

Reprint
as at 1 December 2014

Securities Amendment Act 2006

Public Act 2006 No 46
Date of assent 24 October 2006

Securities Amendment Act 2006: repealed, on 1 December 2014, pursuant to section 4(1)(a) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Securities Amendment Act 2006.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent.
- (2) However, the following provisions only come into force on a date to be appointed by the Governor-General by Order in Council:
 - (a) new section 27(1)(b) of the Securities Act 1978 as substituted by section 5:
 - (b) section 19:
 - (c) in the Schedule, the repeal of sections 382(1)(c) and 383(1)(d) of the Companies Act 1993.
- (3) For the purposes of subsection (2), 1 or more orders may be made bringing different provisions into force on different dates.

Section 2(2)(a): section 27(1)(b) of the Securities Act 1978 as substituted by section 5 brought into force, on 29 February 2008, by clause 2(a) of the Securities Amendment Act 2006 Commencement Order 2007 (SR 2007/369).

Section 2(2)(b): section 19 brought into force, on 29 February 2008, by clause 2(b) of the Securities Amendment Act 2006 Commencement Order 2007 (SR 2007/369).

Section 2(2)(c): in the Schedule, the repeal of sections 382(1)(c) and 383(1)(d) of the Companies Act 1993 brought into force, on 29 February 2008, by clause

2(c) of the Securities Amendment Act 2006 Commencement Order 2007 (SR 2007/369).

3 Principal Act amended

This Act amends the Securities Act 1978.

Sharing of information provisions

4 New section 17B inserted

The following section is inserted after section 17A:

“17B Sharing of information with Commerce Commission

“(1) The Commission may communicate to the Commerce Commission any information that the Commission—

“(a) holds in relation to the exercise of the Commission’s powers, or the performance of its functions and duties; and

“(b) considers may assist the Commerce Commission in the exercise of the Commerce Commission’s powers, or the performance of its functions and duties, in respect of the Fair Trading Act 1986.

“(2) The Commission may use any information communicated to it by the Commerce Commission under section 48A of the Fair Trading Act 1986 in the Commission’s exercise of its powers, or the performance of its functions and duties.

“(3) This section applies despite anything to the contrary in any enactment, contract, deed, or document.”

**Amendments to delegation of powers by
Commission**

5 Delegation of powers by Commission

Section 27 is amended by repealing subsection (1) and substituting the following subsection:

“(1) The Commission may not delegate the powers in—

“(a) sections 5(5), 38B, 38F, 44, 44B(2), 67, 69, and 69N:

- “(b) sections 34, 36ZO, 48, 48C, and subpart 2 of Part 5, of the Securities Markets Act 1988.”

Amendments to remedies

6 New heading and sections 55A to 55G inserted

- (1) The following heading and sections are inserted after section 55:

“Civil liability

“55A Overview of civil liability

- “(1) The following civil remedies are available from the Court under this Act if there is a civil liability event:
- “(a) a pecuniary penalty order and declaration of civil liability (on application by the Commission only) under section 55C:
- “(b) compensation under section 55G.
- “(2) Sections 56 to 57A cover who is liable for the civil liability event for both these remedies.
- “(3) This section is a guide only to the general scheme and effect of sections 55B to 57E.

“55B What are civil liability events

In this Part, a **civil liability event** is—

- “(a) distribution of an advertisement or a registered prospectus that includes an untrue statement:
- “(b) a breach of regulations made under this Act relating to the offer, sale, or management of interests in contributory mortgages.

“55C When Court may make pecuniary penalty orders and declarations of civil liability

If the Commission applies for a pecuniary penalty order against a person under this Act, the Court—

- “(a) must determine whether there has been a civil liability event and whether the person is liable for a pecuniary penalty order for that civil liability event under sections 56 to 57A; and

- “(b) must make a declaration of civil liability if satisfied of those matters (*see* sections 55D and 55E); and
- “(c) may order the person to pay to the Crown a pecuniary penalty that the Court considers appropriate (*see* section 55F) if satisfied of those matters and that the civil liability event—
 - “(i) materially prejudices the interests of subscribers for the securities involved; or
 - “(ii) is likely to materially damage the integrity or reputation of any of New Zealand’s securities markets; or
 - “(iii) is otherwise serious.

“55D Purpose and effect of declarations of civil liability

- “(1) The purpose of a declaration of civil liability is to enable a person who brings proceedings under section 55G to rely on the declaration in the proceedings for compensation, and not be required to prove the civil liability event.
- “(2) Accordingly, a declaration of civil liability is conclusive evidence of the matters that must be stated in it under section 55E.

“55E What declarations of civil liability must state

A declaration of civil liability must state the following:

- “(a) the court that made the declaration; and
- “(b) whether the civil liability event comes within section 55B(a) or (b); and
- “(c) the person who has been found liable for the civil liability event; and
- “(d) the conduct that constituted the civil liability event.

“55F Amount of pecuniary penalty

- “(1) The maximum amount of a pecuniary penalty under this Act is \$500,000 for an individual and \$5,000,000 for a body corporate, for each civil liability event.
- “(2) In determining an appropriate pecuniary penalty, the Court must have regard to all relevant matters, including—
 - “(a) the nature and extent of the civil liability event; and

- “(b) the likelihood, nature, and extent of any damage to the integrity or reputation of New Zealand’s securities markets because of the civil liability event; and
- “(c) the nature and extent of any loss or damage suffered by subscribers because of the civil liability event; and
- “(d) the circumstances in which the civil liability event occurred; and
- “(e) whether or not the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

“55G Compensation orders

- “(1) The Court may, on the application of the Commission or a subscriber, order a liable person to pay compensation to all or any of the persons who subscribed for any securities on the faith of an advertisement or registered prospectus that includes an untrue statement, for the loss or damage that the persons have sustained by reason of the untrue statement.
- “(2) The Court may, on the application of the Commission or a subscriber for an interest in a contributory mortgage, order a liable person to pay compensation to all or any of the persons who subscribe for an interest in a contributory mortgage or who hold an interest in a contributory mortgage, for the loss or damage they have sustained by reason of any breach of regulations made under this Act relating to the offer, sale, or management of interests in contributory mortgages.
- “(3) A **liable person** is a person who is liable for compensation for the relevant civil liability event under any of sections 56 to 57A.
- “(4) The liable person must pay any compensation ordered under the compensation order.
- “(5) The Court may, if the proceedings were brought or conducted (in whole or in part) by the Commission, direct that the Commission’s costs in conducting the proceedings be paid from any amounts recovered under a compensation order.
- “(6) Subsection (5) does not limit section 65B.”
- (2) Section 2(1) is consequentially amended by inserting the following definition in its appropriate alphabetical order:

“**civil liability event** has the meaning set out in section 55B”.

7 Civil liability for misstatements in advertisement or registered prospectus

- (1) Section 56 is amended by omitting the heading and substituting the heading “**Which persons are liable for misstatements**”.
- (2) Section 56 is amended by repealing subsection (1) and substituting the following subsection:
 - “(1) A person is liable for a pecuniary penalty order (section 55C) and for compensation (section 55G) for the distribution of an advertisement or registered prospectus that includes an untrue statement if—
 - “(a) the person is the issuer of the securities referred to in the advertisement or registered prospectus (the **issuer**) and the issuer is an individual:
 - “(b) in the case of an advertisement, the person—
 - “(i) is a director of the issuer at the time that the advertisement is distributed; or
 - “(ii) has authorised himself or herself to be named and is named in the advertisement as a director of the issuer or as having agreed to become a director immediately or after an interval of time:
 - “(c) in the case of a registered prospectus, the person—
 - “(i) has signed the prospectus as a director of the issuer or is a director on whose behalf the prospectus has been so signed; or
 - “(ii) has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or has agreed to become a director either immediately or after an interval of time:
 - “(d) the person is a promoter of the securities referred to in the advertisement or registered prospectus.”
- (3) Section 56(3) is amended by inserting the following paragraph after paragraph (b):
 - “(ba) (in the case of liability for a pecuniary penalty order) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he or she had reasonable grounds to believe and did be-

lieve, up to the time of the distribution of the advertisement or registered prospectus, that the statement was true; or”.

- (4) Section 56(3)(c) is amended by inserting “(in the case of liability for compensation)” before “as regards every untrue statement”.

8 Civil liability for misstatements by expert

- (1) Section 57 is amended by omitting the heading and substituting the heading “**Which experts are liable for misstatements**”.

- (2) Section 57 is amended by repealing subsection (1) and substituting the following subsection:

“(1) A person is liable for a pecuniary penalty order (section 55C) and for compensation (section 55G) for an untrue statement included in an advertisement or registered prospectus if—

“(a) the person gave consent to the distribution of the advertisement or registered prospectus under section 38A or section 40 or under regulations made under this Act; and

“(b) the untrue statement purports to be made by him or her as an expert.”

- (3) Section 57(2) is amended by inserting the following paragraph after paragraph (b):

“(ba) (in the case of liability for a pecuniary penalty order) he or she was competent to make the statement and that he or she had reasonable grounds to believe and did, up to the time of the distribution of the advertisement or registered prospectus, believe that the statement was true; or”.

- (4) Section 57(2)(c) is amended by inserting “(in the case of liability for compensation)” before “he or she was competent”.

9 Civil liability for breach of contributory mortgage regulations

- (1) Section 57A is amended by omitting the heading and substituting the heading “**Which persons are liable for breaches of contributory mortgage regulations**”.

- (2) Section 57A is amended by repealing subsection (1) and substituting the following subsection:

- “(1) A person is liable for a pecuniary penalty order (section 55C) and for compensation (section 55G) for a breach of regulations made under this Act relating to the offer, sale, or management of interests in contributory mortgages if,—
- “(a) in the case of a contributory mortgage broker who is an individual, the person acts, or is charged with acting, as the contributory mortgage broker for the contributory mortgage at the time that the breach occurred:
 - “(b) in the case of a contributory mortgage broker that is a body corporate or other body, the person is—
 - “(i) the contributory mortgage broker; or
 - “(ii) a director of the contributory mortgage broker that is acting, or is charged with acting, as the contributory mortgage broker for the contributory mortgage at the time that the breach occurred.”

10 New heading and sections 57B to 57E inserted

The following heading and sections are inserted after section 57A:

“General provisions on civil liability remedies

“57B Pecuniary penalty order and compensation order may be made for same conduct

A person may be liable for both a pecuniary penalty order and compensation for the same conduct.

“57C Only one pecuniary penalty order may be made for same conduct

If conduct by a person constitutes 2 or more civil liability events, proceedings may be brought against that person for any 1 or more of the civil liability events, but no person is liable to more than 1 pecuniary penalty order for the same conduct.

“57D Standard of proof for civil remedies

The proceedings under sections 55A to 57A are civil proceedings and the usual rules of the Court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

“57E Time limit for applying for civil remedies

- “(1) An application for a pecuniary penalty order may be made at any time within 2 years after the date on which the matter giving rise to the civil liability event was discovered or ought reasonably to have been discovered.
- “(2) The usual time limits apply to all applications for compensation.
- “(3) However, an application for compensation in respect of the civil liability event may be made at any time within 6 months after the date on which a declaration of civil liability is made, even if the usual time limit has expired.”

11 New heading inserted

The following heading is inserted before section 58: “*Criminal liability*”.

12 Criminal liability for obstructing exercise of powers

- (1) Section 59A(1) is amended by repealing paragraphs (b) and (c) and substituting the following paragraphs:
- “(b) having been summoned to appear before the Commission or a member, officer, or employee of the Commission, for the purposes of any matter, without reasonable excuse—
- “(i) refuses or fails to appear:
- “(ii) refuses to take an oath or affirmation as a witness:
- “(iii) refuses to answer any question:
- “(iv) refuses or fails to provide any document or information that the person is required to provide; or
- “(c) deceives or attempts to deceive or knowingly misleads the Commission or a member, officer, or employee of the Commission in providing evidence to any of them; or”.
- (2) Section 59A is amended by inserting the following subsection after subsection (1):
- “(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.”

13 New sections 60A to 60G and headings inserted

The following headings and sections are inserted after section 60:

“Management bans

“60A When Court may make management banning orders

“(1) The Court may, on application by an entitled person, make a management banning order against a person (A) if—

“(a) A has been convicted of an offence against any of sections 58, 59, or 59A or a pecuniary penalty order has been made against A under this Act; or

“(b) A has, while a director of an incorporated or unincorporated body,—

“(i) persistently contravened this Act, the Companies Act 1993, the Securities Markets Act 1988, the Takeovers Act 1993, or the takeovers code in force under that Act; or

“(ii) if the incorporated or unincorporated body has so contravened, persistently failed to take all reasonable steps to obtain compliance with those Acts or the code; or

“(c) A has been prohibited in an overseas jurisdiction from carrying on activities that the Court is satisfied are substantially similar to any of the activities referred to in section 60B in connection with a contravention of any law relating to the offering of securities.

“(2) An **entitled person** is—

“(a) the Commission;

“(b) the Registrar;

“(c) an incorporated or unincorporated body that—

“(i) A is a director of at the time of the application; or

“(ii) A was a director of at the time of the ground that triggers the making of the order under subsection (1):

“(d) the liquidator of an incorporated or unincorporated body referred to in paragraph (c):

“(e) a person who is, or has been, a security holder or creditor of an incorporated or unincorporated body referred to in paragraph (c).

“60B Terms of management banning orders

A management banning order may, for a period stated in the order of 10 years or less, prohibit or restrict the person (without the leave of the Court) from being a director or promoter of, or in any way (whether directly or indirectly) being concerned or taking part in the management of, an incorporated or unincorporated body (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand).

“60C Offence of contravening management banning order

An individual who acts in contravention of a management banning order under section 60A commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both.

“60D Only one management banning order may be made for same conduct

If conduct by a person constitutes grounds for making an order under any 1 or more of section 60A of this Act, section 43F of the Securities Markets Act 1988, section 44F of the Takeovers Act 1993, and section 383 of the Companies Act 1993, proceedings may be brought against that person under any 1 or more of those provisions, but no person is liable to more than 1 order under those provisions for the same conduct.

“60E Persons automatically banned from management

- “(1) This section applies to a person if the person has been convicted of an offence against either section 58 or 59A or a pecuniary penalty order has been made against the person under this Act.
- “(2) The person must not, for the period of 5 years after the conviction or making of the order (without the leave of the Court) be a director or promoter of, or in any way (whether directly or indirectly) be concerned or take part in the management of, an incorporated or unincorporated body (other than an overseas company, or an incorporated or unincorporated body, that does not carry on business in New Zealand).

“(3) An individual who acts in contravention of this section commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or to both.

“**60F General provisions for bans and banning orders**

“(1) The Registrar of the Court must, as soon as practicable after the making of a management banning order by a Court under section 60A,—

“(a) give notice to the Registrar of Companies and the 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.

“(2) A person intending to apply for the leave of the Court under section 60B or section 60E must give to the Commission not less than 10 working days’ written notice of that person’s intention to apply.

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

“*Orders to preserve assets to satisfy claims*

“**60G When Court may prohibit payment or transfer of money, securities, or other property**

“(1) This section applies if—

“(a) an investigation is being carried out under this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or

“(b) a prosecution has begun against a person for a contravention of this Act; or

“(c) a civil proceeding has begun against a person under this Act.

“(2) The Court may, on application by the Commission or by an aggrieved person, make 1 or more of the orders listed in section 60H if the Court considers it necessary or desirable to do so for the purpose of protecting the interests of an aggrieved person.

“(3) In this section and section 60H,—

“**aggrieved person** means any person to whom a relevant person is liable

“**liable** means liable, or may be or become liable, to pay money (whether in respect of a debt, by way of damages or compensation, or otherwise) or to account for securities or other property

“**relevant person** means a person referred to in subsection (1).

“Compare: Section 1323(1), Corporations Act 2001 (Aust.)

“**60H What orders may be made**

“(1) The orders that may be made under section 60G are—

“(a) an order prohibiting the relevant person from transferring, charging, or otherwise dealing with money, securities, or other property held or controlled by the relevant person:

“(b) an order prohibiting a person who is indebted to the relevant person or to an associated person of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed:

“(c) an order prohibiting a person holding money, securities, or other property, on behalf of the relevant person, or on behalf of an associated person of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities, or other property, is or are held:

“(d) an order prohibiting the taking or sending out of New Zealand by a person of money of the relevant person or of an associated person of the relevant person:

“(e) an order prohibiting the taking, sending, or transfer by a person of securities or other property of the relevant person, or of an associated person of the relevant person from a place in New Zealand to a place outside New Zealand (including the transfer of securities from a register in New Zealand to a register outside New Zealand):

“(f) an order requiring the relevant person, or any person holding money, securities, or other property on behalf

of the relevant person or an associated person of the relevant person, to pay or transfer money, securities, or other property to a specified person to be held on trust pending determination of the investigation, prosecution, or civil proceeding:

- “(g) an order appointing,—
 - “(i) if the relevant person is a natural person, a receiver or trustee, having any powers that the Court orders, of the property or of part of the property of that person; or
 - “(ii) if the relevant person is a body corporate, a receiver or receiver and manager, having any powers that the Court orders, of the property or of part of the property of that person:
- “(h) if the relevant person is a natural person, an order requiring that person to deliver up to the Court his or her passport and any other documents that the Court thinks fit:
- “(i) if the relevant person is a natural person, an order prohibiting that person from leaving New Zealand, without the consent of the Court.

- “(2) A reference in subsection (1)(e) or (g) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example,—
 - “(a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
 - “(b) in a fiduciary capacity.
- “(3) An order may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

“Compare: Section 1323(1), (2A), (6), Corporations Act 2001 (Aust.)

“60I Interim orders

- “(1) If an application is made to the Court for an order under section 60G, the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

“(2) The Court must not require the applicant or any other person, as a condition of granting an interim order under this section, to give an undertaking as to damages.

“Compare: Section 1323(3), (4), Corporations Act 2001 (Aust.)

“**60J Relationship with other law**

“(1) Nothing in sections 60G to 60I affects the powers that the Court has apart from those sections.

“(2) This section has effect subject to the Insolvency Act 1967.

“Compare: Section 1323(7), (8) Corporations Act 2001 (Aust.)

“**60K Offence**

A person commits an offence who contravenes an order by the Court under section 60H or section 60I that is applicable to the person and is liable on conviction on indictment,—

“(a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000, or both:

“(b) in the case of a body corporate, to a fine not exceeding \$300,000.

“Compare: Section 1323(9), (10), Corporations Act 2001 (Aust.)”

General provisions on liability

14 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.”

15 New heading above section 65A substituted

The heading above section 65A is repealed and the heading “*Other general provisions*” substituted.

16 New sections 65B to 65F inserted

The following sections are inserted after section 65A:

“65B Court may order payment of Commission’s costs

If the Commission brings or conducts proceedings under this Act and the Court makes any order against a person under this Act, the Court may also order that person to pay the Commission’s costs and expenses in conducting the proceedings.

“65C Orders to secure compliance

The Court may, for the purpose of securing compliance with any other order it makes under this Act, direct a person to do or refrain from doing a specified act.

“65D Giving notice of application for Court orders

Before making an order under this Act, the Court may direct the person making the application for the order to—

- “(a) give notice of the application to those persons the Court thinks fit;
- “(b) publish notice of the application in the manner the Court thinks fit.

“65E General provisions as to Court’s orders

- “(1) An order under this Act may be made on the terms and conditions the Court thinks fit.
- “(2) The Court may revoke, vary, or suspend an order made under this Act on the terms and conditions the Court thinks fit.

“65F No pecuniary penalty and fine for same conduct

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine under this Act for the same conduct.”

**Amendments to investigation and
enforcement powers**

17 New sections 69B, 69BA, and 69C substituted

Sections 69B and 69C are repealed and the following sections substituted:

“69B Who may receive evidence

- “(1) The Commission may receive evidence through a member, officer, or employee of the Commission, or any 2 or more of them.
- “(2) However, if a person who is summoned to give evidence under section 69D requests that the evidence be received by a meeting of the Commission, then—
- “(a) subsection (1) does not apply, and the evidence must be received at a meeting of the Commission; and
 - “(b) the meeting must not be held by a method under section 15(2A)(b) except with the consent of the person summoned.

“69BA Admissibility of evidence

The Commission may receive in evidence, whether admissible in a court of law or not, any statement, document, information, or matter that,—

- “(a) in the opinion of the person receiving it, may assist the Commission in dealing effectively with any matter before it; or
- “(b) the Commission may receive under section 69F.

“69C How evidence may be given

- “(1) The Commission may receive evidence—
- “(a) given on oath:
 - “(b) given not on oath:
 - “(c) if the person receiving the evidence permits it, given by a written statement:
 - “(d) if the person receiving evidence permits it, given by a written statement verified on oath:
 - “(e) given by audio-visual communication, if the Commission and the person giving the evidence agree.
- “(2) A member, officer, or an employee of the Commission may administer an oath for the purpose of a person giving evidence on oath.”

18 Power to summon witnesses

- (1) Section 69D is amended by repealing subsection (1) and substituting the following subsection:

- “(1) A member of the Commission may issue a summons to a person requiring that person to appear (in the case of a body corporate, to appear by its authorised representative) before the Commission, or a member, officer, or employee of the Commission, in relation to any matter before the Commission and to do any of the following things:
- “(a) give evidence:
 - “(b) give evidence under oath:
 - “(c) provide any documents or information that are in the person’s possession or control and that are relevant to the matter.”
- (2) Section 69D(2) is amended by repealing paragraph (c) and substituting the following paragraph:
- “(c) the person’s right to request that the person give evidence at a meeting of the Commission; and”.
- (3) Section 69D is amended by repealing subsection (3) and substituting the following subsection:
- “(3) A summons may be served,—
- “(a) in the case of a natural person, by delivering it personally to the person summoned or by leaving it at his or her usual place of residence or business at least 24 hours before his or her attendance is required:
 - “(b) in the case of a body corporate, by leaving it at the body corporate’s usual place of business at least 24 hours before its attendance is required.”

19 Right to be heard and represented at proceedings before Commission

Section 69L(1) of the principal Act is amended by repealing paragraphs (g) and (h) and substituting the following paragraph:

- “(g) at a meeting for the purposes of section 42F of the Securities Markets Act 1988, the persons to whom notice of the order must be given under that section:”.

20 New section 69U substituted

Section 69U is repealed and the following section substituted:

“69U Restrictions on use of self-incriminating statements obtained by summons

- “(1) A self-incriminating statement made orally by a person summoned under section 69D (whether or not the statement is recorded in writing) in the course of answering any question before, or providing any information or document to, the Commission, or a member, officer, or employee of the Commission,—
- “(a) subject to paragraph (b), is not admissible in—
 - “(i) criminal proceedings against that person; or
 - “(ii) proceedings under this Act, the Securities Markets Act 1988, or the Takeovers Act 1993 for a pecuniary penalty order against that person; but
 - “(b) is admissible against that person in any proceeding in respect of the falsity of the person’s testimony, for example, in a prosecution for perjury or for an offence under section 59A(1).
- “(2) In addition,—
- “(a) a refusal or failure to answer a question or provide information or a document or comply with any other requirement may be used in evidence against that person in proceedings for an offence under section 59A(1) arising from that refusal or failure; and
 - “(b) the answering of a question in a way that is false, deceptive, or misleading or the providing of information or a document that is false, deceptive, or misleading may be used in evidence against that person in proceedings for an offence under section 59A(1) arising from that act.”

Amendments to regulation empowering provisions

21 New sections 70AA to 70AAF inserted

The following sections are inserted after section 70:

“70AA Regulations may require compliance with generally accepted accounting practice and incorporate financial reporting standards by reference

- “(1) Regulations may—

- “(a) require any person, class of persons, information, or class of information to comply with generally accepted accounting practice either generally or in specified circumstances; and
 - “(b) incorporate by reference any approved financial reporting standard.
- “(2) Regulations may require compliance with generally accepted accounting practice or incorporate material by reference—
- “(a) in whole or in part; and
 - “(b) with modifications, additions, or variations specified in the regulations.
- “(3) Material incorporated by reference in regulations has legal effect as part of the regulations.
- “(4) In this section and in sections 70AAB to 70AAF,—
- “**approved financial reporting standard** has the same meaning as in section 2(1) of the Financial Reporting Act 1993
 - “**chief executive** means the chief executive of the Ministry
 - “**generally accepted accounting practice** has the same meaning as in section 3 of the Financial Reporting Act 1993
 - “**material incorporated by reference** means any particular approved financial reporting standard that is incorporated by reference under subsection (1)(b)
 - “**Ministry** means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act.

“**70AAB Effect of amendments to, or replacement of, material incorporated by reference in regulations**

An amendment to, or replacement of, material incorporated by reference in regulations (**regulations A**) has legal effect as part of regulations A.

“**70AAC Access to material incorporated by reference**

- “(1) The chief executive—
 - “(a) must make the material referred to in subsection (3) (**the material**) available for inspection during working hours free of charge at the head office of the Ministry; and

- “(b) must make copies of the material available for purchase at a reasonable price at the head office of the Ministry; and
- “(c) may make copies of the material available in any other way that the chief executive considers appropriate in the circumstances (for example, on an Internet website); and
- “(d) must give notice in the *Gazette* stating that—
 - “(i) the material is incorporated in the regulations and the date on which the regulations were made; and
 - “(ii) the material is available for inspection during working hours, free of charge, at the head office of the Ministry and giving the location of that office; and
 - “(iii) copies of the material can be purchased at the head office of the Ministry and giving the location of that office; and
 - “(iv) if copies of the material are made available under paragraph (c), the material is available in other ways and details of where or how it can be accessed or obtained.
- “(2) The chief executive must comply with subsection (1) as soon as practicable after an approved financial reporting standard is incorporated by reference under section 70AA(1)(b).
- “(3) The material is—
 - “(a) material incorporated by reference in regulations; and
 - “(b) either—
 - “(i) any amendment to, or replacement of, the material referred to in paragraph (a); or
 - “(ii) the material referred to in paragraph (a) with the amendments or replacement material amalgamated within it.
- “(4) A failure to comply with this section does not invalidate regulations that incorporate material by reference.

“70AAD Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in regulations or to an amendment to, or replacement of, that material.

“70AAE Application of Regulations (Disallowance) Act 1989 to material incorporated by reference

- “(1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in regulations to be presented to the House of Representatives.
- “(2) Except as set out in subsection (1), the Regulations (Disallowance) Act 1989 applies to regulations that incorporate material by reference.

“70AAF Application of Standards Act 1988 not affected

Sections 70AA to 70AAE do not affect the application of sections 22 to 25 of the Standards Act 1988.”

22 Registration of judgment

Section 83 is amended by inserting “as a civil judgment debt” after “section 80”.

**Transitional validation relating to
Securities Amendment Act 2004**

23 Transitional validation for small employer superannuation schemes

- (1) Nothing in sections 37, 37A(1)(c), and 39 to 44 of the principal Act applied in respect of any interest in a small employer superannuation scheme on and from 15 April 2004 until the close of 23 October 2004.
- (2) During that period, the investment statement for a small employer superannuation scheme did not have to contain the statement required by clause 1(2) of Schedule 3D of the Securities Regulations 1983, as in force on 15 April 2004, if it instead contained the statement required by that clause as in force immediately before 15 April 2004.

- (3) In this section, **small employer superannuation scheme** has the meaning set out in regulation 2C of the Securities Regulations 1983, as in force immediately before 15 April 2004 (the date on which the Securities Amendment Act 2004 came into force).

Transitional provisions

24 Transitional provision for existing offences and contraventions

- (1) The principal Act continues to have effect as if it were not amended by this subpart for the purpose of—
- (a) investigating an existing offence or contravention:
 - (b) commencing or completing proceedings for an existing offence or contravention:
 - (c) imposing a penalty or other remedy, or making an order, in relation to an existing offence or contravention.
- (2) In this section, **existing offence or contravention** means—
- (a) an offence under, or contravention of, the principal Act that was committed or done in respect of a prospectus that was registered, or an advertisement that was distributed, before the commencement of this subpart; and
 - (b) in any other case, an offence under, or contravention of, the principal Act that was committed or done before the commencement of this subpart.

25 Related amendments

The enactments specified in the Schedule are amended in the manner set out in that schedule.

Schedule

Amendments related to Securities Act 1978

s 25

Building Act 2004 (2004 No 72)

Clause 2(2)(b) of Schedule 3: repeal and substitute:

- “(b) a person 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, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993.”.

Charities Act 2005 (2005 No 39)

Section 16(2)(d): repeal 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.”.

Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17)

Clause 2(b) of Schedule 1: repeal and substitute:

“(b) a person 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, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993.”.

Companies Act 1993 (1993 No 105)

Insert after section 151(2)(e):

“(ea) a person 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 Securities Act 1978 or the Securities Markets Act 1988 or the Takeovers Act 1993.”

Section 266(4): omit “or section 383 of this Act” and substitute “, section 383 of this Act, section 60A of the Securities Act 1978, section 43F of the Securities Markets Act 1988, or section 44F of the Takeovers Act 1993”.

Insert after section 280(1)(k):

“(ka) a person 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 Securities Act

1978, or the Securities Markets Act 1988, or the Takeovers Act 1993:”.

Section 382(1)(c): repeal.

Section 383(1)(c)(i): repeal and substitute:

“(i) persistently failed to comply with this Act or the Companies Act 1955, the Securities Act 1978, the Securities Markets Act 1988, the Takeovers Act 1993, or the takeovers code in force under that Act or, if the company has failed to so comply, persistently failed to take reasonable steps to obtain compliance with those Acts or the code; or”.

Section 383(1)(d): repeal.

Insert after section 383(4):

“(4A) If conduct by a person constitutes grounds for making an order under any 1 or more of this section, section 43F of the Securities Markets Act 1988, section 44F of the Takeovers Act 1993, and section 60A of the Securities Act 1978, proceedings may be brought against that person under any 1 or more of those provisions, but no person is liable to more than 1 order under those provisions for the same conduct.”

Crown Entities Act 2004 (2004 No 115)

Section 30(2)(b): repeal and substitute:

“(b) a person 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, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993:”.

Education Act 1989 (1989 No 80)

Section 103(1)(d): repeal and substitute:

“(d) 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, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993; or”.

**Maori Television Service (Te Aratuku Whakaata Irirangi
Maori) Act 2003 (2003 No 21)**

Clause 2(2)(b) of Schedule 2: repeal and substitute:

“(b) a person 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, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993:”.

Motor Vehicle Sales Act 2003 (2003 No 12)

Section 24(i): repeal and substitute:

“(i) a person 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, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993; or”.

Section 68(1)(c)(i): repeal and substitute:

“(i) 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, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993; or”.

Receiverships Act 1993 (1993 No 122)

Section 5(1)(j) and (k): repeal and substitute:

“(k) a person 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, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993:”.

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Section 46(1)(i) and (j): repeal and substitute:

“(j) 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,

or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993; or”.

Section 58(g) and (h): repeal and substitute:

“(h) 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, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993:”.

Summary Proceedings Act 1957 (1957 No 87)

Part 2 of the Schedule 1: insert in their appropriate alphabetical order:

Securities Act 1978	60C	offence of contravening management banning order
	60E	persons automatically banned from management
	60K	offence of contravening order to preserve assets
Takeovers Act 1993	44C	criminal liability for false or misleading statement or information
	44H	offence of contravening management banning order

44J persons
automatically
banned from
management

44P offence of
contravening order
to preserve assets

Eprint notes**1 *General***

This is an eprint of the Securities Amendment Act 2006 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 4(1)(a)

Securities Amendment Act 2006 Commencement Order 2007 (SR 2007/369)
