

# House of Representatives

# Supplementary Order Paper

Tuesday, 13 December 2016

## Statutes Amendment Bill

### *Proposed amendment*

Hon Simon Bridges, in Committee, to move the following amendment:

*Clauses 24B to 24E*

Replace *clauses 24B to 24E* (page 13, line 9 to page 15, line 17) with:

**24B New section 209C inserted (Alternative obligations for FMC reporting entities)**

After section 209B, insert:

**209C Alternative obligations for FMC reporting entities**

- (1) This section applies, in respect of a company (**company A**) that is an FMC reporting entity, on and after the date on which FMC regulations impose obligations on any company in relation to the way in which it must make its annual report available (including by electronic means).
- (2) If company A is an issuer of regulated products within the meaning of the FMC Act that is required to comply with those FMC regulations, sections 209 to 209B do not apply to an annual report to which the FMC regulations apply.
- (3) If company A is not an issuer of regulated products within the meaning of the FMC Act that is required to comply with those FMC regulations, the board of the company may elect, in respect of an annual report, to comply with the FMC regulations instead of with sections 209 to 209B (as if company A were an issuer of that type).
- (4) If **subsection (3)** applies,—

- (a) if the board complies with the FMC regulations, there is no liability for breach of sections 209 to 209B; and
- (b) if the board fails to comply with the FMC regulations, every director is liable for a breach of sections 209 to 209B (except to the extent that the board complies with those sections), but is not liable under the FMC Act.
- (5) In this section,—
- annual report**—
- (a) means a report prepared under section 208; and
- (b) includes a concise annual report (if any)
- FMC Act** means the Financial Markets Conduct Act 2013
- FMC regulations** means regulations made under section 543(1)(e) of the FMC Act that impose obligations on any FMC reporting entities in relation to the way in which an entity must make its annual report available under either or both of sections 96 and 97 of the FMC Act (including by electronic means)
- FMC reporting entity** has the same meaning as in section 451 of the FMC Act.
- (6) Regulations may be made under section 543(1)(e) of the FMC Act for the purpose of this section.

### Explanatory note

This Supplementary Order Paper amends *new Part 6A* of the Statutes Amendment Bill. *New Part 6A* was included in the Bill at the committee of the whole House stage on 2 November 2016 to amend provisions in the Companies Act 1993. *New Part 6A* would implement the changes proposed in the Member’s Bill, the Companies (Annual Report Notice Requirements) Amendment Bill. The purpose of *new Part 6A* is to reduce compliance costs for listed and other issuers in relation to the way in which annual reports must be made available (including by electronic means).

*New Part 6A* applies more widely than was intended. The General Policy Statement of the Member’s Bill identified “listed and other issuers” as the class of companies that would obtain the benefits of the reform. However, *new Part 6A* also applies to the 4 other classes of companies that are required to prepare an annual report under section 208 of the Companies Act 1993. The proposed *section 209B* in *new Part 6A* would have created unnecessary obligations for those 4 other classes of companies.

In addition, *new Part 6A* is unclear in a number of respects. There is a lack of clarity about what boards of companies need to do to comply with certain obligations, unclear terminology, and inconsistencies between provisions.

The Government now proposes instead to give effect to the purpose of *new Part 6A* in a way that is more workable for the range of issuers to which it should apply by making regulations under the Financial Markets Conduct Act 2013 to regulate how that

group of issuers (namely, FMC reporting entities) must make their annual reports available. If the company is an issuer of regulated products that must comply with the new regulations, those annual report requirements of the Companies Act 1993 will no longer apply to the company. If the company is not an issuer of regulated products, then the company will be able to choose whether to comply with those annual report requirements of the Companies Act 1993 or with the new regulations.

**Departmental disclosure statement**

The Ministry of Business, Innovation, and Employment considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.