

SECURITIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes a number of amendments to the Securities Act 1978.

Clause 1 relates to the Short Title and commencement.

Only certain provisions of the principal Act are currently in force. These are principally sections 9 to 32 (i.e. Part II) and relate to the Securities Commission. Other provisions of the principal Act will come into force on a date to be fixed by Order in Council. Subclause (2) accordingly provides that sections 1, 2, 7 to 10 and 32 (which relate to provisions of the principal Act which are in force) come into force on the passing of this Act and subclause (3) provides that other provisions shall come into force on a date to be fixed by Order in Council.

Clause 2 amends the definition of certain terms used in the Act and inserts a number of new definitions.

Subclause (1) inserts a definition of the term "advertisement". In general terms, an advertisement is defined to mean a form of communication (which includes media advertising) authorised or instigated by an issuer, or prepared with the co-operation of, or by arrangement with, the issuer, which—

(i) Contains or refers to an offer of securities to the public; or
(ii) Is likely to induce persons to subscribe for those securities—
whether or not payment is made for distribution of that communication. It also includes a statement relating to an interest in a contributory mortgage which is required to be given by regulations made under the Act.

Subclause (2) inserts a new definition of the term "contributory mortgage broker". This term is defined to mean a person who offers for sale to the public or manages interests in contributory mortgages but who is not the mortgagor.

Subclause (3) extends the definition of the term "co-operative company" to include a company registered as a co-operative forestry company under the Co-operative Forestry Companies Act 1978.

Subclause (4) inserts a new definition of the term "date of a balance sheet or date of an interim balance sheet" and has reference to provisions relating to the currency of a prospectus offering securities to the public for subscription.

Subclause (5) inserts a new definition of the term "date of a registered prospectus" to take account of the distinction made by the Bill and referred to elsewhere in this note between a "prospectus" and a "registered prospectus".

Subclause (6) amends the definition of “debt security” by excluding an interest in a contributory mortgage offered by a contributory mortgage broker. An interest in a contributory mortgage offered by the mortgagor is a debt security and such an offer is subject to the provisions of the Act relating to the offer of debt securities. The offering of interests in contributory mortgages by brokers is to be dealt with by regulations made under the Act and certain other provisions of the Act applying solely to them.

Subclause (7) substitutes a new definition of the term “director”. It defines the term in relation to companies and entities other than companies.

Subclause (8) substitutes a new definition of the term “issuer”. The main changes are:

- (a) That the issuer of an equity, debt or participatory security is now defined in relation to an advertisement, a prospectus and registered prospectus, whereas the existing definition relates only to a person who issues a prospectus; and
- (b) That the issuer of a contributory mortgage is defined as the broker.

Subclause (9) substitutes a new definition of the term “promoter” and extends the term to apply to a person who is instrumental in the formulation of a plan or programme pursuant to which an offer of securities is made.

Subclauses (10) and (11) define the terms “prospectus” and “registered prospectus”. In broad terms, a prospectus is defined as a document containing an offer of securities to the public which is intended to be registered; a registered prospectus is defined as a prospectus (including an amended prospectus) that has been registered under the Act. A number of consequential amendments to the Act are made by the Bill to distinguish in the application of the Act between a prospectus before and after registration.

Clause 3 amends section 3 of the principal Act which relates to the construction of references in the Act to offering securities.

Subclause (1), which substitutes a new subsection (4) in section 3, provides that a reference to an offer of securities to the public is to be construed as including a reference to distributing an advertisement (as well as a registered prospectus and application form) relating to those securities to the public.

Subclause (2) adds 2 further subsections to section 3. The new *subsection (6)* provides that certain statements relating to an intention to make an offer of securities (e.g. in the nature of a preliminary announcement) made by an officer of an issuer shall not constitute an offer of securities to the public. The new *subsection (7)* provides that annual reports and reports required by the rules of any stock exchange shall likewise not constitute an offer of securities to the public.

Clause 4 amends section 4 as a consequence of the distinction made between a prospectus and a registered prospectus.

Clause 5 amends section 5 of the principal Act, which relates to exemptions from the Act.

Subclauses (1) and (3) require to be read together. Paragraphs (g) and (j) of subsection (1) are repealed and re-enacted as part of subsection (2). The result is that interests in unit trusts and superannuation funds while exempt from the prospectus provisions of the Act must now comply with the advertising provisions.

Subclause (2) amends subsection (2). The principal effect of this amendment when read together with section 38 is that debt and participatory securities of certain specified issuers (banks and authorised money market dealers) will be made subject to the provisions of the Act relating to the advertising of securities.

Subclause (4) amends subsection (3) to similar effect as *subclause (2)*.

Subclause (5), which substitutes a new subsection (4), provides in effect that interests in contributory mortgages offered to the public for subscription by a contributory mortgage broker are subject to the advertising provisions of the Act.

Clause 6 makes a consequential amendment to section 6 (4) of the principal Act.

Clause 7 extends section 18 (3) of the principal Act to provide for service of a summons on a witness at his place of business (as well as that person's abode).

Clause 8 amends section 19 of the principal Act (which relates to proceedings before the Commission). The main changes are to allow persons who may be affected by the exercise of the Commission's powers under the new *section 44B* to be heard by the Commission before the Commission makes an order under that section.

Clause 9 extends section 27 (1) of the principal Act (relating to delegation of powers by the Commission) and provides that the Commission may not delegate its powers under the new *section 44A* or *section 44B*.

Clause 10 inserts new *sections 31A to 31E* in the principal Act. These new sections make provision for the management and audit of the Commission's financial affairs.

Clause 11 amends section 33 (1) of the principal Act in consequence of the distinction made between a prospectus and a registered prospectus.

Clause 12 substitutes a new *section 34* in the principal Act in consequence of the distinction made between a prospectus and a registered prospectus.

Clause 13 substitutes a new *section 37* in the principal Act (which relates to restrictions on the allotment of securities). Some of the changes relate to the distinction between the terms prospectus and registered prospectus. It is made clear that section 37 applies solely in respect of a registered prospectus.

It is also provided (by *subsection (1) (d)*) that an allotment of securities may not be made more than 9 months after the date of a balance sheet or interim balance sheet contained, or referred to, pursuant to regulations under the principal Act, in a registered prospectus. This amendment will enable regulations to be made extending the currency of a prospectus by the use of an interim balance sheet and providing for a short form prospectus in certain cases.

A further substantial amendment (made by *subsection (4)*) is to limit the circumstances under which an issuer must retain subscriptions in the event that securities are not allotted, or cannot be allotted in the following cases, that is—

- (a) If the issuer knows that the registered prospectus is false or misleading at the time of allotment; or
- (b) If the amount payable on application for an equity or participatory security is less than 10 percent of the nominal amount of the security; or

- (c) In the case of a first allotment of such securities, the amount referred to in the prospectus as the minimum amount which must be raised by the issue to provide for matters specified in regulations (e.g. issue expenses, and expenses in acquisition of property to be acquired by the issue) is not subscribed within 4 months of the date of the prospectus.

The existing subsection (section 37 (4)) provides that the issuer must retain subscriptions in trust if no allotment can be made where any of the circumstances mentioned in subsection (1) exist (as well as those mentioned above).

Subsection (6) is new and provides that any allotment made in contravention of section 37, shall be invalid unless a Court orders otherwise.

Clause 14 substitutes a new *section 38* in the principal Act relating to authorised advertisements. Section 33 provides that an offer of securities to the public may be made by means of a registered prospectus or an authorised advertisement. Under the existing section (section 38 (d)) it is provided that an authorised advertisement must contain no information or matter except that specified in regulations. This would require regulations to specify expressly what information or matters must be contained in the advertisement, and would prevent the enactment of regulations which sought only to limit by proscription the content of authorised financial advertising. The new *section 38* accordingly provides that an authorised advertisement is an advertisement which, inter alia, complies with the Act and with regulations and removes any doubt that regulations can be made which provide for those matters which advertisements may not contain.

The proviso (which is new) provides that paragraphs (a) to (c) (which in broad terms require the advertisement to refer to a registered prospectus) do not apply to advertisements by certain issuers. Those issuers are, nevertheless, required to comply with the Act and regulations relating to advertising and the content of authorised advertisements.

Subclause (2) consequentially repeals section 36 of the principal Act.

Clause 15 inserts a new *section 38A* in the principal Act and relates to statements made by an expert in an advertisement. The consent of an expert is required to the inclusion of a statement by him in an advertisement.

Clause 16 substitutes a new *section 39* (relating to the form and content of prospectuses) in the principal Act. The new section applies to both a prospectus and a registered prospectus as those terms are now to be defined.

Clause 17 substitutes a new *section 40* (relating to statements in a prospectus by an expert) in the principal Act. No alteration to the substance of the existing section 40 of the principal Act is made; the section is re-enacted to make clear the distinction which it is considered desirable to make in the principal Act between a prospectus and a registered prospectus.

Clauses 18 and 19 effect consequential amendments.

Clause 20 substitutes a new *section 44* (relating to suspension and cancellation of registration of a registered prospectus) in the principal Act. The main changes are—

- (a) Subscriptions received after suspension of the registration of a prospectus must be held in a trust account by the issuer on behalf of subscribers;

- (b) Where registration is cancelled, the issuer is liable to repay money held in that trust account, to the persons who subscribed for securities; and
- (c) If repayment is not made within 1 month after cancellation of registration, the issuer and the directors of the issuer are jointly and severally liable to make payment with interest from the date the subscription was received.

Clause 21 inserts new *sections 44A, 44B, 44C, and 44D* in the principal Act.

Section 44A: Subsection (1) confers powers on the Securities Commission to make an order prohibiting the publication of any advertisement which—

- (a) Is likely to deceive, mislead, or confuse with regard to an offer of securities; or
- (b) Is inconsistent with a registered prospectus referred to in the advertisement; or
- (c) Does not comply with the Act or regulations.

Subsection (2) requires the Commission to notify the issuer of the securities, and it may notify any other person, of the making of such an order.

Subsection (3) makes it an offence (punishable on summary conviction by a fine not exceeding \$5,000) to distribute an advertisement in respect of which an order prohibiting publication has been made.

Subsection (4) authorises an issuer to appear before the Commission and the Commission is empowered to revoke an order if it is satisfied that it should no longer continue in force.

Section 44B confers certain powers on the Commission in respect of contributory mortgages. These powers which are exercisable in relation to a mortgage broker, enable the Commission by order to—

- (a) Prohibit the broker from selling or offering to sell interests in contributory mortgages for up to 14 days; or
- (b) After notice to the broker concerned, prohibit the broker from selling or offering to sell interests in contributory mortgages for such period as the Commission thinks fit; or
- (c) After notice to the broker concerned, prevent the broker from acting as broker and appointing another person to act in his place; or
- (d) After notice to the broker concerned and the director or secretary of the brokers' nominee company, replace the director or secretary with persons appointed by the Commission.

The new *section 44C* confers extensive powers on any person appointed under the new *section 44B* to act in the place of a broker.

The new *section 44D* relates to the liability of a person appointed as a director or secretary under the new *section 44B* and makes provision for payment of costs and remuneration.

Clause 22 inserts a new *section 53* in the principal Act and relates to the requirement that issuers keep proper accounts and conforms with section 7 of the Companies Amendment Act 1980.

Clause 23 inserts a new *section 55* in the principal Act. The section now applies to advertisements and registered prospectuses. It is also provided that a statement included in an advertisement or registered prospectus is untrue if it is misleading by reason of an omission.

Clause 24 inserts a new *section 56* (which relates to civil liabilities for misleading prospectuses) in the principal Act. The principal change is to extend the provisions which impose liability for loss or damage resulting from an untrue statement in a prospectus to advertisements.

Clause 25 inserts a new *section 57* (which relates to civil liability for mis-statements by an expert) in the principal Act. The principal change is to extend the existing section to apply to untrue statements made by an expert in advertisements.

Clause 26 inserts a new *section 57A* in the principal Act. This new section relates to civil liability for breach of regulations made under the Act relating to contributory mortgages.

Subsection (1) imposes liability for loss or damage sustained as a result of a breach of regulations relating to the offer, sale, or management of interests in contributory mortgages. The persons on whom liability is imposed are—

- (a) If the broker concerned is an individual, the broker acting when the breach occurred;
- (b) If the broker is a body corporate or unincorporated, that broker and every director of the broker acting when the breach occurred.

Subsection (2) relates to certain defences available to a person who, as a director of a broker, is liable under *subsection (1) (b)*. There is no liability if it is proved (the onus of proof rests on the director)—

- (a) The breach occurred without his knowledge or consent;
- (b) He had reasonable grounds for believing, and did believe, up to the time he became aware of the breach, that the broker concerned had complied with the regulations;
- (c) On becoming aware of the breach he forthwith gave notice to the Registrar and any persons specified in regulations.

Clause 27 inserts a new *section 58* in the principal Act. The main change is to extend the provisions of the existing section 58 (which relates to criminal liability for mis-statements in a prospectus) to apply to untrue statements in an advertisement.

Clause 28 amends section 59 of the principal Act, which relates to criminal liability for offering, distributing, or allotting securities in contravention of the Act. The amendments are consequential.

Clause 29 makes a consequential amendment to section 60 (2) of the principal Act.

Clause 30 amends section 63 (1) of the principal Act by inserting a new paragraph (b). This amendment is consequential.

Clause 31 makes a consequential amendment to section 69 (1) (a) of the principal Act.

Clause 32 amends section 70 (1) of the principal Act (which relates to the making of regulations and Orders in Council). It repeals paragraphs (b) to (f), and substitutes new paragraphs. The main changes relate to the distinction made between a prospectus and a registered prospectus. It is also made clear that regulations may be made which (as is contemplated by the new section 38) specify information or matters which may not be contained in advertisements of offers of securities as well as the information and matters that may be so contained. The opportunity has also been taken to make a number of amendments to the regulation-making provisions without material alteration to their substance.

Clause 33 amends the Second Schedule to the principal Act by including patent attorneys.

Hon. Mr McLay

SECURITIES AMENDMENT

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A BILL INTITULED

An Act to amend the Securities Act 1978

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Securities Amendment Act 1982, and shall be read together with and deemed part of the Securities Act 1978* (hereinafter referred to as the principal Act).

(2) This section and sections 2, 7, 8, 9, 10, and 32 of this Act shall come into force on the date on which this Act receives the Governor-General's assent. 5

(3) Except as provided in subsection (2) of this section, 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 10 purposes of this subsection, one or more Orders in Council may be made bringing different provisions of this Act into force on different dates.

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, before the definition of the term 15 "allot", the following definition:

“ ‘Advertisement’ (except in sections 3 (1) (c) and 38 (e) of this Act) means any form of communication (not being a registered prospectus) that is to be, or has been, distributed to any person by any means, and 20 which is authorised or instigated by or on behalf of the issuer, or prepared with the co-operation of, or by arrangement with, the issuer, and—

“(a) That contains or refers to an offer of securities to the public for subscription; or 25

“(b) That is reasonably likely to induce persons to subscribe for securities of the issuer, being securities to which that communication relates and which have been, or are to be, offered to the public for subscription,— 30

whether or not consideration is to be, or has been, paid for the distribution of that communication; and includes a statement relating to an interest in a contributory mortgage required to be distributed to any person by regulations made under this Act:” 35

(2) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “contributory mortgage”, the following definition:

“ ‘Contributory mortgage broker’ means a person (not being a mortgagor under the mortgage or any other 40 person to whom or for whose benefit any money is lent in consideration for the mortgage given by the mortgagor) who—

*1978, No. 103

Amendment: 1979, No. 109

“(a) Offers an interest in a contributory mortgage to the public for subscription; or

5 “(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:”.

(3) Section 2 of the principal Act is hereby further amended by repealing paragraph (c) of the definition of the term “co-operative company”, and substituting the following paragraphs:

10 “(c) A company registered as a co-operative freezing company under the Co-operative Freezing Companies Act 1960; or

15 “(d) A company registered as a co-operative forestry company under the Co-operative Forestry Companies Act 1978:”.

(4) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “the Crown”, the following definition:

20 “ ‘Date of a balance sheet’ or ‘date of an interim balance sheet’ means the date as at which the statement of affairs contained therein has been drawn up:”.

(5) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the the term “date of a 25 prospectus”, the following definition:

“ ‘Date of a registered prospectus’ means the date specified on a registered prospectus pursuant to section 39 (a) of this Act:”.

(6) Section 2 of the principal Act is hereby further amended 30 by adding to the definition of the term “debt security” the words “where the interest is offered by a contributory mortgage broker”.

(7) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “director”, and 35 substituting the following definition:

“ ‘Director’ means—

“(a) In relation to a company, any person occupying the position of a director of the company by whatever name called:

40 “(b) In relation to a partnership (other than a special partnership), any partner:

“(c) In relation to a special partnership, any general partner:

“(d) In relation to a body corporate or unincorporate, other than a company, partnership, or special partnership, any person occupying a position in the body that is comparable with that of a director of a company: 5

“(e) In relation to any other person, that person:”.

(8) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “issuer”, and substituting the following definition: 10

“ ‘Issuer’ means—

“(a) In relation to an equity security or a debt security, or to an advertisement, 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, 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:”.

(9) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “promoter”, and substituting the following definition:

“ ‘Promoter’ , in relation to securities offered to the public for subscription,— 30

“(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 professional capacity:”.

(10) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “prospectus”, and substituting the following definition: 40

“ ‘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 of this Act:” 45

(11) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “qualified auditor”, the following definition:

“Registered prospectus’ means—

5 “(a) Except where paragraph (b) of this definition applies—

“(i) A prospectus that has been registered under section 42 of this Act, and the registration of which has not been cancelled or suspended under section 44 of this Act; or

10 “(ii) A document that, except in the matters specified in paragraphs (a) and (b) of section 41 of this Act, is identical to such a prospectus:

“(b) Where a memorandum of amendments to a prospectus of the kind specified in paragraph (a) (i) of this definition has been registered under section 43 of this Act, and the registration of that prospectus as so amended has not been cancelled or suspended under section 44 of this Act—

20 “(i) That prospectus as so amended; or

25 “(ii) A document that, except for the matters specified in paragraphs (a) and (b) of section 41 of this Act, is identical to that prospectus as so amended.”.

3. Construction of references to offering securities to the public—(1) Section 3 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

30 “(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.”

(2) Section 3 of the principal Act is hereby further amended by adding the following subsections:

40 “(6) A statement made by or on behalf of an issuer to the effect that the issuer intends to make an offer of securities to the public for subscription and which contains no information or matter other than—

“(a) The name of the issuer; and

45 “(b) A description of the securities intended to be offered, including a brief description of any rights or privileges to be attached thereto; and

- “(c) A statement of the rate or rates of interest (if any) that may be earned by holding the securities intended to be offered; and
- “(d) A statement of the total number of securities intended to be offered; and 5
- “(e) A statement of the intended use of the subscriptions; and
- “(f) The terms of the intended offer; and
- “(g) A description of the class of persons to whom it is intended the offer will be made; and 10
- “(h) The date at which the issuer expects that the offer will be made—

shall not constitute an offer of securities to the public.

- “(7) A statement or report—
- “(a) Made to or for the purposes of a general meeting of the 15 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 20 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.”

4. Application—Section 4 of the principal Act is hereby amended— 25

- (a) By inserting in subsection (1), after the word “prospectus”, the words “registered prospectus,”; and
- (b) By inserting in subsection (2), after the word “prospectus”, the words “or registered prospectus”. 30

5. Exemptions—(1) Section 5 (1) of the principal Act is hereby amended by repealing paragraphs (g) and (j).

(2) Section 5 (2) of the principal Act is hereby amended by omitting the expression “sections 33, 34, and 37 to 54”, and substituting the expression “sections 33 (2), 33 (3), 37, 39 to 35 44, and 44B to 54”.

(3) Section 5 (2) of the principal Act is hereby further amended by adding the following paragraphs:

- “(c) An interest in a unit trust (as defined in section 2 (1) of the Unit Trusts Act 1960): 40
- “(d) An interest in an approved superannuation fund.”

(4) Section 5 (3) of the principal Act is hereby amended by omitting the expression “sections 33 to 35 and 37 to 69”, and substituting the expression “sections 33 (2), 33 (3), 34 to 37, 39 to 44, 44B to 54, and 57A to 69”.

5 (5) Section 5 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

10 “(4) Nothing in sections 6, 37, 39 to 44, and 45 to 53 of this Act shall apply in respect of an interest in a contributory mortgage that is offered to the public for subscription by a contributory mortgage broker.”

6. Exemption of previously allotted securities—

Section 6 (4) of the principal Act is hereby amended by repealing the proviso, and substituting the following proviso:

15 “Provided that, for the purposes of sections 33 and 34 of this Act, an offer to the public for subscription of such a security, or a distribution of a registered prospectus or an advertisement relating to such a security, made by or on behalf of the holder of the security shall be deemed to have
20 been made by or on behalf of the issuer thereof.”

7. Powers of Commission to take evidence—

Section 18 (3) of the principal Act is hereby amended by inserting, after the word “abode”, the words “or business”.

8. Provisions relating to certain proceedings before

25 **Commission—**(1) Section 19 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

30 “(1) At any meeting of the Commission for the purposes of section 44 (1) (b), or section 44B (2) (b), (c), or (d), or section 69 of this Act, the Commission shall allow to appear and be represented any person who applies to the Commission for leave to appear or be represented and who is—

35 “(a) In the case of a meeting for the purposes of section 44 (1) (b) of this Act, the issuer of the registered prospectus; or

“(b) In the case of a meeting for the purposes of section 44B (2) (b) or (c) of this Act, the contributory mortgage broker concerned; or

40 “(c) In the case of a meeting for the purposes of section 44B (2) (d) of this Act, the contributory mortgage broker concerned and any director or secretary of the nominee company of that contributory mortgage broker; or

“(d) In the case of a meeting for the purposes of section 69 of this Act, the person whose appeal is being considered; or

“(e) In the opinion of the Commission, a person who ought to be heard or a person whose appearance or representation will assist the Commission in its consideration of the matter before it.”

(2) Section 19 (2) of the principal Act is hereby amended by omitting the expression “section 44 (1) (b)”, and substituting the expression “, sections 44 (1) (b), 44A, 44B (2),”.

9. Delegation of powers by Commission—Section 27 (1) of the principal Act is hereby amended by inserting, after the expression “44”, the expression “44A, 44B (2),”.

10. New sections inserted—The principal Act is hereby amended by inserting, after section 31, the following sections:

“31A. **Funds of Commission**—The funds of the Commission shall consist of—

“(a) Any money appropriated by Parliament for the purposes of the Commission and paid to the Commission for the purposes of the Commission:

“(b) All other money lawfully received by the Commission for the purposes of the Commission:

“(c) All accumulations of income derived from any such money. 25

“31B. **Bank accounts**—(1) The Commission shall open at any bank or banks such accounts as are necessary for the exercise of its functions and powers.

“(2) All money received by the Commission, or by any employee of the Commission shall, as soon as practicable after it has been received, be paid into such bank accounts of the Commission as the Commission from time to time determines.

“(3) The withdrawal or payment of money from any such account shall be authorised by a prior resolution of the Commission, or shall be submitted to the Commission for confirmation at its first ordinary meeting after the date of payment. 35

“(4) The withdrawal or payment of money from any such accounts shall be by cheque signed by such person or persons as the Commission may from time to time authorise. 40

“31c. **Accounts and audit**—(1) The Commission shall keep full and correct accounts of all its financial transactions, assets, liabilities, and funds; and its accounts shall be audited by the Audit Office which for that purpose shall have and
5 may exercise all such powers as it has under the Public Finance Act 1977 in respect of public money and stores.

“(2) At the end of each financial year, the Commission shall prepare an income and expenditure account showing its financial transactions for that year, together with a balance
10 sheet as at the last day of the financial year.

“(3) As soon as practicable after the end of its financial year, the Commission shall submit its income and expenditure account and balance sheet to the Audit Office for audit.

15 “31d. **Investment of money**—Any money which belongs to the Commission and which is not immediately required for expenditure by the Commission may be invested in the same manner in which money in the Public Account may be invested pursuant to section 50 of the Public Finance Act
20 1977.

“31e. **Exemption from income tax**—The income of the Commission shall be exempt from income tax.”

11. Restrictions on offer of securities to the public—

Section 33 of the principal Act is hereby amended by
25 repealing subsection (1), and substituting the following subsection:

“(1) No security shall be offered to the public for subscription, by or on behalf of an issuer, unless—

30 “(a) The offer is made in, or accompanied by, a registered prospectus that complies with this Act and all regulations made under this Act; or

“(b) The offer is made in an authorised advertisement.”

12. Restrictions on distribution of prospectuses—

The principal Act is hereby amended by repealing section 34, and
35 substituting the following section:

“34. No registered prospectus shall be distributed by or on behalf of an issuer,—

40 “(a) After it has been amended unless all the amendments have been incorporated in 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 5 prospectus).”

13. Restrictions on allotment of securities—The principal Act is hereby amended by repealing section 37, and substituting the following section:

“37. (1) No allotment of a security offered to the public for 10 subscription shall be made if—

“(a) The issuer of the security does not hold a properly completed form of application therefor that is signed by or on behalf of the subscriber and that was distributed to the subscriber in or with a 15 registered prospectus relating to the security; or

“(b) The form of application therefor was distributed to the subscriber in or with a registered prospectus—

“(i) That did not incorporate all amendments registered in respect thereof pursuant to section 43 20 of this Act at the time of allotment; or

“(ii) The registration of which has been cancelled pursuant to section 44 of this Act; or

“(iii) The registration of which is suspended pursuant to section 44 of this Act at the time of 25 allotment; or

“(iv) That is known by the issuer of the security, or any director of the issuer, at the time of allotment, to be false or misleading in a material particular by reason of failing to refer, or give 30 proper emphasis, to adverse circumstances (whether or not the registered prospectus became so misleading as a result of a change of circumstances occurring after the date of the registered prospectus); or 35

“(c) The form of application therefor does not state—

“(i) The date of the registered prospectus in or with which it was distributed to the subscriber; and

“(ii) The date or dates of registration of any 40 amendments to the registered prospectus; or

“(d) The date of allotment would be more than 9 months after the date of any balance sheet or interim

balance sheet set out, or attached to, or referred to, in accordance with regulations made under this Act, in the registered prospectus relating to the security or, where there is no such balance sheet or interim balance sheet, more than 6 months after the date of the registered prospectus; or

5

“(e) 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.

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“(2) No allotment shall be made of an equity security or a participatory security offered to the public for subscription unless—

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“(a) The amount payable on application for the security is not less than 10 percent of the nominal amount of the security; and

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“(b) In the case of the first allotment of equity securities or participatory securities offered to the public for subscription by an issuer, 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 paragraph,—

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“(i) 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 for suspecting that the cheque will not be paid:

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“(ii) The amount so stated in the registered prospectus shall be reckoned exclusively of any amount payable otherwise than in cash.

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“(3) No allotment of a participatory security offered to the public for subscription shall be made unless at the time of allotment the statutory supervisor holds a written statement signed by the subscriber authorising the subscription for that particular security.

45

“(4) Where subscriptions for securities are received by or on behalf of an issuer but, by virtue of subsection (1) (b) (iv) or subsection (2) of this section the securities may not be allotted, or for any reason the securities are not allotted, the issuer shall, unless the Court makes an order validating that allotment, ensure that—

“(a) At all times while held by it, the subscriptions are kept in a trust account on behalf of the subscribers; and

“(b) The subscriptions, together with such interest (if any) as has been earned thereon, are repaid to the subscribers as soon as reasonably practicable.

“(5) If any subscriptions to which subsection (4) of this section applies are not so repaid within 2 months after the date the subscriptions were received by or on behalf of the issuer (or, in any case to which subsection (2) (b) of this section 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 with interest at the rate of 10 percent per annum from the date the subscriptions were received by or on behalf of the issuer:

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

“(6) Without limiting the operation of any other enactment or rule of law where any subscriptions for securities are received by or on behalf of an issuer, but, by virtue of this section, the securities may not be allotted, any allotment of such securities shall, unless the Court, on the application of the issuer or any person to whom those securities have been allotted, orders otherwise, be invalid and of no effect.

“(7) The allotment of an interest in a contributory mortgage in contravention of this Act or any regulations made under this Act shall not affect the validity of that contributory mortgage.”

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Cf. 1978, No. 103, s. 37 (1)–(4)

14. Authorised advertisements—(1) The principal Act is hereby amended by repealing section 38, and substituting the following section:

“38. In this Act the term ‘authorised advertisement’ means an advertisement that—

“(a) Refers to a registered prospectus that relates to all the securities referred to in the advertisement, and states the date of registration thereof; and

“(b) States that allotments of the securities shall be made only on receipt of a form of application forming part of, or issued with, a registered prospectus; and

5 “(c) Specifies the place or places at which a registered prospectus may be obtained, or contains a coupon or coupons to be completed by any person who wishes to be sent a registered prospectus, or both; and

10 “(d) Complies with this Act and with all regulations made under this Act relating to advertisements; and

“(e) Does not appear in association with any other advertisement relating to the securities or to the issuer:

15 “Provided that paragraphs (a) to (c) of this section shall not apply in respect of an advertisement relating only to securities exempted from certain provisions of this Act by virtue of subsections (2) to (4) of section 5 of this Act.”

(2) Section 36 of the principal Act is hereby consequentially repealed.

20 **15. Statement in advertisement by expert**—The principal Act is hereby amended by inserting, after section 38, the following section:

“38A. No advertisement shall contain a statement purporting to be made by an expert unless—

25 “(a) The expert has given and has not, before distribution of the advertisement, withdrawn his written consent to the distribution of the advertisement with the statement included in the form and context in which it is included; and

30 “(b) A statement of the expert’s qualifications appears in the advertisement; and

35 “(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.”

16. Form and content of prospectus—The principal Act is hereby amended by repealing section 39, and substituting the following section:

40 “39. Every prospectus and registered prospectus shall—

“(a) Be in writing and be dated; and

45 “(b) Specify any documents required by section 41 of this Act 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.”

17. Statement in prospectus by expert—The principal Act is hereby amended by repealing section 40, and 5 substituting the following section:

“40. (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 of this Act, withdrawn his written consent to the distribution of the prospectus with the statement included in the form 15 and context in which it is included; and

“(b) A statement that the expert has given and has not withdrawn his consent as aforesaid appears in the prospectus or registered prospectus; and

“(c) A statement of the expert’s qualifications appears in 20 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 25 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 of this Act, a supplementary statement 30 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) of this section, a supplementary statement by an expert is required to appear 35 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 40 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 45 comments.”

18. Registration of prospectus—Section 42 (4) (b) of the principal Act is hereby amended—

- (a) By inserting, after the words “copy of a”, the word “registered”:
- 5 (b) By omitting the words “that is already registered.”

19. Amendment of registered prospectus—The principal Act is hereby amended by repealing section 43, and substituting the following section:

“43. (1) A registered prospectus may be amended by a
10 memorandum of amendments to the registered prospectus delivered to the Registrar and registered under this section.

“(2) Every memorandum of amendments to a registered prospectus delivered to the Registrar shall be delivered in duplicate and accompanied by a copy of the registered
15 prospectus as amended.

“(3) Subject to subsections (4) and (5) of this section, the Registrar shall forthwith register every memorandum of amendments to a registered prospectus delivered to him in accordance with this section.

20 “(4) The Registrar may refuse to register a memorandum of amendments to a registered prospectus if—

“(a) Pursuant to section 42 (2) of this Act, he could have refused to register the registered prospectus as amended if it had been delivered for registration at
25 the time of the delivery to him of the memorandum; or

“(b) The prescribed registration fee is not paid.

“(5) The Registrar shall refuse to register a memorandum of amendments to a registered prospectus if—

30 “(a) He is of the opinion that the registered prospectus as amended contains a statement that is false or misleading on a material particular or omits any material particular; or

“(b) The date of the registered prospectus is altered.

35 “(6) Upon registration of a memorandum of amendments to a registered prospectus pursuant to this section, the Registrar shall forthwith give a certificate under his hand of that registration, and the certificate shall be conclusive evidence that the memorandum has been registered under
40 this section.”

20. Suspension and cancellation of registration of registered prospectus—The principal Act is hereby amended by repealing section 44, and substituting the following section:

“44. (1) Where at any time the Commission is of the opinion that 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 does not comply with this Act and regulations made under this Act, the Commission may exercise either or both of the following powers in respect of the registered prospectus: 5

“(a) If it considers that suspension of the registration of the registered prospectus is desirable in the public interest, the Commission may suspend the registration thereof for a period not exceeding 14 days: 10

“(b) After giving the issuer named in the registered prospectus not less than 7 days’ written notice of the meeting at which the matter will be considered by the Commission, the Commission may at that meeting cancel the registration thereof. 15

“(2) Where the Commission suspends the registration of a registered prospectus pursuant to this section,— 20

“(a) It shall forthwith notify the issuer named therein of the suspension and the reasons therefor; and

“(b) No member or alternate member of the Commission, or officer or employee thereof, or person appointed under section 21 of this Act shall, except following cancellation of the registered prospectus under this section or in the course of any criminal proceedings, divulge or communicate to any other person the fact of the suspension or any matter relating thereto. 25 30

“(3) Where subscriptions for securities are received by or on behalf of an issuer after the registration of a registered prospectus has been suspended, the issuer shall hold the subscriptions in a trust account on behalf of the subscribers.

“(4) Where the Commission cancels the registration of a registered prospectus pursuant to this section— 35

“(a) It shall forthwith notify the issuer named therein of the cancellation and the reasons therefor; and

“(b) It may notify any other person of the cancellation and the reasons therefor; and 40

“(c) The issuer named therein shall forthwith repay to the subscribers entitled thereto the subscriptions held in the trust account pursuant to subsection (3) of this section; and

“(d) If such subscriptions are not so repaid within 1 month after the date of the cancellation of the registration of the registered prospectus, the issuer named therein and all the directors thereof shall be jointly and severally liable to repay the subscriptions with interest at the rate of 10 percent per annum from the date the subscriptions were received by or on behalf of the issuer:

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

21. New sections inserted—The principal Act is hereby amended by inserting, after section 44, the following sections:

“44A. **Prohibition of advertisements**—(1) Where at any time the Commission is of the opinion that an advertisement is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities to which the advertisement relates, or that it is inconsistent with any registered prospectus referred to in the advertisement, or that it does not comply with this Act and regulations made under this Act, the Commission may make an order prohibiting the distribution of the advertisement on such terms and conditions as it thinks fit.

“(2) Where the Commission makes an order prohibiting the distribution of an advertisement pursuant to this section—

“(a) It shall forthwith notify the issuer whose securities are referred to in the advertisement of the order and the reasons therefor; and

“(b) It may notify any other person of the order and the reasons therefor.

“(3) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$5,000 who, in contravention of an order made under subsection (2) of this section, distributes to the public by any means the advertisement to which the order relates:

“Provided that it shall be a defence to a charge under this subsection if the defendant proves that the advertisement was distributed without his knowledge or without his knowledge of the order.

“(4) At any time after an order has been made pursuant to subsection (1) of this section, the issuer of the securities to which the advertisement relates shall be entitled to appear and be represented before the Commission, and the Commission, if it is satisfied that the order should not 5 continue in force, may revoke the order.

“44B. **Commission’s powers in respect of contributory mortgages**—(1) Where the District Registrar of Companies at Wellington receives a report from an auditor appointed pursuant to regulations made under this Act to the effect that 10 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 Commission.

“(2) The Commission may, either on the receipt of that 15 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 regulations made under this Act, and that it is desirable in the public interest to do so, exercise any one or more of the following 20 powers:

- “(a) Order that the contributory mortgage broker be prohibited from offering interests in contributory mortgages to the public for subscription for a period not exceeding 14 days; or 25
- “(b) After giving the contributory mortgage broker not less than 7 days written notice of the meeting at which the matter will be considered by the Commission, the Commission may, at that meeting, order that the contributory mortgage broker be prohibited 30 from offering interests in contributory mortgages to the public for subscription for such period as the Commission thinks fit; or
- “(c) After giving the contributory mortgage broker not less than 7 days written notice of the meeting at which 35 the matter will be considered by the Commission, the Commission may, at that meeting, order that the contributory mortgage broker shall forthwith cease to act as contributory mortgage broker in respect of all or any contributory mortgages which 40 have previously been allotted by him and appoint another person to act as contributory mortgage broker in his place with respect to those contributory mortgages; or

5 “(d) After giving the contributory mortgage broker and
any director or secretary of that broker’s nominee
company not less than 7 days written notice of the
meeting at which the matter will be considered by
the Commission, the Commission may, at that
meeting, by order, remove any of the directors or
secretary (as the case may be) of any nominee
company of that contributory mortgage broker and
10 appoint any person as a director or secretary (as
the case may be) in his place.

“(3) Where the Commission makes an order under
subsection (2) of this section—

“(a) It shall forthwith notify the broker of the order and the
reasons therefor; and

15 “(b) It may notify any other person or persons of the order
and the reasons therefor.

“(4) Any such order made by the Commission under
subsection (2) of this section may be made upon such terms
and conditions as the Commission sees fit and shall have
20 effect according to its tenor.

“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 Commission to act as
a contributory mortgage broker in respect of contributory
25 mortgages under section 44B (2) (c) of this Act, the appointee
shall have and may exercise all the powers of the contributory
mortgage broker he is appointed to replace (in this section
called ‘the defaulting broker’), including, but without
limitation, the following powers—

30 “(a) To take and to retain possession of all property,
whatsoever and wheresoever situated, of the
defaulting broker and his nominee company
relating to the contributory mortgages which were
being managed by the defaulting broker (in this
35 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:

40 “(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 thinks fit, any money received by him in his capacity 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: 5
- “(e) To carry out and perform contracts relating to the mortgages entered into by the defaulting broker before the appointment of the appointee: 10
- “(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 duties hereunder: 15
- “(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). 20
- “(2) The appointee may, at any time, in his discretion apply to the Court *ex parte* for directions with respect to the exercise of his 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. 25
- “(4) It shall be the duty of all persons having possession or control of any books or records or 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. 30
- “(5) The appointee shall not be liable for any acts or omissions by him in good faith in the exercise of his 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. 35
- “(6) All costs, charges, and expenses properly incurred by the appointee in the exercise of his duties under this section (including such remuneration as may be approved by the Commission) shall be payable out of the property administered by him in priority to all other claims. 40

“ (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 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 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 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.

“ **44D. Powers and duties of persons appointed to act as directors or secretary of nominee company**—(1) Any person appointed by the Commission pursuant to section 44B (2) (d) of this Act—

“ (a) Shall not be liable for any acts or omissions by him in good faith in the exercise of his 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 in the exercise of his powers and functions (including such remuneration as may be approved by the Commission) as a director or secretary.

“ (2) It shall be the duty of all persons having possession or control of any books, records, or 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 books, records, or documents as that person may require for the purpose of exercising his powers and functions as a director or secretary.”

22. Issuers to keep proper accounting records—The principal Act is hereby amended by repealing section 53, and substituting the following section:

“53. (1) Every issuer of securities offered to the public (other than securities that have been redeemed) shall at all times keep, in such manner as will enable the audit thereof to be conveniently and properly carried out, accounting records that—

- “(a) Correctly record and explain the transactions of the issuer (in the case of equity securities or debt securities), or all transactions in respect of the arrangement or scheme to which the securities relate (in the case of participatory securities); and
- “(b) Will at any time enable the financial position of the issuer, or the arrangement or scheme, as the case may be, to be determined with reasonable accuracy.

“(2) Without limiting the generality of subsection (1) of this section, accounting records kept pursuant to that subsection shall contain—

- “(a) Entries from day to day of all sums of money received and expended—
 - “(i) (In the case of equity or debt securities) by the issuer; or
 - “(ii) (In the case of participatory securities) by the issuer in relation to the scheme or arrangement— and the transactions or matters to which such receipts and expenditure relate:
- “(b) A record of the assets and liabilities of the issuer (in the case of equity or debt securities), or of the arrangement or scheme (in the case of participatory securities); and
- “(c) Where the issuer’s business (in the case of equity or debt securities) or the scheme or arrangement (in the case of participatory securities) involves dealing in goods,—
 - “(i) A record of all goods purchased, and of all goods sold (except those sold for cash by way of ordinary retail trade), showing the goods and the

sellers and buyers in sufficient detail to enable the goods and the sellers and buyers to be identified; and all invoices relating thereto; and

5 “(ii) Statements of stock held by the issuer (in the case of equity or debt securities) or held under the scheme or arrangement (in the case of participatory securities) at the end of each financial year, and all records of stocktakings from which any such statement of stock has been, or is to be, prepared; and

10 “(d) Where the issuer’s business (in the case of equity or debt securities), or the scheme or arrangement (in the case of participatory securities) involves the provision of services, records of the services provided and all invoices relating thereto; and

15 “(e) Such other information required to be contained therein by regulations made under this Act.

 “(2A) The accounting records shall be kept at the registered office of the issuer or at such other place as the
20 directors think fit:

 “Provided that if accounting records are kept at a place outside New Zealand there shall be sent to, and kept at a place in New Zealand such accounts and returns with respect to the business dealt with in the accounting records so kept as
25 will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months and will enable to be prepared (in the case of equity or debt securities), the issuer’s balance sheet, its profit and loss account or income and expenditure account or, (in the case of
30 participatory securities), a balance sheet, profit and loss account or income and expenditure account, of the scheme or arrangement, as the case may be, and any document annexed to any of those documents giving information which is required by any enactment and is thereby allowed to be so
35 given.

 “(2B) Accounting records required by this section to be kept and accounts and returns referred to in subsection (2A) of this section shall be kept either in written form in the English language or so as to enable the accounting records to
40 be readily accessible and readily convertible into written form in the English language.

 “(3) Accounting records kept under this section, or copies thereof, 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
45 of the transaction to which they relate, whichever is the later:

“Provided that nothing in this subsection shall derogate from any other requirement to keep accounting records for a particular time.

“(4) Every issuer shall make the accounting records required to be kept pursuant to this section, and any accounts and returns referred to in subsection (2A) of this section, available in written form in the English language at all reasonable times for inspection without charge by the directors of the issuer and by any trustee or statutory supervisor and by other persons authorised or permitted to inspect the accounting records of the issuer. 5 10

“(5) Every issuer of equity securities or debt securities offered to the public (other than securities that have been redeemed) shall ensure that its accounting records are audited at least once a year by a qualified auditor. 15

“(6) Every issuer of participatory securities offered to the public shall ensure that, if the statutory supervisor so requires, the accounting records relating to the arrangement or scheme to which the securities relate are audited at least once a year by a qualified auditor. 20

“(7) Every issuer of securities offered to the public shall supply, on demand and without charge, to every security holder who so requests,—

“(a) In the case of equity securities or debt securities, a copy of the last audited balance sheet (including every document required by law to be attached thereto) of the issuer of the securities; or 25

“(b) In the case of participatory securities, a copy of the last audited balance sheet (including every document required by law to be attached thereto) relating to the scheme or arrangement to which the securities relate or, where there is no such balance sheet, a summary of the accounting records relating to the arrangement or scheme that correctly sets out the financial position thereof at the time: 30 35

“Provided that no security holder shall be entitled to more than one copy of each balance sheet or summary:

“Provided also that, where an issuer of securities is a company forming part of a group of companies, the last audited balance sheet thereof need not be supplied if the last audited balance sheet of the group is supplied in its place.” 40

23. Interpretation of provisions relating to advertisements, prospectuses, and registered prospectuses—The principal Act is hereby amended by repealing section 55, and substituting the following section:

5 “55. For the purposes of this Act—

“(a) A statement included in an advertisement or registered prospectus shall be deemed to be untrue if—

10 “(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;

15 “(b) A statement shall be deemed to be included in an advertisement or registered prospectus if it is contained therein, or on the face thereof, or in any report, memorandum, or document accompanying the advertisement or registered prospectus or by reference incorporated therein or distributed therewith.”

20

Cf. 1978, No. 103, s. 56

24. Civil liability for mis-statements in advertisement or registered prospectus—The principal Act is hereby amended by repealing section 56, and substituting the
25 following section:

“56. (1) Subject to the provisions of this section, the following persons shall be liable to pay compensation to all persons who subscribe for any securities on the faith of an advertisement or registered prospectus which contains any
30 untrue statement for the loss or damage they may have sustained by reason of such untrue statement, that is to say:

“(a) Where the issuer is an individual, the issuer of the securities:

35 “(b) In the case of an advertisement, every person who is a director of the issuer at the time that the advertisement is distributed or who has authorised himself to be named and is named in the advertisement as a director of the issuer or as having agreed to become a director either
40 immediately or after an interval of time:

“(c) In the case of a registered prospectus, every person who has signed the prospectus as a director of the issuer or on whose behalf the prospectus has been so signed, or who has authorised himself 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: 5

“(d) Every promoter of the securities.

“(2) No person shall be liable under subsection (1) (c) of this section in respect of any untrue statement included in a registered prospectus if he proves that, having consented to become a director of the issuer, he withdrew his consent before the distribution of the registered prospectus, and that he gave written notice of his withdrawal and the reason therefor to the Commission, and that the registered prospectus was distributed without his authority or consent. 15

“(3) No person shall be liable under subsection (1) of this section in respect of any untrue statement included in an advertisement or registered prospectus, as the case may be, if he proves that— 20

“(a) The advertisement was distributed or the prospectus was registered, as the case may be, without his knowledge or consent, and on becoming aware of its distribution or registration he forthwith gave notice to the trustee or statutory supervisor (if any), the Registrar, and the Commission that it was distributed or registered without his knowledge or consent, and also gave reasonable public notice that it was distributed or registered without his knowledge or consent; or 30

“(b) After the distribution of the advertisement or the registration of the prospectus, as the case may be, and before the securities were allotted, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and forthwith gave notice to the trustee or statutory supervisor (if any), the Registrar, and the Commission of the withdrawal and of the reason therefor, and also forthwith gave reasonable public notice of the withdrawal; or 40

“(c) 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 had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true; or 45

“(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,—

5 “(i) It fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and

10 “(ii) He 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

15 “(iii) That person had given the consent required by section 38A and section 40 of this Act 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

20 “(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—

30 “(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 has not consented to become a director, or has withdrawn his 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

35 “(b) The consent of a person is required under section 38A or section 40 of this Act to the distribution of an advertisement or registered prospectus and he either, has not given that consent, or has withdrawn it before the distribution of the advertisement, or delivery of the prospectus for registration—

40 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 may be made liable by reason of his name having been inserted in the advertisement or registered 5 prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceedings brought against him in respect thereof.

“(5) Where any person acting in good faith, believing a 10 statement in an advertisement or prospectus to be untrue, withdraws his consent to the distribution of the advertisement or registration of the prospectus, he shall not be liable in respect of the withdrawal to the issuer or any other person, whether or not the statement is untrue.” 15

Cf. 1978, No. 103, s. 57

25. Civil liability for mis-statements by expert—The principal Act is hereby amended by repealing section 57, and substituting the following section:

“57. (1) Subject to the provisions of this section, every 20 person who gives consent to the distribution of an advertisement or registered prospectus required of him by section 38A or section 40 of this Act, or by regulations made under this Act, which contains an untrue statement purporting to be made by him as an expert, shall be liable to 25 pay compensation to all persons who subscribe for any securities on the faith of the advertisement or registered prospectus for the loss or damage they may have sustained by reason of such untrue statement.

“(2) No person shall be liable under subsection (1) of this 30 section if he proves that—

- “(a) Having given his consent to the distribution of the advertisement or registered prospectus, he withdrew it in writing before distribution of the advertisement or registered prospectus; or 35
- “(b) After distribution of the advertisement or registered prospectus and before the securities were allotted, he, on becoming aware of the untrue statement or omission, withdrew his consent in writing and gave notice to the trustee or statutory supervisor (if 40 any), the Registrar, and the Commission of the withdrawal and of the reason therefor, and also gave reasonable public notice of the withdrawal; or

“(c) He was competent to make the statement and that he had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true.

5 “(3) Where any person acting in good faith, believing a statement in an advertisement or registered prospectus to be untrue, withdraws his consent to the distribution of the advertisement or registered prospectus, he shall not be liable in respect of the withdrawal to the issuer or to any other
10 person, whether or not the statement is untrue.”

26. Civil liability for breach of contributory mortgage regulations—The principal Act is hereby amended by inserting, after section 57, the following section:

15 “57A. (1) Subject to the provisions of this section, the following persons shall be liable to pay compensation to all 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 may have sustained by reason of any breach of regulations made under this Act relating to the
20 offer, sale, or management of interests in contributory mortgages, that is to say—

25 “(a) Where the contributory mortgage broker is an individual, the person who acts, or who is charged with acting, as the contributory mortgage broker in respect of the contributory mortgage at the time that the breach occurred:

30 “(b) Where the contributory mortgage broker is a body corporate or other body, the contributory mortgage broker and every person who is a director of the contributory mortgage broker which is acting, or which is charged with acting, as the contributory mortgage broker in respect of the contributory mortgage at the time that the breach occurred.

35 “(2) No person who is a director of a contributory mortgage broker shall be liable under subsection (1) (b) of this section if he proves that—

40 “(a) The breach occurred without his knowledge or consent; and

“(b) He had reasonable grounds to believe and did, up to the time that he 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 forthwith gave reasonable notice of the breach to the District Registrar of Companies at Wellington and any person to whom such notice is required to be given pursuant to regulations made under this Act.” 5

27. Criminal liability for mis-statement in advertisement or registered prospectus—The principal Act is hereby amended by repealing section 58, and substituting the following section:

“58. (1) Where an advertisement that includes any untrue statement is distributed— 10

“(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— 15

commits an offence.

“(2) Where a registered prospectus that includes any 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 (b) of this Act, commits an offence. 20

“(3) Every person who commits an offence against this section is liable—

“(a) On conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$25,000, or to both; or 25

“(b) On summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$15,000, or to both,— 30

unless he proves, either that the statement was immaterial or that he 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.”

28. Criminal liability for offering, distributing, or allotting in contravention of this Act—(1) Section 59 (1) of the principal Act is hereby amended by inserting, before the word “prospectus” where it first appears, the word “registered”. 35

(2) Section 59 (1) (d) of the principal Act is hereby amended by inserting, after the word “any”, the words “advertisement or registered”. 40

29. Other offences—Section 60 (2) of the principal Act is hereby amended by omitting the number “36”.

30. Power of Court to grant relief in certain cases—Section 63 (1) of the principal Act is hereby amended by 5 repealing paragraph (b), and substituting the following paragraph:

“(b) The distribution of a registered prospectus or advertisement:”.

31. Appeals against other decisions of Registrar—10 Section 69 (1) (a) of the principal Act is hereby amended by inserting, after the words “amendments to a”, the word “registered”.

32. Regulations and Orders in Council—Section 70 (1) of the principal Act is hereby amended by repealing 15 paragraphs (b) to (f), and substituting the following paragraphs:

“(b) Regulating advertisements, prospectuses, and registered prospectuses, including—

20 “(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, prospectuses, or registered prospectuses; and

25 “(ii) Prohibiting or restricting the use in advertisements, prospectuses, or registered prospectuses of prescribed words, information, statements, sounds, and images, graphics, or other matters; or

30 “(iii) Prescribing requirements as to the layout or method of presentation of any advertisement, prospectus, or registered prospectus, and the size of type used therein;—

35 and different matters may be prescribed, prohibited, restricted, specified, or required in respect of advertisements, prospectuses, or registered prospectuses relating to different kinds of securities or different classes of issuers or offerees:

40 “(c) Providing that statements included in, or relating to an advertisement or registered prospectus or to securities to which an advertisement or registered

prospectus relates, made for the purposes of regulations under this Act shall be deemed to be statements made in the advertisement or registered prospectus for the purposes of sections 55 to 65 of this Act:”.

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33. Amendment to Second Schedule—The Second Schedule to the principal Act is hereby amended by adding the following clause:

“13. Registration as a patent attorney under the Patents Act 1953.”

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