

House of Representatives

Supplementary Order Paper

Tuesday, 20 October 2009

Settlement Systems, Futures, and Emissions Units Bill

Proposed amendments

Hon Simon Power, in Committee, to move the following amendments:

Clause 6

New section 156N(6): to omit this subsection (lines 21 to 23 on page 12) and substitute the following subsection:

- “(6) To avoid doubt,—
 - “(a) rules are not regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989; and
 - “(b) a breach of a condition to which the designation of a settlement system is subject does not affect the application of **section 156Q, 156R, 156T, or 156X** of this Act or **section 103A** of the Personal Property Securities Act 1999.

New section 156Y(3)(a): to omit this paragraph (lines 12 to 14 on page 20) and substitute the following paragraphs:

- “(a) be accompanied by a copy of the rules of the settlement system; and
- “(ab) be accompanied by any information required by either or both of the joint regulators; and

New section 156ZN(1): to omit “**section 156ZL**” (line 29 on page 27) and substitute “**section 156Y(3)(ab) or 156ZL**”.

New section 156ZN(3): to omit “**section 156ZL**” (line 25 on page 28) and substitute “**section 156Y(3)(ab) or 156ZL**”.

Clause 7(2)(b)

To insert after “**section 156N** of the Reserve Bank” (line 7 on page 31) “of New Zealand”.

New heading and new clauses 10AA to 10AAC

To insert the following heading and clauses after *clause 10* (after line 9 on page 32):

*Amendments to Corporations (Investigation and
Management) Act 1989*

**10AA Amendments to Corporations (Investigation and
Management) Act 1989**

Sections 10AAB and 10AAC amend the Corporations (Investigation and Management) Act 1989.

10AAB Moratorium

- (1) Section 42(8) is amended by omitting “payment” in each place where it appears and substituting in each case “settlement”.
- (2) Section 42(9) is amended by omitting “156L” and substituting “**156M**”.

**10AAC Statutory manager may suspend payment of money
owing**

Section 44(4) is amended by omitting “156R” and substituting “**156T**”.

Clause 10A

To omit “**10D**” (line 12 on page 32) and substitute “**10E**”.

New clause 10E

To insert the following clause after *clause 10D* (after line 17 on page 33):

10E Power to disclaim onerous property

Section 269(2)(b)(iii) is amended by omitting “payment” in each place where it appears and substituting in each case “settlement”.

Heading above clause 11

To omit “*Amendment*” (line 18 on page 33) and substitute “*Amendments*”.

New clauses 11AA and 11AAB

To insert the following clauses above *clause 11* (above line 20 on page 33):

11AA Amendments to Personal Property Securities Act 1999

Sections 11AAB and 11 amend the Personal Property Securities Act 1999.

**11AAB Priority of purchase money security interest in
collateral or its proceeds, other than inventory or
intangibles**

Section 73 is amended by adding the following subsection as subsection (2):

“(2) However, **section 103A** overrides this section.”

Clause 11

Heading to *clause 11*: to omit this heading (line 20 on page 33) and substitute the following heading: “**New heading and section 103A inserted**”.

Subclause (1): to omit this subclause (lines 21 and 22 on page 33).

Subclause (2): new section 103A(1): to insert after “over any security interest” (line 30 on page 33) “(including a purchase money security interest)”.

Subclause (2): new section 103A: to insert the following subsection after *subsection (4)* (after line 28 on page 34):

“(4A) This section overrides anything in this Act to the contrary.

Clause 13

To insert the following subclause after *subclause (6)* (after line 9 on page 36):

(6A) The definition of **registered exchange** in section 2(1) is amended by adding the following paragraph:

“(d) a subsidiary of a registered exchange in respect of futures markets if the subsidiary operates a futures market”.

Clause 16

New section 36F(1)(b): to add (line 2 on page 37) “; or”.

New section 36F(1): to add the following paragraph (after line 2 on page 37):

“(c) in respect of 1 or more futures markets, provided that the body corporate is already a registered exchange in respect of 1 or more securities markets.

New section 36F(2): to omit *paragraph (b)* (lines 7 to 9 on page 37) and substitute the following paragraph:

“(b) a copy of the proposed conduct rules for the securities markets, securities markets and futures markets, or futures markets to which the application applies; and

New section 36F(3): to insert after “exchange” (line 15 on page 37) “in respect of the securities markets, securities markets and futures markets, or futures markets to which the application applies”.

Clause 17(2)

To omit this subclause (lines 26 and 27 on page 37) and substitute the following subclause:

(2) Section 36G(1) is amended by inserting “and, if registered in respect of futures markets, each of its futures markets” after “securities markets”.

New clause 18A

To insert the following clause after *clause 18* (after line 35 on page 37):

18A Registered exchange must provide proposed new conduct rules and changes to Minister

Section 36J is amended by adding the following subsection:

- “(3) However, subsection (1) does not apply in respect of conduct rules for a futures market unless the registered exchange is registered in respect of both securities markets and futures markets under **section 36F**.”

Clause 27

To insert the following subclause after *subclause (1)* (after line 31 on page 40):

- (1A) The definition of **authorised futures exchange** in section 37(1) is amended by adding the following paragraph:

“(c) a subsidiary of a body corporate that is registered in respect of futures markets if the subsidiary’s conduct rules for futures markets have effect under section 36I.”

To insert the following subclause after *subclause (3)* (after line 37 on page 40):

- (3A) Paragraph (f) of the definition of **futures contract** in section 37(1) is amended by inserting “Act or any” after “to which this”.

Clause 28

Subclause (1): to omit “following subsection” (line 37 on page 41) and substitute “following subsections”.

Subclause (1): *new section 38(1)(b)*: to omit “on the futures markets operated by the authorised futures exchange” (lines 8 and 9 on page 42) and substitute “in accordance with the rules of that exchange”.

Subclause (1): to add the following new subsection (after line 9 on page 42):

- “(1A) However, a person who receives approval under **subsection (1)(b)** may carry on the business of dealing in futures contracts only if that dealing is subject to the regulation and oversight of the authorised futures exchange that approved the person.”

Clause 29

To add the following subclauses as *subclauses (2) and (3)* (after line 21 on page 42):

- (2) Section 43B(2)(c) is amended by omitting “markets” and substituting “and futures markets in accordance”.
- (3) Section 43B(2)(d) is amended by omitting “securities”.

Clause 33

To insert the following subclause after the heading to *clause 33* (after line 21 on page 43):

- (1AA) The definition of **emissions unit** in section 16(1) is repealed.

Clause 33(2)

To omit this subclause (line 18 on page 44 to line 3 on page 45).

Clause 34(1)

To omit this subclause (lines 5 and 6 on page 45).

Clause 34(2)

To omit “inserting the following subsection after subsection (1)” (lines 7 and 8 on page 45) and substitute “repealing subsection (1A) and substituting the following subsection”.

Explanatory note

This Supplementary Order Paper makes a number of minor, technical amendments to the Settlement Systems, Futures, and Emissions Units Bill. The main effects of the amendments are to—

- clarify the effect of a breach of a condition to which the designation of a settlement system is subject:
- ensure that information provided under *new section 156Y(3)(ab)* of the Reserve Bank of New Zealand Act 1989 receives the same protection under *new section 156ZN* of that Act as information that is provided under *new section 156ZL* of that Act:
- correct typographical errors:
- make necessary consequential amendments to other enactments:
- make it clear that when *new section 103A* is inserted into the Personal Property Securities Act 1999, that section will override section 73 of that Act. This means that, in specified circumstances, the interest of an operator in personal property has priority over a purchase money security interest in the same property:
- clarify the effect of several clauses in the Bill that amend the Securities Markets Act 1988:
- align *clauses 33 and 34* of the Bill with amendments that have already been made to the Personal Property Securities Act 1999 by section 81 of the Climate Change Response (Emissions Trading) Amendment Act 2008.