange to prepare a draft change to the market rules for any of its registered markets on a matter specified in a written notice to the registered exchange.
- (2) The FMA may make a request under subsection (1) only—
  - (a) after carrying out a review under section 36YB(1) or (2); or
  - (b) if it believes on reasonable grounds that it is urgent to do so at any other time.
- (3) The registered exchange must, as soon as practicable but, in any case, before the expiry of 60 working days after receiving the written notice (or any further time allowed by the FMA), do either or both of the following things:
  - (a) provide a proposed change to the FMA under section 36J that addresses the requested matter:
  - (b) provide the FMA with a written report that—
    - (i) identifies any requested matter or matters that have not been addressed by a proposed change; and
    - (ii) explains why the registered exchange has not done so; and
    - (iii) suggests alternative ways (if any) by which the matter or matters are being or may be dealt with; and
    - (iv) sets out if, when, and how the registered exchange proposes to provide for the matter or matters (if at all).
- (4) This section does not allow the FMA to request a draft market rule or change on a matter that is not within the matters set out in section 36H.

Section 36M: substituted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

*Miscellaneous provisions on market rules*

Heading: inserted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36N Market rules must be available for public inspection**

- (1) A registered exchange must ensure that a copy of the market rules for each of its registered markets are—
- (a) available for public inspection, free of charge and during normal office hours, at the head office of that registered exchange; and
  - (b) published on an Internet site maintained by, or on behalf of, the registered exchange at all reasonable times.
- (2) A registered exchange that fails to comply with subsection (1) commits an offence (*see* section 43B for the maximum penalty of a \$5,000 fine).

Compare: 1988 No 234 s 36Q

Section 36N: substituted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36O Application of Acts relating to regulations to contractual market rules**

To avoid doubt, market rules are not regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989 or for any other purpose.

Compare: 1988 No 234 s 36R

Section 36O: substituted, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36P Registered exchange must not operate new market if proposed conduct rules or changes not approved**

*[Repealed]*

Section 36P: repealed, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36Q Conduct rules must be available for public inspection**

*[Repealed]*

Section 36Q: repealed, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36R Application of Acts relating to regulations to conduct rules**

*[Repealed]*

Section 36R: repealed, on 1 May 2011, by section 16 of the Securities Markets Amendment Act 2011 (2011 No 7).

**Subpart 1B—Control limits for registered exchanges**

Subpart 1B heading: inserted, on 1 May 2011, by section 17 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36S Power to impose control limits on registered exchanges**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing, altering, or revoking a control limit (which is the highest percentage of voting rights in the body corporate that may be held or controlled by any person) for a body corporate that—
  - (a) is, or may be, a registered exchange; or
  - (b) is a holding company of a body corporate referred to in paragraph (a).
- (2) A control limit does not apply to a body corporate before its registration, or its subsidiary's registration, as a registered exchange.
- (3) The Minister must not make a recommendation for the purposes of subsection (1) unless he or she has consulted the body corporate and is satisfied that it is in the public interest to do so.
- (4) For the purposes of this section and the rest of the subpart—

**control**, in relation to a voting right, means having, directly or indirectly, effective control of the voting right

**voting right** means a currently exercisable right to cast a vote at meetings of members or shareholders of a body corporate, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

  - (a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the security that confers the voting right is in arrears or some other default exists:

- (b) on a proposal that affects rights attached to the security that confers the voting right:
- (c) during the liquidation of the body corporate:
- (d) in respect of a special, immaterial, or remote matter that is inconsequential to control of the body corporate.

Section 36S: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

### **36T Control limit not to be exceeded**

- (1) No person may hold or control voting rights in a body corporate that exceed any control limit for that body corporate that applies under regulations made under section 36S(1) except in accordance with an approval under section 36V.
- (2) For the purposes of this section, voting rights held or controlled by an associated person of a person must be treated as voting rights held or controlled by that person.
- (3) Subsection (1) does not apply to any voting rights in a body corporate held or controlled by a person to the extent that those rights were held or controlled by that person before the control limit was imposed or decreased, as the case may be.
- (4) In this section,—
  - (a) a person is an **associated person** of another person if—
    - (i) they are acting jointly or in concert; or
    - (ii) either person acts, or is accustomed to act, in accordance with the wishes of the other person; or
    - (iii) they are related bodies corporate within the meaning of section 5(7); or
    - (iv) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
    - (v) they are both, directly or indirectly, under the control of the same person; but
  - (b) a director of a company or other body corporate is not an associated person of that company or body corporate merely because he or she is a director of that company or body corporate.

Section 36T: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36T(4): added, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**36U Effect of exceeding control limit**

- (1) Every person who contravenes section 36T(1) must—
  - (a) take the steps that are necessary to ensure that the person is no longer in contravention of that subsection at the end of 90 days after the date of first contravention; and
  - (b) while he or she contravenes that subsection, not exercise or control the exercise of any voting rights that exceed the control limit.
- (2) Every person who contravenes subsection (1)(a) commits an offence (*see* section 43B for the maximum penalty of a \$1,000 fine per day).
- (3) An exercise of voting rights by or under the control of a person in contravention of subsection (1)(b) is of no effect, and must be disregarded by the person responsible for counting the votes concerned.

Section 36U: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36U(2): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**36V Application for approval to exceed control limit**

- (1) A person may apply to the chief executive for approval for any person or class of persons to exceed a control limit for a body corporate that applies under regulations made under section 36S.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve an application under subsection (1) and specify the terms and conditions (if any) applying to the approval.
- (3) The Minister may not make a recommendation for the purposes of subsection (2) unless,—
  - (a) if the body corporate is not the applicant or one of the applicants for the approval, he or she has consulted the body corporate on the application at least 30 days before making the recommendation; and

- (b) he or she is satisfied that it is in the public interest to make the recommendation.
- (4) An approval granted under subsection (2)—
  - (a) may have retrospective effect; but
  - (b) is of no effect if any term or condition of the approval has not been complied with.
- (5) An approval granted under subsection (2) is for the purposes of the control limit only, and not for the purposes of any other enactment.

Section 36V: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

### **36W Revocation or amendment of approval**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
  - (a) revoke an approval granted under section 36V; or
  - (b) vary, revoke, or suspend any term or condition of such an approval.
- (2) The Minister may not make a recommendation for the purposes of subsection (1) unless—
  - (a) he or she has consulted the person to whom the approval was granted and the body corporate concerned; and
  - (b) he or she is satisfied that it is in the public interest to make the recommendation.

Section 36W: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

### *Overseas exchanges* *[Repealed]*

Heading: repealed, on 1 May 2011, by section 18 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36X Overseas exchanges** *[Repealed]*

Section 36X: repealed, on 1 May 2011, by section 18 of the Securities Markets Amendment Act 2011 (2011 No 7).



## Subpart 2—Obligations and oversight in respect of registered markets

Subpart 2: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Subpart 2 heading: substituted, on 1 May 2011, by section 19 of the Securities Markets Amendment Act 2011 (2011 No 7).

### *General obligations in respect of registered markets*

Heading: inserted, on 1 May 2011, by section 20 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **36Y General obligations in respect of registered markets**

A registered exchange must,—

- (a) to the extent that it is reasonably practicable, do all things necessary to ensure that each of its registered markets is a fair, orderly, and transparent market; and
- (b) have adequate arrangements for operating its registered markets, including arrangements—
  - (i) for handling conflicts between the commercial interests of the registered exchange and the need for the registered exchange to ensure that the markets operate in the way referred to in paragraph (a); and
  - (ii) for monitoring the conduct of exchange participants on or in relation to the markets; and
  - (iii) for enforcing compliance with the relevant market rules; and
  - (iv) that ensure there is a sufficiently independent adjudicative body to adjudicate on contraventions of market rules that are referred to it; and
- (c) have sufficient resources (including financial, technological, and human resources) to operate its registered markets properly.

Section 36Y: substituted, on 1 May 2011, by section 20 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **36YA Registered exchange must give annual report to FMA**

- (1) A registered exchange must, within 3 months after the end of its financial year, give a report to the FMA and the Minister on

the extent to which it has complied with its obligations under section 36Y in the preceding financial year.

- (2) The annual report for a financial year must contain, or be accompanied by, the information (if any) in relation to the registered exchange's performance against its obligations under section 36Y, specified by the FMA before the commencement of the relevant financial year.
- (3) The FMA and the registered exchange may, on the terms and conditions that they think fit, agree that the first annual report and the first review under section 36YB relate to a period prior to the commencement of this section.

Section 36YA: inserted, on 1 May 2011, by section 20 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36YB FMA may carry out general obligations review**

- (1) The FMA may, at any time, carry out a review of how well a registered exchange is meeting any or all of its obligations under section 36Y.
- (2) The FMA must carry out a review of how well a registered exchange is meeting all of its obligations under section 36Y at least once in respect of each financial year of the registered exchange.
- (3) The FMA—
  - (a) may, in carrying out the review, take into account the most recent annual report and other information provided under section 36YA and any other information it considers appropriate; and
  - (b) must, after carrying out the review, provide a draft written report on its review to the registered exchange and take into account any submissions made by the exchange within the reasonable period for submissions specified by the FMA.
- (4) The FMA must not carry out a review of a designated settlement system (within the meaning of section 156M(1) of the Reserve Bank of New Zealand Act 1989) of a registered exchange under this section (but nothing in this subsection prevents a review under that Act being carried on in conjunction with a review under this section).

- (5) The first review of a financial year under subsection (2) may relate to the period covered by the first annual report provided under section 36YA.

Section 36YB: inserted, on 1 May 2011, by section 20 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36YC FMA must make written report on general obligations review**

- (1) The FMA must give a written report on a review under section 36YB to the Minister and the registered exchange—
- (a) as soon as practicable after carrying out the review; and
  - (b) in any case, within 3 months after the exchange has provided an annual report to the FMA under section 36YA.
- (2) The FMA must also publish the written report on the review on an Internet site maintained by or on behalf of the FMA.
- (3) However, the FMA may, in publishing the written report of its review, omit from the published report any information for which it considers there would be a good reason for withholding under the Official Information Act 1982 if a request for that information were made under that Act.

Section 36YC: inserted, on 1 May 2011, by section 20 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36YD FMA may require registered exchange to submit action plan on failure to meet general obligations**

- (1) If the FMA considers that the registered exchange has failed or is failing to meet any 1 or more of its obligations under section 36Y after carrying out a review under section 36YB(1) or (2), it may, by written notice, require the exchange to submit an action plan to the FMA.
- (2) The notice must—
- (a) set out the details of the failure; and
  - (b) specify the date by which the action plan must be submitted to the FMA.
- (3) The registered exchange must, as soon as practicable but in any case before the date specified by the FMA, do either or both of the following things:

- (a) provide an action plan that addresses the failure and specifies—
  - (i) the actions that the registered exchange proposes to take to remedy the failure or avoid any further failure; and
  - (ii) the timetable for taking those actions;
- (b) provide the FMA with a written report that—
  - (i) identifies any matter that has not been addressed by an action plan; and
  - (ii) explains why the registered exchange does not consider that matter to be a failure or gives any other reasons why the registered exchange has not provided an action plan on the matter.

Section 36YD: inserted, on 1 May 2011, by section 20 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36YE Approval, amendment, or rejection of action plan**

- (1) If a registered exchange submits an action plan, the FMA may—
  - (a) approve the action plan; or
  - (b) require the registered exchange to amend the action plan and resubmit it to the FMA by a specified date for approval or rejection; or
  - (c) reject the action plan.
- (2) If the FMA requires the registered exchange to amend an action plan provided to the FMA, the registered exchange must do either or both of the following things:
  - (a) provide an amended action plan that addresses the matter required to be amended:
  - (b) provide the FMA with a written report that—
    - (i) identifies any matter that has not been addressed by an amendment to the action plan first provided; and
    - (ii) explains why the registered exchange does not consider that the matter needs amending or gives any other reasons why the registered exchange has not provided an amendment addressing the matter.

- (3) If the FMA approves the action plan (whether as first provided or after amendment), the registered exchange must comply with the action plan.
- (4) An action plan that has been approved by the FMA may be varied at any time by agreement between the registered exchange and the FMA.

Section 36YE: inserted, on 1 May 2011, by section 20 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36YF Minister may give general obligation direction to registered exchange**

- (1) The Minister may, on the recommendation of the FMA, give a written direction to a registered exchange if—
  - (a) the Minister considers that the registered exchange has failed or is failing to meet any 1 or more of its obligations under section 36Y; and
  - (b) any of the following has occurred:
    - (i) the registered exchange has not provided an action plan when required under section 36YD; or
    - (ii) the registered exchange has not provided an amended action plan when required under section 36YE; or
    - (iii) the FMA has rejected a registered exchange's action plan; or
    - (iv) the registered exchange has not complied with an approved action plan.
- (2) The direction may specify—
  - (a) the actions that the registered exchange must take to remedy any failure or avoid any further failure to meet any 1 or more of its obligations under section 36Y; and
  - (b) the timetable for taking those actions.
- (3) The registered exchange must comply with the direction.

Section 36YF: inserted, on 1 May 2011, by section 20 of the Securities Markets Amendment Act 2011 (2011 No 7).

**36Z Offence for breach of terms or conditions of authorisation**  
*[Repealed]*

Section 36Z: repealed, on 1 May 2011, by section 18 of the Securities Markets Amendment Act 2011 (2011 No 7).

*Enforcement of prohibition of certain statements  
relating to exchanges  
[Repealed]*

Heading: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**36ZA Commission may make orders prohibiting statements  
relating to exchanges or requiring corrective statements  
[Repealed]**

Section 36ZA: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**36ZB Notice, submissions, and opportunity to be heard and  
represented on Commission's orders  
[Repealed]**

Section 36ZB: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**36ZC Offence for contravening prohibition order  
[Repealed]**

Section 36ZC: repealed, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

*Notification of disciplinary actions and  
suspected contraventions*

Heading: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

**36ZD Registered exchange must notify FMA of disciplinary  
actions and suspected contraventions**

- (1) A registered exchange must notify the FMA, in accordance with sections 36ZE and 36ZF, if—
- (a) the exchange takes any disciplinary action for a contravention of its market rules against any person:
  - (b) the exchange knows or suspects that a person has committed, is committing, or is likely to commit a significant contravention of—
    - (i) the exchange's market rules; or

- (ii) this Act, the Securities Act 1978, the Takeovers Act 1993, or any enactment made under any of those Acts.
- (2) The FMA must notify the registered exchange of its decision to take, or not to take, any action in relation to a notification under subsection (1)(b)(ii).

Section 36ZD: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZD heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZD(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZD(1)(a): amended, on 1 May 2011, by section 21(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36ZD(1)(b)(i): amended, on 1 May 2011, by section 21(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36ZD(2): added, on 1 May 2011, by section 21(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36ZE When notification required**

The registered exchange must give the notice under section 36ZD immediately after taking the disciplinary action or knowing or suspecting the person has committed, is committing, or is likely to commit the significant contravention.

Section 36ZE: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

### **36ZF Details and method of notification**

- (1) The notice under section 36ZD must include—
  - (a) the person's name and contact details; and
  - (b) if it relates to a disciplinary action, the grounds for, nature of, and reasons for the action taken; and
  - (c) if it relates to a known or suspected contravention, the facts supporting the registered exchange's view and to which obligation the known or suspected contravention relates; and
  - (d) any other information required by regulations under section 49D or by the FMA under section 36ZK.

- (2) The registered exchange must give the notice in the form and by the method required by any regulations made under section 49D.

Section 36ZF: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZF(1)(d): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZF(1)(d): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 36ZF(2): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

### *Real-time surveillance information*

Heading: inserted, on 1 May 2011, by section 22 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **36ZFA Registered exchange must ensure FMA has access to real-time trading and other information**

- (1) A registered exchange must, if requested by the FMA, give to the FMA the information that is necessary to enable the FMA to carry out real-time surveillance of the operation of the exchange's registered markets.
- (2) The FMA must pay all reasonable costs of the registered exchange in providing the information under this section.

Section 36ZFA: inserted, on 1 May 2011, by section 22 of the Securities Markets Amendment Act 2011 (2011 No 7).

### *Disclosure of material information*

Heading: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

#### **36ZG Registered exchange must give FMA material information given to market participants**

If a registered exchange makes material information available to participants, or any class of participants, of a registered market, the exchange must also give that information to the FMA in accordance with sections 36ZH to 36ZJ.

Section 36ZG: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).



Section 36ZG heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZG: amended, on 1 May 2011, by section 23 of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36ZG: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **36ZH When disclosure of material information required**

The registered exchange must give the information under section 36ZG to the FMA immediately after giving it to market participants.

Section 36ZH: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZH: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **36ZI Form and method of disclosure**

The registered exchange must give the information under section 36ZG to the FMA in the same form and by the same method as it gives that information to market participants.

Section 36ZI: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZI: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### *Waiver of notification and disclosure obligations*

Heading: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

### **36ZJ Waiver of notification and disclosure obligations**

- (1) Sections 36ZD to 36ZI do not apply to the extent that the FMA—
  - (a) waives its entitlement to any notice or information or class or classes of notices or information; or
  - (b) agrees with the registered exchange a different time, form, or method of notification or disclosure.
- (2) A waiver or agreement under this section must be in writing.

Section 36ZJ: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZJ(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

*General information and assistance provisions*

Heading: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

**36ZK Registered exchange must give FMA or Takeovers Panel other information and assistance on request**

- (1) A registered exchange must give to the FMA or the Takeovers Panel (or any person authorised by the FMA or Takeovers Panel) information, assistance, and access to the exchange's facilities if the FMA or Takeovers Panel reasonably requests it to carry out its functions.
- (2) The FMA or Takeovers Panel must require that information, assistance, or access by notice in writing to the registered exchange.

Section 36ZK: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZK heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZK(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZK(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**36ZL Power to disclose further information**

- (1) A registered exchange may provide to the FMA any information that the exchange considers may assist the FMA in the performance of the FMA's functions.
- (2) A registered exchange may provide to the Takeovers Panel any information that the exchange considers may assist the Takeovers Panel in the performance of its functions.

Section 36ZL: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZL(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZL(1): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

*Notice and submissions on continuous disclosure determinations*

Heading: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

**36ZM Registered exchange must give notice and have regard to submissions on continuous disclosure determinations**

- (1) This section and section 36ZN apply to a determination by a registered exchange if—
  - (a) the determination exempts from, waives, or determines the meaning of a continuous disclosure provision of its listing rules for any of its registered markets (or varies or revokes a determination of that kind); and
  - (b) that continuous disclosure provision relates to material information that is not generally available to the market; and
  - (c) no regulations under section 48E declare that section 19C applies to that exchange.
- (2) The registered exchange must—
  - (a) give the FMA no less than 2 trading days' written notice before making the determination of—
    - (i) the proposed terms of the determination; and
    - (ii) the reasons for the proposed determination; and
  - (b) have regard to any written submissions made to it by the FMA within that notice period; and
  - (c) must, as soon as reasonably practicable after making the determination, give written notice to the FMA of—
    - (i) the terms of the determination; and
    - (ii) the reasons for the determination.
- (3) A failure to comply with this section or section 36ZN does not affect the validity of a determination.

Section 36ZM: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZM(1)(a): amended, on 1 May 2011, by section 24 of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 39ZM(1)(c): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 36ZM(2)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZM(2)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZM(2)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**36ZN Limited notice and submissions for urgent determinations**

If the registered exchange thinks it necessary or desirable in the public interest for a determination to be made more urgently than section 36ZM(2) permits,—

- (a) it may give less than 2 trading days' notice before it makes the determination and the notice and submissions may be oral, not written; but
- (b) it must include in that notice the reasons for acting urgently and must otherwise comply with that subsection.

Section 36ZN: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

*Directions to exchanges*

Heading: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

**36ZO FMA may give directions to registered exchanges**

- (1) The FMA may give a direction under subsection (2) to a registered exchange in relation to any of its registered markets in accordance with sections 36ZP to 36ZT.
- (2) The FMA may, for up to 21 days,—
  - (a) direct a registered exchange to suspend trading of either or both of the following:
    - (i) the securities, or a class of securities, of 1 or more public issuers;
    - (ii) 1 or more futures contracts, or a class of futures contracts, traded on a registered market; or
  - (b) give the registered exchange any other direction in relation to that trading.
- (3) For the avoidance of doubt, the FMA may not use its power to direct the registered exchange to amend the market rules or direct the registered exchange on the making of a determination on the market rules.
- (4) The direction is subject to appeal only in accordance with section 47A.

Section 36ZO: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZO heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZO(1): amended, on 1 May 2011, by section 25(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36ZO(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZO(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZO(2)(a): substituted, on 24 November 2009, by section 15 of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 36ZO(2)(a)(ii): amended, on 1 May 2011, by section 25(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36ZO(3): amended, on 1 May 2011, by section 25(3) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36ZO(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZO(4): substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

### **36ZP Grounds for continuous disclosure direction**

- (1) A direction on the grounds in this section is a **continuous disclosure direction**.
- (2) A direction may be given under section 36ZO in accordance with sections 36ZR to 36ZT if the FMA—
  - (a) has regard to the purpose of subpart 1 of Part 2, the criteria stated in section 19A, and any other matters it considers relevant; and
  - (b) is satisfied that one of the following grounds applies:
    - (i) a public issuer has contravened a continuous disclosure obligation or a term or condition of a continuous disclosure exemption; or
    - (ii) a determination by a registered exchange to which section 36ZM applies does not achieve the purpose of subpart 1 of Part 2; or
    - (iii) the registered exchange's administration of the continuous disclosure provisions of its listing rules does not achieve the purpose of subpart 1 of Part 2 (and section 19C does not apply to the exchange); or
    - (iv) if section 19C applies to a registered exchange, a continuous disclosure exemption (other than an exemption contained in regulations) does not achieve the purpose of subpart 1 of Part 2; or

- (v) if section 19C applies to a registered exchange, the administration of the continuous disclosure provisions of regulations does not achieve the purpose of subpart 1 of Part 2; and
- (c) is also satisfied that the direction is necessary or desirable in the public interest to protect people trading the securities or the class of securities and that there is no more appropriate course of action to address the situation.

Section 36ZP: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZP(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **36ZQ Grounds for other directions**

A direction may also be given under section 36ZO in accordance with sections 36ZR to 36ZT if the FMA is satisfied that—

- (a) the direction is necessary in the public interest to protect people trading in either or both of the following:
  - (i) the securities, or a class of securities, of 1 or more public issuers:
  - (ii) 1 or more futures contracts, or a class of futures contracts, traded on a registered market; but
- (b) it is not a matter to which the purpose of subpart 1 of Part 2 is relevant.

Section 36ZQ: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZQ: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZQ(a): substituted, on 24 November 2009, by section 16 of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 36ZQ(a)(ii): amended, on 1 May 2011, by section 26 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36ZR Notice, opportunity for exchange to act, and submissions before FMA gives directions**

- (1) A direction may be given under section 36ZO only if—
  - (a) the FMA has given written notice to the registered exchange, and in the case of a direction to suspend the

- trading of securities or a class of securities, the public issuer or issuers concerned, of—
- (i) its opinion that the requirements of section 36ZP or 36ZQ are satisfied; and
  - (ii) the proposed terms of the direction; and
  - (iii) the reasons for its opinion; and
- (b) after receiving the FMA's notice, the registered exchange does not take, within the reasonable period stated in the notice,—
- (i) in the case of a proposed direction to suspend the trading of securities or a class of securities, action to prevent that trading; or
  - (ii) in the case of a proposed direction to suspend the trading of futures contracts, or a class of futures contracts, action to prevent that trading; or
  - (iii) in any other case, any other action that, in the FMA's view, is adequate to assess the situation raised in the notice; and
- (c) the FMA has had regard to any written submissions made to it by the registered exchange, and in the case of a direction to suspend the trading of securities or a class of securities, the public issuer or issuers concerned, within that notice period; and
- (d) the FMA still considers that it is appropriate to give the direction to the registered exchange.
- (2) A **reasonable period** in subsection (1)(b) is, in the case of a continuous disclosure direction, 2 trading days (or any longer time the FMA wishes to allow) and, in the case of any other direction, any longer time that is reasonable in the circumstances.

Section 36ZR: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZR heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZR(1): substituted, on 24 November 2009, by section 17 of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 36ZR(1)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZR(1)(b): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZR(1)(b)(iii): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZR(1)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZR(1)(d): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZR(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **36ZS Limited notice and submissions for urgent continuous disclosure directions**

If the FMA thinks it necessary or desirable in the public interest for a continuous disclosure direction to be made more urgently than section 36ZR permits,—

- (a) it may give less than 2 trading days' notice before it gives the direction and the notice and submissions may be oral, not written; but
- (b) it must include in that notice the reasons for acting urgently and must otherwise comply with that section.

Section 36ZS: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZS: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **36ZT Notice and opportunity to be heard and represented after FMA gives direction**

If a direction is given under section 36ZO, the FMA—

- (a) must, as soon as reasonably practicable, give written notice to the registered exchange, and in the case of a direction to suspend the trading of securities or a class of securities, the public issuer or issuers concerned, of—
  - (i) its opinion that the requirements of section 36ZP or section 36ZQ are satisfied; and
  - (ii) the terms of the direction; and
  - (iii) the reasons for its opinion; and
- (b) must, after the direction is given, give each of those persons or the person's representative an opportunity to make written submissions and to be heard on the matter; and



- (c) may also give notice to any other person of the matters in paragraph (a).

Section 36ZT: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZT heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZT: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZT(a): amended, on 24 November 2009, by section 18 of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 36ZT(b): substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

### **36ZU Effect of directions to exchanges**

- (1) A direction under section 36ZO has effect for the period specified in it (which may be up to 21 days) and, during that period, the registered exchange must comply with the direction and must not allow any trading to take place contrary to it.
- (2) If the registered exchange fails to comply with the direction or the FMA considers that the direction should have effect for a period longer than 21 days, it may apply to the court for, and the court may make, an order that the registered exchange comply with the direction for the period that the court thinks fit.

Section 36ZU: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZU(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **36ZV Provisions as to directions**

- (1) The FMA may vary a direction under section 36ZO in the same way as it may make that direction.
- (2) The FMA may revoke a direction under section 36ZO by giving written notice to the registered exchange.

Section 36ZV: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZV(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36ZV(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

*Contracting out or modification of continuous  
disclosure process requirements*

Heading: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

**36ZW Contracting out or modification of continuous disclosure process requirements**

- (1) The FMA and a registered exchange may, by agreement in writing, contract out of, or modify, any of the requirements of sections 36ZM, 36ZN, and 36ZR to 36ZT.
- (2) For that purpose, the registered exchange may agree to waive or modify obligations under those sections that are owed to public issuers that are parties to listing agreements with the exchange.

Section 36ZW: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZW(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

*Offence*

Heading: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

**36ZX Offence**

- (1) A registered exchange commits an offence if it intentionally or recklessly—
  - (a) fails to give a notice, provide information, give assistance, or provide access as required under this subpart; or
  - (b) contravenes section 36ZM; or
  - (c) fails to comply with a direction under section 36YF or section 36ZO.
- (2) See section 43B for the maximum penalty of a \$30,000 fine.

Section 36ZX: inserted, on 1 December 2002, by section 20 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 36ZX(1): substituted, on 1 May 2011, by section 27 of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 36ZX(2): substituted, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

### Subpart 3—Overseas exchanges

Subpart 3: inserted, on 1 May 2011, by section 28 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **36ZY Overseas exchanges**

- (1) The FMA may (on the terms and conditions it thinks fit), by notice in the *Gazette*, authorise a body corporate to hold a market registration for—
  - (a) 1 or more securities markets; or
  - (b) 1 or more securities markets and 1 or more futures markets; or
  - (c) 1 or more futures markets, if the body corporate already holds a market registration for a securities market.
- (2) The notice must—
  - (a) identify the market registered and the person that is authorised to hold the market registration under this section; and
  - (b) state the terms and conditions that apply to the person under the authorisation (and may, in those terms (without limitation), add to, modify, or disapply any of the provisions of subparts 1A and 2).
- (3) The FMA must not grant the authorisation unless it is satisfied that—
  - (a) the body corporate is authorised to operate the relevant market in another jurisdiction; and
  - (b) the operation of the market by the body corporate will be subject to requirements and supervision under the proposed terms or conditions of the authorisation or the law and regulatory requirements of its home jurisdiction, or both; and
  - (c) those requirements and that supervision are likely to have at least equivalent outcomes, in terms of the degree of integrity and effectiveness of the market and the confidence of investors in the market, to the likely outcomes for that market if the market were registered under section 36F.
- (4) This Act (other than subpart 1B of this Part) and every other enactment, applies to a body corporate authorised to operate a market under this section as if the relevant market were a

registered market and the body corporate were a registered exchange holding that market registration under section 36F (except as specified under subsection (2)).

Compare: 1988 No 234 s 36X

Section 36ZY: inserted, on 1 May 2011, by section 28 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36ZYA Revocation or amendment of authorisation**

- (1) The FMA may, by notice in the *Gazette*, vary or revoke an authorisation granted under section 36ZY or vary, revoke, or suspend any term or condition of the authorisation.
- (2) However, the FMA must not do so unless—
  - (a) it has consulted the body corporate concerned; and
  - (b) it is satisfied that it is in the public interest to do so.

Section 36ZYA: inserted, on 1 May 2011, by section 28 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **36ZYB Offence for breach of terms or conditions of authorisation**

Every person who acts in contravention of a term or condition of an authorisation granted under section 36ZY commits an offence (*see* section 43B for the maximum penalty of a \$10,000 fine per day).

Compare: 1988 No 234 s 36Z

Section 36ZYB: inserted, on 1 May 2011, by section 28 of the Securities Markets Amendment Act 2011 (2011 No 7).

## **Part 3**

### **Dealing in futures contracts**

### **37 Interpretation of terms used in this Part**

- (1) In this Part, unless the context otherwise requires,—

**acquire**, in relation to a futures contract, includes enter into and take an assignment of; and **acquires** and **acquisition** have corresponding meanings

**authorised futures contract** means a futures contract which is—

  - (a) made on, or effected through, an authorised futures market; or

- (b) made on, or effected through, a futures exchange in a country other than New Zealand which is authorised by the laws of that country to operate as a futures exchange, by a person referred to in section 38(1); or
- (c) which is a futures contract of a class in which a person referred to in section 38(1) is authorised to deal

**authorised futures exchange** means any of the following:

- (a) a person that is authorised to conduct a futures market under subsection (8):
- (b) a registered exchange that holds a market registration under Part 2B in respect of its futures market:
- (c) a subsidiary of a person to which paragraph (a) or (b) applies (if the subsidiary conducts the market to which the authorisation or market registration relates)

**authorised futures market** means a futures market to which an authorisation under subsection (8) applies (but also includes a futures market that is registered under Part 2B)

**commodity** means any type of goods; and includes foreign currency, a financial instrument, and emissions units

**dispose of**, in relation to a futures contract, includes—

- (a) in the case of a futures contract described in paragraph (d) of the definition of that term, assign and exercise:
- (b) in the case of any other futures contract, discharge obligations under;—

and **disposes** and **disposition** have corresponding meanings

**emissions units** means—

- (a) units as defined in section 4(1) of the Climate Change Response Act 2002; and
- (b) personal property that—
  - (i) is created by, or in accordance with, any enactment (whether of New Zealand, another country, or any jurisdiction of any country), rule of law, contractual provision, or international treaty or protocol as—
    - (A) one of a fixed number of units issued by reference to a specified amount of greenhouse gas; or
    - (B) evidence of a specified amount of reductions, removals, avoidance, storage, se-

- questration, or any other form of mitigation of greenhouse gas emissions; and
- (ii) can be surrendered, retired, cancelled, or otherwise used to—
  - (A) offset greenhouse gas emissions under, or otherwise comply with, any enactment (whether of New Zealand, another country, or any jurisdiction of any country), rule of law, contractual provision, or international treaty or protocol; or
  - (B) enable a person who surrenders, retires, cancels, or otherwise uses it to claim an environmental benefit

**futures contract** means—

- (a) an agreement under which one party agrees to deliver to another party at a specified future time a specified commodity or a quantity of a specified commodity at a price which is fixed when the agreement is made but under which it is contemplated or understood that the obligations of the parties may be satisfied by means other than actual delivery:
- (b) an agreement under which each party has either—
  - (i) an obligation to pay a sum of money to the other or to credit the account of the other with payment of a sum of money; or
  - (ii) a right to receive payment, or a credit, of a sum of money from the other—depending on whether at a future date the value or price of a specified commodity calculated in a manner specified by, or in accordance with, the agreement is greater or less than the value or price agreed upon by the parties when the agreement was made:
- (c) an agreement under which each party has either—
  - (i) an obligation to pay a sum of money to the other or to credit the account of the other with payment of a sum of money; or
  - (ii) a right to receive payment, or a credit, of a sum of money from the other—

depending on whether at a future date the value or level of a specified index calculated in a manner specified by, or in accordance with, the agreement is greater or less than the value or level agreed upon by the parties when the agreement was made:

- (d) an option or right to assume, at a specified price or value, or within a specified period, or by a specified date, rights and obligations under an agreement of a kind described in a preceding paragraph:
- (e) an agreement, option or right which is declared by the FMA, in accordance with this section, to be an agreement, option or right to which this Act or any Part of this Act applies:
- (f) an agreement, option or right which is of a class of agreements, options or rights declared by the FMA, in accordance with this section, to be a class to which this Act or any Part of this Act applies

**greenhouse gas** has the meaning set out in section 31 of the Climate Change Response Act 2002

**registered bank** has the same meaning as in section 2 of the Reserve Bank of New Zealand Act 1989.

- (2) For the purposes of this Act, none of the following agreements or contracts is a futures contract:
  - (a) a currency swap agreement to which a registered bank is a party:
  - (b) an interest rate swap agreement to which a registered bank is a party:
  - (c) a forward exchange rate contract to which a registered bank is a party:
  - (d) a forward interest rate contract to which a registered bank is a party.
- (3) An agreement or option of the kind described in paragraphs (a), (b), (c), (d), (e), or (f) of the definition of the term futures contract in subsection (1) is a futures contract whether or not it—
  - (a) has any other effect; or
  - (b) contains any other provisions; or
  - (c) is capable of being varied or discharged before the time fixed for performance.

- (4) For the purposes of the definition of the term futures contract in subsection (1), **party**, in relation to an agreement, includes—
  - (a) an assignee;
  - (b) a nominee;
  - (c) a successor in title;
  - (d) if the party to the agreement is an agent, the principal.
- (5) For the purposes of this Part, a person deals in a futures contract if that person—
  - (a) acquires or disposes of the futures contract on behalf of another person; or
  - (b) offers to acquire or dispose of the futures contract on behalf of another person; or
  - (c) on behalf of another person induces, or attempts to induce, a person, to acquire or dispose of the futures contract; or
  - (d) advises or assists a person in connection with the acquisition or disposition of the futures contract; or
  - (e) does any other act or engages in conduct declared by the FMA by notice in the *Gazette* to constitute dealing in a futures contract for the purposes of this Part.
- (6) For the purposes of subsection (5)(d) a person shall not be regarded as giving advice or assistance to any person in connection with the acquisition or disposition of a futures contract by reason only that that person gives that advice or assistance in a professional capacity as a solicitor or a chartered accountant.
- (7) The FMA may, by notice in the *Gazette*, declare—
  - (a) an agreement, option, or right to be an agreement, option, or right to which this Act applies;
  - (b) a class of agreements, options, or rights to be a class of agreements, options, or rights to which this Act applies.
- (8) The FMA may, on the terms and conditions (if any) that it thinks fit, by notice in the *Gazette*, declare a body corporate to be authorised to conduct 1 or more futures markets in New Zealand.
- (8AA) A notice of an authorisation declaration under subsection (8) must—
  - (a) identify the market to which the authorisation applies and the person that is authorised to conduct that market under this section; and



- (b) state the terms and conditions that apply to the person under the authorisation (and may, in those terms (without limitation), add to, modify, or disapply any of the provisions of subparts 1A and 2 of Part 2B).
- (8AB) The FMA must not grant the authorisation declaration under subsection (8) unless it is satisfied that—
  - (a) the operation of the futures market by the body corporate will be subject to requirements and supervision under the proposed terms and conditions of the authorisation or the law and regulatory requirements of another jurisdiction (if the body corporate is authorised to conduct the market in another jurisdiction), or both; and
  - (b) those requirements and that supervision are likely to have at least equivalent outcomes, in terms of the degree of integrity and effectiveness of the market and the confidence of investors in the market, to the likely outcomes for that market if it were registered under section 36F.
- (8A) A notice under subsection (8) may include any authorisation given under section 38.
- (9) The FMA may, by notice in the *Gazette*, declare any act or conduct to constitute dealing in a futures contract for the purposes of this Part.
- (10) The FMA may, by notice in the *Gazette*, vary or revoke any declaration made under this section.

Section 37(1) **authorised dealer in foreign exchange**: repealed, on 3 June 1998, by section 2(1)(a) of the Securities Amendment Act 1998 (1998 No 59).

Section 37(1) **authorised futures contract** paragraph (a): amended, on 1 May 2011, by section 29(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37(1) **authorised futures contract** paragraph (b): amended, on 3 June 1998, by section 2(1)(b) of the Securities Amendment Act 1998 (1998 No 59).

Section 37(1) **authorised futures contract** paragraph (c): amended, on 3 June 1998, by section 2(1)(c) of the Securities Amendment Act 1998 (1998 No 59).

Section 37(1) **authorised futures exchange**: substituted, on 1 May 2011, by section 29(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37(1) **authorised futures market**: inserted, on 1 May 2011, by section 29(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37(1) **commodity**: amended, on 24 November 2009, by section 19(3) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 37(1) **emissions units**: inserted, on 24 November 2009, by section 19(6) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 37(1) **futures contract** paragraph (e): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37(1) **futures contract** paragraph (e): amended, on 24 November 2009, by section 19(4) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 37(1) **futures contract** paragraph (f): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37(1) **futures contract** paragraph (f): amended, on 24 November 2009, by section 19(5) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 37(1) **greenhouse gas**: inserted, on 24 November 2009, by section 19(6) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 37(1) **registered bank**: amended, on 3 June 1998, by section 2(1)(d) of the Securities Amendment Act 1998 (1998 No 59).

Section 37(2): amended, on 24 November 2009, by section 19(7) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 37(2)(a): amended, on 3 June 1998, by section 2(2) of the Securities Amendment Act 1998 (1998 No 59).

Section 37(2)(b): amended, on 3 June 1998, by section 2(2) of the Securities Amendment Act 1998 (1998 No 59).

Section 37(2)(c): amended, on 3 June 1998, by section 2(2) of the Securities Amendment Act 1998 (1998 No 59).

Section 37(2)(d): amended, on 3 June 1998, by section 2(2) of the Securities Amendment Act 1998 (1998 No 59).

Section 37(5)(e): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37(7): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37(7)(a): amended, on 24 November 2009, by section 19(8) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 37(7)(b): amended, on 24 November 2009, by section 19(8) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 37(8): amended, on 1 May 2011, by section 29(3) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37(8): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37(8): amended, on 1 December 2002, by section 21(2) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 37(8AA): inserted, on 1 May 2011, by section 29(4) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37(8AB): inserted, on 1 May 2011, by section 29(4) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37(8A): inserted, on 1 December 2002, by section 21(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 37(9): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37(10): added, on 3 June 1998, by section 2(3) of the Securities Amendment Act 1998 (1998 No 59).

Section 37(10): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**37A No holding out as futures exchange unless authorised under this Part**

- (1) No person may, in connection with carrying on business in New Zealand,—
  - (a) use a style or title including the words “futures exchange” or “futures market”; or
  - (b) state or imply, or permit a statement or implication, that—
    - (i) the person is an authorised futures exchange; or
    - (ii) a market in New Zealand that the person conducts for trading in futures contracts is regulated under New Zealand law.
- (2) Subsection (1)(a) and (b)(i) do not apply to—
  - (a) an authorised futures exchange; or
  - (b) a subsidiary of an authorised futures exchange.
- (2A) Subsection (1)(b)(ii) does not apply to—
  - (a) an authorised futures exchange in respect of its authorised futures market; or
  - (b) a subsidiary of an authorised futures exchange in respect of the exchange’s authorised futures market.
- (3) Every person who acts in contravention of subsection (1) commits an offence (*see* section 43C for the maximum penalty of a \$10,000 fine per day).

Section 37A: inserted, on 1 December 2002, by section 22 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 37A(1)(b)(ii): amended, on 1 May 2011, by section 30(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37A(2): substituted, on 1 May 2011, by section 30(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37A(2A): inserted, on 1 May 2011, by section 30(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37A(3): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**37B No operation of futures markets unless authorised under this Part (if restriction applies)**

- (1) No person to whom this section applies may conduct a market or exchange in New Zealand for trading in futures contracts unless that person is—
  - (a) an authorised futures exchange; or
  - (b) a subsidiary of an authorised futures exchange.
- (2) Every person who acts in contravention of subsection (1) commits an offence (*see* section 43C for the maximum penalty of a \$10,000 fine per day).

Section 37B: inserted, on 1 December 2002, by section 22 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 37B(2): amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

**37C Power to apply and remove restriction on operating futures markets**

- (1) The Minister may, by notice in the *Gazette*,—
  - (a) declare, in accordance with section 37D, that section 37B applies to a person:
  - (b) declare that section 37B ceases to apply to a person:
  - (c) exempt a market for trading in futures contracts, or a class of markets of that kind, from the declaration.
- (2) An exemption under subclause (1)(c) may be on any terms or conditions that the Minister thinks fit.
- (3) An exemption has effect according to its tenor.
- (4) In determining whether or not to grant an exemption, the Minister must seek the advice of the FMA.
- (5) The Minister may vary an exemption in the same way as the exemption may be granted under this section.
- (6) The Minister may, by notice in the *Gazette*, revoke an exemption granted under this section.

Section 37C: inserted, on 1 December 2002, by section 22 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 37C(1)(c): amended, on 1 May 2011, by section 31(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37C(1)(c): amended, on 1 May 2011, by section 31(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 37C(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**37D Criteria and process for applying restriction on operating futures markets**

- (1) The Minister may declare that section 37B applies to a person only if he or she is satisfied that the result of that section not applying to the person is likely to be detrimental to—
  - (a) the integrity or effectiveness of futures markets in New Zealand; or
  - (b) the confidence of investors in futures markets in New Zealand.
- (2) The Minister must, before making the declaration,—
  - (a) give at least 2 months' written notice of the proposed declaration, and of the Minister's reasons for his or her opinion under subsection (1), to—
    - (i) the person to whom it is proposed to apply section 37B; and
    - (ii) the FMA; and
    - (iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposed declaration; and
  - (b) have regard to any submissions made by those persons within the notice period given; and
  - (c) before making the declaration, give at least 14 days' written notice to the persons referred to in paragraph (a), and in the *Gazette*, of his or her intention to do so and of the reasons for his or her opinion under subsection (1).
- (3) A failure to comply with subsection (2) does not invalidate any notice published under section 37C.

Section 37D: inserted, on 1 December 2002, by section 22 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 37D(2)(a)(ii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**37E No operation by authorised futures exchange of unauthorised futures market**

- (1) No authorised futures exchange may operate in New Zealand a futures market for which it does not have an authorisation under this Part or a market registration under Part 2B.

- (2) Every person who acts in contravention of subsection (1) commits an offence (*see* section 43C for the maximum penalty of a \$10,000 fine per day).

Section 37E: inserted, on 1 May 2011, by section 32 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **38 Dealers in futures contracts to be authorised**

- (1) No person may carry on the business of dealing in futures contracts unless that person—
- (a) is, or is a member of a class of persons that is, authorised by the FMA by notice in the *Gazette* to carry on the business of dealing in futures contracts; or
  - (b) has been approved by an authorised futures exchange under its rules to carry on the business of dealing in futures contracts in accordance with the rules of that exchange.
- (1A) However, a person who receives approval under subsection (1)(b) may carry on the business of dealing in futures contracts only if that dealing is subject to the regulation and oversight of the authorised futures exchange that approved the person.
- (2) For the purposes of subsection (1)(a), any authorisation may be for—
- (a) specified futures contracts:
  - (b) a specified class or specified classes of futures contracts:
  - (c) futures contracts generally:
  - (d) futures contracts generally other than—
    - (i) specified futures contracts:
    - (ii) a specified class or specified classes of futures contracts—
- and may be on such terms and conditions as the FMA thinks fit.
- (3) The FMA may, by notice in the *Gazette*, vary or revoke, in whole or in part, any authorisation given under subsection (1)(a).
- (4) For the purposes of subsection (1)(b), **rules**, in relation to an authorised futures exchange that is a registered exchange (or subsidiary of a registered exchange), means market rules.

Section 38(1): substituted, on 24 November 2009, by section 20(1) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 38(1)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 38(1A): inserted, on 24 November 2009, by section 20(1) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 38(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 38(2): amended, on 24 November 2009, by section 20(2) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 38(2): amended, on 2 September 1996, by section 3(2) of the Sharebrokers Amendment Act 1996 (1996 No 144).

Section 38(3): added, on 3 June 1998, by section 2(4) of the Securities Amendment Act 1998 (1998 No 59).

Section 38(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 38(3): amended, on 24 November 2009, by section 20(3) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 38(4): added, on 24 November 2009, by section 20(4) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 38(4): amended, on 1 May 2011, by section 33 of the Securities Markets Amendment Act 2011 (2011 No 7).

### **39 Contravention of section 38 an offence**

Every person who contravenes section 38 commits an offence (*see* section 43C for the maximum penalties of 3 years' imprisonment and a \$100,000 fine for an individual and a \$300,000 fine for a body corporate).

Section 39: substituted, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

### **40 Effect of certain laws on authorised futures contracts and other contracts**

- (1) Nothing in the Gambling Act 2003 applies to, or in respect of,—
  - (a) an authorised futures contract; or
  - (b) an agreement or a contract of the kind described in section 37(2).
- (2) Without limiting subsection (1), a contract referred to in that subsection is not a gaming or wagering contract for the purposes of any enactment or rule of law.
- (3) A contravention of this Part does not affect the validity or enforceability of a contract referred to in subsection (1).

Section 40: substituted, on 28 July 1997, by section 10(2) of the Securities Amendment Act (No 2) 1997 (1997 No 54).

Section 40(1): amended, on 1 July 2004, by section 374 of the Gambling Act 2003 (2003 No 51).

## **Part 4**

### **Investment advisers and brokers**

Part 4: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

#### *Application of this Part* *[Repealed]*

Heading: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

#### **41 When investment advice given to public, etc** *[Repealed]*

Section 41: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

#### *Disclosure by investment advisers* *[Repealed]*

Heading: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

#### **41A Investment advisers' disclosure obligation** *[Repealed]*

Section 41A: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

#### **41B Investment adviser must disclose experience, qualifications, professional standing, etc** *[Repealed]*

Section 41B: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).



**41C Investment adviser must disclose certain criminal convictions, etc**

*[Repealed]*

Section 41C: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41D Investment adviser must disclose fees**

*[Repealed]*

Section 41D: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41E Investment adviser must disclose other interests and relationships**

*[Repealed]*

Section 41E: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41F Investment adviser must disclose details of securities about which advice given**

*[Repealed]*

Section 41F: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

*Disclosure by investment brokers*

*[Repealed]*

Heading: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41G Investment brokers' disclosure obligation**

*[Repealed]*

Section 41G: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41H Investment broker must disclose certain criminal convictions, etc**

*[Repealed]*

Section 41H: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41I Investment broker must disclose procedures for dealing with investment money or investment property***[Repealed]*

Section 41I: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

*Method of disclosure**[Repealed]*

Heading: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41J How disclosure must be made***[Repealed]*

Section 41J: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

*Other requirements relating to disclosure**[Repealed]*

Heading: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41K Disclosure must not be misleading***[Repealed]*

Section 41K: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41L Disclosure of additional information***[Repealed]*

Section 41L: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41M No compliance with disclosure obligations if disclosure statement out of date***[Repealed]*

Section 41M: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41N Advertisement must refer to disclosure statement**

*[Repealed]*

Section 41N: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41O Advertisement must not be deceptive, misleading, or confusing**

*[Repealed]*

Section 41O: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

*Offences*  
*[Repealed]*

Heading: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41P Offence for failure to comply with disclosure obligation**

*[Repealed]*

Section 41P: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41Q Offence of deceptive, misleading, or confusing disclosure**

*[Repealed]*

Section 41Q: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41R Offence of deceptive, misleading, or confusing advertisement**

*[Repealed]*

Section 41R: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41S Recommending, or receiving money for, acquisition of securities prohibited if offer for subscription illegal**

*[Repealed]*

Section 41S: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41T Defence of immateriality***[Repealed]*

Section 41T: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

*Territorial scope of this Part**[Repealed]*

Heading: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41U Territorial scope***[Repealed]*

Section 41U: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

*Miscellaneous**[Repealed]*

Heading: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41V No contracting out***[Repealed]*

Section 41V: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**41W No liability under Fair Trading Act 1986 if not liable under this Part***[Repealed]*

Section 41W: repealed, on 1 July 2011, by section 164(4) of the Financial Advisers Act 2008 (2008 No 91).

**Part 5****Enforcement and remedies**

Part 5 heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**Subpart 1—FMA's enforcement powers**

Subpart 1 heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Subpart 1 heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

*Prohibition and corrective orders*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42 When FMA may make prohibition and corrective orders**

The FMA may make a prohibition order or a corrective order, or both, in accordance with this subpart if it is satisfied that, by engaging in any conduct, a person has contravened, or would contravene,—

- (a) a market manipulation prohibition or exemption or the general dealing misconduct prohibition:
- (b) an investment advisers' or brokers' obligation or exemption:
- (c) section 36A(1) (no holding out as securities exchange unless registered) or an exemption from that section:
- (d) section 37A(1) (no holding out as futures exchange unless authorised) or an exemption from that section.

Section 42: substituted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**42A Terms of prohibition and corrective orders**

- (1) A prohibition order may prohibit or restrict the making of any statement or distributing of any document by or on behalf of the person for the purpose of preventing a contravention or further contravention of the relevant prohibition, obligation, or exemption.
- (2) A corrective order may direct the person in contravention to publish, at the person's own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order.

Section 42A: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

*Disclosure orders*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42B When FMA may make disclosure orders**

The FMA may make a disclosure order in accordance with this subpart if it is satisfied that a person has contravened—

- (a) a continuous disclosure obligation or exemption:
- (b) a directors' and officers' disclosure obligation or exemption:
- (c) a substantial holding disclosure obligation or exemption:
- (d) *[Repealed]*

Section 42B: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42B heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42B: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42B(d): repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

**42C Terms of disclosure orders**

A disclosure order may order the person—

- (a) to disclose in accordance with the order information for the purpose of securing compliance with the relevant obligation or exemption:
- (b) to publish, at the person's own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order.

Section 42C: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

*Temporary investment adviser and broker  
banning orders*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42D When FMA may make temporary banning orders for investment adviser or broker activities**

*[Repealed]*

Section 42D: repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

**42E Terms of temporary banning order for investment adviser and broker activities**

*[Repealed]*

Section 42E: repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

*Unsolicited offer orders*

Heading: inserted, on 1 May 2011, by section 34 of the Securities Markets Amendment Act 2011 (2011 No 7).

**42EA When FMA may make unsolicited offer orders**

The FMA may make an unsolicited offer order in accordance with this subpart if the FMA is satisfied that a person has acted, is acting, or intends to act in contravention of an unsolicited offer obligation or exemption.

Section 42EA: inserted, on 1 May 2011, by section 34 of the Securities Markets Amendment Act 2011 (2011 No 7).

**42EB Terms of unsolicited offer orders**

- (1) An unsolicited offer order may—
- (a) restrain a person from acquiring a security, a power to dispose of a security, or an interest in or right attaching to a security, as a result of the unsolicited offer:
  - (b) restrain a person from taking any action that is, or that may reasonably be expected to constitute, a contravention of an unsolicited offer obligation or exemption:
  - (c) restrain a person from taking specified steps to complete or perform a contract that has been, or may reasonably be expected to be, entered into in contravention of an unsolicited offer obligation or exemption:
  - (d) direct a person not to register the transfer of a security:
  - (e) direct a person to disclose information, make corrective statements, or take any other specified steps, at the per-

son's own expense and in the manner and at the times specified in the order, for the purpose of securing compliance with an unsolicited offer obligation or exemption.

- (2) An unsolicited offer order may be directed at any person.

Section 42EB: inserted, on 1 May 2011, by section 34 of the Securities Markets Amendment Act 2011 (2011 No 7).

### *Process for FMA's orders*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

## **42F FMA must follow steps before making orders**

- (1) The FMA may make an order under this subpart only if it first takes the following steps:
- (a) gives the person to whom the order is directed written notice of—
    - (i) the nature of the alleged contravention; and
    - (ii) the proposed terms of the order; and
    - (iii) the reasons for the proposed order; and
  - (b) also gives that written notice to the relevant registered exchange, in the case of a disclosure order for a contravention of a continuous disclosure obligation or exemption; and
  - (c) gives that notice at least—
    - (i) 24 hours before the FMA makes the order, in the case of an order specified in section 42G; or
    - (ii) 48 hours before the FMA makes the order, in the case of any other disclosure order or an unsolicited offer order; or
    - (iii) 7 days before the FMA makes the order, in the case of any other prohibition or corrective order; and
  - (d) gives each person to whom notice of the order must be given or the person's representative an opportunity to make written submissions and to be heard on the matter within that notice period.



(e) *[Repealed]*

(f) *[Repealed]*

- (2) However, the FMA may shorten these steps in accordance with section 42G for an order specified in that section.

Section 42F: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42F heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42F(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42F(1)(c)(i): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42F(1)(c)(ii): amended, on 1 May 2011, by section 35 of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 42F(1)(c)(ii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42F(1)(c)(iii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42F(1)(d): substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42F(1)(e): repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42F(1)(f): repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42F(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **42G FMA may shorten steps for specified orders**

- (1) If the FMA thinks it necessary or desirable in the public interest for any of the orders set out in subsection (3) to be made more urgently than section 42F permits, it—
- (a) may give less than 24 hours' notice before it makes the order, and the notice may be oral, not written; and
  - (b) may give persons an opportunity to make only oral submissions, not written, to a member, officer, or employee of the FMA (as the FMA determines).
- (2) However, the FMA must include in the notice under that section the reasons for acting urgently and must otherwise comply with the steps set out in that section.
- (3) The orders are—

- (a) a prohibition or corrective order for a contravention of a market manipulation prohibition or exemption or the general dealing misconduct prohibition:
- (b) *[Repealed]*
- (c) a disclosure order for a contravention of a continuous disclosure obligation or exemption:
- (d) a temporary banning order:
- (e) an unsolicited offer order.

Section 42G: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42G heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42G(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42G(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42G(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42G(3)(b): repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

Section 42G(3)(e): added, on 1 May 2011, by section 36 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **42H FMA must give notice after making orders**

- (1) If the FMA makes an order under this subpart, the FMA—
  - (a) must, as soon as is reasonably practicable, give written notice to the person to whom the order is directed of—
    - (i) the terms of the order; and
    - (ii) the reasons for the order; and
  - (b) must also give that written notice to the relevant registered exchange, in the case of a disclosure order for a contravention of a continuous disclosure obligation or exemption; and
  - (c) may also give notice to any other person of those matters.
- (2) The FMA must also, as soon as practicable after the making of a temporary banning order, give notice on its website (and may give public notice by any other means also) of the name of the person against whom the order is made and the period or dates for which the ban applies.

Section 42H: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42H heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42H(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42H(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### *General provisions*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **42I General provisions on FMA's orders**

- (1) The FMA may make an order under this subpart on the terms and conditions that the FMA thinks fit.
- (2) The FMA may vary an order in the same way as it may make the order under this subpart.
- (3) The FMA may revoke an order or suspend an order on the terms and conditions it thinks fit.
- (4) An order made under this subpart is subject to appeal only in accordance with section 47A.

Section 42I: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42I heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42I(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42I(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42I(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42I(4): substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

#### **42J Offence of failing to comply with FMA's orders**

- (1) A person who contravenes an order made by the FMA under this subpart commits an offence (*see* section 43E for the maximum penalty of a \$30,000 fine).
- (2) No person may be convicted of an offence against subsection (1) if—

- (a) the person proves that the contravention occurred without the person's knowledge or without the person's knowledge of the order; or
- (b) the contravention was in respect of matters that, in the court's opinion, were immaterial; or
- (c) the court thinks that the contravention, in the circumstances of the case, ought reasonably to be excused.

Section 42J: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42J heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42J(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

## Subpart 2—Court's enforcement powers

Subpart 2: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

### *Injunctions*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **42K What court may injunct**

The court may, on application by the FMA or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention of a provision of this Act.

Section 42K: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42K: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **42L When court may grant injunctions and interim injunctions**

- (1) The court may grant an injunction restraining a person from engaging in conduct of a particular kind if—
  - (a) it is satisfied that the person has engaged in conduct of that kind; or

- (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- (3) Subsections (1)(a) and (2) apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (4) Subsections (1)(b) and (2) apply whether or not the person has previously engaged in conduct of that kind or there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.

Section 42L: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **42M Undertaking as to damages not required by FMA**

- (1) If the FMA applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the FMA to give an undertaking as to damages.
- (2) However, in determining the FMA's application for the grant of an interim injunction, the court must not take into account that the FMA is not required to give an undertaking as to damages.

Section 42M: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42M heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42M(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42M(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42M(2): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

#### *Corrective orders*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42N When court may grant corrective orders**

The court may, on application by the FMA or any other person, make a corrective order if it is satisfied that a person has contravened—

- (a) a market manipulation prohibition or exemption or the general dealing misconduct prohibition:
- (b) *[Repealed]*
- (c) section 36A(1) (no holding out as securities exchange unless registered) or an exemption from that section:
- (d) section 37A(1) (no holding out as futures exchange unless authorised) or an exemption from that section:
- (e) an unsolicited offer obligation or exemption.

Section 42N: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42N: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42N(b): repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

Section 42N(e): added, on 1 May 2011, by section 37 of the Securities Markets Amendment Act 2011 (2011 No 7).

**42O Terms of corrective orders**

A corrective order may direct the person in contravention to publish, at the person's own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order.

Section 42O: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

*Disclosure orders*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42P When court may make disclosure orders**

The court may, on application by the FMA or any other person, make a disclosure order if it is satisfied that a person has contravened—

- (a) a continuous disclosure obligation or exemption:

- (b) a substantial holding disclosure obligation or exemption:
- (c) *[Repealed]*
- (d) an unsolicited offer obligation or exemption.

Section 42P: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42P: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42P(c): repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

Section 42P(d): added, on 1 May 2011, by section 38 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### 42Q Terms of disclosure orders

A disclosure order may order—

- (a) the person in contravention to disclose in accordance with the order information for the purpose of securing compliance with the relevant obligation or exemption:
- (b) the person in contravention to publish, at the person's own expense, in the manner and at the times specified in the order, corrective statements that are specified in, or are to be determined in accordance with, the order.

Section 42Q: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

### Subpart 3—Civil remedies

Subpart 3: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### *Overview of civil remedies*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### 42R Overview of civil remedies

- (1) The following remedies (**civil remedy orders**) are available for a contravention of a civil remedy provision (except if otherwise provided) under this subpart:
  - (a) a pecuniary penalty order and declaration of contravention (on application by the FMA only):
  - (b) a compensatory order:

- (c) a specific civil remedy order under section 42ZC:
  - (d) other civil remedy orders under section 42ZE.
- (2) This section is a guide only to the general scheme and effect of this subpart.

Section 42R: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42R(1)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **42S What are civil remedy provisions**

In this subpart, a **civil remedy provision** is—

- (a) an insider conduct prohibition or exemption:
- (b) a market manipulation prohibition or exemption:
- (c) the general dealing misconduct prohibition:
- (d) a continuous disclosure obligation or exemption:
- (e) a substantial holding disclosure obligation or exemption:
- (f) *[Repealed]*
- (g) an unsolicited offer obligation or exemption.

Section 42S: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42S(f): repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

Section 42S(g): added, on 1 May 2011, by section 39 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### *Pecuniary penalty orders and declarations of contravention*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **42T When court may make pecuniary penalty orders and declarations of contravention**

- (1) If the FMA applies for a pecuniary penalty order against a person under this Act, the court—
- (a) must determine whether the person has contravened a civil remedy provision; and
  - (b) must make a declaration of contravention (*see* sections 42U and 42V) if satisfied that the person has contravened a civil remedy provision; and



- (c) may order the person to pay a pecuniary penalty that the court considers appropriate to the Crown (*see* sections 42W to 42Y) if satisfied that the person has contravened a civil remedy provision and that the contravention—
  - (i) materially prejudices the interests of acquirers or disposers of the securities or relevant interests involved; or
  - (ii) materially prejudices the public issuer or, if the public issuer is a body corporate, its members; or
  - (iii) is likely to materially damage the integrity or reputation of any of New Zealand's securities markets; or
  - (iv) is otherwise serious.
- (2) However, the court must not make a declaration of contravention or a pecuniary penalty order under this section for a contravention of—
  - (a) section 13 (general dealing misconduct prohibition); or
  - (b) *[Repealed]*

Section 42T: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42T(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42T(2)(b): repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

#### **42U Purpose and effect of declarations of contravention**

- (1) The purpose of a declaration of contravention is to enable an applicant for a compensatory order or other civil remedy order under section 42ZE to rely on the declaration of contravention in the proceedings for that order, and not be required to prove the contravention.
- (2) Accordingly, a declaration of contravention is conclusive evidence of the matters that must be stated in it under section 42V.

Section 42U: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **42V What declarations of contravention must state**

A declaration of contravention must state the following:

- (a) the court that made the declaration; and

- (b) the civil remedy provision to which the contravention relates or, if the contravention is of an exemption, both the term or condition contravened and the civil remedy provision to which the exemption relates; and
- (c) the person who engaged in the contravention; and
- (d) the conduct that constituted the contravention and, if a transaction constituted the contravention, the transaction; and
- (e) the public issuer to which the conduct related (if relevant).

Section 42V: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **42W Maximum amount of pecuniary penalty**

- (1) The maximum amount of a pecuniary penalty for a contravention of an insider conduct prohibition, market manipulation prohibition, or unsolicited offer prohibition is the greater of—
  - (a) the consideration for the transaction that constituted the contravention (if any); or
  - (b) 3 times the amount of the gain made, or the loss avoided, by the person in carrying out the conduct (*see* section 42X for guidance); or
  - (c) \$1,000,000.
- (2) The maximum amount of a pecuniary penalty for a contravention of any other civil remedy provision is \$1,000,000.

Section 42W: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42W(1): amended, on 1 May 2011, by section 40 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **42X Guidance for court on how to determine gains made or losses avoided for purposes of maximum amount**

- (1) For the purposes of section 42W(1)(b),—
  - (a) a person makes a gain if the person acquires a security for less than its value;
  - (b) a person avoids a loss if the person disposes of a security for more than its value.
- (2) In this case, the gain made or loss avoided is the difference between the consideration paid or received (as the case may

be) and the value the security would have had at the time of the sale if, —

- (a) in the case of a contravention of an insider conduct prohibition, the material information had been generally available to the market; or
  - (b) in the case of a contravention of a market manipulation prohibition, the conduct, statement, or information had not been misleading, deceptive, or false.
- (3) In the case of a contravention of an unsolicited offer prohibition, subsection (2) does not apply.

Section 42X: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42X(1)(a): amended, on 1 May 2011, by section 41(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 42X(1)(b): amended, on 1 May 2011, by section 41(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 42X(3): added, on 1 May 2011, by section 41(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **42Y Considerations for court in determining pecuniary penalty**

In determining an appropriate pecuniary penalty, the court must have regard to all relevant matters, including—

- (a) any purpose and criteria stated in this Act that apply to the civil remedy provision; and
- (b) the nature and extent of the contravention; and
- (c) the likelihood, nature, and extent of any damage to the integrity or reputation of any of New Zealand's securities markets because of the contravention; and
- (d) the nature and extent of any loss or damage suffered by a person referred to in section 42T(1)(c)(i) or (ii), or gains made or losses avoided by the person in contravention, because of the contravention; and
- (e) the circumstances in which the contravention took place; and
- (f) whether or not the person in contravention has previously been found by the court in proceedings under this Act to have engaged in any similar conduct; and
- (g) the relationship of the parties to the transaction constituting the contravention.

Section 42Y: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42Z Court must order that recovery from pecuniary penalty be applied to FMA's actual costs**

If the court orders that a person pay a pecuniary penalty, and the proceedings were brought (in whole or in part) by the FMA, the court must also order that the penalty must be applied first to pay the FMA's actual costs in bringing the proceedings.

Section 42Z: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42Z heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42Z: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 42Z: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

*Compensatory orders*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42ZA When court may make compensatory orders**

- (1) The court may make a compensatory order, on application by the FMA or any other person, if the court is satisfied that—
  - (a) there is a contravention of a civil remedy provision; and
  - (b) a person (the **aggrieved person**) has suffered, or is likely to suffer, loss or damage because of the contravention.
- (2) The court may make a compensatory order whether or not the aggrieved person is a party to the proceedings.
- (3) However, the court must not make a compensatory order under this section for a contravention of an investment advisers' and brokers' disclosure obligation or exemption.

Section 42ZA: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42ZA(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**42ZB Terms of compensatory orders**

If section 42ZA applies, the court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce that loss or damage, including an order (without limitation) to—

- (a) direct the person in contravention to pay to the aggrieved person the amount of the loss or damage:
- (b) direct the person in contravention to refund money or return property to the aggrieved person:
- (c) if a contract has been entered into between the person in contravention and the aggrieved person,—
  - (i) vary the contract or any collateral arrangement as specified in the order and, if the court thinks fit, declare the contract or arrangement to have had effect as so varied on and after a date before the order was made, as specified in the order:
  - (ii) cancel the contract and, if the court thinks fit, declare the cancellation to have had effect on and after a date before the order was made, as specified in the order:
  - (iii) require the person in contravention to take any action the court thinks fit to reinstate the parties as near as may be possible to their former positions.

Section 42ZB: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

*Civil remedy order for investment advisers' or  
brokers' disclosure obligations*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42ZC When court may make civil remedy order for investment advisers' or brokers' disclosure obligations**

*[Repealed]*

Section 42ZC: repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

**42ZD Terms of civil remedy order for investment advisers' or brokers' disclosure obligations***[Repealed]*

Section 42ZD: repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

*Other civil remedy orders*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42ZE When court may make other civil remedy orders**

- (1) The court may, on application by the FMA or any other person, make a civil remedy order described in section 42ZF if the court is satisfied on reasonable grounds that a person has contravened or intends to contravene a civil remedy provision.
- (2) However, the court must not make a civil remedy order of that kind for a contravention of a continuous disclosure obligation or exemption or an investment advisers' or brokers' obligation or exemption.

Section 42ZE: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 42ZE(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**42ZF Terms of other civil remedy orders**

A civil remedy order under section 42ZE may—

- (a) restrain the exercise of rights attaching to securities, or the exercise of relevant interests, or declare an exercise of those rights or relevant interests to be void and of no effect:
- (b) restrain the issue or allotment of securities or restrain any distribution due in relation to securities:
- (c) restrain the acquisition or disposal of securities or of relevant interests or restrain the registration of any transfer of that kind:
- (d) direct the disposal of securities or of relevant interests (including the person or class of person to which they must, or must not, be disposed of) and direct the payment of the proceeds of any disposal:

- (e) require securities to be forfeited and require the public issuer to cancel the forfeited securities:
- (f) cancel an agreement for the acquisition or disposal of securities or relevant interests.

Section 42ZF: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

### *Interrelationship of civil remedies*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **42ZG More than 1 civil remedy order may be made for same conduct**

The court may make a civil remedy order of one kind against a person even though the court has made another civil remedy order of a different kind against the person for the same conduct.

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##### **Examples**

The court may make a compensatory order and a pecuniary penalty order for the same conduct.

The court may make a civil remedy order requiring forfeiture of securities and declaring a previous exercise of voting rights attaching to those securities to be void.

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Section 42ZG: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **42ZH Only 1 pecuniary penalty order may be made for same conduct**

If conduct by a person constitutes a contravention of 2 or more civil remedy provisions, proceedings may be brought against that person for the contravention of any 1 or more of the provisions, but no person is liable to more than 1 pecuniary penalty order for the same conduct.

Section 42ZH: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

### *General*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42ZI Standard of proof for civil remedies**

The proceedings under this subpart are civil proceedings and the usual rules of the court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

Section 42ZI: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**42ZJ Time limit for applying for civil remedies**

- (1) An application for a pecuniary penalty order, a civil remedy order under section 42ZC, or other civil remedy order under section 42ZE may be made at any time within 3 years after the date on which the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.
- (2) The usual time limits apply to all applications for other civil remedy orders.
- (3) However, an application for a compensatory order in respect of the contravention may be made at any time within 6 months after the date on which a declaration of contravention is made, even if the usual time limit has expired.

Section 42ZJ: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**Subpart 4—Criminal offences and penalties**

Subpart 4 heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

*Penalties for offences*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43 Penalties for failing to comply with Part 1**

- (1) A person who commits an offence against any of the sections set out in subsection (2) is liable on conviction on indictment to—
  - (a) in the case of an individual, imprisonment for a term not exceeding 5 years or a fine not exceeding \$300,000, or to both;
  - (b) in the case of a body corporate, a fine not exceeding \$1,000,000.



- (2) The sections are—
- (a) section 8F (criminal liability for insider conduct):
  - (b) section 11A (criminal liability for false or misleading statement or information):
  - (c) section 11D (criminal liability for false or misleading appearance of trading, etc).

Section 43: substituted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43A Penalties for failing to comply with Part 2**

- (1) A person who commits an offence against any of the following sections is liable on summary conviction to a fine not exceeding \$30,000:
- (a) section 19ZD (offence for failure to comply with directors' and officers' disclosure obligation):
  - (b) section 35BA (offence for failure to comply with substantial holding disclosure obligation).
- (2) A person who commits an offence against any of the following sections is liable on summary conviction to a fine not exceeding \$10,000:
- (a) section 19ZF (offences relating to directors' and officers' interests register):
  - (b) section 32 (conditions of exemption for trustee corporations and nominee companies):
  - (c) section 35E (offences relating to substantial holdings register):
  - (d) section 35H (offence for failing to publish information on substantial holdings or disclosures).

Section 43A: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43B Penalties for failing to comply with Part 2B**

- (1) A person who commits an offence against section 36ZX (offence for failing to comply with monitoring of registered exchange provisions) is liable on summary conviction to a fine not exceeding \$30,000.
- (2) A person who commits an offence against any of the following sections is liable on summary conviction to a fine not exceed-

ing \$10,000 for every day or part of a day during which the contravention occurs:

- (a) section 36A(1) (no holding out as securities exchange unless registered):
  - (b) section 36B(1) (no operation of securities markets unless registered (if restriction applies)):
  - (c) section 36FB(1) (no operation by registered exchange of unregistered market):
  - (d) section 36G(1) (registered exchange must operate markets under market rules that comply with subpart 1A of Part 2B):
  - (e) section 36ZYB (offence for breach of terms or conditions of authorisation).
- (3) A person who commits an offence against section 36N (market rules must be available for public inspection) is liable on summary conviction to a fine not exceeding \$5,000.
- (4) A person who commits an offence against section 36U(1)(a) (effect of exceeding control limit) is liable on summary conviction to a fine not exceeding \$1,000 for every day or part of a day during which the contravention occurs.

Section 43B: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 43B(1): amended, on 24 November 2009, by section 21(1) of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 43B(2)(c): substituted, on 1 May 2011, by section 42(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 43B(2)(d): substituted, on 1 May 2011, by section 42(1) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 43B(2)(e): amended, on 1 May 2011, by section 42(2) of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 43B(3): amended, on 1 May 2011, by section 42(3) of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **43C Penalties for failing to comply with Part 3**

- (1) A person who commits an offence under section 39 (contravention of section 38 an offence) is liable on conviction on indictment,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both:

- (b) in the case of a body corporate, to a fine not exceeding \$300,000.
- (2) A person who commits an offence against any of the following sections is liable on summary conviction to a fine not exceeding \$10,000 for every day or part of a day during which the contravention occurs:
  - (a) section 37A(1) (no holding out as futures exchange unless authorised):
  - (b) section 37B(1) (no operation of futures markets unless authorised (if restriction applies)):
  - (c) section 37E(1) (no operation by authorised futures exchange of unauthorised futures market).

Section 43C: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 43C(2)(c): added, on 1 May 2011, by section 43 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **43D Penalties for failing to comply with Part 4**

*[Repealed]*

Section 43D: repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

#### **43E Penalties for failing to comply with this Part**

- (1) An individual who commits an offence against either of the following sections is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both:
  - (a) *[Repealed]*
  - (b) section 43I (persons automatically banned from management).
- (2) A person who commits an offence against any of the sections set out in subsection (3) is liable on conviction on indictment,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both:
  - (b) in the case of a body corporate, to a fine not exceeding \$300,000.
- (3) The sections are—

- (a) *[Repealed]*
  - (b) *[Repealed]*
  - (c) section 43T (offence of contravening orders to preserve assets to satisfy claims).
- (4) A person who commits an offence against section 42J (offence of failing to comply with FMA's orders) is liable on summary conviction to a fine not exceeding \$30,000.
- Section 43E: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).
- Section 43E(1)(a): repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).
- Section 43E(3)(a): repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).
- Section 43E(3)(b): repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).
- Section 43E(4): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

### Subpart 5—Other court orders

Subpart 5: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

### *Management bans*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

### **43F When court may make management banning orders**

- (1) The court may, on application by an entitled person, make a management banning order against a person (A) if—
  - (a) A has been convicted of an offence against Part 1 (dealing misconduct) or a pecuniary penalty order has been made against A for a contravention of that Part; or
  - (b) A has, while a director of an incorporated or unincorporated body,—
    - (i) persistently contravened this Act, the Companies Act 1993, the Securities Act 1978, the Securities Trustees and Statutory Supervisors Act 2011, the Takeovers Act 1993, or the takeovers code; or
    - (ii) if the incorporated or unincorporated body has so contravened, persistently failed to take all rea-

- sonable steps to obtain compliance with those Acts or the code; or
- (c) A has been prohibited in an overseas jurisdiction from carrying on activities that the court is satisfied are substantially similar to any of the activities referred to in section 43G in connection with a contravention of any law relating to the trading of securities.
- (2) An **entitled person** is—
- (a) the FMA;
- (b) the Registrar of Companies;
- (c) an incorporated or unincorporated body that—
- (i) A is a director of at the time of the application; or
- (ii) A was a director of at the time of the ground that triggers the making of the order under subsection (1);
- (d) the liquidator of an incorporated or unincorporated body referred to in paragraph (c);
- (e) a person who is, or has been, a holder of securities (and, for this purpose, **security** has the same meaning as in the Securities Act 1978) or creditor of an incorporated or unincorporated body referred to in paragraph (c).

Section 43F: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 43F(1)(b)(i): amended, on 1 October 2011, by section 74(2) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Section 43F(2)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **43G Terms of management banning orders**

A management banning order may, for a period stated in the order of 10 years or less, prohibit or restrict the person (without the leave of the court) from being a director or promoter of, or in any way (whether directly or indirectly) being concerned or taking part in the management of, an incorporated or unincorporated body (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand).

Section 43G: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43H Offence of contravening management banning order**

An individual who acts in contravention of a management banning order under section 43F commits an offence (*see* section 43E for the maximum penalty of 3 years' imprisonment and a \$100,000 fine).

Section 43H: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43I Persons automatically banned from management**

- (1) This section applies to a person if the person has been convicted of an offence against Part 1 (dealing misconduct) or a pecuniary penalty order has been made against the person for a contravention of that Part.
- (2) The person must not, for the period of 5 years after the conviction or making of the order (without the leave of the court) be a director or promoter of, or in any way (whether directly or indirectly) be concerned or take part in the management of, an incorporated or unincorporated body (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand).
- (2A) The court may give leave for the purposes of subsection (2)—
  - (a) at the time of conviction or making of the order, or at any other time on the application of the relevant person:
  - (b) in respect of a particular incorporated or unincorporated body, a class of incorporated or unincorporated bodies, or incorporated or unincorporated bodies generally.
- (3) An individual who acts in contravention of this section commits an offence (*see* section 43E for the maximum penalty of 3 years' imprisonment and a \$100,000 fine).

Section 43I: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 43I(2A): inserted, on 1 May 2011, by section 44 of the Securities Markets Amendment Act 2011 (2011 No 7).

**43J Only 1 management ban may be made for same conduct**

If conduct by a person constitutes grounds for making an order under any 1 or more of section 43F of this Act, section 60A of the Securities Act 1978, section 44F of the Takeovers Act 1993, and section 383 of the Companies Act 1993, proceed-

ings may be brought against that person under any 1 or more of those provisions, but no person is liable to more than 1 order under those provisions for the same conduct.

Section 43J: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

### *Investment adviser or broker bans*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **43K When court may make banning orders for investment adviser or broker activities**

*[Repealed]*

Section 43K: repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

#### **43L Terms of investment adviser or broker banning orders**

*[Repealed]*

Section 43L: repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

#### **43M Offence of contravening investment adviser or broker banning order**

*[Repealed]*

Section 43M: repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

#### **43N Persons automatically banned from investment adviser or broker activities**

*[Repealed]*

Section 43N: repealed, on 1 July 2011, by section 164(5) of the Financial Advisers Act 2008 (2008 No 91).

#### **43O General provisions for bans and banning orders**

- (1) The Registrar of the court must, as soon as practicable after the making of a banning order by a court under this Part,—
  - (a) give notice to the Registrar of Companies and the FMA that the order has been made; and

- (b) give notice in the *Gazette* of the name of the person against whom the order is made and the period or dates for which the ban applies.
- (2) A person intending to apply for the leave of the court to override a ban imposed by or under section 43F, 43I, 43K, or 43N must give to the FMA not less than 10 working days' written notice of that person's intention to apply.
- (3) The FMA, and any other person that the court thinks fit, may attend and be heard at the hearing of the application.

Section 43O: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 43O(1)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 43O(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 43O(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### *Orders to preserve assets to satisfy claims*

Heading: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

## **43P When court may prohibit payment or transfer of money, securities, or other property**

- (1) This section applies if—
  - (a) an investigation is being carried out under this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act or any regulations made under this Act; or
  - (b) a prosecution has begun against a person for a contravention of this Act; or
  - (c) a civil proceeding has begun against a person under this Act.
- (2) The court may, on application by the FMA or by an aggrieved person, make 1 or more of the orders listed in section 43Q if the court considers it necessary or desirable to do so for the purpose of protecting the interests of an aggrieved person.
- (3) In this section and section 43Q,—



**aggrieved person** means any person to whom a relevant person is liable

**liable** means liable, or may be or become liable, to pay money (whether in respect of a debt, by way of damages or compensation, or otherwise) or to account for securities or other property

**relevant person** means a person referred to in subsection (1).

Compare: Corporations Act 2001 s 1323(1) (Aust)

Section 43P: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 43P(1)(a): amended, on 1 May 2011, by section 45 of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 43P(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **43Q What orders may be made**

- (1) The orders that may be made under section 43P are—
- (a) an order prohibiting the relevant person from transferring, charging, or otherwise dealing with money, securities, or other property held or controlled by the relevant person:
  - (b) an order prohibiting a person who is indebted to the relevant person or to an associated person of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed:
  - (c) an order prohibiting a person holding money, securities, or other property, on behalf of the relevant person, or on behalf of an associated person of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities, or other property, is or are held:
  - (d) an order prohibiting the taking or sending out of New Zealand by a person of money of the relevant person or of an associated person of the relevant person:
  - (e) an order prohibiting the taking, sending, or transfer by a person of securities or other property of the relevant person, or of an associated person of the relevant person from a place in New Zealand to a place outside

New Zealand (including the transfer of securities from a register in New Zealand to a register outside New Zealand):

- (f) an order requiring the relevant person, or any person holding money, securities, or other property on behalf of the relevant person or an associated person if the relevant person, to pay or transfer money, securities, or other property to a specified person to be held on trust pending determination of the investigation, prosecution, or civil proceeding:
  - (g) an order appointing,—
    - (i) if the relevant person is a natural person, a receiver or trustee, having any powers that the court orders, of the property or of part of the property of that person; or
    - (ii) if the relevant person is a body corporate, a receiver or receiver and manager, having any powers that the court orders, of the property or of part of the property of that person:
  - (h) if the relevant person is a natural person, an order requiring that person to deliver up to the court his or her passport and any other documents that the court thinks fit:
  - (i) if the relevant person is a natural person, an order prohibiting that person from leaving New Zealand, without the consent of the court.
- (2) A reference in subsection (1)(e) or (g) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example,—
- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
  - (b) in a fiduciary capacity.
- (3) An order may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

Compare: Corporations Act 2001 s 1323(1), (2A), (6) (Aust)

Section 43Q: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43R Interim orders**

- (1) If an application is made to the court for an order under section 43P, the court may, if in the opinion of the court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (2) The court must not require the applicant or any other person, as a condition of granting an interim order under this section, to give an undertaking as to damages.
- (3) In determining an application for the grant of an interim order, the court must not take into account that the applicant is not required to give an undertaking as to damages.

Compare: Corporations Act 2001 s 1323(3), (4) (Aust)

Section 43R: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43S Relationship with other law**

- (1) Nothing in sections 43P to 43R affects the powers that the court has apart from those sections.
- (2) This section has effect subject to the Insolvency Act 1967.

Compare: Corporations Act 2001 s 1323(7), (8) (Aust)

Section 43S: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43T Offence**

A person commits an offence who contravenes an order by the court under section 43Q or section 43R that is applicable to the person (*see* section 43E for the maximum penalty of 3 years' imprisonment and a \$100,000 fine for an individual or a \$300,000 fine for a body corporate).

Compare: Corporations Act 2001 s 1323(9), (10) (Aust)

Section 43T: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**Subpart 6—General**

Subpart 6: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43U Time for laying information for summary offences**

- (1) Any information for an offence against this Act punishable on summary conviction may be laid at any time within 3 years after the date of the offence.
- (2) Subsection (1) applies despite section 14 of, or anything else to the contrary in, the Summary Proceedings Act 1957.

Section 43U: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43V Evidence not otherwise admissible**

In the exercise of its jurisdiction under this Act, the court may receive in evidence any statement, document, or information that would not be otherwise admissible that may in its opinion assist it to deal effectively with the matter.

Section 43V: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43W Court may order payment of FMA's costs**

If the FMA brings proceedings under this Part and the court makes any order against a person under this Part, the court may also order that person to pay the FMA's costs and expenses in bringing the proceedings.

Section 43W: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 43W heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 43W: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 43W: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

**43X Orders to secure compliance**

The court may, for the purpose of securing compliance with any other order it makes under this Part, direct a person to do or refrain from doing a specified act.

Section 43X: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43Y Giving notice of applications for court orders**

Before making an order under this Part, the court may direct the person making the application for the order to—

- (a) give notice of the application to those persons the court thinks fit;
- (b) publish notice of the application in the manner the court thinks fit.

Section 43Y: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43Z General provisions as to court's orders**

- (1) An order under this Part may be made on the terms and conditions the court thinks fit.
- (2) The court may revoke, vary, or suspend an order made under this Part on the terms and conditions the court thinks fit.

Section 43Z: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

**43ZA Persons entitled to appear before court**

The following persons are entitled to appear and be heard at the hearing of an application to the court under this Part:

- (a) the applicant;
- (b) the public issuer;
- (c) a person who is alleged to have suffered, or to be likely to suffer, loss or damage because of an alleged contravention (whether that person or another person makes the allegation);
- (d) the FMA;
- (e) the relevant registered exchange;
- (f) a person directed to be given notice of the application;
- (g) with the leave of the court, any other person.

Section 43ZA: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 43ZA(d): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**43ZB Knowledge of matters presumed if employee or agent knows matters**

In any proceedings under this Act, it is presumed, in the absence of proof to the contrary, that a person knew, at a material

time, of any matter if, at that time, an employee or agent of that person knew of the matter in his or her capacity as employee or agent.

Section 43ZB: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **43ZC No pecuniary penalty and fine for same conduct**

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine under this Act for the same conduct.

Section 43ZC: inserted, on 29 February 2008, by section 12(1) of the Securities Markets Amendment Act 2006 (2006 No 47).

### **Part 6 Miscellaneous**

Part 6 heading: inserted, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### *General provisions*

Heading: inserted, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **44 Commission may exercise powers under Securities Act 1978**

*[Repealed]*

Section 44: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

#### **45 Actions of other persons on behalf of registered exchanges**

- (1) If a person acts on behalf of a registered exchange,—
  - (a) this Act applies to that person in the same way as it would apply to the registered exchange if it were acting itself (with any necessary modifications); and
  - (b) the registered exchange is also responsible under this Act for the acts of the person as if it were acting itself (with any necessary modifications).
- (2) Subsection (1) applies except as expressly provided by this Act.

Section 45: substituted, on 1 December 2002, by section 24 of the Securities Markets Amendment Act 2002 (2002 No 44).

**46 Protection for acting on FMA directions**

A registered exchange, or an officer or employee of a registered exchange, is not liable for any act done or omitted to be done by that person in compliance with a direction by the FMA under section 36ZO.

Section 46: substituted, on 1 December 2002, by section 24 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 46 heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 46: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**47 Protection from liability for registered exchanges and others**

- (1) A registered exchange is not liable for anything it may do or fail to do in the course of the exercise or intended exercise of its functions or duties under Part 2 or Part 2B, unless it is shown that it acted in bad faith or without reasonable care.
- (2) An officer, an employee, or a person acting on behalf of a registered exchange is not liable for anything he or she may do or say or fail to do or say in the course of the exercise or intended exercise of the registered exchange's functions or duties under Part 2 or Part 2B, unless it is shown that he or she acted in bad faith.

Section 47: substituted, on 1 December 2002, by section 24 of the Securities Markets Amendment Act 2002 (2002 No 44).

**47AA Protection from liability in connection with unsolicited offer obligations**

- (1) This section applies to any person who—
  - (a) is stated by the regulations made under section 48DB to be a protected person for the purposes of this section; and
  - (b) is not in contravention of an unsolicited offer obligation or exemption.
- (2) A person to whom this section applies is not liable for any act done or omitted to be done by that person in good faith if the act or omission is—
  - (a) required by an unsolicited offer order made by the FMA; or

- (b) required by an order made by the court under Part 5 in connection with a contravention of an unsolicited offer obligation or exemption; or
- (c) stated by the regulations made under section 48DB to be a protected act or omission for the purposes of this section.

Section 47AA: inserted, on 1 May 2011, by section 46 of the Securities Markets Amendment Act 2011 (2011 No 7).

### *Appeals*

Heading: inserted, on 1 May 2011, by section 46 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **47A Appeals against decisions of FMA on questions of law only**

A person that considers that a decision of the FMA under any of the following provisions is wrong in law may appeal against the decision to the High Court on a question of law only:

- (a) section 34 (which relates to requirements for persons to disclose relevant interests and powers to get relevant interests);
- (b) section 36ZO (which relates to directions by the FMA to registered exchanges);
- (c) subpart 1 of Part 5 (which relates to the FMA's enforcement powers).

Section 47A: inserted, on 1 May 2011, by section 46 of the Securities Markets Amendment Act 2011 (2011 No 7).

### *Exemptions granted and removed by FMA*

Heading: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

Heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **48 Exemptions granted by FMA**

- (1) The FMA may, on the terms and conditions (if any) that it thinks fit,—
  - (a) exempt any transaction, class of transactions, person, class of persons, or class of relevant interests, acquisitions, or disposals from compliance with any directors' and officers' disclosure obligation or obligations:



- (b) exempt any person or class of persons, any transaction or class of transactions, or any class of relevant interests, substantial holdings, or relevant events from compliance with any substantial holding disclosure obligation or obligations:
  - (c) *[Repealed]*
  - (d) exempt any person or class of persons from compliance with any requirement of the Futures Industry (Client Funds) Regulations 1990 or regulations that replace them.
- (2) The FMA must not grant an exemption under this section unless it is satisfied that—
  - (a) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption; and
  - (b) in the case of subsection (1)(d), there are adequate alternative safeguards for preserving client money and client property.

Section 48: substituted, on 1 May 2011, by section 47 of the Securities Markets Amendment Act 2011 (2011 No 7).

Section 48(1)(c): repealed, on 1 July 2011, by section 164(7) of the Financial Advisers Act 2008 (2008 No 91).

#### **48A Status and publication of exemptions**

- (1) An exemption granted under section 48—
  - (a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and
  - (b) must be presented to the House of Representatives under section 4 of that Act.
- (2) A class exemption (but not any other exemption granted under section 48) is a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- (3) An exemption granted under section 48 that is not a class exemption must, as soon as practicable after it is granted, be—
  - (a) published on an Internet site maintained by or on behalf of the FMA; and
  - (b) notified in the *Gazette*; and
  - (c) made available in printed form for purchase on request by members of the public.

- (4) A notification in the *Gazette* for the purpose of subsection (3)(b) does not have to include the text of the exemption.
- (5) The FMA's reasons for granting an exemption under section 48 (including why the exemption is appropriate) must be published together with the exemption.
- (6) In this section, **class exemption**—
  - (a) means an exemption of general application that applies to a class of persons, transactions, offers, securities, relevant interests, substantial holdings, relevant events, acquisitions, or disposals; but
  - (b) does not include an exemption granted in relation to—
    - (i) particular persons, transactions, offers, securities, relevant interests, substantial holdings, relevant events, acquisitions, or disposals; or
    - (ii) persons, transactions, offers, securities, relevant interests, substantial holdings, relevant events, acquisitions, or disposals associated with or involving a particular entity.

Section 48A: substituted, on 1 May 2011, by section 47 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **48B Variation or revocation of exemptions**

- (1) The FMA may vary or revoke an exemption granted under section 48.
- (2) Section 48A and this section apply, with necessary modifications, in all respects to a variation or revocation under this section.

Section 48B: substituted, on 1 May 2011, by section 47 of the Securities Markets Amendment Act 2011 (2011 No 7).

#### **48C FMA may designate persons as not exempt from disclosure obligations**

- (1) The FMA may, by notice in the *Gazette*, designate a person as a person that is not exempt under section 6(1)(a) to (g) (in relation to either subpart 2 or subpart 3 of Part 2) or under section 31 or section 32A.
- (2) The FMA may exercise that power if it is satisfied that the exemption is being used for purposes of circumventing, evading, or defeating the purpose of the subpart that will (in whole or

part) apply as a result of the designation, taking into account the nature, substance, and economic effect of the interest or relationship or other facts (and not the mere form).

- (3) The FMA may, by notice in the *Gazette*, revoke a designation.
- (4) A notice under this section has effect according to its tenor.
- (5) A notice under this section takes effect from the date stated in the notice (which must not be earlier than the date of the *Gazette* notice).

Section 48C: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 48C heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 48C(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 48C(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 48C(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **48D Requirements for FMA for designations of persons as not exempt**

- (1) Before designating a person as not exempt under section 48C, the FMA must—
  - (a) do everything reasonably possible on its part to advise the person of the proposed designation; and
  - (b) give the person a reasonable opportunity to make submissions to the FMA on the proposal.
- (2) Subsection (1) does not apply to a designation if the FMA considers that it is desirable in the public interest for the exemption to be removed urgently.
- (3) Failure to comply with subsection (1) does not invalidate the designation.
- (4) The FMA must list on its website all persons that are currently designated (and may also publicly notify them by any other means).

Section 48D: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 48D heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 48D(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 48D(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 48D(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 48D(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### *Regulations*

Heading: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

#### **48DA Definitions relating to unsolicited offer regulations and related provisions**

- (1) For the purposes of this Act, an **unsolicited offer** means an offer to which all of the following apply:
  - (a) the offer is to acquire a security, to acquire a power to dispose of a security, or to acquire another interest in or right attaching to a security, made by a person (**A**) to another person (**B**) (whether the acquisition is by A or an associated person of A):
  - (b) it is unsolicited by B:
  - (c) it is not made on a registered market:
  - (d) it is within the class or classes of unsolicited offers to which the regulations apply:
  - (e) it is not a takeover offer for securities under the takeovers code or an acquisition or a redemption by a company of its shares under the Companies Act 1993.
- (2) For the purposes of this section, sections 47AA, 48DB, 48DC, and any regulations made under this section,—
  - (a) **associated person** has the meaning set out in section 49(7)(b) of the Financial Markets Authority Act 2011:
  - (b) an **offer** made by A includes an invitation or proposal for A (or an associated person of A) to make an offer:
  - (c) regulations may define or clarify the meaning of **unsolicited**.

Section 48DA: inserted, on 1 May 2011, by section 48 of the Securities Markets Amendment Act 2011 (2011 No 7).

**48DB Regulations concerning unsolicited offer regulations**

- (1) The Governor-General may, on the recommendation of the Minister in accordance with subsection (3), make regulations setting out the rules applying to unsolicited offers for any or all of the purposes set out in subsection (2).
- (2) The purposes are—
  - (a) ensuring offerees are fully informed of—
    - (i) the current market price of a listed security or, for a non-listed security, a fair estimate of the value of the security and the basis for making that estimate; and
    - (ii) the material terms of the offer and their effect; and
    - (iii) any warnings issued by the FMA (if ordered by the FMA to be contained in or to accompany offer documents); and
    - (iv) their rights and remedies under the regulations:
  - (b) ensuring that notice of an unsolicited offer to security holders is given to the relevant public issuer or issuer and the FMA:
  - (c) ensuring that no agreement to transfer may bind offerees for a minimum period for the purpose of enabling offerees to consider, and reconsider, any decision to accept an offer:
  - (d) requiring there to be minimum or maximum offer periods or both:
  - (e) setting out any other rules applying to unsolicited offers.
- (3) In formulating recommendations to make regulations under this section, the Minister must—
  - (a) have regard to the objective of preventing unfair practices in the making of unsolicited offers; and
  - (b) consult with the FMA.

Section 48DB: inserted, on 1 May 2011, by section 48 of the Securities Markets Amendment Act 2011 (2011 No 7).

**48DC Specific provisions for regulations concerning unsolicited offers**

The regulations made under section 48DB may, without limiting that section,—

- (a) define the class or classes of unsolicited offers and securities to which the regulations apply:
- (b) prescribe requirements in relation to unsolicited offers and the making of those offers, including requirements as to the form and content of those offers, variations of those offers, the updating and resending of offer documents or other corrective statements, and the implication of terms into the offer or any resulting agreement:
- (c) prescribe the information, statements, certificates, or other documents that must be supplied to offerees, the relevant public issuer or issuer, and the FMA:
- (d) provide for any duties or functions of the FMA in connection with the rules applying to unsolicited offers:
- (e) state which obligations are unsolicited offer obligations for the purposes of this Act:
- (f) provide for the exercise of a right to withdraw a notification of a decision to accept an unsolicited offer, a right to refuse to complete a transfer, or any other right or remedy of offerees, and any consequences and obligations that apply in those cases:
- (g) provide for any powers of, and requirements on, public issuers, issuers, or their agents in connection with transfers under an unsolicited offer and provide for protections from liability for those persons, persons administering a register of securities, and other persons for the purposes of section 47AA:
- (h) provide for the regulations to—
  - (i) extend to, or in respect of, any conduct of an associated person of an offeror and any conduct that, in substance or effect, constitutes an unsolicited offer:
  - (ii) prohibit contracting out of the regulations and include any other provision or provisions designed to prevent avoidance of the regulations (for example, prohibiting persons inviting others to make an offer to sell a security in circumstances in which, if the invitation were an offer to acquire the security, it would be an unsolicited offer to which the regulations applied):

- (i) provide for transitional matters.

Section 48DC: inserted, on 1 May 2011, by section 48 of the Securities Markets Amendment Act 2011 (2011 No 7).

**48E Regulations requiring continuous disclosure by public issuers**

- (1) The Governor-General may, on the recommendation of the Minister in accordance with section 48F or section 48G, make regulations for the purpose of providing, under section 19C, for continuous disclosure by public issuers of material information that is not generally available to the market.
- (2) Those regulations may—
  - (a) declare that section 19C applies to a registered exchange:
  - (b) contain requirements for the purpose of requiring public issuers that are parties to listing agreements with that exchange to notify information about events or matters as they arise (being material information that is not generally available to the market) for the purpose of that information being made available to participants in the registered exchange's securities market:
  - (c) determine the form in which, how, and when that information must be made available to participants in the registered exchange's securities market, or provide who may determine any of these matters:
  - (d) determine the form of, method of, and any additional details required with, the notification of that information, or provide who may determine any of these matters:
  - (e) exempt (on terms and conditions, if any) persons, classes of persons, information, and classes of information from compliance with any provision or provisions of the regulations:
  - (f) provide for a specified person or persons to exempt (on terms and conditions, if any) persons, classes of persons, information, and classes of information from compliance with any provision or provisions of the regulations, and to vary and revoke those exemptions:

- (g) provide for a specified person or persons to carry out functions under the regulations, and the powers and procedures of that person or persons:
  - (h) require fees and charges to be paid in connection with the performance or exercise of a function or power referred to in paragraph (f) or paragraph (g), and prescribe those fees and charges or a means by which they may be calculated or ascertained:
  - (i) provide for transitional provisions.
- (3) A failure to comply with section 48F(3) or section 48G(2)(b) to (d) does not invalidate any regulations made under this section.

Section 48E: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 48E(2)(b): amended, on 24 November 2009, by section 22 of the Securities Markets Amendment Act 2009 (2009 No 54).

Section 48E(2)(c): amended, on 24 November 2009, by section 22 of the Securities Markets Amendment Act 2009 (2009 No 54).

#### **48F Requirements for regulations replacing continuous disclosure listing rules**

- (1) This section applies if the Minister proposes to recommend regulations to declare that section 19C applies to a registered exchange.
- (2) The Minister may make a recommendation under section 48E if the Minister—
  - (a) has had regard to the purpose of subpart 1 of Part 2, the criteria stated in section 19A, and any other matters he or she considers relevant; and
  - (b) is satisfied that, over time, the continuous disclosure provisions of the registered exchange's listing rules, or the registered exchange's administration of those provisions, has not achieved the purpose of that subpart.
- (3) The Minister must, before making that recommendation,—
  - (a) give at least 3 months' written notice of the proposed recommendation, and of the Minister's reasons for his or her opinion under subsection (2)(b), to—
    - (i) the FMA; and
    - (ii) the relevant registered exchange; and



- (iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposal; and
- (b) have regard to any submissions made by those persons within the notice period given; and
- (c) give at least 14 days' written notice to the persons in paragraph (a), and in the *Gazette*, of his or her decision to do so and of the Minister's reasons for his or her opinion under subsection (2)(b).

Section 48F: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 48F(3)(a)(i): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **48G Ongoing requirements for continuous disclosure regulations**

- (1) This section applies if the Minister proposes to recommend regulations to amend, revoke, or replace regulations made under section 48E.
- (2) The Minister must, before making a recommendation under section 48E,—
  - (a) have regard to the purpose of subpart 1 of Part 2, the criteria stated in section 19A, and any other matters he or she considers relevant; and
  - (b) give written notice of the proposed recommendation to—
    - (i) the FMA; and
    - (ii) the relevant registered exchange; and
    - (iii) any other persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the proposal; and
  - (c) have regard to any submissions made by those persons within the notice period given; and
  - (d) give at least 14 days' written notice to the persons in paragraph (b), and in the *Gazette*, of his or her decision to do so.

Section 48G: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 48G(2)(b)(i): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**49 Regulations concerning directors' and officers' disclosure obligations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (2), make regulations for the purpose of—
  - (a) declaring any persons (whether described as a class or otherwise) not to be officers for the purpose of the definition of officer in section 2:
  - (b) prescribing further matters relating to a relevant interest, or acquisition or disposal of a relevant interest, that must be disclosed by directors and officers under subpart 2 of Part 2, which may include (without limitation):
    - (i) the nature of the relevant interest:
    - (ii) the number and class of securities to which the relevant interest relates or related:
    - (iii) the date of the disclosure obligation becoming applicable, or the date of the acquisition or disposal:
    - (iv) the consideration paid or received for the acquisition or disposal:
    - (v) details as to the circumstances in which the acquisition or disposal occurred:
    - (vi) the date of the last disclosure by the director or officer:
  - (c) determining when the disclosure in paragraph (b) is required (including by requiring disclosure only on request) and prescribing the form of or for, and the method of, disclosure, or providing for the relevant registered exchange to determine that form or method and for the way in which it must do so:
  - (d) exempting (on terms and conditions, if any) classes of persons, classes of transactions, or classes of relevant interests, acquisitions, or disposals from compliance with any directors' and officers' disclosure obligation or obligations.
- (2) The Minister must consult with the FMA before making a recommendation under subsection (1).

Section 49: substituted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 49(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**49A Regulations concerning substantial holding disclosure**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (3), make regulations for the purpose of—
  - (a) prescribing further matters relating to a matter, a relevant event, or a substantial holding, that must be disclosed under subpart 3 of Part 2, which may include (without limitation):
    - (i) the nature of the relevant interests in the substantial holding (including before and after the relevant event in the case of sections 23 and 24):
    - (ii) the number, nominal value (if any), and class of securities in which the person has or had the substantial holding (including before and after the relevant event in the case of sections 23 and 24):
    - (iii) the date of the relevant event:
    - (iv) the terms and conditions (including consideration) of the transaction giving rise to the relevant event:
    - (v) details as to the circumstances in which the relevant event occurred:
    - (vi) the date of the last disclosure by the person under that subpart in respect of the substantial holding:
    - (vii) information relating to the relevant event or substantial holding and concerning other persons who have made disclosures under that subpart:
  - (b) prescribing the documents, certificates, and statements that must accompany or be annexed to those disclosures:
  - (c) determining when disclosure of the further matters referred to in paragraph (a) is required (including by requiring disclosure only on request):
  - (d) prescribing the form of or for, and the method of, disclosure under that subpart (and of any other acknowledgments or notices required by the subpart), or providing for the relevant registered exchange to determine

that form or method and providing for the way in which it must do so:

- (e) exempting (on terms and conditions, if any) classes of persons, classes of transactions, or classes of relevant interests, substantial holdings, or relevant events from compliance with any substantial holding disclosure obligation or obligations.
- (2) The further matters prescribed for disclosures required by section 22 or 25 may differ according to whether section 15(1)(a), (b), or (d) of the Securities Markets Amendment Act 2006 (which contains transitional provisions) applies to the disclosure or not.
- (3) The Minister must consult with the FMA before making a recommendation under subsection (1).

Section 49A: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 49A(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **49B Regulations concerning dealing in futures contracts**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, in accordance with subsection (3), make regulations for the purpose of—
- (a) regulating the business and operations of authorised futures exchanges:
  - (b) regulating the carrying on of the business of dealing in futures contracts and prescribing requirements that must be met by persons dealing in those contracts including requirements relating to the disclosure of financial and other information and the appointment and duties of trustees:
  - (c) regulating the receipt of money and property from clients by persons dealing in futures contracts and the application of that money and property:
  - (d) prescribing requirements relating to the deposit of that money and property in separate clients' funds accounts or safe custody, as the case may be:

- (e) specifying the duties and obligations of those dealers in relation to clients' funds accounts including obligations to make payments into those accounts:
  - (f) providing for the protection of money deposited in clients' funds accounts and the investment of that money and property deposited in safe custody from claims against persons dealing in futures contracts:
  - (g) providing for the FMA to carry out functions under the regulations, and its powers and procedures in doing so.
- (2) Without limiting subsection (1), regulations made under that subsection may also apply to persons acting on behalf of an authorised futures exchange in the same way that they apply to the authorised futures exchange.
- (3) The Minister must consult with the FMA before making a recommendation under subsection (1).

Section 49B: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 49B(1)(g): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49B(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **49C Regulations concerning investment advisers and brokers** *[Repealed]*

Section 49C: repealed, on 1 July 2011, by section 164(7) of the Financial Advisers Act 2008 (2008 No 91).

#### **49D Other regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (3), make regulations for the purpose of—
- (a) exempting (on terms and conditions, if any) anything from being dealings in securities for the purposes of the general dealing misconduct prohibition:
  - (b) exempting (on terms and conditions, if any) conduct from being—
    - (i) insider conduct, that is conduct that would otherwise fall within section 8C or section 8D or section 8E:

- (ii) market manipulation, that is conduct that would otherwise fall within section 11 or section 11B:
  - (c) requiring information to be provided in a notice under section 36ZD:
  - (d) prescribing fees and charges to be paid for the purposes of this Act, or a means by which fees and charges may be calculated or ascertained:
  - (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Without limiting subsection (1)(d), regulations made under that paragraph may—
- (a) authorise the FMA to require payment of fees and charges—
    - (i) in connection with the exercise by the FMA of any power or function conferred on it by or under this Act:
    - (ii) on an application to the FMA to exercise any power or function conferred on it by or under this Act:
    - (iii) from a person for advice provided by the FMA to the Minister on the exercise of the Minister's powers or functions in connection with that person under this Act:
  - (b) authorise the FMA to require payment of any costs incurred by the FMA.
- (3) The Minister must consult with the FMA before making a recommendation under subsection (1).

Section 49D: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 49D(2)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49D(2)(a)(i): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49D(2)(a)(ii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49D(2)(a)(iii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49D(2)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 49D(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

**49E Breach of exemption conditions**

The breach of a term or condition of an exemption provided by regulations made under this Act or by notice under section 48 is a breach of the obligation for which the exemption applies.

Section 49E: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

**49F Regulations or exemptions in respect of specified overseas jurisdictions**

Without limiting sections 48 to 49D, exemptions made under those sections or under regulations made under those sections may extend to all, or classes of, persons, transactions, or other matters in relation to specified overseas jurisdictions.

Section 49F: inserted, on 29 February 2008, by section 13 of the Securities Markets Amendment Act 2006 (2006 No 47).

**50 Disclosure of information relating to inspection**

*[Repealed]*

Section 50: repealed, on 1 December 2002, by section 25 of the Securities Markets Amendment Act 2002 (2002 No 44).

**51 Regulations and Orders in Council**

*[Repealed]*

Section 51: repealed, on 1 December 2002, by section 25 of the Securities Markets Amendment Act 2002 (2002 No 44).

**52 Fees and charges**

*[Repealed]*

Section 52: repealed, on 1 December 2002, by section 25 of the Securities Markets Amendment Act 2002 (2002 No 44).

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## Securities Markets Amendment Act 2006

Public Act    2006 No 47  
Date of assent    24 October 2006  
Commencement    see section 2

### 1    **Title**

This Act is the Securities Markets Amendment Act 2006.

### 2    **Commencement**

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) One or more orders may be made bringing different provisions into force on different dates.

Section 2(1): this Act brought into force, on 29 February 2008, by the Securities Markets Amendment Act 2006 Commencement Order 2007 (SR 2007/367).

### 3    **Principal Act amended**

This Act amends the Securities Markets Act 1988.

### *Miscellaneous*

### 15    **Transitional provisions relating to new subpart 3 of Part 2 of principal Act**

- (1) The following transitional provisions apply to the commencement of new subpart 3 of Part 2 (**commencement**):
  - (a) a person who, immediately before commencement, was a substantial security holder under old section 20 of the principal Act is not required to disclose that fact (or any of their existing substantial holdings) by new section 22 (but *see* paragraph (e));
  - (b) a person who begins to have a substantial holding only as a result of the commencement of new subpart 3 of Part 2 (for example, because of changes to the meaning of substantial security holder) must disclose that fact in accordance with new section 22 (except that disclosure is not required until the expiry of 14 days after commencement);



- (c) new sections 23 and 24 apply only to a movement or change that occurs on or after commencement;
  - (d) a person who ceases to have a substantial holding only as a result of the commencement of new subpart 3 of Part 2 must disclose that fact in accordance with new section 25 (except that disclosure is not required until the expiry of 14 days after commencement);
  - (e) old subpart 3 and the rest of the Securities Markets Act 1988 continues to apply as they did immediately before commencement for the purposes of any disclosure required by old subpart 3 before commencement.
- (2) In this section, **new section** or **new subpart** means the section or subpart inserted by section 11, and **old section** or **old subpart** means the section or subpart as they were immediately before commencement.

**16 Transitional provision for existing offences and contravention**

- (1) This section applies to an offence committed under, or a contravention of,—
- (a) subpart 3 of Part 2 of the principal Act, or the Securities (Substantial Security Holders) Regulations 1997, before the commencement of section 11; and
  - (b) the Investment Advisers (Disclosure) Act 1996 before the commencement of section 12(2); and
  - (c) the rest of the principal Act and any other regulations in force under it, (other than the subpart and regulations specified in paragraph (a)) before the commencement of this section.
- (2) The enactments referred to in subsection (1) continue to have effect as if they had not been amended, repealed, or revoked by this subpart for the purpose of—
- (a) investigating an offence or contravention to which this section applies;
  - (b) commencing or completing proceedings for an offence or contravention to which this section applies;

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- (c) imposing a penalty or other remedy, or making an order, in relation to an offence or contravention to which this section applies.
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## Securities Markets Amendment Act 2011

Public Act    2011 No 7  
Date of assent    18 April 2011  
Commencement    see section 2

### **1    Title**

This Act is the Securities Markets Amendment Act 2011.

### **2    Commencement**

This Act comes into force on 1 May 2011.

### **3    Principal Act amended**

This Act amends the Securities Markets Act 1988.

#### *Transitional provisions*

### **49    Transitional provisions for conduct rules and registered exchanges**

- (1) Any conduct rules that had effect under section 36I of the principal Act immediately before the commencement of this section—
  - (a) continue to have effect under section 36I of the principal Act (as substituted by this Act); and
  - (b) must be treated as market rules that have been approved under section 36L of the principal Act (as substituted by this Act).
- (2) Any reference in an enactment, proceedings, or other thing (whether express or implied) to conduct rules must be read as a reference to market rules.
- (3) NZX Limited continues to be a registered exchange under the principal Act (as amended by this Act), holding a market registration for its NZSX, NZDX, and NZAX markets (without the need for any further notice of market registration).

### **50    Transitional provision for authorised futures exchanges**

- (1) In this section,—

**existing authorisation** means a declaration of authorisation that was in effect under section 37(8) of the principal Act immediately before the date on which this section comes into force

**transitional period** means, in relation to each existing authorisation, the period commencing on the date on which this section comes into force and ending on the sooner of—

- (a) the revocation or variation of the existing authorisation (whether or not following a review under this section);
  - (b) the date of publication of a notice confirming the existing authorisation under subsection (4).
- (2) During the transitional period for each existing authorisation,—
- (a) the authorised futures exchange under the existing authorisation continues to be an authorised futures exchange under section 37(8) of the principal Act (as amended by this Act); and
  - (b) each futures market operated in New Zealand under the existing authorisation must be treated as being an authorised futures market for the purposes of the principal Act.
- (3) The FMA must carry out a review of each existing authorisation to—
- (a) determine the futures market or markets to which the authorisation should apply; and
  - (b) ensure that it is satisfied that—
    - (i) the operation of each of those futures markets by the authorised futures exchange will be subject to requirements and supervision under the existing or proposed terms and conditions of the authorisation or the law and regulatory requirements of another jurisdiction (if the exchange is also authorised to conduct the market in another jurisdiction), or both; and
    - (ii) those requirements and that supervision are likely to have at least equivalent outcomes, in terms of the degree of integrity and effectiveness of the market and the confidence of investors in the market, to the likely outcomes for that market

if the market were registered under section 36F of the principal Act; and

- (c) review any other matters it thinks fit.
- (4) The FMA must, after completing each review,—
  - (a) vary, revoke, or revoke and replace the existing authorisation under section 37(10) of the principal Act; or
  - (b) publish a notice in the *Gazette* confirming the existing authorisation.
- (5) The FMA must use its best endeavours to complete the reviews no later than 9 months after the date on which this section comes into force.

## **51 Exemptions continue in force**

- (1) This section applies to every exemption granted under section 48 of the principal Act that is in force immediately before the commencement of this section.
  - (2) The exemption—
    - (a) continues in force as if it were granted under section 48 of the principal Act (as substituted by this Act); and
    - (b) may be amended or revoked as if granted under that section.
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**Contents**

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**Notes****1 General**

This is a reprint of the Securities Markets Act 1988. The reprint incorporates all the amendments to the Act as at 1 October 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

**2 Status of reprints**

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 How reprints are prepared**

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

**4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989***

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5**     ***List of amendments incorporated in this reprint  
(most recent first)***

Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10): section 74(2)

Securities Markets Amendment Act 2011 (2011 No 7)

Financial Markets Authority Act 2011 (2011 No 5): sections 82, 84(3), (5)

Financial Advisers Amendment Act 2010 (2010 No 40): section 50

Securities Markets Amendment Act 2009 (2009 No 54)

Māori Trustee Amendment Act 2009 (2009 No 12): section 30(2)(a)

Financial Advisers Act 2008 (2008 No 91): section 164

Limited Partnerships Act 2008 (2008 No 1): section 121(4)

Securities Markets Amendment Act 2006 Commencement Order 2007 (SR 2007/367)

Companies Amendment Act (No 2) 2006 (2006 No 62): section 16

Securities Markets Amendment Act 2006 (2006 No 47)



Gambling Act 2003 (2003 No 51): section 374  
Securities Markets Amendment Act 2002 (2002 No 44)  
Securities Amendment Act 1998 (1998 No 59)  
Securities Amendment Act (No 2) 1997 (1997 No 54)  
Sharebrokers Amendment Act 1996 (1996 No 144): section 3(2)

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