

**Reprint
as at 1 October 2011**



Securities Act 1978

Public Act 1978 No 103
Date of assent 20 October 1978
Commencement see section 1(2)

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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.

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An Act to consolidate and amend the law relating to the offering of securities to the public, and to extend the application thereof

Title: amended, on 1 May 2011, by section 4 of the Securities Amendment Act 2011 (2011 No 6).

1 Short Title and commencement

- (1) This Act may be cited as the Securities Act 1978.
- (2) The provisions of this Act shall come into force on a date to be fixed by the Governor-General by Order in Council. For the purposes of this subsection, 1 or more Orders in Council may be made bringing different provisions of this Act into force on different dates.

Section 1(2): sections 1, 2, 5(5), Part 1, sections 48(3), (4), 70, 72, and 76 brought into force, on 1 May 1979, by the Securities Act Commencement Order 1979 (SR 1979/94).

Section 1(2): the provisions of this Act not already in force on 4 July 1983, including, in particular, sections 3, 4, 5(1)–(4), 6–8, 33–47, 48(1), (2), (5), 49–69, 71, and 73–75, and the schedules brought into force, on 1 September 1983, by the Securities Act Commencement Order 1983 (SR 1983/119).

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—
advertisement has the meaning set out in section 2A

allot includes sell, issue, assign, and convey; and **allotment** has a corresponding meaning

associated persons or **persons associated with each other** are—

- (a) persons who are relatives within the meaning of the Income Tax Act 2007; or
- (b) persons who are partners to whom the Partnership Act 1908 applies; or
- (c) bodies corporate that consist substantially of the same members or shareholders or that 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 rights 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 of the body corporate

authorised advertisement has the meaning assigned to it by section 38 or section 38AA

bonus bond means a unit in an approved unit trust within the meaning of section 3(1) of the Finance Act (No 2) 1990

building society has the same meaning as in section 2(1) of the Building Societies Act 1965

chattel includes livestock and emissions units, but does not include a book debt or negotiable instrument

civil liability event has the meaning set out in section 55B

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

contributory mortgage means a mortgage of land that—

- (a) secures money owing to 2 or more persons or to a nominee on behalf of 2 or more persons, whether or not the mortgage originally secured money owing to only 1 person; or
- (b) has the same priority in respect of the land as another mortgage or mortgages of that land;—

and, for the purposes of this definition, money owing to not more than 5 persons as joint tenants shall be deemed to be owed to 1 person

contributory mortgage broker means a person (not being a mortgagor under the mortgage or any other person to whom or for whose benefit any money is lent in consideration for the mortgage given by the mortgagor) who—

- (a) offers an interest in a contributory mortgage to the public for subscription; or
- (b) manages interests in a contributory mortgage, being interests that have been offered to the public for subscription, whether or not that person holds beneficially any interest in that mortgage

contributory scheme means any scheme or arrangement that, in substance and irrespective of the form thereof, involves the investment of money in such circumstances that—

- (a) the investor acquires or may acquire an interest in or right in respect of property; and
- (b) pursuant to the terms of investment that interest or right will or may be used or exercised in conjunction with any other interest in or right in respect of property acquired in like circumstances, whether at the same time or not;—

but does not include such a scheme or arrangement if the number of investors therein does not exceed 5, and neither a manager of the scheme nor any associated person is a manager of any other such scheme or arrangement

convertible note has the same meaning as in section YA 1 of the Income Tax Act 2007

co-operative company means—

- (a) a company registered as a co-operative company under the Co-operative Companies Act 1956 or the Co-operative Companies Act 1996; or
- (b) a company registered as a co-operative dairy company under the Co-operative Dairy Companies Act 1949 or Part 3 of the Co-operative Companies Act 1996; or
- (c) a company registered as a co-operative freezing company under the Co-operative Freezing Companies Act 1960; or
- (d) a company registered as a co-operative forestry company under the Co-operative Forestry Companies Act 1978

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

the Crown includes a government department

date of a prospectus means the date specified on a prospectus pursuant to section 39(1)(a)

date of a registered prospectus means the date specified on a registered prospectus pursuant to section 39(1)(a)

date of a statement of financial position or date of an interim statement of financial position means the date as at which the statement of affairs contained in the statement of financial position or interim statement of financial position has been drawn up

debt security means 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); and includes—

- (a) a debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and
- (b) an interest or right that is declared by regulations to be a debt security for the purposes of this Act; and
- (c) a renewal or variation of the terms or conditions of any such interest or right or of a security referred to in paragraph (a) or paragraph (b);—

but does not include—

- (d) an interest in a contributory mortgage where the interest is offered by a contributory mortgage broker; or
- (e) any such interest or right or a security referred to in paragraph (a) or paragraph (c) that is declared by regulations not to be a debt security for the purposes of this Act

delayed allotment order means an order made by the FMA under section 44A(2) or (3) that delays the date of allotment of a security that is offered in a simplified disclosure prospectus

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

disclosure obligation means—

- (a) the requirements of the continuous disclosure provisions as defined in section 19D of the Securities Markets Act 1988; and
- (b) any obligation that—
 - (i) requires ongoing disclosure of information to the public or to a person who has a role in monitoring the person who disclosed the information; and
 - (ii) is imposed by an enactment; and
 - (iii) is specified in the regulations

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

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, sequestration, 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

equity security means any interest in or right to a share in, or in the share capital of, a company; and includes—

- (a) a preference share, and company stock; and
- (b) a security that is declared by regulations to be an equity security for the purposes of this Act; and
- (c) a renewal or variation of the terms or conditions of any such interest or right or a security referred to in paragraph (a) or paragraph (b);—

but does not include any such interest or right or a security referred to in paragraph (a) or paragraph (c) that is declared by regulations not to be an equity security for the purposes of this Act

expert means any person who holds himself or herself out to be of a profession or calling that gives authority to a statement made by him or her; but does not include a person acting in his or her capacity as an auditor or as a director or officer of a body

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

government department includes—

- (a) the Māori Trustee; and
- (b) Public Trust, but in relation only to money constituted in the common fund of Public Trust that is entitled to the protection against deficiency afforded by section 52 of the Public Trust Act 2001

greenhouse gas has the meaning set out in section 31 of the Climate Change Response Act 2002

interest in a superannuation scheme means an interest or right to participate in any capital, assets, earnings, or other property of a superannuation scheme; and includes—

- (a) any interest or right that is declared by regulations to be an interest in a superannuation scheme for the purposes of this Act; and
- (b) any renewal or variation of the terms or conditions of any such interest or right or a security referred to in paragraph (a);—

but does not include any such interest or right, or a security referred to in paragraph (b), that is declared by regulations not to be an interest in a superannuation scheme for the purposes of this Act

investment statement has the meaning set out in section 38C

issuer means,—

- (a) in relation to an equity security or a debt security, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to an equity security or a debt security, or to a trust deed that relates to a debt security, the person on whose behalf any money paid in consideration of the allotment of the security is received;
- (b) in relation to a participatory security, or to an advertisement, investment statement, prospectus, or registered prospectus, or to a deed of participation that relates to a participatory security, the manager;
- (c) in relation to an interest in a contributory mortgage offered by a contributory mortgage broker, or to an advertisement that relates to such an interest, the contributory mortgage broker:

- (d) in relation to a unit in a unit trust, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to such a unit, the manager:
- (e) in relation to a life insurance policy, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to a life insurance policy, the life insurance company that is liable under the policy:
- (f) in relation to an interest in a superannuation scheme (including a restricted KiwiSaver scheme but not any other KiwiSaver scheme), or to an advertisement, investment statement, prospectus, or registered prospectus that relates to such an interest, the superannuation trustee of the scheme:
- (g) in relation to an interest in a KiwiSaver scheme other than a restricted KiwiSaver scheme, or to an advertisement, investment statement, prospectus, or registered prospectus that relates to such an interest, the manager of the scheme

KiwiSaver scheme has the same meaning as in section 4(1) of the KiwiSaver Act 2006

KiwiSaver trustee means a person who is designated or appointed as trustee of a KiwiSaver scheme other than a restricted scheme, or the successor of that person

life insurance company means any person or association of persons, whether incorporated or unincorporated, which, in the course of business issues, or is liable under, life insurance policies

life insurance policy means a policy of life or endowment insurance, or a policy securing an annuity; and includes—

- (a) a policy of insurance that is declared by regulations to be a life insurance policy for the purposes of this Act; and
 - (b) a renewal or variation of the terms or conditions of any such policy or a security referred to in paragraph (a);—
- but does not include any such policy, or a security referred to in paragraph (b), or a term life insurance policy (within the meaning of regulations) that is declared by regulations not to be a life insurance policy for the purposes of this Act

local authority has the meaning set out in section 5(1) of the Local Government Act 2002

manager,—

- (a) in relation to a participatory security,—
 - (i) means a person—
 - (A) on whose behalf any money paid in consideration of the allotment of the security is received; or
 - (B) with a substantial obligation to security holders to act in the continuing administration or management of the scheme to which the security relates; or
 - (C) to whom both subsubparagraphs (A) and (B) apply; but
 - (ii) does not include a person who is a participatory security trustee in relation to the security if the person acts in the continuing administration or management of the scheme to which the security relates solely in the person's capacity as a participatory security trustee; and
- (b) in relation to a unit in a unit trust, has the same meaning as in section 2(1) of the Unit Trusts Act 1960;
- (c) in relation to an interest in a KiwiSaver scheme other than a restricted KiwiSaver scheme, has the same meaning as in section 4(1) of the KiwiSaver Act 2006

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

money includes money's worth

offer includes an invitation, and any proposal or invitation to make an offer; and **to offer** has a corresponding meaning

offered in a simplified disclosure prospectus means an offer of securities to the public for subscription that is made—

- (a) by or on behalf of an issuer; and
- (b) in, or accompanied by, a simplified disclosure prospectus

participatory security means any security other than—

- (a) an equity security; or
- (b) a debt security; or
- (c) a unit in a unit trust; or
- (d) an interest in a superannuation scheme; or
- (e) a life insurance policy

participatory security trustee means a person appointed as a trustee in respect of participatory securities

person includes a corporation sole, a company or other body corporate (whether incorporated in New Zealand or elsewhere), an unincorporated body of persons, a public body, and a government department

portfolio investment entity means a portfolio investment entity within the meaning of the Income Tax Act 2004

portfolio investment interest means a portfolio investment interest within the meaning of the Income Tax Act 2004

prescribed means prescribed by regulations made under the authority of 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; or
- (c) in relation to any particular requirement of this Act, any person whose function it is, or who has undertaken, to ensure that that requirement is complied with by the body:

provided that for the purposes of this Act, a person shall not be regarded as a person in accordance with whose directions or instructions any or all of the directors of a body are accustomed to act by reason only that the directors act on advice given by him or her solely in a professional capacity

prohibition order means an order made by the FMA under section 44AE(1) that prohibits a person from using a simplified disclosure prospectus

promoter, in relation to securities offered to the public for subscription,—

- (a) means a person who is instrumental in the formulation of a plan or programme pursuant to which the securities are offered to the public; and
- (b) where a body corporate is a promoter, includes every person who is a director thereof; but
- (c) does not include a director or officer of the issuer of the securities or a person acting solely in his or her professional capacity

prospective investor, in relation to a security, means any person who, under the terms of issue of the security, is eligible to subscribe for the security

prospectus means a document that contains an offer of securities to the public for subscription, and that is intended to be, or has been, delivered to the Registrar for registration under section 42

qualified auditor has the meaning given to it by section 2C

receive, in relation to a document, information, or other matter, includes receive by any form of electronic or other means of communication in a manner that enables the recipient to readily store the document, information, or other matter in a permanent form and, with or without the aid of any equipment, to retrieve and read it

registered bank has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

registered prospectus means,—

- (a) except if paragraph (b) applies,—
 - (i) a prospectus that has been registered under section 42 and the registration of which has not been cancelled under section 43G(2)(b); or
 - (ii) a document that, except in the matters specified in section 41(1), is identical to such a prospectus:
- (b) if an instrument that amends a prospectus of the kind specified in paragraph (a)(i) has been registered under section 43, and the registration of that prospectus as so amended has not been cancelled under section 43G(2)(b),—

- (i) that prospectus as so amended; or
- (ii) a document that, except for the matters specified in section 41(1), is identical to that prospectus as so amended

Registrar means the Registrar of Financial Service Providers under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

regulations means regulations made under section 70

relative has the same meaning as in the Income Tax Act 2007

restricted KiwiSaver scheme and **restricted scheme** have the same meaning as in section 4(1) of the KiwiSaver Act 2006

scheme means,—

- (a) in relation to a participatory security, the arrangement or scheme to which the security relates; and
- (b) in relation to an interest in a superannuation scheme, that superannuation scheme; and
- (c) in relation to a unit in a unit trust, that unit trust

security has the meaning set out in section 2D

security holder, in relation to a security offered to the public, means—

- (a) in the case of a bearer security or a security to which section 51 does not apply, the holder of that security; or
- (b) in the case of any other security, the person who is registered as the holder of the security in a register kept pursuant to section 51

send, in relation to a document, information, or other matter, includes send by electronic or other means that enables the recipient to readily store the matter in a permanent and legible form

simplified disclosure prospectus means a registered prospectus that may be used only if—

- (a) the issuer is subject to a disclosure obligation; and
- (b) the regulations provide for the use of a simplified disclosure prospectus by a person who is subject to that type of disclosure obligation

statutory supervisor means a person appointed as a statutory supervisor in respect of participatory securities for the purposes of, and in accordance with, this Act

subscribe includes purchase and contribute to, whether by way of cash or otherwise; and **subscription** and **subscriber** have corresponding meanings

superannuation scheme means a registered superannuation scheme within the meaning of section 2(1) of the Superannuation Schemes Act 1989

superannuation trustee has the same meaning as the term trustees has in the Superannuation Schemes Act 1989

trust deed means a trust deed required by section 33(2)(a)

trustee means a person appointed as a trustee in respect of debt securities for the purposes of, and in accordance with, this Act

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

unit means an interest or right to participate in any capital, assets, earnings, or other property of a unit trust; and includes—

- (a) any interest or right that is declared by regulations to be a unit for the purposes of this Act; and
- (b) any renewal or variation of the terms or conditions of any such interest or right;—

but does not include any such interest or right or a security referred to in paragraph (b) that is declared by regulations not to be a unit for the purposes of this Act

unit trust has the same meaning as in section 2(1) of the Unit Trusts Act 1960

unit trustee has the same meaning as the term trustee has in section 2(1) of the Unit Trusts Act 1960

working day means a day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, and Waitangi Day; and
- (b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and
- (c) if 1 January in any year falls on a Friday, the following Monday; and

- (d) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday

writing includes—

- (a) the recording of words in a permanent and legible form; and
(b) the display of words by any form of electronic or other means of communication in a manner that enables the words to be readily stored in a permanent form and, with or without the aid of any equipment, to be retrieved and read;—

and **written** has a corresponding meaning.

(2) *[Repealed]*

Section 2(1) **advertisement**: substituted, on 1 October 1997, by section 3(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **approved superannuation scheme**: repealed, on 22 March 1989, by section 31 of the Superannuation Schemes Act 1989 (1989 No 10).

Section 2(1) **associated persons** or **persons associated with each other**: substituted, on 1 October 1997, by section 3(2) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **associated persons** or **persons associated with each other** paragraph (a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **authorised advertisement**: amended, on 1 October 1997, by section 3(3) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **authorised life insurance company**: repealed, on 1 October 1997, by section 3(4) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **bonus bond**: inserted, on 1 October 1997, by section 3(5) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **books and papers** or **books or papers**: repealed, on 1 October 1997, by section 3(4) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **chattel**: substituted, on 15 April 2004, by section 3(1) of the Securities Amendment Act 2004 (2004 No 31).

Section 2(1) **chattel**: amended, on 24 November 2009, by section 4(1) of the Securities Amendment Act 2009 (2009 No 56).

Section 2(1) **civil liability event**: inserted, on 25 October 2006, by section 6(2) of the Securities Amendment Act 2006 (2006 No 46).

Section 2(1) **Commission**: repealed, on 1 May 2011, by section 5(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 2(1) **company**: substituted, on 15 April 2004, by section 3(2) of the Securities Amendment Act 2004 (2004 No 31).

Section 2(1) **contributory mortgage broker**: inserted, on 16 December 1982, by section 2(2) of the Securities Amendment Act 1982 (1982 No 147).

Section 2(1) **convertible note**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **co-operative company** paragraph (a): substituted, on 1 September 1996, by section 51 of the Co-operative Companies Act 1996 (1996 No 24).

Section 2(1) **co-operative company** paragraph (b): substituted, on 1 September 1996, by section 51 of the Co-operative Companies Act 1996 (1996 No 24).

Section 2(1) **co-operative company** paragraph (c): substituted, on 16 December 1982, by section 2(3) of the Securities Amendment Act 1982 (1982 No 147).

Section 2(1) **co-operative company** paragraph (d): added, on 16 December 1982, by section 2(3) of the Securities Amendment Act 1982 (1982 No 147).

Section 2(1) **court**: substituted, on 1 December 2002, by section 3(1) of the Securities Amendment Act 2002 (2002 No 43).

Section 2(1) **date of a balance sheet** or **date of an interim balance sheet**: repealed, on 1 October 1997, by section 2 of the Securities Amendment Act 1997 (1997 No 16).

Section 2(1) **date of a prospectus**: amended, on 15 April 2004, by section 3(4) of the Securities Amendment Act 2004 (2004 No 31).

Section 2(1) **date of a registered prospectus**: inserted, on 16 December 1982, by section 2(5) of the Securities Amendment Act 1982 (1982 No 147).

Section 2(1) **date of a registered prospectus**: amended, on 15 April 2004, by section 3(4) of the Securities Amendment Act 2004 (2004 No 31).

Section 2(1) **date of a statement of financial position** or **date of an interim statement of financial position**: inserted, on 1 October 1997, by section 2 of the Securities Amendment Act 1997 (1997 No 16).

Section 2(1) **debt security**: substituted, on 1 October 1997, by section 3(6) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **delayed allotment order**: inserted, on 28 July 2009, by section 4 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

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

Section 2(1) **director**: substituted, on 16 December 1982, by section 2(7) of the Securities Amendment Act 1982 (1982 No 147).

Section 2(1) **director** paragraph (b): amended, on 2 May 2008, by section 121(3) of the Limited Partnerships Act 2008 (2008 No 1).

Section 2(1) **director** paragraph (c): amended, on 2 May 2008, by section 121(3) of the Limited Partnerships Act 2008 (2008 No 1).

Section 2(1) **director** paragraph (d): amended, on 2 May 2008, by section 121(3) of the Limited Partnerships Act 2008 (2008 No 1).

Section 2(1) **disclosure obligation**: inserted, on 28 July 2009, by section 4 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 2(1) **distribute**: substituted, on 1 October 1997, by section 3(7) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **document**: substituted, on 1 December 2002, by section 3(2) of the Securities Amendment Act 2002 (2002 No 43).

Section 2(1) **emissions units**: inserted, on 24 November 2009, by section 4(2) of the Securities Amendment Act 2009 (2009 No 56).

Section 2(1) **equity security**: substituted, on 1 October 1997, by section 3(8) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **expert**: amended, on 15 April 2004, by section 3(5) of the Securities Amendment Act 2004 (2004 No 31).

Section 2(1) **expert**: amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 2(1) **expert**: amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 2(1) **expert**: amended, on 3 May 2001, by section 5(f) of the Securities Amendment Act 2001 (2001 No 25).

Section 2(1) **FMA**: inserted, on 1 May 2011, by section 5(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 2(1) **government department**: substituted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

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

Section 2(1) **greenhouse gas**: inserted, on 24 November 2009, by section 4(2) of the Securities Amendment Act 2009 (2009 No 56).

Section 2(1) **interest in a superannuation scheme**: inserted, on 1 October 1997, by section 3(9) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **investment statement**: inserted, on 1 October 1997, by section 3(9) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **issuer**: substituted, on 1 October 1997, by section 3(10) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **issuer** paragraph (f): amended, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 2(1) **issuer** paragraph (g): added, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 2(1) **KiwiSaver scheme**: inserted, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 2(1) **KiwiSaver trustee**: inserted, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 2(1) **labour share**: repealed, on 15 April 2004, by section 3(6) of the Securities Amendment Act 2004 (2004 No 31).

Section 2(1) **life insurance company**: inserted, on 1 July 1989, by section 42(2) of the Securities Markets Act 1988 (1988 No 234).

Section 2(1) **life insurance policy**: substituted, on 1 October 1997, by section 3(11) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **local authority**: substituted, on 9 April 2008, by section 4 of the Securities (Local Authority Exemption) Amendment Act 2008 (2008 No 23).

Section 2(1) **manager**: substituted, on 1 October 1997, by section 3(12) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **manager** paragraph (a): substituted, on 15 April 2004, by section 3(7) of the Securities Amendment Act 2004 (2004 No 31).

Section 2(1) **manager** paragraph (c): added, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 2(1) **Minister**: substituted, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 2(1) **offered in a simplified disclosure prospectus**: inserted, on 28 July 2009, by section 4 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 2(1) **overseas regulator**: repealed, on 1 May 2011, by section 5(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 2(1) **participatory security**: substituted, on 1 October 1997, by section 3(13) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **participatory security trustee**: inserted, on 15 April 2004, by section 3(8) of the Securities Amendment Act 2004 (2004 No 31).

Section 2(1) **portfolio investment entity**: inserted, on 1 October 2007, by section 232 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 2(1) **portfolio investment interest**: inserted, on 1 October 2007, by section 232 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 2(1) **principal officer** proviso: amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 2(1) **prohibition order**: inserted, on 28 July 2009, by section 4 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

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

Section 2(1) **promoter**: substituted, on 16 December 1982, by section 2(9) of the Securities Amendment Act 1982 (1982 No 147).

Section 2(1) **promoter** paragraph (c): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 2(1) **prospective investor**: inserted, on 1 October 1997, by section 3(14) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **prospectus**: substituted, on 16 December 1982, by section 2(10) of the Securities Amendment Act 1982 (1982 No 147).

Section 2(1) **qualified auditor**: substituted, on 1 October 1997, by section 3(15) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **receive**: inserted, on 1 October 1997, by section 3(15) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **registered bank**: inserted, on 24 March 1995, by section 13(2) of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Section 2(1) **registered prospectus**: substituted, on 1 May 2011, by section 5(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 2(1) **Registrar**: substituted, on 1 May 2011, by section 5(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 2(1) **regulations**: inserted, on 1 October 1997, by section 3(16) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **relative**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **restricted KiwiSaver scheme** and **restricted scheme**: inserted, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 2(1) **scheme**: inserted, on 1 October 1997, by section 3(17) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **security**: substituted, on 1 October 1997, by section 3(18) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **send**: inserted, on 1 October 1997, by section 3(19) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **simplified disclosure prospectus**: inserted, on 28 July 2009, by section 4 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 2(1) **superannuation scheme**: inserted, on 1 October 1997, by section 3(20) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **superannuation trustee**: inserted, on 1 October 1997, by section 3(20) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **Takeovers Panel**: repealed, on 1 May 2011, by section 5(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 2(1) **trust deed**: inserted, on 1 October 1997, by section 3(20) of the Securities Amendment Act 1996 (1996 No 100).

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) **trustee corporation**: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 2(1) **trustee corporation**: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

Section 2(1) **unit**: added, on 1 October 1997, by section 3(21) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **unit trust**: added, on 1 October 1997, by section 3(21) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **unit trustee**: added, on 1 October 1997, by section 3(21) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **working day**: added, on 1 October 1997, by section 3(21) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(1) **writing**: added, on 1 October 1997, by section 3(21) of the Securities Amendment Act 1996 (1996 No 100).

Section 2(2): repealed, on 1 October 1997, by section 3(22) of the Securities Amendment Act 1996 (1996 No 100).

2A Meaning of advertisement

- (1) In this Act, unless the context otherwise requires, **advertisement** means a form of communication—
- (a) that—
 - (i) contains or refers to an offer of securities to the public for subscription; or
 - (ii) is reasonably likely to induce persons to subscribe for securities of an issuer, being securities to which the communication relates and that have been, or are to be, offered to the public for subscription; and
 - (b) that is authorised or instigated by, or on behalf of, the issuer of the securities or prepared with the co-operation of, or by arrangement with, the issuer of the securities; and
 - (c) that is to be, or has been, distributed to a person.
- (2) The following are also advertisements:
- (a) a statement relating to an interest in a contributory mortgage required to be distributed to a person by regulations;
 - (b) an investment statement;
 - (c) documents, information, and other matters required to be made publicly available under section 54C.
- (3) None of the following is an advertisement:
- (a) a registered prospectus;
 - (b) *[Repealed]*
 - (c) a statement or report made in accordance with section 3(7);
 - (d) a disclosure statement published by a registered bank under section 81 of the Reserve Bank of New Zealand Act 1989.
- (4) A communication is an advertisement whether or not consideration is to be, or has been, paid for the distribution of the communication.
- (5) The definition of the term advertisement in this section does not apply to the term advertisement in section 3(1)(c).
- (6) Where—
- (a) an advertisement within the meaning of this section appears in association with another advertisement that is

not an advertisement within the meaning of this section;
and

- (b) both advertisements are authorised or instigated by, or on behalf of, the same person or prepared with the co-operation of, or by arrangement with, the same person,—

those advertisements are deemed to be a single advertisement within the meaning of this section.

- (7) Unless this Act or regulations provide otherwise, nothing in this Act or regulations limits the information, statements, and other matters that may be contained in an advertisement.

Section 2A: inserted, on 1 October 1997, by section 4 of the Securities Amendment Act 1996 (1996 No 100).

Section 2A(2)(c): added, on 1 May 2011, by section 6 of the Securities Amendment Act 2011 (2011 No 6).

Section 2A(3)(b): repealed, on 15 April 2004, by section 4 of the Securities Amendment Act 2004 (2004 No 31).

2B Meaning of due enquiry

- (1) For the purposes of this Act, a person who is required to make **due enquiry** about a matter does not fail to do so if—

- (a) he or she receives information or advice about the matter from another person whom he or she believes on reasonable grounds is reliable and competent; and
- (b) the information or advice received—
 - (i) is of the same kind and standard as that which it would be reasonable to expect to be supplied in the ordinary course of management of businesses of the same kind to persons in the same kind of position; and
 - (ii) does not state or indicate that further information, advice, or investigation is or may be required; and
- (c) he or she has no reason to believe that the information or advice is or may be incorrect.

- (2) Nothing in subsection (1) limits the ways in which a person may make due enquiry about a matter.

Section 2B: inserted, on 1 October 1997, by section 4 of the Securities Amendment Act 1996 (1996 No 100).

2C Meaning of qualified auditor

- (1) For the purposes of this Act, a person is a **qualified auditor** only if—
- (a) the person is a chartered accountant (within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996); or
 - (b) the person is an auditor appointed by the Auditor-General under section 32 of the Public Audit Act 2001; or
 - (c) the person is a member, fellow, or associate of an association of accountants constituted outside New Zealand where—
 - (i) the association is, by notice in the *Gazette*, approved for the time being for the purposes of this Act by the Registrar; and
 - (ii) the person is entitled to act as an auditor in the country, State, or territory in which the association is constituted; or
 - (d) the person, not being a person referred to in paragraph (c), is—
 - (i) entitled to act as an auditor in a country, State, or territory outside New Zealand; and
 - (ii) approved for the time being for the purposes of this Act by the Registrar by notice in the *Gazette*.
- (2) None of the following persons is qualified for appointment as an auditor of the accounting or other records of an issuer of securities:
- (a) the issuer, or a principal officer, officer, or employee of the issuer;
 - (b) a person who is a partner of or in the employment of a person specified in paragraph (a);
 - (c) a body corporate.
- (3) A person is not qualified for appointment as auditor of an issuer of securities if the person is, by virtue of subsection (2), disqualified for appointment as auditor of a person that is the issuer's subsidiary or holding company or a subsidiary of the issuer's holding company, or would be so disqualified if that person were a company.

Section 2C: inserted, on 1 October 1997, by section 4 of the Securities Amendment Act 1996 (1996 No 100).

Section 2C(1)(a): amended, on 7 July 2010, by section 10 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

Section 2C(1)(b): amended, on 1 July 2001, by section 53 of the Public Audit Act 2001 (2001 No 10).

2D Meaning of security

- (1) In this Act, unless the context otherwise requires, the term **security** means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and includes—

- (a) an equity security; and
- (b) a debt security; and
- (c) a unit in a unit trust; and
- (d) an interest in a superannuation scheme; and
- (e) a life insurance policy; and
- (f) any interest or right that is declared by regulations to be a security for the purposes of this Act; and
- (g) any renewal or variation of the terms or conditions of any such interest or right;—

but does not include any such interest or right (other than a security referred to in paragraph (f)) that is declared by regulations not to be a security for the purposes of this Act.

- (2) Where the terms of a security require or allow the subscriber to pay separate amounts of money at different times, each such payment shall, for the purposes of this Act, be treated as payment for the same security as each other payment.

Section 2D: inserted, on 1 October 1997, by section 4 of the Securities Amendment Act 1996 (1996 No 100).

3 Construction of references to offering securities to the public

- (1) Any reference in this Act to an **offer of securities to the public** shall be construed as including—

- (a) a reference to offering the securities to any section of the public, however selected; and
- (b) a reference to offering the securities to individual members of the public selected at random; and
- (c) a reference to offering the securities to a person if the person became known to the offeror as a result of any advertisement made by or on behalf of the offeror and

- that was intended or likely to result in the public seeking further information or advice about any investment opportunity or services,—
whether or not any such offer is calculated to result in the securities becoming available for subscription by persons other than those receiving the offer.
- (2) None of the following offers shall constitute an offer of securities to the public:
- (a) an offer of securities made to any or all of the following persons only:
 - (i) relatives or close business associates of the issuer or of a director of the issuer:
 - (ii) persons whose principal business is the investment of money or who, in the course of and for the purposes of their business, habitually invest money:
 - (iia) persons who are each required to pay a minimum subscription price of at least \$500,000 for the securities before the allotment of those securities:
 - (iib) persons who have each previously paid a minimum subscription price of at least \$500,000 for securities (the **initial securities**) in a single transaction before the allotment of the initial securities, provided that—
 - (A) the offer of the securities is made by the issuer of the initial securities; and
 - (B) the offer of the securities is made within 18 months of the date of the first allotment of the initial securities:
 - (iii) any other person who in all the circumstances can properly be regarded as having been selected otherwise than as a member of the public:
 - (b) an invitation to a person to enter into a bona fide underwriting or sub-underwriting agreement with respect to an offer of securities.
 - (c) *[Repealed]*
 - (d) *[Repealed]*
 - (3) A person shall not be precluded from being regarded as a member of the public in regard to any offer of securities by reason

only that he or she is a purchaser of goods from, or an employee or client of, or a holder of securities previously issued by, the issuer or any promoter of the securities.

- (4) Any reference in this Act to an **offer of securities to the public** shall be construed as including a reference to distributing an advertisement, a prospectus, a registered prospectus, or an application form for the subscription of securities.
- (5) Proof of an offer of securities to 1 person selected as a member of the public shall be prima facie evidence of an offer of securities to the public.
- (6) *[Repealed]*
- (7) A statement or report—
 - (a) made to or for the purposes of a general meeting of the members of the issuer, or a report of the proceedings of such a meeting; or
 - (b) relating to the affairs of the issuer made to any stock exchange for the purposes of compliance with the listing requirements relating to that stock exchange, by or on behalf of that issuer, or any report of such statement or report—shall not constitute an offer of securities to the public.
- (8) In calculating the subscription price payable, or paid, for securities for the purposes of subsection (2)(a)(iia) or (iib), any amount payable, or paid, must be disregarded to the extent to which it is to be paid, or was paid, out of money lent by the issuer, the offeror, or any associated person of the issuer or offeror.
- (9) The Governor-General may, by Order in Council, amend the minimum subscription price that applies under subsection (2)(a)(iia) or (iib).

Section 3(2)(a)(i): amended, on 15 April 2004, by section 5(1) of the Securities Amendment Act 2004 (2004 No 31).

Section 3(2)(a)(iia): inserted, on 15 April 2004, by section 5(2) of the Securities Amendment Act 2004 (2004 No 31).

Section 3(2)(a)(iib): inserted, on 28 July 2009, by section 5(1) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 3(2)(c): repealed, on 1 July 2001, by section 12(2) of the Takeovers Amendment Act 2001 (2001 No 30).

Section 3(2)(d): repealed, on 1 July 2001, by section 12(2) of the Takeovers Amendment Act 2001 (2001 No 30).

Section 3(3): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 3(4): substituted, on 1 September 1983, by section 3(1) of the Securities Amendment Act 1982 (1982 No 147).

Section 3(6): repealed, on 15 April 2004, by section 5(3) of the Securities Amendment Act 2004 (2004 No 31).

Section 3(7): added, on 1 September 1983, by section 3(2) of the Securities Amendment Act 1982 (1982 No 147).

Section 3(8): added, on 15 April 2004, by section 5(4) of the Securities Amendment Act 2004 (2004 No 31).

Section 3(8): amended, on 28 July 2009, by section 5(2) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 3(9): added, on 15 April 2004, by section 5(4) of the Securities Amendment Act 2004 (2004 No 31).

Section 3(9): amended, on 28 July 2009, by section 5(3) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

3A Status of examples

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

Section 3A: inserted, on 28 July 2009, by section 6 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

4 Application of this Act

- (1) The provisions of this Act shall have effect notwithstanding anything to the contrary in any other enactment or in any deed, agreement, application, prospectus, registered prospectus, or advertisement.
- (2) A condition of any agreement requiring or binding an applicant for securities to waive compliance with any requirement of this Act, or purporting to affect him or her with notice of any contract, document, or matter relating to the securities that is not specifically referred to in a prospectus or registered prospectus, shall be void.
- (3) Nothing in this Act shall limit any powers a trustee, superannuation trustee, unit trustee, or statutory supervisor may have other than pursuant to this Act.

- (4) Nothing in this section or in any other provision of this Act limits the Illegal Contracts Act 1970.
- (5) Despite subsection (4), nothing in the Illegal Contracts Act 1970 applies to sections 37 and 37A.

Section 4(1): amended, on 1 September 1983, by section 4(a) of the Securities Amendment Act 1982 (1982 No 147).

Section 4(2): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 4(2): amended, on 1 September 1983, by section 4(b) of the Securities Amendment Act 1982 (1982 No 147).

Section 4(3): amended, on 1 October 1997, by section 5(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 4(4): added, on 1 October 1997, by section 5(2) of the Securities Amendment Act 1996 (1996 No 100).

Section 4(5): added, on 15 April 2004, by section 6 of the Securities Amendment Act 2004 (2004 No 31).

5 Exemptions from this Act

- (1) Nothing in Part 2 shall apply in respect of—
 - (a) *[Repealed]*
 - (b) any estate or interest in land for which a separate certificate of title can be issued under the Land Transfer Act 1952 or the Unit Titles Act 2010, other than any such estate or interest that—
 - (i) forms part of a contributory scheme; and
 - (ii) does not entitle the holder to a right in respect of a specified part of the land for which a separate certificate of title can be so issued; or
 - (c) any proprietary right to chattels (other than any such right that forms part of a contributory scheme); or
 - (d) any share in the share capital of a flat or office owning company (as defined in section 121A(1) of the Land Transfer Act 1952); or
 - (e) any interest or right to participate in the capital, assets, earnings, royalties, or other property of any company, partnership, or other person whose sole undertaking is the practice, conduct, or operation of any 1 or more of the professions, occupations, or businesses that may in law be practised, conducted, or operated only by

- persons having or possessing qualifications specified in Schedule 2; or
- (f) a mortgage of land other than a contributory mortgage; or
 - (g) *[Repealed]*
 - (h) a share purchased or subscribed for by an employee of a company under a share purchase scheme as defined in section YA 1 of the Income Tax Act 2007; or
 - (i) an interest in the Government Superannuation Fund; or
 - (j) *[Repealed]*
 - (k) an interest in a retirement village that is an interest exempted from this Act by section 107(1) of the Retirement Villages Act 2003.
- (2) An exemption under subsection (1) does not apply—
- (a) in the circumstances prescribed by regulations made under section 70AAA; or
 - (b) if any additional requirements prescribed by regulations made under section 70AAA are not satisfied.
- (2A) *[Repealed]*
- (2B) *[Repealed]*
- (2C) Nothing in sections 33(2), 37, 37A(1)(c) and (d), 39 to 43B, 45 to 52, 54, and 54B(3) shall apply in respect of any debt security the issuer of which is a registered bank.
- (2CA) Nothing in Part 2 (except sections 38B and 58) or the regulations applies to an advertisement made by or on behalf of an issuer that—
- (a) states that—
 - (i) the issuer is considering making an offer of securities to the public; and
 - (ii) no money is currently being sought and that no applications for securities will be accepted or money received unless the subscriber has received an investment statement or, if the securities are to be offered in a simplified disclosure prospectus, a copy of that prospectus; and
 - (b) if the issuer wishes, states that the issuer is seeking preliminary indications of interest and, in this case, also states—
 - (i) how indications of interest may be made; and

- (ii) that no indication of interest will involve an obligation or commitment of any kind; and
 - (c) contains no other information, except any or all of the following:
 - (i) the name of the issuer;
 - (ii) a description of the securities intended to be offered, including a brief description of any rights or privileges to be attached;
 - (iii) the rate or rates of interest (if any) that may be earned by holding the securities intended to be offered;
 - (iv) the total number of securities intended to be offered;
 - (v) a statement of the intended use of the subscriptions;
 - (vi) the terms of the intended offer;
 - (vii) a description of the class of persons to whom it is intended the offer will be made;
 - (viii) the date at which the issuer expects that the offer will be made; and
 - (d) is dated and is not distributed to any person later than 6 months after its date.
- (2CB) Nothing in Part 2 (except sections 38B and 58) or the regulations applies in respect of a security if—
- (a) the only persons in New Zealand who are able, under the terms of the offer of the security, to subscribe for the security are eligible persons; and
 - (b) the subscriber is an eligible person.
- (2CBA) Nothing in Part 2 (except sections 38B and 58) or the regulations applies in respect of a security if—
- (a) the only persons in New Zealand who are able, under the terms of the offer of the security, to subscribe for the security are—
 - (i) eligible persons; and
 - (ii) persons who fall within 1 or more of the categories set out in subparagraphs (i) to (iii) of section 3(2)(a); and
 - (b) the subscriber is either—
 - (i) an eligible person; or

- (ii) a person who falls within 1 or more of the categories set out in subparagraphs (i) to (iii) of section 3(2)(a).
- (2CC) For the purposes of subsections (2CB) and (2CBA), a person is an **eligible person** if the person is 1 or more of the following:
 - (a) wealthy (as defined in subsection (2CD));
 - (b) experienced in investing money (as defined in subsection (2CE));
 - (c) experienced in the industry or business to which the security relates (as defined in subsection (2CE)).
- (2CD) For the purposes of subsection (2CC)(a), a person is **wealthy** if an independent chartered accountant certifies, no more than 12 months before the offer is made, that the chartered accountant is satisfied on reasonable grounds that the person—
 - (a) has net assets of at least \$2,000,000; or
 - (b) had an annual gross income of at least \$200,000 for each of the last 2 financial years.
- (2CDA) To avoid doubt, for the purposes of subsections (2CC)(a) and (2CD), **person** includes—
 - (a) the trustees of a trust acting jointly in their capacity as trustees of that trust; and
 - (b) the sole trustee of a trust acting in his, her, or its capacity as trustee of that trust.
- (2CE) For the purposes of subsection (2CC)(b) and (c), a person is **experienced** in investing money or in the industry or business to which the security relates (as the case may be) if—
 - (a) an independent financial service provider is satisfied on reasonable grounds that the person to whom the offer is made, as a result of having experience of that kind, is able to assess—
 - (i) the merits of the offer; and
 - (ii) the value of the security; and
 - (iii) the risks involved in accepting the offer; and
 - (iv) that person's own information needs; and
 - (v) the adequacy of the information given by the person making the offer; and
 - (b) the financial service provider gives the person to whom the offer is made, before the security is allotted to the person, a written statement of the financial service

provider's reasons for being satisfied as to those matters; and

- (c) the person to whom the offer is made signs a written acknowledgment, before the security is allotted to the person, that—
 - (i) the financial service provider has given the person neither an investment statement nor a registered prospectus relating to the security; and
 - (ii) the person understands that he, she, or it will not receive information usually provided by an issuer in respect of an offer of securities to the public including (in particular) an investment statement and a registered prospectus.

(2CF) For the purposes of subsection (2CE),—

financial service provider means a person whose principal business consists of 1 or more of the following:

- (a) the giving of investment advice:
- (b) the receiving of investment money:
- (c) the receiving of investment property

investment advice has the same meaning as in section 2(1) of the Securities Markets Act 1988

investment money means any money received from, or on account of, a member of the public in relation to buying or selling securities

investment property means security certificates or other valuable property received from, or on account of, a member of the public in relation to buying or selling securities.

(2CG) The Governor-General, by Order in Council, may make regulations for all or any of the following purposes:

- (a) amending the amounts of minimum net assets and minimum annual gross income that apply under subsection (2CD):
- (b) prescribing how net assets referred to in subsection (2CD) are to be determined and valued, either generally or in specified circumstances:
- (c) prescribing how gross income referred to in subsection (2CD) is to be calculated, either generally or in specified circumstances.

- (2D) Nothing in sections 37A(1)(a) and 38C to 38E and 43F shall apply in respect of—
- (a) an interest in a call debt security as defined in regulations made under this Act; or
 - (b) an interest in a call building society share as defined in regulations made under this Act; or
 - (c) an interest in a bonus bond.
- (2E) *[Repealed]*
- (2F) *[Repealed]*
- (3) Nothing in sections 33(2), 33(3), 34 to 37, 37A(1)(c) and (d) and (2), 39 to 43B, 44B to 54, and 57A to 65F shall apply in respect of any security the issuer of which is—
- (a) the Crown; or
 - (b) *[Repealed]*
 - (c) the National Provident Fund Board established by the National Provident Fund Act 1950; or
 - (d) the Reserve Bank of New Zealand constituted under the Reserve Bank of New Zealand Act 1964; or
 - (e) Housing New Zealand Corporation established by the Housing Corporation Act 1974; or
 - (f) *[Repealed]*
- (3A) Nothing in sections 37, 37A(1)(c) and (d) and (1A), and 39 to 43B applies in respect of a debt security the issuer of which is a local authority.
- (3B) The exemption in subsection (3A) is subject to the conditions that—
- (a) the investment statement relating to the debt securities refers to the most recent audited financial statements, and audited consolidated financial statements, for the local authority; and
 - (b) if the date of allotment of the debt securities would be more than 9 months after the balance date of the financial statements referred to in paragraph (a), the investment statement relating to the debt securities refers to interim financial statements, and interim consolidated financial statements, for the local authority that have been prepared in accordance with generally accepted accounting practice (within the meaning of section 5(1) of the Local Government Act 2002) for a period begin-

- ning on the day after that balance date and ending on a date that is not more than 9 months later; and
- (c) it is a term of the offer of the debt securities to the public that the local authority will, upon the request of a security holder or a prospective investor for a copy of any financial statements referred to in paragraph (a) or (b), without fee, send, or cause to be sent, to that security holder or prospective investor, a copy of those statements; and
 - (d) the investment statement relating to the debt securities contains, unless the debt securities are expressly guaranteed by the Crown under the Public Finance Act 1989, a statement that the debt securities being offered are not guaranteed by the Crown.
- (3C) The conditions in subsection (3B) apply despite anything to the contrary in any regulations made under this Act.
- (3D) The financial statements referred to in subsection (3B)(a) and (b) must, for the purposes of this Act, be treated as forming part of the investment statement relating to the debt securities.
- (4) Nothing in sections 6, 33(3), 37, 37A, 38C to 38E, 39 to 43B, and 45 to 53 shall apply in respect of an interest in a contributory mortgage that is offered to the public for subscription by a contributory mortgage broker.
- (4A) Nothing in sections 33, 37, and 37A(1)(a) shall apply in respect of an adjustment under section HL 7(3) of the Income Tax Act 2004 of the portfolio investor interest of an investor by a portfolio investment entity.
- (4B) The exemption in subsection (4A) does not apply if the portfolio investment entity has under section HL 7(4) of the Income Tax Act 2004 offered the investor a choice of the method of adjustment.
- (5) *[Repealed]*
- (5A) *[Repealed]*
- (5B) *[Repealed]*
- (6) *[Repealed]*

Section 5(1)(a): repealed, on 1 July 1989, by section 43(1) of the Securities Markets Act 1988 (1988 No 234).

Section 5(1)(b): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Section 5(1)(d): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 5(1)(d): amended, on 28 July 2009, by section 7(1) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 5(1)(g): repealed, on 1 September 1983, by section 5(1) of the Securities Amendment Act 1982 (1982 No 147).

Section 5(1)(h): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 5(1)(h): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 5(1)(h): amended, on 15 April 2004, by section 7(1) of the Securities Amendment Act 2004 (2004 No 31).

Section 5(1)(j): repealed, on 1 September 1983, by section 5(1) of the Securities Amendment Act 1982 (1982 No 147).

Section 5(1)(k): added, on 1 May 2007, by section 110 of the Retirement Villages Act 2003 (2003 No 112).

Section 5(2): substituted, on 1 May 2011, by section 7(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(2A): repealed, on 1 October 1997, by section 6(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 5(2B): repealed, on 1 October 1997, by section 6(2) of the Securities Amendment Act 1996 (1996 No 100).

Section 5(2C): substituted, on 1 October 1997, by section 6(3) of the Securities Amendment Act 1996 (1996 No 100).

Section 5(2C): amended, on 1 May 2011, by section 7(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(2CA): inserted, on 15 April 2004, by section 7(2) of the Securities Amendment Act 2004 (2004 No 31).

Section 5(2CA)(a)(ii): amended, on 28 July 2009, by section 7(2) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 5(2CB): inserted, on 15 April 2004, by section 7(2) of the Securities Amendment Act 2004 (2004 No 31).

Section 5(2CB)(a): amended, on 28 July 2009, by section 7(3) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 5(2CBA): inserted, on 28 July 2009, by section 7(4) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 5(2CC): inserted, on 15 April 2004, by section 7(2) of the Securities Amendment Act 2004 (2004 No 31).

Section 5(2CC): amended, on 28 July 2009, by section 7(5) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 5(2CD): inserted, on 15 April 2004, by section 7(2) of the Securities Amendment Act 2004 (2004 No 31).

Section 5(2CD): amended, on 28 July 2009, by section 7(6) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 5(2CDA): inserted, on 28 July 2009, by section 7(7) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 5(2CE): inserted, on 15 April 2004, by section 7(2) of the Securities Amendment Act 2004 (2004 No 31).

Section 5(2CE)(c): substituted, on 28 July 2009, by section 7(8) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 5(2CF): inserted, on 15 April 2004, by section 7(2) of the Securities Amendment Act 2004 (2004 No 31).

Section 5(2CF) **investment advice**: amended, on 29 February 2008, by section 14 of the Securities Markets Amendment Act 2006 (2006 No 47).

Section 5(2CG): inserted, on 15 April 2004, by section 7(2) of the Securities Amendment Act 2004 (2004 No 31).

Section 5(2D): inserted, on 1 October 1997, by section 6(3) of the Securities Amendment Act 1996 (1996 No 100).

Section 5(2D): amended, on 1 May 2011, by section 7(3) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(2E): repealed, on 15 April 2004, by section 7(3) of the Securities Amendment Act 2004 (2004 No 31).

Section 5(2F): repealed, on 15 April 2004, by section 7(3) of the Securities Amendment Act 2004 (2004 No 31).

Section 5(3): amended, on 1 May 2011, by section 7(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(3): amended, on 1 May 2011, by section 7(4) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(3): amended, on 1 October 1997, by section 6(4) of the Securities Amendment Act 1996 (1996 No 100).

Section 5(3): amended, on 1 September 1983, by section 5(4) of the Securities Amendment Act 1982 (1982 No 147).

Section 5(3)(b): repealed, on 1 July 1998, by section 13(1) of the Local Government Amendment Act (No 3) 1996 (1996 No 83).

Section 5(3)(e): amended, on 1 July 2001, by section 24(1) of the Housing Corporation Amendment Act 2001 (2001 No 37).

Section 5(3)(f): repealed, on 1 May 1990, by section 20 of the Rural Banking and Finance Corporation of New Zealand Act 1989 (1989 No 81).

Section 5(3A): inserted, on 9 April 2008, by section 5(1) of the Securities (Local Authority Exemption) Amendment Act 2008 (2008 No 23).

Section 5(3A): amended, on 1 May 2011, by section 7(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(3B): inserted, on 9 April 2008, by section 5(1) of the Securities (Local Authority Exemption) Amendment Act 2008 (2008 No 23).

Section 5(3C): inserted, on 9 April 2008, by section 5(1) of the Securities (Local Authority Exemption) Amendment Act 2008 (2008 No 23).

Section 5(3D): inserted, on 9 April 2008, by section 5(1) of the Securities (Local Authority Exemption) Amendment Act 2008 (2008 No 23).

Section 5(4): substituted, on 1 September 1983, by section 5(5) of the Securities Amendment Act 1982 (1982 No 147).

Section 5(4): amended, on 1 May 2011, by section 7(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(4): amended, on 1 May 2011, by section 7(5) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(4): amended, on 1 October 1997, by section 6(5) of the Securities Amendment Act 1996 (1996 No 100).

Section 5(4A): inserted, on 1 October 2007, by section 233 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 5(4B): inserted, on 1 October 2007, by section 233 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 5(5): repealed, on 1 May 2011, by section 7(6) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(5A): repealed, on 1 May 2011, by section 7(6) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(5B): repealed, on 1 May 2011, by section 7(6) of the Securities Amendment Act 2011 (2011 No 6).

Section 5(6): repealed, on 1 May 2011, by section 7(6) of the Securities Amendment Act 2011 (2011 No 6).

5A Exemption for employer superannuation schemes

Nothing in sections 37, 37A(1)(c), and 39 to 43B applies to any interest in a superannuation scheme that is an employer superannuation scheme.

Section 5A: inserted, on 15 April 2004, by section 8 of the Securities Amendment Act 2004 (2004 No 31).

Section 5A: amended, on 1 May 2011, by section 8 of the Securities Amendment Act 2011 (2011 No 6).

5B Conditions of exemption for employer superannuation schemes

The exemption in section 5A is subject to the conditions that—

- (a) each annual report prepared under section 14 of the Superannuation Schemes Act 1989 for a financial year during which the superannuation trustees of the scheme relied on that exemption must include the following statements and information:
 - (i) if any superannuation trustee, promoter, or manager of the scheme, or any director of that

superannuation trustee, promoter, or manager, has, during the 5 years preceding the specified date, been adjudged bankrupt or insolvent, convicted of any crime involving dishonesty, prohibited from acting as a director of a company, or placed in statutory management or receivership, a statement to that effect including the name and any alternative or former name or names of the superannuation trustee, promoter, manager, or director concerned:

- (ii) if more than 10% of the value of the scheme's assets (calculated in accordance with generally accepted accounting practice) was, at any time during the year preceding the specified date, represented directly or indirectly by any securities that were issued by a superannuation trustee, manager, or custodian of the scheme (or any associated person of any of them), a description of those securities:
- (iii) a brief description of any legal proceedings or arbitrations that are pending at the specified date and that may have a material adverse effect on the scheme:
- (iv) a statement by the superannuation trustees of the scheme (or, if a superannuation trustee is a body corporate or unincorporate, by the directors of that body) as to whether, in their opinion, after due enquiry by them, either or both of the following have materially and adversely changed since the specified date:
 - (A) the value of the scheme's assets relative to its liabilities (including contingent liabilities):
 - (B) the ability of the scheme to pay its debts as they become due in the normal course of business; and
- (b) the superannuation trustees of the scheme must, within 5 working days of receiving a member's request for a description of the investment objectives and policy for

the scheme or of the means by which changes can be made to those objectives and that policy, without fee, send, or cause to be sent, to that member a brief description of those matters, except to the extent that those matters have been disclosed in the investment statement.

Section 5B: inserted, on 15 April 2004, by section 8 of the Securities Amendment Act 2004 (2004 No 31).

5C Definitions for the purposes of sections 5A to 5C

(1) For the purposes of this section and sections 5A and 5B, unless the context otherwise requires,—

crime involving dishonesty has the same meaning as in section 2(1) of the Crimes Act 1961

custodian does not include a bare trustee

de facto partner has the same meaning as in the Property (Relationships) Act 1976

employer superannuation scheme means a registered superannuation scheme (within the meaning of section 2(1) of the Superannuation Schemes Act 1989) that is promoted by an employer—

- (a) admission to the membership of which is conditional on either or both of the following:
 - (i) being an employee of that employer or an employee of an associated person of that employer;
 - (ii) being a relative, spouse, partner, or dependant of a person who is an employee of that employer or an employee of an associated person of that employer; and
- (b) in respect of which that employer is required to incur in any financial year costs (by way of contributions, expense payments, or both) at least equal to the amount of the costs of administering the scheme in respect of that financial year that are not met in that year from any excess in the value of the scheme's assets over the value of the members' accrued benefits

manager,—

- (a) in relation to a KiwiSaver scheme other than a restricted scheme, has the same meaning as in section 4(1) of the KiwiSaver Act 2006; and

- (b) in relation to any other scheme, means an administration manager or an investment manager (as those terms are defined in section 2(1) of the Superannuation Schemes Act 1989)

partner means a civil union partner or de facto partner

specified date means, in relation to an annual report for a financial year, the date on which the financial year ends

spouse has the same meaning as in the Property (Relationships) Act 1976.

- (2) For the purposes of the definition of employer superannuation scheme, the costs of administering a scheme do not include costs that are directly attributable to the management of the investments of the scheme.

Section 5C: inserted, on 15 April 2004, by section 8 of the Securities Amendment Act 2004 (2004 No 31).

Section 5C(1) **employer superannuation scheme** paragraph (a)(ii): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 5C(1) **manager**: substituted, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 5C(1) **partner**: inserted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

6 Previously allotted securities

- (1) Subject to this section, nothing in sections 33, 34, 37 to 38A, 38C to 43B, and 44B to 59 shall apply in respect of a security that has previously been allotted.
- (2) All the provisions of this Act shall apply in respect of a security that has previously been allotted (whether in New Zealand or elsewhere) if the security was originally allotted with a view to its being offered for sale to the public in New Zealand and the security has not previously been offered for sale to the public in New Zealand or to the public outside New Zealand under an application regime under Part 5.
- (2AA) A provision of Part 2 or the Regulations applies to a previously allotted security that is offered to a person outside New Zealand if—
 - (a) the provision applies to the security under section 77; and

- (b) the security was originally allotted with a view to its being offered for sale to the public outside New Zealand in circumstances in which an application regime under Part 5 would have applied to the security; and
 - (c) the security has not previously been offered for sale to the public in New Zealand or to the public outside New Zealand under an application regime under Part 5.
- (2A) All the provisions of this Act shall apply in respect of a unit in a unit trust that has previously been allotted (whether in New Zealand or elsewhere) and that is being offered, sold, or otherwise disposed of to the public for subscription by the manager or unit trustee of the unit trust or by an associated person of that manager or unit trustee.
- (3) All the provisions of this Act shall apply in respect of an equity security or a security convertible into an equity security if the holder or offeror, not being the original allotter, offers the security for sale to the public and the original allotter advises, encourages, or knowingly assists the holder or offeror in connection with the offer or sale of the security.
- (4) Nothing in subsection (3) applies in respect of—
 - (a) an offer by the holder of a security, being an offer of the security to the public, that is made only to persons who, at the time of the offer, are holders of securities of the original allotter under terms of the articles of association or the constitution of the original allotter that require the offer to be made to those persons; or
 - (b) an offer by the holder of a security, being an offer of the security to the public, where the aggregate amount received by the holder, or persons associated with the holder, pursuant to offers of such securities to the public for subscription does not exceed \$200,000 in any period of 12 months; or
 - (c) an offer by the holder of a security that is made—
 - (i) to not more than 6 members of the public; or
 - (ii) if the offer is made to more than 6 members of the public, the offer is made with a view to its being accepted by not more than 6 members of the public.

- (5) For the purposes of subsections (2) and (2AA), unless the contrary is proved, a security shall be deemed to have been allotted with a view to its being offered for sale to the public if it is shown—
- (a) that an offer of the security for sale to the public was made within 6 months after the allotment; or
 - (b) that, at the date when the offer was made, the consideration to be received by the allotter in respect of the security had not been received.
- (6) For the purposes of subsection (4)(c), unless the contrary is proved, an offer shall be deemed to have been made with a view to its being accepted by more than 6 members of the public if, within the period of 12 months immediately following the making of the offer, more than 6 persons acquire an interest, whether direct or indirect, in securities of the same class offered to the public for subscription by the holder.
- (7) Notwithstanding anything in section 2, in this Act, unless the context otherwise requires, in relation to a security to which subsection (2) or subsection (2AA) or subsection (2A) or subsection (3) applies, the term **issuer** means the original allotter of the security, and, except for the purposes of sections 51 to 54, also includes the offeror of the security.

Section 6: substituted, on 1 July 1994, by section 2(1) of the Securities Amendment Act 1993 (1993 No 120).

Section 6(1): amended, on 1 May 2011, by section 9 of the Securities Amendment Act 2011 (2011 No 6).

Section 6(1): amended, on 1 October 1997, by section 7(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 6(2): amended, on 1 December 2002, by section 5(1) of the Securities Amendment Act 2002 (2002 No 43).

Section 6(2AA): inserted, on 1 December 2002, by section 5(2) of the Securities Amendment Act 2002 (2002 No 43).

Section 6(2A): inserted, on 1 October 1997, by section 7(2) of the Securities Amendment Act 1996 (1996 No 100).

Section 6(3): amended, on 1 December 2002, by section 5(3) of the Securities Amendment Act 2002 (2002 No 43).

Section 6(5): amended, on 1 December 2002, by section 5(4) of the Securities Amendment Act 2002 (2002 No 43).

Section 6(7): amended, on 1 December 2002, by section 5(5) of the Securities Amendment Act 2002 (2002 No 43).

Section 6(7): amended, on 1 October 1997, by section 7(3) of the Securities Amendment Act 1996 (1996 No 100).

6A Term implied in certain offers of previously allotted securities

- (1) This section applies to a security—
 - (a) that is exempted from the application of sections 33, 34, 37 to 38A, 38C to 43B, and 44B to 59 by virtue of section 6(1); and
 - (b) that is not a security to which any of subsections (2), (2AA), (2A), or (3) of section 6 applies; and
 - (c) that is offered to the public.
- (2) Subject to subsection (3), it is an implied term of every offer of a security to which this section applies, that, except to the extent disclosed for the purposes of the offer of the security, the offeror has no information in relation to the original allotter that is not publicly available and that would, or would be likely to, affect materially the price of the security if it were so disclosed.
- (3) For the purposes of subsection (2), an offeror is not to be taken to have information in relation to the original allotter if—
 - (a) arrangements existed to ensure that no individual who took part in the decision to offer the securities to the public received, or had access to, that information or was influenced, in relation to that decision, by an individual who had that information; and
 - (b) no individual who took part in the decision to offer the securities to the public received, or had access to, that information or was influenced, in relation to that decision, by an individual who had that information.

Section 6A: substituted, on 1 July 1994, by section 2 of the Securities Amendment Act 1994 (1994 No 15).

Section 6A(1)(a): amended, on 1 May 2011, by section 10 of the Securities Amendment Act 2011 (2011 No 6).

Section 6A(1)(a): amended, on 1 October 1997, by section 8(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 6A(1)(b): amended, on 1 December 2002, by section 6(1) of the Securities Amendment Act 2002 (2002 No 43).

Section 6A(1)(b): amended, on 1 October 1997, by section 8(2) of the Securities Amendment Act 1996 (1996 No 100).

Section 6A(1)(c): amended, on 1 December 2002, by section 6(2) of the Securities Amendment Act 2002 (2002 No 43).

7 Territorial scope of Part 2

- (1) Part 2 applies to securities offered to the public in New Zealand, regardless of—
 - (a) where any resulting allotment occurs:
 - (b) where the issuer is resident, incorporated, or carries on business.
- (2) For the purposes of this Act, a security is offered to a person in New Zealand if an offer of that security for subscription is received by a person in New Zealand, unless the issuer demonstrates that it took all reasonable steps to ensure that members of the public in New Zealand may not accept the offer.
- (3) Sections 38B and 58 (except section 58(3) and (4)) also apply to any advertisement that contains or refers to an offer of securities to the public outside New Zealand and that is distributed or to be distributed to a person outside New Zealand by,—
 - (a) in the case of section 38B, a person resident or having a place of business in New Zealand:
 - (b) in the case of section 58, a person resident or having a principal place of business in New Zealand.
- (4) For the purpose of subsection (3), the definitions of **advertisement** and **offer** extend to communications or offers received by persons outside New Zealand.
- (5) The territorial scope of Part 2 may be further extended under Part 5.
- (6) For the avoidance of doubt, nothing in Part 2 applies to a security or an advertisement unless it applies under subsections (1) to (5).

Section 7: substituted, on 1 December 2002, by section 7 of the Securities Amendment Act 2002 (2002 No 43).

7A Temporary exemption for superannuation schemes *[Expired]*

Section 7A: expired, on 14 September 2001, by section 7A(2).

7B Terms and conditions of authorisation*[Repealed]*

Section 7B: repealed, on 1 October 1997, by section 9(1) of the Securities Amendment Act 1996 (1996 No 100).

8 Act to bind Crown

This Act shall bind the Crown.

**Part 1
Securities Commission***[Repealed]*

Part 1: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

9 Securities Commission*[Repealed]*

Section 9: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

10 Functions of Commission*[Repealed]*

Section 10: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

11 Membership of Commission*[Repealed]*

Section 11: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

12 Appointment of member to exercise powers of chairperson*[Repealed]*

Section 12: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

13 Term of office of members*[Repealed]*

Section 13: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

14 Remuneration of members

[Repealed]

Section 14: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

14A Travelling allowances and expenses

[Repealed]

Section 14A: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

14B Commission may act by divisions

[Repealed]

Section 14B: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

14C Membership, chairperson, meetings, and resolutions of division

[Repealed]

Section 14C: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

14D Powers of division

[Repealed]

Section 14D: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

15 Meetings of Commission

[Repealed]

Section 15: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

15A Completion of proceedings where member unable to attend meeting

[Repealed]

Section 15A: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

16 Assent to resolution without a meeting*[Repealed]*

Section 16: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

17 General powers of Commission*[Repealed]*

Section 17: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

17A Sharing of information with Takeovers Panel*[Repealed]*

Section 17A: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

17B Sharing of information with Commerce Commission*[Repealed]*

Section 17B: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

18 Powers of Commission to take evidence*[Repealed]*

Section 18: repealed, on 1 December 2002, by section 12 of the Securities Amendment Act 2002 (2002 No 43).

18A Commission may take evidence for overseas commission or body*[Repealed]*

Section 18A: repealed, on 1 December 2002, by section 12 of the Securities Amendment Act 2002 (2002 No 43).

19 Provisions relating to certain proceedings before Commission*[Repealed]*

Section 19: repealed, on 1 December 2002, by section 12 of the Securities Amendment Act 2002 (2002 No 43).

20 Employees of Commission

[Repealed]

Section 20: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

21 Employment of experts

[Repealed]

Section 21: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

22 Superannuation or retiring allowances

[Repealed]

Section 22: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

23 Application of certain Acts to members and staff of Commission

[Repealed]

Section 23: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

24 Members of Commission and staff deemed to be officials

[Repealed]

Section 24: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

25 Commission may state case for opinion of High Court

[Repealed]

Section 25: repealed, on 1 December 2002, by section 12 of the Securities Amendment Act 2002 (2002 No 43).

26 Appeals to High Court on questions of law only

[Repealed]

Section 26: repealed, on 1 December 2002, by section 12 of the Securities Amendment Act 2002 (2002 No 43).

27 Restrictions on delegation

[Repealed]

Section 27: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

28 Protection from liability for Commission and members, officers, and employees*[Repealed]*

Section 28: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

28A Commission may publish reports*[Repealed]*

Section 28A: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

29 Evidence of resolution of Commission*[Repealed]*

Section 29: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

30 Annual reports*[Repealed]*

Section 30: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

31 Money to be appropriated by Parliament for purposes of this Act*[Repealed]*

Section 31: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

31A Funds of Commission*[Repealed]*

Section 31A: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

31B Bank accounts*[Repealed]*

Section 31B: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

31C Auditor-General to be auditor of Commission

[Repealed]

Section 31C: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

31CA Crown entity

[Repealed]

Section 31CA: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

31D Investment of money

[Repealed]

Section 31D: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

31E Exemption from income tax

[Repealed]

Section 31E: repealed, on 1 May 2011, by section 11 of the Securities Amendment Act 2011 (2011 No 6).

32 Offences

[Repealed]

Section 32: repealed, on 1 December 2002, by section 14 of the Securities Amendment Act 2002 (2002 No 43).

Part 2

**Restrictions on offer and allotment of
securities to the public**

33 Restrictions on offer of securities to the public

- (1) No security shall be offered to the public for subscription, by or on behalf of an issuer, unless—
- (a) the offer is made in, or accompanied by, an authorised advertisement that is an investment statement that complies with this Act and regulations; or
 - (b) the offer is made in an authorised advertisement that is not an investment statement; or
 - (c) the offer is made in, or accompanied by, a registered prospectus that complies with this Act and regulations.

- (2) No debt security shall be offered to the public for subscription, by or on behalf of an issuer, unless—
- (a) the issuer of the security has appointed a person who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers the security as a trustee in respect of the security and both the issuer and that person have signed a trust deed relating to the security; and
 - (ab) the trust deed complies with this Act and the regulations; and
 - (b) a copy of the trust deed has been registered by the Registrar pursuant to section 46; and
 - (c) where the provisions of the trust deed have been amended, a copy of the instrument amending the deed has been registered by the Registrar pursuant to section 47.
- (3) No participatory security shall be offered to the public for subscription, by or on behalf of an issuer, unless—
- (a) the issuer of the security has appointed a person who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers the security as a statutory supervisor in respect of the security and both the issuer and that person have signed a deed of participation relating to the security; and
 - (ab) the deed of participation complies with this Act and the regulations; and
 - (b) a copy of the deed of participation has been registered by the Registrar pursuant to section 46; and
 - (c) where the provisions of the deed of participation have been amended, a copy of the instrument amending the deed has been registered by the Registrar pursuant to section 47.

Section 33(1): substituted, on 1 October 1997, by section 11(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 33(2)(a): amended, on 1 October 2011, by section 68(1) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Section 33(2)(ab): inserted, on 1 May 2011, by section 12(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 33(3)(a): amended, on 1 October 2011, by section 68(2) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Section 33(3)(ab): inserted, on 1 May 2011, by section 12(2) of the Securities Amendment Act 2011 (2011 No 6).

34 Restrictions on distribution of prospectuses

- (1) No registered prospectus shall be distributed by or on behalf of an issuer,—
 - (a) after it has been amended unless all the amendments have been incorporated in, or attached by way of an instrument to, every copy of the registered prospectus that is so distributed; or
 - (b) if it is false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not it became so misleading as a result of a change in circumstances occurring after the date of the prospectus).
- (2) A registered prospectus shall not be distributed by or on behalf of an issuer unless it is accompanied by,—
 - (a) if the registered prospectus refers to, but does not contain, financial statements registered under the Financial Reporting Act 1993, a copy of those financial statements; and
 - (b) a copy of any documents registered under this Act for the purpose of extending the period during which allotments may be made under the registered prospectus.
- (3) However, subsection (2)(a) does not apply to a simplified disclosure prospectus.

Section 34: substituted, on 1 September 1983, by section 14 of the Securities Amendment Act 1982 (1982 No 147).

Section 34(1)(a): substituted, on 28 July 1997, by section 6 of the Securities Amendment Act (No 2) 1997 (1997 No 54).

Section 34(1)(a): amended, on 1 May 2011, by section 13 of the Securities Amendment Act 2011 (2011 No 6).

Section 34(2): added, on 1 October 1997, by section 12 of the Securities Amendment Act 1996 (1996 No 100).

Section 34(3): added, on 28 July 2009, by section 8 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

35 Restrictions on door-to-door sales

- (1) No person shall go from house to house offering securities to the public or any member of the public.

- (2) In this section, the term **house** shall not include an office used for business purposes, or any other premises used by the occupier wholly or partly for the purpose of carrying on any trade, business, profession, or calling.
- (3) In this section, the term **securities** does not include life insurance policies or securities in any co-operative company or building society.

Section 35(3): substituted, on 1 October 1997, by section 13 of the Securities Amendment Act 1996 (1996 No 100).

36 Restrictions on advertising of otherwise exempt securities *[Repealed]*

Section 36: repealed, on 1 September 1983, by section 17(2) of the Securities Amendment Act 1982 (1982 No 147).

36A Subscriptions must be held in trust

An issuer must ensure that subscriptions for securities offered to the public are held in trust for the subscribers until the securities are allotted or until the subscriptions are repaid to the subscribers under this Act.

Section 36A: inserted, on 15 April 2004, by section 10 of the Securities Amendment Act 2004 (2004 No 31).

37 Void irregular allotments

- (1) No allotment of a security offered to the public for subscription shall be made unless at the time of the subscription for the security there was a registered prospectus relating to the security.
- (1A) No allotment of a security that is offered in a simplified disclosure prospectus may be made—
 - (a) by a person who is subject to a prohibition order while that order is in force; or
 - (b) in contravention of section 44AD(1).
- (1B) No allotment of a security offered to the public for subscription may be made in contravention of section 43D(1), 43I(4), or 43K(5)(b).
- (2) No allotment shall be made of an equity security or a participatory security or a unit in a unit trust offered to the public for subscription unless the amount stated in the registered

prospectus relating thereto as the minimum amount which, in the opinion of the directors of the issuer, must be raised by the issue of the securities in order to provide for the matters specified in regulations made under this Act, is subscribed, and that amount is paid to, and received by, the issuer within 4 months after the date of the registered prospectus; and, for the purposes of this subsection—

- (a) a sum shall be deemed to have been paid to, and received by, the issuer if a cheque for that sum is received in good faith by the issuer and the directors of the issuer have no reason to suspect that the cheque will not be paid;
 - (b) the amount so stated in the registered prospectus shall be reckoned exclusively of any amount payable otherwise than in cash.
- (2A) Subsection (2) does not apply if there is no minimum amount which, in the opinion of the directors of the issuer, must be raised by the issue of the securities in order to provide for the matters specified in regulations made under this Act.
- (3) An allotment of a participatory security offered to the public for subscription must not be made unless, at the time of allotment, a written statement from the subscriber authorising the subscription for that particular security has been received by—
 - (a) the statutory supervisor; or
 - (b) a person appointed by the statutory supervisor to receive, on the statutory supervisor's behalf, that written statement or written statements of that class.
- (4) Any allotment made in contravention of the provisions of this section shall be invalid and of no effect.
- (5) Where subscriptions for securities are received by or on behalf of an issuer, but, by virtue of this section, the securities may not be allotted, or for any reason the securities are not allotted, the issuer shall ensure that—
 - (a) *[Repealed]*
 - (b) the subscriptions, together with such interest (if any) as has been earned thereon, are repaid to the subscribers as soon as reasonably practicable.
- (6) If any subscriptions to which this section applies are not so repaid within 2 months after the date on which the subscriptions

were received by or on behalf of the issuer (or, in any case to which subsection (2) applies, within 5 months after the date of the registered prospectus), the issuer and all the directors thereof shall be jointly and severally liable to repay the subscriptions, together with interest at a rate prescribed from time to time by regulations made under this Act from the date on which the subscriptions were received by or on behalf of the issuer:

provided that a director shall not be so liable if he or she proves that the default in the repayment of the subscriptions was not due to any misconduct or negligence on his or her part.

(7) *[Repealed]*

Section 37: substituted, on 1 September 1983, by section 15 of the Securities Amendment Act 1982 (1982 No 147).

Section 37(1A): inserted, on 28 July 2009, by section 9 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 37(1B): inserted, on 1 May 2011, by section 14 of the Securities Amendment Act 2011 (2011 No 6).

Section 37(2): amended, on 15 April 2004, by section 11(1) of the Securities Amendment Act 2004 (2004 No 31).

Section 37(2): amended, on 1 October 1997, by section 14(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 37(2A): inserted, on 15 April 2004, by section 11(2) of the Securities Amendment Act 2004 (2004 No 31).

Section 37(3): substituted, on 15 April 2004, by section 11(3) of the Securities Amendment Act 2004 (2004 No 31).

Section 37(5)(a): repealed, on 15 April 2004, by section 11(4) of the Securities Amendment Act 2004 (2004 No 31).

Section 37(6): amended, on 1 October 1997, by section 3 of the Securities Amendment Act 1997 (1997 No 16).

Section 37(6) proviso: amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 37(6) proviso: amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 37(7): repealed, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Relief orders in respect of section 37

Heading: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

37AA Applications for relief orders in respect of section 37

- (1) An application to the court for a relief order in respect of the application of section 37 to the allotment of a security may be made—
 - (a) in respect of a contravention of section 37; and
 - (b) regardless of whether the contravention occurred before or after this section comes into force; and
 - (c) in connection with 1 or more subscribers.
- (2) However, an application to the court for a relief order in respect of the application of section 37 to the allotment of a security may not be made if the subscription for the security has been repaid to the subscriber under section 37(5) or (6).
- (3) In this section and sections 37AB to 37AL, unless the context otherwise requires,—
 - (a) **security holder** means the person who would be the current security holder but for the application of section 37(4); and
 - (b) the references to the security holder apply if the security holder is a person other than the subscriber.

Section 37AA: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

37AB Effect of relief order in respect of section 37

Section 37(4) to (6) does not apply to the allotment of a security if a relief order under section 37AC or section 37AH or section 37AI is made in respect of the application of section 37 to the allotment of the security.

Section 37AB: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

Mandatory relief orders

Heading: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

37AC Court must make relief order in certain circumstances

- (1) The court must make a relief order in respect of the application of section 37 to the allotment of the security if the application for that order is made by—
 - (a) the subscriber; or

- (b) the security holder; or
 - (c) the issuer, if the subscriber consents in writing to the making of the relief order; or
 - (d) the issuer, if the security holder consents in writing to the making of the relief order; or
 - (e) the issuer, if—
 - (i) the contravention of section 37 was caused by a failure to comply with a condition of an exemption granted under section 5(5) (as in force before its repeal) or under section 70B or of an exemption provided under section 5(3A) or 5A; and
 - (ii) the issuer has given notice of that contravention to the subscriber in accordance with sections 37AE and 37AF; and
 - (iii) the subscriber has not objected to the court making a relief order by—
 - (A) notifying the issuer in writing within 30 working days after the day on which the notice is given that the subscriber objects to the making of the relief order; and
 - (B) including in the subscriber's objection a description as to how the contravention has materially prejudiced the interests of the subscriber.
- (2) An order may be made under this section regardless of whether the contravention of section 37 occurred before or after this section comes into force.
- (3) An application under this section may be made in conjunction with an application under section 37AH or section 37AI.

Section 37AC: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

Section 37AC(1)(e)(i): substituted, on 1 May 2011, by section 15 of the Securities Amendment Act 2011 (2011 No 6).

37AD Consent for purposes of section 37AC(1)(c) or (d)

- (1) The issuer must not obtain the consent of a person under section 37AC(1)(c) or (d) until after—
- (a) the contravention in relation to the proposed application for the relief order has occurred; and

- (b) a notice that contains, or has attached to it, the following is sent by the issuer to the person:
 - (i) any information that is necessary to enable a reasonable person to understand the nature and implications of the contravention that has occurred:
 - (ii) a statement to the effect that the notice concerns the legal rights of the person and that, if there is anything about the person's legal rights that the person does not understand, then the person should seek legal advice before giving their consent to the making of a relief order:
 - (iii) any information, documents, or copies of documents required to be sent, delivered, or provided to the person in accordance with an exemption of a kind referred to in section 37AC(1)(e)(i), if the contravention of section 37 was caused by a failure to send, deliver, or provide that information, those documents, or those copies to the person in accordance with that exemption:
 - (iv) an investment statement relating to the security, unless an exemption from section 37A(1)(a) granted or provided under this Act applies to the security or to the issuer in respect of the security (or would have applied but for a failure to comply with a condition of that exemption):
 - (v) a statement to the effect that there is a registered prospectus in relation to the security and that, at the request of the person and on payment of any prescribed fee, the issuer will send the registered prospectus to the person:
 - (vi) a statement that describes the effect of section 363 of the Companies Act 1993 (as applied by section 66) in relation to that prospectus:
 - (vii) if the security is offered in a simplified disclosure prospectus, a copy of that simplified disclosure prospectus.
- (1A) However, subsection (1)(b)(iv) and (v) do not apply to securities that are offered in a simplified disclosure prospectus.

- (2) Subsection (1)(b)(v) and (vi) does not apply if an exemption from section 37(1) granted or provided under this Act applies to the security or to the issuer in respect of the security (or would have applied but for a failure to comply with a condition of that exemption).
- (3) A person's consent is of no effect for the purposes of section 37AC(1)(c) or (d) if either or both of the following apply:
 - (a) that consent is given before the date on which the notice referred to in subsection (1)(b) has been received by the person;
 - (b) that consent is given before there is a registered prospectus relating to the security if the notice referred to in subsection (1)(b) is required to contain, or have attached to it, the statements referred to in subsection (1)(b)(v) and (vi).

Section 37AD: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

Section 37AD(1)(b)(iii): amended, on 1 May 2011, by section 16(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 37AD(1)(b)(iv): amended, on 1 May 2011, by section 16(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 37AD(1)(b)(vii): added, on 28 July 2009, by section 10(1) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 37AD(1A): inserted, on 28 July 2009, by section 10(2) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 37AD(2): amended, on 1 May 2011, by section 16(4) of the Securities Amendment Act 2011 (2011 No 6).

37AE Notice to subscriber for purposes of section 37AC(1)(e)

- (1) The issuer must, if an application is to be made under section 37AC(1)(e), give a notice to the subscriber in accordance with this section and section 37AF after the contravention in relation to the proposed application for the relief order has occurred.
- (2) The notice must contain statements or information to the following effect:
 - (a) a description of the securities to which the notice relates; and
 - (b) a description of the manner in which the issuer has contravened section 37; and

- (c) a summary of the effect of section 37(4) and (6) if a relief order is not made; and
 - (d) a summary, if appropriate, of the effect of section 37(5) if a relief order is not made; and
 - (e) that the court has the power to make an order that grants relief from the application of section 37(4) to (6); and
 - (f) that the issuer is seeking, or may seek, a relief order; and
 - (g) that the subscriber may object to the making of a relief order by notifying the issuer in writing within 30 working days after the day on which the notice is given that the subscriber objects to the making of the relief order; and
 - (h) that, if the subscriber objects to the making of the relief order, then the subscriber must include in the subscriber's objection a description as to how the contravention has materially prejudiced the interests of the subscriber; and
 - (i) that the court must make a relief order if the subscriber does not object to the making of the relief order in the manner referred to in paragraphs (g) and (h); and
 - (j) the address of the issuer to which objections must be sent; and
 - (k) that the notice affects the subscriber's legal rights and that, if there is anything about the subscriber's legal rights that the subscriber does not understand, then the subscriber should seek legal advice immediately; and
 - (l) a summary of the effect of section 37AF(1)(d) and the names and addresses of the persons to whom the notice will be sent under section 37AF(1)(d); and
 - (m) any further information and explanation as may be necessary to enable a reasonable person to understand the nature and implications of an application for a relief order and the notice.
- (3) The notice may contain statements and information in connection with 1 or more subscribers.
 - (4) The form of the notice must be approved by the court before the notice is given to any subscriber.
 - (5) The court may—

- (a) grant its approval subject to any terms and conditions concerning the form and content of the notice that it thinks fit; and
- (b) require the notice to contain any information concerning the security or the issuer that it considers may assist the subscriber to decide whether or not to object to the making of the relief order.

Section 37AE: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

37AF How notice must be given

- (1) The notice to be given to a subscriber under section 37AE must be given by—
 - (a) sending the notice to a current address for the subscriber; and
 - (b) publishing the notice in each of the daily newspapers published in Whangarei, Auckland, Hamilton, Rotorua, Hawke's Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin, and Invercargill (unless a daily newspaper is not published in that place); and
 - (c) publishing the notice on the issuer's website (if the issuer has a website) in an electronic form that is publicly accessible; and
 - (d) sending a copy of the notice to,—
 - (i) in the case of a participatory security, the statutory supervisor (if any); and
 - (ii) in the case of a debt security, the trustee (if any); and
 - (iia) in the case of an interest in a KiwiSaver scheme other than a restricted scheme, the KiwiSaver trustee; and
 - (iii) in the case of a unit in a unit trust, the unit trustee (if any); and
 - (iv) the FMA.
- (2) The issuer must comply with subsection (1)(a) to (d) within a consecutive period of 5 working days.
- (3) However, the issuer does not have to comply with subsection (1)(a) if the issuer does not have knowledge of a current ad-

dress for a subscriber and has taken reasonable steps to obtain a current address for the subscriber.

- (4) The notice must be treated as having been given to the subscriber on the day within the consecutive period of 5 working days—
 - (a) on which subsection (1)(a) to (d) was complied with by the issuer; or
 - (b) on which subsection (1)(b) to (d) was complied with by the issuer if subsection (3) applies.
- (5) The form of the notice that is published under subsection (1)(b) and (c) must not contain any personal information (within the meaning of the Privacy Act 1993) unless the court orders otherwise.

Section 37AF: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

Section 37AF(1)(d)(iia): inserted, on 1 May 2011, by section 56 of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

Section 37AF(1)(d)(iv): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

37AG Court may make order for compensation

- (1) The court may, on the application of a subscriber, order an issuer to pay compensation to the subscriber for any loss or damage suffered by the subscriber that is caused by a contravention of section 37.
- (2) An application may be made under subsection (1) only if—
 - (a) an application has been made to the court for a relief order under section 37AC; or
 - (b) the court has made a relief order under section 37AC.
- (3) An application under subsection (1) may not be made 1 year or more after the date on which the court makes a relief order under section 37AC (if the court has made an order).
- (4) Subsection (1) applies regardless of whether the contravention of section 37 occurred before or after this section comes into force.

Section 37AG: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

Discretionary relief orders

Heading: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

37AH When court may make relief order in respect of section 37

- (1) The court may in the course of any proceedings, or on the application of the issuer under this section, make a relief order in respect of the application of section 37 to the allotment of a security if the court considers that it is just and equitable to do so.
- (2) An order may be made under this section regardless of whether the contravention of section 37 occurred before or after this section comes into force.
- (3) In determining whether to make a relief order under this section, the court must have regard to—
 - (a) all of the circumstances relating to the allotment of the security; and
 - (b) the nature and seriousness of the contravention of section 37; and
 - (c) whether the contravention has materially prejudiced the interests of the subscriber; and
 - (d) whether the subscriber has disposed of the security to any other person; and
 - (e) any other matters that the court thinks fit.
- (4) An application under this section may be made in conjunction with an application under section 37AC or section 37AI.

Section 37AH: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

Transitional provision for relief orders

Heading: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

37AI Transitional provision for relief orders in respect of section 37

- (1) This section applies to a contravention of section 37 in connection with the allotment of a security if that contravention is

caused solely by a failure to comply, before this section comes into force, with—

- (a) any of the requirements in paragraph (d) of the definition of Australian prospectus in clause 3 of the Securities Act (Australian Unit Trusts) Exemption Notice 1995 (SR 1995/105); or
 - (b) any of the requirements in paragraph (d) of the definition of Australian prospectus in clause 4 of the Securities Act (Australian Unit Trusts) Exemption Notice 1996 (SR 1996/74); or
 - (c) the condition in clause 5 of the Securities Act (Australian Unit Trusts) Exemption Notice 1997 (SR 1997/216); or
 - (d) the condition in clause 5 of the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 1999 (SR 1999/119); or
 - (e) the condition in clause 6 of the Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 1999 (SR 1999/420).
- (2) The court must, on the application of the issuer, make a relief order in respect of the application of section 37 to the allotment of the security if the contravention has not materially prejudiced the interests of the subscriber.
- (3) If the contravention has materially prejudiced the interests of the subscriber, the court may make a relief order in respect of the application of section 37 to the allotment of the security if the court considers that it is just and equitable to do so having regard to—
- (a) whether the subscriber has disposed of the security to any other person; and
 - (b) any other matters that the court thinks fit.
- (4) An application under this section may be made in conjunction with an application under section 37AC or section 37AH.

Section 37AI: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

*Other orders in relation to section 37AH and
section 37AI relief orders*

Heading: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

37AJ Other orders that court may make in relation to relief orders under section 37AH or section 37AI

If the court makes a relief order under section 37AH or section 37AI, the court may—

- (a) make the relief order subject to any terms and conditions that it thinks fit if the contravention of section 37 has materially prejudiced the interests of the subscriber; and
- (b) in respect of a security, order the issuer to pay compensation to—
 - (i) the subscriber for any loss or damage suffered by the subscriber that is caused by the contravention of section 37; and
 - (ii) any person who has, at any time, been a security holder in relation to the security for any loss or damage suffered by the person that is caused by the contravention of section 37; and
- (c) grant any mandatory, restrictive, or prohibitory injunction that the court thinks fit; and
- (d) make an order for any consequential relief that the court thinks fit, unless the court makes the relief order under section 37AI.

Section 37AJ: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

Service, rights to appear, and other proceedings

Heading: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

37AK Service and rights to appear and adduce evidence in respect of section 37

- (1) If an application for an order is made under section 37AC(1)(a) or (b) in connection with a security, the applicant must, as soon

- as practicable, serve notice of the application on the following persons:
- (a) the issuer:
 - (b) any other person that the court orders must be served with notice of the application.
- (2) If an application for an order is made under section 37AC(1)(c) or (d) in connection with a security, the applicant must, as soon as practicable, serve notice of the application on the following persons:
- (a) the subscriber:
 - (b) the security holder:
 - (c) the FMA:
 - (d) any other person that the court orders must be served with notice of the application.
- (3) If an application for an order is made under any of the provisions of sections 37AG to 37AI in connection with a security, the applicant must, as soon as practicable, serve notice of the application on the following persons (unless the person is the applicant):
- (a) the issuer:
 - (b) the subscriber or a representative defendant appointed by the court:
 - (c) the security holder or a representative defendant appointed by the court:
 - (d) the FMA:
 - (e) in the case of a participatory security, the statutory supervisor (if any):
 - (f) in the case of a debt security, the trustee (if any):
 - (fa) in the case of an interest in a KiwiSaver scheme other than a restricted scheme, the KiwiSaver trustee:
 - (g) in the case of a unit in a unit trust, the unit trustee (if any):
 - (h) any other person that the court orders must be served with notice of the application.
- (4) For the purposes of subsection (3)(b), a notice of an application does not have to be served on a subscriber if, in connection with the security, the issuer has given the subscriber a notice in accordance with sections 37AE and 37AF and the subscriber

- has not objected to the making of a relief order in the manner referred to in section 37AE(2)(g) and (h).
- (5) If an issuer applies, in connection with a security, to the court for the court's approval for the purposes of section 37AE(4), the issuer must, as soon as practicable, serve notice of that application on the following persons:
- (a) the FMA;
 - (b) in the case of a participatory security, the statutory supervisor (if any);
 - (c) in the case of a debt security, the trustee (if any);
 - (ca) in the case of an interest in a KiwiSaver scheme other than a restricted scheme, the KiwiSaver trustee;
 - (d) in the case of a unit in a unit trust, the unit trustee (if any);
 - (e) any other person that the court orders must be served with notice of the application.
- (6) Despite subsections (1) to (5), the court may, if it thinks fit, order that notice of an application does not have to be served on a person or a class of persons.
- (7) If a person has been served, or should have been served, with notice of an application—
- (a) in accordance with subsections (1) to (3), the person may appear and be heard on the application and on any related matter, in person or by a barrister or solicitor, in the court;
 - (b) in accordance with subsection (5), the person may appear and be heard in relation to the matters referred to in section 37AE(5), in person or by a barrister or solicitor, in the court.
- (8) A person has the right to adduce evidence and the right to cross-examine witnesses if the person appears under this section, unless the proceedings are by way of appeal.
- (9) The rights referred to in this section apply whether or not the person was a party to the proceedings at any earlier stage in the proceedings.
- (10) This section does not limit the rights of any person, under any other enactment or rule of law, to appear and be heard or to adduce evidence.

Section 37AK: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

Section 37AK(2)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37AK(3)(d): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37AK(3)(fa): inserted, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 37AK(5)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37AK(5)(ca): inserted, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

37AL Other proceedings for relief in respect of section 37

- (1) This section applies—
 - (a) to all proceedings commenced after this section comes into force that relate to an allotment of a security made in contravention of section 37; and
 - (b) to all proceedings that have not been finally disposed of by the court of first instance before this section comes into force that relate to an allotment of a security made in contravention of section 37.
- (2) The court must not, in respect of an allotment of a security made in contravention of section 37, make any order or declaration, including an order or declaration in respect of moneys payable, relief, validation, restitution, compensation, variation of a contract, or relief of a contract in whole or part or for any particular purpose, other than any of the following orders:
 - (a) any order in accordance with any of the provisions of sections 37AA to 37AK, this section, and sections 37B to 37G;
 - (b) any order or direction in relation to a matter of procedure;
 - (c) any order as to costs;
 - (d) any order to require the repayment of any subscriptions or interest under section 37(5) or (6);
 - (e) any order in relation to proceedings under section 59;
 - (f) any order in relation to proceedings under section 60(2).
- (3) This section does not limit—
 - (a) the right of a person to discontinue any proceedings; or

- (b) the right of a person to commence proceedings in accordance with any of the provisions of sections 37AA to 37AK, this section, and sections 37B to 37G.
- (4) Subsection (5) applies if—
 - (a) proceedings have been commenced to require the repayment of subscriptions or interest under section 37(5) or (6) in relation to the allotment of a security; and
 - (b) an application has been made for a relief order in relation to the security under 1 or more of the following provisions:
 - (i) section 37AC;
 - (ii) section 37AH;
 - (iii) section 37AI.
- (5) The court must, on the application of the issuer, order that the proceedings to require the repayment of subscriptions or interest under section 37(5) or (6) be stayed until after the determination of the application, or applications, for a relief order unless the application, or applications, for a relief order—
 - (a) is, or are, frivolous or vexatious; or
 - (b) is, or are, an abuse of the process of the court.
- (6) Nothing in this section applies to an appeal against a final judgment given or made before this section comes into force.

Section 37AL: inserted, on 15 April 2004, by section 12 of the Securities Amendment Act 2004 (2004 No 31).

37A Voidable irregular allotments

- (1) No allotment of a security offered to the public for subscription shall be made if—
 - (a) the subscriber did not receive an investment statement relating to the security before subscribing for the security; or
 - (ab) in the case of a security that is offered in a simplified disclosure prospectus,—
 - (i) the subscriber did not receive, before subscribing for the security, a copy of—
 - (A) that simplified disclosure prospectus; and
 - (B) every instrument that amends that prospectus that is registered under section 43 before the time of allotment; or

- (ii) the FMA made a delayed allotment order in relation to that simplified disclosure prospectus and the subscriber subscribed for the security before the delayed allotment order was made; or
- (b) at the time of allotment, the investment statement or registered prospectus relating to the security is known by the issuer of the security, or any director of the issuer, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the investment statement or registered prospectus became so false or misleading as a result of a change of circumstances occurring after the date of the investment statement or registered prospectus); or
- (c) the date of allotment would be more than,—
 - (i) where the registered prospectus relating to the security contains or refers to a statement of financial position or interim statement of financial position in accordance with regulations and no certificate has been registered in relation to that prospectus under subsection (1A), 9 months after the date of that statement of financial position or interim statement of financial position (whichever is the later); or
 - (ii) where the registered prospectus relating to the security contains or refers to a statement of financial position (but not an interim statement of financial position) in accordance with regulations and a certificate has been registered in relation to that prospectus under subsection (1A), 9 months after the date of that certificate; or
 - (iii) in any other case, 6 months after the date of the registered prospectus; or
- (d) in the case of an equity security, debt security, or participatory security, after the allotment, the total amount of securities allotted under the registered prospectus relating to the security would (after deducting, in the case of an allotment of debt securities, the total amount of debt securities of the issuer redeemed since the date of the

registered prospectus) exceed the amount specified in the registered prospectus as the maximum amount that will be so allotted.

(1AA) However, subsection (1)(a) does not apply to securities that are offered in a simplified disclosure prospectus.

(1A) For the purposes of subsection (1)(c), if no interim statement of financial position is contained or referred to in a registered prospectus, an issuer may deliver to the Registrar for registration under this Act, and the Registrar shall register, a certificate that relates to the registered prospectus and that—

- (a) is signed on behalf of all the directors by at least 2 directors of the issuer (or, where the issuer has only 1 director, by that director); and
- (b) is dated no later than 9 months after the date of the statement of financial position contained or referred to in the registered prospectus; and
- (c) states that, in the opinion of all directors of the issuer after due enquiry by them,—
 - (i) the financial position shown in the statement of financial position referred to in paragraph (b) has not materially and adversely changed during the period from the date of that statement of financial position to the date of the certificate; and
 - (ii) the registered prospectus is not, at the date of the certificate, false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances; and
- (d) where the registered prospectus relates to equity securities, debt securities, or participatory securities, is accompanied by financial statements—
 - (i) for the 6-month period from the date of the statement of financial position referred to in paragraph (b); and
 - (ii) prepared in accordance with regulations as if they were required to be contained or referred to in a registered prospectus for those securities, except that they need not be audited.

- (2) *[Repealed]*
- (3) An allotment made in contravention of this section is (whether or not the issuer is in liquidation) voidable at the instance of the subscriber by notice in writing to the issuer at any time within the prescribed period.
- (4) For the purpose of subsection (3), **prescribed period** means—
- (a) a period of 1 year after the security or a certificate of the security has been sent to the subscriber; or
 - (b) a period of 6 months after the subscriber knows, or ought reasonably to know, that the allotment was made in contravention of the provisions of this section—
- whichever is the lesser.
- (5) Without limiting any enactment or rule of law, an allotment made in contravention of this section shall be valid unless notice avoiding the allotment is given by the subscriber in accordance with subsection (3).
- (6) Where an allotment made in contravention of this section is avoided by the subscriber under subsection (3), the issuer shall forthwith upon receiving notice under that subsection, repay the subscriptions to the subscriber.
- (7) If such subscriptions are not so repaid within 1 month after the date of the receipt by the issuer of notice under subsection (3), the issuer and all the directors thereof shall be jointly and severally liable to repay the subscriptions with interest at a rate prescribed from time to time by regulations made under this Act from the date on which such notice was received: provided that a director shall not be so liable if he or she proves that the default in the repayment of the subscriptions was not due to any misconduct or negligence on his or her part.

- (8) *[Repealed]*

Section 37A: inserted, on 1 September 1983, by section 16 of the Securities Amendment Act 1982 (1982 No 147).

Section 37A(1): substituted, on 1 October 1997, by section 15(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 37A(1)(a): amended, on 1 October 1997, by section 4(1)(a) of the Securities Amendment Act 1997 (1997 No 16).

Section 37A(1)(ab): inserted, on 28 July 2009, by section 11(1) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 37A(1)(ab)(i)(B): substituted, on 1 May 2011, by section 17 of the Securities Amendment Act 2011 (2011 No 6).

Section 37A(1)(ab)(ii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37A(1)(b): amended, on 1 October 1997, by section 4(1)(b) of the Securities Amendment Act 1997 (1997 No 16).

Section 37A(1)(c)(i): amended, on 1 October 1997, by section 4(1)(c) of the Securities Amendment Act 1997 (1997 No 16).

Section 37A(1)(c)(ii): amended, on 1 October 1997, by section 4(1)(c) of the Securities Amendment Act 1997 (1997 No 16).

Section 37A(1AA): inserted, on 28 July 2009, by section 11(2) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 37A(1A): inserted, on 1 October 1997, by section 15(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 37A(1A): amended, on 1 October 1997, by section 4(2) of the Securities Amendment Act 1997 (1997 No 16).

Section 37A(1A)(b): amended, on 1 October 1997, by section 4(2) of the Securities Amendment Act 1997 (1997 No 16).

Section 37A(1A)(c)(i): amended, on 1 October 1997, by section 4(2) of the Securities Amendment Act 1997 (1997 No 16).

Section 37A(1A)(d)(i): amended, on 1 October 1997, by section 4(2) of the Securities Amendment Act 1997 (1997 No 16).

Section 37A(2): repealed, on 15 April 2004, by section 13(1) of the Securities Amendment Act 2004 (2004 No 31).

Section 37A(3): amended, on 28 July 2009, by section 11(3) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 37A(7): amended, on 1 October 1997, by section 4(3) of the Securities Amendment Act 1997 (1997 No 16).

Section 37A(7) proviso: amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 37A(7) proviso: amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 37A(8): repealed, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Relief orders in respect of section 37A

Heading: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

37B Relief orders in respect of section 37A

- (1) The issuer of a security may make an application to the court for a relief order under section 37C or section 37D in respect of the application of section 37A to the allotment of a security if the subscriber has given notice to the issuer under section 37A(3).

- (2) However, an application to the court for a relief order in respect of the application of section 37A to the allotment of a security may not be made if the subscription for the security has been repaid to the subscriber under section 37A(6) or (7).
- (3) If a relief order in respect of the application of section 37A to the allotment of a security is made,—
 - (a) the notice given under section 37A(3) does not affect the validity of the allotment of the security; and
 - (b) section 37A(6) and (7) does not apply to the allotment of the security.
- (4) An application to the court may be made in connection with 1 or more subscribers.

Section 37B: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

Discretionary relief orders

Heading: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

37C When court may make relief order in respect of section 37A

- (1) The court may in the course of any proceedings, or on the application of the issuer under this section, make a relief order in respect of the application of section 37A to the allotment of a security if the court considers that it is just and equitable to do so.
- (2) An order may be made under this section regardless of whether the contravention of section 37A occurred before or after this section comes into force.
- (3) In determining whether to make a relief order under this section, the court must have regard to—
 - (a) all of the circumstances relating to the allotment of the security; and
 - (b) the nature and seriousness of the contravention of section 37A; and
 - (c) whether the contravention has materially prejudiced the interests of the subscriber; and
 - (d) whether the subscriber has disposed of the security to any other person; and

- (e) any other matters that the court thinks fit.
- (4) An application under this section may be made in conjunction with an application under section 37D.

Section 37C: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

Transitional provision for relief orders

Heading: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

37D Transitional provision for relief orders in respect of section 37A

- (1) This section applies to a contravention of section 37A in connection with the allotment of a security if that contravention is caused solely by a failure to comply, before this section comes into force, with the condition in clause 6 of the Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 1999 (SR 1999/420).
- (2) The court must, on the application of the issuer, make a relief order in respect of the application of section 37A to the allotment of the security if the contravention has not materially prejudiced the interests of the subscriber.
- (3) If the contravention has materially prejudiced the interests of the subscriber, the court may make a relief order in respect of the application of section 37A to the allotment of the security if the court considers that it is just and equitable to do so having regard to—
 - (a) whether the subscriber has disposed of the security to any other person; and
 - (b) any other matters that the court thinks fit.
- (4) An application under this section may be made in conjunction with an application under section 37C.

Section 37D: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

Other orders

Heading: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

37E Other orders that court may make in relation to relief orders under section 37C or section 37D

If the court makes a relief order under section 37C or section 37D, the court may—

- (a) make the relief order subject to any terms and conditions that it thinks fit if the contravention of section 37A has materially prejudiced the interests of the subscriber; and
- (b) in respect of a security, order the issuer to pay compensation to—
 - (i) the subscriber for any loss or damage suffered by the subscriber that is caused by the contravention of section 37A; and
 - (ii) any person who has, at any time, been a security holder in relation to the security for any loss or damage suffered by the person that is caused by the contravention of section 37A; and
- (c) grant any mandatory, restrictive, or prohibitory injunction that the court thinks fit; and
- (d) make an order for any consequential relief that the court thinks fit, unless the court makes the relief order under section 37D.

Section 37E: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

Service, rights to appear, and other proceedings

Heading: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

37F Service and rights to appear and adduce evidence in respect of section 37C or section 37D

- (1) If an application for an order is made under section 37C or section 37D in connection with a security, the applicant must, as soon as practicable, serve notice of the application on the following persons:
 - (a) the subscriber or a representative defendant appointed by the court;
 - (b) the security holder (being the person who would be the current security holder but for the application of section

- 37A(3)) or a representative defendant appointed by the court:
- (c) the FMA:
 - (d) in the case of a participatory security, the statutory supervisor (if any):
 - (e) in the case of a debt security, the trustee (if any):
 - (ea) in the case of an interest in a KiwiSaver scheme other than a restricted scheme, the KiwiSaver trustee:
 - (f) in the case of a unit in a unit trust, the unit trustee (if any):
 - (g) any other person that the court orders must be served with notice of the application.
- (2) Despite subsection (1), the court may, if it thinks fit, order that notice of an application does not have to be served on a person or a class of persons.
- (3) If a person has been served, or should have been served, with notice of an application, the person may appear and be heard on the application and on any related matter, in person or by a barrister or solicitor, in the court.
- (4) A person has the right to adduce evidence and the right to cross-examine witnesses if the person appears under this section, unless the proceedings are by way of appeal.
- (5) The rights referred to in this section apply whether or not the person was a party to the proceedings at any earlier stage in the proceedings.
- (6) This section does not limit the rights of any person, under any other enactment or rule of law, to appear and be heard or to adduce evidence.

Section 37F: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

Section 37F(1)(c): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 37F(1)(ea): inserted, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

37G Other proceedings for relief in respect of section 37A

- (1) This section applies—

- (a) to all proceedings commenced after this section comes into force that relate to an allotment of a security made in contravention of section 37A; and
 - (b) to all proceedings that have not been finally disposed of by the court of first instance before this section comes into force that relate to an allotment of a security made in contravention of section 37A.
- (2) The court must not, in respect of an allotment of a security made in contravention of section 37A, make any order or declaration, including an order or declaration in respect of moneys payable, relief, validation, restitution, compensation, variation of a contract, or relief of a contract in whole or part or for any particular purpose, other than any of the following orders:
 - (a) any order in accordance with any of the provisions of sections 37AA to 37AL, sections 37B to 37F, and this section:
 - (b) any order or direction in relation to a matter of procedure:
 - (c) any order as to costs:
 - (d) any order to require the repayment of any subscriptions or interest under section 37A(6) or (7):
 - (e) any order in relation to proceedings under section 59:
 - (f) any order in relation to proceedings under section 60(2).
- (3) This section does not limit—
 - (a) the right of a person to discontinue any proceedings; or
 - (b) the right of a person to commence proceedings in accordance with any of the provisions of sections 37AA to 37AL, sections 37B to 37F, and this section.
- (4) Subsection (5) applies if—
 - (a) proceedings have been commenced to require the repayment of subscriptions or interest under section 37A(6) or (7) in relation to the allotment of a security; and
 - (b) an application has been made for a relief order under section 37C or section 37D (or both of them) in relation to the security.
- (5) The court must, on the application of the issuer, order that the proceedings to require the repayment of subscriptions or interest under section 37A(6) or (7) be stayed until after the deter-

mination of the application, or applications, for a relief order unless the application, or applications, for a relief order—

- (a) is, or are, frivolous or vexatious; or
 - (b) is, or are, an abuse of the process of the court.
- (6) Nothing in this section applies to an appeal against a final judgment given or made before this section comes into force.

Section 37G: inserted, on 15 April 2004, by section 14 of the Securities Amendment Act 2004 (2004 No 31).

Advertisements

Heading: substituted, on 1 October 1997, by section 16(1) of the Securities Amendment Act 1996 (1996 No 100).

38 Meaning of authorised advertisement

In this Act, the term **authorised advertisement** means,—

- (a) in relation to an offer of securities to the public in respect of which an investment statement is required, an advertisement—
 - (i) that is an investment statement that relates to the securities and that complies with this Act and regulations; or
 - (ii) that refers to an investment statement that relates to the securities referred to in the advertisement and that complies with this Act and regulations:
- (b) in relation to an offer of securities to the public in respect of which an investment statement is not required, but in respect of which a registered prospectus or a disclosure statement under section 81 of the Reserve Bank of New Zealand Act 1989 is required, an advertisement—
 - (i) that refers to a registered prospectus or a current disclosure statement; and
 - (ii) that describes where a copy of the prospectus or the disclosure statement can be obtained free of charge; and
 - (iii) that complies with this Act and regulations:
- (c) in any other case, an advertisement that complies with this Act and regulations.

Section 38: substituted, on 1 October 1997, by section 16(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 38(b): substituted, on 1 October 1997, by section 5 of the Securities Amendment Act 1997 (1997 No 16).

Section 38(c): added, on 1 October 1997, by section 5 of the Securities Amendment Act 1997 (1997 No 16).

38AA Meaning of authorised advertisement in relation to offers of debt securities by registered banks

[Repealed]

Section 38AA: repealed, on 1 October 1997, by section 6 of the Securities Amendment Act 1997 (1997 No 16).

38A Statement in advertisement by expert

No advertisement shall contain a statement purporting to be made by an expert unless—

- (a) the expert has given and has not, before distribution of the advertisement, withdrawn his or her written consent to the distribution of the advertisement with the statement included in the form and context in which it is included; and
- (b) a statement of the expert's qualifications appears in the advertisement; and
- (c) if the expert is, or is intended to be, an officer, director, or employee of, or professional adviser to, the issuer of the securities referred to in the advertisement, a statement appears in the advertisement to that effect.

Section 38A: inserted, on 1 September 1983, by section 18 of the Securities Amendment Act 1982 (1982 No 147).

Section 38A(a): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

38B Prohibition of advertisements

- (1) Where, at any time, the FMA is of the opinion that an advertisement—

- (a) is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities to which it relates; or
- (b) is inconsistent with any registered prospectus referred to in it; or

- (c) does not comply with this Act and regulations,—
the FMA may make an order prohibiting the distribution of that advertisement or any advertisement which relates to the offer of securities.
- (2) Without limiting subsection (1), where, at any time, the FMA is of the opinion that an advertisement that contains or refers to an offer of debt securities the issuer of which is a registered bank is inconsistent with the most recent disclosure statement published by the registered bank under section 81 of the Reserve Bank of New Zealand Act 1989, the FMA may make an order prohibiting the distribution of that advertisement or any advertisement which relates to the offer of securities.
- (3) An order may be made on such terms and conditions as the FMA thinks fit.
- (4) Where the FMA makes an order under this section,—
(a) it shall forthwith notify the issuer of the securities that the order has been made and the reasons for making it; and
(b) it may notify any other person that the order has been made and the reasons for making it.
- (5) Every person who contravenes an order made under this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.
- (6) It is a defence to a charge under subsection (5) if the defendant proves that the advertisement was distributed—
(a) without the defendant's knowledge; or
(b) without the defendant's knowledge of the order.
- (7) The FMA must, after an order has been made under this section, give the issuer or the issuer's representative an opportunity to make written submissions and to be heard on the matter.
- (8) The FMA, if it is satisfied that the order should not continue in force, may revoke the order.
- (9) In this section, the term **advertisement** does not include an investment statement.

Section 38B: inserted, on 1 October 1997, by section 17 of the Securities Amendment Act 1996 (1996 No 100).

Section 38B(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 38B(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 38B(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 38B(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 38B(7): substituted, on 1 May 2011, by section 18 of the Securities Amendment Act 2011 (2011 No 6).

Section 38B(8): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Investment statements

Heading: inserted, on 1 October 1997, by section 17 of the Securities Amendment Act 1996 (1996 No 100).

38C Meaning of investment statement

In this Act, the term **investment statement** means a written document that—

- (a) contains or refers to 1 or more offers of securities to the public for subscription; and
- (b) states that it is an investment statement for the purposes of this Act.

Section 38C: inserted, on 1 October 1997, by section 17 of the Securities Amendment Act 1996 (1996 No 100).

38D Purpose of investment statement

The purpose of an investment statement is to—

- (a) provide certain key information that is likely to assist a prudent but non-expert person to decide whether or not to subscribe for securities; and
- (b) bring to the attention of such a person the fact that other important information about the securities is available to that person in other documents.

Section 38D: inserted, on 1 October 1997, by section 17 of the Securities Amendment Act 1996 (1996 No 100).

38E Form and content of investment statement

- (1) Every investment statement shall—
 - (a) be in writing; and

- (b) state, in a prominent place, the date as at which the investment statement is prepared; and
 - (c) if a registered prospectus is required in respect of the securities referred to in the investment statement, state that there is a registered prospectus containing an offer of securities to which the investment statement relates; and
 - (d) contain all information, statements, and other matters that it is required to contain by regulations.
- (2) An investment statement may relate to any or all of the following:
 - (a) 1 or more kinds of securities;
 - (b) 1 or more offers of or subscriptions for securities of a particular kind.
- (3) Unless this Act or regulations provide otherwise, nothing in this Act or in regulations limits the information, statements, or other matters that may be contained in an investment statement.

Section 38E: inserted, on 1 October 1997, by section 17 of the Securities Amendment Act 1996 (1996 No 100).

Section 38E(1)(c): substituted, on 1 October 1997, by section 7 of the Securities Amendment Act 1997 (1997 No 16).

38F Suspension and prohibition of investment statement

[Repealed]

Section 38F: repealed, on 1 May 2011, by section 19 of the Securities Amendment Act 2011 (2011 No 6).

Prospectuses

39 Form and content of prospectus

- (1) Every prospectus and registered prospectus shall—
 - (a) be in writing and be dated; and
 - (b) specify any documents required by section 41 to be endorsed on or attached to the prospectus or registered prospectus for the purposes of that section; and
 - (c) contain all information, statements, certificates, and other matters that it is required to contain by regulations made under this Act.

- (2) A prospectus or registered prospectus may form part of, or be combined with, any annual report or other document that is required by any enactment; and, in any such case, the provisions of this Act and of all regulations made under this Act shall apply to that annual report or other document.
- (3) Unless this Act or regulations provide otherwise, nothing in this Act or in regulations made under this Act limits the information, statements, certificates, or other matters that may be contained in a prospectus or registered prospectus.

Section 39: substituted, on 1 September 1983, by section 19 of the Securities Amendment Act 1982 (1982 No 147).

Section 39(2): added, on 1 October 1997, by section 18 of the Securities Amendment Act 1996 (1996 No 100).

Section 39(3): added, on 1 October 1997, by section 18 of the Securities Amendment Act 1996 (1996 No 100).

40 Statement in prospectus by expert

- (1) No prospectus delivered to the Registrar for registration under this Act, and no registered prospectus, shall contain a statement purporting to be made by an expert unless—
 - (a) the expert has given and has not, before delivery of a copy of the prospectus for registration in accordance with section 41, withdrawn his or her written consent to the distribution of the prospectus with the statement included in the form and context in which it is included; and
 - (b) a statement that the expert has given and has not withdrawn his or her consent as aforesaid appears in the prospectus or registered prospectus; and
 - (c) a statement of the expert's qualifications appears in the prospectus or registered prospectus; and
 - (d) a statement which appears in the prospectus or registered prospectus states whether or not the expert is or is intended to be a director, officer, or employee of, or professional adviser to, the issuer of the prospectus; and
 - (e) if the statement by the expert was made more than 4 months before the date of delivery of the prospectus for registration in accordance with section 41, a supplementary statement on the same matter made by the same or another expert less than 4 months before that

date appears in the prospectus and registered prospectus.

- (2) Where under subsection (1)(e), a supplementary statement by an expert is required to appear in a prospectus or registered prospectus—
- (a) the supplementary statement shall specifically affirm, deny, or qualify all assertions of fact contained in the original statement; and
 - (b) if in the opinion of the expert making the supplementary statement, any opinions expressed in the original statement require further comment because of any such denial or qualification of any assertions of fact, or for any other reason, the supplementary statement shall contain such comments.

Section 40: substituted, on 1 September 1983, by section 20 of the Securities Amendment Act 1982 (1982 No 147).

Section 40(1)(a): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 40(1)(b): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

41 Requirements relating to prospectuses delivered to Registrar for registration

- (1) Every prospectus delivered to the Registrar for registration under this Act shall—
- (a) have endorsed thereon or attached thereto—
 - (i) any consent to the issue thereof required by section 40 from any person as an expert; and
 - (ii) all documents, information, certificates, and other matters required to be endorsed thereon or attached thereto for the purposes of this section by regulations made under this Act; and
 - (b) be signed by—
 - (i) the issuer of the prospectus (if an individual) and every person who is a director of the issuer at the time the prospectus is delivered to the Registrar, or by its or his or her agent authorised in writing; and

- (ii) every promoter of the securities to which the prospectus relates, or by its or his or her agent authorised in writing.
- (2) The prescribed information and documents (if any) must be supplied to the Registrar, when the prospectus is delivered to the Registrar for registration, in the manner specified by the Registrar.

Section 41(1)(b)(i): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 41(1)(b)(ii): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 41(2): added, on 1 May 2011, by section 20 of the Securities Amendment Act 2011 (2011 No 6).

42 Registration of prospectus

- (1) The Registrar must promptly register every prospectus delivered to him or her.
- (2) However, the Registrar must refuse to register a prospectus if,—
 - (a) in his or her opinion,—
 - (i) it does not comply with section 39(1)(a) or 41(1)(b); or
 - (ii) it contains any material matter that is not clearly legible; or
 - (iii) section 41(2) is not complied with; or
 - (b) the prescribed amount payable on registration is not paid; or
 - (c) the date of registration would be earlier than the date of the prospectus.
- (3) The Registrar must, on the registration of a prospectus under this section, give a certificate of the registration (and the certificate is conclusive evidence that the prospectus has been registered under this section).
- (4) The certificate must specify a registration number for the prospectus.

Section 42: substituted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43 Amendment of registered prospectus

- (1) A registered prospectus may be amended by an instrument to amend the prospectus that is delivered to the Registrar and registered under this section.
- (2) The prescribed information and documents (if any) must be supplied to the Registrar, when an instrument to amend the prospectus is delivered to the Registrar for registration, in the manner specified by the Registrar.
- (3) Every instrument to amend a registered prospectus that is delivered to the Registrar must be—
 - (a) signed by the issuer of the prospectus (if an individual) and every person who is a director of the issuer at the time the instrument is delivered to the Registrar, or by the issuer's or director's agent authorised in writing; and
 - (b) accompanied by a copy of the registered prospectus as amended.
- (4) The Registrar must promptly register every instrument delivered to him or her in accordance with this section.
- (5) However, the Registrar must refuse to register an instrument under this section if,—
 - (a) in his or her opinion,—
 - (i) he or she could, under section 42(2), have refused to register the registered prospectus as amended if it had been delivered for registration at the time of the delivery to him or her of the instrument; or
 - (ii) subsection (2) or (3) is not complied with; or
 - (b) the prescribed amount payable on registration is not paid; or
 - (c) the date of the registered prospectus is altered.
- (6) The Registrar must, on the registration of an instrument of amendment under this section, give a certificate of that registration (and the certificate is conclusive evidence that the instrument has been registered under this section).

Section 43: substituted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43A Registrar not required to consider certain matters

It is not the function of the Registrar, when acting under section 42 or 43, to consider whether a prospectus—

- (a) complies with section 39(1)(b) or (c), 40, or 41(1)(a);
or
- (b) contains a statement that is false or misleading as to a
material particular or omits any material particular.

Section 43A: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43B Publication of registration

- (1) If a prospectus, or an instrument to amend a prospectus, is registered under section 42 or 43, the issuer must, within 5 working days after it receives the certificate of the registration, ensure that an Internet site maintained by or on behalf of the issuer—
 - (a) contains a reasonably prominent statement—
 - (i) to the effect that the prospectus or instrument has been registered; and
 - (ii) describing where a copy of the prospectus or instrument can be obtained; or
 - (b) contains a reasonably prominent link to such a statement.
- (2) The statement or link referred to in subsection (1) may be removed from the Internet site maintained by or on behalf of the issuer if the period within which allotments of securities may be made under the prospectus in accordance with this Act has finally ended (for example, as a result of section 37A(1)(c)).
- (3) If a prospectus, or an instrument to amend a prospectus, is registered under section 42 or 43, the Registrar may, in any manner that the Registrar thinks fit, give notice of the registration to any person or class of persons or to the public generally.
- (4) The Registrar may, in any manner that the Registrar thinks fit, give notice to any person or class of persons or to the public generally of any changes in the information referred to in section 43P in respect of a registered prospectus.

Section 43B: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

*FMA's consideration of prospectuses,
amendments, trust deeds, and deeds of
participation*

Heading: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43C FMA's consideration of prospectuses, amendments, trust deeds, and deeds of participation

- (1) The Registrar must, immediately after a prospectus or an instrument to amend a prospectus is registered under this Act, notify the FMA of the registration for the purpose of allowing the FMA an opportunity to consider whether the prospectus, or the prospectus as amended,—
 - (a) complies with this Act and the regulations; or
 - (b) contains any material misdescription or error or any material matter that is not clearly legible; or
 - (c) is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus or instrument was registered).
- (2) The Registrar must, immediately after a trust deed, a deed of participation, or an instrument to amend a deed of that kind is registered under this Act, notify the FMA of the registration for the purpose of allowing the FMA an opportunity to consider whether the trust deed or deed of participation, or the trust deed or deed of participation as amended,—
 - (a) complies with this Act and the regulations; or
 - (b) contains any material misdescription or error or any material matter that is not clearly legible.
- (3) The nature and extent of the consideration (if any) that the FMA gives to a prospectus, trust deed, or deed of participation or an instrument to amend a prospectus or deed is at the FMA's discretion.
- (4) Nothing in this section or any other provision of this Act limits the FMA's power to consider or reconsider at any time whether—
 - (a) a registered prospectus—
 - (i) complies with this Act and the regulations; or

- (ii) contains any material misdescription or error or any material matter that is not clearly legible; or
 - (iii) is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus or instrument was registered):
- (b) a trust deed or deed of participation—
 - (i) complies with this Act and the regulations; or
 - (ii) contains any material misdescription or error or any material matter that is not clearly legible.

Section 43C: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43D No allotments may be made and no applications or subscription money may be accepted during consideration period

- (1) No allotment of securities offered to the public for subscription may be made, and no applications for those securities or subscriptions for those securities may be accepted, during the period—
 - (a) starting on the date that the prospectus relating to the offer of the securities is registered; and
 - (b) ending on the close of—
 - (i) the date that is 5 working days after that date; or
 - (ii) a later date specified by the FMA by notice to the issuer.
- (2) However,—
 - (a) if the prospectus is a continuous issue prospectus, subsection (1) applies to the prospectus only if it is of a class that is prescribed by the FMA in a notice under section 43EA;
 - (b) if subsection (1) applies to a prospectus that relates to particular securities but another registered prospectus also relates to those securities, subsection (1) does not prevent—
 - (i) an offer and allotment of those securities being made in accordance with this Act in reliance upon the other registered prospectus; and

- (ii) applications for those securities and subscriptions for those securities from being accepted in respect of the offer and allotment referred to in subparagraph (i).
- (3) In subsection (2) and section 43EA, a prospectus is a **continuous issue prospectus** if it—
 - (a) relates to securities that the issuer, in the ordinary course of its business, continuously offers to the public for subscription; and
 - (b) is not the first prospectus to be registered in respect of that class of securities.
- (4) The later date specified under subsection (1)(b)(ii) must be no more than 10 working days after the prospectus is registered.
- (5) If a person contravenes subsection (1), section 37(1B) and (4) to (7) apply (which provide that an allotment of a security in contravention of subsection (1) is invalid and of no effect).

Section 43D: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43E FMA may remove restrictions if its consideration is complete or consideration or further consideration is unnecessary

- (1) This section applies if the FMA is satisfied that—
 - (a) its consideration of a prospectus is complete; or
 - (b) consideration or further consideration of a prospectus is, in the circumstances, unnecessary.
- (2) The FMA may give notice to the issuer that—
 - (a) the period that applies under section 43D ends at a particular time specified by the FMA (being an earlier time than that provided for under section 43D); or
 - (b) section 43D(1) does not apply in respect of the prospectus.
- (3) Section 43D is subject to this section.
- (4) Nothing in this section limits section 70B (which also allows the FMA to grant exemptions in respect of compliance with section 43D).

Section 43E: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43EA FMA may prescribe classes of continuous issue prospectuses to which section 43D(1) applies

- (1) The FMA may issue a notice that prescribes the class or classes of continuous issue prospectuses to which section 43D(1) applies.
- (2) The FMA must, before issuing a notice under subsection (1) in respect of a class of continuous issue prospectuses, be satisfied that it is in the public interest for the FMA to have an opportunity to act under section 43C(1) in respect of those prospectuses before the allotment of securities in reliance upon those prospectuses (for example, where in the circumstances a particular risk relates to a particular class of issuers or securities).
- (3) A notice issued by the FMA—
 - (a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the House of Representatives under section 4 of that Act; and
 - (b) is a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- (4) The FMA may vary or revoke a notice issued under this section, and subsections (2) and (3) apply, with necessary modifications, in all respects to the variation or revocation.

Section 43EA: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

*FMA's powers to prohibit distribution of
investment statements, prohibit allotments, or
cancel registration of prospectuses*

Heading: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43F Prohibition of distribution of investment statement

- (1) The FMA may, at any time, make an order prohibiting the distribution of an investment statement if the FMA is of the opinion that the investment statement—
 - (a) is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities to which it relates; or

- (b) is inconsistent with any registered prospectus referred to in it; or
 - (c) does not comply with this Act or the regulations.
- (2) If an order is made under subsection (1) in respect of an investment statement,—
 - (a) no allotment may be made of any securities subscribed for whether before or after the order is made (being securities to which the investment statement relates);
 - (b) all subscriptions received for securities to which the investment statement relates, not being subscriptions for securities that were allotted before the order is made or subscriptions received after the order is revoked, must be immediately repaid to the subscribers.
- (3) An allotment made in contravention of subsection (2)(a) is invalid and of no effect.

Section 43F: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43G FMA may prohibit allotment or cancel registration

- (1) This section applies if, at any time, the FMA is of the opinion that—
 - (a) a registered prospectus does not comply with this Act or the regulations; or
 - (b) a registered prospectus contains any material misdescription or error or any material matter that is not clearly legible; or
 - (c) a registered prospectus is false or misleading as to a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus was registered); or
 - (d) section 41 has not been complied with in respect of a registered prospectus; or
 - (e) a trust deed or deed of participation in respect of the securities offered in a registered prospectus—
 - (i) does not comply with this Act or the regulations; or
 - (ii) contains any material misdescription or error or any material matter that is not clearly legible.

- (2) The FMA may exercise either or both of the following powers in respect of the registered prospectus if it considers that it is desirable in the public interest:
 - (a) make an order prohibiting the allotment of securities under the registered prospectus for a period not exceeding 18 months;
 - (b) cancel the registration of the registered prospectus (with effect from the time that the Registrar is notified of the cancellation).
- (3) If an order is made under subsection (2)(a) in respect of a registered prospectus,—
 - (a) during the period in which the order is in force, no allotment may be made of any securities subscribed for whether before or after the order is made (being securities to which the prospectus relates); and
 - (b) all subscriptions received for securities to which the prospectus relates, not being subscriptions for securities that were allotted before the order is made or subscriptions received after the order ceases to be in force, must be immediately repaid to the subscribers.
- (4) If the registration of a registered prospectus is cancelled,—
 - (a) no allotment may be made of any securities subscribed for whether before or after the cancellation (being securities to which the prospectus relates); and
 - (b) all subscriptions received for securities to which the prospectus relates, not being subscriptions for securities that were allotted before the cancellation, must be immediately repaid to the subscribers.
- (5) An allotment made in contravention of subsection (3)(a) or (4)(a) is invalid and of no effect.

Section 43G: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43H Repayment of subscriptions

- (1) If any subscriptions that are required under section 43F or 43G to be repaid to the subscribers entitled to those subscriptions are not repaid within 1 month after the relevant date, the issuer and all the directors of the issuer are jointly and severally liable to repay the subscriptions with interest at the prescribed rate

from the date the subscriptions were received by or on behalf of the issuer.

- (2) A director of an issuer is not liable to repay any subscriptions and interest on the subscriptions under subsection (1) if the director proves that the default in the repayment of the subscriptions was not due to any misconduct or negligence on his or her part.
- (3) In this section, **relevant date** means,—
 - (a) in the case of subscriptions received before the order is made under section 43F or 43G or before the registration of the prospectus is cancelled, the date that the order is made or the registration is cancelled; or
 - (b) in any other case, the date that the subscriptions are received by or on behalf of the issuer.

Section 43H: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43I Order may be made on terms and conditions and may be varied or revoked

- (1) The FMA may make an order under section 43F or 43G on the terms and conditions that the FMA thinks fit.
- (2) The FMA may vary an order under section 43F or 43G in the same way as it may make the order.
- (3) The FMA may, either of its own volition or on the application of the person concerned, revoke an order under section 43F or 43G, on the terms and conditions it thinks fit, if it is satisfied that it should not continue in force.
- (4) No allotment may be made of a security—
 - (a) to which an investment statement relates in contravention of the terms or conditions of an order under section 43F or of the revocation of an order made under that section; or
 - (b) that is offered under a prospectus to which an order under section 43G has been made in contravention of the terms or conditions of the order or of the revocation of the order.
- (5) If a person contravenes subsection (4), section 37(1B) and (4) to (7) apply (which provide that an allotment of a security in contravention of that subsection is invalid and of no effect).

Section 43I: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43J Notices and submissions concerning exercise of power under section 43F, 43G, or 43I(2) or (3)

- (1) The FMA may exercise a power under section 43F, 43G, or 43I(2) or (3) only if—
 - (a) the FMA gives the issuer at least 5 working days' written notice of the following matters before the FMA exercises the power:
 - (i) that the FMA may make an order under section 43F or 43G, vary or revoke an order under section 43I(2) or (3), or cancel the registration of the prospectus under section 43G (as the case may be); and
 - (ii) the reasons why it is considering exercising that power; and
 - (b) the FMA gives the issuer or the issuer's representative an opportunity to make written submissions and to be heard on the matter within that notice period.
- (2) If the FMA exercises a power under section 43F or 43G,—
 - (a) it must, immediately after exercising the power, notify the issuer of—
 - (i) the reasons for making the order or for the cancellation; and
 - (ii) the terms and conditions of the order (if any); and
 - (b) it must, immediately after exercising the power, give notice to the Registrar and on its Internet site of—
 - (i) the reasons for making the order or for the cancellation; and
 - (ii) the terms and conditions of the order (if any); and
 - (iii) any other information the FMA thinks relevant in the circumstances; and
 - (c) it may give public notice by any other means of the matters in paragraph (b); and
 - (d) it may notify any other person of the matters in paragraph (b).
- (3) If the FMA varies or revokes an order under section 43I,—

- (a) it must, immediately after exercising the power, notify the Registrar and the issuer of—
 - (i) the terms and conditions of the variation or revocation; and
 - (ii) the reasons for the variation or revocation; and
 - (iii) any other information the FMA thinks relevant in the circumstances; and
- (b) it may give notice on its Internet site or give public notice by any other means of those matters; and
- (c) it may notify any other person of those matters.

Section 43J: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43K FMA may make interim orders pending exercise of powers

- (1) The FMA may make an interim order that prohibits the allotment of securities—
 - (a) to which an investment statement relates while the interim order is in force if—
 - (i) the FMA is considering, at any time, whether it may exercise a power under section 43F in respect of the investment statement; and
 - (ii) the FMA considers that making an interim order is desirable in the public interest:
 - (b) under a registered prospectus while the interim order is in force if—
 - (i) the FMA is considering, at any time, whether it may exercise a power under section 43G in respect of the prospectus; and
 - (ii) the FMA considers that making an interim order is desirable in the public interest.
- (2) An interim order under subsection (1) is in force from the time at which it is made until the close of—
 - (a) the date that is 15 working days after the day on which it is made; or
 - (b) a later date specified by the FMA by notice to the issuer.
- (3) For the purposes of subsection (2)(b),—
 - (a) the FMA may specify a later date if the FMA is of the opinion that it is not reasonably practicable for it to

- complete its consideration as referred to in subsection (1)(a)(i) or (b)(i) within the 15-working-day period referred to in subsection (2)(a):
- (b) the later date must be a date that is no more than 30 working days after the day on which the interim order is made.
- (4) The FMA—
- (a) may act under subsection (1) or (2)(b) without giving the issuer an opportunity to make submissions to, or be heard before, the FMA in respect of the matter; but
 - (b) must, after acting under subsection (1) or (2)(b), give the issuer or the issuer's representative an opportunity to make written submissions and to be heard on the matter.
- (5) If an interim order is made in respect of an investment statement or a registered prospectus,—
- (a) the FMA must immediately after making the order notify the issuer and the Registrar that the order has been made and the reasons for the order; and
 - (b) during the period in which the order is in force, no allotment may be made of any securities subscribed for whether before or after the order is made (being securities to which the investment statement or prospectus relates); and
 - (c) section 37(1B) and (4) to (7) apply (which provide that an allotment of a security in contravention of paragraph (b) is invalid and of no effect).

Section 43K: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43L FMA may revoke interim order

- (1) The FMA may revoke an interim order made under section 43K if it is satisfied that the order should not continue in force.
- (2) If an interim order is revoked, the FMA must immediately notify the issuer and the Registrar of the revocation.

Section 43L: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

43M Nothing done or omitted to be done by Registrar or FMA guarantees or represents that prospectus complies with Act and regulations

- (1) Nothing done or omitted to be done under this Act by the Registrar or the FMA guarantees or represents that—
- (a) a prospectus—
 - (i) complies with this Act and the regulations:
 - (ii) does not contain any material misdescription or error or any material matter that is not clearly legible:
 - (iii) is not false or misleading as to a material particular:
 - (iv) does not omit any material particular; or
 - (b) the FMA has considered a prospectus with a view to determining whether it—
 - (i) complies with this Act and the regulations:
 - (ii) contains any material misdescription or error or any material matter that is not clearly legible:
 - (iii) is false or misleading as to a material particular:
 - (iv) omits any material particular.
- (2) This section does not limit section 22 of the Financial Markets Authority Act 2011 (which provides protection from liability for the FMA and its members and employees).

Section 43M: inserted, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

44 Suspension and cancellation of registration of registered prospectus

[Repealed]

Section 44: repealed, on 1 May 2011, by section 21 of the Securities Amendment Act 2011 (2011 No 6).

*Delayed allotment orders and prohibition orders
concerning simplified disclosure prospectuses*

Heading: inserted, on 28 July 2009, by section 12 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

44A FMA may make delayed allotment orders

- (1) This section applies if the FMA is of the opinion that the issuer of a security that is offered in a simplified disclosure prospectus—
 - (a) has disclosed information in the prospectus that has not previously been publicly disclosed under the issuer's disclosure obligations, and that information is adverse to the issuer or the scheme and is material to the offer of the security; or
 - (b) has disclosed information under the issuer's disclosure obligations between the date of the prospectus and the allotment date, and that information is adverse to the issuer or the scheme and is material to the offer of the security; or
 - (c) has failed to comply with the issuer's disclosure obligations at any time during the previous 12 months.
- (2) If either subsection (1)(a) or (b) applies, the FMA may, if it considers that it is desirable in the public interest, make an order delaying the date of allotment for the securities that are offered in a simplified disclosure prospectus for a period not exceeding 14 days from the date of allotment stated in the terms of the offer.
- (3) If subsection (1)(c) applies, the FMA may, if it considers that it is desirable in the public interest, make an order delaying the date of allotment for the securities that are offered in a simplified disclosure prospectus until a date not exceeding the later of—
 - (a) 14 days after the date of allotment stated in the terms of the offer; or
 - (b) 14 days after the date on which the issuer's failure to comply with the issuer's disclosure obligations is remedied.
- (4) The FMA may make a delayed allotment order on the terms and conditions that the FMA thinks fit (which may include a condition that the issuer disclose or give public notice of specified information in any manner that the FMA thinks fit in the circumstances).
- (5) The FMA may vary a delayed allotment order in the same way as it may make the order.

- (6) The FMA may revoke a delayed allotment order, on the terms and conditions it thinks fit, if it is satisfied that it should not continue in force.
- (7) In this section, **issuer's disclosure obligations** means the disclosure obligations that an issuer is subject to and that the issuer has relied on in order to permit the issuer to use a simplified disclosure prospectus in accordance with the regulations and the definition of simplified disclosure prospectus.

Section 44A: substituted, on 28 July 2009, by section 12 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 44A heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44A(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44A(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44A(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44A(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44A(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44A(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

44AB Notices and submissions concerning delayed allotment orders

- (1) The FMA may make a delayed allotment order only if—
- (a) the FMA gives the issuer at least 3 working days' written notice of the following matters before the FMA makes the delayed allotment order:
 - (i) that the FMA is considering making a delayed allotment order; and
 - (ii) the paragraph of section 44A(1) that is alleged to apply to the issuer; and
 - (iii) the reasons why the FMA is considering making a delayed allotment order; and
 - (b) the FMA gives the issuer or the issuer's representative an opportunity to make written submissions and to be heard on the matter within that notice period.
- (2) If the FMA makes a delayed allotment order,—

- (a) it must, immediately after the making of the order, notify the issuer of—
 - (i) the terms and conditions of the order; and
 - (ii) the reasons for the order; and
 - (b) it must, immediately after the making of the order, give notice on its Internet site of—
 - (i) the terms and conditions of the order; and
 - (ii) the reasons for the order; and
 - (iii) the information that is adverse to the issuer or the scheme and is material to the offer of the security, or the nature of the issuer's failure to comply with the issuer's disclosure obligations; and
 - (iv) any other information the FMA thinks relevant in the circumstances; and
 - (c) it may give public notice by any other means of the matters in paragraph (b); and
 - (d) it may notify any other person of the matters in paragraph (b).
- (3) If the FMA varies or revokes a delayed allotment order under section 44A(5) or (6),—
- (a) it must immediately notify the issuer of—
 - (i) the terms and conditions of the variation or revocation; and
 - (ii) the reasons for the variation or revocation; and
 - (b) it may give notice on its Internet site or give public notice by any other means of those matters; and
 - (c) it may notify any other person of those matters.

Section 44AB: inserted, on 28 July 2009, by section 12 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 44AB(1): substituted, on 1 May 2011, by section 23 of the Securities Amendment Act 2011 (2011 No 6).

Section 44AB(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44AB(2)(b)(iv): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44AB(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

44AC Limited notice and submissions for urgent delayed allotment orders

If the FMA thinks it necessary or desirable in the public interest for a delayed allotment order to be made more urgently than section 44AB permits,—

- (a) it may give less than 3 working days' notice before it makes the order, and the notice and the submissions may be oral rather than written; but
- (b) it must include in that notice the reasons for acting urgently and must otherwise comply with that section.

Section 44AC: inserted, on 28 July 2009, by section 12 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 44AC: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44AC(a): substituted, on 1 May 2011, by section 24 of the Securities Amendment Act 2011 (2011 No 6).

44AD Effect of delayed allotment orders

- (1) No allotment of a security that is offered in a simplified disclosure prospectus to which a delayed allotment order applies may be made—
 - (a) in contravention of the terms or conditions of the delayed allotment order or of its revocation; or
 - (b) if a term or condition of the delayed allotment order remains unfulfilled; or
 - (c) until after the delayed allotment order expires or is revoked.
- (2) If a person contravenes subsection (1), section 37(1A)(b) and (4) to (7) apply (which provide that an allotment of a security that is offered in a simplified disclosure prospectus in contravention of subsection (1) is invalid and of no effect).
- (3) If the FMA makes a delayed allotment order and a subscriber has subscribed for a security that is offered in a simplified disclosure prospectus to which that delayed allotment order applies before the FMA made the delayed allotment order, section 37A(1)(ab)(ii) and (3) to (8) apply (which provide that an allotment of a security in those circumstances is voidable at the instance of the subscriber by notice in writing).

Example

Issuer A makes an offer of securities to the public for subscription in a simplified disclosure prospectus. Tom subscribes for some of those securities. After Tom has subscribed for the securities, the FMA makes a delayed allotment order that applies to the simplified disclosure prospectus. Section 37A(1)(ab)(ii) and (3) to (8) apply.

In these circumstances, Issuer A's options may include the following:

- (a) Issuer A may ask Tom if he wants to resubscribe for the securities. In this case, Issuer A could obtain Tom's permission to use the money that Tom paid Issuer A when he originally subscribed for the securities (**Tom's subscription money**) to resubscribe for those securities after the date on which the delayed allotment order was made. Issuer A may then allot those securities to Tom (once the delayed allotment order has expired or has been revoked) without contravening section 37A(1)(ab)(ii); or
- (b) Issuer A could withdraw the offer or take some other similar course of action. If Issuer A withdraws the offer it must pay Tom's subscription money back to him. Tom's subscription money must be held in trust for him until it is repaid (see section 36A); or
- (c) Issuer A could allot the securities to Tom (once the delayed allotment order has expired or has been revoked) without Tom having resubscribed for the securities. In this case, the allotment would be valid (see section 37A(5)), but it is voidable at the instance of Tom (see section 37A(3)) and Issuer A has committed an offence (see sections 37A(1)(ab)(ii) and 59(1)).

Tom's options include the following:

- (a) Tom may decide to leave Tom's subscription money with Issuer A and use that money to resubscribe for the securities. If Issuer A agrees to this, Issuer A may allot those securities to Tom (once the delayed allotment order has expired or has been revoked) without contravening section 37A(1)(ab)(ii); or
- (b) Tom may require Issuer A to pay Tom's subscription money back to him. Tom's subscription money must be held in trust for him until it is repaid (see section 36A); or
- (c) Tom may decide to take no action at all. In this case, if Issuer A allots the securities to Tom (once the delayed allotment order has expired or has been revoked), the allotment would be valid (see section 37A(5)), but it is voidable at the instance of Tom (see section 37A(3)) and Issuer A

Example—continued

has committed an offence (see sections 37A(1)(ab)(ii) and 59(1)). If Issuer A does not allot the securities to Tom, Issuer A must pay Tom's subscription money back to him (see section 36A).

Regardless of which option is taken by Issuer A or Tom, if Issuer A allots securities to Tom in contravention of section 44AD(1) (for example, by allotting the securities to Tom before the delayed allotment order has expired or has been revoked), that allotment is invalid and of no effect (see sections 44AD(1), (2), and (4) and 37(1A)(b) and (4) to (7)) and Issuer A has committed offences (see sections 59(1) and 60(2)).

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- (4) Subsections (1) and (2) override subsection (3).
 - (5) This section applies despite anything in the terms of the offer.

Section 44AD: inserted, on 28 July 2009, by section 12 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 44AD(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44AD(3) example: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

44AE FMA may make prohibition orders

- (1) If the FMA is satisfied that a person (**person A**) who is subject to a disclosure obligation has failed to comply with that obligation at any time during the previous 12 months, the FMA may, if it considers that it is desirable in the public interest, make an order prohibiting person A from using a simplified disclosure prospectus for a period not exceeding 24 months.
- (2) The FMA may make a prohibition order on the terms and conditions that the FMA thinks fit.
- (3) The FMA may vary a prohibition order in the same way as it may make the order.
- (4) The FMA may, either of its own volition or on the application of the person concerned, revoke or suspend a prohibition order, on the terms and conditions it thinks fit, if it is satisfied that it should not continue in force.

Section 44AE: inserted, on 28 July 2009, by section 12 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 44AE heading: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44AE(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44AE(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44AE(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44AE(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

44AF Notices and submissions concerning prohibition orders

- (1) The FMA may make a prohibition order only if—
 - (a) the FMA gives the person concerned (**person A**) at least 10 working days' written notice of the following matters before the FMA makes the prohibition order:
 - (i) that the FMA is considering making a prohibition order; and
 - (ii) the nature of person A's failure to comply with his, her, or its disclosure obligations; and
 - (iii) the reasons why the FMA is considering making the prohibition order; and
 - (b) the FMA gives person A or person A's representative an opportunity to make written submissions and to be heard on the matter within that notice period.
- (2) If the FMA makes a prohibition order,—
 - (a) it must, immediately after the making of the order, notify person A of—
 - (i) the terms and conditions of the order; and
 - (ii) the reasons for the order; and
 - (b) it must, immediately after the making of the order, give notice on its Internet site of—
 - (i) the terms and conditions of the order; and
 - (ii) the reasons for the order; and
 - (iii) the nature of person A's failure to comply with his, her, or its disclosure obligations; and
 - (iv) any other information the FMA thinks relevant in the circumstances; and
 - (c) it may give public notice by any other means of the matters in paragraph (b); and
 - (d) it may notify any other person of the matters in paragraph (b).

- (3) If the FMA varies, revokes, or suspends a prohibition order under section 44AE(3) or (4),—
- (a) it must immediately notify person A of—
 - (i) the terms and conditions of the variation, revocation, or suspension; and
 - (ii) the reasons for the variation, revocation, or suspension; and
 - (b) it may give notice on its Internet site or give public notice by any other means of those matters; and
 - (c) it may notify any other person of those matters.

Section 44AF: inserted, on 28 July 2009, by section 12 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 44AF(1): substituted, on 1 May 2011, by section 25 of the Securities Amendment Act 2011 (2011 No 6).

Section 44AF(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44AF(2)(b)(iv): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44AF(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

44AG Effect of prohibition orders

If the FMA makes a prohibition order,—

- (a) a person who is prohibited by that order from using a simplified disclosure prospectus must not, while the prohibition order is in force,—
 - (i) make an offer of securities to the public in, or accompanied by, a simplified disclosure prospectus; or
 - (ii) distribute a simplified disclosure prospectus that relates to a security; or
 - (iii) allot securities offered in a simplified disclosure prospectus; and
- (b) section 37(1A)(a) and (4) to (7) apply (which provide that an allotment of a security that is offered in a simplified disclosure prospectus by a person who is subject to a prohibition order while that order is in force is invalid and of no effect).

Section 44AG: inserted, on 28 July 2009, by section 12 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 44AG: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Contributory mortgages

Heading: inserted, on 1 October 1997, by section 21 of the Securities Amendment Act 1996 (1996 No 100).

44B FMA's powers in respect of contributory mortgages

- (1) Where the Registrar receives a report from an auditor appointed pursuant to regulations made under this Act to the effect that a contributory mortgage broker is contravening, or has contravened, any of the provisions of this Act or regulations made under this Act, the Registrar may forward a copy of that report to the FMA.
- (2) The FMA may, either on the receipt of that report or for any other reason, if it is satisfied that a contributory mortgage broker is contravening, or has contravened, any of the provisions of this Act or the regulations, and that it is desirable in the public interest to do so, exercise any 1 or more of the following powers:
 - (a) make an order prohibiting the contributory mortgage broker from offering interests in contributory mortgages to the public for subscription for a period not exceeding 10 working days; or
 - (b) make an order prohibiting the contributory mortgage broker from offering interests in contributory mortgages to the public for subscription for the period that the FMA thinks fit; or
 - (c) make an order that the contributory mortgage broker must promptly cease to act as contributory mortgage broker in respect of all or any contributory mortgages that have previously been allotted by him, her, or it, and make an order appointing another person to act as contributory mortgage broker in his, her, or its place with respect to those contributory mortgages; or
 - (d) make an order removing any of the directors of any nominee company of the contributory mortgage broker and make an order appointing any person as a director in his or her place.

- (2A) The FMA—
- (a) may act under subsection (2)(a) without giving the contributory mortgage broker an opportunity to make submissions to, and be heard before, the FMA in respect of the matter; but
 - (b) must, after acting under subsection (2)(a), give the contributory mortgage broker or the contributory mortgage broker's representative an opportunity to make written submissions and to be heard on the matter.
- (2B) The FMA may make an order under subsection (2)(b) to (d) only if—
- (a) the FMA gives the relevant person or persons at least 5 working days' written notice of the following matters before the FMA makes the order:
 - (i) that the FMA is considering making an order under subsection (2)(b), (c), or (d) (as the case may be); and
 - (ii) the reasons why it is considering making the order; and
 - (b) the FMA gives the relevant person or persons or a representative of the relevant person or persons an opportunity to make written submissions and to be heard on the matter within that notice period.
- (2C) In subsection (2B), **relevant person or persons** means,—
- (a) in the case of subsection (2)(b) or (c), the contributory mortgage broker;
 - (b) in the case of subsection (2)(d), the contributory mortgage broker and every director of the broker's nominee company.
- (3) Where the FMA makes an order under subsection (2)—
- (a) it shall forthwith notify the broker of the order and the reasons therefor; and
 - (b) it may notify any other person or persons of the order and the reasons therefor.
- (4) Any such order made by the FMA under subsection (2) may be made upon such terms and conditions as the FMA sees fit and shall have effect according to its tenor.

Section 44B: inserted, on 1 September 1983, by section 24 of the Securities Amendment Act 1982 (1982 No 147).

Section 44B heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44B(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44B(2): substituted, on 1 May 2011, by section 26 of the Securities Amendment Act 2011 (2011 No 6).

Section 44B(2A): inserted, on 1 May 2011, by section 26 of the Securities Amendment Act 2011 (2011 No 6).

Section 44B(2B): inserted, on 1 May 2011, by section 26 of the Securities Amendment Act 2011 (2011 No 6).

Section 44B(2C): inserted, on 1 May 2011, by section 26 of the Securities Amendment Act 2011 (2011 No 6).

Section 44B(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44B(4): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

44C Powers and duties of persons appointed to act as broker

- (1) Where a person (in this section called the **appointee**) has been appointed by the FMA to act as a contributory mortgage broker in respect of contributory mortgages under section 44B(2)(c), the appointee shall have and may exercise all the powers of the contributory mortgage broker he or she is appointed to replace (in this section called the **defaulting broker**), including, but without limitation, the following powers—
 - (a) to take and to retain possession of all property, whatsoever and wheresoever situated, of the defaulting broker and his or her nominee company relating to the contributory mortgages which were being managed by the defaulting broker (in this section called the **mortgages**) and to hold and administer that property for the benefit of the contributors to the mortgages in their respective rights and interests:
 - (b) to demand and receive all money payable to the defaulting broker on account of the mortgages:
 - (c) to sue for and recover all debts due and other money payable to the defaulting broker on account of the mortgages:
 - (d) to pay over, in the discretion of the appointee, and in such manner and to such extent as he or she thinks fit, any money received by him or her in his or her cap-

- acity as appointee, whether arising from real or personal property and whether capital or income, for any purpose for or to which the defaulting broker might lawfully have applied that money:
- (e) to carry out and perform contracts relating to the mortgages entered into by the defaulting broker before the appointment of the appointee:
 - (f) to take any such action, including, without limitation, actions at law or in equity, to enforce the rights of the mortgagee under the mortgages:
 - (g) to consult and employ counsel, solicitors, accountants, and other persons for the purpose of performing his or her duties hereunder:
 - (h) to do all acts and to execute, in the name of the defaulting broker all deeds, receipts, and other documents, and for that purpose to use, when necessary, the seal of the defaulting broker (if any).
- (2) The appointee may, at any time, in his or her discretion apply to the court *ex parte* for directions with respect to the exercise of his or her powers, and the court may, on any such application, make such order as the court thinks fit.
 - (3) The court may, on application of the appointee, enlarge the powers of the appointee in such manner as it thinks fit.
 - (4) It shall be the duty of all persons having possession or control of any documents or other property, whatsoever and wheresoever situated, belonging to the defaulting broker and relating to the mortgages, forthwith after the appointment of the appointee to yield up the same to the appointee.
 - (5) The appointee shall not be liable for any acts or omissions by him or her in good faith in the exercise of his or her powers under this section, and no action or proceeding shall be commenced against the appointee except by leave of the court and subject to such terms and conditions as the court may impose.
 - (6) All costs, charges, and expenses properly incurred by the appointee in the exercise of his or her duties under this section (including such remuneration as may be approved by the FMA) shall be payable out of the property administered by him or her in priority to all other claims.

- (7) In any case where, either before or after the appointment of the appointee, any property has been acquired by any person in circumstances which cause it to be just and equitable that he or she should hold the property in trust for all or any of the contributors to all or any of the mortgages, or any property so acquired has been unjustly disposed of, the court, if it thinks fit, may, on the application of the appointee, order that the property be delivered to the appointee, or may order that any person who acquired or received the property or his or her administrator, pay to the appointee a sum not exceeding the value of the property; and for the purpose of giving effect to any such order the court may make such further order as it thinks fit:
provided that no such order shall deprive any other person of any estate or interest in the property if the estate or interest was acquired in good faith and for valuable consideration.
- (8) The appointee may, at any time, apply to the court to be relieved of his or her appointment and the court may make any order with respect thereto as it thinks fit including, without limitation, an order appointing another person to act as appointee.

Section 44C: inserted, on 1 September 1983, by section 24 of the Securities Amendment Act 1982 (1982 No 147).

Section 44C(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44C(1): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(1)(a): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(1)(d): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(1)(d): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(1)(d): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(1)(g): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(2): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(4): amended, on 1 October 1997, by section 22 of the Securities Amendment Act 1996 (1996 No 100).

Section 44C(5): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(5): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(6): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44C(6): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(6): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(7): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(7): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 44C(8): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

44D Powers and duties of person appointed to act as director or secretary of nominee company

- (1) Any person appointed by the FMA pursuant to section 44B(2)(d)—
 - (a) shall not be liable for any acts or omissions by him or her in good faith in the exercise of his or her powers as a director or secretary, and no action or proceeding shall be commenced against that person except by leave of the court and subject to such terms and conditions as the court may impose:
 - (b) shall be entitled to be paid out of the property held in the name of the nominee company, in priority to all other claims, all costs, charges, and expenses properly incurred by him or her in the exercise of his or her powers and functions (including such remuneration as may be approved by the FMA) as a director or secretary.
- (2) It shall be the duty of all persons having possession or control of any documents, whatsoever and wheresoever situated, relating to the contributory mortgage broker in respect of whose nominee company the order has been made, to deliver to any person appointed pursuant to section 44B(2)(d), such documents as that person may require for the purpose of exercising his or her powers and functions as a director or secretary.

Section 44D: inserted, on 1 September 1983, by section 24 of the Securities Amendment Act 1982 (1982 No 147).

Section 44D(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44D(1)(a): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 44D(1)(a): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 44D(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 44D(1)(b): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 44D(1)(b): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 44D(2): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 44D(2): amended, on 1 October 1997, by section 23 of the Securities Amendment Act 1996 (1996 No 100).

Trust deeds and deeds of participation

45 Contents of deeds

- (1) Every trust deed, and deed of participation, required for the purposes of this Act shall contain all information and other matters that are required to be included therein by regulations made under this Act.
- (2) Every trust deed, and deed of participation, required for the purposes of this Act shall be deemed to contain all clauses that are prescribed in regulations made under this Act as clauses that are deemed to be contained in a trust deed or a deed of participation, as the case may be; and every such clause shall have effect notwithstanding anything to the contrary in any deed in which it is deemed to be contained.
- (3) A trust deed or deed of participation may expressly adopt all or any of the clauses that are prescribed in regulations made under this Act as clauses that may be adopted in a trust deed or deed of participation, as the case may be.

46 Registration of trust deeds and deeds of participation

- (1) The Registrar must promptly register every copy of a trust deed or deed of participation delivered to him or her for registration under this Act.
- (2) However, the Registrar must refuse to register a copy of a trust deed or deed of participation if,—
 - (a) in his or her opinion, it contains any material matter that is not clearly legible; or
 - (b) the prescribed amount payable on registration is not paid.
- (3) The Registrar must, on the registration of a copy of a trust deed or deed of participation under this section, give a certificate of that registration (and the certificate is conclusive evidence that the deed has been registered under this section).

Section 46: substituted, on 1 May 2011, by section 27 of the Securities Amendment Act 2011 (2011 No 6).

47 Amendment of registered deed

- (1) If a trust deed or deed of participation that has been registered under this Act has been lawfully amended, the issuer must ensure that there is delivered to the Registrar, as soon as practicable after the amendment, a copy of the instrument by which the amendment to the deed was made.
- (2) The Registrar must promptly register every copy of an instrument amending a deed that—
 - (a) is delivered to him or her for registration under this section; and
 - (b) if the Registrar so requires, is accompanied by a copy of the deed as amended.
- (3) However, the Registrar must refuse to register a copy of an instrument amending a deed if,—
 - (a) in his or her opinion, the deed as amended contains any material matter that is not clearly legible; or
 - (b) the prescribed amount payable on registration is not paid.
- (4) The Registrar must, on the registration of a copy of an instrument of amendment under this section, give a certificate of that registration (and the certificate is conclusive evidence that the instrument has been registered under this section).

Section 47: substituted, on 1 May 2011, by section 27 of the Securities Amendment Act 2011 (2011 No 6).

47A Registrar not required to consider certain matters

It is not the function of the Registrar, when acting under section 46 or 47, to consider whether a trust deed or deed of participation—

- (a) complies with this Act or the regulations; or
- (b) contains any misdescription or error.

Section 47A: inserted, on 1 May 2011, by section 27 of the Securities Amendment Act 2011 (2011 No 6).

Trustees and statutory supervisors

48 Removal of trustees and statutory supervisors

- (1) A trustee or statutory supervisor (**T**) in respect of a security may not resign, be discharged, or be removed as trustee or statutory supervisor unless—
 - (a) all functions and duties of the position have been performed; or
 - (b) the issuer has appointed another person who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers the security to the position in place of T and the other person has accepted the appointment; or
 - (c) the court consents.
- (2) This section does not apply to the removal of a trustee or statutory supervisor by the FMA under Part 2 of the Securities Trustees and Statutory Supervisors Act 2011.

Section 48: substituted, on 1 October 2011, by section 69 of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

49 Trustees and statutory supervisors may apply to court for orders relating to securities

- (1) Where at any time after due inquiry, a trustee or statutory supervisor of securities is of the opinion that—
 - (a) there is a significant risk that the interests of the security holders will be materially prejudiced; or

- (b) the provisions of any deed relating to the securities are no longer adequate to give proper protection to the security holders—
the trustee or statutory supervisor may, in its absolute discretion, apply to the court for an order or orders under this section.
- (2) An application to the court under this section shall be served on such persons as the court may direct.
- (3) On an application by a trustee or statutory supervisor under this section, the court may, after giving the issuer and such other persons as it thinks fit an opportunity of being heard, by order—
 - (a) amend the provisions of any deed relating to the securities:
 - (b) impose such restrictions on the activities of the issuer, including restrictions on advertising, as the court thinks necessary for the protection of the interests of the security holders:
 - (c) direct the issuer or the trustee or statutory supervisor to convene a meeting of the security holders for the purpose of having placed before them by the trustee or statutory supervisor such information relating to their interests, and such proposals for the protection of their interests, as the court or the trustee or statutory supervisor considers necessary or appropriate, and for the purpose of obtaining their opinions or directions in relation thereto; and the court may give such directions in relation to the conduct of the meeting as the court thinks fit:
 - (d) stay all civil actions or civil proceedings before any court by or against the issuer or any guarantor of the securities:
 - (e) restrain the payment of any money by the issuer or any guarantor of the securities to the security holders or any class of such holders:
 - (f) appoint a receiver or manager of such of the property as constitutes the security (if any) for the securities:
 - (fa) remove a person as manager and appoint another person as manager (with any powers that the court orders):

- (g) give such other directions as the court considers necessary to protect the interests of the security holders, other holders of securities of the issuer, any guarantor of the securities, or the public.

In making any such order the court shall have regard to the interests of all creditors of the issuer.

- (4) The court may at any time vary or rescind any order made under this section.

Section 49(1)(a): substituted, on 1 October 2011, by section 70(1) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Section 49(3)(fa): inserted, on 1 October 2011, by section 70(2) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Duties of auditors

Heading: inserted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

50 Duty of auditor to report to trustee or statutory supervisor

- (1) Whenever the auditor of an issuer of debt securities or participatory securities offered to the public (being securities that are held by members of the public) furnishes to the issuer or its members or shareholders or the security holders any report, financial statements, certificate, or other document that is required by any Act or by any deed relating to the securities to be so furnished, the auditor shall forthwith send a copy to the trustee or statutory supervisor of the securities.
- (2) Whenever, in the performance of the auditor's duties, the auditor of an issuer of debt securities or participatory securities offered to the public (being securities that are held by members of the public) becomes aware of any matter that, in the auditor's opinion, is relevant to the exercise or performance of the powers or duties of the trustee or statutory supervisor of the securities, the auditor shall, within 7 working days of becoming aware of the matter, send—
 - (a) to the issuer, a report in writing on the matter; and
 - (b) to the trustee or statutory supervisor, as the case may be, a copy of that report.
- (3) The auditor of an issuer of debt securities or participatory securities offered to the public (being securities that are held by

members of the public) shall from time to time, at the request of the trustee or statutory supervisor, furnish to the trustee or statutory supervisor such information or particulars relating to the issuer as are requested and are within the auditor's knowledge and are, in the auditor's opinion, relevant to the exercise or performance of the powers or duties of the trustee or statutory supervisor.

- (4) Nothing in this section affects the duties or liability of a trustee or statutory supervisor.

Section 50: substituted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

50A Duty of auditor to report to unit trustee

- (1) Whenever the auditor of an issuer of units in a unit trust furnishes to the issuer any report, financial statements, certificate, or other documents required by any Act or any trust deed relating to the unit trust, the auditor shall forthwith send a copy to the unit trustee.
- (2) Whenever, in the performance of the auditor's duties, the auditor of a unit trust that has units held by members of the public becomes aware of any matter that, in the auditor's opinion, is relevant to the exercise or performance of the powers or duties of the unit trustee, the auditor shall, within 7 working days of becoming aware of the matter, send—
- (a) to the issuer of the units, a report in writing on the matter; and
- (b) to the unit trustee, a copy of that report.
- (3) The auditor of an issuer of units in a unit trust that has units held by members of the public shall from time to time, at the request of the unit trustee, furnish to the unit trustee such information or particulars relating to the issuer as are requested and are within the auditor's knowledge and are, in the auditor's opinion, relevant to the exercise or performance of the powers or duties of the unit trustee.
- (4) Nothing in this section affects the duties or liability of an issuer of units in a unit trust or a unit trustee.

Section 50A: inserted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

50B Duty of auditor to report to KiwiSaver trustee

- (1) This section applies to the auditor of an issuer of interests in a KiwiSaver scheme other than a restricted scheme.
- (2) If the auditor provides the issuer with any report, financial statement, certificate, or other document required by an Act or a trust deed relating to the scheme, the auditor must, as soon as practicable, send a copy to the KiwiSaver trustee.
- (3) If, in the performance of the auditor's duties, the auditor becomes aware of a matter that, in the auditor's opinion, is relevant to the exercise or performance of the powers or duties of the KiwiSaver trustee, the auditor must, within 7 working days of becoming aware of the matter, send—
 - (a) a written report on the matter to the issuer of interests in the scheme; and
 - (b) a copy of the report to the KiwiSaver trustee.
- (4) The auditor must, from time to time, at the request of the KiwiSaver trustee, provide the KiwiSaver trustee with any information relating to the issuer—
 - (a) that the KiwiSaver trustee requests; and
 - (b) that is within the auditor's knowledge; and
 - (c) that is, in the auditor's opinion, relevant to the exercise or performance of the powers or duties of the KiwiSaver trustee.
- (5) This section does not limit the duties or liability of a KiwiSaver trustee or an issuer of interests in a KiwiSaver scheme other than a restricted scheme.

Section 50B: inserted, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

50C Protection for auditors

- (1) No civil, criminal, or disciplinary proceedings may be brought against an auditor in respect of a protected disclosure.
- (2) No person may terminate the appointment of an auditor by reason of a protected disclosure.
- (3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of an auditor may make an order against, or do any act in relation to, an auditor in respect of a protected disclosure.

- (4) In this section, **protected disclosure**, in relation to an auditor, means a disclosure of information in good faith by the auditor under any of the following provisions:
- (a) section 50(2):
 - (b) section 50(3):
 - (c) section 50A(2):
 - (d) section 50A(3):
 - (e) section 50B(3):
 - (f) section 50B(4).

Compare: 1989 No 157 s 157ZH

Section 50C: inserted, on 1 October 2011, by section 71 of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Obligations of issuers

Heading: inserted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

51 Issuers to keep registers of securities

- (1) Every issuer of securities offered to the public shall keep in New Zealand—
- (a) a register of all equity securities; and
 - (b) where the issuer is a company, a register of all debentures, debenture stock, bonds, notes, certificates of deposit, and convertible notes; and
 - (c) a register of all participatory securities; and
 - (d) a register of all units in unit trusts; and
 - (e) a register of all interests in superannuation schemes; and
 - (f) a register of all life insurance policies—
- of which it is the issuer.
- (2) Every register kept for the purposes of this section shall contain, in respect of every security entered in it,—
- (a) the name and address of the holder; and
 - (b) the date on which the security was allotted or transferred to the holder, as the case may be; and
 - (c) the nature of the security; and
 - (d) the amount of the security (if any); and
 - (e) the due date of the security (if any); and
 - (f) such other particulars as are required to be entered in the register by regulations.

- (3) Nothing in paragraphs (a) and (b) of subsection (2) applies to bearer securities.
- (4) No notice of any trust, expressed, implied, or constructive, shall be entered on a register kept under any of paragraphs (a) to (c), and (f) of subsection (1).
- (5) Every register kept under this section is prima facie evidence of the matters required by this Act to be entered in it.
- (6) Every issuer of securities offered to the public (other than securities that have been redeemed) shall ensure that every register kept by it under this section is audited at least once a year by a qualified auditor.
- (7) Nothing in subsection (6) applies to a superannuation scheme if, by virtue of section 13(2) of the Superannuation Schemes Act 1989, the annual accounts of the scheme need not be audited.
- (8) If the auditor considers at any time that this section is not being complied with, the auditor shall forthwith advise the issuer and,—
 - (a) in the case of equity securities, the security holders at their next meeting:
 - (b) in the case of debt securities, the trustee:
 - (c) in the case of participatory securities, the statutory supervisor:
 - (ca) in the case of interests in a KiwiSaver scheme other than a restricted scheme, the KiwiSaver trustee:
 - (d) in the case of units in a unit trust, the unit trustee.
- (9) Every issuer shall send a notice to the Registrar of the place where its registers are kept and of any change in that place.
- (10) Subsection (9) does not apply to an issuer that is a company if the registers of the company are kept at its registered office.
- (11) Nothing in this section derogates from the Life Insurance Act 1908 or the Companies Act 1993.

Section 51: substituted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

Section 51(8)(ca): inserted, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

Section 51(11): amended, on 15 April 2004, by section 18 of the Securities Amendment Act 2004 (2004 No 31).

52 Rights of inspection of registers of securities and to copies of registers and deeds

- (1) The registers kept under paragraphs (a) to (d) of section 51(1) shall, except when duly closed (but subject to such reasonable restrictions as the issuer may impose, so that not less than 2 hours in each day shall be allowed for inspection), be open to the inspection of any holder of the securities without fee, and of any other person on payment of the prescribed fee.
- (2) The registers kept under paragraphs (e) and (f) of section 51(1) shall, except when duly closed (but subject to such reasonable restrictions as the issuer may impose, so that not less than 2 hours in each day shall be allowed for inspection), be open to the inspection of a holder of securities in respect of the securities of that holder without fee.
- (3) Any person may require a copy of a register kept under paragraphs (a) to (d) of section 51(1), or any part of the register, on payment of the prescribed fee.
- (4) A holder of securities may require a copy of that part of a register kept under paragraph (e) or paragraph (f) of section 51(1) that relates to the securities of that holder on payment of the prescribed fee.
- (5) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the rules of the issuer or in the securities or any trust deed or deed of participation relating to the securities, during a period or periods not exceeding in aggregate 30 days in any year.
- (6) Nothing in this section derogates from the Life Insurance Act 1908 or the Companies Act 1993.

Section 52: substituted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

Section 52(6): amended, on 15 April 2004, by section 19 of the Securities Amendment Act 2004 (2004 No 31).

53 Issuers to keep proper accounting records

- (1) Every issuer of securities offered to the public (other than securities that have been redeemed) shall ensure that there are kept at all times accounting records that—
 - (a) correctly record and explain the transactions,—

- (i) in the case of an issuer of equity securities, debt securities, or life insurance policies, of the issuer; and
 - (ii) in the case of an issuer of participatory securities, units in a unit trust, or interests in a superannuation scheme, of the scheme; and
 - (b) will at any time enable the financial position of the issuer or scheme, as the case may be, to be determined with reasonable accuracy; and
 - (c) will enable the issuer to ensure that the financial statements of the issuer or scheme, as the case may be, comply with the Financial Reporting Act 1993 and any applicable regulations made under this Act; and
 - (d) will enable the financial statements of the issuer or scheme, as the case may be, to be readily and properly audited.
- (2) The accounting records referred to in subsection (1) must be kept in a manner that will enable the financial statements of the issuer or scheme, as the case may be, to be readily and properly audited.
- (3) Without limiting subsection (1), accounting records kept under that subsection shall contain, in respect of the issuer or scheme concerned,—
- (a) entries of money received and spent each day and the matters to which those entries relate;
 - (b) a record of the assets and liabilities of the issuer or scheme;
 - (c) if the business of the issuer or scheme involves dealing in goods,—
 - (i) a record of goods bought or sold, except goods sold for cash in the ordinary course of carrying on a retail business, that identifies the goods and buyers and sellers and relevant invoices; and
 - (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year;
 - (d) if the business of the issuer or scheme involves providing services, a record of services provided and relevant invoices.

Section 53: substituted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

53A Place where accounting records to be kept

- (1) Subject to subsection (2), accounting records required by section 53 shall be kept at the registered office of the issuer, if any, or at such other place as the directors of the issuer think fit.
- (2) The accounting records may be kept at a place outside New Zealand only if there is sent to, and kept at a place in, New Zealand such documents in respect of the business dealt with in those accounting records as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months and will enable to be prepared the financial statements of the issuer or scheme, and any document annexed to any of those documents giving information that is required by any enactment.

Section 53A: inserted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

53B Accounting records to be in English

Accounting records required by section 53 and the documents in respect of the business dealt with in those accounting records referred to in section 53A shall be kept either in written form in the English language or so as to enable the accounting records to be readily accessible and readily convertible into written form in the English language.

Section 53B: inserted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

53C Period for which accounting records to be kept

- (1) Accounting records kept under section 53A, or copies of them, shall be retained by the issuer for a period of at least 7 years after the date they are made or the date of completion of the transaction to which they relate, whichever is the later.
- (2) Nothing in subsection (1) derogates from any other requirement to keep accounting records for a particular time.

Section 53C: inserted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

53D Inspection of accounting records

Every issuer shall make the accounting records required to be kept under section 53 and the documents in respect of the business dealt with in those accounting records referred to in section 53A available in written form in English at all reasonable times for inspection without charge by the directors of the issuer and by any trustee, statutory supervisor, Kiwi-Saver trustee, or unit trustee and by other persons authorised or permitted to inspect the accounting records of the issuer or scheme.

Section 53D: inserted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

Section 53D: amended, on 1 May 2011, by section 56 of the KiwiSaver Amendment Act 2011 (2011 No 8).

53E Financial statements to be audited

- (1) Every issuer of equity securities or debt securities or life insurance policies offered to the public (other than securities that have been redeemed) shall ensure that its financial statements are audited at least once a year by a qualified auditor.
- (2) *[Repealed]*
- (3) Every issuer of participatory securities, units in a unit trust, or interests in a superannuation scheme offered to the public must ensure that the financial statements for the scheme to which the securities relate are audited at least once a year by a qualified auditor.
- (4) Nothing in subsection (3) applies to a superannuation scheme if, by virtue of section 13(2) of the Superannuation Schemes Act 1989, the annual accounts of the scheme need not be audited.

Section 53E: inserted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

Section 53E(2): repealed, on 15 April 2004, by section 20(1) of the Securities Amendment Act 2004 (2004 No 31).

Section 53E(3): substituted, on 15 April 2004, by section 20(2) of the Securities Amendment Act 2004 (2004 No 31).

53F Application of other Acts not affected

Nothing in sections 53 to 53E derogates from the Companies Act 1993 or any other enactment.

Section 53F: inserted, on 1 October 1997, by section 24 of the Securities Amendment Act 1996 (1996 No 100).

Section 53F: amended, on 15 April 2004, by section 21 of the Securities Amendment Act 2004 (2004 No 31).

54 Issuers to issue certificates evidencing securities

- (1) Every issuer of an equity security, a debt security, a unit, or a participatory security offered to the public shall send, or cause to be sent, to the security holder either the security or a certificate of the security within 1 month of the allotment, or receipt by or on behalf of the issuer of a registrable transfer, of the security.
- (2) Every security or certificate sent to a security holder pursuant to this section shall be executed by or on behalf of the issuer of the security:
provided that it shall be sufficient compliance with the provisions of this subsection requiring a security or certificate to be executed by any person if a facsimile of the required signature and seal (if any) is reproduced on the security or certificate.
- (3) Nothing in this section applies to an issuer in respect of securities that are approved for transfer under, or in accordance with the rules of, a system that does not require a certificate for the transfer of securities.
- (4) In this section,—

certificate means a certificate or any other document that properly evidences the nature, ownership, terms, and conditions of a security

system means—

- (a) a system authorised or approved under the Securities Transfer Act 1991:
- (b) a designated settlement system (as defined in section 156M of the Reserve Bank of New Zealand Act 1989).

Section 54(1): amended, on 1 October 1997, by section 26 of the Securities Amendment Act 1996 (1996 No 100).

Section 54(3): substituted, on 24 November 2009, by section 10 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 54(4): substituted, on 24 November 2009, by section 10 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

54A Information to be sent periodically to security holders

Every issuer of securities offered to the public for subscription shall send, or cause to be sent, to each security holder, at the times prescribed by regulations, the documents, information, and other matters required to be sent by those regulations.

Section 54A: inserted, on 1 October 1997, by section 27 of the Securities Amendment Act 1996 (1996 No 100).

54B Information to be disclosed by issuers on request

- (1) Every issuer of securities offered to the public shall, at the request of a security holder and on payment of any prescribed fee, send, or cause to be sent, to the security holder such documents, information, and other matters of a kind prescribed by regulations as are requested by the security holder.
- (2) The documents, information, and other matters must be sent to the security holder as soon as practicable but, in any event, within 5 working days of the issuer receiving the request.
- (3) Every issuer of securities offered to the public shall, upon the request of a security holder or a prospective investor for a copy of the registered prospectus relating to the securities, without fee, send, or cause to be sent, to that security holder or prospective investor,—
 - (a) a copy of that registered prospectus; and
 - (b) a copy of any financial statements of the issuer or scheme concerned that have been registered under the Financial Reporting Act 1993 and that are referred to in the registered prospectus; and
 - (c) a copy of any documents registered under this Act for the purpose of extending the period during which allotments may be made under the registered prospectus.
- (4) The documents referred to in subsection (3) must be sent to the security holder or prospective investor as soon as practicable but, in any event, within 5 working days of the issuer receiving the request.

Section 54B: inserted, on 1 October 1997, by section 27 of the Securities Amendment Act 1996 (1996 No 100).

54C Documents, information, and other matters to be made publicly available

- (1) Every issuer of securities offered to the public for subscription must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, make publicly available the documents, information, and other matters that are required to be made publicly available by the regulations.
- (2) The documents, information, and other matters must, if required by the regulations, be presented, calculated, or prepared in accordance with the frameworks or methodologies specified in a notice issued by the FMA under section 54D.

Section 54C: inserted, on 1 May 2011, by section 28 of the Securities Amendment Act 2011 (2011 No 6).

54D FMA may specify frameworks or methodologies

- (1) The FMA may issue a notice that specifies frameworks or methodologies relating to the manner in which documents, information, or other matters that are to be made publicly available under section 54C are to be presented, calculated, or prepared.
- (2) A notice issued by the FMA—
 - (a) may specify different matters and requirements in respect of different kinds of securities or different classes of issuers;
 - (b) must not specify matters and requirements that are inconsistent with regulations made under section 70(1)(cb).
- (3) A notice issued by the FMA—
 - (a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the House of Representatives under section 4 of that Act; but
 - (b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- (4) A notice issued by the FMA must, as soon as practicable after it is issued, 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.
- (5) A notification in the *Gazette* for the purpose of subsection (4)(b) does not have to include the text of the notice.

Section 54D: inserted, on 1 May 2011, by section 28 of the Securities Amendment Act 2011 (2011 No 6).

54E Consultation

- (1) The FMA must not issue a notice under section 54D unless the FMA has consulted the persons or representatives of the persons that the FMA considers will be substantially affected by the issue of the notice.
- (2) A failure to comply with subsection (1) does not affect the validity of the notice.

Section 54E: inserted, on 1 May 2011, by section 28 of the Securities Amendment Act 2011 (2011 No 6).

54F FMA may vary or revoke notice

- (1) The FMA may vary or revoke a notice issued under section 54D.
- (2) Sections 54D(2) to (5) and 54E apply, with necessary modifications, in all respects to a variation or revocation under this section.

Section 54F: inserted, on 1 May 2011, by section 28 of the Securities Amendment Act 2011 (2011 No 6).

Liability of issuers, etc, and offences

55 Interpretation of provisions relating to advertisements, prospectuses, and registered prospectuses

For the purposes of this Act,—

- (a) a statement included in an advertisement or registered prospectus is deemed to be untrue if—
 - (i) it is misleading in the form and context in which it is included; or
 - (ii) it is misleading by reason of the omission of a particular which is material to the statement in the form and context in which it is included:

- (b) a statement is deemed to be included in an advertisement or registered prospectus if it is—
 - (i) contained in the advertisement or registered prospectus; or
 - (ii) appears on the face of the advertisement or registered prospectus; or
 - (iii) contained in any financial statements, report, memorandum, or document that accompany, or are incorporated by reference or referred to in, or distributed with, the advertisement or registered prospectus:
- (c) a certificate registered under section 37A(1A), and any financial statements that accompany that certificate, shall be deemed to be included in the registered prospectus to which the certificate relates.

Section 55: substituted, on 1 October 1997, by section 28(1) of the Securities Amendment Act 1996 (1996 No 100).

Civil liability

Heading: inserted, on 25 October 2006, by section 6(1) of the Securities Amendment Act 2006 (2006 No 46).

55A Overview of civil liability

- (1) The following civil remedies are available from the court under this Act if there is a civil liability event:
 - (a) a pecuniary penalty order and declaration of civil liability (on application by the FMA only) under section 55C:
 - (b) compensation under section 55G.
- (2) Sections 56 to 57A cover who is liable for the civil liability event for both these remedies.
- (3) This section is a guide only to the general scheme and effect of sections 55B to 57E.

Section 55A: inserted, on 25 October 2006, by section 6(1) of the Securities Amendment Act 2006 (2006 No 46).

Section 55A(1)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

55B What are civil liability events

In this Part, a **civil liability event** is—

- (a) distribution of an advertisement or a registered prospectus that includes an untrue statement:
- (b) a breach of regulations made under this Act relating to the offer, sale, or management of interests in contributory mortgages.

Section 55B: inserted, on 25 October 2006, by section 6(1) of the Securities Amendment Act 2006 (2006 No 46).

55C When court may make pecuniary penalty orders and declarations of civil liability

If the FMA applies for a pecuniary penalty order against a person under this Act, the court—

- (a) must determine whether there has been a civil liability event and whether the person is liable for a pecuniary penalty order for that civil liability event under sections 56 to 57A; and
- (b) must make a declaration of civil liability if satisfied of those matters (*see* sections 55D and 55E); and
- (c) may order the person to pay to the Crown a pecuniary penalty that the court considers appropriate (*see* section 55F) if satisfied of those matters and that the civil liability event—
 - (i) materially prejudices the interests of subscribers for the securities involved; or
 - (ii) is likely to materially damage the integrity or reputation of any of New Zealand's securities markets; or
 - (iii) is otherwise serious.

Section 55C: inserted, on 25 October 2006, by section 6(1) of the Securities Amendment Act 2006 (2006 No 46).

Section 55C: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

55D Purpose and effect of declarations of civil liability

- (1) The purpose of a declaration of civil liability is to enable a person who brings proceedings under section 55G to rely on the declaration in the proceedings for compensation, and not be required to prove the civil liability event.
- (2) Accordingly, a declaration of civil liability is conclusive evidence of the matters that must be stated in it under section 55E.

Section 55D: inserted, on 25 October 2006, by section 6(1) of the Securities Amendment Act 2006 (2006 No 46).

55E What declarations of civil liability must state

A declaration of civil liability must state the following:

- (a) the court that made the declaration; and
- (b) whether the civil liability event comes within section 55B(a) or (b); and
- (c) the person who has been found liable for the civil liability event; and
- (d) the conduct that constituted the civil liability event.

Section 55E: inserted, on 25 October 2006, by section 6(1) of the Securities Amendment Act 2006 (2006 No 46).

55F Amount of pecuniary penalty

- (1) The maximum amount of a pecuniary penalty under this Act is \$500,000 for an individual and \$5,000,000 for a body corporate, for each civil liability event.
- (2) In determining an appropriate pecuniary penalty, the court must have regard to all relevant matters, including—
 - (a) the nature and extent of the civil liability event; and
 - (b) the likelihood, nature, and extent of any damage to the integrity or reputation of New Zealand's securities markets because of the civil liability event; and
 - (c) the nature and extent of any loss or damage suffered by subscribers because of the civil liability event; and
 - (d) the circumstances in which the civil liability event occurred; and
 - (e) whether or not the person has previously been found by the court in proceedings under this Act to have engaged in any similar conduct.

Section 55F: inserted, on 25 October 2006, by section 6(1) of the Securities Amendment Act 2006 (2006 No 46).

55G Compensation orders

- (1) The court may, on the application of the FMA or a subscriber, order a liable person to pay compensation to all or any of the persons who subscribed for any securities on the faith of an advertisement or registered prospectus that includes an untrue

statement, for the loss or damage that the persons have sustained by reason of the untrue statement.

- (2) The court may, on the application of the FMA or a subscriber for an interest in a contributory mortgage, order a liable person to pay compensation to all or any of the persons who subscribe for an interest in a contributory mortgage or who hold an interest in a contributory mortgage, for the loss or damage they have sustained by reason of any breach of regulations made under this Act relating to the offer, sale, or management of interests in contributory mortgages.
- (3) A **liable person** is a person who is liable for compensation for the relevant civil liability event under any of sections 56 to 57A.
- (4) The liable person must pay any compensation ordered under the compensation order.
- (5) The court may, if the proceedings were brought or conducted (in whole or in part) by the FMA, direct that the FMA's costs in conducting the proceedings be paid from any amounts recovered under a compensation order.
- (6) Subsection (5) does not limit section 65B.

Section 55G: inserted, on 25 October 2006, by section 6(1) of the Securities Amendment Act 2006 (2006 No 46).

Section 55G(1): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55G(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55G(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 55G(5): amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

56 Which persons are liable for misstatements

- (1) A person is liable for a pecuniary penalty order (section 55C) and for compensation (section 55G) for the distribution of an advertisement or registered prospectus that includes an untrue statement if—
 - (a) the person is the issuer of the securities referred to in the advertisement or registered prospectus (the **issuer**) and the issuer is an individual:
 - (b) in the case of an advertisement, the person—

- (i) is a director of the issuer at the time that the advertisement is distributed; or
 - (ii) has authorised himself or herself to be named and is named in the advertisement as a director of the issuer or as having agreed to become a director immediately or after an interval of time:
 - (c) in the case of a registered prospectus, the person—
 - (i) has signed the prospectus as a director of the issuer or is a director on whose behalf the prospectus has been so signed; or
 - (ii) has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or has agreed to become a director either immediately or after an interval of time:
 - (d) the person is a promoter of the securities referred to in the advertisement or registered prospectus.
- (2) No person shall be liable under subsection (1)(c) in respect of any untrue statement included in a registered prospectus if he or she proves that, having consented to become a director of the issuer, he or she withdrew his or her consent before the distribution of the registered prospectus, and that he or she gave written notice of his or her withdrawal and the reason therefor to the FMA, and that the registered prospectus was distributed without his or her authority or consent.
- (3) No person shall be liable under subsection (1) in respect of any untrue statement included in an advertisement or registered prospectus, as the case may be, if he or she proves that—
- (a) the advertisement was distributed or the prospectus was registered, as the case may be, without his or her knowledge or consent, and on becoming aware of its distribution or registration he or she promptly gave notice to the trustee, statutory supervisor, KiwiSaver trustee, unit trustee, or superannuation trustee (if any) and the FMA that it was distributed or registered without his or her knowledge or consent; or
 - (b) after the distribution of the advertisement or the registration of the prospectus, as the case may be, and before the securities were subscribed for, he or she, on becoming aware of any untrue statement in the advertisement

or the prospectus, withdrew his or her consent to the distribution or the registration and promptly gave notice to the trustee, statutory supervisor, KiwiSaver trustee, unit trustee, or superannuation trustee (if any) and the FMA of the withdrawal and of the reason for the withdrawal; or

- (ba) (in the case of liability for a pecuniary penalty order) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he or she had reasonable grounds to believe and did believe, up to the time of the distribution of the advertisement or registered prospectus, that the statement was true; or
- (c) (in the case of liability for compensation) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he or she had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true; or
- (d) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert,—
 - (i) it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and
 - (ii) he or she had reasonable grounds to believe and did, up to the time of the distribution of the advertisement or the registration of the prospectus, as the case may be, believe that the person making the statement was competent to make it; and
 - (iii) that person had given the consent required by section 38A and section 40 to the distribution of the advertisement or the registration of the prospectus, as the case may be, and had not withdrawn that consent before distribution of the advertisement, or delivery of the prospectus for registration or, to the defendant's knowledge, before the securities were subscribed for; or

- (e) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (4) Where—
 - (a) an advertisement or a registered prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director thereof, and he or she has not consented to become a director, or has withdrawn his or her consent before the distribution of the advertisement or registration of the prospectus, and has not authorised or consented to the distribution of the advertisement or registration of the prospectus; or
 - (b) the consent of a person is required under section 38A or section 40 to the distribution of an advertisement or registered prospectus and he or she either, has not given that consent, or has withdrawn it before the distribution of the advertisement, or delivery of the prospectus for registration—

the directors of the issuer, except any without whose knowledge or consent the advertisement was distributed or the prospectus was registered, shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs, and expenses to which he or she may be made liable by reason of his or her name having been inserted in the advertisement or registered prospectus or of the inclusion therein of a statement purporting to be made by him or her as an expert, as the case may be, or in defending himself or herself against any action or legal proceedings brought against him or her in respect thereof.
- (5) Where any person acting in good faith, believing a statement in an advertisement or prospectus to be untrue, withdraws his or her consent to the distribution of the advertisement or registration of the prospectus, he or she shall not be liable in respect

of the withdrawal to the issuer or any other person, whether or not the statement is untrue.

Compare: 1978 No 103 s 57

Section 56: substituted, on 1 September 1983, by section 27 of the Securities Amendment Act 1982 (1982 No 147).

Section 56 heading: substituted, on 25 October 2006, by section 7(1) of the Securities Amendment Act 2006 (2006 No 46).

Section 56(1): substituted, on 25 October 2006, by section 7(2) of the Securities Amendment Act 2006 (2006 No 46).

Section 56(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 56(2): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(2): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(3): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(3)(a): substituted, on 1 May 2011, by section 29 of the Securities Amendment Act 2011 (2011 No 6).

Section 56(3)(a): amended, on 1 May 2011, pursuant to section 56 of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

Section 56(3)(b): substituted, on 1 May 2011, by section 29 of the Securities Amendment Act 2011 (2011 No 6).

Section 56(3)(b): amended, on 1 May 2011, pursuant to section 56 of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

Section 56(3)(ba): inserted, on 25 October 2006, by section 7(3) of the Securities Amendment Act 2006 (2006 No 46).

Section 56(3)(c): amended, on 25 October 2006, by section 7(4) of the Securities Amendment Act 2006 (2006 No 46).

Section 56(3)(c): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(3)(d)(ii): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(4): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(4): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(4): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(4): amended, on 3 May 2001, by section 5(f) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(4)(a): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(4)(a): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(4)(b): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(5): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 56(5): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

57 Which experts are liable for misstatements

- (1) A person is liable for a pecuniary penalty order (section 55C) and for compensation (section 55G) for an untrue statement included in an advertisement or registered prospectus if—
 - (a) the person gave consent to the distribution of the advertisement or registered prospectus under section 38A or section 40 or under regulations made under this Act; and
 - (b) the untrue statement purports to be made by him or her as an expert.
- (2) No person shall be liable under subsection (1) if he or she proves that—
 - (a) having given his or her consent to the distribution of the advertisement or registered prospectus, he or she withdrew it in writing before distribution of the advertisement or registered prospectus; or
 - (b) after distribution of the advertisement or registered prospectus and before the securities were subscribed for, he or she, on becoming aware of the untrue statement or omission, withdrew his or her consent in writing and gave notice to the trustee, statutory supervisor, KiwiSaver trustee, unit trustee, or superannuation trustee (if any) and the FMA of the withdrawal and of the reason for the withdrawal; or
 - (ba) (in the case of liability for a pecuniary penalty order) he or she was competent to make the statement and that he or she had reasonable grounds to believe and did, up to the time of the distribution of the advertisement or registered prospectus, believe that the statement was true; or

- (c) (in the case of liability for compensation) he or she was competent to make the statement and that he or she had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true.
- (3) Where any person acting in good faith, believing a statement in an advertisement or registered prospectus to be untrue, withdraws his or her consent to the distribution of the advertisement or registered prospectus, he or she shall not be liable in respect of the withdrawal to the issuer or to any other person, whether or not the statement is untrue.

Section 57: substituted, on 1 September 1983, by section 28 of the Securities Amendment Act 1982 (1982 No 147).

Section 57 heading: substituted, on 25 October 2006, by section 8(1) of the Securities Amendment Act 2006 (2006 No 46).

Section 57(1): substituted, on 25 October 2006, by section 8(2) of the Securities Amendment Act 2006 (2006 No 46).

Section 57(2): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 57(2)(a): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 57(2)(a): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 57(2)(b): substituted, on 1 May 2011, by section 30 of the Securities Amendment Act 2011 (2011 No 6).

Section 57(2)(b): amended, on 1 May 2011, pursuant to section 56 of the Kiwi-Saver Amendment Act 2011 (2011 No 8).

Section 57(2)(ba): inserted, on 25 October 2006, by section 8(3) of the Securities Amendment Act 2006 (2006 No 46).

Section 57(2)(c): amended, on 25 October 2006, by section 8(4) of the Securities Amendment Act 2006 (2006 No 46).

Section 57(2)(c): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 57(3): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 57(3): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

57A Which persons are liable for breaches of contributory mortgage regulations

- (1) A person is liable for a pecuniary penalty order (section 55C) and for compensation (section 55G) for a breach of regulations

made under this Act relating to the offer, sale, or management of interests in contributory mortgages if,—

- (a) in the case of a contributory mortgage broker who is an individual, the person acts, or is charged with acting, as the contributory mortgage broker for the contributory mortgage at the time that the breach occurred:
 - (b) in the case of a contributory mortgage broker that is a body corporate or other body, the person is—
 - (i) the contributory mortgage broker; or
 - (ii) a director of the contributory mortgage broker that is acting, or is charged with acting, as the contributory mortgage broker for the contributory mortgage at the time that the breach occurred.
- (2) No person who is a director of a contributory mortgage broker shall be liable under subsection (1)(b) if he or she proves that—
- (a) the breach occurred without his or her knowledge or consent; and
 - (b) he or she had reasonable grounds to believe and did, up to the time that he or she learned of the breach, believe that the contributory mortgage broker had complied with the regulations made under this Act; and
 - (c) upon becoming aware of the breach he or she forthwith gave reasonable notice of the breach to the Registrar and any person to whom such notice is required to be given pursuant to regulations made under this Act.

Section 57A: inserted, on 1 September 1983, by section 29 of the Securities Amendment Act 1982 (1982 No 147).

Section 57A heading: substituted, on 25 October 2006, by section 9(1) of the Securities Amendment Act 2006 (2006 No 46).

Section 57A(1): substituted, on 25 October 2006, by section 9(2) of the Securities Amendment Act 2006 (2006 No 46).

Section 57A(2): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 57A(2)(a): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 57A(2)(b): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 57A(2)(c): amended, on 20 September 2007, by section 5 of the Securities Amendment Act 2007 (2007 No 79).

Section 57A(2)(c): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

General provisions on civil liability remedies

Heading: inserted, on 25 October 2006, by section 10 of the Securities Amendment Act 2006 (2006 No 46).

57B Pecuniary penalty order and compensation order may be made for same conduct

A person may be liable for both a pecuniary penalty order and compensation for the same conduct.

Section 57B: inserted, on 25 October 2006, by section 10 of the Securities Amendment Act 2006 (2006 No 46).

57C Only 1 pecuniary penalty order may be made for same conduct

If conduct by a person constitutes 2 or more civil liability events, proceedings may be brought against that person for any 1 or more of the civil liability events, but no person is liable to more than 1 pecuniary penalty order for the same conduct.

Section 57C: inserted, on 25 October 2006, by section 10 of the Securities Amendment Act 2006 (2006 No 46).

57D Standard of proof for civil remedies

The proceedings under sections 55A to 57A 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 57D: inserted, on 25 October 2006, by section 10 of the Securities Amendment Act 2006 (2006 No 46).

57E Time limit for applying for civil remedies

- (1) An application for a pecuniary penalty order may be made at any time within 3 years after the date on which the matter giving rise to the civil liability event was discovered or ought reasonably to have been discovered.
- (2) The usual time limits apply to all applications for compensation.

- (3) However, an application for compensation in respect of the civil liability event may be made at any time within 6 months after the date on which a declaration of civil liability is made, even if the usual time limit has expired.

Section 57E: inserted, on 25 October 2006, by section 10 of the Securities Amendment Act 2006 (2006 No 46).

Section 57E(1): amended, on 1 May 2011, by section 31(1) of the Securities Amendment Act 2011 (2011 No 6).

Criminal liability

Heading: inserted, on 25 October 2006, by section 11 of the Securities Amendment Act 2006 (2006 No 46).

58 Criminal liability for misstatement in advertisement or registered prospectus

- (1) Subject to subsection (2), where an advertisement that includes any untrue statement is distributed,—
- (a) the issuer of the securities referred to in the advertisement, if an individual; or
 - (b) if the issuer of the securities is a body, every director thereof at the time the advertisement is distributed—
- commits an offence.
- (2) No person shall be convicted of an offence under subsection (1) if the person proves either that the statement was immaterial or that he or she had reasonable grounds to believe, and did, up to the time of the distribution of the advertisement, believe that the statement was true.
- (3) Subject to subsection (4), where a registered prospectus that includes an untrue statement is distributed, every person who signed the prospectus, or on whose behalf the registered prospectus was signed for the purposes of section 41(1)(b), commits an offence.
- (4) No person shall be convicted of an offence under subsection (3) if the person proves either that the statement was immaterial or that he or she had reasonable grounds to believe, and did, up to the time of the distribution of the prospectus, believe that the statement was true.
- (5) Every person who commits an offence against this section is liable—

- (a) on conviction on indictment to—
 - (i) imprisonment for a term not exceeding 5 years; or
 - (ii) a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued; or
- (b) on summary conviction to—
 - (i) imprisonment for a term not exceeding 3 months; or
 - (ii) a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.

Section 58: substituted, on 15 December 1994, by section 2(1) of the Securities Amendment Act (No 2) 1994 (1994 No 158).

Section 58(3): amended, on 1 May 2011, by section 32 of the Securities Amendment Act 2011 (2011 No 6).

Section 58(5): substituted, on 1 December 2002, by section 16 of the Securities Amendment Act 2002 (2002 No 43).

59 Criminal liability for offering, distributing, or allotting in contravention of this Act

- (1) Subject to subsection (2), if an offer of a security is made to the public, or a registered prospectus relating to a security is distributed, or a security is allotted, in contravention of this Act, (or, in the case of an interest in a contributory mortgage, in contravention of regulations made under this Act),—
 - (a) the issuer of the security; and
 - (b) every person who is a principal officer of the issuer at the time of the contravention; and
 - (c) every promoter of the security; and
 - (d) every person who has authorised himself or herself to be named and is named in any advertisement or registered prospectus relating to the security as a director of the issuer or as having agreed to become a director either immediately or after an interval of time—

each commits an offence, and is liable on summary conviction to a fine not exceeding \$300,000 and, if the offence is a con-

tinuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.

- (2) No person shall be convicted under subsection (1) for any such contravention if—
- (a) the contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial, or was otherwise such as, in the opinion of the court having regard to all the circumstances of the case, ought reasonably to be excused; or
 - (b) in the case of a person other than the issuer, in the opinion of the court dealing with the case, the contravention did not take place with his or her knowledge and consent.

Section 59(1): amended, on 1 December 2002, by section 17 of the Securities Amendment Act 2002 (2002 No 43).

Section 59(1): amended, on 1 September 1983, by section 31(1) of the Securities Amendment Act 1982 (1982 No 147).

Section 59(1)(d): amended, on 3 May 2001, by section 5(f) of the Securities Amendment Act 2001 (2001 No 25).

Section 59(1)(d): amended, on 1 September 1983, by section 31(2) of the Securities Amendment Act 1982 (1982 No 147).

Section 59(2)(b): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

59A Criminal liability for delivering prospectus or amendment for registration that does not comply with various requirements

- (1) The issuer of securities to which a prospectus relates commits an offence if, when the prospectus is delivered to the Registrar for registration under this Act,—
- (a) any of sections 39(1), 40, or 41(1) are not complied with in respect of the prospectus; and
 - (b) the issuer knows, or ought reasonably to know, that any of sections 39(1), 40, or 41(1) have not been complied with in respect of the prospectus.
- (2) The issuer of securities to which a registered prospectus relates commits an offence if—
- (a) an instrument to amend the prospectus is delivered to the Registrar for registration under this Act that would

- result, if the amendment were made, in the prospectus failing to comply with section 39(1) or 40; and
- (b) when the instrument is delivered for registration under this Act, the issuer knows, or ought reasonably to know, that if the amendment in the instrument were made it would result in the prospectus failing to comply with section 39(1) or 40.
- (3) An issuer that commits an offence under subsection (1) or (2) is liable, on summary conviction, to a fine not exceeding \$30,000.
- (4) This section applies in respect of prospectuses and instruments of amendment delivered to the Registrar for registration under this Act on or after the commencement of this section.

Section 59A: substituted, on 1 May 2011, by section 33 of the Securities Amendment Act 2011 (2011 No 6).

60 Other offences

- (1) Every person who—
- (a) *[Repealed]*
- (b) *[Repealed]*
- (c) *[Repealed]*
- (d) without reasonable excuse, acts in contravention of, or fails to comply in any respect with, any provision of sections 35, 43B(1), 47, 50, 51, 52, and 54 or any requirement imposed pursuant to any of those sections—commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.
- (2) If a person contravenes or fails to comply in any respect with any provision of sections 7, 37(4), 43D(1), 48, 53 to 53E, and 54A to 54C, or any requirement imposed pursuant to any of those sections, the person, and every principal officer thereof, commits an offence, and is liable on summary conviction to a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued: provided that—
- (a) no person shall be convicted under this subsection in respect of any such contravention or failure to comply if the contravention or failure was in respect of matters

which in the opinion of the court dealing with the case were immaterial, or was otherwise such as, in the opinion of the court having regard to all the circumstances of the case, ought reasonably to be excused:

- (b) no principal officer shall be convicted under this subsection in respect of any such contravention or failure to comply if, in the opinion of the court dealing with the case, the contravention or failure did not take place with his or her knowledge and consent.

Section 60(1): amended, on 1 December 2002, by section 19(1)(d) of the Securities Amendment Act 2002 (2002 No 43).

Section 60(1)(a): repealed, on 1 December 2002, by section 19(1)(a) of the Securities Amendment Act 2002 (2002 No 43).

Section 60(1)(b): repealed, on 1 December 2002, by section 19(1)(a) of the Securities Amendment Act 2002 (2002 No 43).

Section 60(1)(c): repealed, on 1 May 2011, by section 34(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 60(1)(d): amended, on 1 May 2011, by section 34(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 60(1)(d): amended, on 1 December 2002, by section 19(1)(c) of the Securities Amendment Act 2002 (2002 No 43).

Section 60(2): amended, on 1 May 2011, by section 34(3)(a) of the Securities Amendment Act 2011 (2011 No 6).

Section 60(2): amended, on 1 May 2011, by section 34(3)(b) of the Securities Amendment Act 2011 (2011 No 6).

Section 60(2): amended, on 1 December 2002, by section 19(2) of the Securities Amendment Act 2002 (2002 No 43).

Section 60(2): amended, on 1 October 1997, by section 31 of the Securities Amendment Act 1996 (1996 No 100).

Section 60(2): amended, on 1 September 1983, by section 32 of the Securities Amendment Act 1982 (1982 No 147).

Section 60(2)(b): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Management bans

Heading: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

60A 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 section 58 or 59 or a pecuniary penalty order has been made against A under this Act; or
 - (ab) A has been convicted of an offence against section 51 or 61 of the Financial Markets Authority Act 2011; or
 - (b) A has, while a director of an incorporated or unincorporated body,—
 - (i) persistently contravened this Act, the Companies Act 1993, the Securities Markets Act 1988, the Securities Trustees and Statutory Supervisors Act 2011, the Takeovers Act 1993, or the takeovers code in force under that Act; or
 - (ii) if the incorporated or unincorporated body has so contravened, persistently failed to take all reasonable 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 60B in connection with a contravention of any law relating to the offering of securities.
- (2) An **entitled person** is—
- (a) the FMA;
 - (b) the Registrar;
 - (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 security holder or creditor of an incorporated or unincorporated body referred to in paragraph (c).

Section 60A: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

Section 60A(1)(a): amended, on 1 May 2011, by section 35(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 60A(1)(ab): inserted, on 1 May 2011, by section 35(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 60A(1)(b)(i): amended, on 1 October 2011, by section 72 of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Section 60A(2)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

60B 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 60B: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

60C Offence of contravening management banning order

An individual who acts in contravention of a management banning order under section 60A commits an offence and 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.

Section 60C: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

60D Only 1 management banning order may be made for same conduct

If conduct by a person constitutes grounds for making an order under any 1 or more of section 60A of this Act, section 43F of the Securities Markets Act 1988, section 44F of the Takeovers Act 1993, and section 383 of the Companies Act 1993, proceedings 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 60D: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

60E Persons automatically banned from management

(1) This section applies to a person if—

- (a) the person has been convicted of an offence against section 58 of this Act or section 51 or 61 of the Financial Markets Authority Act 2011; or
 - (b) a pecuniary penalty order has been made against the person under this Act.
- (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 and 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.

Section 60E: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

Section 60E(1): substituted, on 1 May 2011, by section 36(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 60E(2A): inserted, on 1 May 2011, by section 36(2) of the Securities Amendment Act 2011 (2011 No 6).

60F General provisions for bans and banning orders

- (1) The Registrar of the court must, as soon as practicable after the making of a management banning order by a court under section 60A,—
 - (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 under section 60B or section 60E 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 persons that the court thinks fit, may attend and be heard at the hearing of the application.

Section 60F: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

Section 60F(1)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 60F(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 60F(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 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

60G 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 the Financial Markets Authority Act 2011 in relation to an act or omission by a person that—
 - (i) constitutes or may constitute a contravention of this Act; or
 - (ii) constitutes or may constitute a contravention of any other financial markets legislation in connection with an offer of securities to the public or securities offered to the public; or
 - (iii) may result in a prosecution or civil proceedings of the kind referred to in any of paragraphs (b) to (d) being begun against the person; or
 - (b) a prosecution has begun against a person for a contravention of—
 - (i) this Act; or
 - (ii) any other financial markets legislation in connection with an offer of securities to the public or securities offered to the public; or

- (c) civil proceedings have begun against a person under, or in respect of,—
 - (i) this Act; or
 - (ii) any other financial markets legislation in connection with an offer of securities to the public or securities offered to the public; or
 - (d) civil proceedings have begun against a person, being proceedings that, in connection with an offer of securities to the public or securities offered to the public, seek damages or other relief for fraud, negligence, default, breach of duty, or other misconduct.
- (2) The court may, on application by the FMA or by an aggrieved person, make 1 or more of the orders listed in section 60H 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 60H,—

aggrieved person means any person to whom a relevant person is liable

civil proceedings means proceedings in a court (other than criminal proceedings)

financial markets legislation has the same meaning as in section 4 of the Financial Markets Authority Act 2011

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 60G: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

Section 60G(1): substituted, on 1 May 2011, by section 37(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 60G(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 60G(3) **civil proceedings**: inserted, on 1 May 2011, by section 37(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 60G(3) **financial markets legislation**: inserted, on 1 May 2011, by section 37(2) of the Securities Amendment Act 2011 (2011 No 6).

60H What orders may be made

- (1) The orders that may be made under section 60G 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 of 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:
- (ga) an order—
 - (i) removing a person from being a manager of a scheme to which the investigation, prosecution, or proceedings referred to in section 60G(1) relates; and
 - (ii) appointing another person as the manager of the scheme (with any powers that the court orders):
 - (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 60H: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

Section 60H(1)(ga): inserted, on 1 May 2011, by section 38(1) of the Securities Amendment Act 2011 (2011 No 6).

60I Interim orders

- (1) If an application is made to the court for an order under section 60G, 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.

Compare: Corporations Act 2001 s 1323(3), (4) (Aust)

Section 60I: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

60J Relationship with other law

- (1) Nothing in sections 60G to 60I 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 60J: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

60K Offence

A person commits an offence who contravenes an order by the court under section 60H or section 60I that is applicable to the person and 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 both;
- (b) in the case of a body corporate, to a fine not exceeding \$300,000.

Compare: Corporations Act 2001 s 1323(9), (10) (Aust).

Section 60K: inserted, on 25 October 2006, by section 13 of the Securities Amendment Act 2006 (2006 No 46).

61 General prohibition on indemnities or insurance for directors, employees, and auditors of issuer

- (1) Except as provided in section 61A or section 61B, an issuer must not indemnify, or directly or indirectly effect insurance for, a director, employee, or auditor of an issuer in respect of—
- (a) liability for any negligence, default, breach of duty, or breach of trust in his or her capacity as a director, employee, or auditor; or

- (b) costs incurred by that director, employee, or auditor in defending or settling any claim or proceeding relating to that liability.
- (2) An indemnity given in breach of this section is void.

Section 61: substituted, on 15 April 2004, by section 23 of the Securities Amendment Act 2004 (2004 No 31).

61A Permitted indemnities for certain costs of directors, employees, and auditors of issuers

- (1) An issuer may indemnify a director, employee, or auditor of the issuer for—
 - (a) any costs incurred by him or her in defending or settling a proceeding that relates to liability of a kind referred to in section 61(1)(a) if—
 - (i) judgment is given in his or her favour or if he or she is acquitted; or
 - (ii) the proceeding is discontinued; or
 - (b) any costs incurred by him or her in connection with an application under section 63 in which he or she is relieved from liability by the court.
- (2) This section does not limit section 162 of the Companies Act 1993.

Section 61A: inserted, on 15 April 2004, by section 23 of the Securities Amendment Act 2004 (2004 No 31).

61B Permitted insurance for certain liability of directors and employees of issuer

- (1) An issuer may effect insurance for a director or employee of the issuer in respect of—
 - (a) liability (other than criminal liability) of a kind referred to in section 61(1)(a); or
 - (b) costs incurred by that director or employee in defending or settling any proceeding relating to that liability; or
 - (c) costs incurred by that director, employee, or auditor in defending any criminal proceedings—
 - (i) that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee; and
 - (ii) in which he or she is acquitted.

- (2) The directors of the issuer who vote in favour of authorising the insurance under subsection (1) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the issuer.
- (3) The director or employee who is insured is personally liable to the issuer for the cost of effecting insurance if—
 - (a) subsection (2) has not been complied with in effecting the insurance; or
 - (b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (2).
- (4) However, subsection (3) does not apply to the extent that the director or employee proves that the insurance was fair to the issuer at the time the insurance was effected.
- (5) A certificate signed for the purposes of section 162(6) of the Companies Act 1993 is effective also for the purposes of subsection (2); but this section does not limit section 162 of the Companies Act 1993.

Section 61B: inserted, on 15 April 2004, by section 23 of the Securities Amendment Act 2004 (2004 No 31).

61C Interpretation for sections 61 to 61B

In sections 61 to 61B,—

director includes a former director

effect insurance includes pay, whether directly or indirectly, the costs of the insurance

employee includes a former employee

indemnify includes relieve, exempt, or excuse from liability, whether before or after the liability arises.

Section 61C: inserted, on 15 April 2004, by section 23 of the Securities Amendment Act 2004 (2004 No 31).

62 Liability of trustees and statutory supervisors

- (1) Subject to the following provisions of this section, any provision of a deed or contract relating to debt securities or participatory securities shall be void in so far as it would have the effect of exempting a trustee or statutory supervisor thereof from or indemnifying him or her against liability for breach of trust where he or she fails to show the degree of care and dili-

gence required of him or her as trustee or statutory supervisor having regard to the provisions of any deed conferring on him or her any powers, authorities, or discretions.

- (2) Subsection (1) shall not invalidate—
 - (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee or statutory supervisor before the giving of the release; or
 - (b) any provision enabling such a release to be given—
 - (i) on the agreement thereto of a majority comprising not less than three-fourths in value of the security holders voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee or statutory supervisor being wound up or ceasing to act.
- (3) Subsection (1) shall not operate—
 - (a) to invalidate any provision in force at the commencement of this Part; or
 - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him or her while any such provision was in force.

Section 62(1): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 62(1): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 62(3)(b): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

63 Power of court to grant relief in certain cases

- (1) If in any proceedings against any person for negligence, default, breach of duty, or breach of trust in connection with—
 - (a) an offer to the public or allotment of securities; or
 - (b) the distribution of a registered prospectus or advertisement; or
 - (c) the management of securities offered to the public; or
 - (d) any matter related thereto—it appears to the court hearing the case that the person is or may be liable in respect of the negligence, default, breach of

duty, or breach of trust, but that he or she has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default, breach of duty, or breach of trust, the court may relieve him or her either wholly or partly from his or her liability, on such terms as the court may think fit.

- (2) Where any such person has reason to apprehend that any claim will or might be made against him or her in respect of any such negligence, default, breach of duty, or breach of trust, he or she may apply to the court for relief, and the court on any such application shall have the same power to relieve him or her as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty, or breach of trust had been brought.
- (3) Where any case to which subsection (1) applies is being tried by a Judge with a jury, the Judge may, after hearing the evidence, if he or she is satisfied that the defendant ought in pursuance of that subsection to be relieved wholly or partly from the liability sought to be enforced against him or her, withdraw the case wholly or partly from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the Judge may think proper.

Section 63(1): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 63(1): amended, on 3 May 2001, by section 5(d) of the Securities Amendment Act 2001 (2001 No 25).

Section 63(1): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 63(1)(a): amended, on 28 July 2009, by section 14(1) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 63(1)(b): substituted, on 1 September 1983, by section 33 of the Securities Amendment Act 1982 (1982 No 147).

Section 63(1)(b): amended, on 28 July 2009, by section 14(2) of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 63(2): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 63(2): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

Section 63(3): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 63(3): amended, on 3 May 2001, by section 5(e) of the Securities Amendment Act 2001 (2001 No 25).

63A No liability under Fair Trading Act 1986 if not liable under this Act

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 Act if that person would not be liable for that conduct under this Act.

Section 63A: inserted, on 25 October 2006, by section 14 of the Securities Amendment Act 2006 (2006 No 46).

64 Time in which information may be laid

Notwithstanding anything to the contrary in the Summary Proceedings Act 1957, 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.

65 Saving of liability under general law

Nothing in this Act shall limit or diminish any liability that any person may incur under any rule of law or enactment other than this Act.

Other general provisions

Heading: substituted, on 25 October 2006, by section 15 of the Securities Amendment Act 2006 (2006 No 46).

65A Jurisdiction of courts in New Zealand

The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than proceedings for offences against Part 2.

Section 65A: inserted, on 1 December 2002, by section 20 of the Securities Amendment Act 2002 (2002 No 43).

65B Court may order payment of FMA's costs

If the FMA brings or conducts proceedings under this Act and the court makes any order against a person under this Act, the court may also order that person to pay the FMA's costs and expenses in conducting the proceedings.

Section 65B: inserted, on 25 October 2006, by section 16 of the Securities Amendment Act 2006 (2006 No 46).

Section 65B heading: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 65B: amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 65B: amended, on 1 May 2011, by section 84(5) of the Financial Markets Authority Act 2011 (2011 No 5).

65C Orders to secure compliance

The court may, for the purpose of securing compliance with any other order it makes under this Act, direct a person to do or refrain from doing a specified act.

Section 65C: inserted, on 25 October 2006, by section 16 of the Securities Amendment Act 2006 (2006 No 46).

65D Giving notice of application for court orders

Before making an order under this Act, 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 65D: inserted, on 25 October 2006, by section 16 of the Securities Amendment Act 2006 (2006 No 46).

65E General provisions as to court's orders

- (1) An order under this Act 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 Act on the terms and conditions the court thinks fit.

Section 65E: inserted, on 25 October 2006, by section 16 of the Securities Amendment Act 2006 (2006 No 46).

65F 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 65F: inserted, on 25 October 2006, by section 16 of the Securities Amendment Act 2006 (2006 No 46).

65G 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 38B (which relates to the prohibition of advertisements):
- (b) section 43F (which relates to the prohibition of the distribution of investment statements):
- (c) section 43G (which relates to orders to prohibit allotments or the cancellation of the registration of prospectuses):
- (d) section 44A (which relates to delayed allotment orders):
- (e) section 44AE (which relates to prohibition orders):
- (f) section 44B (which relates to the FMA's powers in respect of contributory mortgages).

Section 65G: inserted, on 1 May 2011, by section 39 of the Securities Amendment Act 2011 (2011 No 6).

65H Power of Registrar to delegate

- (1) The Registrar may delegate to any person, either generally or particularly, any of the Registrar's functions, duties, and powers under this Act except the power of delegation.
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions and conditions the Registrar thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Section 65H: inserted, on 1 May 2011, by section 39 of the Securities Amendment Act 2011 (2011 No 6).

66 Registers to be kept by Registrar for purposes of this Act

- (1) The Registrar shall cause to be kept in the office of each District Registrar of Companies such registers as he or she considers necessary for the purposes of this Act, and all matters required by this Act to be registered or recorded by the Registrar shall be recorded therein.
- (2) Sections 360, 361, and 363 of the Companies Act 1993 apply in respect of any documents kept by the Registrar for the purposes of this Act as if they were documents kept for the purposes of that Act.

Section 66(1): amended, on 3 May 2001, by section 5(c) of the Securities Amendment Act 2001 (2001 No 25).

Section 66(2): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 66(2): amended, on 15 April 2004, by section 24(1) of the Securities Amendment Act 2004 (2004 No 31).

Section 66(2): amended, on 15 April 2004, by section 24(2) of the Securities Amendment Act 2004 (2004 No 31).

Part 3

General investigation and enforcement powers

[Repealed]

Part 3: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

Powers of inspection

[Repealed]

Heading: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

67 Power to inspect documents

[Repealed]

Section 67: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

67A Power to request or approve Registrar or authorised persons to inspect documents

[Repealed]

Section 67A: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68 Limits on exercise of power to inspect documents

[Repealed]

Section 68: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68A Requirements for persons authorised to inspect documents

[Repealed]

Section 68A: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68B Disclosure of information from inspection

[Repealed]

Section 68B: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68C Powers not limited

[Repealed]

Section 68C: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68D Non-disclosure of information from inspection

[Repealed]

Section 68D: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68E No privilege against self-incrimination

[Repealed]

Section 68E: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68F Protection from liability for persons exercising powers of inspection*[Repealed]*

Section 68F: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68G Rights of appeal*[Repealed]*

Section 68G: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68H Time for appeal*[Repealed]*

Section 68H: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68I Situation while appeal pending*[Repealed]*

Section 68I: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68J Determination of appeal*[Repealed]*

Section 68J: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

68K Requirements where appeal allowed*[Repealed]*

Section 68K: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69 Appeals against other decisions of Registrar*[Repealed]*

Section 69: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69A Appeals from decisions under section 67A*[Repealed]*

Section 69A: repealed, on 1 December 2002, by section 22 of the Securities Amendment Act 2002 (2002 No 43).

Commission's powers for receiving evidence
[Repealed]

Heading: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69B Who may receive evidence
[Repealed]

Section 69B: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69BA Admissibility of evidence
[Repealed]

Section 69BA: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69C How evidence may be given
[Repealed]

Section 69C: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69D Power to summon witnesses
[Repealed]

Section 69D: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69E Witnesses' expenses
[Repealed]

Section 69E: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

*Exercise of inspection and evidence powers for
overseas regulators*
[Repealed]

Heading: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69F Power of Commission to act on requests of overseas regulators*[Repealed]*

Section 69F: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69G Commission's consideration of requests*[Repealed]*

Section 69G: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69H Conditions that may be imposed on providing information to overseas regulators*[Repealed]*

Section 69H: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69I Undertakings to be obtained before providing certain information to overseas regulators*[Repealed]*

Section 69I: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

*Commission's power to accept undertakings**[Repealed]*

Heading: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69J Commission may accept undertakings*[Repealed]*

Section 69J: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69K Enforcement of undertakings*[Repealed]*

Section 69K: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

Proceedings before Commission

[Repealed]

Heading: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69L Right to be heard and represented at proceedings before Commission

[Repealed]

Section 69L: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69M Power to hear proceedings in private

[Repealed]

Section 69M: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69N Power to make other confidentiality orders

[Repealed]

Section 69N: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69O Commission may state case for opinion of High Court

[Repealed]

Section 69O: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

Appeals of Commission decisions

[Repealed]

Heading: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69P Appeals to High Court on questions of law only

[Repealed]

Section 69P: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69Q Requirements for lodging appeal

[Repealed]

Section 69Q: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69R Determination of appeal*[Repealed]*

Section 69R: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

*Miscellaneous provisions**[Repealed]*

Heading: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69S Witnesses and counsel to have privileges of witnesses and counsel in court*[Repealed]*

Section 69S: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69T No privilege against self-incrimination*[Repealed]*

Section 69T: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69U Restrictions on use of self-incriminating statements obtained by summons*[Repealed]*

Section 69U: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

69V Limitation on disclosure of information obtained in Commission's operations*[Repealed]*

Section 69V: repealed, on 1 May 2011, by section 41 of the Securities Amendment Act 2011 (2011 No 6).

Part 4**Regulations and exemptions**

Part 4 heading: inserted, on 1 December 2002, by section 24 of the Securities Amendment Act 2002 (2002 No 43).

Part 4 heading: amended, on 1 May 2011, by section 42 of the Securities Amendment Act 2011 (2011 No 6).

70 Regulations and Orders in Council

- (1) The Governor-General may from time to time, by Order in Council, on the recommendation of the Minister in accordance with subsection (3), make regulations for all or any of the following purposes:
- (a) prescribing, or empowering the Registrar to prescribe, forms required for the purposes of this Act;
 - (b) regulating advertising, advertisements, investment statements, prospectuses, and registered prospectuses, including—
 - (i) prescribing the information, statements, certificates, documents, or other matters that shall or shall not be contained in, or endorsed on, or attached to, advertisements, investment statements, prospectuses, or registered prospectuses; and
 - (ii) prohibiting or restricting the use in advertisements, investment statements, prospectuses, or registered prospectuses of prescribed words, information, statements, sounds, and images, graphics, or other matters; or
 - (iii) prescribing requirements as to the layout or method of presentation of any advertisement, investment statement, prospectus, or registered prospectus, and the size of type used therein;—
and different matters may be prescribed, prohibited, restricted, specified, or required in respect of advertisements, investment statements, prospectuses, or registered prospectuses relating to different kinds of securities or different classes of issuers or offerees:
 - (c) providing that statements included in, or relating to an advertisement, investment statement, or registered prospectus or to securities to which an advertisement, investment statement, or registered prospectus relates, made for the purposes of regulations under this Act shall be deemed to be statements made in the advertisement, investment statement, or registered prospectus for the purposes of sections 55 to 65:

- (ca) prescribing, in respect of securities offered to the public, the kinds of information that must be sent to security holders periodically or on request; and different kinds of information may be prescribed in respect of different kinds of securities:
- (cb) prescribing, in respect of securities offered to the public, the documents, information, and other matters that must be made publicly available under section 54C, the times or events referred to in that section, and the manner of making the documents, information, and other matters publicly available (including prescribing the manner in which the documents, information, or matters are to be presented, calculated, or prepared); and different matters and requirements may be prescribed in respect of different kinds of securities or different classes of issuers or offerees:
- (d) specifying obligations that are disclosure obligations for the purposes of this Act:
- (e) *[Repealed]*
- (f) *[Repealed]*
- (g) prescribing the information and other matters that shall be included in trust deeds and deeds of participation for the purposes of this Act, and the clauses that shall be deemed to be contained in, or may be adopted by, such deeds; and different matters and clauses may be prescribed in respect of deeds relating to different kinds of securities and different classes of issuers:
- (h) regulating the offer to the public of interests in contributory mortgages; and prescribing requirements relating to the management of such interests, including requirements relating to the auditing thereof:
- (i) prescribing the places at which documents shall be delivered, and the number of copies of such documents required, for the purposes of this Act:
- (j) prescribing transitional and savings provisions relating to the coming into force of this Act; and without limiting the generality of the foregoing, any such regulation may provide that, subject to such terms and conditions as are specified in the regulation, specified provisions of

- this Act shall not apply during a specified transitional period, or specified provisions of Acts repealed by this Act shall continue to apply, in respect of any specified person or class of persons:
- (k) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act; and prescribing the fines, not exceeding \$5,000, that may be imposed in respect of any such offence:
 - (l) providing for such other matters, not inconsistent with this Act, as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (1A) Regulations made for the purposes of subsection (1)(g) may, without limitation, do all or any of the following:
- (a) specify the duties and powers of the trustee or statutory supervisor:
 - (b) specify the duties of the issuer:
 - (c) provide for the trustee or statutory supervisor to have the power, exercisable with the consent of the issuer (but without the consent of security holders having to be obtained), to make amendments to the trust deed or deed of participation that do not adversely affect the interests of security holders.
- (2) The Governor-General may from time to time, by Order in Council, on the recommendation of the Minister in accordance with subsection (3), add to Schedule 2 any qualification. Any reference in this Act to Schedule 2 shall be construed as a reference to that schedule with any additions made by any Order in Council for the time being in force under this subsection.
- (3) The Minister must consult with the FMA before making a recommendation under subsection (1) or subsection (2).
- (3A) *[Repealed]*
- (4) *[Repealed]*

Section 70(1): amended, on 12 March 2009, by section 25(1) of the Securities Amendment Act 2002 (2002 No 43).

Section 70(1)(b): substituted, on 16 December 1982, by section 35 of the Securities Amendment Act 1982 (1982 No 147).

Section 70(1)(b): amended, on 2 September 1996, by section 37(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 70(1)(b)(i): amended, on 2 September 1996, by section 37(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 70(1)(b)(ii): amended, on 2 September 1996, by section 37(1) of the Securities Amendment Act 1996 (1996 No 100).

Section 70(1)(b)(iii): amended, on 2 September 1996, by section 37(2) of the Securities Amendment Act 1996 (1996 No 100).

Section 70(1)(c): substituted, on 16 December 1982, by section 35 of the Securities Amendment Act 1982 (1982 No 147).

Section 70(1)(c): amended, on 2 September 1996, by section 37(3) of the Securities Amendment Act 1996 (1996 No 100).

Section 70(1)(ca): inserted, on 2 September 1996, by section 37(4) of the Securities Amendment Act 1996 (1996 No 100).

Section 70(1)(cb): inserted, on 1 May 2011, by section 43(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 70(1)(d): substituted, on 28 July 2009, by section 15 of the Securities (Disclosure) Amendment Act 2009 (2009 No 23).

Section 70(1)(e): repealed, on 16 December 1982, by section 35 of the Securities Amendment Act 1982 (1982 No 147).

Section 70(1)(f): repealed, on 16 December 1982, by section 35 of the Securities Amendment Act 1982 (1982 No 147).

Section 70(1)(g): amended, on 1 October 2011, by section 73(1) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Section 70(1A): inserted, on 1 October 2011, by section 73(2) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Section 70(2): amended, on 12 March 2009, by section 25(2) of the Securities Amendment Act 2002 (2002 No 43).

Section 70(3): substituted, on 12 March 2009, by section 25(3) of the Securities Amendment Act 2002 (2002 No 43).

Section 70(3): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 70(3A): repealed, on 21 December 1988, by section 51(1) of the Securities Markets Act 1988 (1988 No 234).

Section 70(4): repealed, on 21 December 1988, by section 51(1) of the Securities Markets Act 1988 (1988 No 234).

70AAA Regulations relating to exemptions under section 5(1)

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with subsection (2), make regulations—
 - (a) prescribing circumstances in which any exemption under section 5(1) does not apply:

- (b) prescribing additional requirements that must be satisfied before any exemption under section 5(1) may apply;
 - (c) prescribing transitional and savings provisions in connection with any regulations made under paragraph (a) or (b).
- (2) The Minister must, before making a recommendation under subsection (1),—
 - (a) consult with the FMA; and
 - (b) be satisfied that the regulations are needed in order to prevent an exemption in section 5(1) from applying in inappropriate circumstances, having regard to whether the exemption may, in relation to securities of a particular kind, cause significant detriment to subscribers for those securities who are members of the public in New Zealand.

Section 70AAA: inserted, on 1 May 2011, by section 44 of the Securities Amendment Act 2011 (2011 No 6).

70AA Regulations may require compliance with generally accepted accounting practice and incorporate financial reporting standards by reference

- (1) Regulations may—
 - (a) require any person, class of persons, information, or class of information to comply with generally accepted accounting practice either generally or in specified circumstances; and
 - (b) incorporate by reference any financial reporting standard.
- (2) Regulations may require compliance with generally accepted accounting practice or incorporate material by reference—
 - (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the regulations.
- (3) Material incorporated by reference in regulations has legal effect as part of the regulations.
- (4) In this section and in sections 70AAB to 70AAF,—
chief executive means the chief executive of the Ministry

financial reporting standard has the same meaning as in section 2(1) of the Financial Reporting Act 1993

generally accepted accounting practice has the same meaning as in section 3 of the Financial Reporting Act 1993

material incorporated by reference means any particular financial reporting standard that is incorporated by reference under subsection (1)(b)

Ministry means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act.

Section 70AA: inserted, on 25 October 2006, by section 21 of the Securities Amendment Act 2006 (2006 No 46).

Section 70AA(1)(b): amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section 70AA(4) **approved financial reporting standard**: repealed, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section 70AA(4) **financial reporting standard**: inserted, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section 70AA(4) **material incorporated by reference**: amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

70AAB Effect of amendments to, or replacement of, material incorporated by reference in regulations

An amendment to, or replacement of, material incorporated by reference in regulations (**regulations A**) has legal effect as part of regulations A.

Section 70AAB: inserted, on 25 October 2006, by section 21 of the Securities Amendment Act 2006 (2006 No 46).

70AAC Access to material incorporated by reference

(1) The chief executive—

- (a) must make the material referred to in subsection (3) (**the material**) available for inspection during working hours free of charge at the head office of the Ministry; and
- (b) must make copies of the material available for purchase at a reasonable price at the head office of the Ministry; and

- (c) may make copies of the material available in any other way that the chief executive considers appropriate in the circumstances (for example, on an Internet website); and
- (d) must give notice in the *Gazette* stating that—
 - (i) the material is incorporated in the regulations and the date on which the regulations were made; and
 - (ii) the material is available for inspection during working hours, free of charge, at the head office of the Ministry and giving the location of that office; and
 - (iii) copies of the material can be purchased at the head office of the Ministry and giving the location of that office; and
 - (iv) if copies of the material are made available under paragraph (c), the material is available in other ways and details of where or how it can be accessed or obtained.
- (2) The chief executive must comply with subsection (1) as soon as practicable after a financial reporting standard is incorporated by reference under section 70AA(1)(b).
- (3) The material is—
 - (a) material incorporated by reference in regulations; and
 - (b) either—
 - (i) any amendment to, or replacement of, the material referred to in paragraph (a); or
 - (ii) the material referred to in paragraph (a) with the amendments or replacement material amalgamated within it.
- (4) A failure to comply with this section does not invalidate regulations that incorporate material by reference.

Section 70AAC: inserted, on 25 October 2006, by section 21 of the Securities Amendment Act 2006 (2006 No 46).

Section 70AAC(2): amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

70AAD Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in regulations or to an amendment to, or replacement of, that material.

Section 70AAD: inserted, on 25 October 2006, by section 21 of the Securities Amendment Act 2006 (2006 No 46).

70AAE Application of Regulations (Disallowance) Act 1989 to material incorporated by reference

- (1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in regulations to be presented to the House of Representatives.
- (2) Except as set out in subsection (1), the Regulations (Disallowance) Act 1989 applies to regulations that incorporate material by reference.

Section 70AAE: inserted, on 25 October 2006, by section 21 of the Securities Amendment Act 2006 (2006 No 46).

70AAF Application of Standards Act 1988 not affected

Sections 70AA to 70AAE do not affect the application of sections 22 to 25 of the Standards Act 1988.

Section 70AAF: inserted, on 25 October 2006, by section 21 of the Securities Amendment Act 2006 (2006 No 46).

70A Fees and charges

- (1) The Governor-General may from time to time, by Order in Council, make regulations—
 - (a) prescribing the amount to be paid on the registration of a prospectus under section 42 and different amounts may be prescribed in respect of different amounts of securities being offered; and
 - (b) prescribing the amount to be paid on the registration of an instrument that amends a registered prospectus under section 43 and in the case of amendments increasing the amount of the securities being offered different amounts may be prescribed in respect of increases of different amounts; and

- (c) prescribing the amount to be paid on the registration of any other information or document under this Act and different amounts may be prescribed in respect of different amounts of securities being offered, different kinds of securities, or different classes of issuers or offerees:
 - (d) requiring the Registrar to provide to the FMA a portion of any amounts paid on the registration of a prospectus, trust deed, deed of participation, or an instrument that amends any of those kinds of documents.
- (1A) Regulations made under subsection (1) may prescribe amounts to be paid on the registration of a prospectus, trust deed, deed of participation, or an instrument that amends any of those kinds of documents on the basis that those amounts recover (in whole or in part) the costs of the FMA in performing or exercising functions, powers, or duties under sections 43C to 43L (in addition to recovering (in whole or in part) the costs of the Registrar in performing or exercising functions, powers, or duties in connection with the registration of those documents).
- (2) The Governor-General may from time to time, by Order in Council, make regulations prescribing fees and charges to be paid for the purposes of this Act.
- (3) Without limiting subsection (2), regulations may be made under that subsection—
 - (a) prescribing fees and charges which the FMA may require to be paid to it—
 - (i) in connection with the exercise by the FMA of any power or function conferred on it by this Act:
 - (ii) on an application to the FMA to exercise any power or function conferred on it by this Act:
 - (b) authorising the FMA to require payment of any costs incurred by the FMA.

Section 70A: inserted, on 21 December 1988, by section 52 of the Securities Markets Act 1988 (1988 No 234).

Section 70A(1)(b): amended, on 1 May 2011, by section 45(1) of the Securities Amendment Act 2011 (2011 No 6).

Section 70A(1)(b): amended, on 1 May 2011, by section 45(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 70A(1)(c): added, on 1 May 2011, by section 45(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 70A(1)(d): added, on 1 May 2011, by section 45(2) of the Securities Amendment Act 2011 (2011 No 6).

Section 70A(1A): inserted, on 1 May 2011, by section 45(3) of the Securities Amendment Act 2011 (2011 No 6).

Section 70A(3)(a): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 70A(3)(a)(i): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 70A(3)(a)(ii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 70A(3)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

70B FMA may grant exemptions

- (1) The FMA may, on the terms and conditions (if any) that it thinks fit, exempt any person or class of persons or any transaction or class of transactions from compliance with any provision or provisions of—
 - (a) Part 2; or
 - (b) any regulations made under section 70(1).
- (2) The FMA must not grant an exemption under this section unless it is satisfied that—
 - (a) the exemption would not cause significant detriment to subscribers for the securities to which the exemption relates who are members of the public in New Zealand; and
 - (b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (3) Nothing in Part 5 limits subsection (1).

Section 70B: inserted, on 1 May 2011, by section 46 of the Securities Amendment Act 2011 (2011 No 6).

70C Status and publication of exemptions

- (1) An exemption granted under section 70B—
 - (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 70B) is a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- (3) An exemption granted under section 70B 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 70B (including why the exemption is appropriate) must be published together with the exemption.
- (6) In this section, **class exemption**—
 - (a) means an exemption granted under section 70B that is of general application and that applies to a class of persons or a class of transactions; but
 - (b) does not include an exemption granted under section 70B in relation to—
 - (i) a particular person or transaction; or
 - (ii) persons associated with, or transactions involving, a particular entity.

Section 70C: inserted, on 1 May 2011, by section 46 of the Securities Amendment Act 2011 (2011 No 6).

70D Variation or revocation of exemptions

- (1) The FMA may vary or revoke an exemption granted under section 70B.
- (2) Sections 70B(2) and 70C apply, with necessary modifications, in all respects to a variation or revocation under this section.

Section 70D: inserted, on 1 May 2011, by section 46 of the Securities Amendment Act 2011 (2011 No 6).

Part 5

Recognition and application regimes

Part 5 heading: inserted, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

Subpart 1—Preliminary

Subpart 1 heading: inserted, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

71 Purpose of this Part

The purpose of this Part is to enable recognition and application regimes to be implemented that—

- (a) provide for exemptions from Part 2 and the Regulations so that issuers may offer securities in New Zealand in accordance with the securities laws of designated countries:
- (b) extend the territorial scope of Part 2 and the Regulations so that issuers may offer securities in designated countries in accordance with New Zealand securities laws, and investors in those countries may rely on and enforce those laws:
- (c) provide for enforcement in New Zealand of fines and pecuniary penalties imposed for breaches of securities laws of designated countries.

Section 71: substituted, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

72 Definition of country in this Part

In this Part, **country** includes a State, a territory, a country, or a group of countries in respect of which a single securities law, or set of laws, is in force.

Section 72: substituted, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

Subpart 2—Exemption from Part 2 and Regulations for New Zealand offers under recognition regime

Subpart 2 heading: inserted, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

73 Exemption from Part 2 and Regulations for New Zealand offers under recognition regime

- (1) A provision of Part 2 or the Regulations does not apply to a security offered to a person in New Zealand if—

- (a) a recognition regime set out in regulations made under section 74 applies to the security; and
 - (b) the recognition regime provides an exemption from that provision for the security; and
 - (c) the issuer of the security has opted into the recognition regime; and
 - (d) any other preconditions of the recognition regime are met.
- (2) For the purposes of subsection (1), an issuer opts into a recognition regime in respect of a security by notifying the Registrar—
 - (a) that an offer of the security is to be made under the recognition regime; and
 - (b) of the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand at that address of documents on behalf of the issuer.

Section 73: substituted, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

74 Power to exempt from Part 2 and Regulations under recognition regime

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations, for the purpose of implementing a recognition regime for a designated country, that provide for—
 - (a) exemptions from provisions of Part 2 and the Regulations; and
 - (b) the other matters set out in section 75.
- (2) The Minister may recommend making an Order in Council under this section only—
 - (a) if he or she is satisfied that it is in the public interest after having regard to—
 - (i) the securities laws of the designated country; and
 - (ii) the interests of New Zealand investors; and
 - (b) after consulting with the FMA.

Section 74: substituted, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

Section 74(2)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

75 Matters that must be stated in regulations implementing recognition regime

- (1) The regulations made under section 74 must state—
- (a) the country to which the recognition regime applies; and
 - (b) the classes of securities to which the recognition regime applies (whether by reference to type of issuer, offer, or any other matter); and
 - (c) the exemptions from provisions of Part 2 and the Regulations for those securities; and
 - (d) the preconditions that must be met for the recognition regime to apply, for example (without limitation), requiring specified information relating to the offer or securities to be provided to the FMA or Registrar; and
 - (e) the terms and conditions that must be complied with under the recognition regime, for example (without limitation), requiring—
 - (i) the offer of the securities to be made in accordance with specified provisions of the designated country's laws;
 - (ii) warnings to be given to investors so as to inform them that the offer of the securities is regulated under the designated country's laws and that New Zealand securities laws do not apply to the offer;
 - (iii) specified information relating to the offer or securities to be provided to the FMA or Registrar.
- (2) Regulations may provide different exemptions, preconditions, and terms and conditions for different classes of securities, offers, persons, or circumstances.

Section 75: substituted, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

Section 75(1)(d): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 75(1)(e)(iii): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

76 Offence for breach of regulations implementing recognition regime

- (1) If there is a contravention, in respect of a security, of a term or condition that must be complied with under a recognition regime, each of the following persons commits an offence:

- (a) the issuer of the security; and
 - (b) every person who is a principal officer of the issuer at the time of the contravention; and
 - (c) every promoter of the security; and
 - (d) every person who has authorised himself or herself to be named and is named in any advertisement relating to the security as a director of the issuer or as having agreed to become a director either immediately or after an interval of time.
- (2) A person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.
- (3) No person may be convicted under subsection (1) for a contravention if—
- (a) the contravention was for matters that, in the opinion of the court, were immaterial, or that otherwise, in the opinion of the court, having regard to all the circumstances of the case, ought reasonably to be excused; or
 - (b) in the case of a person other than the issuer, in the opinion of the court dealing with the case, the contravention did not take place with the person's knowledge and consent.

Section 76: substituted, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

Subpart 3—Extension of Part 2 and Regulations to overseas offers under application regime

Subpart 3 heading: inserted, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

77 Extension of Part 2 and Regulations to overseas offers under application regime

A provision of Part 2 or the Regulations applies to a security that is offered to a person outside New Zealand if—

- (a) an application regime set out in regulations made under section 78 applies to the security; and

- (b) the application regime applies that provision to the security; and
- (c) any other preconditions of the application regime are met.

Section 77: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

78 Power to extend Part 2 and Regulations under application regime

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations, for the purpose of implementing an application regime for a designated country, that provide for—
 - (a) the application of provisions of Part 2 and the Regulations to securities offered to persons in that country; and
 - (b) the other matters set out in section 79.
- (2) The Minister may recommend making an Order in Council under this section only—
 - (a) if he or she is satisfied that it is appropriate for New Zealand securities laws to apply to securities offered to persons in the designated country as set out in the proposed application regime; and
 - (b) after consulting with the FMA.

Section 78: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

Section 78(2)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

79 Matters that must be stated in regulations implementing application regime

- (1) The regulations made under section 78 must state—
 - (a) the country to which the application regime applies; and
 - (b) the classes of securities to which the application regime applies (whether by reference to type of issuer, offer, or any other matter); and
 - (c) the provisions of Part 2 and the Regulations that apply to those securities; and
 - (d) whether or not, or the extent to which, exemptions from those provisions granted by the FMA under section 70B may also apply for those securities; and

- (e) the preconditions (if any) that must be met for the application regime to apply; and
 - (f) the terms and conditions (if any) that must be complied with under the application regime.
- (2) The regulations may provide different applications of provisions, preconditions, and terms and conditions for different classes of securities, offers, persons, or circumstances.

Section 79: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

Section 79(1)(d): substituted, on 1 May 2011, by section 47 of the Securities Amendment Act 2011 (2011 No 6).

Subpart 4—Enforcement of overseas pecuniary penalties under application regime

Subpart 4 heading: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

80 Enforcement of overseas pecuniary penalties under application regime

This subpart applies to a judgment given by a court under a provision of the law of another country if—

- (a) an application regime set out in regulations made under section 81 applies this subpart to that provision of the law of that country; and
- (b) the judgment requires payment of a pecuniary penalty; and
- (c) any other preconditions of the application regime are met.

Section 80: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

81 Power to enforce overseas pecuniary penalties under application regime

The Governor-General may, by Order in Council made on the recommendation of the Minister, for the purpose of implementing an application regime for a designated country, make regulations that provide for—

- (a) the application of this subpart to provisions of the securities laws of that country under or in respect of which a pecuniary penalty may be imposed; and
- (b) the preconditions of the application regime (if any).

Section 81: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

82 Interpretation

In this subpart, unless the context requires otherwise,—

court of rendition, in relation to a judgment, means the court by which the judgment was given

enforcement, in relation to a judgment, includes execution of a judgment

judgment includes an order

pecuniary penalty means a fine or other pecuniary penalty (whether criminal or civil)

place of rendition, in relation to a judgment, means the country in which the court of rendition is established

registered judgment means a judgment that is registered under section 83.

Section 82: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

83 Registration of judgment

The High Court must register a judgment to which this subpart applies under section 80 as a civil judgment debt if an application is made to it in accordance with regulations made under section 90.

Section 83: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

Section 83: amended, on 25 October 2006, by section 22 of the Securities Amendment Act 2006 (2006 No 46).

84 Effect of registration

A registered judgment—

- (a) has the same force and effect; and
 - (b) subject to sections 85 and 86, may give rise to the same proceedings by way of enforcement—
- as if the judgment had been given by the High Court.

Section 84: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

85 Enforceability of registered judgment

A registered judgment is capable of being enforced in or by the High Court only if, and to the extent that, at the time when the proceeding for enforcement is or is to be taken, the judgment is capable of being enforced in or by—

- (a) the court of rendition; or
- (b) a court in the place of rendition.

Section 85: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

86 Stay may be granted

- (1) The High Court may, on application by a person against whom the registered judgment has been given, order that proceedings in the High Court to enforce the judgment—
 - (a) not be commenced until a specified time; or
 - (b) be stayed for a specified period.
- (2) The order—
 - (a) must be made subject to conditions that—
 - (i) within the period specified in the order, the person make and prosecute an appropriate application for relief in respect of the registered judgment; and
 - (ii) the application be prosecuted in an expeditious manner; and
 - (b) may be made subject to other conditions, including as to the giving of security, that the High Court thinks fit.
- (3) For the purposes of subsection (2)(a)(i), an **appropriate application for relief** is an application to set aside, vary, or appeal against the registered judgment that is made to a court or tribunal that has jurisdiction under the law in force in the place of rendition to grant the application.

Section 86: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

87 Costs

- (1) The following are recoverable in proceedings by way of enforcement of a registered judgment:
- (a) the reasonable costs and expenses of, and incidental to, obtaining and lodging the copy of the judgment; and
 - (b) the costs and expenses reasonably incurred in attempting to execute the judgment in the court of rendition.
- (2) The entitlement of a person to, and the liability of a person for, the costs or expenses of, and incidental to, those proceedings are the same as they are in proceedings by way of enforcement of—
- (a) a similar judgment given by the High Court; or
 - (b) if there is no such similar judgment, the most closely analogous judgment given by the High Court.

Section 87: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

88 Interest

Interest on the amount of a registered judgment—

- (a) is payable at the same rate or rates and in respect of the same period or periods as would be applicable in the court of rendition; and
- (b) is recoverable to the extent that the judgment creditor satisfies the High Court as to the amount of the interest.

Section 88: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

89 Rules of private international law not to apply

If a judgment is registered in the High Court under this subpart, the courts of New Zealand must not, merely because of the operation of a rule of private international law, refuse to permit proceedings by way of enforcement of the registered judgment to be taken or continued.

Section 89: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

90 Other regulations for registration of judgments under application regime

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the registration of judgments under this subpart, including (without limitation) providing for—

- (a) the verification requirements for those judgments:
- (b) the registration and service of facsimiles of those judgments:
- (c) the service of notice of registration of those judgments:
- (d) other requirements for the way in which those judgments may be registered (for example, the currency of registrations and the registration of partly satisfied judgments).

Section 90: added, on 1 December 2002, by section 26 of the Securities Amendment Act 2002 (2002 No 43).

Schedule 1

s 67

Acts to which section 67 applies

[Repealed]

Schedule 1: repealed, on 1 May 2011, by section 48 of the Securities Amendment Act 2011 (2011 No 6).

Schedule 2

Qualifications

s 5(1)(e)

- 1 A practising certificate under the Lawyers and Conveyancers Act 2006.
- 2 Registration (including interim or temporary registration) as a medical practitioner under the Health Practitioners Competence Assurance Act 2003.
- 3 *[Repealed]*
- 4 *[Repealed]*
- 5 A qualification entitling the holder to practise the profession of accountancy in New Zealand (which qualification may consist of membership of the New Zealand Institute of Chartered Accountants and require the holder to comply with the applicable rules of the Institute).
- 6 A qualification entitling the holder to practise the profession of engineering in New Zealand (which qualification may consist of membership of the Institution of Professional Engineers of New Zealand Incorporated and require the holder to comply with the applicable rules of the Institution).
- 7 Registration as a valuer under the Valuers Act 1948.
- 8 A practising certificate under the Veterinarians Act 2005.
- 9 Registration as a surveyor within the meaning of the Survey Act 1986.
- 10 Registration as an optometrist or dispensing optician under the Health Practitioners Competence Assurance Act 2003.
- 11 Registration as a registered architect under the Registered Architects Act 2005.
- 12 Registration as a dentist under the Health Practitioners Competence Assurance Act 2003.
- 13 Registration as a patent attorney under the Patents Act 1953.

Schedule 2 item 1: amended, on 1 August 2008, pursuant to section 349 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Schedule 2 item 2: substituted, on 1 July 1996, by section 143(1) of the Medical Practitioners Act 1995 (1995 No 95).

Schedule 2 item 2: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Schedule 2 item 3: repealed, on 1 July 1996, by section 143(1) of the Medical Practitioners Act 1995 (1995 No 95).

Schedule 2 item 4: repealed, on 1 July 1996, by section 143(1) of the Medical Practitioners Act 1995 (1995 No 95).

Schedule 2 item 5: substituted, on 1 October 1996, by section 23 of the Institute of Chartered Accountants of New Zealand Act 1996 (1996 No 39).

Schedule 2 item 5: amended, on 7 July 2010, by section 10 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

Schedule 2 item 6: substituted, on 1 January 2004, by section 76 of the Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17).

Schedule 2 item 8: substituted, on 22 December 2005, by section 105 of the Veterinarians Act 2005 (2005 No 126).

Schedule 2 item 9: amended, on 1 April 1987, pursuant to section 81(3) of the Survey Act 1986 (1986 No 123).

Schedule 2 item 10: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Schedule 2 item 11: substituted, on 1 July 2006, by section 87 of the Registered Architects Act 2005 (2005 No 38).

Schedule 2 item 12: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Schedule 2 item 13: added, on 1 September 1983, by section 36 of the Securities Amendment Act 1982 (1982 No 147).

Securities Amendment Act 2006

Public Act 2006 No 46
Date of assent 24 October 2006
Commencement see section 2

1 Title

This Act is the Securities Amendment Act 2006.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent.
- (2) However, the following provisions only come into force on a date to be appointed by the Governor-General by Order in Council:
 - (a) new section 27(1)(b) of the Securities Act 1978 as substituted by section 5:
 - (b) section 19:
 - (c) in the Schedule, the repeal of sections 382(1)(c) and 383(1)(d) of the Companies Act 1993.
- (3) For the purposes of subsection (2), 1 or more orders may be made bringing different provisions into force on different dates.

Section 2(2): brought into force, on 29 February 2008, by the Securities Amendment Act 2006 Commencement Order 2007 (SR 2007/369).

3 Principal Act amended

This Act amends the Securities Act 1978.

Transitional provisions

24 Transitional provision for existing offences and contraventions

- (1) The principal Act continues to have effect as if it were not amended by this subpart for the purpose of—
 - (a) investigating an existing offence or contravention:
 - (b) commencing or completing proceedings for an existing offence or contravention:

- (c) imposing a penalty or other remedy, or making an order, in relation to an existing offence or contravention.
 - (2) In this section, **existing offence or contravention** means—
 - (a) an offence under, or contravention of, the principal Act that was committed or done in respect of a prospectus that was registered, or an advertisement that was distributed, before the commencement of this subpart; and
 - (b) in any other case, an offence under, or contravention of, the principal Act that was committed or done before the commencement of this subpart.
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Securities Amendment Act 2011

Public Act 2011 No 6
Date of assent 18 April 2011
Commencement see section 2

1 **Title**

This Act is the Securities Amendment Act 2011.

2 **Commencement**

- (1) This Act (apart from sections 5(3), 16(3), 22, 40, 43(2), and 49(3) to (6)) comes into force on 1 May 2011.
- (2) Sections 5(3), 16(3), 22, 40, 43(2), and 49(3) to (6) come into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.
- (3) To the extent that the provisions referred to in subsection (2) are not previously brought into force under that subsection, those provisions come into force on 1 July 2013.

3 **Principal Act amended**

This Act amends the Securities Act 1978.

31 **Time limit for applying for civil remedies**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Nothing in subsection (1)—
 - (a) enables an application for a pecuniary penalty order to be made that was barred before the commencement of this section; or
 - (b) affects any proceedings commenced before the commencement of this section.

37 **When Court may prohibit payment or transfer of money, securities, or other property**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) Section 60G(1) of the principal Act (as substituted by this section) applies in respect of—

- (a) a contravention, fraud, negligence, default, breach of duty, or other misconduct regardless of whether it was committed before or after the commencement of this section; and
- (b) a prosecution or proceeding regardless of whether it begins before or after the commencement of this section.

38 What orders may be made

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Section 60H(1)(ga) of the principal Act (as inserted by this section) applies in respect of—
 - (a) a contravention, fraud, negligence, default, breach of duty, or other misconduct regardless of whether it was committed before or after the commencement of this section; and
 - (b) a prosecution or proceeding regardless of whether it begins before or after the commencement of this section.

Transitional provisions

49 Registration of prospectus continues

- (1) If a prospectus was registered under the principal Act before the commencement of this subsection (or is registered in accordance with section 53),—
 - (a) the prospectus must continue to be treated as being a registered prospectus under the principal Act; and
 - (b) the principal Act (as amended by this Act) continues to apply to the prospectus as if it had been registered under section 42 of the principal Act (as substituted by this Act); and
 - (c) every memorandum of amendments to the prospectus registered under the principal Act before the commencement of this subsection (or in accordance with section 53) must continue to be treated as registered.
- (2) However,—
 - (a) subsection (1) does not apply if, before the commencement of this subsection, the registration of the prospectus has been cancelled; and

- (b) sections 43B to 43E of the principal Act (as substituted by this Act) do not apply to a prospectus referred to in subsection (1) (except as referred to in paragraph (c)); and
 - (c) sections 43B and 43C of the principal Act (as substituted by this Act) apply to an instrument to amend a prospectus referred to in subsection (1) only if the instrument is registered after the commencement of this subsection.
- (3) For the purpose of including information and documents in the register for a current prospectus, the issuer of the securities to which the prospectus relates must, within 40 working days after the commencement of this subsection, supply the prescribed information and documents to the Registrar in the prescribed manner.
- (4) The Registrar is not required to include in the register information and documents for a prospectus registered before the commencement of this subsection if—
 - (a) the period within which allotments of securities may be made under the prospectus in accordance with the principal Act finally ended before the commencement of this subsection (for example, as a result of section 37A(1)(c) of the principal Act); or
 - (b) that information or those documents are of a kind that is prescribed as being information or documents that are not required to be included in the register.
- (5) In subsection (3), **current prospectus**—
 - (a) means a prospectus that was registered before the commencement of this subsection and under which allotments may still be made in accordance with the principal Act after that commencement; but
 - (b) does not include a prospectus if no allotments of securities will be made under the prospectus after the date that is 40 working days after the commencement of this subsection.
- (6) An issuer commits an offence and is liable on summary conviction to a fine not exceeding \$30,000 if the issuer,—
 - (a) without reasonable excuse, fails to comply with subsection (3); or

- (b) in purported compliance with that subsection, supplies information or a document knowing it to be false or misleading.

50 Regulations for purposes of section 49

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister in accordance with subsection (2), make regulations prescribing—
 - (a) information and documents for the purposes of section 49(3); and
 - (b) the manner of supplying that information and those documents to the Registrar; and
 - (c) information and documents for the purposes of section 49(4)(b).
- (2) The Minister must consult with the FMA before making a recommendation under subsection (1).
- (3) Different matters may be prescribed under subsection (1) in respect of different kinds of securities or different classes of issuers.

51 FMA may perform functions formerly performed by Registrar of Companies in relation to registration of prospectuses

For the purpose of effectively managing the transition relating to the amendments in sections 20 and 21 of this Act (which include changes to the process for registering prospectuses), the FMA may, in the manner that it thinks fit and on a temporary basis, perform the same, or substantially similar, functions as the Registrar of Companies performed, before the commencement of this section, in relation to the registration of prospectuses under the principal Act (whether those functions were performed on a formal or an informal basis).

52 Registration of deeds continues

If a trust deed or deed of participation was registered under the principal Act before the commencement of this section (or is registered in accordance with section 53),—

- (a) the deed must continue to be treated as being a deed that is registered under the principal Act; and

- (b) the principal Act (as amended by this Act) continues to apply to the deed as if it had been registered under section 46 of the principal Act (as substituted by this Act); and
- (c) every instrument of amendments to the deed registered under the principal Act before the commencement of this section (or in accordance with section 53) must continue to be treated as registered.

53 Prospectuses, amendments, and deeds delivered but not yet registered must be dealt with under old law

- (1) If, before the commencement of this section,—
 - (a) a prospectus is delivered for registration under the principal Act but the Registrar has not yet decided whether or not to register it, the prospectus must be dealt with in accordance with section 42 of the principal Act as in force before the commencement of section 21;
 - (b) a memorandum of amendments is delivered for registration under section 43 of the principal Act but the Registrar has not yet decided whether or not to register it, the memorandum must be dealt with in accordance with section 43 of the principal Act as in force before the commencement of section 21;
 - (c) a copy of a trust deed or deed of participation is delivered for registration under section 46 of the principal Act but the Registrar has not yet decided whether or not to register it, the deed must be dealt with in accordance with section 46 of the principal Act as in force before the commencement of section 27;
 - (d) an instrument of amendments is delivered for registration under section 47 of the principal Act but the Registrar has not yet decided whether or not to register it, the instrument must be dealt with in accordance with section 47 of the principal Act as in force before the commencement of section 27.
- (2) In subsection (1), **Registrar** has the same meaning as in section 2(1) of the principal Act (as in force before the commencement of section 5(2)).

54 Exemptions continue in force

- (1) This section applies to every exemption granted under section 5(5) 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 70B of the principal Act (as inserted by this Act); and
 - (b) may be amended or revoked as if granted under that section.
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Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
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Notes**1 General**

This is a reprint of the Securities Act 1978. 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)***

Financial Reporting Amendment Act 2011 (2011 No 22): section 12

Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10): sections 68–73

KiwiSaver Amendment Act 2011 (2011 No 8): section 56

Securities Amendment Act 2011 (2011 No 6)

Financial Markets Authority Act 2011 (2011 No 5): section 84(3), (5)

Limitation Act 2010 (2010 No 110): section 58

New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74): section 10

Unit Titles Act 2010 (2010 No 22): section 233(1)

Securities Amendment Act 2009 (2009 No 56)

Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53): section 10

Securities (Disclosure) Amendment Act 2009 (2009 No 23)

Māori Trustee Amendment Act 2009 (2009 No 12): section 30(2)(a)
Securities (Local Authority Exemption) Amendment Act 2008 (2008 No 23)
Limited Partnerships Act 2008 (2008 No 1): section 121(3)
Income Tax Act 2007 (2007 No 97): section ZA 2(1)
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Securities Amendment Act 2004 (2004 No 31)
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Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)
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