



House of Representatives

Supplementary Order Paper

Wednesday, 13 September 2006

Securities Legislation Bill

Proposed amendments

Hon Lianne Dalziel, in Committee, to move the following amendments:

Clause 2

To omit subclauses (1) to (3) (line 4 on page 9 to line 11 on page 10) and substitute the following subclauses:

- (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 3B** of this Act:
 - (b) **section 14A** of this Act:
 - (c) **subpart 2 of Part 1** of this Act:
 - (d) **section 29** and **Schedule 2** of this Act:
 - (e) **new sections 44B, 44C, 44D, and 44DAA** of the Takeovers Act 1993 as inserted by **section 51** of this Act:
 - (f) **section 56** of this Act:
 - (g) **section 61** of this Act:
 - (h) in **Schedule 1** of this Act, 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.

Clause 10

New section 59A(1)(b)(iv): to omit “fails or refuses” (line 8 on page 20) and substitute “refuses or fails”.

New section 59A(1A): to omit this subsection (lines 17 to 20 on page 20) and substitute the following subsection:

“(1A) A body corporate commits an offence under **subsection (1)(b)** if its representative refuses or fails to appear, refuses to take an oath or affirmation as a witness, refuses to answer any question, or refuses or fails to provide any document or information that the body corporate is required to provide.”

Clause 11

New section 60A(2)(c)(ii): to omit “event” (line 21 on page 21) and substitute “ground”.

New section 60C: to omit “court” (line 19 on page 22) and substitute “management banning”.

New section 60EA: to omit the heading to this section (lines 26 and 27 on page 23) and substitute the following heading and subclause:

“60EA General provisions for bans and banning orders

“(1AA) 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 Commission 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.

New section 60F(3): to insert after “section” (line 10 on page 25) “and **section 60FA**”.

New heading: to add the following heading after *new section 60G* (after line 32 on page 27):

“General provisions on liability

New clause 11A

To insert the following clause after *clause 11* (after line 32 on page 27):

11A New section 63A inserted

The following section is inserted after section 63:

“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.”

Clause 18(2)(a)

To omit “investment statement” (line 4 on page 37) and substitute “advertisement”.

Clause 20

New section 2(1): to insert the following definition (after line 28 on page 37):

“**advertisement** means an advice advertisement, a broker advertisement, or a product advertisement

New section 2(1): to insert the following definition (after line 8 on page 38):

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

Definition of **authorised futures exchange** in *new section 2(1)*: to omit “, in Part 3,” (line 9 on page 38).

Definition of **futures contract** in *new section 2(1)*: to omit “, in Part 3,” (line 20 on page 42).

Paragraph (c) of the definition of **investment broker** in *new section 2(1)*: to omit “of a security to which the investment money or investment property relates” (lines 2 and 3 on page 45).

Paragraph (b) of the definition of **officer** in *new section 2(1)*: to omit “class or classes of persons” (line 9 on page 46) and substitute “persons (whether described as a class or otherwise)”.

Paragraph (b) of the definition of **security** in *new section 2(1)*: to insert after “1978” (line 2 on page 49) “except section 6A”.

Paragraph (c) of the definition of **security**: to insert after “**paragraph (a)**” (line 4 on page 49) “and includes a futures contract”.

Paragraph (c)(v) of the definition of **voting security** in *new section 2(1)*: to insert after “the whole” (line 1 on page 51) “or a material part”.

New section 4(2): to omit this subsection (lines 23 to 25 on page 53) and substitute the following subsection:

“(2) In this section, **relevant securities** means securities of a kind the price or (in the case of futures contracts) the value of which might reasonably be expected to be affected by the information.

New section 6(1)(g): to omit “or section 45 of the Companies Act 1993” (lines 26 and 27 on page 56).

Clause 21

New section 9C(1): to add “or its business activities” (line 15 on page 60).

New section 9C(2): to omit this subsection (lines 16 to 22 on page 60) and substitute the following subsections:

“(2) A person (**B**) does not contravene **section 8E** merely because B advises or encourages A to trade or hold securities when B has knowledge acquired in the course of acting as A’s adviser that A proposes to enter into, or has previously entered into, 1 or more transactions or agreements in relation to the securities or the public issuer or its business activities.

“(3) In **subsection (2)**, **adviser** means an adviser acting in a professional capacity, and includes an adviser such as a lawyer, an accountant, or an investment adviser, but is not limited to those persons.

New section 9E(1): to insert after paragraph (b) (after line 10 on page 61) the following paragraph:

“(ba) entering into an agreement to acquire or dispose of securities at a fixed price under a future takeover offer that complies with the takeovers code; or

New section 9E(1)(c): to insert after “acquisition” (line 11 on page 61) “or disposal”.

New section 9E(1)(c): to insert after “acquire” (line 12 on page 61) “or dispose of”.

New section 9E(2)(a): to insert after “offeror” (line 17 on page 61) “or its advisers”.

New section 9E(2)(c): to insert after “offeror” (line 24 on page 61) “or its advisers”.

New section 9E: to add (after line 12 on page 62) the following subsections:

“(5) A person (A) does not contravene **section 8D or section 8E** merely because A, in relation to a takeover offer or prospective takeover offer under the takeovers code, discloses inside information to another person (B) or advises B to trade or hold securities of the public issuer when A has that inside information, or is an information insider, only through acting as B’s adviser in relation to the takeover offer or prospective takeover offer.

“(6) In **subsection (5)**, **adviser** means an adviser acting in a professional capacity, and includes an adviser such as a lawyer, an accountant, or an investment adviser, but is not limited to those persons.

New section 10B: to add (after line 24 on page 63) the following subsections:

“(3) In any proceeding against a person (A) for contravening **section 8D or section 8E** by disclosing inside information to another person (B) or by advising B to trade or hold securities of the public issuer, it is a defence if A proves on a balance of probabilities that A has that inside information, or is an information insider, only through acting as B’s adviser in relation to trading or holding those securities.

“(4) In **subsection (3)**, **adviser** means an adviser acting in a professional capacity, and includes an adviser such as a lawyer, an accountant, or an investment adviser, but is not limited to those persons.

New section 11(c): to add (after line 5 on page 65) the following subparagraph:

“(iii) induce a person to vote for, or vote against, a transaction, or to abstain from voting in respect of that transaction.”

New heading and section 11E: to insert after *new section 11D* (after line 29 on page 66) the following heading and section:

“Futures contracts

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

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

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

New section 14(1): to omit “in relation to the acquisition of securities” (line 24 on page 69).

New section 14(1): to add “1993” (line 26 on page 69).

New section 14(2): to add “, and includes conduct incidental or preliminary to a takeover that is regulated by the takeovers code” (line 31 on page 69).

New heading and clause 21A

To insert after *clause 21* (after line 7 on page 71) the following heading and clause:

Amendments to continuous disclosure by public issuers

21A New section 19PA inserted

The following section is inserted after section 19P:

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

A person (A) does not, in relation to the contravention by a public issuer of a continuous disclosure obligation or a term or condition of a continuous disclosure exemption, contravene

that obligation or term or condition if A proves on the balance of probabilities that—

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

Clause 26

New section 31(1): to omit “a substantial holding” (line 21 on page 76) and substitute “1 or more substantial holdings”.

New section 32(1): to omit “**31**” (line 3 on page 77) and substitute “**31(1)**”.

New section 32A(1): to omit “a substantial holding” (line 21 on page 77) and substitute “1 or more substantial holdings”.

New section 35BA: to omit “is aware or ought reasonably to be aware of” (line 26 on page 79) and substitute “knows or ought to know”.

Clause 27

New section 41: to omit “section 3(2)(a)(ii)” (lines 14 and 15 on page 83) and substitute “section 3(2)(a)(iia)”.

New section 41B: to add as subsection (2) (after line 35 on page 83) the following subsection:

- “(2) However, the requirement in **subsection (1)** that disclosure must be made before investment advice is given does not apply to the extent that—
 - “(a) disclosure subsequent to investment advice is permitted by regulations made under **section 49C**; and
 - “(b) the disclosure is made in accordance with those regulations.

New section 41D(1)(e): to omit “court, tribunal, or disciplinary body” (lines 36 and 37 on page 84) and substitute “court”.

New section 41I(1)(e): to omit “court, tribunal, or disciplinary body” (lines 5 and 6 on page 87) and substitute “court”.

New section 41P(2): to omit this subsection (lines 18 and 19 on page 90).

New section 42B(a): to insert after “prohibition” in the first place where it appears (line 35 on page 94) “or exemption”.

New section 42G(b): to omit “company or business that is an investment adviser or an investment broker” (lines 25 to 27 on page 96) and substitute “incorporated or unincorporated body that is an investment adviser or an investment broker (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand)”.

New section 42I(3)(a): to insert after “prohibition” in the second place where it appears (line 6 on page 98) “or exemption”.

New section 42P(a): to insert after “prohibition” in the first place where it appears (line 23 on page 100) “or exemption”.

New section 42U(a): to add “or exemption” (line 3 on page 102).

New section 42U(b): to add “or exemption” (line 4 on page 102).

New section 42V(1)(b): to omit “of that matter” (line 20 on page 102) and substitute “that the person has contravened a civil remedy provision”.

New section 42V(1)(c): to omit “of that matter” (lines 23 and 24 on page 102) and substitute “that the person has contravened a civil remedy provision”.

To insert after *new section 42ZA* (after line 35 on page 104) the following section:

“42ZAB Court must order that recovery from pecuniary penalty be applied to Commission’s actual costs

If the Court orders that a person pay a pecuniary penalty, and the proceedings were brought (in whole or in part) by the Commission, the Court must also order that the penalty must be applied first to pay the Commission’s actual costs in bringing the proceedings.

New section 42ZC(2) and (3): to omit these subsections (lines 1 to 5 on page 106).

New section 42ZK(1): to omit “2” (line 4 on page 109) and substitute “3”.

New section 43C(1): to omit “against section 38 (dealers in futures contracts must be authorised)” (lines 21 and 22 on page 111) and substitute “under section 39 (contravention of section 38 an offence)”.

New section 43F(2)(c)(ii): to omit “event” (line 23 on page 114) and substitute “ground”.

New section 43H: to omit “court” (line 18 on page 115) and substitute “management banning”.

New section 43M: to omit “a court” (line 22 on page 118) and substitute “an investment adviser or a broker banning”.

New section 43O: to add (after line 7 on page 120) the following subsection:

“(3) The Commission, and any other person that the Court thinks fit, may attend and be heard at the hearing of the application.

New section 43P(3): to insert after “section” (line 24 on page 121) “and **section 43Q**”.

New section 43QA: to add (after line 34 on page 123) the following subsection:

“(3) In determining an application for the grant of an interim order, the Court must not take into account that the applicant is not required to give an undertaking as to damages.

New section 43T: to omit “or conducts” (line 2 on page 125).

New section 43T: to omit “conducting” (line 5 on page 125) and substitute “bringing”.

Clause 28

New section 48(1)(b): to omit “security holders’ ” (line 29 on page 126) and substitute “holding”.

New section 48(1): to add the following paragraph (after line 36 on page 126):

“(d) exempt any person or class of persons from compliance with any requirement of the Futures Industry (Client Funds) Regulations 1990 or regulations that replace them, provided that the Commission is satisfied that

there are adequate alternative safeguards for preserving client money and client property.

New section 48C(1): to omit “**section 6(1)(a) to (f)**” (line 17 on page 127) and substitute “**section 6(1)(a) to (g)**”.

New section 49(1)(a): to omit this paragraph (lines 37 and 38 on page 130) and substitute the following paragraph:

- “(a) declaring any persons (whether described as a class or otherwise) not to be officers for the purpose of the definition of **officer** in **section 2**:

Clause 30

Subclause (2): to omit “**27**” (line 11 on page 137) and substitute “**26**”.

Clause 31

Subclause (1)(c): to omit “the principal Act, or any” (line 23 on page 137) and substitute “the rest of the principal Act and any other”.

Subclause (2): to omit “The Investment Advisers (Disclosure) Act 1996 and the principal Act, and the regulations in force under the principal Act,” (lines 27 and 28 on page 137) and substitute “The enactments referred to in **subsection (1)**”.

Clause 33

Subclause (3): to omit this subclause (line 23 on page 139 to line 15 on page 140) and substitute the following subclause:

- (3) Section 2 is amended by adding the following subsection:
- “(2) In **sections 32, 33, and 33AA** and in **subpart 2 of Part 3** (which contain the enforcement powers of the Panel and the Court), unless the context otherwise requires, **contravene the takeovers code or not act in compliance with the takeovers code** includes—
- “(a) a contravention of the takeovers code or a term or condition of an exemption from the takeovers code; or
- “(b) an attempt to contravene the takeovers code or a term or condition of an exemption from the takeovers code; or
- “(c) aiding, abetting, counselling, or procuring any other person to contravene the takeovers code or a term or condition of an exemption from the takeovers code; or
- “(d) inducing, or attempting to induce, any other person, whether by threats or promises or otherwise, to contravene the takeovers code or a term or condition of an exemption from the takeovers code; or
- “(e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention by any other person of the takeovers code or a term or condition of an exemption from the takeovers code; or
- “(f) conspiring with any other person to contravene the takeovers code or a term or condition of an exemption from the takeovers code.”

Clause 42

New section 33G(4): to omit this subclause (lines 7 to 10 on page 147) and substitute the following subclause:

- “(4) **Subsections (1)(b) and (2)** apply whether or not—
 - “(a) the person has previously engaged in conduct of that kind:
 - “(b) there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.

New section 33J(c): to omit “of that kind” (line 36 on page 147) and substitute “or transmission of securities”.

New section 33L(2) and (3): to omit these subsections (lines 3 to 7 on page 150).

New section 33M(b): to omit “of that matter” (line 18 on page 150) and substitute “that the person has contravened the takeovers code”.

New section 33M(c): to omit “of that matter” (line 22 on page 150) and substitute “that the person has contravened the takeovers code”.

New section 33M(c)(i): to omit “step” in both places where it appears (lines 28 and 30 on page 150) and substitute “event”.

New section 33N(1): to insert after “compensatory order” (lines 38 and 39 on page 150) “under **section 33K**” .

New section 33Q(a): to omit “objectives of” (omit line 26 on page 151) and substitute “principles contained in”.

New section 33R: to insert after *new section 33Q* (after line 2 on page 152) the following section:

“33R Court must order that recovery from pecuniary penalty be applied to Panel’s actual costs

If the Court orders that a person pay a pecuniary penalty, and the proceedings were brought (in whole or in part) by the Panel, the Court must also order that the penalty must be applied first to pay the Panel’s actual costs in bringing the proceedings.

Heading to clause 50

To omit “**44J**” (line 12 on page 154) and substitute “**43C**”.

Clause 51

New section 44(2)(d): to omit “fail or refuse” (line 18 on page 156) and substitute “refuse or fail”.

New section 44(3): to omit this subsection (lines 20 to 22 on page 156) and substitute the following subsection:

- “(3) A body corporate contravenes **subsection (2)** if its representative refuses or fails to appear before the Panel to give evidence, refuses to take an oath or affirmation as a witness, refuses to answer any question, or refuses or fails to provide any document or information that the body corporate is required to provide.

New section 44(6) and (7): to omit these subsections (lines 30 to 40 on page 156).

To insert after *new section 44* (after line 40 on page 156) the following section:

“44A Conviction of offence under section 44 excluded in certain cases

- “(1) A person must not be convicted of an offence under **section 44** if, in the opinion of the court dealing with the case,—
- “(a) the contravention related to matters that were immaterial to the relevant matter before the Panel; or
- “(b) the contravention ought reasonably to be excused, having regard to all the circumstances of the case.
- “(2) A director of a body corporate must not be convicted of an offence under **section 44** in relation to a contravention by the body corporate if, in the opinion of the court dealing with the case, the contravention took place without the director’s knowledge and consent.

New section 44B(1)(b): to omit this paragraph (lines 11 to 14 on page 157).

New section 44B(1)(c): to add (after line 20 on page 157) the following subparagraph:

- “(iii) induce a person to vote for, or to vote against, a transaction that is or is likely to be regulated by the takeovers code, or to abstain from voting in respect of that transaction.

New section 44DA(1): to omit “an entitled person” (line 12 on page 158) and substitute “any person referred to in section 35(1)(a) to (g)”.

New section 44DA(2): to omit this subsection (lines 32 to 34 on page 158).

New section 44DC: to omit “court” (line 11 on page 159) and substitute “management banning”.

New section 44DF: to omit this section (lines 5 to 10 on page 160) and substitute the following section:

“44DF 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 under **section 44DA**,—
- “(a) give notice to the Registrar of Companies and the Panel 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 44DB or section 44DE** must give to the Panel not less than 10 days’ written notice of that person’s intention to apply.
- “(3) The Panel, and any other person that the Court thinks fit, may attend and be heard at the hearing of the application.

New section 44DG(3): to insert after “section” (line 27 on page 160) “and section 44DH”.

New section 44DG(3): to insert (after line 29 on page 160) the following definition:

“associated persons are—

- “(a) persons who are relatives within the meaning of the Income Tax Act 2004 or de facto partners; or
- “(b) persons who are partners to whom the Partnership Act 1908 applies; or
- “(c) bodies corporate that consist of substantially the same shareholders or are under the control of the same persons; or
- “(d) a body corporate and a person who has the power, directly or indirectly, to exercise, or control the exercise of, the right to vote attached to 25% or more of the voting securities of the body corporate; or
- “(e) a body corporate and a person who is a director or principal officer of the body corporate

New section 44DI: to add (after line 35 on page 162) the following subsection:

- “(3) In determining an application for the grant of an interim order, the Court must not take into account that the applicant is not required to give an undertaking as to damages.

New section 44F: to omit “or conducts” (line 23 on page 163).

New section 44F: to omit “conducting” (line 26 on page 163) and substitute “bringing”.

New section 44FA: to omit “That” (line 28 on page 163) and substitute “The”.

New section 44FA: to omit “other” (line 29 on page 163).

New section 44H(e): to insert after “contravention” (lines 23 and 24 on page 164) “of this Act or the takeovers code”.

Clause 56

To omit *new rule 64* (line 29 on page 166 to line 3 on page 167) and substitute the following rule:

“64 Misleading or deceptive conduct

- “(1) A person must not engage in conduct that is—
 - “(a) conduct in relation to any transaction or event that is regulated by this code; and
 - “(b) misleading or deceptive or likely to mislead or deceive.
- “(2) A person must not engage in conduct that is—
 - “(a) incidental or preliminary to a transaction or event that is or is likely to be regulated by this code; and
 - “(b) misleading or deceptive or likely to mislead or deceive.

Clause 56A

To omit this clause (lines 15 to 20 on page 168).

Clause 58

Heading to clause 58: omit “Part” and (line 3 on page 169)) and substitute “section”.

Paragraph (a): omit “Part” in both places where it appears (lines 7 and 10 on page 169) and substitute “section”.

Paragraph (b): omit “Part” in both places where it appears (lines 13 and 16 on page 169) and substitute section.

Clause 61

New section 5A: to omit this section (lines 9 to 14 on page 170) and substitute the following section:

“5A No liability under Act if not liable under Securities Act 1978 or Securities Markets Act 1988

A court hearing a proceeding brought against a person under this Act must not find that person liable for conduct—

- “(a) that is regulated by the Securities Act 1978 if that person would not be liable for that conduct under that Act:
- “(b) that is regulated by the Securities Markets Act 1988 if that person would not be liable for that conduct under that Act.

Clause 62

New section 48A(1)(b): to omit “1983” (line 4 on page 171) and substitute “1993”.

New section 48A(2): to insert after “1978 or” (line 8 on page 171) “by the Takeovers Panel” .

New section 48A(2): to omit “1983” (line 8 on page 171) and substitute “1993”.

Schedule 1

To insert after the item relating to the Building Act 2004 (after line 10 on page 172) the following item:

Charities Act 2005 (2005 No 39)

Repeal section 16(2)(d) and substitute:

- “(d) an individual who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993:”.

To insert after the second item in the item relating to the Summary Proceedings Act 1957 (after line 16 on page 175) the following item:

60G offence of contravening order to
preserve assets

To add (after line 23 on page 175) the following item:

44DK offence of contravening order to
preserve assets

Schedule 2

To insert after the item relating to the Electricity Industry Reform Act 1998 (after line 15 on page 180) the following item:

Judicature Act 1908 (1908 No 89)

Section 24B(1)(e): add “or the Securities Markets Act 1988”.

Fourth item in the item relating to the Summary Proceedings Act 1957: to omit “38” (line 26 on page 181) and substitute “39”.

Item relating to the Summary Proceedings Act 1957: to add (after line 4 on page 182) the following item:

43QC offence of contravening order to
preserve assets

Explanatory note

The majority of the amendments contained in this Supplementary Order Paper are minor technical amendments made for reasons of style, consistency, clarification, or correction. The changes that merit some brief explanation are discussed below.

Clause 2: commencement

Generally the Act will come into force on the day after Royal assent. However, the commencement of *subpart 2 of Part 1* (the amendments to the Securities Markets Act 1988) will be delayed and those provisions will come into force by Order in Council. A handful of provisions outside *subpart 2 of Part 1* that are affected by its delayed commencement will also come into force by Order in Council.

New clause 11A: new section 63A of the Securities Act 1978

New section 63A of the Securities Act 1978 mirrors *new section 19* of the Securities Markets Act 1988. The purpose of these companion provisions is to ensure that conduct is not prosecuted under the Fair Trading Act 1986 which could not be prosecuted under either the Securities Act 1978 or the Securities Markets Act 1988. In other words, there should be no Fair Trading Act jurisdiction over conduct that is not a transgression under the securities legislation.

Clause 21: protection of agent or officer

New sections 9C, 9E, and 10B are amended to put beyond doubt, if any existed, that an adviser acting in a professional capacity for a principal does not transgress the no dealing, no disclosure, and no advice or encouragement rules in *new sections 8D and 8E* by virtue of knowledge or inside information acquired in the course of acting for the principal.

Clause 21: application of insider conduct rules to futures contracts

It is intended that the rules relating to insider conduct should apply also to conduct in relation to a futures contract that is listed on an authorised futures exchange. The rules, as drafted, hinge on knowledge in relation to a public issuer. In the case of a futures contract, however, this concept does not translate: it is not knowledge about the public issuer that matters but knowledge about the futures contract itself or the underlying commodity, index, or asset that is the subject of the futures contract or about the issuer of any security underlying the futures contract. Accordingly *new section 11E* adapts for futures contracts the terminology used in *subpart 1 of Part 1* of the Securities Markets Act 1988.

New clause 21A: new section 19PA of the Securities Markets Act 1988

New clause 21A inserts *new section 19PA* in the Securities Markets Act 1988. *New section 19PA* protects a person from liability for contravention of a public issuer's continuous disclosure obligation if that person takes reasonable steps to ensure compliance by the public issuer. The possibility of liability arises because *contravene* is defined (in *new section 2(1)*) very broadly to include being "knowingly concerned in, or a party to, the contravention by any other person". Apart from the merit of protecting from liability a person who acts properly, the new provision also ensures consistency with Australian law, where the corresponding provision is section 674(2B) of the Corporations Act 2001 (Aust).

Clause 27: new section 41B(2) of Securities Markets Act 1988

The rule in *new section 41B(1)* of the Securities Markets Act 1988 is that an investment adviser must not give investment advice to a member of the public without making certain disclosures first. It is recognised that prior disclosure might be impractical or too onerous in some cases, and *new section 41B(2)*, through a regulation making power, allows some flexibility as to timing of disclosure.

Clause 27: new section 42ZAB of Securities Markets Act 1988

This new provision requires (there is no discretion) a Court to order that the payment of a pecuniary penalty must be applied in the first instance to the actual costs of the Securities Commission in bringing or conducting the relevant proceedings. There is a companion provision to the same effect in relation to the Takeovers Panel in *new section 33R* of the Takeovers Act 1993 (*see clause 42*).

