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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CORPORATIONS BILL 1988

CORPORATIONS (FEES) BILL 1988

SECURITIES EXCHANGES (APPLICATION FOR MEMBERSHIP)
FIDELITY FUNDS CONTRIBUTION BILL 1988

SECURITIES EXCHANGES (MEMBERSHIP) FIDELITY FUNDS
CONTRIBUTION BILL 1988

SECURITIES EXCHANGES FIDELITY FUNDS BILL 1988

NATIONAL GUARANTEE FUND (REPORTABLE TRANSACTIONS)
LEVY BILL 1988

NATIONAL GUARANTEE FUND (PARTICIPATING EXCHANGES)
LEVY BILL 1988

NATIONAL GUARANTEE FUND (MEMBERS OF PARTICIPATING
EXCHANGES) LEVY BILL 1988

FUTURES ORGANISATIONS (APPLICATION FOR MEMBERSHIP)
FIDELITY FUNDS CONTRIBUTION BILL 1988

FUTURES ORGANISATIONS (MEMBERSHIP) FIDELITY FUNDS
CONTRIBUTION BILL 1988

FUTURES ORGANISATIONS FIDELITY FUNDS LEVY BILL 1988

EXPLANATORY MEMORANDUM

VOLUME 4

(Circulated by authority of the Honourable Lionel Bowen, MP,
Deputy Prime Minister and Attorney-General)

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CHAPTER 8 - THE FUTURES INDUSTRYIntroduction

3343. The provisions contained in this Chapter are based on those contained in the FIA but with some important modifications. For example, the Bill will require all futures brokers and futures advisers will be required to be foreign or trading corporations. Also, there will no longer be any requirement for representatives of a futures broker or futures adviser to be licensed. Representatives will, however, be required to hold a proper authority from a futures broker or futures adviser and disclose the proper authority to the client before they can act as a representative of a broker or adviser. Futures brokers and futures advisers will be required, through the imposition of conditions on their licences, to properly supervise representatives and to give them adequate training and education. The protection that licensing of representatives affords the investor will be replaced with a system where the futures brokers and advisers will be made fully liable for the conduct of a person who is their representative.

3344. The powers of inspection and investigation that are now contained in FIA Part II will now be dealt with by the ASC Bill.

3345. Penalties are dealt with in Schedule 3 to the Bill.

BILL PART 8.1 - INTERPRETATION

Cl.1120 : Business rules: futures association

Cl.1121 : Business rules: clearing house

Cl.1122 : Business rules: futures exchange

3346. Part 1 of the Bill (cls.1120 to 1122) contains definitions of "business rules" relating to a futures association, clearing house and futures exchange. Other definitions are contained in Bill Part 1.2. Some of the more important definitions and interpretative provisions which are relevant to the Futures Chapter are discussed below.

Definition of "futures contract"

3347. The definition of "futures contract" is fundamental to the operation of the Futures Chapter. The term "futures contract" is defined in Bill cl.72 and is based on the definition of "futures contract" in FIA sub-s.4(1). "Futures contract" is defined to mean a Chapter 8 agreement that is, or has been, an eligible commodity agreement or an adjustment agreement, a futures option or an eligible exchange-traded option. The following agreements are excluded:

- (a) currency and interest rate swaps, and forward exchange rate and forward interest rate contracts to which an Australian bank or merchant bank is a party; or
- (b) agreements prescribed by the Regulations.

(Bill sub-cl.72(1)).

3348. This definition has the following key elements:

- (a) Chapter 8 Agreement - A Chapter 8 agreement is any agreement, arrangement or understanding, whether formal or informal, written or oral, and whether or not having legal or equitable force, and includes a proposed agreement, an agreement as proposed to be varied and an agreement in force before variation or discharge (see definition of "Chapter 8 agreement" and "relevant agreement" in Bill cl.9). The definitions of "Chapter 8 agreement" and "relevant agreement" are based on the definition of "agreement" in FIA sub-ss.5(1) and (2).
- (b) Adjustment agreement - The definition of "adjustment agreement" in Bill cl.9 is based on the definition of "adjustment agreement" in FIA sub-s.4(1). An adjustment agreement means a standardised agreement the effect of which is that a person will be under an obligation to pay, or will have a right to receive, an amount of money calculated by reference to a state of affairs existing at a particular future time (e.g. currency futures contracts, share price index futures contracts). It should be noted that contracts or agreements under which the only possible results are that a particular party pays or does not pay, at a particular time (e.g. an insurance or superannuation contract) would fall outside the definition. The definition also includes the concept of 'fluctuations' in value in price: this concept was originally taken from the UK Financial Services Bill.

The definition of "standardised agreement" in Bill cl.9 is based on the definition of "standardised agreement" in FIA sub-s.4(1). This term will mean a Chapter 8 agreement that is one of 2 or more such agreements, each agreement being of the same kind. (See Bill cl.54 as to whether a Chapter 8 agreement is of the same kind as another Chapter 8 agreement - based on FIA sub-s.5(3)).

The obligation to pay or right to receive will include an obligation or right whether or not such obligation or right is enforceable at law or in equity (see definitions of "Chapter 8 obligation" and "Chapter 8 right" in Bill cl.9 and Bill sub-cl.55(1) - based on the definitions of "obligation" and "right" in FIA sub-s.4(1)).

- (c) Eligible commodity agreement - The definition of "eligible commodity agreement" is based on the definition of "eligible commodity agreement" in FIA sub-s.4(1). It is defined in Bill cl.9 to mean a commodity agreement where, when the agreement is entered into (or when the agreement becomes a commodity agreement in the case of an agreement that is not a commodity agreement when entered into), it appears likely that the agreement will be settled by offset rather than delivery (i.e. commodity futures contracts, only a very small percentage of which are settled by delivery of the underlying commodity).

The definition of "commodity agreement" in Bill cl.9 is based on the definition of "commodity agreement" in FIA sub-s.4(1). It means a standardised agreement the effect of which is that a person is under an obligation to make or accept delivery at a particular future time of a particular quantity of a particular commodity for a particular price or for a price to be calculated in a particular manner.

The definition of "commodity" in Bill cl.9 is the same as the definition of "commodity agreement" in FIA sub-s.4(1). It means anything capable of delivery pursuant to an agreement for its delivery or an instrument creating or evidencing a thing in action (e.g. bills of exchange).

The definition of "price" in Bill cl.9 is based on the definition of "price" in FIA sub-s.4(1). It includes any amount payable for the delivery of a commodity under an agreement.

- (d) Futures option - This definition is based on the definition of "futures option" in FIA sub-s.4(1).

It is defined in Bill cl.9 as an option or right to assume at a specified price or value and within a specified time a bought or sold position in relation to an eligible commodity agreement or an adjustment agreement, or any other option the subject matter of which is an eligible commodity agreement or an adjustment agreement (i.e. commodity options traded on a futures exchange and options over a futures contract).

The definition of "bought position" in Bill cl.9 is based on the definition of "bought position" in FIA sub-s.4(1). It is defined as the position of a person who is obliged to accept delivery under a commodity agreement or who will have an obligation to pay or a right to receive an amount under an adjustment agreement depending on whether the value or worth of the agreement has decreased or increased.

The definition of "sold position" in Bill cl.9 is based on the definition of "sold position" in FIA sub-s.4(1). It is defined as the position of a person who is obliged to make delivery under a commodity agreement or who will have an obligation to pay or a right to receive an amount under an adjustment agreement depending on whether the value or worth of the agreement has increased or decreased.

- (e) Eligible exchange-traded option - This definition is based on the definition of "prescribed exchange-traded option" in FIA sub-s.4(1). It is defined in Bill cl.9 to mean a contract, entered into on a futures market of a futures exchange, under which a party to the contract acquires an option or right to buy or sell a commodity, or to be paid an amount of money determined by rises or falls in the All Ordinaries Index.

3349. "Futures contract" does not include a currency swap or interest rate swap to which an Australian bank or merchant bank is a party. Stated briefly, an interest rate swap is the transfer between two parties of interest rate obligations - one that is a fixed interest rate, the other a floating rate. A currency swap is the exchange of a fixed rate liability in one currency for a fixed rate liability in another currency. Swap transactions are discussed at p.201 of Handbook of Australian Corporate Finance, (Bruce, McKern and Pollard (eds), Butterworths, 1983):

"The principle of swap transactions is straightforward: two cash flows are exchanged. In the case of currency swaps the cash flows are denominated in different currencies. In the case of interest rate swaps, each cash flow represents a stream of interest payments on a certain principal sum over a certain period; in one instance at a fixed interest rate, and in the other, at a variable interest rate. The advantage to borrowers is access to either fixed or floating rate funds or funds in the currency of their choice at a cheaper cost than through conventional methods."

3350. "Futures contract" will also not include forward exchange rate contracts or forward interest rate contracts to which an Australian bank or merchant bank is a party. Forward exchange contracts are discussed at p.329 of Handbook of Australian Corporate Finance (supra):

"Forward exchange contracts in the main overseas currencies are available with banks for the protection of exporters and importers who are subject to exchange risks in the course of their transactions. A forward exchange contract, between an Australian bank and a customer, is a written contract under which the bank agrees to buy from or sell to the customer a fixed amount in a certain overseas currency on a fixed future date (or during a period expiring on a fixed future date), at the rate of exchange quoted in the contract. The customer undertakes to deliver to or receive from the bank, the overseas currency in terms of the contract."

"Merchant bank" will mean a corporation the name of which is entered in the Register of corporations kept by the Reserve Bank pursuant to the Financial Corporations Act 1974 and included in the category for authorised money market dealers or money market corporations or a prescribed category. (Bill s-cl.72(4) and (5) - see also Commonwealth of Australia Gazette, No. S.321 of 19 August 1985, Categories C and D). These provisions are based on FIA sub-ss.4(5) and (6).

Although "futures contract" is defined widely (to cater for new contracts that may be developed and to ensure that all trading in futures contracts is subject to similar prudential requirements) there is an exempting mechanism to enable the exclusion by regulation of other transactions that are clearly outside the contemplation of the Bill (see para.(e) of the definition of "futures contract" in Bill sub-cl.72(1) - based on para.(e) of the definition of "futures contract" in FIA sub-s.4(1)).

3351. To ensure that all intermediaries in a chain (linking the person who actually enters into the futures contract with the ultimate client) are covered by the provisions of the Futures Chapter, Bill cls.26, 27 and 28 will ensure that a

person on whose behalf a futures contract is acquired or disposed of is also a party to the contract. These provisions are based on FIA sub-ss.4(2) and (3) but include references to a person dealing in a futures contract on another person's behalf otherwise than by way of acquisition or disposal and to dealings on a futures market.

Associates

3352. The circumstances in which a person will be deemed to be associated with another person are set out in Bill Part 1.2 Division 2. These provisions basically reproduce the "associate" provisions from each of the substantive co-operative scheme Acts (i.e. CA, SIA, CASA, and FIA). For the purposes of the Futures Chapter, Bill cls.11, 14, 15, 16 and 17 are relevant.

3353. In brief:

(a) a reference to a person associated with another person will include-

- (i) a director, executive officer or secretary of a body corporate (Bill para.11(a) - cf. FIA sub-para.6(1)(a)(i) which does not include executive officers);
- (ii) related bodies corporate (Bill para.11(b) - based on FIA sub-para.6(1)(a)(ii));
- (iii) a director, executive officer or secretary of a related body corporate (Bill para.11(c) - cf. FIA sub-para.6(1)(a)(iii) which does not include executive officers);

- (iv) a trustee of a trust in relation to which the other person benefits otherwise than by money lending transactions (Bill para.14(c) - based on FIA para.6(1)(e)); and
 - (v) subject to Bill sub-s.16(3), co-directors and partners (Bill paras.14(a), (b), (d), and (e) - based on FIA paras.6(1)(c), (d), (f) and (g)).
 - (vi) persons acting or proposing to act in concert (Bill para.15(1)(a) - based on FIA para.6(1)(b)).
- (b) A partner or co-director of another person in a non-futures business will not be deemed to be associated unless the person alleging the association proves that the first-mentioned person knew or ought reasonably have known the material particulars of the relevant matter (Bill sub-cl.16(3) - based on FIA sub-s.6(2)).
- (c) Where 2 or more persons constitute a futures broker or futures adviser, a person will be associated with the broker or adviser if associated with any of those persons (Bill cl.17 - based on FIA sub-s.6(3)).
- (d) A person is not to be regarded as associated with another person due to paras.15(1)(a) (acting in concert), 15(1)(b) (associates by virtue of the regulations) or 15(1)(c) (associates in any other way) by reason only that one person gives advice or acts for the other person as part of a business relationship or in a professional capacity (Bill para.16(2)(a) - based on FIA sub-s.6(4)).

Dealing in futures contracts

3354. The meaning of the expression "dealing in futures contracts", which is set out in Bill Part 1.2, Division 4, is based on the interpretation of "dealing in futures contracts" in FIA s.7.

3355. A person will be taken to deal in futures contracts if the person acquires or disposes of a futures contract, offers to acquire or dispose of a futures contract or induces or attempts to induce, another person to acquire or dispose of a futures contract (see definition of "deal" in Bill cl.9 and Bill sub-cl.25(1)). The meanings of "acquiring a futures contract" and "disposing of a futures contract" are set out respectively in Bill cls.23 and 24 (based on the definitions of "acquire" and "dispose of" in FIA sub-s.4(1)). There are several provisions in the Bill where the concept of dealing is significant. For example, Bill cls.1253-1257 (dealings by insiders), Bill cl.1213 (accounts to be kept) and Bill cl.1266 (sequence of orders).

3356. Of central importance to the Futures Chapter is the concept of dealing on behalf of others. A person will be taken to deal in futures contracts on another person's behalf if and only if the first person acquires or disposes of, or offers to acquire or dispose of, a futures contract on behalf of that other person (Bill sub-cl.25(2) - based on FIA sub-s.7(2)). For example, A will deal on behalf of B if A enters into or takes an assignment of a futures contract on the instructions of B (Note that the expression "on behalf of" includes on the instructions of - see definition of "on behalf of" in Bill cl.9). Thus an employee of a corporation acting in the proper course of his or her employment, would not be dealing on behalf of the corporation in a case where that employee arranged for the corporation to acquire a futures contract. The futures contract would be acquired by the corporation. A futures broker who took instructions from the employee in such a case would be acting on behalf of the corporation and would require a licence under Bill cl.1142.

3357. A specific provision has been included in the Futures Chapter to ensure that an overseas resident who deals through a licenced broker in Australia will not be considered to be a person who deals in futures contracts on behalf of other persons (Bill sub-cl.25(3) - based on FIA sub-s.7(3)). An example is an overseas resident who is a clearing member of ICCH.

Own account dealings and transactions : futures contracts

3358. The circumstances in which a person will be taken to deal in a futures contract, or enter into a transaction in relation to a futures contract, on the person's own account is dealt with in Bill cl.29, which is based on FIA s.8.

3359. A reference to a person dealing in futures contracts on the person's own account will include dealing on the instructions of an associate and dealing on behalf of a body corporate in which the person has a controlling interest. A broker who is a member of an exchange will not be regarded as dealing on own account merely because the transaction is with another exchange member.

Discretionary Accounts

3360. The interpretation of the expression "discretionary accounts", which is set out in Bill cl.61, is based on the definition of "discretionary accounts" in FIA s.9.

3361. A reference to a futures broker operating on a discretionary account (see e.g. Bill cl.1207) means the broker is authorised by a client to use the client's funds, or by a number of clients to use the clients' pooled funds, to deal in futures contracts on the client(s) instructions (not being dealings on instructions limited to time and/or price) without prior approval.

Exempt brokers and exempt futures advisers

3362. Bill cl.67, dealing with exempt brokers and exempt futures advisers, is based on FIA s.10 but will now require that persons (such as receivers and managers) who are appointed otherwise than by a Court to carry on an ailing futures business must first obtain approval from the ASC.

BILL PART 8.2 : FUTURES EXCHANGES, CLEARING HOUSES AND FUTURES ASSOCIATIONS

3363. Bill Part 8.2 deals with the approval and regulation of futures exchanges, clearing houses and futures associations. At present there are two futures exchanges in Australia - the Sydney Futures Exchange (SFE) and the Stock Exchange of Melbourne (SEM) . The International Commodities Clearing House Limited (ICCH) provides clearing facilities for both these exchanges. As the SFE, SEM and ICCH are already corporations approved, or deemed to be approved, under the FIA and Codes it is not proposed that they be required to obtain approval under Bill Part 8.2. However, any new corporation wishing to establish a futures exchange, clearing house or futures association will be required to obtain approval under Bill Part 8.2.

3364. Self-regulatory organisations can be either futures exchanges or futures associations. The essential difference between an exchange and an association is that the latter will be concerned primarily with the day-to-day regulation of its members, rather than having this function as well as providing a market as is the case with the SFE and SEM.

Division 1 - Futures Exchanges and Exempt Futures Markets

Cl.1123 : Conducting unauthorised futures markets

3365. This provision is based on FIA sub-s.45(1).

3366. A corporation will not be able to establish or conduct a futures market that is neither a futures market of a futures exchange nor an exempt futures market (Bill sub-cl.1123(1) - see also definition of "unauthorised futures market" in Bill cl.9. It should be noted that the definition of "unauthorised futures market" is not intended to have extraterritorial operation i.e. it is not intended to include a futures market of an overseas futures exchange.)

3367. It will be an offence for a person to conduct an unauthorised futures market where a corporation deals in a futures contract on that market (Bill sub-cl.1123(2)).

3368. This provision has been structured differently from FIA sub-s.45(1) in order to connect the offence of conducting an unauthorised futures market with a "corporation" (whether it be the corporation conducting the unauthorised futures market as in Bill sub-cl.1123(1), or the corporation dealing in a futures contract on an unauthorised futures market as in Bill sub-cl.1123(2)).

Cl.1124 : Corporation not to deal on unauthorised futures market

3369. This provision is new.

3370. It will be an offence for a corporation to deal in a futures contract on an unauthorised futures market (Bill para.1124(a)).

3371. As noted above, the definition of "unauthorised futures market" is not intended to have extraterritorial operation i.e. it is not intended to include a futures market of an overseas futures exchange. Clause 1124 will therefore not prohibit dealings on overseas futures exchanges.

3372. It will also be an offence for a corporation to deal in a futures contract that was acquired by a person on an unauthorised futures market (Bill para.1124(b)). The effect of Bill cls.26, 27 and 28 will be that a corporation that acts through an agent will be caught by Bill cl.1124 even if the agent deals through another agent or the other agent deals through a third and so on.

Cl.1125 : No dealing on corporation's behalf on unauthorised futures market

3373. This provision is new.

3374. It will be an offence for a person to deal on a corporation's behalf in a futures contract on an unauthorised futures market (Bill para.1125(a)).

3375. It will also be an offence for a person to deal on a corporation's behalf, in a futures contract that was acquired by a person on an unauthorised futures market (Bill para.1125(b)).

3376. The effect of Bill cls.26, 27 and 28 will be that where there is a chain of intermediaries leading "upward" from the person who actually deals in a futures contract, a person in the chain will be deemed to deal on behalf of each of the persons "higher up" in the chain.

Cl.1126 : Approval of futures exchange

3377. This provision is based on FIA s.46, with some modifications.

3378. Existing futures exchanges will not need to be approved under the Bill (sub-cl.1126(3)).

3379. A body corporate that proposes to establish or conduct a futures market may apply to the ASC for approval by the Minister as a futures exchange (Bill sub-cl.1126(1) - based on FIA sub-s.46(1)).

3380. The Minister will be able to approve a body corporate as a futures exchange if he or she is satisfied that:

- . it is in the public interest to do so (Bill para.1126(2)(f) - based on FIA para.46(2)(b));

- . the body is an eligible corporation i.e. a trading corporation or a foreign corporation (Bill para.1126(2)(a) - new provision);
- . all members of the body are eligible corporations (Bill para.1126(2)(b) - new provision);
- . the constitution of the body ensures that no person other than an eligible corporation may be a member (Bill para.1126(2)(c) - new provision);
- . the body's business rules make satisfactory provision for a number of matters including:
 - the admission of members;
 - the qualifications for membership including standards of training and experience;
 - the manner in which members are to conduct their business of dealing in futures contracts to ensure efficiency, honesty and fair practice;
 - the exclusion from membership of a corporation where a responsible officer of that corporation is not of good character and high business integrity;
 - the disciplining of members for improper conduct;
 - for corporations aggrieved by a refusal of a membership application etc to appeal to an independent body;
 - the inspection and audit of members' accounting records;

- futures contracts that members may deal in;
- requiring a member to accept or execute instructions to deal in futures contracts only in accordance with the business rules;
- requiring a member to deal in futures contracts on behalf of another person only in accordance with instructions accepted from the person;
- requiring a member to deal in futures contracts on behalf of another person on a futures market only in accordance with the business rules of the relevant futures exchange or recognised futures exchange (see also Bill cl.1258);
- requiring a member, subject to exceptions in the business rules, to execute instructions to deal in futures contracts on a futures market of a futures exchange or of a recognised futures exchange or on an exempt futures market (see also Bill cl.1258);
- the settlement of business claims and grievances between members; and
- the conciliation and settlement of member/client disputes concerning dealings in futures contracts.

(Bill para.1126(2)(d) - based on FIA para.46(2)(a)); and

- . there will be enough money in its fidelity fund to meet claims (Bill para.1126(2)(e)).

3381. The effect of Bill para.1126(2)(a) (requiring a body corporate seeking approval as a futures exchange to be an eligible corporation) together with the definition of "futures exchange" in Bill cl.9 is that in order to retain its status as a futures exchange a body must continue to be a trading corporation.

Cl.1127 : Exempt futures market

3382. This provision is based on FIA sub-ss.45(2) and (3). Existing exempt futures markets will have their exemption continued (Bill sub-cl.1127(3)).

3383. The Minister will be able to declare that a specified futures market is an exempt futures market (Bill sub-cl.1127(1) - based on FIA sub-s.45(1)).

3384. The Minister will be able to vary or revoke such a declaration and may, when considering whether to do so, have regard amongst other things, to a breach of condition specified in the declaration (Bill sub-cl.1127(2) - based on FIA sub-s.45(2)).

Division 2 - Clearing houses

Cl.1128 : When corporation may provide clearing house facilities

3385. This provision is based on FIA s.47, except that a clearing house is required to be an eligible corporation (i.e. a trading corporation or a foreign corporation).

3386. It will be an offence for a corporation to provide clearing house facilities for a futures market (other than an exempt futures markets) unless that market is conducted by a futures exchange and the corporation providing such clearing house facilities is an eligible corporation and has been approved for that purpose under Bill cl.1131.

3387. "Clearing house" and "clearing house facilities" are defined in Bill cl.9.

Cl.1129 : Providing clearing house facilities for a corporation

3388. This provision is new.

3389. It will be an offence for a person to provide clearing house facilities for a futures market (other than an exempt futures market) conducted by a corporation unless that corporation is a futures exchange, and the person providing such clearing house facilities is an eligible corporation which has been approved for that purpose under Bill cl.1131 (Bill sub-cl.1129(1)).

3390. It will also be an offence for a corporation that conducts a futures market (other than an exempt futures market) to authorise a person to provide clearing house facilities unless that corporation is a futures exchange and the person providing such clearing house facilities is an eligible corporation which has been approved for that purpose under Bill cl.1131 (Bill sub-cl.1129(2)).

Cl.1130 : Providing facilities for registering futures contracts made by corporations

3391. This provision is new.

3392. It will be an offence for a clearing house to register or provide facilities for the registration of a futures contract acquired or disposed of by a corporation on a futures market unless that futures market is conducted by a futures exchange and the clearing house is an eligible corporation that has been approved as a clearing house under Bill cl.1131.

3393. The effect of Bill cls.26, 27 and 28 will be to widen the ambit of this clause. For example, an unauthorised clearing house could be in breach of this provision where, despite the fact that the immediate parties to the futures contract are not corporations, one of them is dealing on a corporation's behalf.

Cl.1131 : Approval of clearing house

3394. This provision is based on FIA s.48. Existing clearing houses will not need to apply for approval under the Bill (sub-cl.1131(4)).

3395. A body corporate proposing to provide clearing house facilities for a futures market of a futures exchange will be required to apply to the ASC for approval by the Minister (Bill sub-cl.1131(1)) - based on FIA sub-s.48(1)).

3396. The Minister will be able to approve the body as a clearing house for a futures exchange if:

- . the body is an eligible corporation (Bill para.1131(2)(a));
- . its business rules are satisfactory (Bill paras.1131(2)(b) and (c) - based on FIA paras.48(2)(a) and (b));
- . the public interest will be served by granting approval (Bill para.1131(2)(d) - based on FIA para.48(2)(c)).

3397. One of the matters to which the Minister will be able to have regard in considering an application for approval of a clearing house is any business rules of the application concerning the guaranteeing to its members of the performance of futures contracts made on a futures market of the futures exchange (Bill sub-cl.1131(3) - based on FIA sub-s.48(3)).

Division 3 - Futures AssociationsCl.1132 : Approval of futures association

3398. This provision is based on FIA s.50.

3399. The SFE has already been approved as a futures association under the FIA and it is proposed that this approval will continue. However, any new corporation wishing to establish a futures association will have to comply with Bill cl.1132.

3400. Any futures association approved by the Minister under Bill cl.1132 will have responsibility for day-to-day regulation (including such matters as conduct of business and disciplinary action) of futures brokers that are members of the association. A futures broker will be required to be a member of a futures association or a futures exchange (see Bill sub-cl.1148(1)).

3401. The Minister will be able to approve a body corporate as a futures association if:

- . the body is an eligible corporation (Bill para.1132(2)(a));
- . all members of the body are eligible corporations (Bill para.1132(2)(b));
- . the body's constitution requires that all members be eligible corporations (Bill para.1132(2)(c));
- . the body may properly exercise its functions as a futures association, viz. regulating its affairs in the interests of the public and administering and enforcing its business rules (Bill para.1132(2)(d) - based on FIA para.50(2)(a));

. its business rules make satisfactory provision for a number of matters including:

- (i) the admission of members (who must be licenced or proposing to apply to be licenced);
- (ii) the standards of training and experience, and other qualifications, for membership;
- (iii) the efficient, honest and fair conduct by members of business of dealing in futures contracts;
- (iv) the exclusion of a corporation from membership where a responsible officer is not of good character and high business integrity;
- (v) the disciplining of members for improper conduct;
- (vi) for persons aggrieved by refusal of a membership application or by disciplinary action to appeal to an independent body;
- (vii) the inspection and audit of members' accounting records;
- (viii) requiring a member to accept or execute instructions to deal in futures contracts only in accordance with the business rules;
- (ix) requiring a member to deal in futures contracts on behalf of another person only in accordance with instructions accepted from the person;

- (x) requiring a member to deal in futures contracts on behalf of another person on a futures market only in accordance with the business rules of the relevant futures exchange or recognised futures exchange (see also Bill cl.1258);
- (xi) requiring a member, subject to exceptions in the business rules, to execute instructions to deal in futures contracts on a futures market of a futures exchange or of a recognised futures exchange or on an exempt market (see also Bill cl.1258);
- (xii) the equitable and expeditious settlement of members' claims and grievances relating to the transaction of futures business; and
- (xiii) appropriate mechanisms for the conciliation and settlement of disputes between members and their clients concerning, or connected with, dealings in futures contracts (other disputes will need to be resolved by recourse to ordinary legal remedies);

(Bill para.1132(2)(e) - based on FIA para.50(2)(b)).

- . if it is to be a futures organisation required to have a fidelity fund, there will be enough money in the fund to meet claims or it will have appropriate indemnity insurance (Bill para.1132(2)(f); and
- . that the public interest will be served by granting the approval (Bill para.1132(2)(c) - based on FIA para.50(2)(g)).

Cl.1133 : Suspension or cancellation of approval

3402. This provision is based on FIA s.51.

3403. The Minister will be able to require a futures association to show cause at a hearing before a specified person why its approval should not be suspended or cancelled (Bill sub-cl.1133(1) - based on FIA sub-s.51(1)).

3404. After giving such futures association an opportunity to be heard, the person specified in the notice will be required to submit to the Minister a report in relation to the hearing and a recommendation in relation to the matter. The Minister will be able to decide to take no further action, suspend the approval of the futures association or cancel its approval (Bill sub-cl.1133(3) and (4) - based on FIA sub-s.51(3)).

3405. If it is suspended, a futures association will be deemed not to be approved as a futures association during the period of its suspension (Bill sub-cl.1133(5) - based on FIA sub-s.51(4)).

Division 4 - General

Cl.1134 : Publication of certain instruments

3406. This provision is based on FIA ss.49 and 52.

3407. The ASC will be required to publish in the Gazette a copy of an instrument executed by the Minister under Bill sub-cl.1126(2) (approval of futures exchange), 1127(1) (exempt futures markets), 1131(2) (approval of clearing house), 1132(2) (approval of futures association) and 1133(4) (suspension or cancellation of approval of futures association).

Cl.1135 : Appeal to the Court against certain decisions of futures exchanges and futures associations

3408. This provision is based on FIA s.53.

3409. Where an eligible corporation that is not a member of a futures exchange or futures association is refused membership of a futures exchange or futures association, there will be a right of appeal to the Court (see definition of "Court" in Bill cl.9). In addition, where a corporation's membership of a futures exchange or futures association is suspended or cancelled and at the time of suspension or cancellation the corporation is not a member of any other exchange or association, the person will be able to appeal to the Court (Bill sub-cl.1135(1) - based on FIA sub-s.53(1)).

3410. The rationale for this provision is that because a corporation's ability to hold a broker's licence is dependent on membership of an exchange or association, there is a need to have right of appeal where the effect of an adverse decision by an exchange or association is to preclude a person from participating in the futures industry.

3411. Examples are as follows:

- (a) where a corporation that is already a member of an exchange or association is suspended from that organisation, there will be no right of appeal to the Court in respect of the refusal of an application by that person for membership of another exchange or association (Bill para.1135(2)(a));
- (b) where a member is suspended by one or more exchanges or associations, a suspension by the only remaining exchange or association of which that person is a member will be subject to appeal (Bill para.1135(2)(b)).

3412. Stated briefly, the effect of Bill sub-cl.1135(1) and (2) is to provide a right of appeal to the Court in relation to an application for a first membership of an exchange or association and in relation to the last loss of membership of an exchange or association.

3413. Where a corporation appeals to the Court against a decision by an exchange or association to suspend or cancel membership, the Court will be able to make orders concerning the effect of the decision pending determination of the appeal (Bill sub-cl.1135(4)).

3414. After hearing an appeal, the Court may dismiss the appeal or decide that:

- (a) the application should be granted or should be granted subject to specified conditions;
- (b) the membership should not be suspended or should be suspended for a lesser period; or
- (c) the membership should not be cancelled or should be suspended for a specified period.

(Bill sub-cl.1135(5)).

3415. Where a Court varies the decision of a futures association the Court's decision has effect as a decision of the futures association (Bill sub-cl.1135(6)).

Cl.1136 : Commission to be notified of amendments of business rules

3416. This provision is based on FIA s.54.

3417. The ASC will be required to be notified of any amendments to the business rules of a futures exchange, clearing house or futures association (Bill sub-cl.1136(1) - based on FIA sub-s.54(1) and note definition of "business rules" in Bill Part 8.1).

3418. A brief outline of this provision is as follows:

- (a) An amendment will cease to have effect if it is not notified within 21 days (Bill sub-cl.1136(3) - based on FIA sub-s.54(3)).
- (b) The ASC will be required to send a copy of the notification to the Minister (Bill sub-cl.1136(4) - based on FIA sub-s.54(4)). The Minister will be able to disallow all or part of an amendment within 28 days (Bill sub-cl.1136(5) - based on FIA sub-s.54(5)).
- (c) The ASC will be required to give notice to the futures exchange, clearing house or futures association of any disallowance, and the amendment ceases, to the extent of the disallowance, to have effect on receipt of that notice (Bill sub-cl.1136(6) - based on FIA sub-s.54(6)).
- (d) There is a new transitional provision (Bill sub-cl.1136(7)) to cover notices of amendments given to the NCSC before the commencement of Part 8.2. If notices of amendments to business rules are lodged with the NCSC before the commencement of Part 8.2 and the 28 day disallowance period has not expired, the Minister will have another 28 days to consider the amendments.

Cl.1137 : Orderly markets in futures contracts - functions and powers of futures exchanges and clearing houses

3419. This provision is based on FIA s.55.

3420. A futures exchange and clearing house will be required, so far as is reasonably practicable, to take all steps necessary to ensure that an orderly and fair market is maintained (Bill sub-cl.1137(1) - based on FIA sub-s.55(1). For the purpose of maintaining an orderly market, a futures exchange will be able to give directions to a non-exchange member in whose name a futures contract is registered (Bill sub-cl.1137(2) - based on FIA sub-s.55(2)). Failure to comply with such directions will not be an offence (but may for example give rise to civil action under Bill cl.1324) (Bill sub-cl.1137(3)) - based on FIA sub-s.55(3).

Cl.1138 : Orderly markets in futures contracts - powers of Commission

3421. This provision is based on FIA s.56. Any directions or determinations given by the NCSC under FIA s.56 will continue in force with such modifications as the circumstances require (Bill sub-cl.1138(13)).

3422. Before taking action under this provision the ASC will be required to consult the futures exchange and clearing house (Bill sub-cl.1138(3) - based on FIA sub-s.56(3) but failure to do so will not affect any subsequent ASC determination of direction (Bill sub-cl.1138(4) - based on FIA sub-s.56(4)). (Note that under Bill cl.1139 the exchange and clearing house are required to provide reasonable assistance to the ASC).

3423. The ASC will then be required to determine that the futures exchange or clearing house has failed to ensure an orderly and fair market or that there is some interest that requires protection (Bill para.1138(2)(a)). The ASC will be

required to give the futures exchange and clearing house notice of its determination and the direction it considers should be given (Bill paras.1138(2)(b) - (d) - based on FIA paras.56(2)(b)-(d)).

3424. As soon as practicable after giving this notice, the ASC will be required to give the Minister a copy of the notice and a written report setting out reasons for giving the notice. The ASC will be required to give a copy of the report to the futures exchange and clearing house (Bill sub-cl.1138(5) - based on FIA sub-s.56(5)).

3425. The ASC will then be able to give written directions to the futures exchange unless the Minister has directed the ASC not to, or the exchange has acted as if a direction had been given (Bill sub-cl.1138(6) - based on FIA sub-s.56(6)). They include directions to a futures exchange:

- (i) to close a futures market;
- (ii) to suspend any dealing in futures contracts;
- (iii) to limit transactions on a futures market to the closing out of futures contracts;
- (iv) to defer the completion date for all futures contracts or a specified class of futures contracts;
- (v) to require a futures contract to be discharged by the tendering of a commodity (the quality or standard of which is determined by the exchange) and of a price determined by the exchange; or

- (vi) to require an exchange member to act in a specified manner in relation to dealings in futures contracts or a class of those dealings (Bill sub-cl.1138(1) - based on FIA sub-s.56(1)).

3426. As soon as practicable after giving a direction, the ASC will be required to give the Minister and clearing house a copy and direct the clearing house to act in accordance with the direction (Bill sub-cl.1138(7) - based on FIA sub-s.56(7)).

3427. Unless the Minister determines otherwise (Bill sub-cl.1138(8)), a direction given by the ASC will remain in force, unless sooner revoked, for 21 days or such shorter period as is specified by the ASC (Bill sub-cl.1138(9)). It will be an offence for a futures exchange or clearing house to fail to comply with a direction (Bill sub-cl.1138(10) and (11)).

Cl.1139 : Futures exchanges and others to assist Commission

3428. This provision is based on FIA s.57.

3429. A futures exchange, clearing house and a futures association will be required to assist to the ASC in the performance of its functions (Bill sub-cl.1139(1) - based on FIA sub-s.57(1)). Any disciplinary action taken by a futures exchange, clearing house or futures association against a member will be required to be notified to the ASC (Bill sub-cl.1139(2) - based on FIA sub-s.57(2)). Where a clearing house refuses to register a dealing in a futures contract or closes out a futures contract for failure to meet a deposit or margin call it will be required to notify the ASC forthwith (Bill sub-cl.1139(3) - based on FIA sub-s.57(3)). A person authorised by the ASC will be entitled to access to the futures exchange floor (Bill sub-cl.57(4) - based on FIA sub-s.1139(4)). It will be an offence to refuse to allow a person authorised by the ASC to have access to the trading floor (Bill sub-cl.1139(5) - based on FIA sub-s.57(5)).

Cl.1140 : Power of court to order observance or enforcement of business rules of futures exchange, clearing house or futures association

3430. This provision is based on FIA s.58.

3431. The Court (see definition of "Court" in Bill cl.9) will be able to give directions, on the application of the ASC, the futures exchange, clearing house or futures association or a person aggrieved, where a person has failed to comply with, observe, enforce or give effect to the business rules of a futures exchange, clearing house or futures association.

Cl.1141 : Effect of certain laws on certain agreements

3432. This provision is based on FIA s.59 but has been drafted differently to reflect its different constitutional basis.

3433. State and Territory gaming and betting legislation will not prevent the entering into, or affect the enforceability, of a futures contract made:

- (a) on a futures market of a futures exchange or of an overseas recognised futures exchange;
- (b) on an exempt futures market conducted by a corporation;
- (c) in eligible circumstances (i.e. a futures contract made in the course of trade or commerce or in a Territory - see definition in cl.9); or
- (d) as permitted by the business rules of a futures association, of a futures exchange or of a recognised futures exchange.

BILL PART 8.3 : PARTICIPANTS IN THE FUTURES INDUSTRYDivision 1 - Futures brokers and futures advisersCl.1142 : Futures brokers

3434. This provision is based in part on FIA s.61. However, the effect of this and subsequent provisions in Part FIA will be that futures brokers and futures advisers will be required to be eligible corporations i.e. trading corporations or foreign corporations.

3435. A corporation will be prohibited from dealing in a futures contract on behalf of another or from holding itself out as carrying on a futures broking business unless the corporation is an eligible corporation and has a futures broker's licence or is an exempt broker (Bill sub-cl.1142(1)).

3436. "Futures broking business" and "exempt broker" are defined in Bill cls.9 and 67.

3437. The prohibition on dealing in futures contracts unless an eligible corporation has a futures broker's licence or is an exempt broker should be read in conjunction with Bill cl.1258 which specifies the manner in which dealings in futures contracts on behalf of others may be effected.

3438. A person will be prohibited from dealing in a futures contract on a corporation's behalf or from dealing in a futures contract on a person's behalf in the course of trade or commerce or in a Territory unless the person is an eligible (trading or foreign) corporation and holds a futures broker's licence or is an exempt broker (Bill sub-cl.1142(2) - new provision - and see definitions of "eligible circumstances" and "eligible corporation" in Bill cl.9). A person will be prohibited from holding himself, herself or itself out as carrying on a business of dealing in futures contracts on

behalf of corporations, or persons including corporations, or as carrying on a business of dealing in futures contracts in circumstances including dealing in the course of trade or commerce or in a Territory, unless the person is an eligible (trading or foreign) corporation and holds a futures broker's licence or is an exempt broker (Bill sub-cl.1142(3) - new provision).

3439. A person will be prohibited from using a postal, telegraphic, telephonic or other like service in the course of a futures broking business unless the person is an eligible (foreign or trading) corporation and holds a futures broker's licence or is an exempt broker (Bill sub-cl.1142(4) - new provision - and see definition of "eligible communications service" in Bill cl.9).

Cl.1143 : Futures advisers

3440. A corporation will be prohibited from carrying on a futures advice business (defined in Bill cl.7) or holding itself out to be a futures adviser (defined in Bill cl.9) unless the corporation is an eligible (foreign or trading) corporation and holds a futures brokers or futures advisers licence or is an exempt broker (Bill sub-cl.1143(1) and (3) - based in part on FIA s.63).

3441. A person will be prohibited from advising a corporation about futures contracts or giving a corporation an analysis or report about futures contracts unless the person is an eligible (foreign or trading) corporation and holds a futures broker's licence or a futures adviser's licence or is an exempt futures adviser (Bill sub-cl.1143(2) - new provision).

3442. A person will be prohibited from using a postal, telegraphic, telephonic or other like service in the course of a futures advice business unless the person is an eligible corporation and holds a futures broker's or futures adviser's

licence or is an exempt futures adviser (Bill sub-cl.1143(4) - new provision).

Cl.1144 : Application for a licence

3443. This provision is based on FIA s.65 with the modification that the provisions in respect of applications by representatives have not been included. (There will no longer be any requirement for representatives to be licensed. Futures brokers and futures advisers will be made fully liable for the conduct of their representatives.) Furthermore, applications made to the NCSC for a licence that have not been dealt with by the NCSC will be deemed to have been made to the ASC (Bill sub-cl.1144(3)).

3444. A body corporate will be able to apply to the ASC for a licence (Bill sub-cl.1144(1)). The ASC will be able to request further information in relation to the application (Bill sub-cl.1144(2)).

Cl.1145 : Grant of a licence

3445. This provision is substantially based on FIA s.66, with some modifications.

3446. Where a body corporate applies for a futures broker's or a futures adviser's licence the ASC will be required to grant the licence if:

- (a) the application was made in accordance with Bill cl.1144;
- (b) the ASC is satisfied the applicant is an eligible (foreign or trading) corporation;

- (c) the corporation is not in receivership, under official management or in the course of being wound up, and has not entered into a compromise with its creditors (see definition of "externally-administered body corporate" in Bill cl.9);
- (d) if the application is for a futures broker's licence, it is a member of a futures organisation;
- (e) the ASC is satisfied the educational qualifications and experience of each responsible officer are adequate having regard to the duties that the officer would perform; and
- (f) the ASC has no reason to believe the corporation will not perform efficiently, honestly and fairly the duties of a holder of a licence of the kind applied for.

3447. Otherwise the ASC will be required to refuse the application (Bill sub-cl.1145(2) and (3)).

3448. In determining whether or not it has reason to believe the corporation will perform its duties efficiently, honestly and fairly (pursuant to para.(f) above), the ASC will be required to have regard to the following in respect of each responsible officer:

- (a) whether or not the officer is an insolvent under administration;
- (b) any conviction of serious fraud over the last 10 years;
- (c) any reason to believe the officer is not of good fame and character; and

- (d) any reason to believe the officer will not perform efficiently, honestly and fairly the duties the officer is to perform.

(Bill sub-cl.1145(4)).

3449. Nothing in the above provision limits the matters to which the will be able to may have regard in deciding on an application or in connection with performing any other function or power under this Part (Bill sub-cl.1145(5)).

3450. This provision will be subject to Bill cl.1200 (dealing with hearings) and the regulations.

Cl.1146 : Licences under corresponding laws

3451. An eligible (trading or foreign) corporation which holds a futures broker's or futures adviser's licence in force under a co-operative scheme law will not be required to obtain a new licence under Bill Part 8.3 but will be subject to the other requirements of the Bill. Other existing licensees will be required to comply with all requirements of the Bill subject to any modifications made to the Futures Chapter by the Regulations.

Cl.1147 : Conditions of licence: general

3452. This provision is based on FIA sub-s.69(1).

3453. A licence will be subject to such conditions and restrictions as are imposed by the regulations and, subject to Bill sub-cl.1200, such conditions and restrictions as are imposed by the ASC when granting the licence or while it is in force.

Cl.1148 : Conditions of futures brokers licence : membership of futures organisation

3454. This provision is based on FIA sub-s.69(2).

3455. A futures brokers licence will be subject to a condition that:

- (a) the licensee is a member of a futures exchange or association (Bill para.1148(1)(a)); and
- (b) the licence is suspended where the licensee is not a member of any futures organisation and would, but for the suspension of the licensee's membership, be a member of the futures organisation (Bill para.1148(1)(b)).

3456. Where a licensee's membership of a futures organisation is suspended:

- (a) the effect of Bill para.1148(2)(a) is that the licensee is not in breach of the licence condition in Bill para.1148(1)(a) and thus the ASC would not be able to revoke a licence in such a case; and
- (b) the effect of Bill para.1148(1)(b) and Bill para.1148(2)(b) is that the licence is suspended during the period of suspension of membership.

Cl.1149 : Conditions of futures brokers licence : assets and liabilities

3457. This provision is based on FIA sub-ss.69(4), (5), (6) and (7).

3458. Conditions and restrictions regarding assets and liabilities will be able to relate to:

- (a) the limitation of liability that may be incurred in connection with a business of dealing in futures contracts (Bill para.1149(1)(a));
- (b) the incurring or disclosure of liabilities arising otherwise than from such a business (Bill para.1149(1)(b));
- (c) the licensee's financial position, whether or not resulting from such a business (Bill para.1149(1)(c));
- (d) the licensee's assets including or not including specified assets (Bill para.1149(1)(d)); and
- (e) the sum of the values of specified assets being not less than, or not greater than, an ascertained amount (Bill para.1149(1)(e)).

3459. A condition imposed pursuant to Bill para.1149(1)(e) may provide:

- (a) for values of assets to be ascertained in a manner specified in, or determined in accordance with, the condition (Bill sub-cl.1149(2)).
- (b) for the amount referred to to be a specified percentage of the sum of:
 - (i) the values of all assets
 - (ii) the values of specified assets
 - (iii) the amounts of all liabilities
 - (iv) the amounts of specified liabilities.

(Bill sub-cl.1149(3)).

Cl.1150 : Conditions of licence : supervision of representatives

3460. Under this new provision, one or more of the following conditions may be imposed regarding representatives:

- (a) A condition about what the licensee is to do to prevent representatives from contravening this Chapter or other conditions of the licence (Bill para.1150(a)).
- (b) A condition about what the licensee is to do to ensure each representative has adequate qualifications and experience having regard to the representative's duties (Bill para.1150(b)).

3461. This new provision is designed to ensure that the ASC will be able to make licensees take reasonable steps to supervise the conduct of their representatives and to giving training and on-going education to their representatives.

Cl.1151 : Revocation and variation of licence conditions

3462. This provision is based on FIA sub-s.69(9).

3463. The ASC will be able to revoke or vary a condition of a licence unless it was imposed by Regulations. This is subject to the hearing requirement in Bill cl.1200.

Cl.1152 : Futures organisations to be informed about conditions of futures broker's licence

3464. This provision is based on FIA sub-s.69(10).

3465. The ASC will be required to notify each futures organisation and each clearing house of which the licensee is a member when it imposes, varies or revokes conditions or restrictions in a licence (Bill sub-cl.1152(1)).

3466. A contravention of Bill sub-cl.1152(1) will not affect the validity of an act done by the ASC (Bill sub-cl.1152(2)).

Cl.1153 : Licensee to notify breach of licence condition

3467. This provision is based on FIA. s.70.

3468. A licensee will be required to notify the ASC and each futures organisation of which the licensee is a member within one business day of a breach of a condition or restriction (Bill sub-cl.1153(1)). A defence is provided in Bill sub-cl.1153(2).

Cl.1154 : Commission may require licensed futures broker to give information

3469. This provision is based on FIA s.71.

3470. The holder of a futures broker's licence will be required to furnish written statements in respect of the broker's business to the ASC if required (Bill sub-cl.1154(1)). The ASC will be able to require such a statement to be audited (Bill sub-cl.1154(2)). The futures broker will be required to comply within the specified time or a reasonable time if no time is specified. The ASC will be able to extend time for the futures broker to give the information (Bill sub-cl.1154(3)).

Cl.1155 : Register of Futures Licensees

3471. This provision is based on FIA s.72, requiring the NCSC to keep a Register of Futures Licensees, with the following modifications:

- (a) There is the added requirement for the inclusion in the register of a copy of the licence and each instrument imposing conditions or revoking or varying conditions of the licence after it has been granted.

- (b) The requirements to maintain details of representatives and recognised licencees are no longer appropriate and have not been included.

3472. The information to be maintained on the Register is set out in Bill sub-cl.1155(2) and (3).

3473. A person will be able to inspect and make copies or take extracts from the Register (Bill sub-cl.1155(4)).

Cl.1156 : Notifying changes in particulars

3474. This provision is based on FIA s.73, with the modification that the requirement to notify changes in particulars of representatives is no longer appropriate and has not been included.

3475. The holder of a licence will be required to notify the ASC within 21 days when ceasing to carry on the business to which the licence relates, or a change occurs in particulars that are required to be entered in the Register.

Cl.1157 : Annual statement of licensee

3476. This provision is based on FIA sub-s.74(1) with the modification that the annual statement is to set out the number of representatives holding a proper authority of the licensee. Proper authority is defined in Bill cl.87.

3477. The holder of a futures broker's licence or a futures adviser's licence must lodge with the ASC each year a statement containing prescribed information (Bill sub-cl.1157(1) and (3)).

Cl.1158 : Time for lodging annual statement

3478. This provision is based on FIA ss.75 and 76.

3479. The annual statement by a licensee will required to be lodged:

- (a) by the holder of a futures broker's licence - when the profit and loss account and balance sheet referred to in Bill cl.1218 are required to be lodged (Bill para.1158(a)); and
- (b) by the holder of a futures adviser's licence - within 1 month before the anniversary of the date on which the licence was granted (Bill para.1158(b)).

3480. The ASC will be able to extend the period for lodging a statement under Bill cl.1157. Any extension of time granted by the NCSC will be deemed to have been granted by the ASC (Bill sub-cl.1158(2)).

Division 2 - Agreements with unlicensed persons

3481. Division 2 is new. Under the FIA there is no provision to prevent the enforcement of a contract by a person who either advises or deals in futures contracts and does not have a licence but who should be licensed. Division 2 introduces a series of provisions to bring about this result, with appropriate safeguards to ensure that the rights of third parties are properly protected.

3482. Division 2 is divided into 2 Subdivisions. Subdivision A identifies the classes of agreements to which Subdivision B applies and Subdivision B deals with the extent to which agreements are enforceable by non-licensees and the circumstances in which the client has a right to rescind those agreements.

Subdivision A - Agreements affected

3483. This subdivision identifies the agreements to which Subdivision B applies.

Cl.1159 : Excluded clients

3484. This new definitional provision ensures that a futures broker or futures adviser is not regarded as a client for the purposes of Division 2. Futures brokers and futures advisers will be able to rely on their own expertise in dealings with others and do not need the protection afforded by Division 2.

Cl.1160 : Agreement about dealing in breach of Bill cl.1142

3485. Where an unlicensed person and a client (other than a futures broker or futures adviser) enter into an agreement relating to a dealing or proposed dealing in a futures contract by an unlicensed person on the client's behalf, Subdivision B will have effect where the dealing or proposed dealing involves a contravention of Bill cls.1142, (failure to hold a futures broker's licence).

Cl.1161 : Agreement with corporation acting in breach of Bill cl.1143

3486. Where an unlicensed corporation in contravention of Bill cl.1143 (failure to hold a futures broker's or futures adviser's licence) carries on a futures advice business or holds itself out to be a futures adviser and a client (other than a futures broker or futures adviser) enters into an agreement that relates to the advising of the client about futures contracts or to giving the client futures reports, Subdivision B will have effect.

Cl.1162 : Agreement about advice, or reports, given in breach of subsection 1143(2)

Cl.1163 : Agreement with person acting in breach of subsection 1143(3)

3487. Where an unlicensed person carrying on a futures advice business enters into an agreement with a client (other than a

futures broker or futures adviser) relating to giving advice or reports about futures contracts and the person does not hold a futures broker's or futures adviser's licence, Subdivision B will apply.

Subdivision B - Effects on Agreements

3488. This subdivision deals with the enforceability or otherwise of agreements between non-licensed persons and their clients.

Cl.1164 : Client may give notice of rescission

3489. This is a new provision.

3490. The client of a non-licensee will be able to give written notice to the non-licensee stating that the client wishes to rescind his or her agreement (Bill sub-cl.1164(1)). The client will, however, have to do so within a reasonable time (Bill sub-cl.1164(2)). The client will also lose the right to give a notice under this clause if the client engages in conduct that amounts to an affirmation of the agreement (Bill sub-cl.1164(3)). The client will have a right to give a notice under this clause whether or not the effect of the notice will be to rescind the agreement and whether or not the Court will be empowered to make an order under cl.1164 (Bill sub-cl.1164(5)).

Cl.1165 : Effect of notice under section 1164

3491. This is a new provision.

3492. A valid notice given by a client under cl.1164 stating that the client wishes to rescind the agreement will rescind the agreement unless rescission of the agreement would prejudice the rights of a third party. For this exception to apply the third party will be required to have acquired those rights in good faith for valuable consideration and without notice of the facts that have entitled the client to give notice under cl.1164.

Cl.1166 : Court may make consequential orders

3493. This is a new provision.

3494. If the client exercises his or her right to rescind, the Court will have the power to make such orders as it would have power to make if the client had rescinded on the grounds of misrepresentation by the non-licensee (Bill sub-cl.1166(1)). But the Court will not be able to make an order if the order would prejudice the rights of a third party and the third party acquired those rights in good faith, for valuable consideration and without notice of the facts that have given the client a right to rescind (Bill sub-cl.1166(2)).

Cl.1167 : Agreement unenforceable against client

3495. This is a new provision.

3496. This clause only applies if the agreement has been rescinded or if the client is entitled to give a notice under cl.1164 and giving of the notice will result in rescission of the agreement. That is, this clause will not apply if it is not possible to rescind the agreement (Bill sub-cl.1167(1)). Where this clause applies the non-licensed person will not be able, whether directly or indirectly, to enforce or rely on the agreement between the client and the non-licensee (Bill sub-cl.1167(2)).

Cl.1168 : Non-licensee not entitled to recover commission

3497. This a new provision.

3498. This clause will apply only while a client is entitled to give a notice under cl.1164 that he or she wishes to rescind the agreement or after he or she has given such a notice. It will not matter that the agreement may not be rescinded (i.e. because rescission would prejudice the rights of third parties (Bill sub-cl.1168(1))). Where this clause applies, the non-licensed person will not be entitled, by any means, to recover from the client any commission or other fee owed by the client under the agreement.

Cl.1169 : Onus of establishing non-application of section 1167 or 1168

3499. This is a new provision.

3500. In any proceedings where a non-licensee is seeking to enforce an agreement against a client or is seeking to recover a commission or other fee from a client, it will be presumed that cl.1167 or cl.1168 applies, as the case may be, and hence the non-licensee will be unsuccessful. The non-licensee will however be able to bring evidence to rebut the presumption. Thus the onus is on the licensee to show that the client has lost the protection granted by cls.1167 and 1168.

Cl.1170 : Client may recover commission paid to non-licensee

3501. This is a new provision.

3502. The client will be given a right to recover from the non-licensee any commission or other fee the client has paid to the non-licensee under the agreement. The client will be able to recover that money only if he or she has given a notice under cl.1164 of his or her wishes to rescind the agreement.

Cl.1171 : Remedies under this Division additional to other remedies

3503. This is a new provision.

3504. The rights and remedies conferred under this Division will be additional to any other rights or remedies the client may have against a non-licensee.

Division 3 : Futures representatives

3505. Division 3 is a new Division. It deals with representatives of futures brokers and futures advisers. Representatives will no longer be licensed. However, representatives will be required to hold an appropriate document (a proper authority) from their principal and disclose it to persons with whom they deal. Licensees will be required to keep a register of persons who hold a proper authority from them.

Cl.1172 : Representatives of futures brokers

3506. This is a new provision.

3507. A natural person will not be able to act as a representative of a futures broker (other than an exempt broker) unless the broker is a corporation and holds a futures broker's licence and the person holds a proper authority from the broker.

Cl.1173 : Representatives of futures advisers

3508. This is a new provision.

3509. A natural person will not be able to act as a representative of a futures adviser (other than an exempt adviser) unless the futures adviser is a corporation and holds

a futures broker's licence or and the person holds a proper authority from the futures adviser.

Cl.1174 : Defence

3510. This is a new provision.

3511. Where a person is prosecuted for acting as a representative of a futures broker or futures adviser in contravention of cl.1172 or 1173 it will be a defence if the person can prove that:

- (a) the act was a contravention only because the licence of the broker or adviser had been revoked or suspended;
- (b) the person believed that the broker or adviser held a licence and was unaware of the revocation or suspension; and
- (c) it was reasonable for the person so to believe and to be unaware of the revocation or suspension.

Cl.1175 : Body corporate not to act as futures representative

3512. This is a new provision that makes explicit what is already implicit in FIA sub-ss.65(1) and (2).

3513. A body corporate will not be able to act as a representative of a futures broker or futures adviser. Only a natural person will be able so to act.

Cl.1176 : Licensee to keep register of holders of proper authorities

3514. This is a new provision.

3515. A licensee will be required to establish a register of persons holding proper authorities from the licensee. The register is to be kept in written form or in such other form as approved by the ASC (Bill sub-cl.1176(1) and (2)).

3516. The register is to contain in respect of each person:

- (a) a copy of the proper authority;
- (b) the person's name;
- (c) current residential address and current business address (unless the same as the licensee's); and
- (d) such other information as is prescribed by the Regulations.

(Bill sub-cl.1176(3)).

3517. A copy of the proper authority will have to be placed in the register within 2 business days of the person beginning to hold the proper authority (Bill sub-cl.1176(4)). Other information required to be included in the register will have to be included within 2 business days after the person begins to hold a proper authority from the licensee or after the licensee receives the information, whichever happens later (Bill sub-cl.1176(5)). After a person ceases to hold a proper authority from the licensee, the licensee will have to transfer the information in the register to a separate part of the register (Bill sub-cl.1176(6)).

Cl.1177 : Licensee to notify Commission of location and contents of register

3518. This is a new provision.

3519. Within 14 days after establishing the register the licensee will be required to advise the ASC in writing as to where the register is kept (Bill sub-cl.1177(2)).

3520. Where there is a change of place where the register is kept the licensee is to advise the ASC in writing of the new place as soon as practicable (Bill sub-cl.1177(3)).

3521. Within 2 business days of a person beginning to hold a proper authority, the person's supervising licensee will be required to lodge with the ASC a copy of the authority and a notice stating when the person began to hold the authority (Bill sub-cl.1177(4)).

3522. The licensee will be required to notify the ASC of the information that the register is required to contain (Bill sub-cl.1177(5) and within 2 business days of a person ceasing to hold a proper authority from the licensee (Bill sub-cl.1177(6)).

Cl.1178 : Inspection and copying of register

3523. The register is to be open for inspection without charge (Bill sub-cl.1178(1)). A person will be able to request a licensee in writing to give the person a copy of the whole or part of the register (Bill sub-cl.1178(2)). The licensee's obligation to comply with such a request is set out in Bill sub-cl.1178(3).

Cl.1179 : Disclosure to client by representative

3524. A representative of a futures broker or futures adviser who holds a proper authority will be prohibited from:

- (a) accepting instructions from a person (other than the licensee or a person acting on the licensee's behalf) to deal in futures contracts;

- (b) dealing in futures contracts otherwise than on a futures market;
- (c) advising a person (other than the licensee or a person receiving advice on a licensee's behalf) about futures contracts; or
- (d) giving a futures report to a person (other than a licensee or a person receiving the futures report on the licensee's behalf);

unless the representative:

- (e) has informed the person that he or she is acting as a futures representative of the licensee;
- (f) has at some previous time shown the proper authority to the person; and
- (g) has at some previous time informed the person in writing of his or her business address.

Cl.1180 : Commission may require production of authority

3525. This is a new provision.

3526. The ASC will have the power to require a person to produce any proper authority or invalid futures authority held by that person. The ASC will only be able to exercise this power where it has reason to believe that a person holds a proper authority from a licensee or has acted as a representative of another person (Bill sub-cl.1180(1)).

Cl.1181 : Commission may give licensee information about representative

3527. This is a new provision.

3528. If the ASC has information about a person, the ASC will be able to give that information to a licensee if it believes on reasonable grounds that:

- (a) the person holds or will hold a proper authority from the licensee;
- (b) the ASC should give the information to licensee; and
- (c) the information is true.

(Bill sub-cl.1181(1)).

3529. Where the ASC gives such information to a licensee, the licensee or an officer of the licensee will be able to give that information to another person or make use of or record that information for purposes related to taking action against the holder of the proper authority (Bill sub-cl.1181(2)). Similarly a person who receives information under sub-cl.1181(2) will be able to give that information to another person or make use of or record that information only for purposes related to taking action against the holder of the proper authority (Bill sub-cl.1181(3)). Qualified privilege will be conferred on persons who do things permitted by sub-cl.1181(2) and (3) (Bill sub-cl.1181(5)). A person who is given information in accordance with this clause will be prohibited from disclosing that information in court except in the following cases:

- (a) for purposes connected with the licensee taking action, if any, against the holder of the proper authority;
- (b) in proceedings relating to an alleged contravention of cl.1181;

- (c) in proceedings relating to an ancillary offence relating to an offence against cl.1181;(see definition of "ancillary offence" in Bill cl.9); or
- (d) in proceedings relating to the giving to a court of false information to a court.

(Bill sub-cl.1181(6)).

Cl.1182 : Holder of authority may be required to return it

3530. This is a new provision.

3531. Where a person holds a proper authority from the licensee, the licensee will be able to require the person to give the proper authority to the licensee (Bill sub-cl.1182(1)). Similarly, where a person holds an invalid futures authority from another person, that other person will be able to require the return of the invalid authority (Bill sub-cl.1182(2)).

Division 4: Liability of Principals for Representatives' Conduct

3532. This is a new Division.

3533. As representatives of futures brokers and advisers will no longer be required to be licensed, futures brokers and advisers will be required to accept greater responsibility for the acts of their representatives. In general all the principals of a representative will be jointly and severally liable for the representative's conduct unless it can be established that the representative was acting for a particular identified principal. If the principal is identified then that principal will be fully liable for the acts of the representative.

Cl.1183 : Conduct engaged in as a representative

3534. This is a new provision.

3535. Where a person engages in conduct as a representative of another person, then as between that other person (or principal) and a third party, the principal will be liable as if the principal had done the act himself or herself. Under this clause the principal will be liable even if the person acting as a representative acts beyond the express limits of the instructions from the principal.

Cl.1184 : Liability where identity of principal unknown

3536. This is a new provision.

3537. This clause will apply where a person (or representative) engages in conduct while that person is a representative of 2 or more principals and that person engages in the conduct as a representative of a principal but the identity of the principal is not established (Bill sub-cl.1184(1)). Where this clause applies and only one of the principals is a party to a proceeding, that principal is liable in respect of the conduct of the representative as if he or she were the unidentified principal (Bill sub-cl.1184(2)). Where this clause applies and 2 or more of the principals are a party to a proceeding then each of those principals is liable in respect of the conduct of the representative as if each of them were the unidentified principal (Bill sub-cl.1184(3)).

Cl.1185 : Liability of principals where act done in reliance on representative's conduct

3538. This is a new provision.

3539. This clause will apply where the following 3 elements are satisfied:

- (a) a person is a representative of one or more principals and engages or proposes to engage in particular conduct;
- (b) the client does or omits to do an act because the client believes in good faith that the representative engaged in or proposes to engage in that conduct on behalf of a principal and in connection with a futures broking business or futures advice business carried on by the principal; and
- (c) it is reasonable for the client to have that belief and to do or omit to do the act in question because of that belief.

(Bill sub-cl.1185(1)).

3540. It will not matter that the conduct of the representative may be outside the scope of the representative's employment by, or authority from the principal.

3541. Where this clause applies, and the representative has engaged in the particular conduct then the principals of the representative will be liable in respect of the conduct of the representative as if they had engaged in the conduct themselves (Bill sub-cl.1185(2)).

3542. The liability of principals under this clause will include liability to pay damages to the client in respect of any loss or damage that the client suffers as a result of doing or omitting to do an act in reliance on the conduct of the representative (Bill sub-cl.1185(3)).

3543. If during proceedings the identity of the principal on whose behalf the representative acted can be established, and the identified principal is a party to the proceedings, then only the identified principal will be liable in respect of the conduct of the representative (Bill sub-cl.1185(4)).

Cl.1186 : Presumptions about certain matters

3544. This is a new provision.

3545. Where a person is a representative of one or more principals, and engaged in particular conduct, it will be presumed until the contrary is proved, that the person engaged in that conduct as a representative of one of those principals (Bill sub-cl.1186(1)).

3546. Where the application of cl.1185 is at issue in a proceeding, and it is proved that a client did or omitted to do an act because the client believed in good faith that the representative had or would engage in particular conduct then it will be presumed unless the contrary is proved that it was reasonable for the client to so act and believe (Bill sub-cl.1186(2)).

Cl.1187 : No contracting out of liability for representative's conduct

3547. This is a new provision.

3548. Sub-clause 1187(1) is definitional and identifies the nature of the liability of a principal that is dealt with in the clause. Any agreement that purports to exclude, restrict or otherwise affect a liability of a principal in respect of conduct engaged in by a person as a representative of the principal will be void (Bill sub-cl.1187(2)). An agreement that provides for a person to indemnify the principal will be similarly void (Bill sub-cl.1187(2)). However, some types of agreements will not be made void. They are as follows:

- (a) a contract of insurance;
- (b) an agreement between a representative and a principal for the representative to indemnify the principal in respect of the liability of the principal arising from acts of that representative; and
- (c) an agreement between licensees who have both given a person a proper authority, providing for one licensee to indemnify the other licensee in respect of the other licensee's liability arising from acts of the person holding the proper authority.

(Bill sub-cl.1187(3)).

3549. A person will be prohibited from making, offering to make, or inviting another person to offer to make an agreement that would be void under sub-cl.1187(2).

(Bill sub-cl.1187(4)).

Cl.1188 : Effect of Division

3550. This is a new provision.

3551. Where two or more people are liable under Part 8, Division 4 in respect of the same conduct or the same loss, they will be jointly and severally liable (Bill sub-cl.1188(1)). The liability created by this Division will not affect a liability arising otherwise than under this Division. However, this Division will not give a person an entitlement to be compensated twice in respect of the same loss or damage (Bill sub-cl.1188(2)).

Cl.1189 : Additional operation of Division

3552. This is a new provision which will extend the operation of various provisions contained in Part 8 Division 4 e.g. references in certain provisions to:

- (a) persons will include references to corporations;
- (b) eligible futures conduct will include any conduct; and
- (c) third persons will include corporations.

3553. Furthermore, cl.73, which defines "futures representative" will have additional operation in certain circumstances so as to include a person acting as a representative of any futures broking business or futures advice business.

Division 5: Excluding persons from the futures industry

3554. This Division deals with the various means by which participants in the securities industry may be disciplined. Under the FIA, disciplining took the form of suspension or revocation of a person's licence or disqualification by the Court. Under this Division, in addition to these forms (which are expanded in scope) the ASC is given a power to make a banning order against a person, as well as a power to fine a licensee or representative. Also the provisions dealing with revocation and suspension of licences have been restructured to provide a format that is easier to follow.

Cl.1190 : Power to revoke licence without a hearing

3555. This clause is based on FIA s.77.

3556. The ASC will be able , by written order, to revoke a licence in certain specified circumstances (Bill cl.1190) without giving the licensee an opportunity to be heard. These circumstances are as follows:

- (a) the licensee ceases to be an eligible (trading or foreign) corporation;

- (b) if the body ceases to carry on business;
- (c) if the licensee becomes externally-administered i.e. if it begins to be wound up, comes under official management, has a receiver or receiver and manager appointed, or enters into a compromise or scheme of arrangement with its creditors;
- (d) if the body contravenes cls.1157 and 1158 (failure to lodge an annual statement within the permitted time) or 1218 (failure to prepare proper accounts);
- (e) if the licensee asks the ASC to revoke the licence; or
- (f) if a director, secretary or executive officer of the body contravenes this Chapter because he or she does not hold a licence or a licence held by him or her is suspended.

Cl.1191 : Power to revoke licence after a hearing

3557. This clause is based on FIA s.78 although a number of additional grounds for revocation have been inserted.

3558. The ASC will be able, by written order, to revoke a licence in certain specified circumstances provided that the licensee is given an opportunity for a hearing under cl.F80. These circumstances are as follows:

- (a) if the application for the licence contained false or misleading information, or omitted material information (Bill paras.1191(1)(a) and (b));
- (b) if the licensee contravenes a futures law (other than cls.1157, 1158 and 1218 dealing with annual statements and accounts) or contravenes a condition of the licence (Bill para.1191(1)(c) and (d));

- (c) if the ASC is satisfied that the educational qualifications or experience of an officer of the licensee are inadequate having regard to the duties that that officer performs in connection with holding the licence. This power will be exerciseable only in relation to persons who become officers after the grant of the licence or in relation to duties that an officer performs that are different to those performed at the time of granting the licence (Bill paras.1191(1)(e) and (f));
- (d) if the ASC believes that the licensee has not or will not perform his or her duties as a licensee efficiently, honestly and fairly (Bill paras.1191(1)(h) and(j))
- (e) if a licence held by a director, secretary or executive officer of the body is suspended or revoked or a banning order under cl.1194 is issued against such a director, secretary or executive officer (Bill para.1191(1)(g)).

3559. In determining whether the good fame and character criterion or the efficiency, honesty and fairness criterion is met, the ASC will be able to regard to matters that arose before the licence was granted (Bill sub-cl.1191(2)).

Cl.1192 : Power to suspend licence instead of revoking it

3560. This clause is based on FIA sub-ss.77(3), 78(2) and FIA s.79, although a number of additional grounds of suspension have been inserted.

3561. The ASC will be able, by written order, to suspend a licence rather than revoke it in certain specified circumstances provided the licensee is given an opportunity for a hearing under cl.1200 (Bill para.1192(1)(c)). These circumstances are as follows:

- (a) on any of the grounds specified in cls.1190, except of course where the licensee has requested that the licence be revoked (Bill para.1192(1)(a))

- (b) on any of the grounds specified in cls.1191 except:
 - (i) if the application for the licence contained false or misleading information or omitted material information; or

 - (ii) if the ASC believes the licensee, being a natural person, is not of good fame and character (Bill para.1192(1)(b)).

3562. The ASC will also be able, in the same circumstances, to prohibit the licensee from doing specified acts which would be prohibited if the licensee did not hold a licence (Bill para.1192(1)(d)).

3563. The holder of a licence will be deemed not be the holder for any period during which the licence is suspended. This will mean that a person cannot act as a representative of a licensee while the licensee's licence is suspended. (Bill sub-cl.1192(3)). Similarly, a person will not be able, as a representative, to do an act which a licensee is prohibited from doing pursuant to an order under para.1192(1)(d) (Bill sub-cl.1192(4)).

Cl.1193 : Power to make banning order

3564. This a new provision.

3565. After providing an opportunity for a hearing, the ASC will be able to issue a banning order against a natural person prohibiting that person from doing an act as a representative of a futures broker or futures adviser (see Bill cl.1194):

- (a) if the person becomes an insolvent under administration (Bill para.1193(a))
- (b) if the person is convicted of serious fraud (Bill para.1193(b))
- (c) if the person becomes incapable, through mental or physical incapacity, of managing his or her affairs (Bill para.1193(c))
- (d) if the person contravenes a futures law (Bill para.1193(d))
- (e) if the ASC believes the person is not of good fame and character (Bill para.1193(e))
- (f) if the ASC believes the person has not or will not perform his or her duties as a representative of a futures broker or futures adviser efficiently, honestly and fairly (Bill paras.1194(f) and (g))

Cl.1194 : Nature of banning order

3566. This is a new provision.

3567. This clause specifies the nature of the banning orders that the ASC is empowered by other clauses to make. The ASC will be able to permanently prohibit a person from doing an act as a representative of a futures broker or futures adviser or both (Bill paras.1194(1)(a), (c), (d) and (e)).

3568. The ASC will also be able to prohibit, for a specified period, a person from doing an act as a representative of a futures broker or futures adviser or both. This power, however, will not be available where the ground for making the banning order is that the person is not of good fame and character. (Bill para.1194(1)(b)).

Cl.1195 : Exceptions to banning order

3569. This is a new provision.

3570. A banning order made by the ASC will be able to include a provision that permits the person to do things that the order would otherwise prohibit. This provision may be subject to conditions (Bill sub-cl.1195(1)). The ASC will be able to vary a banning order by inserting or removing such a provision or by varying the conditions to which the provision is subject (Bill sub-cl.1195(2)). Such variations will be able to be made only if the person is given an opportunity for a hearing under cl.1200.

Cl.1196 : Variation or revocation of banning order on application

3571. This is a new provision.

3572. A person will be able to apply to the ASC for a variation or revocation of a banning order relating to the person (Bill sub-cl.1196(1)). The ASC will be required to revoke the banning order if the person is not an insolvent under administration, if the ASC has no reason to believe that the person is not of good fame and character and if the ASC has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of a representative of a futures broker or of a futures adviser (Bill paras.1196(2)(a), (b), (c) and (e)). If the ASC has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of a representative of either a futures broker or futures adviser, but not both, the ASC will be required to vary the banning order accordingly (Bill paras.1196(2)(a), (b), (c) and (d)). In determining whether the efficiency, honesty and fairness criterion is met, the ASC will be required to have regard to any convictions of the person for serious fraud in the preceding 10 years (Bill sub-cl.1196(4)).

Cl.1197 : Revocation of banning order in certain cases

3573. This a new provision.

3574. Where the ASC is required to vary a banning order so that it no longer has a particular operation and the banning order has no other operation, the ASC will be required to revoke the banning order instead (Bill cl.1197).

Cl.1198 : Effect and publication of orders under this Division

3575. This a new provision.

3576. A banning order or variation of a banning order will take effect when it is served on the person to whom the order relates (Bill sub-cl.1198(1)). After the order is served the ASC will be required to publish a copy of the banning order or the banning order as varied in the Gazette, together with the day the banning order or variation took effect (Bill sub-cl.1198(2)). If the banning order includes a provision that permits, subject to conditions, the person to do things that are otherwise prohibited, and inclusion of those conditions in the Gazette would make the notice unreasonably long, the notice published in the Gazette will be able to contain a summary of the effect of those conditions instead (Bill sub-cl.1198(3)).

Cl.1199 : Contravention of a banning order

3577. This is a new provision.

3578. It will be an offence for a person to contravene a banning order.

Cl.1200 : Opportunity for hearing

3579. This clause is based on FIA s.80 although, as a consequence of other amendments, a number of additional circumstances where a person is entitled to a hearing have been inserted.

3580. The ASC will be required to give a person an opportunity to appear in private before the ASC and to make submissions and give evidence to the ASC before the ASC takes action in any of a number of specified ways (Bill sub-cl.1200(2)). The matters in relation to which the ASC must give the person affected an opportunity for a hearing before it acts are as follows:

- (a) refusing to grant a licence because, amongst other things, the applicant does not have adequate educational qualifications and experience or the ASC believes the applicant will not perform the duties of a licensee efficiently, honestly and fairly;
- (b) imposing or varying conditions of a licence;
- (c) revoking or suspending a licence otherwise than as empowered by Cl.1190 or para.1192(1)(a);
- (d) making a banning order against a person, otherwise than by virtue of paras.1193(a), (b) or (c);
- (e) varying a banning order under sub-cl.1195(2); or
- (f) refusing an application for a variation or revocation of a banning order

(Bill sub-cl.1200(1)).

Cl.1201 : Disqualification by the Court

3581. This clause is based on FIA sub-ss.78(3) and (4), although some minor changes have been made in order to give the Court more flexibility in the types of orders it can make.

3582. The ASC will be able to apply to the Court for a disqualification order against a person if it has revoked the person's licence after a hearing or if it has made a permanent banning order against that person (Bill sub-cl.1201(1)). The Court will be able to make an order disqualifying the person permanently or for a specified period from holding either a futures broker's licence, a futures advisers licence or both (Bill para.1201(2)(a)) or disqualifying the person permanently or for a specified period from doing an act as a representative of either a futures broker or futures adviser or both (Bill para.1201(2)(b)) or such other order as it thinks fit (Bill para.1201(2)(c)).

Cl.1202 : Effect of orders under section 1201

3583. This clause is new.

3584. A licence will not be able to be granted to a person while there is in force an order from the Court disqualifying that person from holding a licence (Bill sub-cl.1202(1)). It will be an offence for a person to contravene a disqualifying order that prohibits that person from doing an act as a representative of a futures broker or futures adviser or both (Bill sub-cl.1202(2)).

Cl.1203 : Effect of previous orders under laws corresponding to section 1201

3585. This provision is new.

3586. Court orders disqualifying a person from holding a futures licence that are in force when cl.1201 commences will continue to have effect.

BILL PART 8.4 : CONDUCT OF FUTURES BUSINESS

3587. Part 8.4 of the Bill (cls.1204 to 1210) deals with the conduct of futures business.

Cl.1204 : Certain representations prohibited

3588. This provision is based on FIA s.81.

3589. A licence holder will be prohibited from representing that his or her abilities or qualifications have been approved by the ASC (Bill sub-cl.1204(2)). A statement that a person holds a licence will not contravene the provision (Bill sub-cl.1204(2)).

Cl.1205 : Undesirable advertising

3590. This provision is based on FIA s.82.

3591. Where, having regard to past, present or proposed conduct, the ASC considers it is in the public interest to do so, it will be able to serve an order on a person prohibiting the publication or broadcast of statements relating to futures contracts or to the carrying on of futures business unless the ASC has first approved the form and content of the statements (Bill sub-cl.1205(2)). Failure to comply with an ASC order will be an offence (Bill sub-cl.1205(4)).

3592. Before the ASC will be able to make such an order it must first give the person affected an opportunity to appear at a private hearing and to make submissions and give evidence (Bill sub-cl.1205(3)).

3593. A person will be presumed to have published or broadcast a statement where that statement sets out the name and address details of the person (Bill sub-cl.1205(5)).

Cl.1206 : Issue of contract notes

3594. This provision is based on FIA s.83.

3595. The primary purpose of a contract note is to inform a client of the essential features of the contract which the broker has made after effecting a futures transaction.

3596. A contract note will be required to be issued as soon as practicable by a futures broker to the following persons in respect of the acquisition or disposal of a futures contract on behalf of the persons:

- (a) the person on whose behalf the transaction was effected (other than an operation on a discretionary account); or
- (b) to each person who gave the broker instructions authorising the broker to operate on a discretionary account (other than a person who agrees not to receive a contract note);

(Bill sub-cl.1206(2));

3597. A futures broker will not be required to give a contract note to the holder of futures broker's licence (Bill sub-cl.1206(3)).

3598. A contract note in respect of a futures contract transaction (other than in a transaction in relation to a futures option or eligible exchange-traded option - see definitions of these terms in cl.9) will be required to include the particulars set out in Bill sub-cl.1206(4), such as:

- (a) the day the transaction took place;

- (b) a description of the futures contract;
- (c) the deposit paid or payable in respect of the transaction;
- (d) the name of abbreviation of the futures exchange or exempt futures market where the transaction took place; and
- (e) a statement of the amount of commission charged or the rate (if any) at which the commission was charged.

3599. A contract note in respect of the acquisition or disposal of a futures option will be required to include the particulars set out in Bill sub-cl.1206(5) and a contract note in respect of the acquisition or disposal of an eligible exchange-traded option will be required to include the particulars set out in Bill sub-cl.1206(6).

Cl.1207 : Futures broker to furnish monthly statement to client

3600. This provision is based on FIA s.84.

3601. In order to keep a client informed, a futures broker will be required to provide the client with a monthly statement where the broker has:

- (a) held money or property on account of the client during the month (Bill para.1207(2)(a)); or
- (b) an open position at the end of the month in a futures contract acquired on behalf of the client (Bill para.1207(2)(b)).

3602. The monthly statement will be required to be sent to the client within 7 days after the end of the month and to specify various matters including:

- (a) the opening cash balance for the month in the client's account (Bill para.1207(2)(d));
- (b) all deposits, credits, withdrawals and debits affecting the account during the month (Bill para.1207(2)(e));
- (c) the cash balance at the end of this month (Bill para.1207(2)(f)); and
- (d) particulars of each futures contract acquired on behalf of the client and of open positions at the end of the month in futures contracts acquired on behalf of the client (Bill para.1207(2)(g)).

3603. Where the broker has authority to operate on a discretionary account, the statement sent to each client who has authorised the broker to operate on that account will be required to specify certain matters including:

- (a) the opening and closing cash balance and all deposits, credits, withdrawals and debits for the month in the client's account;
- (b) in relation to each transaction in respect of a futures contract that was effected during the month:
 - (i) a description of the futures contract and details of any liquidating trade; and
 - (ii) details of outstanding deposit or margin calls.

(Bill sub-cl.1207(3)).

Cl.1208 : Dealing by futures broker on own account

3604. This provision is based on FIA s.85.

3605. A futures broker will be required to keep separate records that correctly record and explain dealings in futures contracts by the broker on the broker's own account.

3606. These records are to include the time, date and description of the broker's dealings on own account and the source of the funds used for effecting those dealings (Bill sub-cl.1208(1)). The records must be in English or be readily convertible into English (Bill sub-cl.1208(2)).

3607. A futures broker will be prohibited from knowingly taking the other side of client's order unless:

(a) the client consents to the broker doing so with respect to each transaction where this is contemplated: or

(b) the broker is taken, for the purposes of the legislation, to be dealing in a futures contract on the broker's own account - including, for example, where the the broker deals in a futures contract on the instructions of an associate - see Bill sub-cl.29(1) (Bill sub-cl.1208(3)).

3608. For the purposes of Bill sub-cl.1208(3), a futures broker will take the other side of a client's order where the broker, dealing on the broker's own account, assumes a bought or sold position and, when dealing on the instructions of a client, assumes the opposite sold or bought position (Bill sub-cl.1208(4)).

Cl.1209 : Segregation of client money and property

3609. This provision is based on FIA s.86.

3610. Where money or property (other than property that is delivered in accordance with a futures contract - see Bill cl.1214) is deposited with the broker by or on behalf of the client, the broker will be required to deposit the money in a client's segregated account and the property in safe custody within the next business day (Bill sub-cl.1209(3)).

3611. Clause 1209 will apply only to money or property of bona fide clients. For the purpose of this provision "client" will not include:

- (a) the futures broker or a director, officer or employee of the broker;
- (b) a body corporate that is related to the broker i.e. its subsidiary or holding company;
- (c) a person who is associated with, or who is a partner of, the broker; or
- (d) a body corporate in which the broker has, or the broker and the partners of the broker together have, a controlling interest

(Bill sub-cl.1209(1) - definition of "client").

3612. The property of a client that may be deposited with a futures broker will include credit facilities and securities (Bill sub-cl.1209(1) - definition of "property"). "Credit facility" is defined to mean a document evidencing the right of a person to obtain money or credit from another person, including a letter of credit and a bank guarantee. Where a clearing house or some other person or body corporate pays a futures broker an amount of money, some of which is attributable to dealings on behalf of clients, the broker will be required to deposit the money in a clients' segregated account (Bill sub-cl.1209(4)).

3613. A futures broker will not be able to withdraw any of the money in a clients' segregated account except for the purpose of -

- (a) making a payment to a person entitled to the money;
- (b) making a payment for the entering into, margining, guaranteeing, securing, transferring, adjusting or settling of dealings in futures contracts effected on behalf of a client - ("settling" is defined in Bill sub-cl.1209(1) to include making delivery, or taking delivery, of a commodity to which a futures contract relates);
- (c) defraying brokerage and other proper charges incurred in respect of dealings in futures contracts effected on behalf of a client;
- (d) investing it in authorised trustee investments, or with an authorised dealer in the short term money market, a bank or the clearing house of a futures exchange, or in a cash management trust;
- (e) paying the broker a fee that the broker may charge, or an amount to which the broker is entitled, under an agreement with a client;
- (f) making a payment that is otherwise authorised by law; or
- (g) reimbursing the broker with funds which the broker has deposited to meet a client's shortfall (see Bill sub-cl.1209(10) and (11), discussed below)

(Bill sub-cl.1209(5)).

3614. Where a futures broker invests client money that has been deposited in a clients' segregated account:

- (a) the broker will be able to charge such fee, and is entitled to so much of the return on the money invested, as the broker and the client agree in writing (Bill sub-cl.1209(8));
- (b) the broker will be required to:
 - (i) inform the institution with which the money is invested that the money is client money that has been withdrawn from a clients' segregated account; and
 - (ii) obtain from the institution a signed statement setting out the amount invested and acknowledging that the broker has informed the institution as mentioned in (i) above

(Bill sub-cl.1209(9)).

3615. A futures broker will not be able to deal with property deposited in safe custody pursuant to Bill sub-cl.1209(3) otherwise than in accordance with the terms and conditions on which the property was deposited with the broker (Bill sub-cl.1209(7)).

3616. Where the total of a client's relevant liabilities (defined in Bill sub-cl.1209(1)) exceed the client's relevant credit balance (also defined in Bill sub-cl.1209(1)), the broker will be able to deposit money in a clients' segregated account sufficient to make up the shortfall (Bill sub-cl.1209(10)). Money so deposited is deemed to be money to which the client is entitled (Bill sub-cl.1209(10)) except that once the shortfall is made up the broker will be able to withdraw any excess funds from the account (Bill sub-cl.1209(11)).

3617. In relation to the clients' segregated account, a futures broker will be required to keep accounting records that -

- (a) are separate from other accounting records;
- (b) record, separately in respect of each client, particulars of the amounts deposited in and withdrawn from the account or accounts; and
- (c) record, separately from the particulars referred to in para.(b) -
 - (i) particulars (including withdrawals) of money to which the broker is entitled which has been received from a clearing house;
 - (ii) particulars of money deposited to make up a client shortfall; and
 - (iii) particulars of money withdrawn after the client shortfall has been made up

(Bill sub-cl.1209(12)).

3618. A futures broker will also be required to keep records of property deposited pursuant to Bill sub-cl.1209(3) and to keep separate records of each client's property (Bill sub-cl.1209(13)). The records required by Bill sub-cl.1209(12) and (13) will be required to adhere to the requirements of Bill cl.1213 (accounts to be kept by futures brokers) so far as Bill cl.1213 is capable of application (Bill sub-cl.1209(14)).

3619. Money in a clients' segregated account, property in which such money has been invested and property deposited in safe custody pursuant to Bill sub-cl.1209(3) will not be

available for the payment of the debts or liabilities of the broker (Bill sub-cl.1209(15)). This will not, however, affect the right of a client to recover money or property to which the client is entitled (Bill sub-cl.1209(16)) or prevent the broker withdrawing money from the account to which the broker is entitled (Bill sub-cl.1209(17)).

3620. Where a futures broker invests client money from a clients' segregated account, neither that money nor any property in which the money is invested is available for the payment of the debts or liabilities of the investment institution (Bill sub-cl.1209(18)).

3621. Clause 1209 will does not prejudice any claim or lien that a futures broker has against or on any money in a clients' segregated account, property in which such money has been invested and property deposited in safe custody (Bill sub-cl.1209(19)).

Cl.1210 : Futures broker to give certain information to prospective clients

3622. This provision is based on FIA s.87.

3623. The Bill will require all futures brokers to provide certain information to clients to ensure, among other things, that the client is aware that futures trading involves the risk of a loss as well as the prospect of profit.

3624. A futures broker will be required to give a prospective client:

(a) a document that:

(i) explains the nature of futures contracts and client obligations;

- (ii) sets out a risk disclosure statement in the prescribed form;
 - (iii) sets out the specifications and essential details of futures contracts in which the broker deals; and
- (b) a copy of each agreement which the broker proposes to require the prospective client to enter into.

BILL PART 8.5 : ACCOUNTS AND AUDIT

3625. Part 8.5 (Bill cls.1211 to 1227) deals with the accounts to be kept by the holder of a futures broker's licences and with the auditing and supervision of those accounts. The application of this Part is dealt with in cl.1212.

Cl.1211 : Interpretation

3626. This provision is based on FIA s.88.

3627. A reference in Part 8.5 to a book, futures contract or business of a futures broker who carries on business in partnership is to be read as a reference to a book, futures contract or business of the partnership.

Cl.1212 : Application of Part

3628. This provision is based on FIA sub-s.89(2).

3629. Part 8.5 will not affect the operation of Bill Parts 3.6 and 3.7 in relation to a company which holds a futures broker's licence (Bill cl.1212).

Cl.1213 : Accounts to be kept by futures brokers

3630. This provision is based on FIA s.90.

3631. A brief outline of cl.1213 is as follows:

- (a) A futures broker will be required to keep accounting records that correctly record and explain the transactions and financial position of the broker's futures business. A futures broker will be required to keep accounting records that enable true and fair profit and loss accounts and balance sheets to be

made up and conveniently and properly audited (Bill sub-cl.1213(1)).

- (b) These accounting records will be required to be in English or readily convertible into English and to be kept in sufficient detail to show particulars of the matters set out in Bill paras.1213(2)(b)-(e) (Bill sub-cl.1213(2)).
- (c) In respect of a discretionary account on which the futures broker operates, the broker will be required to keep records in sufficient detail to show the particulars required to be furnished to the client in order to comply with Bill sub-cl.1207(3) (Bill sub-cl.1213(3)).
- (d) A futures broker will also be required to keep records in sufficient detail to show separately particulars of all transactions in relation to clients, the broker, the broker's partners, other futures brokers and the broker's representatives (Bill sub-cl.1213(4)).
- (e) An entry in the records will be deemed to have been made by or with the authority of the futures broker (Bill sub-cl.1213(5)).
- (f) If required, a futures broker will be required to convert a record not kept in English into English within a reasonable time (Bill sub-cl.1213(6)).
- (g) If records are kept outside Australia, the broker will be required to send to and keep in Australia such particulars as will enable true and fair profit and loss accounts and balance sheets to be prepared (Bill sub-cl.1213(8)). If required by the ASC to produce such records, the broker will be required to comply within 28 days (Bill sub-cl.1213(9)).

Cl.1214 : Property in custody of futures broker

3632. This provision is based on FIA s.91.

3633. A brief outline of cl.1214 is as follows:

- (a) Where a futures broker receives property of a client delivered in accordance with a futures contract and for which the broker or the broker's nominee is accountable, the broker will be required forthwith:
 - (i) if so requested, deposit it in safe custody at a bank; or
 - (ii) deposit it in accordance with the futures exchange business rules

(Bill sub-cl.1214(1)).

- (b) If an amount is owed to a futures broker by the client, the broker will be required to deposit the client's property as security with the broker's creditors if the broker gives a written notice to the client identifying the property and stating that the broker intends to deposit it as a security (Bill sub-cl.1214(2)). Where money owed to the broker is paid by the client, the broker will be required, at the client's request, to withdraw the property from deposit as soon as practicable. This will not, however, prevent the broker from redepositing the property as permitted by Bill sub-cl.1214(2) (Bill sub-cl.1214(3)).

- (c) If the property is maintained as security for more than 3 months the futures broker will be required to give the client written notice of this fact, and at 3 monthly intervals thereafter (Bill sub-cl.1214(4)).

Cl.1215 : Appointment of auditor by futures broker

3634. This provision is based on FIA s.92.

3635. A person who holds a futures broker's licence (other than an Australian bank) will be required to have auditor. A brief outline of cl.1215 is as follows:

- (a) A futures broker (other than an Australian bank) will be required to appoint an auditor within one month of becoming licence holder (Bill sub-cl.1215(1)). The appointment of an auditor will be required to be notified to the ASC within 14 days (Bill sub-cl.1215(12)).
- (b) A person or firm will not be able to be an auditor where one or more of the restrictions set out in Bill sub-cl.1215(2) and (3) exist. The appointment of a firm as auditor will be taken as the appointment of all members of the firm who are registered company auditors (Bill sub-cl.1215(8)) and a newly constituted firm (due to death or retirement etc.) will be deemed to be appointed as auditor if not disqualified by Bill sub-cl.1215(9). Except as provided by Bill sub-cl.1215(9) the appointment of members of a firm as auditors will not be affected by dissolution of the firm (Bill sub-cl.1215(10)).
- (c) Each member of a firm that consents to be appointed as the auditor of a futures broker will be guilty of an offence if this appointment is in breach of this clause (Bill sub-cl.1215(13)).
- (d) A person will be prohibited from knowingly disqualifying himself or herself or a firm (if he or she is a member) from acting as auditor of the futures broker (Bill sub-cl.1215(14)).

- (e) An auditor will hold office until death, removal, resignation or incapacity (Bill sub-cl.1215(15)).
- (f) If there is no surviving or continuing auditor, a futures broker must appoint an auditor within 14 days (Bill sub-cl.1215(16)).
- (g) The provisions of cl.1215 will not apply to a body corporate (other than an exempt proprietary company) in relation to which Bill cl.327 applies. (Bill cl.327 deals with the appointment of auditors by a company) (Bill sub-cl.1215(19)).

Cl.1216 : Removal and resignation of auditors

3636. This provision is based on FIA s.93.

3637. Clause 1216 deals with the removal and resignation of a futures broker's auditor.

3638. A brief outline of cl.1216 is as follows:

- (a) A futures broker will be able to remove an auditor if the ASC consents (Bill sub-cl.1216(1)). An auditor will be able to resign if the ASC consents (Bill sub-cl.1216(2)).
- (b) A statement made in an application by an auditor or in answer to an inquiry by the ASC will not be admissible in evidence in civil or criminal proceedings (except in relation to cl.1308 which deals with the offence of false or misleading statements) and will not be able to be the ground of a prosecution (other than in relation to cl.1308) (Bill sub-cl.1216(4)).

- (c) Where, on the retirement or withdrawal of a member of a firm the firm is no longer capable of being auditor because no member of the firm is a registered company auditor ordinarily resident in Australia (see para.1215(3)(d)), the retiring member (if not disqualified) will be deemed to be the auditor until the ASC consents to the member's retirement or withdrawal (Bill sub-cl.1216(6)).
- (d) A person aggrieved where the ASC does not consent to the removal or resignation of an auditor will be able to appeal to the Court, which will be able to confirm or reverse the decision or make such further order as it thinks appropriate (Bill sub-cl.1216(7)). Clause 1216 will not apply in relation to a body corporate (other than an exempt proprietary company) to which Bill sub-cl.329 applies (cl.329 deals with the removal and resignation of company auditors) (Bill sub-cl.1216(8)).

Cl.1217 : Fees and expenses of auditors

3639. This provision is based on FIA s.94.

3640. A futures broker will be required to pay the reasonable fees and expenses of the broker's auditor.

Cl.1218 : Futures brokers' accounts

3641. This provision is based on FIA s.95.

3642. Clause 1218 will require a futures broker (other than an Australian bank) to prepare a yearly profit and loss account and balance sheet and to lodge these with the ASC together with an auditor's report (Bill sub-cl.1218(2)). The ASC will be able to approve an extension of time for the lodgement of the accounts and auditor's report (Bill sub-cl.1218(3)).

Cl.1219 : Auditor's right of access to records, information etc

3643. An auditor of a futures broker will have a right of access at all reasonable times to the broker's records and may require information and explanations for the purposes of the audit (Bill sub-cl.1219(1)). It will be an offence for a futures broker, or an executive officer of the futures broker, without lawful excuse to:

- (a) refuse access to records;
- (b) refuse or fail to give information or explanations as required; or
- (c) hinder or obstruct the auditor

(Bill sub-cl.1219(2)).

Cl.1220 : Auditor to report to ASC in certain cases

3644. This provision is based on FIA s.97.

3645. Clause 1220 will require an auditor to lodge with the ASC within 7 days a written report of any prescribed matter coming to the auditor's attention. A copy will be required to be sent to the futures broker, each futures exchange and futures association of which the broker is a member, and to the clearing house. "Prescribed matter" is defined by Bill sub-cl.1220(2) as a matter that, in the opinion of the auditor:

- (a) adversely affects the ability of the futures broker to meet obligations as a broker; or
- (b) constitutes or may constitute a breach of cls.1209 (requirement to segregate client money and property), 1213 (requirement of futures broker to keep accounts) or 1214 (requirement to keep clients' property in safe custody) or any breaches of licence conditions.

Cl.1221 : Certain matters to be reported to ASC

3646. This provision is based on FIA s.98.

3647. A futures exchange, clearing house or futures association will be required to notify the ASC of a prescribed matter in relation to its members as soon as practicable after becoming aware of the matter (Bill sub-cl.1221(1) and (2)).

3648. "Prescribed matter" is defined in similar terms to the definition in Bill cl.1220 except that it also includes a matter that in the opinion of the futures exchange, clearing house or futures association concerned constitutes a failure to make contributions to the fidelity fund in accordance with Part 8.6 (Bill sub-cl.1221(3)).

Cl.1222 : Defamation

3649. This provision is based on FIA s.99.

3650. An auditor of a futures broker will not be liable, in the absence of malice, to a defamation action in respect of an oral or written statement made or issued by the auditor in the course of the auditor's duties or the dissemination of any report under Bill cl.1220 (Bill sub-cl.1222(1)). A futures exchange, clearing house, futures association or their officers will not be liable, in the absence of malice, to a defamation action in respect of an oral or written statement made in the course of performing duties imposed by Bill cl.1221 or the dissemination of any report under Bill cl.1221 (Bill cl.1221(2)). Protection will also be given (in the absence of malice) to the publisher of any of these statements or reports (Bill sub-cl.1222(3)).

Cl.1223 : This Part not to affect right of futures exchange or futures association to impose obligations etc. on members

3651. This provision is based on FIA s.100.

3652. Nothing in Part 8.5 will prevent a futures exchange or futures association from imposing on members any obligations dealing with auditing of accounts, furnishing information in auditors' reports or the keeping of books, provided they are not inconsistent with the proposed legislation.

Cl.1224 : Power of Court to restrain dealings with futures broker's bank accounts

3653. This provision is based on FIA s.101.

3654. The Court will be able to make an order restraining dealings in relation to a futures broker's bank accounts (including accounts of a futures broker who deals on his or her own account - see Bill sub-cl.1224(3)) where the ASC or a futures organisation (see definition of "futures organisation" in Bill cl.9) shows to the satisfaction of the Court that:

- (a) there are reasonable grounds for believing there is a deficiency in a clients' segregated account provided for by Bill cl.1209;
- (b) there has been undue delay or unreasonable refusal by futures broker in paying or accounting for money;
- (c) has not paid moneys into the clients' segregated account; or
- (d) where a business is or was carried on otherwise than in partnership - that a person's futures broker's licence has been revoked or suspended or that the broker has ceased to carry on business or dealing in futures contracts (Bill sub-cl.1224(1)).

3655. Before considering an application for an order under Bill sub-cl.1224(1), the Court will be able to grant an interim order pending the determination of the application (Bill sub-cl.1224(4)).

3656. Where the ASC applies for an order under Bill sub-cl.1224(1), the Court will not be able to require the ASC, as a condition of granting an interim order under Bill sub-cl.1224(4), to give any undertaking as to damages (Bill sub-cl.1224(5)).

Cl.1225 : Duty of banker or body corporate to make full disclosure

3657. This provision is based on FIA s.102.

3658. Where an order made under cl.1224 is directed to a banker or a body corporate the banker or body corporate will be required to make full disclosure to the applicant for the order and permit the applicant to make a copy of or take an extract from an account to which the order relates.

Cl.1226 : Power of Court to make further orders and give directions

3659. This provision is based on FIA s.103.

3660. The ASC, a futures exchange, a futures association or a person affected by an order under cl.1224 will be able to apply to the Court which will be able to make further orders.

Cl.1227 : Power of Court to make order relating to payment of money

3661. This provision is based on FIA s.104.

3662. The Court, in making an order under Bill cl.1226, will be able to include directions directing the person to whom moneys are to be paid:

- (a) to pay the moneys into a trust account;

- (b) to prepare a scheme for distributing the moneys; or
- (c) to apportion the moneys in proportion to the proved claims where the moneys received are insufficient

(Bill sub-cl.1227(1)).

3663. A scheme prepared pursuant to Bill sub-cl.1227(1) will be required to be approved by the Court (Bill sub-cl.1227(2)). The Court will be able to give such directions as it thinks fit in relation to moneys held in a trust account under Bill sub-cl.1227(1) (Bill sub-cl.1227(3)).

BILL PART 8.6 : FIDELITY FUNDS

3664. Part 8.6 of the Bill (cls.1228 to 1250) deals with the fidelity fund which must be established by each futures organisation. The term "futures organisation" has been defined in cl.9 for the purpose of Part 8.6 to mean a futures exchange or a futures association (of which not all the members are members of a futures exchange). Transitional provisions have also been included (see sub-cl.1240(7)) to cover claims against an existing fidelity fund.

3665. The effect of Part 8.6 will be that:

- (a) where a futures exchange is also a futures association, only one fidelity fund is required, provided the fund covers all members;
- (b) a person who is a member of a futures exchange and a futures association is only required to contribute to the futures exchange fidelity fund;
- (c) only those futures association members who are not members of a futures exchange are to be required to contribute to the futures association fidelity fund.

Cl.1228 : Establishment of fidelity funds

3666. This provision is based on FIA s.106. Existing fidelity funds will be required to continue to be kept in accordance with Part 8.6 (Bill sub-cl.1228(3)).

3667. Each futures exchange or futures association must establish a fidelity fund which is administered by its Board (Bill sub-cl.1228(1)). The assets of the fund will be the property of the exchange or association, but will have to be kept separately from other property and be held in trust for the purposes of Part 8.6 (Bill sub-cl.1228(2)).

Cl.1229 : Money constituting fidelity fund

3668. This provision is based on FIA s.107.

3669. The fidelity fund of a futures organisation will consist of the moneys specified in sub-cl.1229(1). The Minister will be able to approve (conditionally or otherwise) the repayment of the whole or a specified part of an amount from the fidelity fund to the general fund of the futures exchange or futures association (Bill sub-cl.1229(2)).

3670. The fidelity fund will consist of:

- (a) in the case of a new fidelity fund - any amount paid in on its establishment;
- (b) money paid by contributing members to the futures exchange or futures association in accordance with this Part or the business rules of the exchange or association;
- (c) the interest and profits accruing from the investment of the fidelity fund;
- (d) money paid into the fund by the futures exchange or futures association in the exercise of a right of action conferred by this Part;
- (e) money recovered by or on behalf of the exchange or association in the exercise of a right of action conferred by this Part;
- (f) money paid by an insurer pursuant to an insurance or indemnity contract entered into by the exchange or association under cl.1249; and

(g) all other money lawfully paid into the fund

(Bill sub-cl.1229(1)).

Cl.1230 : Fund to be kept in separate bank account

3671. This provision is based on FIA s.108.

3672. Fidelity fund money will be required to be kept in a separate bank account.

Cl.1231 : Payments out of fund

3673. This provision is based on FIA s.109.

3674. The following payments will be payable out of the fidelity fund in such order as the board of a futures exchange or association determines:

- (a) claims allowed by the board or established against the futures exchange or association;
- (b) expenses incurred in investigating or defending claims or in the exercise by the exchange or association or its board of rights, powers and authorities under this Part;
- (c) premiums payable in respect of insurance or indemnity contracts entered into under cl.1249;
- (d) expenses incurred in administering the fund, including wages and salaries; and
- (e) all other money payable out of the fund in accordance with the Futures Chapter.

Cl.1232 : Accounts of fund

3675. This provision is based on FIA s.110.

3676. A futures exchange or futures association will be required to establish and keep proper accounts of its fidelity fund, prepare a balance sheet within 3 months of the end of its financial year (Bill sub-cl.1232(1)) and have the accounts audited (Bill sub-cl.1232(2)). The auditor will be required to lay a report before the board of a futures exchange or association (Bill sub-cl.1232(3)) and a copy of this report and the balance sheet will be required to be given to the ASC (Bill sub-cl.1232(4)).

Cl.1233 : Management sub-committee

3677. This provision is based on FIA s.111.

3678. The board of a futures exchange or futures association will be able to appoint a management sub-committee of not more than 5 nor less than 3 members, one of whom is a member of the Board (Bill sub-cl.1233(1)).

3679. Any management sub-committee appointed under the FIA that is still in existence when the Bill commences will be able to continue in existence (Bill sub-cl.1233(7)). Any delegations by the board of a futures exchange or futures association to such a management sub-committee will also continue in force (Bill sub-cl.1233(8)).

3680. Other provisions (in cl.1233) relating to this management sub-committee are as follows:

- (a) The board will be able to delegate its powers, authorities and discretions under Part 8.6 other than this power of delegation (Bill sub-cl.1233(2)).
- (b) A delegation by the board will be able to be varied or revoked (Bill sub-cl.1233(4)) and delegation will not prevent the exercise by the board of a power, authority or discretion (Bill sub-cl.1233(6)).

- (c) The board will be able to remove a member or fill a vacancy in a sub-committee appointed by it (Bill sub-cl.1233(5)).

Cl.1234 : Contribution to fund

3681. This provision is based on FIA s.112, although changes have been made to reflect the different constitutional basis. This provision and cls.1235 and 1236 should be read in conjunction with the 3 separate Bills dealing with contributions and levies to the fidelity fund of a futures exchange or futures association (dealt with at the end of this explanatory memorandum). Because these contributions and levies are in the nature of a tax, their imposition is required by the Constitution to be dealt with by separate Bills.

3682. This provision reflects the basic scheme referred to in para.3665 of this explanatory memorandum. A person will not be able to be admitted to membership of a futures exchange or association unless the person has paid to the futures exchange the fidelity fund contribution payable under the Futures Organisations (Application for Membership) Fidelity Funds Contribution Bill 1988 or the person is already a member of a futures exchange (Bill sub-cl.1234(1)). A contributing member of a futures exchange or futures association will not be entitled to continue to be a member, or a member organisation, of a futures exchange or association unless he, she or it pays an annual contribution to the fidelity fund of the exchange or association (Bill sub-cl.1234(2)). Such contributions will be imposed by the Futures Organisations (Membership) Fidelity Funds Contribution Bill 1988.

3683. As these fidelity fund contributions are in the nature of a tax, they will be payable to the Secretary of the Attorney-General's Department. They will be paid into the Consolidated Revenue Fund and will be reimbursed to the relevant futures exchange or association for inclusion in its fidelity fund (Bill sub-cl.1234(3) to (5)). A person will not

be liable to pay a fidelity fund contribution unless it has been imposed by separate legislation (Bill sub-cl.1234(6) and cl.1236).

Cl.1235 : Levy in addition to annual contributions

3684. This provision is based on FIA s.113.

3685. A futures exchange or association will be able to impose a levy on each contributor if the fidelity fund is insufficient to pay all amounts required to be paid under cl.1231 (Bill sub-cl.1235(1)). A person or partnership will not be required to pay a levy of more than \$5,000 in total or more than \$1,000 in 12 month period (Bill sub-cl.1235(2)). Such levies will be imposed by the Futures Organisations Fidelity Funds Levy Bill 1988.

3686. As this levy is in the nature of a tax, it will be payable to the Secretary of the Attorney-General's Department within the prescribed period and in the prescribed manner. Levies will be paid into the Consolidated Revenue Fund and will be reimbursed to the relevant futures exchange or association for inclusion in its fidelity fund (Bill sub-cl.1235(3) to (5)). A person will not be required to pay the levy unless it has been imposed by separate legislation (Bill sub-cl.1235(6) and see cl.1236).

Cl.1236 : Contributions and levies not payable unless imposed by another Act

3687. This is a new provision.

3688. A person will not be liable to pay a contribution or levy to the fidelity fund of a futures exchange or association unless it has been imposed by separate legislation.

Cl.1237 : Power of futures organisation to make advances to fund

3689. This provision is based on FIA s.114.

3690. A futures exchange or association will be able to give or advance money to its fidelity fund (Bill sub-cl.1237(1)) which will be able to be repaid at any time (Bill sub-cl.1237(2)).

Cl.1238 : Investment of fund

3691. This provision is based on FIA s.115.

3692. Money in a fidelity fund not immediately required may be invested in authorised trustee investments or on deposit with an authorised dealer in the short-term money market.

Cl.1239 : Application of fund

3693. Clause 1239 is based on FIA s.116.

3694. It deals with the payment of moneys out of the fidelity fund where a person has suffered pecuniary loss or where there is a deficiency in an insolvency.

3695. A brief outline of the main features of cl.1239 is as follows:

- (a) The fund will be applied to compensate persons who suffer loss because of defalcation or fraudulent misuse of money or other property (wherever and whenever occurring) by a contributing member of a futures organisation or a director, partner, officer, or employee of such a contributing member or a partner in (or employee of) a partnership that is a contributing member who received that money or property in connection with a dealing in futures

contracts (whether or not effected on a futures market) (Bill sub-cl.1239(1) and (12)).

- (b) If there is no right to compensation under Bill sub-cl.1239(1) a payment from the fund will be able to be made at the discretion of the Board to an official receiver, trustee in bankruptcy or liquidator. The amount of such a payment will be limited to the amount the official receiver, trustee or liquidator certifies is required to make up or reduce the deficiency in the bankrupt contributing member's estate, or in the available assets of the contributory member, to satisfy debts arising from dealings in futures contracts (Bill sub-cl.1239(3) and (5)).
- (c) Bill sub-cl.1239(3) will apply to any contributing member who has made a composition with creditors or has executed a deed of assignment or deed or arrangement (Bill sub-cl.1239(4)).
- (d) Moneys paid pursuant to Bill sub-cl.1239(3) and (5) will only be able to be applied to satisfy debts arising from dealings in futures contracts (Bill sub-cl.1239(6)).
- (e) The total liability of a futures organisation in relation to the defalcations etc. of one contributing member will be \$500,000 or such other amount as is prescribed (Bill sub-cl.1239(7)).
- (f) If the assets of the fidelity fund permit, the futures organisation will also be able to apply out of the fund such sums in excess of the amount limited by this clause as it thinks fit in compensating person who have suffered loss, or in payment to a trustee, official receiver or liquidator (Bill sub-cl.1239(9)).

- (g) The fund will also be applied to compensate a person who suffers loss because of a defalcation or fraudulent misuse of money or other property by a former contributing member or by a director, partner, officer or employee of the former member where the person seeking compensation believed on reasonable grounds that the former member was at that time a member of a futures organisation (Bill sub-cl.1239(10)).
- (h) The fund will also be able to be applied (if the Board of a futures organisation sees fit) to compensate creditors of a former contributing member in a bankruptcy or winding up who, when a debt arising from dealings in futures contracts was incurred, believed on reasonable grounds that the former member was a member of a futures organisation (Bill sub-cl.1239(11)).

Cl.1240 : Claims against fund

3696. This provision is based on FIA s.117. A person who suffers pecuniary loss will be entitled to claim compensation from the fidelity fund and to take Court proceedings to establish the claim (Bill sub-cl.1240(1)). Claims against the fidelity fund made before the commencement of Part 8.6 will continue on foot (Bill sub-cl.1240(5)).

3697. Other provisions of cl.1240 are as follows:

- (a) A person will not have a claim against the fund if:
- (i) the pecuniary loss was suffered before the commencement of the FIA (1 July 1986);
 - (ii) the pecuniary loss was suffered after the money or property had, in due course of administration of a trust, ceased to be under

the sole control of a member of a futures organisation

(Bill sub-cl.1240(2)).

(b) The claimant will be able to claim the actual pecuniary loss suffered including the reasonable costs in making a proving the claim less any benefit received from any other source in reduction of the loss (Bill sub-cl.1240(3)).

(c) Interest will be payable on the amount of the compensation at the prescribed rate (Bill sub-cl.1240(4)).

Cl.1241 : Rights to innocent partner in relation to fund

3698. This provision is based on FIA s.118.

3699. An innocent partner who has made payments to persons who have suffered loss will be able to make a claim against the fidelity fund in certain circumstances.

3700. A brief outline of the main features of cl.1241 is as follows:

(a) Where all claimants have been fully compensated for loss suffered in relation to money or other property entrusted to or received by a partner of a contributing member, any partner who has made a payment to a person in relation to that compensation will be subrogated to the rights and remedies of that person against the fund. This will occur only if the board determines that the partner was in no way a party to the loss and acted honestly and reasonably in the matter (Bill sub-cl.1241(1)).

- (b) A partner aggrieved by the board's decision will be able to appeal to the Supreme Court (Bill sub-cl.1241(2)).
- (c) The Court will be able to direct that the partner be subrogated to the rights and remedies against the fund of the person to whom the partner made the payment (Bill sub-cl.1241(4)).

Cl.1242 : Notice calling for claims against fund

3701. This provision is based on FIA s.119. Notices already published under co-operative scheme legislation will continue to have effect (Bill sub-cl.1242(4)).

3702. A futures organisation will be able to call for claims in relation to a particular person.

3703. A brief outline of cl.1242 is as follows:

- (a) A futures organisation will be able to publish in a daily newspaper circulating nationally a notice specifying a date (not earlier than 3 months after the date of the notice) by which compensation claims must be made (Bill sub-cl.1242(1)).
- (b) A claim will be required to be made in writing before the specified date or, where there is no notice, within 6 months of the claimant becoming aware of the loss : other claims are barred unless the futures organisation determines otherwise (Bill sub-cl.1242(2)).
- (c) A futures organisation, a member of its board, or a member or employee of a futures organisation will have a qualified privilege in respect of the publication of a notice calling for claims against the fidelity fund (Bill sub-cl.1242(3)).

Cl.1243 : Power of Board to settle claims

3704. This provision is based on FIA s.120.

3705. The procedure for the settlement of claims for compensation by the board of the futures organisation is set out in cl.1243).

3706. A brief outline of the main features of cl.1243 is as follows:

- (a) The board will be able to allow and settle a compensation claim against the fund (Bill sub-cl.1243(1)).
- (b) A claimant will be barred from commencing proceedings against a futures organisation without leave of the Board unless his or her claim has been disallowed and the claimant has exhausted other remedies (Bill sub-cl.1243(2)). A person refused leave will be able to apply to the Court for leave to commence proceedings (Bill sub-cl.1243(3)).
- (c) Notice of disallowance of a claim will have to be served on the claimant or the claimant's solicitor (Bill sub-cl.1243(4)), and proceedings against the futures organisation will have to be commenced within 3 months of this notice (Bill sub-cl.1243(5)).
- (d) The Board or Court will be able to allow a claim if satisfied there was defalcation or fraudulent misuse even though the person against whom the allegation is made was not convicted or prosecuted (Bill sub-cl.1243(7)).

Cl.1244 : Form of order of Court establishing claim

3707. This provision is based on FIA s.121.

3708. Where the Court is satisfied that there was a defalcation or fraudulent misuse of property and the claimant has a valid claim it will be obliged, by order, to declare this and the date it occurred together with the amount of the claim and to direct the Board to allow that claim (Bill sub-cl.1244(1)). Costs will be at the Court's discretion (Bill sub-cl.1244(2)).

Cl.1245 : Power of Board to require production of documents etc.

3709. This provision is based on FIA s.122.

3710. The Board will be able to require any person to produce any documents or statements of evidence necessary to support a claim, to enable criminal proceedings to be taken or to enable the Board to exercise its rights against a contributing member or partner in partnership that is a contributing member.

Cl.1246 : Subrogation of futures organisation to rights etc. of claimant on payment from fund

3711. This provision is based on FIA s.123.

3712. A futures organisation will be deemed to be subrogated to the rights and remedies of a claimant on payment being made out of the fund.

Cl.1247 : Payment of claims only from fund

3713. This provision is based on FIA s.124.

3714. Money or other property of a futures organisation other than its fidelity fund will not be available for the payment of a claim under this Part.

Cl.1248 : Provisions where fund insufficient to meet claims or where claims exceed total amount payable

3715. This provision is based on FIA s.125.

3716. Where the amount of the fund is insufficient to satisfy all claims allowed, the amount of the fund will be apportioned among the claimants in such manner as the Board thinks equitable and the remaining unpaid amount will be charged against future receipts, to be paid when available (Bill sub-cl.1248(1)). Where the aggregate of claims allowed in respect of a contributing member exceeds the total amount in the fund that any be paid in respect of that member, the total amount will be apportioned among the claimants and after this apportionment all such claims are discharged (Bill sub-cl.1248(2)).

Cl.1249 : Power of futures organisation to enter into contracts of insurance or indemnity

3717. This provision is based on FIA s.126.

3718. A futures organisation will be able to insure itself against liability in respect of claims under this Part.

3719. The fidelity fund will consist, among other things, of moneys paid by the insurer pursuant to a contract of insurance or indemnity entered into by the futures organisation under Bill cl.1249 (see Bill para.1229(1)(f)). Premiums payable in respect of contracts of insurance or indemnity entered into by the futures organisation under Bill cl.1249 will be able to be paid out of the fidelity fund (see Bill para.1231(c)).

Cl.1250 : Application of insurance moneys

3720. This provision is based on FIA s.127.

3721. A claimant against a fidelity fund will have no right of action against a person with whom a contract of insurance is

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taken out in respect of any money paid by the insurer under such a contract.

PART 8.7 : OFFENCES

3722. Part 8.7 of the Bill (cls.1251 to 1267) deals with various offences relating to futures. It is based on FIA Part 8 but is drafted differently to reflect its different constitutional basis.

3723. Various terms, defined in the Interpretation Chapter, are used throughout Part 8.7. These are as follows:

- (a) eligible circumstances - acts will be done in eligible circumstances if they are done in the course of trade or commerce or in a Territory (Bill cl.9);
- (b) eligible communications service - a postal, telegraphic, telephonic or like service within the meaning of paragraph 51(5) of the Constitution (Bill cl.9);
- (c) eligible corporation - trading corporation or a foreign corporation (Bill cl.9);
- (d) eligible futures broker - a corporation that holds a futures broker's licence, or an exempt broker (being a prescribed body corporate or an exempt public authority or a person such as a receiver, liquidator or manager appointed to carry on or wind up an ailing futures broker - Bill cls.9 and 67).
- (e) eligible futures market - a futures market conducted by a corporation or in eligible circumstances.

Division 1 - Insider dealingCl.1251 : Futures contract concerning a body corporate

3724. This clause is based on FIA sub-s.129(11).

3725. For the purposes of Division 1 of Part 8.7 a futures contract will concern a body corporate only if -

- (a) a commodity to which the futures contract relates is securities of a body corporate; or
- (b) a state of affairs to which the futures contract relates concerns the price of securities of the body corporate.

Cl.1252 : Person connected with a body corporate

3726. This clause is based on FIA sub-s.129(12).

3727. For the purposes of Division 1 of Part 8.7 a person will be connected with a body corporate if the person:

- (a) is a natural person and an officer (defined widely in Bill sub-cl.1252(2)) of the body corporate or of a subsidiary or holding company to the body corporate;
- (b) is a substantial shareholder in the body corporate or in its holding company or subsidiary; or
- (c) occupies a position that may reasonably be expected to give the person access to price sensitive information by virtue of a professional or business relationship or the person being an officer of a substantial shareholder in the body corporate or in its holding company or subsidiary.

Cl.1253 : Persons precluded from dealing

3728. This clause is based on FIA sub-ss.129(1)-(3). A person who has inside information relating to a futures contract concerning a body corporate (i.e. information that is not generally available but if it were would be likely to affect

materially the price for dealing in that futures contract or in a futures contract of the same kind as that futures contract - see definition in Bill cl.9) will be precluded from dealing in that futures contract if:

- (a) the person has in the past 6 months been connected with that body corporate;
- (b) the person has in the past 6 months been connected with another body corporate and has information relating to any actual or expected transaction between that body corporate and the body corporate to whose securities the futures contract relates; or
- (c) the person has obtained the inside information from another person and is aware, or ought reasonably to be aware, that that other person is precluded from using the information to deal in the futures contract, and is an associate of the other person or has an arrangement with the other person with a view to using the inside information to deal in that futures contract.

Cl.1254 : Body corporate precluded from dealing when officer precluded

3729. This clause is based on FIA sub-ss.129(6)-(8).

3730. A body corporate will be precluded from dealing in a futures contract if one of its officers is precluded from dealing in the futures contract unless:

- (a) the decision to deal on the body's behalf is taken by someone who did not have inside information; or
- (b) the inside information concerned relates only to a proposed dealing in securities of, or a futures contract concerning, another body corporate.

Cl.1255 : Exceptions: Licensed futures brokers

3731. This clause is based on on FIA sub-s.129(9).

3732. A licensed futures broker will not be precluded from dealing in a futures contract concerning a body corporate as agent for an unassociated client who has not divulged insider information to the broker.

Cl.1256 : Prohibitions on dealing when precluded

3733. This clause is of similar effect to the existing law. Sub-clause 1256(5) is based on FIA sub-s.129(5).

3734. It will be an offence for a person or corporation to deal in a futures contract when precluded from dealing by virtue of one of the preceding provisions in this Division (Bill sub-cl.1256(1), (2) and (3)).

3735. It will be an offence for a person who is precluded from dealing in a futures contract to:

- (a) deal in the futures contract on behalf of, or with, a corporation, in eligible circumstances, on a eligible futures market or outside Australia; or
- (b) use an eligible communication service in connection with a dealing in the futures contract (Bill sub-cl.1256(4)).

3736. It will be an offence for a person with inside information to communicate the information to another person whom he or she knows, or ought reasonably to know, will make use of the information to deal (Bill sub-cl.1256(5)).

Cl.1257 : Defence where other party to dealing also had the inside information

3737. This clause is based on FIA sub-s.129(10).

3738. Where a person is prosecuted for dealing in inside information it will be a defence if it is proved that the other party to the dealing knew, or ought to reasonably have known, the information before entering into the dealing.

Division 2 - General

Cl.1258 : Dealings by futures brokers on behalf of others

3739. This provision is based on FIA s.128.

3740. It will be an offence for an eligible futures broker to deal in a futures contract on behalf of another person unless the dealing is effected -

- (a) on a futures market of a futures exchange;
- (b) on a futures market of a recognised (overseas) futures exchange;
- (b) on an exempt futures market; or
- (c) as permitted by the business rules of a futures association or futures exchange of which the broker is a member.

Cl.1259 : Futures market manipulation

3741. This provision is based on FIA s.130.

3742. Clause 1259 will prohibit a person from effecting or taking part in one or more transactions (whether involving futures contracts or not) that have, or are intended to have, or are likely to have, the effect of creating an artificial price, or maintaining at an artificial level the price, for dealing in futures contracts on a futures market if:

- (a) if the person is a corporation;

- (b) the transaction, or any of the transactions, is entered into in eligible circumstances or outside Australia;
- (c) the futures market is an eligible futures market; or
- (d) dealings in futures contracts on a futures market within Australia that are affected by the transaction are dealings by corporations or are done in eligible circumstances.

Cl.1260 : False trading and market rigging

3743. This provision prohibits false trading and market rigging and is based on FIA s.131.

3744. It will be an offence to create a false or misleading appearance of active trading, or create a false or misleading appearance with respect to the market for futures contracts if:

- (a) the person committing the offence is a corporation;
- (b) the futures market with respect to which the offence relates is an eligible futures market; or
- (c) dealings in futures contracts on a futures market in Australia that are affected by the false trading or market rigging are dealings by corporations or are done in eligible circumstances.

Cl.1261 : False or misleading statements etc

3745. This provision is based on FIA s.132.

3746. It will be an offence for a person to make a false or misleading statement or to disseminate information that is likely to induce dealing in futures contracts or affect their

market price if, when the person makes the statement or disseminates the information, that person does not care whether the statement or information is true or false or knows or ought reasonably to know that it is false or misleading and if:

- (a) the person committing the offence is a corporation;
- (b) the persons induced to deal include corporations;
- (c) the futures market on which the dealings take place or are intended to take place is an eligible futures market;
- (d) if the dealings on the basis of the false or misleading information are dealings by or on behalf of corporations or are done in eligible circumstances.

Cl.1262 : Fraudulently inducing person to deal in futures contracts

3747. This provision is based on FIA s.133.

3748. A person will be prohibited from inducing another person to deal in a futures contract by making a statement that the person knows to be misleading, false or deceptive; by dishonestly concealing material facts; by recklessly making a misleading, false or deceptive statement, or by recording or storing information that the person knows to be misleading in a material particular if:

- (a) the person fraudulently inducing another person to deal is a corporation;
- (b) the person induced to deal is a corporation;

- (c) the dealing on the basis of the misleading, false or deceptive information is, or will be, on behalf of a corporation;
- (d) the dealing is, or will be, on an eligible futures market; or
- (e) the dealing is, or will be, entered into in eligible circumstances.

3749. With regard to a prosecution for recording or storing misleading information, it will be a defence if it is proved that when the defendant recorded or stored the information, the defendant had no reasonable grounds for expecting that the information would be available to any person (Bill sub-cl.1262(7)).

Cl.1263 : Dissemination of information about illegal transactions

3750. This provision is based on FIA s.134.

3751. It will be an offence for a person to disseminate information to the effect that the price for dealing in a class of futures contracts is likely to rise or fall or be maintained because of transactions by that person or associates that were in contravention of the prohibitions against:

- futures markets market manipulation (see cl.1259);
- false trading or market rigging (see cl.1260);
- false or misleading statements (see cl.1261); or
- fraudulently inducing persons to deal in futures contracts (see cl.1262).

Cl.1264 : Fraud in connection with dealings in futures contracts

3752. This provision is based on FIA s.135.

3753. It will be unlawful for a futures broker (or for the broker's employees or agents) or a person who has an interest in a dealing in a futures contract:

- (a) to deceive or defraud a client; or
- (b) to make a false or misleading statement to the client or to include such a statement in a record relating to the client, if:
 - (a) that person is a corporation; or
 - (b) the dealing is, or the proposed dealing in question is to be, a dealing on a corporation's behalf, in eligible circumstances, on an eligible futures market or outside Australia.

Cl.1265 : Compensation for loss etc.

3754. This provision is based on FIA s.137.

3755. Compensation will be payable in certain circumstances to persons who suffer losses as a result of the contravention of the market offence provisions.

3756. A brief outline of cl.1265 is as follows:

- (a) Any person who contravenes the foregoing prohibitions will be liable to pay compensation to an innocent third party who suffers loss because of price differences in dealing resulting from the contravention (Bill sub-cl.1265(1) and (2)).

- (b) The amount of compensation or profit for which a person is liable will be reduced by any award made under this Part or Bill sub-cl.232(6) by reason of the same act or transaction (Bill sub-cl.1265(3)). The onus will lie on the person liable to pay the amount to prove that the liability arose from the same act or transaction (Bill sub-cl.1265(4)).
- (c) An action under this clause will have to be commenced within 2 years from the day the transaction was completed (Bill sub-cl.1265(5)).
- (d) The ASC will be able to bring an action in the name of a person for the recovery of compensation for a loss suffered by that person, if it considers it is in the public interest to do so (Bill sub-cl.1265(6)).
- (e) Any liability under any other laws will not be affected (Bill sub-cl.1265(7)).

Cl.1266 : Sequence of transmission and execution of orders

3757. This provision is based on FIA s.138.

3758. Subject to Bill sub-cl.1266(3), an futures broker will be required to transmit all clients' instructions in the sequence in which they are received (Bill sub-cl.1266(2)). A reference to the transmission of instructions will be a reference to the transmission of the instructions to the futures market to which the broker has direct access or, where access is through another futures broker (as in the case of an associate member of the SFE) it will be a reference to the transmission of the instructions to that other broker (Bill sub-cl.1266(1)).

3759. Where an eligible futures broker proposes to deal in futures contracts on the broker's own account, and the person by whom or on whose instructions the instructions for the

dealing are to be transmitted is aware of instructions of a client to deal in those futures contracts that have not been transmitted, that person will not be permitted to give effect to the broker's proposal before the client's instructions are transmitted (Bill sub-cl.1266(3)).

3760. Except to the extent necessary to execute a client's instructions, to comply with the Bill or any other law or as required by business rules, an eligible futures broker, or a director, partner, officer or employee of the broker will be prohibited from disclosing those instructions to any other futures broker or person engaged or employed by any other futures broker (Bill sub-cl.1266(4)).

3761. An exchange member concerned with the execution of instructions on the trading floor will be required to execute these instructions to deal in futures contracts in the order in which they are received (Bill sub-cl.1266(5)).

3762. Where an eligible futures broker transmits instructions to deal in a class of futures contracts at or near market price, and dealings in those futures contracts are effected pursuant to those instructions, the broker will be required (except where business rules provide otherwise) to allocate the dealings to those instructions in the sequence in which the dealings were effected and in the sequence in which the broker transmitted those instructions (Bill sub-cl.1266(6)).

3763. An eligible futures broker will be required to keep records relating to:

- (a) clients' instructions to deal in futures contracts;
- (b) the date and time of receipt, transmission and execution, of those instructions;
- (c) the person who received, transmitted and executed the instructions;

- (d) the date and time of receipt, transmission and execution of instructions for dealing by the broker in futures contracts on his own account; and
- (e) the person who received, transmitted and executed the broker's instructions

(Bill sub-cl.1266(7)).

3764. Where a futures broker transmits instructions to deal in futures contracts for execution on an overseas futures market and it is not reasonably practicable to set out the date and time of execution, the broker will be required to indicate the date and time as precisely as is reasonably practicable (Bill sub-cl.1266(8)).

Cl.1267 : Dealings by employees of eligible futures brokers and eligible futures advisers

3765. This provision is based on FIA s.139.

3766. A brief outline of cl.1267 is as follows:

- (a) An eligible futures broker or an eligible futures adviser, and an employee or officer of either (including an independent contractor) will be prohibited from jointly dealing in futures contracts as principals (Bill sub-cl.1267(1), (8) and (10)). A similar prohibition will apply where a partnership is a futures broker or a futures adviser in relation to its employees (Bill sub-cl.1267(2), (3) and (10)).
- (b) An eligible futures broker or an eligible futures adviser will be prohibited from giving credit to an employee, officer or independent contractor or a person the broker knows is associated with the employee, officer or independent contractor to deal

in futures contracts (Bill sub-cl.1267(4), (8) and (10)). A similar prohibition will apply where a partnership is an eligible futures broker or futures adviser (Bill sub-cl.1267(5), (6) and (10)).

- (c) Employees, officers or independent contractors of exchange members will be prohibited from dealing in futures contracts as principals unless the exchange members acts as agent in the transaction (Bill sub-cl.1267(7), (9) and (10)).

BILL PART 8.8 : MISCELLANEOUS

Cl.1268 : Power of Court to make certain orders

3767. This provision is based on FIA s.20.

3768. Where it appears to the Court that a person has committed (or is about to commit) an offence relating to dealings in futures contracts or has contravened (or is about to contravene) a condition of a licence, or the business rules of a futures exchange, clearing house or futures association, the Court will be able to make various orders.

3769. Whereas FIA s.20 related to the powers of the Supreme Court to make various orders, Bill cl.1268 relates to the powers of the Federal Court of Australia or the Supreme Court of a State or Territory to make such orders (see definition of "Court" in Bill cl.9).

Cl.1269 : Restrictions on use of title "futures broker", "futures exchange", etc.

3770. This provision is based on FIA s.140.

3771. A corporation will be prohibited from using the title "futures broker" if it does not held a futures broker's licence (Bill sub-cl.1269(1)).

3772. A corporation will be prohibited from using the title "futures exchange" if it is not a futures exchange (Bill sub-cl.1269(2)), and the title "futures association" if it is not a futures association (Bill sub-cl.1269(3)).

Cl.1270 : Preservation and disposal of records, etc.

3773. This provision is based on FIA s.143.

3774. Clause 1270 deals with the preservation and disposal of records.

3775. A brief outline of cl.1270 is as follows:

- (a) Anyone required to keep a register or record will be required to keep it for the prescribed period even if ceasing to carry on business before the expiration of that period (Bill sub-cl.1270(1)).
- (b) The prescribed period for a register or record other than an accounting record will be 5 years from the day on which the last entry was made. For an accounting record the period will be 7 years after the last day of the accounting period to which the record relates (Bill sub-cl.1270(2)).
- (c) These provisions will not apply to a contract note received or issued by a futures broker if the matters referred to in Bill sub-cl.1206(4), (5) and (6) are recorded by the exchange or (subject to any conditions imposed by the ASC) by the broker in a manner approved by the ASC and the record is retained for 5 years (Bill sub-cl.1270(3)).
- (d) The ASC will have certain powers regarding disposal of documents (Bill sub-cl.1270(4)).

Cl.1271 : Concealing, etc. of books relating to futures contracts

3776. This provision is based on FIA s.144.

3777. Concealment, destruction or alteration of books relating to the business of an eligible futures broker or sending such books out of Australia will be an offence (Bill sub-cl.1271(1)).

3778. It will be a defence to a prosecution of a person for such an offence if it is proved that the person did not intend to defraud, to defeat the purposes of the Bill or to prevent,

delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power or authority, under the Bill (Bill sub-cl.1271(2)).

Cl.1272 : Falsification of records

3779. This provision is based on FIA s.145.

3780. A person will be prohibited from recording or storing false or misleading material, destroying or falsifying such material or not recording matter that is required to be used in connection with the keeping of a book where such matter is stored in an illegible form by means of a mechanical device, an electronic device or other device (Bill sub-cl.1272(1)). It will be a defence if it is established that the person acted honestly and that in all the circumstances the act or omission constituting the offence should be excused (Bill sub-cl.1272(2)).

Cl.1273 : Precautions against falsification of records

3781. This provision is based on FIA s.146.

3782. A person required to keep records will be required to take reasonable precautions to guard against any falsification.

CHAPTER 9 - MISCELLANEOUS

PART 9.1 - REGISTERS AND REGISTRATION OF DOCUMENTS

Cl.1274 : Registers

3783. The ASC will be able to keep such registers as it considers necessary and in a form it considers appropriate (Bill sub.cl.1274(1)).

3784. Subject to certain exceptions, a person will be able to inspect any document lodged with the ASC. The documents unavailable for public inspection include:

- (a) an application under Bill cl.1279 for registration as an auditor or a liquidator;
- (b) documents lodged under Bill cls.1287 and 1288 relating to auditors and liquidators;
- (c) a notice lodged with the ASC under Bill cl.1296 where the Companies Auditors and Liquidators Disciplinary Board has refused to exercise its disciplinary power;
- (d) reports of receivers, official managers and liquidators pursuant to Bill cls.422, 452 and 533.
- (e) a document that has been destroyed or otherwise disposed of.

(Bill sub-cl.1274(2)).

3785. A person will be able to obtain copies of documents that can be inspected by the public and certificates that can be issued by the ASC (Bill sub-cl.1274(2)).

3786. A certificate issued by the ASC that no company was registered under the Bill by a name specified in the certificate is prima facie evidence that no company was registered by that name for the specified period or at the specified date. Also a certificate that a requirement of the Bill has or has not been complied with at a date or within a specified period will be prima facie evidence of the matters set out in the certificate (Bill sub-cl.1274(7)).

3787. The ASC will have certain powers in relation to the registration or lodgement of documents including the power to

- (a) refuse to register or to receive documents (Bill sub-cl.1274(8)); and
- (b) to require the production of other documents which the ASC thinks necessary to enable it to decide whether it may refuse to receive or register a document.

(Bill sub-cl.1274(8) and (9)).

3788. The ASC will be able, in certain circumstances, to destroy or dispose of documents it considers no longer necessary or desirable to retain (Bill sub-cl.1274(10)).

3789. The Court will be able on the application of a member, creditor or the ASC to order a body corporate or other person who has not complied with a provision of the Bill or other law requiring the lodging with the ASC of any return, account or other document or the giving of notice to the ASC of any matter to make good the default (Bill sub-cl.1274(11)).

Cl.1275 : Relodging of lost registered documents

3790. This clause is based on CA s.32.

3791. The clause sets out the procedures to be followed when a document lodged with the ASC has been lost or destroyed. Any person, not only the body corporate, will be able to apply to the ASC for leave to lodge a copy of the document as originally lodged (Bill sub-cl.1275(1)).

Part 9.2 - REGISTRATION OF AUDITORS AND LIQUIDATORS

3792. Part 9.2 of the Bill (cls.1276 to 1299) contains provisions governing the regulation of auditors, liquidators and official liquidators. (See also Division 1 of Part 12 of the ASC Bill in relation to the establishment and operation of the Companies Auditors and Liquidators Disciplinary Board).

3793. These provisions are based on CA Part II Division 2. The principal features of the provisions are as follows:

- (a) ASC responsibility : The registration of auditors, liquidators and official liquidators will be performed by the ASC.
- (b) Auditors : Suitably qualified natural persons will be able to apply to the ASC for registration as auditors. In addition, the Auditors-General of the Commonwealth and of States and Territories of the Commonwealth will be deemed to be registered as auditors.
- (c) Liquidators : Suitably qualified natural persons will be able to apply to the ASC for registration as liquidators. The CB also provides for the registration of a liquidator of a specified body corporate.
- (d) Registers : The ASC will maintain registers of auditors, liquidators and official liquidators containing specified information.
- (e) Notification of changes : Where a registered auditor or liquidator ceases to practice, or where a change occurs in particulars to be entered in the ASC's register, the ASC must be notified within 21 days.

- (f) Triennial requirements : Each third year, registered auditors and liquidators will have to lodge with the ASC a statement containing such information as is prescribed. (To simplify administration, the dates on which registered auditors and liquidators will have to lodge their statements will be staggered over the three year period and throughout each of the 3 years).
- (g) Official liquidators : The ASC will be able to register as many registered liquidators as it thinks fit to assist the relevant Supreme Court as official liquidators, and may cancel the registration of such liquidators.
- (h) Bonds : Registered liquidators and liquidators of specified bodies corporate will be required to give a security.
- (i) Geographic boundary of registration : A person registers as an auditor, liquidator or official liquidator by the ASC will be registered to audit or liquidate bodies corporate falling under the jurisdiction of the ASC.

Division 1 : Interpretation

Cl.1276 : Interpretation

3794. This is a new clause which sets out the definitions of "body corporate", "decision" and "registered" as used in Part 9.2

3795. The meaning of each word is as follows:

- . "body corporate" is defined as including a Part 5.7 body, which in turn is defined in Bill cl.9 as meaning a Type A body or a Type B body. For an explanation of the latter terms (both of which are defined in Bill cl.9).

"decision" means, for the purposes of Division 3 of Part 9.2 (Cancellation or Suspension of Registration), any action decided upon by the Board concerning the cancellation or suspension of the registration of an auditor, liquidator or liquidator of a specified body corporate.

"registered" means registered under Division 2 of Part 9.2. The word as defined is used in Division 3 of Part 9.2 (Cancellation or Suspension of Registration).

(Bill cl.1276.)

Cl.1277 : Effect on certain State and Territory laws

3796. The effect of this clause, which has no equivalent in the co-operative scheme legislation, is to ensure that the CB provisions on registration of auditors and liquidators do not conflict with co-existing State and Territory laws about the registration of auditors and liquidators for State and Territory bodies (Bill cl.1277).

Division 2 : Registration

Cl.1278 : Auditor or liquidator registered under corresponding law

3797. A person registered as an auditor or liquidator, or appointed as an official liquidator, under the CA will be deemed registered under the new legislation for a period of 6 months after the commencement of this provision subject to the cancellation or suspension provisions in cl.1280 of the Bill.

3798. Where such a person has then applied for registration under Division 2 of Part 9.2 within that 6 months and has not been notified of the results of his or her application at the

end of that period, his or her registration will be deemed to be extended:-

- (a) in the case of an auditor, until the day on which the application is granted or refused; and
- (b) in the case of a liquidator, until the day on which the person is notified of the results of his or her application.

3799. A successful applicant for registration as a liquidator will be deemed to have been registered as a liquidator under Division 2 of Part 9.2 from the day on which the person is notified of the results of his or her application until the day before the day when the registration comes into force.

(Bill cl.1278)

Cl.1279 : Application for registration as an auditor or liquidator

3800. This clause is essentially the same as CA s.17.

3801. A natural person will be able to apply in writing to the ASC for registration as an auditor, as a liquidator or as a liquidator of a specified body corporate (Bill cl.1279).

Cl.1280 : Registration of auditors

3802. This clause is essentially the same as CA s.18.

3803. Persons who are registered as auditors under the existing legislation will be granted registration by the ASC unless it is satisfied that the applicant is not a "fit and proper person" (Bill cl.1280(1)).

3804. Persons who have not previously been registered as an auditor may make application for registration. The Commission is to grant the application if:

- (a) the applicant is a member of the Australian Society of Accountants, the Institute of Chartered Accountants or some other prescribed body (the bodies to be prescribed will be the principal Canadian, Irish, New Zealand, U.S. and U.K. accounting bodies);
- (b) the applicant has completed a course of study in accountancy and commercial law at a prescribed university or other prescribed institution (the bodies to be prescribed are those currently listed in regulations 21 and 22 of the Companies Regulations) or has other qualifications and experience that are equivalent to such a course; and
- (c) it is satisfied that the applicant has had sufficient practical experience in auditing (to be prescribed), is capable of performing the duties of auditor and is otherwise a fit and proper person (Bill sub-cl.1280(2)).

3805. Persons under a prohibition from acting in the management promotion or control of a body corporate shall not be registered as auditors (Bill sub-cl.1280(3)).

3806. The ASC may, subject to Bill sub-cl.1280(8), refuse registration of a person who is not resident in Australia (Bill sub-cl.1280(4)).

3807. The ASC will issue a registered auditor with a certificate (Bill sub-cl.1280(5)), such registration to remain in force until it is cancelled or the auditor dies (Bill sub-cl.1280(7)).

3808. Before refusing a person registration, the ASC must afford the applicant the opportunity of a hearing (Bill sub-cl.1280(8)).

3809. Within 14 days of a refusal of registration, the ASC will have to provide an unsuccessful applicant with a notice of the decision, setting out the findings on material questions of fact by reference to the evidence and giving the reasons for the decision (Bill sub-cl.1280(9)).

Cl.1281 : Auditors-General deemed to be registered auditors

3810. This clause is essentially the same as CA s.19.

3811. The Commonwealth, State and Territory Auditors-General will be deemed to be registered auditors (Bill cl.1281).

Cl.1282 : Registration of liquidators

3812. This clause is essentially the same as CA s.20.

3813. Persons who were registered as liquidators under existing legislation (to be listed in the Regulations) will be granted registration by the ASC unless it is satisfied that the applicant is not a "fit and proper person".

3814. Persons who had not previously registered as liquidators under the CA (or State codes) will have to comply with the requirements as to qualifications, experience and character. These requirements are similar to those for auditors (see Bill sub-cl.1280(2)).

3815. Where a person applies to be the liquidator of a specified body corporate, the ASC will have to be satisfied that the applicant has sufficient experience and ability and is a fit and proper person to act as liquidator of the body corporate, having regard to the business of the body corporate and the interests of creditors and members (Bill sub-cl.1282(3)).

3816. Person under a prohibition from acting in the management, promotion or control of a body corporate shall not be registered as liquidators (Bill sub-cl.1282(4)).

3817. The ASC may refuse registration of a person who is not resident in Australia (Bill sub-cl.1282(5)) although the applicant must first be afforded a hearing (Bill sub-cl.1282(10)).

3818. The ASC will issue a registered liquidator or liquidator of a specified body corporate with a certificate after he or she has lodged a security bond (Bill sub-cl.1282(6)).

3819. The ASC will have to offer a person a hearing before refusing registration (Bill sub-cl.1282 (10)).

3820. Within 14 days of a refusal of registration, the ASC will have to provide an unsuccessful applicant with a notice of the decision and the reasons for it (Bill cl.1282).

Cl.1283 : Registration of official liquidators

3821. This clause is essentially the same as CA s.21.

3822. The ASC will be able to register as an official liquidator a natural person who is a registered liquidator (Bill cl.1283).

Cl.1284 : Security to be given by liquidators

3823. This clause is essentially the same as CA s.22.

3824. Liquidators, and liquidators of specified bodies corporate, will be required to lodge and maintain a security for the due performance of their duties in such form and for such amount as the ASC from time to time requires in relation to that liquidator (Bill cl.1284).

Cl.1285 : Register of Auditors

3825. This clause is essentially the same as CA s.23.

3826. The ASC will maintain a Register of Auditors containing the following particulars in relation to each registered auditor:

- (a) name;
- (b) date on which application for registration granted;
- (c) addresses at which person practises as an auditor;
- (d) the name of the firm (if any) of which the person is a member or the name under which the person practises if not using his or her own name; and
- (e) particulars of any suspension of registration (Bill sub-cl.1285(1)).

3827. When a person ceases to be an auditor, particulars of that person are to be removed from the register (Bill sub-cl.1285(2)).

3828. A person will be able to inspect, make copies or take extracts from the Register (Bill sub-cl.1285(3)).

Cl.1286 : Registers of Liquidators and Official Liquidators

3829. This clause is essentially the same as CA s.24.

3830. The ASC will maintain a Register of Liquidators containing similar particulars to those required for auditors (see Bill cl.1285) in relation to registered liquidators and persons registered as liquidators of specified bodies corporate (Bill sub-cl.1286(1)).

3831. The ASC will also maintain a Register of Official Liquidators (Bill sub-cl.1286(2)).

3832. When a person ceases to be a liquidator, a liquidator of a specified corporation or an official liquidator, particulars of that person are to be removed from the register (Bill sub-cl.1286(3)).

3833. A person will be able to inspect, make copies or take extracts from the Register of Liquidators and the Register of Official Liquidators (Bill sub-cl.1286(4)).

Cl.1287 : Notification of certain matters

3834. This clause is essentially the same as CA s.25.

3835. Where a registered auditor or liquidator, including a liquidator of a specified body corporate, ceases to practise, or where a change occurs in any matter, particulars of which are entered in the appropriate Register, the ASC will have to be notified within 21 days (Bill sub-cl.1287(1) to (3)). Details of certain other matters (relating to insolvency, prohibitions from acting in the management, promotion or control of bodies corporate) must be notified within 3 days (Bill sub-cl.1287(4)).

Cl.1288 : Triennial statements by registered auditors and liquidators

3836. This clause is essentially the same as CA s.26.

3837. Every 3 years registered auditors and liquidators will be required to lodge with the ASC a statement containing such information as is prescribed (Bill sub-cl.1288(3)). The ASC has the power to grant an extension of time for lodging the statement provided application is made before the due date for lodgment (Bill sub-cl.1288(4)).

3838. The anniversary for lodgment of the statement will normally be calculated from a person's date of registration as an auditor or liquidator (Bill para.1288(3)(b)). However, the ASC can, where a person is registered within 12 months after the commencement of the Act, specify a date (being not more than 3 years after the date of registration) as the day to which the first statement is to be made up and which is to be used as the anniversary date for subsequent statements (Bill sub-cl.1288(1) and (2)).

3839. The ASC may require the liquidator of a specified body corporate to prepare a statement for a period specified by the ASC (Bill sub-cl.1288(5)).

Cl.1289 : Auditors and other persons to enjoy qualified privilege in certain circumstances

3840. This clause is essentially the same as CA s.30.

3841. Qualified privilege under the laws of defamation will be given to auditors and certain other persons in respect of statements and reports of auditors made in the course of their duties and the sending of accounts and reports to the ASC (Bill cl.1289).

Division 3 : Cancellation or Suspension of Registration

Cl.1290 : Cancellation at request of registered person

3842. This clause is essentially the same as CA s.30B.

3843. If requested, the ASC will be able to cancel the registration of a person as an auditor, liquidator, liquidator of a specified body corporate or official liquidator (sub-cl.1290(1)).

3844. The decision of the ASC to cancel a registration will come into effect upon the making of the decision (sub-cl.1290(2)).

Cl.1291 : Official liquidators

3845. This clause is based on CA s.30C. However, it has been expanded to provide an additional penalty in the form of a conditional suspension.

3846. The ASC will be able to use its discretion to cancel or suspend the registration of an official liquidator. The Bill makes no provision for a right of appeal from such a decision (Bill sub-cl.1291(1)).

3847. In addition, the ASC may require an undertaking from an official liquidator in relation to refraining from engaging in specified conduct except on specified conditions (Bill sub-cl.1291(2)). This has the effect of allowing the ASC to impose a conditional suspension on the official liquidator, prohibiting him or her from accepting any new assignments but allowing the completion of liquidations on hand.

3848. Where the ASC exercises its discretion to cancel or suspend the registration of an official liquidator, it must, within 14 days of the decision, provide the affected person with a notice of the decision and the reasons for the it. However, the failure of the ASC to give such notice will not affect the validity of the decision (Bill sub-cl.1291(3)).

3849. A decision of the ASC under sub-cl.1291(1) will come into effect at the expiration of the day on which a notice of the decision is given to the affected person (Bill sub-cl.1291(4)).

Cl.1292 : Powers of Board in relation to auditors and liquidators

3850. This clause is based on CA s.30D, although it has also been expanded to provide an additional penalty in the form of a conditional suspension.

3851. The Board will be given power to hear applications by the ASC regarding the conduct or capacity of an auditor, a liquidator or liquidator of a specified body corporate.

3852. The Board may exercise its discretion in deciding whether to cancel or suspend the registration of a person who has failed to provide a triennial statement, has ceased to be resident in Australia, has failed to properly carry out or perform his or her duties or functions as a registered auditor, liquidator or liquidator of a specified body corporate or who is otherwise not fit and proper person to remain so registered (Bill sub-cl.1292(1) to (6)).

3853. Where a registered auditor, liquidator or liquidator of a specified body corporate has his or her ability to perform audits or liquidations cancelled, suspended or is in any other way disciplined under State or Territory legislation co-existing with the CB, he or she may be similarly dealt with by the Board (Bill sub-cl.1292(1) to (3)).

3854. The Board shall cancel or suspend the registration of an auditor, liquidator or liquidator of a specified body corporate where it is satisfied that such a person is subject to a statutory or Court ordered prohibition from acting in the management, promotion or control of a body corporate, or that the person is incapable because of mental infirmity, of managing his or her affairs (Bill sub-cl.1292(7)).

3855. As well as being able to cancel or suspend the registration of an auditor, liquidator or liquidator of a specified body corporate, the Board may impose additional penalties, i.e. admonish or reprimand the person, require the person to enter an undertaking in relation to specified conduct or require an undertaking from the person in relation to refraining from engaging in specified conduct except on certain conditions (Bill sub-cl.1292(9)).

Cl.1293 : Effect in certain cases of cancellation or suspension of registration under corresponding law

3856. This is a new provision for the purposes of the national scheme.

3857. Where a person is registered as an auditor, liquidator, liquidator of a specified body corporate or an official liquidator under a law equivalent to Division 2 of Part 9.2, and that registration is either

- (a) cancelled before the commencement of this provision;
- (b) is suspended at any time,

as a result of an application made before this provision commenced, the person's registration under Division 2 is deemed to be either cancelled or suspended while the corresponding registration is suspended (Bill cl.1293).

Cl.1294 : Board to give opportunity for hearing etc.

3858. This clause is essentially the same as CA sub-ss.30E(2) and (3). The hearings provisions previously contained in CA s.30E are to be found in the ASC Bill.

3859. The Board may not cancel, suspend or conditionally suspend the registration of or otherwise discipline a registered auditor, liquidator, or liquidator of a specified body corporate without first affording the person an opportunity of appearing at a hearing. The person may make submissions to and bring evidence before the Board in relation to the matter (Bill cl.1294(1)).

3860. Where the Board gives a person a hearing in accordance with sub-cl.1294(1), it is also required to permit the ASC to make submissions to and bring evidence before it in relation to that matter (Bill sub-cl.1294(2)).

Cl.1295 : Board may remove suspension

3861. This is a new clause, the intention of which is to clarify the Board's power to remove a suspension it had previously placed on a person.

3862. The Board may, either on application by a suspended person or by its own initiative, terminate the suspension of a person (Bill cl.1295).

Cl.1296 : Notice of board's decision

3863. This clause is essentially the same as CA s.30M.

3864. When the Board exercises its power to discipline or make an order effecting an auditor, liquidator or liquidator of a specified body corporate, it shall, within 14 days notify the effected person in writing of the decision and the reasons for reaching the decision. The Board shall also lodge a copy of the notification with the ASC and publish the decision in the Gazette within the same time limit (Bill sub-cl.1296(1)).

3865. If the Board declines to exercise its disciplinary powers it shall, within 14 days, notify the effected person in writing of the decision and the reasons for so deciding and lodge a copy of the notice with the ASC (Bill sub-cl.1296(2)).

3866. Failure to comply with sub-cl.1296(1) or (2) does not affect the validity of the Board's decision (Bill sub-cl.1296(3)).

Cl.1297 : Time when Board's decision comes into effect

3867. This clause is essentially the same as CA s.30N.

3868. An order of the Board to cancel, suspend or conditionally suspend the registration of an auditor, liquidator or liquidator of a specified body corporate comes

into effect at the expiration of the day on which notice of the decision is given to the affected person (Bill sub-cl.1297(1)). The Board may postpone the coming into effect of a decision to enable the ASC or the affected person to appeal against the decision (Bill sub-cl.1297(2)).

Cl.1298 : Effect of suspension

3869. This clause is based on CA s.30P.

3870. The effect of the suspension of a registration of an auditor, liquidator, liquidator of a specified body corporate, or official liquidator will be that the person whose registration is suspended shall be deemed not to be registered during the suspension, however, the person's name remains on the relevant register (suitably annotated) and the person is not relieved from the requirement to lodge a triennial statement (Bill cl.1298).

Cl.1299 : Appeal from decision of Board

3871. This clause is based on CA s.30R.

3872. A person affected by a decision of the Board will be able to appeal to the Court within such a period as is prescribed in the regulations. The Court may confirm, reverse or modify the decision of the Board and may made such orders and give such directions as it thinks fit (Bill sub-cl.1299(1)). The ASC may similarly appeal against a decision of the Board (Bill sub-cl.1299(2)).

PART 9.3 - BOOKS

Cl.1300 : Inspection of books

3873. This provision is based on CA s.545.

3874. It will provide that a book that must be available for inspection will be required to be available for inspection at the place where it is kept at a time when the registered office in Australia of the body corporate is open and accessible to the public. If it is kept at a place other than the registered office, that place will be required to be open and accessible for inspection during the same hours as the registered office is required to be open. The same requirements will apply to a register kept by a company or a foreign company for the purposes of the Bill. It will be an offence for any person to refuse to allow a person who is permitted by the Bill to make a copy of, or take extracts from a book, that is required by the Bill to be available for inspection.

Cl.1301 : Location of books kept on computers etc.

3875. This provision is based on CA s.546.

3876. It will provide that where a corporation keeps required books in other than a written form (e.g. on a computer) it will be deemed to have complied with the requirements of the Bill relating to the location of books if:-

- (a) the information is available in written form at the place where the books are required to be kept;
- (b) the ASC is notified; and
- (c) changes in location are notified within 14 days.

Cl.1302 : Location of register

3877. This clause is based on CA s.547.

3878. A company, which for the purposes of this clause will include a registered body, will be required to keep the following registers at its registered office or principal place of business:

- . register of options (cl.215);
- . register of substantial shareholders (cl.715);
- . register of debenture holders (cl.1047);
- . register of charges (cl.271);
- . register of directors shareholdings (cl.235);
- . register of directors, principal executive officers and secretaries (cl.242);
- . register of members (cl.209); and
- . register of beneficial ownership of shares (cl.724).

(Bill sub-cl.1302(1)).

3879. These registers will be able to be located elsewhere if;

- (a) the register is made up at another office of the company in Australia;
- (b) the company arranges for the register to be made up by some other person at an office in Australia; or
- (c) the ASC approves, at another office in Australia.

(Bill sub-cl.1302(1)).

3880. Similar requirements will apply to the keeping of branch registers (Bill sub-cl.1302(2)).

3881. A company will be required to notify the ASC if it keeps a register or branch register at a place other than the company's registered office or principal place of business or if there is any change in the location of the register or branch register (Bill sub-cl.1302(4)).

Cl.1303 : Court may compel compliance

3882. This clause is based on CA s.551.

3883. The Bill will require certain books of a company such as minute books and registers to be available for inspection and for copies to be supplied on request. This clause will empower a court to order immediate inspection of a book or to order a copy to be supplied.

Cl.1304 : Translation of instruments

3884. This provision is based on CA s.548.

3885. It provides that where a body corporate is required to lodge any document with the ASC and the document is not written in English, a certified translation of the document into English will be required to be lodged at the same time. Where a body corporate must make an instrument available to the public and the instrument is not English, the body corporate will be required to keep a certified translation into English at its registered office or principal office in Australia.

Cl.1305 : Admissibility of books in evidence

3886. This provision is based on CA s.550.

3887. It will provide that any book kept by a body corporate as required by this Bill or as required under a law corresponding to a provision of the Bill will be admissible in evidence in any proceeding and will be prima facie evidence of the matter stated or recorded in the book. A document purporting to be a book kept by a body corporate will be deemed to be such a book unless the contrary is proved.

Cl.1306 : Form and evidentiary value of books

3888. This provision is based on CA s.544.

3889. It will provide that a book that is required by the Bill to be kept or prepared, will be able to be kept:

- (a) by making entries in a bound or looseleaf book;
- (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or
- (c) in any other manner approved by the ASC.

(Bill sub-cl.1306(1)).

3890. However, a book will not be able to be kept or prepared by a mechanical, electronic or other device unless:

- (a) the matters recorded or stored will be capable of being reproduced in written form; or
- (b) a reproduction of those matters is kept in a written form approved by the ASC.

(Bill sub-cl.1306(2)).

3891. A corporation will be required to take all reasonable precautions, including any precautions set out in the regulations, to safeguard against damage to, falsification or

destruction of, records required to be kept by the Bill. Where a corporation records or stores any matter by means of a mechanical, electronic or other device, any duty imposed by the Bill to make a book containing those matters available for inspection will be construed as a duty to make the matters available for inspection in written form, or to provide a reproduced copy of them (Bill sub-cl.1306(3) and (4)).

3892. Where a book required by this Bill to be kept or prepared is prima facie evidence and of matters, any writing reproducing matters from storage on a mechanical or electronic device will be prima facie evidence of those matters (Bill sub-cl.1306(5)).

Cl.1307 : Falsification of books

3893. This provision is based on CA s.560.

3894. The provision will make it an offence for any officer, former officer, member or former member of a company to conceal, destroy, mutilate, or falsify any of the company's securities or any books affecting or relating to the affairs of the company (Bill sub-cl.1307(1)).

3895. Where a company's books are kept on a mechanical or electronic or other device a person will contravene this sub-clause if the person :

- (a) records or stores information the person knows to be false or misleading;
- (b) destroys, removes or falsifies information with intent to falsify an entry made or intended to be compiled from matter recorded or stored; or
- (c) having a duty to record or store matter, fails to record or store the matter knowing that the failure to do so will render false or misleading in a material particular other matter recorded or stored.

(Bill sub-cl.1307(2)).

3896. It will be a defence to a charge arising under Bill sub-cl.1307(1) or (2) if the defendant proves that he or she or it acted honestly and that, in all the circumstances, the offence should be excused (Bill sub-cl.1307(3)).

3897. For the purposes of this provision an officer in relation to a company will include a receiver who is not also a manager (Bill sub-cl.560(4)).

PART 9.4 - OFFENCES

Division 1 - Specific Offences

Cl.1308 : False or misleading statements

3898. This provision is based on CA s.563, except that a new provision has been included to make it clear that a statement, report or other document that is attached to or included in a director's report provided under cl.315 shall be deemed to be part of that report. A further provision has also been added prohibiting the making of a false statement in relation to an application for a securities or a futures licence.

3899. It will be an offence for a corporation to advertise, circulate or publish a misleading statement of the amount of its capital, and for any officer of the corporation knowingly to authorise, direct, or consent to the advertising (Bill sub-cl.1308(1)).

3900. A person will be guilty of an offence if, in a document required by or for the purposes of the Bill or lodged with or submitted to the ASC, the person makes or authorises the making of a statement that to the person's knowledge is false or misleading, or omits or authorises the omission of any matter or thing without which the document is to the person's knowledge misleading (Bill sub-cl.1308(2)).

3901. A person will be deemed to have made or authorised the making of a statement that is, to the person's knowledge, false or misleading in a material particular if the statement is based on information that to the person's knowledge:

- (a) is false or misleading in a material particular; or
- (b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect.

(Bill sub-cl.1308(3)).

3902. A person will also be guilty of an offence, if, in a document required by or for the purposes of the Bill or lodged with or submitted to the ASC, the person makes or authorises the making of a statement that is false or misleading or omits or authorises the omission of any matter or thing without which the document is misleading, without having taken reasonable steps to ensure that the statement did not omit any matter or thing without which the document would be misleading (Bill sub-cl.1308(4)).

3903. A person will be deemed to have made or authorised the making of a statement without having taken reasonable steps to ensure that the statement was not false or misleading if the person makes or authorises the making of a statement without having taken reasonable steps to ensure that the information on which the statement was based:

- (a) was not false or misleading in a material particular; and
- (b) did not have omitted from it a matter or thing the omission of which would render the information misleading in a material respect.

(Bill sub-cl.1308(5)).

3904. The prohibition against false or misleading statements or omissions will also apply to applications for securities or futures licenses (Bill sub-cl.1308(8)).

Cl.1309 : False information, &c

3905. This provision is based on CA s.564, except for a new sub-clause prohibiting false or misleading statements made to a futures exchange, a clearing house or a futures association.

3906. This clause will provide that an officer of a corporation, who makes or furnishes, or authorises or permits the making or furnishing of information whether in documentary or other form relating to the affairs of the corporation to:

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of a corporation;
- (b) in the case of a corporation that is a subsidiary, an auditor of the holding company; or
- (c) a securities exchange in Australia or elsewhere or an officer of such a securities exchange,

knowing the information to be false or misleading, or without having taken reasonable steps to ensure that the information was not false or misleading will be guilty of an offence (Bill sub-cl.1309(1)).

3907. This clause will also apply to situations where an officer of a corporation makes available or furnishes information, or authorises or permits the making available or furnishing of information, that has omitted from it a matter or thing the omission of which renders the information misleading in a material respect (Bill sub-cl.1309(2)).

3908. A person will not, for the purposes of this Bill, lodge with a futures exchange, a clearing house for a futures exchange, or a futures association, a document that contains a statement that, to the person's knowledge, is false or misleading (Bill sub-cl.1309(5)).

Cl.1310 : Obstructing or hindering Commission etc.

3909. This clause is based on SIA s.140 and FIA s.147.

3910. This clause provides that a person will not, without lawful excuse, obstruct or hinder the ASC, or any other person, in the performance or exercise of a function or power under this Bill.

Division 2 - Offences generally

Cl.1311 : General penalty provisions

3911. This provision is based on CA s.570.

3912. It will provide that a person who contravenes or fails to comply with a provision of the Bill will be guilty of an offence by virtue of this clause. This clause subject to Bill cl.1312 will specify the general penalty applicable to an offence except where a specified penalty is provided by the provision creating the offence, or the penalty is set out in Schedule 3 to this Bill, or a penalty is calculated by a daily rate imposed by a provision in respect of continuing offences.

Cl.1312 : Penalties for bodies corporate

3913. This provision is based on SIA s.143 and will provide for the maximum penalty that the Court will be able to impose for an offence against this Bill by a body corporate.

Cl.1313 : Penalty notices

3914. This clause is based on CA s.570A, S1A s.141A and FLA s.149.

3915. Where the ASC has reason to believe that a person has committed a prescribed offence, it will be able to serve a penalty notice on that person alleging the commission of the offence and giving particulars and setting out the prescribed penalty.

3916. The main elements of the penalty notice procedure will be as follows:-

- (a) Payment pursuant to a penalty notice will not be regarded, for any purpose, as an admission of liability in relation to the alleged offence.
- (b) Only one notice will be able to be served on a person in respect of each alleged offence. Service may be effected on a natural person either personally or by post.
- (c) A person may not be served with a penalty notice unless proceedings could be instituted against that person for that offence under Bill cl.1316.
- (d) This procedure (except as provided in proposed paras.1313(4)(a) and (b) and 1313(5)(a)) will not affect the operation of any provision of the Bill, the regulations, the rules or any other Act relating to the institution of proceedings for offences in respect of which penalty notices may be served.

Offences constituted by a failure to do an act or thing

3917. Where the penalty notice relates to an offence constituted by a failure to do a particular act or thing:

- (a) if the penalty is paid and the act or thing is done within the period specified in the notice, no proceedings will be instituted in respect of that offence;
- (b) if the penalty is paid, but the act or thing is not done within the specified period, no proceedings will be instituted in respect of that offence, but the obligation to do that act or thing will continue, and the provisions relating to continuing offences (Bill sub-cl.1314), will apply in relation to the continued failure to do that act or thing as if, on the day the penalty was paid, the person had been convicted of an offence constituted by a failure to do that act or thing;
- (c) if the act or thing is done but the penalty is not paid within the specified period, proceedings may be instituted in respect of that offence; and
- (d) if neither the penalty is paid nor the act or thing done within the specified period, the obligation to do the act or thing will continue, and proceedings may be instituted in respect of that offence.

(Bill sub-cl.1313(4)).

3918. Where the offence is constituted by a failure to do an act or thing, the penalty notice will be required to state that:-

- (a) the obligation to do the act or thing continues notwithstanding the service of the notice or the payment of the penalty;

(b) the payment of the penalty and the doing of that act or thing within the specified period will result in no further action being taken in respect of that offence; and

(c) failure to do either of these things may result in proceedings being instituted.

(Bill sub-cl.1313(1)).

Other Offences

3919. Where the penalty notice relates to any other prescribed offence, and the penalty is paid within the specified period, no proceeding will be instituted in respect of that offence. However, failure to pay within the specified time may result in proceedings being instituted (Bill sub-cl.1313(5)).

3920. This information will be required to be set out in the penalty notice itself (Bill s-para.1313(1)(c)(ii)).

Cl.1314 : Continuing offences

3921. This provision is based on CA s.571, S1A s.141A and F1A s.150.

3922. Where a person is convicted of an offence constituted by the failure to do an act within the time allowed for doing the act by the provision of the Bill creating the offence, and after the conviction for the original offence, that person continues to fail to do the act required, Bill cl.1314 will provide that the person commits a separate and further offence for each day during which the act remains undone (Bill sub-cl.1314(1)).

3923. A similar situation will prevail where the provision creating the original offence prescribes no time limit for the doing of the required act (Bill sub-cl.1314(2)).

3924. Continuing offences may be committed by:

- (a) the substantive offender - that is, the person whose commission of an offence by reason of the failure to do the required act arises directly (e.g. in Bill cl.187-the company); and
- (b) the derivative offender - that is, the person who commits an offence by virtue of being an officer of a body corporate, or a person who is knowingly concerned in, or party to, the commission of the substantive offence (e.g. in Bill cl.187 and Bill cl.83 - the officer in default).

3925. In the case of the substantive offender, if after conviction of the offence of failing to do the act required by the provision creating the offence (i.e. the "primary substantive offence" - e.g. Bill sub-cl.187 in respect of the company), the failure to do the act continues, that person will be guilty of a second substantive offence in respect of the date specified in the subsequent information laid for the second substantive offence. If, after the substantive offender has been convicted of that second substantive offence, the required act remains undone, the substantive offender will be guilty of a third substantive offence in respect of the next period (i.e. after the conviction for the second substantive offence and until the date specified in the information laid for the third substantive offence), and so on in respect of each further substantive offence until the act is done (Bill sub-cl.1314(3)).

3926. In the case of the derivative offender the time for the commission of further derivative offences will begin to run from, alternatively:

- (a) the conviction of the derivative offender of an offence constituted by being knowingly concerned in or party to the primary substantive offence - that is, the "primary derivative offence"; or

- (b) the conviction of a person for the primary substantive offence, whereby the derivative offender will be guilty of an offence where the body corporate has been convicted of the primary substantive offence and the act remains undone, notwithstanding that the officer has not been convicted of the primary derivative offence.

(Bill sub-cl.1314(4)).

3927. The commission of an offence by a derivative offender on either of the above grounds, or in respect of subsequent periods during which the failure continues after conviction, will be referred to as "secondary derivative offences". The pattern for the further commission of secondary derivative offences will be along the same lines as that for the commission of further substantive offences.

3928. Bill sub-cl.1314(5) specifies that the penalty is to be calculated by daily rate in respect of the period during which each further offence continues.

Cl.1315 : Proceedings - how taken

3929. This provision is based on s.36 of the C & S Interpretation Act and will provide that unless the Bill provides otherwise, any information, charge, complaint or application in relation to proceedings for an offence against the Bill will only be able to be laid or made by the ASC or a delegate of the ASC, or any other person authorised by the Minister to institute proceedings.

Cl.1316 : Time for instituting criminal proceedings

3930. This provision is based on s.34 of the C & S Interpretation Act and will allow, despite anything in any other law, (eg the Crimes Act 1914) for proceedings to be

instituted within 5 years of the act or omission alleged to constitute the offence, or after that period with the Minister's consent.

Cl.1317 : Certain persons to assist in prosecutions

3931. This clause is based on S1A s.144 and F1A s.152.

3932. The Bill will provide for the ASC to require a person to assist in prosecutions. In the case of a prosecution of a natural person assistance may be required of a partner, employee or agent of the defendant and in the case of a body corporate, an officer, employee or agent,. In neither case would a likely defendant or the defendant's lawyer be required to give such assistance.

PART 9.5 : POWERS OF COURTS

Cl.1318 : Power to grant relief

3933. This provision is based on CA s.535.

3934. Under this clause the Court will be empowered to provide relief for officers and other persons who have been charged with offences involving negligence, default, a breach of duty or breach of trust, where it appears to the Court that such a person acted honestly and ought fairly to be excused.

Cl.1319 : Power of Court to give directions with respect to meetings ordered by the Court

3935. This clause is based on CA s.536.

3936. Where a Court has ordered a meeting to be convened, the Court will be able to give directions with respect to the convening, holding or conduct of the meeting.

Cl.1320 : Appeals from decisions of the Commission

3937. This clause is based on CA s.537, S1A s.134 and F1A s.141.

3938. There will be a general right of appeal to the Court from acts, omissions or decisions of the ASC where there is no appeal or review procedure otherwise expressly provided by the Bill, except in relation to matters declared by the Bill to be conclusive or final, or in respect of which an appeal procedure has already been provided for by the Bill.

Cl.1321 : Appeals from decisions of receivers, liquidators etc.

3939. This clause is based on CA 538.

3940. It will provide for a right of appeal in respect of acts, omissions or decisions of a person administering arrangements under Part 5.1 of the Bill, a receiver, a receiver and manager, an official manager or deputy, a provisional liquidator or a liquidator.

3941. The Court will be able to make such orders and give such directions as it see fit.

Cl.1322 : Irregularities

3942. The provisions dealing with irregularities in proceedings are based on CA s.539.

3943. The main provisions are as follows:

- (a) A proceeding under the Bill will be defined to include a legal proceeding.
- (b) A reference to a procedural irregularity will include a reference to the absence of a quorum as well as a defect, irregularity or deficiency of notice or time.

- (c) A proceeding under the Bill will not be invalidated by reason of any procedural irregularity, unless the Court is of the opinion that some substantial injustice may be caused which cannot be remedied by the Court and the Court declares the proceeding invalid.
- (d) The accidental omission to give notice of a meeting will not invalidate a meeting or proceedings at the meeting unless the Court declares the proceedings at the meeting to be void.
- (e) The Court, on the application by any interested person, will be able to make any of the following orders:
 - (i) an order declaring any act to be valid notwithstanding a failure to comply with the Bill or a provision of the constitution of a corporation;
 - (ii) an order directing the rectification of any register kept by the ASC (Bill para s.1322(4)(b));
 - (iii) an order relieving a person from any liability in respect of such a failure;
 - (iv) an order extending or abridging the period for doing any act.
- (f) In the case of an order declaring an act to be valid under Bill para.1322(4)(a), the Court will be required to be satisfied before making an order that:
 - (i) the act is essentially procedural in nature;

(ii) those concerned in the failure or contravention acted honestly; or

(iii) it is in the public interest that the order be made.

(g) In the case of an order relieving a person from any civil liability, the Court will be required to be satisfied that the person acted honestly.

(h) In all cases, before an order can be made, the Court will be required to be satisfied that no substantial injustice has been or is likely to be caused to any person.

Cl.1323 : Power of Court to prohibit payment or transfer of moneys, securities, futures contracts or other property

3944. This clause is based on CA s.573, SIA s.147 and FIA s.155.

3945. The ASC will be able to apply for a 'freeze' on a person's assets in the listed circumstances. If an investigation, prosecution or civil proceeding is in progress, the Court, on the application of the ASC or an aggrieved person, will be able to make any one or more of the orders specified in paras.1323(1)(d)-(k). These include orders:

(a) prohibiting a person who is indebted to the relevant person from making a payment in total or partial discharge of the debt at the direction of the person to whom the debt is owed (for the purposes of this provision, a relevant person will be a person subject to an investigation under the Bill or the subject of criminal or civil proceedings under the Bill i.e., a person listed in paras.1323(1)(a)-(c));

- (b) prohibiting a person holding money, securities, futures contracts or other property on behalf of other relevant person from paying any of the money, or parting with the securities, futures contracts or other property to the person on whose behalf the money or the securities, futures contracts or other property, is or are held;
- (c) prohibiting the taking or sending by a person out of Australia, of moneys of the relevant person or any person associated with the relevant person;
- (d) prohibiting the taking, sending or transfer by a person of securities or other property of the relevant person out of Australia;
- (e) an order appointing a receiver or trustee of the property or part of the property of the person where the relevant person is a natural person or where the relevant person is a body corporate, a receiver or receiver and manager of the property or part of the property of the person;
- (f) prohibiting a natural person from leaving Australia without the Courts consent and requiring delivery of the person's passport and other such documents.

3946. The Court will be able to grant interim orders pending the determination of an application under this provision and will be able to vary or discharge any order made.

Cl.1324 : Injunctions

3947. This clause is based on CA s.574., SIA s.149 and FIA s.157.

3948. A number of amendments which find parallels in TPA s.80 have been made to the clause.

3949. The Court will be able, on the application of the ASC or any person whose interests have been, are or would be affected by the conduct in question, to grant an injunction on such terms as it thinks appropriate.

3950. The present sections have been amended by the addition of the following elements.

3951. Sub-cl.1324(1) indicates the relevant conduct pursuant to which an injunction may be sought, to be:

- (a) a contravention of a provision of this Bill;
- (b) attempting to contravene such a provision;
- (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
- (d) inducing or attempting to induce whether by threats, promises or otherwise a person to contravene such a provision;
- (e) being in any way, directly or indirectly knowingly concerned in or party to the contravention by a person of such a provision; or
- (f) conspiring with others to contravene such a provision.

3952. Sub-cl.1324(3) is new. It enables the Court to grant injunctions, consented to by all the parties to the proceedings without the Court first having to satisfy itself that a person has engaged or is proposing to engage in conduct of the kind mentioned in sub-cl. (1) or (2). This makes it clear that, in the absence of an admission of liability, the Court can grant consent injunctions if the Court considers it to be appropriate, without holding a hearing of the matter.

3953. The Court may also grant interim injunctions (sub-cl.1324(4) - see CA sub-s.574(3)), and discharge or vary an injunction or interim injunction (sub-cl.1324(5) - see CA sub-s.574(4)).

3954. The situations when an injunction may be granted to restrain a person from engaging in conduct (sub-cl.1324(6) - see CA sub-s.574(5)) or requiring a person to do certain acts (sub-cl.1324(7) - see CA sub-s.574(6)) are specified.

3955. Alternatively, or in addition, the Court will be able to award damages to the affected person.

Cl.1325 : Other orders

3956. This is a new provision. It finds a parallel in TPA s.87.

3957. This clause specifies a variety of orders that the court may make in respect of a contravention of Parts 7.11 or 7.12 of the Securities Chapter. The ASC will also be able, in specified cases, to bring a representative action.

3958. Without limiting the generality of the injunction clause, where proceedings are instituted pursuant to Part 7.11 or Part 7.12, and the Court finds that a person who is a party to the proceedings has suffered or is likely to suffer loss or damage by conduct of another person that was engaged in a contravention of the provision of Part 7.11 or Part 7.12 the Court may in certain circumstances make additional orders as it thinks appropriate.

3959. Sub-clauses 1325(2) and (3) confer power on the Commission to act on behalf of particular named persons (who consent in writing to the Commission acting on their behalf) in seeking redress, where the Court has found a contravention in proceedings brought by the ASC. The Court may make such

orders as it thinks fit against the person who engaged in the offending conduct if it considers that the order will compensate, reduce or prevent loss to the aggrieved person.

3960. This new provision enables a representative action to be brought pursuant to a contravention of Part 7.11 or Part 7.12. 'Aggrieved' persons must be identified in the application and must consent in writing to the ASC acting on their behalf. The Court is not empowered to make awards of damages to a class of persons, but it can make orders in respect of particular named persons. These persons would have to establish individually the amount of their loss caused by the contravention.

3961. The wide range of orders that the Court may make are set out in sub-cl.132(5). These include:

- (a) an order declaring the whole or any part of a contract made to be void;
- (b) an order varying such a contract or arrangement in such manner as is specified in the order; and
- (c) an order refusing to enforce any or all of the provisions of such a contract.

Cl.1326 : Effect of clauses 1323, 1324 and 1325

3962. Nothing in clauses 1323, 1324 and 1325 limits the generality of anything else contained in any of those clauses.

Cl.1327 : Power of Court to punish for contempt of Court

3963. This provision is based on CA s.575.

3964. The power of the Court in relation to the punishment of contempt will not be affected by any provision of the Bill.

Cl.1328 : Court may resolve certain transitional difficulties

3965. This provision is new and will have effect subject to the Constitution.

3966. It will provide for a Court, on the application of an interested person, to make such order, as the Court thinks proper, to remove a difficulty which might arise in applying a provision of this Bill in relation to a particular case to which, if this Bill had not been enacted, a law corresponding to that provision would have applied. Such an order will have effect regardless of any other provision of the Bill or of any law corresponding to such a provision.

PART 9.6 - PROCEEDINGS

Cl.1329 : Jurisdiction of the Courts

3967. The purpose of this provision is to provide concurrent jurisdiction to the Federal Court and State and Territory Supreme Courts to hear matters arising from the Bill. It is not intended to affect the operation of s.68 of the Judiciary Act 1903 dealing with the jurisdiction of State and Territory Courts dealing in criminal matters.

Cl.1330 : Power of ASC to intervene in proceedings

3968. This provision is based on CA s.540, S1A s.148 and FLA s.156.

3969. It will enable ASC to intervene in any legal proceeding relating to a matter under the Bill. When it does so, the ASC will be deemed to be a party to the proceeding with, subject to this Bill, all the attendant rights, duties and liabilities. The ASC will be able to appear and be represented by an employee of the ASC or by a person to whom it has delegated its functions and powers with respect to a matter to which the proceedings relate or by a solicitor or counsel.

Cl.1331 : Civil proceedings not to be stayed

3970. This provision is based on CA s.543.

3971. It will provide that civil proceedings arising under the Bill will not be stayed by reason only that the proceedings disclose, or arise out of, the commission of an offence.

Cl.1332 : Standard of proof

3972. This provision is based on s.38B of the C & S Interpretation Act and is intended to make clear that in proceedings other than for an offence that relate to contravention of the Bill, a default in complying with a provision of the Bill, an unlawful act or omission or where a person has been knowingly concerned in or party to a contravention of the Bill, the civil standard of proof will apply.

Cl.1333 : Evidence of contravention

3973. This provision is based on s.38A of the C & S Interpretation Act.

3974. For the purposes of the Bill, a certificate purporting to be signed by the Registrar or other proper officer of a court and stating:

- (a) that a person was convicted by the court on a specified date of a specified offence; or
- (b) that a person charged with a specified offence was, on a specified date, found to have committed the offence but was not convicted,

will, in the absence of proof to the contrary, be taken to be conclusive evidence that the person was convicted or that the person contravened, or failed to comply with, a particular provision of the Bill.

Cl.1334 : Evidence of laws of States and Territories

3975. This provision is based on s.41 of the C & S Interpretation Act and will provide that a document that is published purporting to be the provisions of the laws of a State or of a Territory will be prima facie evidence of the provisions of those laws or regulations as applying in that jurisdiction on a particular date.

Cl.1335 : Costs

3976. This provision is based on CA s.533.

3977. Where a body corporate is plaintiff in legal or other proceedings under this Bill, the Court will be able to require security to be given for costs, if it appears that the body corporate may be unable to pay the costs of a successful defendant.

Cl.1336 : Vesting of property

3978. This provision is based on CA s.531.

3979. It will provide that where a court order, under the Bill, vests property in a person, the property forthwith vests in the person except that, where the transfer or transmission of the property may be registered under a Commonwealth, State or Territory law, the property will not vest in that person at law (though it does in equity) until the requirements of the law relating to registration have been complied with. This will also be the case for any property vesting under the Bill, the transfer or transmission of which may be registered under a law of the Commonwealth, a State or a Territory.

PART 9.7 : UNCLAIMED PROPERTY

3980. This Part is based on CA s.427 and CA s.534, except that it will provide for the establishment of the Companies Unclaimed Money Account, which will replace the Companies Liquidation Account established by CA s.428, and into which unclaimed money will be able to be paid.

Cl.1337 : Interpretation

3981. This provision refers to the account established by Bill cl.1338, the Companies Unclaimed Money Account, and also gives the meanings of "transferred" and "unclaimed property".

Cl.1338 : Companies Unclaimed Money Account

3982. This clause establishes the Trust Account into which unclaimed money will be able to be paid under Bill cl.1339 and to which money standing to the credit of the Companies Liquidation Account established by CA s.428 will be paid.

3983. Bill sub-cl.1338(3) will provide for money standing to the credit of the Account to be paid in accordance with this Part.

Cl.1339 : How Minister to deal with unclaimed property

3984. Bill cl.1339 is new and will provide for unclaimed money to be paid into the Account and for the proceeds of the sale or other disposal of unclaimed property also to be paid into the Account.

Cl.1340 : Minister not liable to pay calls on shares etc.

3985. Bill cl.1340 is based on CA sub-s.534(7) and will provide that the Minister will not be subject to certain obligations in respect of shares in a body corporate which become unclaimed property. The right of a body corporate to forfeit a share will not be affected by this clause.

Cl.1341 : Disposition of money in Account

3986. This provision is based on CA s.427 and will provide for the transfer of money out of the Account and into Consolidated Revenue Fund, and also for the payment of claims for money that has been paid to the credit of the Account to persons, whom the Minister is satisfied are entitled to such money.

Cl.1342 : Commonwealth or Minister not liable for loss or damage

3987. This clause is based on CA sub-s.534(6) and will provide for a statutory disclaimer of liability by the Commonwealth and the Minister in respect of loss or damage which might arise out of the exercise of powers under this Part and in relation to unclaimed property.

Cl.1343 : Disposal of securities if whereabouts of holder unknown

3988. This provision is based on CA sub-ss.534(1) and (4).

3989. It will provide that where a company has attempted with reasonable diligence to communicate with a person who has been in the company register for at least 6 years and whom the company has reasonable grounds for believing to be no longer resident at the address shown in the register, the company will be able to transfer securities or rights to securities to the Minister on behalf of such persons.

PART 9.8- RULES AND REGULATIONS

Cl.1344 : Rules

3990. This provision is based on CA-s.576, S1A-s.151 and F1A-s.159.

3991. The Federal Court will have the power to make rules of court with respect to proceedings under this Bill, and with respect to the Court's own practice and procedure in relation to this Bill.

Cl.1345 : Regulations

3992. This standard provision is based on CA-s.577, SlA-s.150 and FlA-s.160.

3993. The Governor-General will be able to make regulations not inconsistent with the Bill prescribing all matters required or permitted by the Bill to be prescribed by the regulations, or necessary or convenient to be prescribed by regulations for carrying out or giving effect to the Bill.

3994. The Regulations will be able to provide for specified provisions of this Bill to apply as modified according to the Regulations, to close corporations.

PART 9.9 : MISCELLANEOUS

Cl.1346 : Non-application of rule against perpetuities to certain schemes

3995. This clause is based on CA-s.578.

3996. The rule against perpetuities will not apply to the trusts of any funds or schemes established for the benefit of any employee of a corporation (Bill sub-cl.1346(1)).

Cl.1347 : Act not to apply to trade unions

3997. This clause is based on CA-s.579.

3998. The Bill will not apply to trade unions and the registration of any trade union pursuant to its provisions will be void (Bill cl.1347).

Cl.1348 : Operation of Life Insurance Act

3999. This clause is based on CA-s.580.

4000. The Bill will not affect any of the provisions of the Life Insurance Act 1945.

Cl.1349 : General transitional provision

4001. This is a new provision.

4002. Acts done by the NCSC or references to the NCSC in a prospectus or other document before the commencement of this Part will continue to have effect as if they had been done or made under the Bill. Acts done by the Ministerial Council will also continue to have effect and references to such acts will include directions, consents or approvals given, and declarations, exemptions and instruments made, given or granted.

Cl.1350 : Effect of Bill on existing laws in force in the Capital Territory

4003. This provision is new.

4004. It will provide that the Bill will have effect, subject to any other provisions in the Bill, despite anything in an Act that is a relevant Act for the purposes of the C & S Interpretation Act.

SCHEDULE 1

Table A : Regulations for management of a company limited by shares

Table B : Regulations for management of a no liability company

4005. Table A and Table B of Bill Schedule 1 are based upon Table A and Table B of CA Schedule 3. A company will be able to adopt all or any of the regulations in Table A of Schedule 1; a no liability company will be able to adopt all or any of the regulations in Table B of Schedule 1.

4006. These articles will apply automatically to such companies except insofar as they are excluded or modified by the articles of the company (see Bill cl.175).

Schedule 2 - Forms of Transfer of Marketable Securities

4007. These forms are partly based on those contained in CA Schedule 4 and are to be used as sufficient instruments of transfers of marketable securities and marketable rights (and accordingly proper instruments of transfer for the purposes of cl.1091). A number of substantial changes have been made to those forms as a result of the following reform measures:

- (a) deletion of transferor signatures from security transfer and security renunciation and transfer forms (Forms 1 and 5 of Schedule 2);
- (b) deletion of transferee acceptance forms (previously CA Schedule 4, Forms 4, 9 and 11); and
- (c) insertion of a consolidated transfer and a renunciation and consolidated transfer form (Forms 4 and 8 respectively of Schedule 2) to enable a transferee broker to reduce the amount of processing required where a transferee's purchase is made up of transfers from a number of transferors.

Forms 1 and 5.

4008. These forms are based on Forms 1 and 5 of CA Schedule 4. The following changes have been made to them:

- (a) the provision for a transferor's signature has been removed and replaced with a declaration that the transfer (or transfer and renunciation) is executed on the transferor's behalf by the transferor broker;
- (b) a new part (Part 3) has been added for the transferee broker's use in conjunction with a consolidated transfer, or renunciation and consolidated transfer, form (Forms 4 and 8).

4009. The transferor broker's certifications are the same as in CA.

Forms 2, 3, 6 and 7.

4010. These forms are the same as the corresponding forms in CA Schedule 4 except that a new part (Part 3) has been added to them for use in situations where the transferee broker opts to use a consolidated transfer or renunciation and consolidated transfer form (Forms 4 and 8).

Forms 4 and 8.

4011. These are new forms which are available to be used by transferee brokers who have received a number of transfers which they wish registered in the name of the transferee. They are designed to be used with (new) Part 3 of either Form 1, 2 or 3 in the case of security transfers, or Form 5, 6 or 7 in the case of rights transfers. A brief outline of the method of use of the forms is as follows:

- (a) the transferee broker will fill in Part 3 of the particular transfers (note only the broker's stamp is required not the transferee details which would otherwise have been inserted in Part 2);
- (b) the transferee broker's stamp used in Part 3 must have a transfer consolidation number on it (it is anticipated that broker's stamps used for this purpose would have a sequential numbering facility);
- (c) the transferee broker would then fill in the appropriate consolidated transfer form with details of the the total number of securities represented by the various transfer forms, details of the transferee's name and address and the transfer consolidation numbers used in the Part 3's of the transfer forms (so a cross reference is established to each of those transfers);

- (d) the consolidated transfer form would then be stamped by the transferee broker and lodged, along with the attached transfer forms, with the company for registration.

Forms 9 and 10.

4012. Form 9 coincides with CA Form 8 and Form 10 coincides with CA Form 10 except to the extent that the reference to prescribed corporation is replaced with other eligible body. They are used for transfers of securities or rights by an authorised trustee corporation (see cl.1102 of the Bill).

SCHEDULE 3

Penalties

4013. This Schedule sets out the penalties in respect of particular provisions in the Bill.

CORPORATIONS (FEES) BILL 1988

4014. The fees that will be charged in connection with the proposed Corporations Bill will be set out in regulations to be made under the Corporations (Fees) Bill (hereafter referred to as the 'Fees Bill').

Cl.1 : Short Title

4015. The Fees Bill when enacted may be cited as the Corporations (Fees) Act 1988 (Fees Bill cl.1).

Cl.2 : Commencement

4016. The Fees Bill when enacted will come into operation when the Corporations Act comes into operation (Fees Bill cl.2).

Cl.3 : Interpretation

4017. Expressions used in the Fees Bill will have the same meaning as in the Corporations Bill (Fees Bill cl.3).

Cl.4 : Fees Payable

4018. There will be payable to the Commonwealth such fees as are prescribed (Fees Bill s-cl.4(1)). Fees may be prescribed, inter alia for:

- (a) lodgement of documents;
- (b) registration of documents;
- (c) inspection or production of documents; and
- (d) preparation by ASC by "computer produced" documents using information previously lodged with ASC.

4019. Where a requirement to lodge a document with the ASC at a particular time is deemed by CB cl.338 to have been satisfied by the lodgement of the annual return, than:

- (a) a fee, equal to the amount that would have been payable had the document been lodged at the same time as the annual return, is payable; and
- (b) the fee is a debt due to the Commonwealth and may be recovered in a court of competent jurisdiction (Fees Bill sub-cl.4(2)).

4020. Any fees that are payable on notices deemed to be lodged with the ASC will be in the nature of 'late fees', and as such are a penalty for failing to notify the ASC of changes in company officers, registered office, number of shares issued and the like within the period of time specified in the CB. The assessing of late fees on such notices is consistent with the philosophy that companies should comply with the time-limits specified in the CB and notify the ASC of changes as they occur, thus ensuring that the registers maintained by the ASC provide the public with up-to-date information about companies.

4021. Where a document has been lodged with the ASC without payment of the prescribed fee, such document will still be regarded as having been lodged (cf. s-section 4(2) of the Companies (Fees) Act 1981 which deemed such document not to have been lodged until the fee had been paid). The prescribed fee payable upon lodgment of the document would however become a debt due to the Commonwealth (Fees Bill s-cl.4(3)).

4022. The Minister or the ASC may not deal with any application until the appropriate fee has been paid (Fees Bill s-cl.4(4)).

4023. The Commonwealth will be able to waive, reduce or refund fees that would otherwise be payable or paid under cl.4 (Fees Bill s-cl.4(6)).

Cl.5 : Regulations

4024. The Governor-General will be able to make regulations prescribing fees of up to \$2,500 (Fees Bill cl.5 - cf. s.5 of the Companies (Fees) Act 1981 in which the limit on the level of fees that could be prescribed was \$1,000).

BILLS DEALING WITH CONTRIBUTIONS AND LEVIES TO SECURITIES
EXCHANGE FIDELITY FUNDS AND THE NATIONAL GUARANTEE FUND

Introduction

4025. Members of securities exchanges to which Part 7.9 of the Securities Chapter applies are required to make joining and annual contributions and may, in certain circumstances, be required to pay levies to the fidelity funds established by the respective exchanges (see sub-cl.902(1) and (2) and 904(1)).

4026. Members of "participating exchanges" under Part 7.10 of that Chapter may be required to pay certain transaction levies to the Securities Exchange Guarantee Corporation (SEGC) where the National Guarantee Fund falls below the minimum amount (see cls 936 and 938). In such circumstances, the participating exchanges themselves may also be required by the SEGC to pay a levy and in order to pay that levy, the participating exchange may levy its members (see cls.940 and 941).

4027. Because these contributions and levies will be in the nature of a tax, their imposition is required by the Constitution to be dealt with by separate Bills.

4028. These 6 bills are now dealt with in turn.

SECURITIES EXCHANGES (APPLICATION FOR MEMBERSHIP) FIDELITY
FUNDS CONTRIBUTION BILL 1988

4029. The purpose of this Bill is to impose by a separate Act the tax that is payable under sub-cl.902(1) of the Corporations Bill 1988.

Cl.1 : Short title

4030. The Bill when it is enacted may be cited as the Securities Exchanges (Application for Membership) Fidelity Funds Contribution Act 1988.

Cl.2 : Commencement

4031. The Bill will come into operation when Part 7.9 of the Corporations Bill (which includes sub-cl.902(1)) comes into operation.

Cl.3 : Incorporation

4032. This clause is an interpretation provision requiring this Bill to be read as if it were in Part 7.9 of the Corporations Bill.

Cl.4 : Imposition of tax

4033. This clause imposes the tax that is payable under sub-cl.902(1) of the Corporations Bill by a person seeking membership of a securities exchange (defined in cl.9 of the Corporations Bill).

Cl.5 : Amount of tax

4034. The amount of the tax will be determined by the securities exchange. The amount determined will be at least \$500 but cannot be higher than the rate set by the regulations.

Cl.6 : Regulations

4035. Regulations may be made prescribing the maximum amount of tax for the purposes of cl.5 (sub-cl.6(1)). Regulations can set different maximum amounts for different securities exchanges (sub-cl.6(2)).

SECURITIES EXCHANGES (MEMBERSHIP) FIDELITY FUNDS CONTRIBUTION
BILL 1988

4036. The purpose of this Bill is to impose by a separate Act the tax that is payable under sub-cl.902(2) of the Corporations Bill 1988.

Cl.1 : Short title

4037. The Bill when it is enacted may be cited as the Securities Exchanges (Membership) Fidelity Funds Contribution Act 1988.

Cl.2 : Commencement

4038. The Bill will come into operation when Part 7.9 of the Corporations Bill (which includes sub-cl.902(2)) comes into operation.

Cl.3 : Incorporation

4039. This clause is an interpretation provision requiring this Bill to be read as if it were in Part 7.9 of the Corporations Bill.

Cl.4 : Imposition of tax

4040. This clause imposes the tax that is payable under sub-cl.902(2) of the Corporations Bill by a member of a securities exchange (defined in cl.9 of the Corporations Bill).

Cl.5 : Amount of tax

4041. The amount of the tax will be determined by the securities exchange. The amount determined will be at least \$100 but it cannot be higher than the rate set by the regulations.

Cl.6 : Regulations

4042. Regulations may be made prescribing the maximum amount of tax for the purposes of cl.5 (sub-cl.6(1)). Regulations can set different maximum amounts for different securities exchanges (sub-cl.6(2)).

NATIONAL GUARANTEE FUND (REPORTABLE TRANSACTIONS) LEVY BILL
1988

4050. The purpose of this Bill is to impose by a separate Act the levy that is payable under cl.938 of the Corporations Bill 1988.

Cl.1 : Short title

4051. The Bill when it is enacted may be cited as the National Guarantee Fund (Reportable Transactions) Levy Act 1988.

Cl.2 : Commencement

4052. The Bill will come into operation when Part 7.10 of the Corporations Bill (which includes cl.938) comes into operation.

Cl.3 : Incorporation

4053. This clause is an interpretation provision requiring this Bill to be read as if it were in Division 4 of Part 7.10 of the Corporations Bill.

Cl.4 : Imposition of levy

4054. This clause imposes the levy that is payable under cl.938 of the Corporations Bill in relation to reportable transactions (defined in sub-cl.920(1) of the Corporations Bill).

Cl.5 : Rate of levy

4055. The levy is payable at a rate determined by the Securities Exchange Guarantee Corporation (SEGC) but the rate set by the SEGC cannot be higher than the rate set by the regulations (sub-cl.5(1)). The SEGC can set different rates for transactions in different kinds of securities and transactions by different classes of dealer (sub-cl.5(2)).

Cl.6 : Regulations

4056. Regulations may be made prescribing the maximum rate of levy that can be set by the SEGC under cl.5 (sub-cl.6(1)). As a consequence of sub-cl.5(2) regulations can set different maximum rates for transactions in different kinds of securities and transactions by different classes of dealers (sub-cl.6(2)).

NATIONAL GUARANTEE FUND (PARTICIPATING EXCHANGES) LEVY BILL
1988

4057. The purpose of this Bill is to impose by a separate Act the levy that is payable under cl.940 of the Corporations Bill 1988.

Cl.1 : Short title

4058. The Bill when it is enacted may be cited as the National Guarantee Fund (Participating Exchanges) Levy Act 1988.

Cl.2 : Commencement

4059. The Bill will come into operation when Part 7.10 of the Corporations Bill (which includes cl.940) comes into operation.

Cl.3 : Incorporation

4060. This clause is an interpretation provision requiring this Bill to be read as if it were in Division 4 of Part 7.10 of the Corporations Bill.

Cl.4 : Imposition of levy

4061. This clause imposes the levy that is payable by participating exchanges (defined in sub-cl.920(1) of the Corporations Bill) under cl.940 of the Corporations Bill.

Cl.5 : Rate of levy

4062. The levy payable by the participating exchange is the amount set by the Securities Exchange Guarantee Corporation (SEGC) but the rate set by the SEGC cannot be higher than the rate set by the regulations (cl.5).

Cl.6 : Regulations

4063. Regulations may be made prescribing the maximum rate of levy that can be set by the SEGC under cl.5 (sub-cl.6(1)). The regulations can set different maximum rates for different participating exchanges (sub-cl.6(2)).

NATIONAL GUARANTEE FUND (MEMBERS OF PARTICIPATING EXCHANGES)
LEVY BILL 1988

4064. The purpose of this Bill is to impose by a separate Act the levy that is payable under cl.941 of the Corporations Bill 1988.

Cl.1 : Short title

4065. The Bill when it is enacted may be cited as the National Guarantee Fund (Members of Participating Exchanges) Levy Act 1988.

Cl.2 : Commencement

4066. The Bill will come into operation when Part 7.10 of the Corporations Bill (which includes cl.941) comes into operation.

Cl.3 : Incorporation

4067. This clause is an interpretation provision requiring this Bill to be read as if it were in Division 4 of Part 7.10 of the Corporations Bill.

Cl.4 : Imposition of levy

4068. This clause imposes the levy that is payable by members of participating exchanges (defined in sub-cl.920(1) of the Corporations Bill) under cl.941 of the Corporations Bill.

Cl.5 : Rate of levy

4069. The levy is payable at a rate determined by the participating exchange but the rate set by participating exchange cannot be higher than the rate set by the regulations (sub-cl.5(1)). The participating exchanges can set different rates for different classes of members or member organisations of the exchange (sub-cl.5(2)).

Cl.6 : Regulations

4070. Regulations may be made prescribing the maximum rate of levy that can be set by participating exchanges under cl.5 (sub-cl.6(1)). As a consequence of sub-cl.5(2) regulations can set different maximum rates for different class of members or member organisations of a participating exchange (sub-cl.6(2)).

BILLS DEALING WITH CONTRIBUTIONS AND LEVIES TO THE FIDELITY
FUND OF A FUTURES ORGANISATION

Introduction

4071. Under cls.1234 and 1235 of the Corporations Bill applicants for membership to, or existing members of, a futures exchange or a futures association having the day-to-day responsibility for the regulation of futures brokers will be required to pay a contribution, and may be required to pay additional levies, to the fidelity fund of the exchange or association.

4072. Because these contributions and levies will be in the nature of a tax, their imposition is required by the Constitution to be dealt with by separate Bills.

4073. For this purpose, there are 3 separate Bills dealing with contributions and levies payable by:

- (a) a person who wishes to be admitted to membership of a futures exchange or futures association;
- (b) a member of a futures exchange or futures association who wishes to continue his or her membership of that exchange or association; and
- (c) a member of a futures exchange or futures association who is required to pay a levy additional to the member's annual contribution to the fidelity fund of the exchange or association.

4074. These Bills are now dealt with in turn.

FUTURES ORGANISATIONS (APPLICATION FOR MEMBERSHIP)
FIDELITY FUNDS CONTRIBUTION BILL 1988

Cl.1 : Short title

4075. When enacted, this Bill will be able to be cited as the Futures Organisations (Application for Membership) Fidelity Funds Contribution Act 1988.

Cl.2 : Commencement

4076. This Bill will commence on the same day as the fidelity fund provisions contained in Part 8.6 of the Corporations Bill.

Cl.3 : Incorporation

4077. This Bill is to be read together with the Corporations Bill. In particular, it is to be read as if its provisions were contained in Part 8.6 of the Corporations Bill (see, in particular, cls.1234, 1235 and 1236 of that Bill).

Cl.4 : Imposition of tax

4078. Any fidelity fund contribution payable by a person wishing to be admitted to membership of a futures exchange or futures association will be imposed by this Bill.

Cl.5 : Amount of tax

4079. The amount of the contribution will be determined by the futures exchange or futures association and will be at least \$500 and not more than such amount as is prescribed by the Regulations.

C1.6 : Regulations

4080. The Governor-General will be able to make regulations prescribing the maximum amount of contribution payable. The Regulations will be able to prescribe different contribution amounts for different futures exchanges or futures associations.

FUTURES ORGANISATIONS (MEMBERSHIP) FIDELITY
FUNDS CONTRIBUTION BILL 1988

Cl.1 : Short title

4081. When enacted, this Bill will be able to be cited as the Futures Organisations (Membership) Fidelity Funds Contribution Act 1988.

Cl.2 : Commencement

4082. This Bill will commence on the same day as the fidelity fund provisions contained in Part 8.6 of the Corporations Bill.

Cl.3 : Incorporation

4083. This Bill is to be read together with the Corporations Bill. In particular, it is to be read as if its provisions were contained in Part 8.6 of the Corporations Bill (see, in particular, cls.1234, 1235 and 1236 of that Bill).

Cl.4 : Imposition of tax

4084. Any fidelity fund contribution payable by a contributing member of a futures exchange or futures association who wishes to continue his or her membership of that exchange or association will be imposed by this Bill.

Cl.5 : Amount of tax

4085. The amount of the contribution will be determined by the futures exchange or futures association and will be at least \$100 and not more than such amount as is prescribed by the Regulations.

Cl.6 : Regulations

4086. The Governor-General will be able to make regulations prescribing the maximum amount of contribution payable. The Regulations will be able to prescribe different contribution amounts for different futures exchanges or futures associations.

FUTURES ORGANISATIONS FIDELITY FUNDS LEVY BILL 1988

Cl.1 : Short title

4087. When enacted, this Bill will be able to be cited as the Futures Organisations Fidelity Funds Levy Act 1988.

Cl.2 : Commencement

4088. This Bill will commence on the same day as the fidelity fund provisions contained in Part 8.6 of the Corporations Bill.

Cl.3 : Incorporation

4089. This Bill is to be read together with the Corporations Bill. In particular, it is to be read as if its provisions were contained in Part 8.6 of the Corporations Bill (see, in particular, cls.1234, 1235 and 1236 of that Bill).

Cl.4 : Imposition of levy

4090. Any fidelity fund levy payable by a person in addition to the person's annual contribution to the fund will be imposed by this Bill.

Cl.5 : Amount of levy

4091. The amount of the levy will be determined by the futures exchange or futures association and will not exceed the amount prescribed by the Regulations.

Cl.6 : Regulations

4092. The Governor-General will be able to make regulations prescribing the maximum amount of levy payable. The Regulations will be able to prescribe different levies for different futures exchanges or futures associations.

APPENDIX A

Major changes to co-operative companies and securities scheme legislation

4093. Major changes made by the CB and ASC Bill to co-operative companies and securities legislation are as follows:

INTERPRETATIONS PROVISIONS - ALL LEGISLATION

"Association" -

CA s.9, FIA s.6, SIA s.6 and CASA s.7(4)

These interpretative provisions have been consolidated into Part 1.1, Div. 2. The only substantive change is the inclusion of "executive officers" as associates of the body corporate and related bodies corporate.

"carrying on business" -

CA sub-s.5(1A)

The interpretation of "carrying on business" has been expanded in Div.3 of Part 1.1. In Div.4 of Part 1.1, there are new provisions deeming those on whose behalf intermediaries deal, to be dealing in futures contracts.

"relevant interests" -

CA s.8, CASA s.9, SIA s.5

Provisions relating to relevant interests are consolidated in Part 1.1, Div.5.

no equivalent

Certain State and Territory companies will be required to register under the Commonwealth regime (See Part 2.2 Division 2).

COMPANIES ACT 1988

Registration

Part III, Division 4 (ss.83 to 92)

Under Part 2.2 Divisions 2 to 6 of the Bill registration will be required only once for recognition throughout Australia, instead of the existing system recognising local and foreign companies registered in another jurisdiction.

s.512

A registrable Australian corporation carrying on business interstate and a foreign company carrying on business in Australia will be required to register under the Bill (CB cls.340 and 343).

Lodgment of constituent documents -

CA s.35

CB cl.118. Not all companies will be required to lodge a copy of the memorandum and articles of association. In these cases, copies must be available for inspection, and may be required to be produced to the ASC (cl.119).

no equivalent

All companies registering under this Bill will be required to lodge a statement as to the current or intended activities of the company or proposed company (Part 2.2 Division 6). Companies ceasing to be trading or banking corporations will be dissolved.

Close corporations will be permitted to register under this Bill (Part 2.2 Division 4).

s.66

Companies licensed under Bill cl.383 will not be exempted from lodging annual returns of particulars of directors, principal executive officers and secretaries.

Names

s.38

Bill cl.367. In CA s.38, a name would not be available for reservation if in the opinion of the NCSC, such a name was undesirable or so closely resembled another name as to be likely to be mistaken for it. These subjective tests have not been included in Bill cl.367.

Bill cl.372. A new company will be able to incorporate with, and be known by, a number name allocated to it by the ASC upon registration.

Bill cl.374 deals with the reservation and registration of the name of a body corporate proposing to be registered under Division 2 of Part 2.2 (i.e. companies previously registered under co-operative scheme legislation) or Division 3 of Part 2.2 (i.e. foreign companies proposing to register as a company).

Prospectuses

All persons involved in the preparation of a prospectus are made responsible for it. Defences are provided for categories of these persons. These defences basically require due diligence on the part of the person responsible for the preparation (CB cls.1004 to 1012).

ss.1017-1020 ss.5(4), 94 and 95

Prospectuses will be required for all offers, invitations or issues of securities except for excluded offers, invitations or issues. Excluded offers are defined in (cl.66). The concepts of 'offer to the public' and 'section of the public' found in the CA proved problematic and are not used in the CB. The term "securities" is considered to be more relevant in this area than "share", "debenture" etc. and accordingly it is used in the prospectus Division. Consequently this Division is now found in the Securities Chapter which regulates all dealings in securities (see CB cls.1017 to 1020).

Prospectuses will be lodged with the ASC but will no longer be pre-vetted and registered.

s.98

Basic disclosure rules and a general requirement that a prospectus contain all material relevant to an investor making an informed investment decision, replace the previous complex content rules (see CB cls.1021 and 1022).

no equivalent

A supplementary prospectus is to be provided if there is a significant change in a matter contained in a prospectus or a new matter arises (see CB cl.1024).

no equivalent

The ASC will have power in certain circumstances to stop the issue of securities. The ASC will have this power so as to be an effective "watch dog" over the dealings of the issuers of prospectuses (see CB cl.1033).

no equivalent

There are a number of new remedies, based on s.87 of the Trade Practices Act 1974. In the event of a breach of provisions in Parts 7.11 and 7.12, the Court will be able to grant a wide variety of remedies. Obtaining a remedy will be facilitated by the ASC's new ability to bring representative actions in certain cases (see CB cl.1325).

Substantial Shareholders

sub-s.136(9)

The threshold of shareholding requiring disclosure has been lowered from 10% to 5% (CB cl.708).

sub-s.137(1)

There is no longer a need for a substantial shareholder to provide notification of interests in the 'prescribed form' (CB cls.709).

Branch registers

Various provisions in CA require branch registers to be established

s.148

The obligation to maintain a branch register of debenture holders in a particular State or Territory has been removed (CB cl.1048).

s.262

The obligation to maintain a branch register of members in a particular State or Territory has been removed (CB cl.214).

s.521

The obligation to maintain a branch register of members of a foreign company in a particular State has been removed (CB cl.351 and 352).

Directors' Liability

s.229A

Cl.233 is based upon CA s.229A but it now ensures that a body corporate carries the primary liability to meet a debt incurred on behalf of the trust, with directors being personally liable only where the body corporate is not able to obtain reimbursement from the trust and is unable to pay the debt out of its own assets.

Beneficial interests inquiries

sub-s.261(1)

(Definition of "company") Part 6.8 applies only to listed and prescribed companies in contrast with the far wider CA definition. (CB cl.717).

sub-s.261(2)

Cl.718. Only the ASC may give a "primary" notice. The corresponding CA provision allowed the company to initiate an inquiry as to beneficial ownership at any time or at the request of either the Commission or a member or members entitled to not less than 45% of the total voting rights (CB cl.718). A "primary" notice replaces the concept of a "subsection (2) notice" under CA.

sub-s.261(3)

As with primary notices, it is the Commission and not the company which gives a "secondary" notice in response to

information received in response to a primary or another notice, secondary (CB cl.719). A "secondary" notice replaces the concept of a "subsection (3) notice" under CA.

no equivalent

The ASC will have the power to provide to the company any information given in response to a primary or secondary notice (CB cl.720).

sub-ss.261(5) and (6)

The previous system of full or partial exemptions from compliance based upon the issuing of a certificate by the Commission is to be replaced. The exemptions, if given, will relate in the first instance to the giving of information to the Commission and in the second instance, to the passing on of that information to the company (CB cl.721).

sub-ss.261(8)

A with CA paras.261(8)(c) and (d), CB cl.723 provides for the consequences to the applicant of the different decisions which the ASC could made in response to a request that information not be given. In contrast with the CA, the applicant is not required to inform the company of a request made under cl.721.

Accounting and financial disclosure

no equivalent

The annual activities statement is to be included in an annual return (CB cl.336).

s.266B

Accounting Standards are to be made (rather than approved) by ASRB and are to be treated as a disallowable instrument under s.46A of the Acts Interpretation Act 1901. Standards are to be laid before Parliament (CB cl.283).

ss.269, 270 and 274

Financial statements will not be required to be made out and dispatched at least 14 days before the annual general meeting where the shareholders agree to dispense with the requirement to give 14 days notice of the meeting (CB cls.292 293, 295, 296, 301, 302, 302, 304, 305 and 315).

Insolvency

no equivalent

This provision is based on s.29 of the Bankruptcy Act 1966. It requires all Courts having jurisdiction under the CB and officers of or under the control of those Courts to act in aid of one another in all external administration matters (see CB cl.581). This last term is defined to include a variety of windings up and insolvencies.

Penalties

Whereas penalties appeared at the foot of provisions in the CA, the penalties for contraventions of provisions in the CB are consecutively set out in CB Schedule 3.

FUTURES INDUSTRY ACT 1986

Part II

This area is now dealt with in ASC Bill, Part 3.

Part IV

Bill Part 8.3. All futures brokers and futures advisers will be required to be corporations.

- There will no longer be any requirement for representatives of a futures broker or futures adviser to be licensed.
- Representatives will be required to hold a proper authority from a futures broker or futures adviser and disclose the proper authority to clients.
- Futures brokers and futures advisers will be required to supervise their representatives and give them adequate training and education.
- Part 8.3 Division 2 will prevent the enforcement of a contract by a person who advises or deals in futures contracts and does not have a licence but who should be licensed.
- The ASC will be able to permanently prohibit a person from acting as a representative of a futures broker or futures adviser or both (see cls. 1193 to 1199).

SECURITIES INDUSTRY ACT 1980

no equivalent

New provisions will prohibit the engaging in of misleading or deceptive conduct in relation to dealing in securities. The provisions are broad in scope and are considered to be valuable in maintaining integrity in the securities market. They are based on SIA and s.52 of the Trade Practices Act 1974 (see CB cls.762, 765 and 995).

Licensing

no equivalent

Divisions 2 of Part 7.3 (cls.794-805) provides remedies for clients dealing with unlicensed dealers or investment advisers e.g. rescission, recovery of commission.

ss.44 and 46

Whereas the existing system requires a representative of a dealer or investment adviser to be licensed, Divisions 3 and 4 of Part 7.3 (cls.806-822) introduce a new regime for representatives - they will no longer need to be licensed by the ASC. The licence holder(s) for whom they act will, in general, be liable for their activities in relation to securities.

no equivalent provision

Cls.828-836 give the ASC (in addition to its existing licence suspension and revocation powers) a power to make a banning order against a person from participating in the securities industry as a licensee or representative.

Securities Recommendations

s.65

Presently, a securities licence holder making a written securities recommendation to a client is required to disclose any interests he has in the securities and other interests which could influence the recommendation.

Cl.849 modifies s.65 by extending it to exempt dealers, to oral as well as written recommendations and by widening its definition of associate and providing a more relevant test for wider pecuniary or other interests.

National Guarantee Fund

s.122CA

The existing provision provides for the establishment of the NGF and for it to be administered by the Board of NSEGC

Cl.927 extends s.122CA by allowing the Board to appoint and to delegate functions to a management sub-committee.

s.122DB

Sub-cl. 934(3)-(5) extend s.122DB by allowing the NSEGC to appoint a professional fund manager for investment of the Fund.

s.122CC

Cl.931 extends s.122CC by allowing the Board to open a separate account for administrative purposes.

s.122J

This clause provides for NGF claims against buying dealers by selling dealers. Sub-cl.949(4) allows an ASX subsidiary to make a net claim on behalf of a selling dealer and allows for net claims by selling dealers.

ss.122L and 122M.

Cls.951 and 952 will now allow for net claims by clients in respect of default by dealers.

s.122W

Cl.968 retains the aggregate limit but does not contain the individual limit in respect of a dealer's insolvency provided in sub-s.122W(2).

Transfer of marketable securities and forms relating to such transfers

s.191 and CA Forms 1 and 5

S.191 currently requires transferee acceptance forms to be completed in respect of securities with uncalled liabilities. Cl.1101 dispenses with this requirement (CA Schedule 4, Forms 4, 9 and 11 do not appear in Schedule 2).

Cl.1101 and Forms 1 and 5 of Schedule 2 dispense with the requirement for the transferor to sign - a broker authorised by the owner is permitted to execute it on his behalf.

no equivalent provision

Cls.1098 and 1101 and Schedule 2 provide for two new forms - a consolidated transfer form (Form 4) and a renunciation and consolidated transfer form (Form 8) - for use by a transferee broker in respect of multiple transfers to the transferee.

sub-s.194(1)

Sub-s.194(1) provides for certain warranties and indemnities by a transferor broker - the latter relating to forged or unauthorised signatures.

Cl.1105 changes the transferor broker's indemnity so as to apply in respect of wrongful stamping or unauthorised execution of the transfer by the broker. The indemnity is also extended to the owner.

no equivalent provision

cl. 1113 gives the ASC a wide exemption and modification power in respect of Part 7.13.

COMPANIES (ACQUISITION OF SHARES) ACT 1980

sub-s.12(g)

The exception to the main prohibition on acquisitions of shares relating to acquisitions approved by a resolution of the target company has been extended to allotments under a grant of an option (CB cl.623).

s.17

By virtue of the definitions of "home stock exchange" and "listed company" in cl.603, the takeover announcement option is extended to second board companies and to companies listed on exchanges other than ASX (CB cl.674).

no equivalent

All documents sent to shareholders with a Part C statement are to be lodged with ASC (CB cl.680).

s.17

An offeror can extend the offer period during the last 5 days of the offer if a counter bid is made (CB para.687(3)(b)).

no equivalent

A new provision requires the offeror to lodge with the ASC a copy of every document accompanying offers not previously lodged (CB cl.640).

s.18

The ASC will be required to register copies of what purports to be a Part A statement and offer if certain

formalities are met. The ASC will not be required to check that the documents comply with the Act and do not contain false or misleading material (CB cl.644).

s.25A

Trustees and nominees will be able to accept offers in respect of distinct portions of shares at different times during the offer period, rather than be allowed only one opportunity to accept in aggregate (CB cl.650).

sub-ss.27(10), (11)

The variation notices of extended offers need not be served to those who have already accepted offers that are or have become unconditional (CB sub-cl.657(3)).

s.27(14)

To register a variation notice, the ASC will only need to be satisfied that the variation is permitted and the notice is properly signed (CB sub-cl.659(2)). This is consistent with cl.644.

sub-s.18(2A)

Offers that include defeating conditions of the kind referred to in sub-cl.622(2) are prohibited and void (CB sub-cl.622(3)). Presently the NCSC is given a discretion to refuse registration of such offers.

s.37

The prohibition on offerors and target companies from making profit forecasts except with written consent of Commission has been dispensed with.

s.38

The prohibition on the making of statements relating to a revaluation of the target company's assets except with written consent of Commission has been dispensed with.

s.40

The prohibition on giving benefits to offerees except as allowed under a takeover offer is extended to persons who propose to send a takeover offer within the next 4 months and do not propose to include the benefit in the offer (CB cl.698).

sub-ss.42(2), (3)

There are new alternative tests which are to apply to offerors who commence their bid with more than a 10% shareholding in the target company to determine whether they are entitled to the benefit of provisions relating to the compulsory acquisition of shares of minority shareholders (CB cl.701).

s.57

The ASC will have an extended power to grant an exemption in relation to classes of persons generally and in particular cases or classes of cases, and not just in a particular case (CB cl.728).

s.58

The ASC will have an extended power to modify or vary a provision in Chapter 7 in its application to classes of persons generally or in particular cases or classes of cases and not just its application to a particular person in a particular case (CB cl.730).

NATIONAL COMPANIES AND SECURITIES COMMISSION ACT 1979

reform function

s.6

ASC Bill cl.11 - Among the functions to be conferred on the ASC will be the new function of advising the Minister about any changes to a national scheme law that it sees as necessary.

Ministerial directions

s.7

ASC Bill cl.12 - Unlike the Ministerial Council which has the capacity to give the NCSC a direction in respect of a particular case, the Minister will not have the power to give the ASC directions about a particular case.

Information gathering powers

NCSC Act Part VI,
CA Part II, Division 1,
CA Part VII
SIA Part II
FIA Part II

ASC Bill Part 3 - The inspection and special investigation powers under the co-operative scheme legislation will be amalgamated so that the inspection powers will be more effective. The ASC's investigative powers (including its powers to conduct an investigative hearing) will be distinct from its general powers to conduct hearings for the purposes of the performance or exercise of its functions or powers.

ASC Bill cl.61 - If a question of law arises at a hearing the ASC will be able to refer that question to the Court.

appear in the dictionary and the interpretation provisions of CB Chapter 1.

ASC Bill cl.220 - The Minister will be able to make arrangements with a State or Territory about any matter connected with the administration of national scheme legislation or the performance or exercise of a function or power of the ASC or the Companies and Securities Advisory Committee.

ASC Bill cl.96 - If the Commonwealth fails to reach agreement with a State or Territory with respect to the vesting of administration of national scheme laws in that State or Territory's CAC, the ASC will appoint a Regional Commissioner for that State or Territory.

ASC Bill Part 9 - A Companies and Securities Advisory Committee will be established to advise the Minister about the administration and reform of the national companies and securities scheme.

ASC Bill Part 10 - A Corporations and Securities Panel, independent of the ASC, will be established to conduct private hearings with respect to certain matters designated by the Minister.

ASC Bill Part 11 - A Companies Auditors and Liquidators Disciplinary Board will be established to deal with disciplinary matters concerning auditors and liquidators registered under the CB. Under the co-operative scheme there are eight separate disciplinary boards established under various State and Territory laws.

ASC Bill Part 12 - An Accounting Standards Review Board will be established to take over the function of the body known as the Accounting Standards Review Board established by the Ministerial Council.

COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) ACT

The various provisions of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act, 1980 ASC Bill cl.222 - The Federal Court and the State and Territory Supreme Courts will have concurrent jurisdiction to hear matters arising under the ASC Bill.

APPENDIX BCOMPARATIVE TABLE

4094. The following table compares the numbering of the CB and ASC Bill with that of the co-operative companies and securities scheme legislation.

<u>Existing Provision</u>	<u>CB OR ASC BILL PROVISION</u>
<u>Companies Act 1981</u>	[Unless otherwise indicated, provisions are those of CB]
s.1	cl.1
s.2	cl.2
sub-s.3(2)	cls.3 and 4
s.4	-
-	cls.6 to 8 (new)
sub-s.5(1)	cl.9
sub-s.5(1A)	cl.18
-	cls.19-22 (new)
sub-ss.(2) to 10)	see Part 1.2 Division 7 - cls.51 to 99
s.6	cl.53
-	c.45 (new)
sub-s.7(1)	cl.46
sub-s.7(2)	cl.47
sub-s.7(3)	cl.48
sub-s.7(4)	cl.9
-	cl.49 (new)

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

sub-s.7(5)	cl.50
sub-s.7(6)	cl.9
sub-s.7(7)	cl.9
-	cl.30 (new)
sub-s.8(1)	cl.31
sub-s.8(2)	cl.36
sub-s.8(3)	cl.30
sub-s.8(4)	cl.32
sub-s.8(5)	cl.33
sub-s.8(6)	cl.34
sub-s.8(7)	cl.35
sub-ss.8(8) and (9)	cls.38 to 42
sub-s.8(9A)	cl.37
sub-s.8(10)	cl.36
sub-s.8(11)	cl.43
sub-s.8(12)	-
s.9	cls.10 to 17
-	cls.110, 111 (new)
s.10	cl.9
s.11	ASC Bill cl.29
s.12	ASC Bill cls.28, 30, 33, 34, 37, 38, 39, 84 and 92
s.13	ASC Bill cls.35 to 37 and 93
s.14	ASC Bill cls.63 to 65 and 68
s.15	ASC Bill cl.80
s.16	ASC Bill cl.69
s.16A	ASC Bill cl.13
-	cl.1277
s.17	cl.1279
s.18	cls.1278, 1280
s.19	cl.1281
s.20	cl.1282

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981

[Unless otherwise indicated,
provisions are those of CB]

s.21	cl.1283
s.22	cl.1284
s.23	cl.1285
s.24	cl.1286
s.25	cl.1287
s.26	cl.1288
(no s.27) -	
s.28	-
s.29	-
s.30	cl.1289
s.30A	cls.9, 1276, ASC Bill cl.5
s.30B	cl.1290
s.30C	cl.1291
s.30D	cl.1292
s.30E	cl.1294, ASC cl.197
s.30F	ASC Bill cl.198
s.30G	ASC Bill cl.199
s.30H	ASC Bill cl.200
s.30J	ASS Bill cl.201
s.30K	ASC Bill cl.202
s.30L	ASC Bill cl.203
s.30M	cl.1296
s.30N	cls.1297, 1295
s.30P	cls.1298, 1293
s.30Q	ASC Bill cl.204
s.30R	cl.1299
s.30S	-
s.31	cl.1274
s.32	cl.1275
sub-s.33(1)	cl.114
sub-s.33(2)	cl.115

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

sub-ss.33(3) and (4)	cl.112
-	cl.113 (new)
sub-s.34(1)	cl.116
sub-s.34(2) to (4)	-
sub-s.35(1)	cl.118
sub-ss.35(2) and (3)	cl.121
-	cl.122 (new)
sub-s.35(4) and (5)	cl.123
sub-s.35(6) and (7)	cl.124
sub-s.35(8)	cl.184
sub-s.35(9)	cl.120
-	cl.119 (new)
s.36	cl.185
s.37	cl.117
-	cl.366
s.38	cl.367
s.39	cls.368, 371
-	cl.372 (new)
s.40	cl.373
s.41	-
s.42	-
-	cl.374 (new)
s.43	cl.375
s.44	-
s.45	-
s.46	cl.376
s.47	-
s.48	-
s.49	cl.377
s.50	-
s.51	-
s.52	-

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.53	-
s.54	-
s.55	-
s.56	-
s.57	-
-	cl.378 (new)
s.58	cl.379
s.59	-
s.60	-
s.61	-
s.62	-
s.63	cl.380
s.64	-
-	cl.381 (new)
s.65	cl.382
s.66	cl.383
s.66A	-
s.66B	cl.159
s.66C	cl.160
s.67	cl.161
s.68	cl.162
-	cl.163 (new)
s.68A	cl.164
(no s.68B)	
s.68C	cl.165
s.68D	cl.166
s.69	cl.167
s.70	cl.168
-	cl.169 (new)
s.71	cl.170
s.72	cl.171
s.73	cl.172

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.73	cl.173
s.74	cl.125
-	cl.126 (new)
-	cl.174 (new)
s.75	cl.175
s.76	cl.176
-	cls.177, 178 (new)
s.77	cl.179
s.78	cl.180
s.79	cl.181
s.80	cl.182
s.81	cl.183
s.82	cl.186
s.83	-
s.84	cl.127
-	cls.130 to 132 (new)
sub-s.85(1)	-
sub-s.85(2)	cl.134
sub-s.85(3)	cl.135
sub-ss.85(4), (5) and (6)	cl.136
sub-s.86(1)	cl.128
sub-s.86(2)	cl.133
sub-ss.86(3) and (4)	cl.129 and 137
sub-ss.86(5) and (6)	cl.148
sub-ss.86(7)	cl.138
sub-ss.87(1) to (3)	cl.150
sub-ss.87(4) and (5)	cl.139
s.88	cl.140
s.89	-
s.90	cl.151
s.91	cl.152
s.92	cl.141

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.93	cl.149
-	cls.142 to 147 and 153 to 158 (new)
s.94	cl.1017
-	cl.1018 (new)
s.95	cl.1019
s.96	cl.1020
s.97	cl.1023
-	cl.1024 (new)
s.98	cl.1021
-	cl.1022 (new)
s.99	cls.9, 1025
s.100	cls.9, 1026
s.101	cls.9, 1027
s.102	cl.1028
sub-s.103(1), (2)	-
sub-s.103(3)	cl.1029
s.104	cl.1030
s.105	cl.1031
s.106	cl.1032
-	cl.1033 (new)
-	cl.1034 (new)
s.107	cls.1003 to 1012
-	cls.994 and 995 (new)
s.108	cl.996
(no s.109)	
sub-ss.110(1) to (4)	cl.1035
sub-ss.110(5) to (7)	cl.1036
sub-ss.110(8) and (9)	cl.1037
sub-s.110(10)	cl.1042
sub-s.110(11)	cl.1039
sub-s.110(12)	cl.1040

<u>Existing Provision</u>	<u>CB OR ASC BILL PROVISION</u>
<u>Companies Act 1981</u>	[Unless otherwise indicated, provisions are those of CB]
sub-s.110(13)	cl.1041
s.111	cl.1043
-	cls.1044, 1045 (new)
s.112	cl.1038
s.113	cl.187
s.114	cl.188
s.115	cl.189
s.116	cl.203
s.117	cl.204
s.118	cl.190
s.119	cl.191
s.120	cl.192
s.121	cl.193
s.122	cl.194
s.123	cl.195
s.124	cl.196
s.125	cl.197
s.126	cl.198
s.127	cl.199
s.128	cl.200
s.129	cl.205
s.130	cl.206
s.131	cl.215
s.132	cl.216
s.133	cl.202
sub-ss.134(1), (4) to (6)	-
sub-ss.134(2) and (3)	cl.707
s.135	-
s.136	cl.708
s.137	cl.709
s.138	cl.710
s.139	cl.711

<u>Existing Provision</u>	<u>CB OR ASC BILL PROVISION</u>
<u>Companies Act 1981</u>	[Unless otherwise indicated, provisions are those of CB]
s.140	cl.712
s.141	cl.713
s.142	cl.714
s.143	cl.715
s.144	-
s.144A	cl.716
s.145	-
s.146	cl.741
-	cl.1044 to 1046 (new)
s.147	cl.1047
s.148	cl.1048
s.149	cl.1049
s.150	cl.1050
s.151	cl.1051
s.152	cl.1052
s.153	cl.1053
s.154	cl.1054
s.155	cl.1055
s.156	cl.1056
s.157	cl.1057
s.158	cl.1058
s.159	cl.1059
s.160	cl.1060
s.161	cl.1061
s.162	-
s.163	cl.1062
s.164	cls.9, 1064
ss.165 and 166	cl.1066
sub-ss.166(4) and (5)	cl.1068
s.167	cl.1067
s.168	cl.1069
s.169	cl.1064

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

sub-ss.170(1), (2), (4) to (6)	-
sub-s.170(3)	cl.1063
s.171	cl.1065
s.172	cl.1070
s.173	cl.1071
-	cl.1072
s.174	cl.1073
s.175	cl.1074
s.176	cl.1075
s.177	cl.1076
-	cl.1077
s.178	cl.1085
s.179	cl.1086
s.180	cl.1087
s.181	cl.1088
s.182	cl.1089
-	cl.1090 (new)
s.183	cl.1091
s.184	cl.1092
s.185	cl.1093
s.186	cl.1094
s.187	cl.1095
s.188	cl.1096
s.189	cls.1097 to 1099
s.190	cl.1100
s.191	cl.1101
s.192	cl.1102
s.193	cls.1103 and 1104
s.194	cls.1105 to 1108
s.195	cl.1109
s.196	cl.1110
s.197	cl.1111

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.198	cl.1112
-	cl.1113 (new)
s.199	cl.261
s.200	cl.262
s.201	cl.263
s.202	cl.264
s.203	cl.265
s.204	cl.279
s.205	cl.266
s.205A	cl.267
s.206	cl.268
s.207	cl.269
s.208	cl.270
s.209	cl.271
s.210	cl.272
s.211	cl.273
s.212	cl.274
s.213	cl.276
s.214	cl.275
s.215	cl.277
s.215A	-
s.215B	cl.1083
s.215C	cl.1084
sub-ss215D(1), (2)	-
sub-s.215D(3)	cl.9
s.216	cl.217
s.217	cl.218
s.218	cl.219
s.219	cl.221
s.220	cl.222
s.221	cl.223
s.222	cl.224

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.223	cl.225
s.224	cl.226
s.225	cl.227
s.226	cl.228
s.227	cl.229
s.227A	cl.230
s.228	cl.231
s.229	cl.232
s.229A	cl.233
s.230	cl.234
s.231	cl.235
s.232	cl.236
s.233	cl.237
s.234	cl.238
s.235	cl.239
s.236	cl.240
s.237	cl.241
s.238	cl.242
s.238A	cl.243
s.239	cl.244
s.240	cl.245
s.241	cl.246
s.242	cl.247
s.243	cl.248
s.244	cl.249
s.245	cl.250
s.246	cl.251
s.247	cl.252
s.248	cl.253
s.249	cl.254
s.250	cl.255
s.251	cl.256

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.252	cl.257
s.253	cl.258
s.254	cl.259
s.255	cl.207
s.255A	cl.208
s.256	cl.209
s.257	cl.210
s.258	cl.211
s.259	cl.212
s.260	cl.213
sub-s.261(1)	cl.717
sub-s.261(2)	cl.718
sub-ss.261(3) and (4)	cl.719
-	cl.720
sub-ss.261(5) and (6)	cl.721
sub-s.261(7)	cl.722
sub-s.261(8)	cl.723
sub-ss.261(9) to (12)	cl.724
sub-s.261(12A)	cl.725
sub-ss.261(13), (14) and (15)	-
sub-ss.261(16), (17) and (18)	cl.726
sub-s.261(19)	cl.727
s.261A	cl.742
s.262	cl.214
s.263	cl.335
-	cl.336
(no s.264)	
s.265	cl.337
s.265A	cl.338
-	cl.339
s.265B	cl.319
s.265C	cl.320

<u>Existing Provision</u>	<u>CB OR ASC BILL PROVISION</u>
<u>Companies Act 1981</u>	[Unless otherwise indicated, provisions are those of CB]
s.266	cls.9 and 285
s.266A	cl.62
s.266B	cl.283
s.266C	cl.284
s.266D	-
s.266E	cl.286
s.266F	cl.287
-	cl.288(new)
s.266G	ASC Bill cl.215
s.267	cl.289
s.268	cl.290
-	cl.291
sub-s.269(1)	cl.292
sub-s.269(2)	cl.293
sub-s.269(3)	cl.295
sub-ss.269(4) and (5)	cl.296
sub-s.269(6)	-
sub-s.269(7)	cl.294
sub-s.269(8)	cl.297
sub-ss.269(8A) and (8B)	cl.298
-	cl.299
-	cl.300
sub-ss.269(9), (9A), (10), (10A), (11) and (12)	cl.301
sub-ss.269(13) and (14)	-
-	cl.302 (new)
-	cl.303 (new)
sub-ss.270(1) and (9) to (12)	cl.305
sub-s.270(2)	cl.304
sub-s.270(3)	cl.306
sub-ss.270(3A) and (13)	cl.307
sub-ss.270(4), (5) and (6)	cl.308

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

sub-s.270(7)	cl.309
sub-s.270(8)	-
-	cl.310 (new)
s.271	cl.311
s.272	cl.312
s.273	cl.313
-	cl.314
s.274	cl.315
s.275	cl.316
s.275A	cl.317
s.276	cl.318
-	cl.321
-	cl.322
-	cl.323
s.277	cl.324
s.278	cl.325
s.279	cl.326
s.280	cl.327
s.281	cl.328
s.282	cl.329
s.283	cl.330
s.284	cl.331
s.285	cl.332
s.286	cl.333
s.287	cl.334
s.288	cl.409
s.289	ASC Bill cl.88
s.290	-
s.291	ASC Bill cl.14
s.292	-
s.293	-
s.294	-

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.295	ASC Bill cls.19, 21 and 85
s.296	ASC Bill cls.23, 63, 64, 68 and 89
s.297	ASC Bill cl.70
s.298	ASC Bill cls.24 to 27 and 76
s.299	ASC Bill cl.76
s.300	ASC Bill cl.77
s.301	ASC Bill cl.78
s.302	ASC Bill cl.78
s.303	ASC Bill cls.79 and 83
s.304	-
s.305	ASC Bill cls.16 to 18
s.306	ASC Bill cls.18, 49, 50 and 81
-	ASC Bill cl.82
s.308	ASC Bill cl.69
s.309	ASC Bill cl.90 and 91
s.310	ASC Bill cl.67
s.311	ASC Bill cls.71, 72 and 75
s.312	cl.464
s.313	-
s.314	-
-	cl.410 (new)
s.315	cls.9 and 411
s.316	cl.412
s.317	cl.413
s.318	cl.414
s.319	cl.415
s.320	cl.260
s.321	cl.416
s.322	-
-	cl.417 (new)
s.323	cl.418

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.324	cl.419
s.324A	cl.420
s.324B	cl.421
s.324C	cls.422 and 533
s.324D	cl.534
s.324E	cl.423
s.324F	cl.424
s.325	cl.425
s.325A	cl.426
s.326	cl.427
s.327	cl.428
s.328	cl.429
s.329	cl.430
s.329A	cl.431
s.330	cl.432
s.331	cl.433
s.332	cl.434
s.333	cl.435
s.334	-
s.335	cl.436
s.336	cl.437
s.337	cl.438
s.338	cl.439
s.339	cl.440
s.340	cl.441
s.341	cl.442
s.342	cl.443
s.343	cl.444
s.344	cl.445
s.345	cl.446
s.346	cl.447
s.347	cl.448

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.348	cl.449
s.349	cl.450
s.350	cl.451
s.351	cl.452
s.352	cl.453
s.353	cl.454
s.354	cl.455
s.355	cl.456
s.356	cl.457
s.357	cl.458
s.358	-
s.359	-
-	cl.513 (new)
-	cl.514 (new)
sub-s.360(1)	cl.515
para.360(1)(e)	cl.516
para.360(1)(f)	cl.517
-	cl.518
para.360(1)(g)	cl.519
para.360(1)(c)	cl.520
-	cl.521
para.360(1)(d)	cl.522
para.360(1)(b)	cl.523
para.360(1)(h)	cl.524
-	cl.525
para.360(1)(j)	cl.526
s.361	cl.527
sub-s.362(1)	cl.528
sub-s.362(2)	cl.529
-	cl.530 (new)
s.363	cls.459 and 460
s.364	cls.461 to 464

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.365	cl.465
s.366	cl.466
s.367	cl.467
s.368	cl.468
s.369	cl.469
s.370	cl.470
s.371	cl.471
s.372	cl.472
s.373	cl.473
s.374	cl.474
s.375	cl.475
s.376	cl.476
s.377	cl.477
s.378	cl.478
s.379	cl.479
(no CA s.380)	
s.381	cl.480
s.382	cl.481
s.383	cl.482
s.384	cl.483
s.385	cl.484
s.386	cl.485
s.387	cl.486
s.388	cl.487
s.389	cl.488
s.390	cl.489
s.391	cl.490
s.392	cl.491
s.393	cl.492
s.394	cl.493
s.395	cl.494
s.396	cl.495

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.397	cl.496
s.398	cl.497
s.399	cl.498
s.400	cl.499
s.401	cl.500
s.402	-
s.403	cl.501
s.404	cl.502
s.405	cl.503
s.406	cl.504
s.407	cl.505
s.408	cl.506
s.409	cl.507
s.410	cl.508
s.411	cl.509
s.412	cl.510
s.413	cl.511
s.414	cl.512
s.415	cl.9
s.416	cl.531
s.417	cl.532
s.418	cl.533
s.419	cl.535
s.420	cl.536
s.421	cl.537
s.421A	cl.538
s.422	cl.539
s.423	cl.540
s.424	cl.541
s.425	cl.542
s.426	cl.543
s.427	cl.544

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.428	-
s.429	cl.545
s.430	cl.546
s.431	cl.547
s.432	cl.548
s.433	cl.549
s.434	cl.550
s.435	cl.551
s.436	cl.552
s.437	cl.9
s.438	cl.553
s.439	cl.554
s.440	cl.555
s.441	cl.556
s.442	cl.557
s.443	cl.558
s.444	cl.559
s.445	cl.560
s.446	cl.561
s.447	cl.562
s.448	cl.563
s.449	-
s.450	cl.564
s.451	cl.565
s.452	cl.566
s.453	cl.567
s.454	cl.568
s.455	cl.569
s.456	cl.570
s.457	-
s.458	cl.571

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.459	cls.572 and 574
-	cl.573 (new)
s.460	cl.575
s.461	cl.576
s.462	cl.577
s.463	cl.578
s.464	cl.579
ss.465 to 468	cls.580 and 581
-	cl.582 (new)
s.469	-
s.470	cls.583 and 585
-	cl.584
s.471	cl.586
s.472	cl.587
ss.473 and 474	cl.588
s.475	cl.384
s.476	cl.385
s.477	cl.386
s.478	cl.387
s.479	cl.388
s.480	cl.389
s.481	cl.390
s.482	cl.391
s.483	cl.392
s.484	cl.393
s.485	cl.394
s.486	cl.395
s.487	cl.396
s.488	cl.397
s.489	cl.398
s.490	cl.399
s.491	cl.400

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.492	cl.401
s.493	cl.402
s.494	cl.403
s.495	cl.404
s.496	cl.405
s.497	cl.406
s.498	cl.407
s.499	cl.408
s.500 to 509	-
sub-s.510(1)	cl.9
sub-s.510(2)	cl.21
s.511	cl.364
-	cl.365 (new)
s.512	cls.340 and 343
-	cl.341 (new)
s.513	cl.359
s.514	cl.345
sub-s.514(1)	cl.346
sub-s.514(2)	cl.348
sub-s.514(3) and (4)	cl.347
-	cl.360 (new)
s.515	cl.361
s.516	cl.349
s.517	cl.362
s.518	cls.342 and 350
s.519	-
s.520	cl.358
s.521	cls.351 to 353
sub-s.522(1)	sub-cl.353(2)
sub-s.522(2)	-
s.523	sub-cl.353(7)
-	cls.354, 355 (new)

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.524	cl.356
s.525	sub-cl.353(8)
s.526	cl.357
s.527	-
s.528	cl.220
s.529	-
s.530	cl.363
s.530A	cl.100
s.531	cl.1336
s.532	cl.108
s.533	cl.1335
s.534	Part 9.7
s.535	cl.1318
s.536	cl.1319
s.537	cl.1320
s.538	cl.1321
-	cl.1329 (new)
s.539	cl.1322
-	cls.1332 to 1335 (new)
s.540	cl.1330
s.541	cl.597
s.542	cl.598
s.543	cl.1331
s.544	cl.1306
s.545	cl.1300
s.546	cl.1301
s.547	cl.1302
s.548	cl.1304
s.549	cl.122
s.550	cl.1305
s.551	cl.1303
sub-ss.552(1) and (2)	cl.1078

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

sub-ss.552(3) to (5) and (15)	cl.1079
sub-s.552(6)	cl.1080
sub-s.552(8)	cl.1081
sub-s.552(9)	cl.1019
sub-ss.552(12) and (13)	cl.1082
sub-ss.552(7), (10)	-
s.553	cl.589
s.554	cl.590
s.555	cl.591
s.556	cl.592
s.557	cl.593
s.558	cl.594
s.559	cl.595
s.560	cl.1307
s.561	cl.596
s.562	cl.599
s.562A	cl.600
s.563	cl.1308
s.564	cl.1309
s.565	cl.201
s.566	cl.369
s.567	cl.370
s.568	-
s.569	-
s.570	cl.1311
-	cl.1312 (new)
s.570A	cl.1313
s.571	cl.1314
-	cls.1315, 1316 (new)
s.572	cl.83
s.573	cl.1323

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Act 1981[Unless otherwise indicated,
provisions are those of CB]

s.574	cl.1324
-	cl.1325 (new)
-	cl.1326 (new)
s.575	cl.1327
s.576	cl.1337
s.577	cl.1338
s.578	cl.1339
s.579	cl.1340
s.580	cl.1341
s.581	cl.601
(no Schedules 1 or 2)	
Schedule 3	Schedule 1
Schedule 4	Schedule 2
	Schedule 3 (new)
Schedule 5 cl.1	cl.280
Schedule 5 cl.2	cl.281
Schedule 5 cl.3	cl.282
Schedule 5 cls.3A to 6	cl.278

Companies Auditors and Liquidators Disciplinary Board
Ordinance 1982 - CALDBO

CALDBO s.3	ASC Bill cl.5
CALDBO s.4	ASC Bill cl.185
CALDBO s.5	ASC Bill cl.187
CALDBO s.6	ASC Bill cl.186
CALDBO s.7	ASC Bill cl.191
CALDBO s.8	ASC Bill cl.192
CALDBO s.9	ASC Bill cl.193
CALDBO s.10	ASC Bill cl.194
CALDBO s.11	ASC Bill cl.189
CALDBO s.12	ASC Bill cl.190
CALDBO s.13	ASC Bill cl.195
CALDBO s.14	ASC Bill cl.202

Existing provisionCB OR ASC Bill PROVISIONFutures Industry Act 1986

[Unless otherwise indicated,
provisions are those of CB]

ss.1 to 3	-
s.4	cls.9, 23 to 28, 55, 72, 1120 to 1122
s.5	cl.54
s.6	cls.11, 14, 15, 16, 17
s.7	cl.25
s.8	cl.29
s.9	cl.61
s.10	cl.67
s.11	-
s.12	ASC Bill cl.5
s.13	ASC Bill cls.32, 33, 34, 37, 38, 84, 92
s.14	ASC Bill cls.35, 36, 37, 93
s.15	ASC Bill cls.64, 65, 68
s.16	ASC Bill cl.80
s.17	ASC Bill cl.69
s.18	ASC Bill cls.44, 46, 92
s.19	ASC Bill cl.13
s.20	cl.1268
s.21	ASC Bill cl.5, definition of "statement"
s.22	ASC Bill cl.14
s.23	-
s.24	-
s.25	ASC Bill cls.64, 68, 89, 92
s.26	ASC Bill cl.88

Existing ProvisionCB OR ASC BILL PROVISIONFutures Industry Act 1986[Unless otherwise indicated,
provisions are those of CB]

s.27	ASC Bill cl.76
s.28	ASC Bill cl.27
s.29	ASC Bill cl.76
s.30	ASC Bill cl.77
s.31	ASC Bill cl.78
s.32	ASC Bill cl.78
s.33	ASC Bill cls.79, 83
s.34	cf. ASC Bill cl.102
s.35	ASC Bill cls.16, 17, 18
s.36	ASC Bill cls.49, 50
s.37	ASC Bill cl.37
s.38	ASC Bill cl.69
s.39	ASC Bill cls.90, 91
s.40	ASC Bill cl.67
s.41	ASC Bill cls.71, 74, 75
s.42	-
s.43	ASC Bill Part 10
s.44	ASC Bill Part 10
s.45	cl.1123, 1127
-	cls.1124, 1125 (new)
s.46	cl.1126
s.47	cl.1128
-	cls.1129, 1130 (new)
s.48	cl.1131
s.49	cl.1134
s.50	cl.1132
s.51	cl.1133
s.52	cl.1134
s.53	cl.1135
s.54	cl.1136
s.55	cl.1137
s.56	cl.1138

Existing ProvisionCB OR ASC BILL PROVISIONFutures Industry Act 1986[Unless otherwise indicated,
provisions are those of CB]

s.57	cl.1139
s.58	cl.1140
s.59	cl.1141
s.60	-
s.61	cl.1142
s.62	-
s.63	cl.1143
s.64	-
s.65	cl.1144
s.66	cl.1145
-	cl.1146 (new)
s.67	-
s.68	-
s.69	cls.9, 1147 to 1149, 1151, 1152
-	cl.1150 (new)
s.70	cl.1153
s.71	cl.1154
s.72	cl.1155
s.73	cl.1156
s.74	cl.1157
s.75 and 76	cl.1158
-	cls.1159 to 1189 (new)
s.77	cls.1190, 1192
s.78	cls.1191, 1192, 1201
s.79	cl.1192
-	cls.1193 to 1199 (new)
s.80	cl.1200
-	cls.1202, 1203 (new)
s.81	cl.1204
s.82	cls.9, 1205
s.83	cl.1206
s.84	cl.1207

Existing ProvisionCB OR ASC BILL PROVISIONFutures Industry Act 1986[Unless otherwise indicated,
provisions are those of CB]

s.85	cl.1208
s.86	cl.1209
s.87	cl.1210
s.88	cl.1211
s.89	cl.1212
s.90	cl.1213
s.91	cl.1214
s.92	cl.1215
s.93	cl.1216
s.94	cl.1217
s.95	cl.1218
s.96	cl.1219
s.97	cl.1220
s.98	cl.1221
s.99	cl.1222
s.100	cl.1223
s.101	cl.1224
s.102	cl.1225
s.103	cl.1226
s.104	cl.1227
s.105	cl.9
s.106	cl.1228
s.107	cl.1229
s.108	cl.1230
s.109	cl.1231
s.110	cl.1232
s.111	cl.1233
s.112	cl.1234
s.113	cl.1235
-	cl.1236 (new)
s.114	cl.1237
s.115	cl.1238

Existing ProvisionCB OR ASC BILL PROVISIONFutures Industry Act 1986[Unless otherwise indicated,
provisions are those of CB]

s.116	cl.1239
s.117	cl.1240
s.118	cl.1241
s.119	cl.1242
s.120	cl.1243
s.121	cl.1244
s.122	cl.1245
s.123	cl.1246
s.124	cl.1247
s.125	cl.1248
s.126	cl.1249
s.127	cl.1250
s.128	cl.1258
s.129	cls.1251 to 1257
s.130	cl.1259
s.131	cl.1260
s.132	cl.1261
s.133	cl.1262
s.134	cl.1263
s.135	cl.1264
s.136	cl.1312
s.137	cl.1265
s.138	cl.1266
s.139	cl.1267
s.140	cl.1269
s.141	cl.1320
s.142	cl.1308
s.143	cl.1270
s.144	cl.1271
s.145	cl.1272
s.146	cl.1273
s.147	cl.1310

Existing ProvisionCB OR ASC BILL PROVISIONFutures Industry Act 1986[Unless otherwise indicated,
provisions are those of CB]

s.148	cl.1311
s.149	cl.1313
s.150	cl.1314
s.151	cl.1312
s.152	cl.1317
s.153	-
s.154	-
s.155	cl.1323
s.156	cl.1330
s.157	cl.1324
s.158	cl.1327
s.159	cl.1344
s.160	cl.1345

Existing ProvisionCB OR ASC BILL PROVISIONSECURITIES INDUSTRY ACT[Unless otherwise indicated,
provisions are those of CB]

s.1 to 3	-
-	cl.760
s.4	cls.9, 761, 763 and 766
-	cl.764 (new)
sub-s.5(1)	cl.31
sub-s.5(2)	cl.36
sub-s.5(3)	cl.30
sub-s.5(4)	cl.32
sub-s.5(5)	cl.33
sub-s.5(6)	cl.34
sub-s.5(7)	sub-cl.44(2)
sub-s.5(8)	cls.38 to 42
sub-s.5(9)	-
sub-s.5(9A)	cl.37
sub-s.5(10)	cl.36
sub-s.5(11)	cl.43
sub-s.5(12)	-
s.6	cls.10 to 17
s.7	cl.9
s.8	ASC Bill cls.31, 33, 34, 37, 38 and 84
s.9	ASC Bill cls.35 to 37 and 93
s.10	ASC Bill cls.63 to 68
s.10A	ASC Bill cl.80
s.11	ASC Bill cl.69
s.12	ASC Bill cls.41, 43, 64, 68 and 92
s.13	ASC Bill cl.13
s.14	cl.1114
s.15	-

Existing ProvisionCB OR ASC BILL PROVISIONSECURITIES INDUSTRY ACT[Unless otherwise indicated,
provisions are those of CB]

s.16	ASC Bill cl.14
s.17	-
s.18	ASC Bill cl.92
s.19	ASC Bill cls.64, 68, 70, 89 and 92
s.20	ASC Bill cl.88
s.21	ASC Bill cl.76
s.23	ASC Bill cl.76
s.24	ASC Bill cl.77
s.25	ASC Bill cl.78
s.26	ASC Bill cl.78
s.27	ASC Bill cls.79 and 83
s.28	-
s.29	ASC Bill cls.16 to 18
s.30	ASC Bill cls.49 and 50
s.31	ASC Bill cl.80
s.32	ASC Bill cl.69
s.33	ASC Bill cls.90 and 91
s.34	ASC Bill cl.67
s.35	ASC Bill cls.71, 73 and 75
s.36	-
ss.36A to 36T	-
-	cl.762 (new)
-	cl.765 (new)
s.37	cls.767, 771, 773
-	cl.768 (new)
s.38	cl.769
s.38A	cl.770
s.38B	cl.772
s.39	cl.774
s.40	cl.775
s.41	cl.776

Existing ProvisionCB OR ASC BILL PROVISIONSECURITIES INDUSTRY ACT[Unless otherwise indicated,
provisions are those of CB]

s.42	cl.777
s.42A	cl.778
s.42B	cl.779
s.43	cl.780
s.44	-
s.45	cl.781
s.47	cls.782, 809
s.48	cls.783 to 785
s.51	cls.9 and 786
s.52	cl.787
s.53	cl.788
s.54	cl.789
s.55	cl.790
s.56	cl.791
s.57	cl.792
s.58	cl.793
-	cls.794 to 823 (new)
s.59	cls.824, 825, 827
s.60	cls.826, 827, 838
-	cls.828 to 836 (new)
s.61	cl.827
s.62	cl.837, 839
-	cl.840 (new)
s.63	cl.841
s.64	cl.842
s.65	cls.848 to 850
s.65A	cls.851 to 853
s.66	cl.843
s.67	cl.872
s.68	cl.846
s.68A	cl.847
s.69	cl.854

Existing ProvisionCB OR ASC BILL PROVISIONSECURITIES INDUSTRY ACT[Unless otherwise indicated,
provisions are those of CB]

s.70	cl.855
s.71	cl.856
s.72	cl.873
s.73	cls.866 to 868
s.74	cls.869 to 871
s.75	cl.857
s.76	cl.858
s.77	cl.859
s.78	cl.860
s.79	cl.861
s.80	cl.862
s.81	cl.863
s.82	cl.864
-	cl.865 (new)
s.83	cls.874, 875
s.84	cl.876
s.85	cl.877
s.86	cl.878
s.87	cls.879, 880
s.88	cl.880
s.89	cl.881
s.90	cls.882, 883
s.91	cl.884
s.92	cl.885
s.93	cl.886
s.94	cl.887
s.94A	cl.888
s.95	cl.889
s.96	cls.761, 890
s.97	cl.891
s.98	cl.892
s.99	cl.893

Existing ProvisionCB OR ASC BILL PROVISIONSECURITIES INDUSTRY ACT[Unless otherwise indicated,
provisions are those of CB]

s.99A	cl.894
s.100	cl.895
s.101	cl.896
s.102	cl.897
s.103	cl.898
s.103A	cl.899
s.104	cl.900
s.105	cl.901
s.106	cl.902
s.107	cl.903
s.108	cl.904
s.109	cl.905
s.110	cl.906
s.111	cl.907
s.112	cl.908
s.113	cl.909
s.114	cl.910
s.115	cl.911
s.116	cl.912
s.117	cl.913
s.118	cl.914
s.119	cl.915
s.120	cl.916
s.121	cl.917
s.122	cl.918
-	cl.919 (new)
s.122AA	cls.9 and 920
s.122AB	cl.921
s.122AC	cl.922
s.122AD	cl.923
-	cl.924 (new)
s.122BA	cl.925

Existing ProvisionCB OR ASC BILL PROVISIONSECURITIES INDUSTRY ACT[Unless otherwise indicated,
provisions are those of CB]

s.122BB	cl.926
s.122BC	cl.928
s.122CA	cl.929
s.122CB	cl.930
s.122CC	cl.931
s.122CD	cl.932
s.122DA	cl.933
s.122DB	cl.934
s.122DC	cl.935
s.122DD	cl.936
s.122EA	cl.937
s.122EB	cl.938
s.122EC	cl.938
s.122FA	cl.939
s.122FB	cl.940
s.122FC	cl.941
-	cl.942 (new)
s.122GA	cl.943
s.122GB	cl.944
s.122GC	cl.945
s.122GD	cl.946
s.122GE	cl.947
s.122H	cl.948
s.122J	cl.949
s.122K	cl.950
s.122L	cl.951
s.122M	cl.952
s.122N	cl.953
s.122P	cl.954
-	cls.955 to 961 (new)
s.122Q	cl.962
s.122R	cl.963

Existing ProvisionCB OR ASC BILL PROVISIONSECURITIES INDUSTRY ACT[Unless otherwise indicated,
provisions are those of CB]

s.122S	cl.964
s.122T	cl.965
s.122U	cl.966
sub-s.122V(2)	cl.967
s.122W	cl.968
s.122X	cl.969
s.122YA	cl.970
s.122YB	cl.971
s.122YC	cl.972
s.122YD	cl.973
s.122YE	cl.974
s.122YF	cl.975
s.122YG	cl.976
s.122YH	cl.977
s.122YJ	cl.978
s.122YK	cl.979
s.122ZA	cl.980
s.122ZB	cl.981
s.122ZC	cl.982
s.122ZD	cl.983
s.122ZE	cl.984
s.122ZF	cl.985
s.122ZG	cl.986
s.122ZH	cl.987
-	cls.988 to 993 (new)
s.123	cl.997
s.124	cl.998
s.125	cl.999
s.126	cl.1000
s.127	cl.1001
s.128	cl.1002
s.129	-

Existing ProvisionCB OR ASC BILL PROVISIONSECURITIES INDUSTRY ACT[Unless otherwise indicated,
provisions are those of CB]

s.130	cls.1005, 1013 to 1015
-	cl.1016 (new)
s.131	cl.844
s.132	cl.845
s.133	cl.1115
s.134	-
s.135	-
s.136	cl.1116
s.137	cl.1117
s.138	cl.1118
s.139	cl.1119

Existing ProvisionCB OR ASC BILL PROVISIONCompanies (Acquisition of
Shares) Act[Unless otherwise indicated,
provisions are those of CB]

s.1	cl.1
s.2	cl.2
s.3 to 5	-
s.6	cl.9 and 603
-	cl.602 (new)
s.7	cls.10 to 17, 51 and 109
s.8	cls.604, 606, 610 to 612
s.8A	cl.607
-	cls.605, 608, 609 and 613 (new)
sub-s.9(1)	cl.31
sub-s.9(2)	cl.32
sub-s.9(3)	cl.30
sub-s.9(4)	cl.32
sub-s.9(5)	cl.33
sub-s.9(6)	cl.34
sub-s.9(7)	cl.35
sub-s.9(8)	cls.38 to 42
sub-s.9(9)	-
sub-s.9(9A)	cl.37
sub-s.9(10)	cl.36
s.10	cl.614
s.11	cl.615
para.12(a)	cl.631
paras.12(b), (c), (d)	cl.622
para.12(e)	cl.624
para.12(ea)	cl.625

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Acquisition of
Shares) Act[Unless otherwise indicated,
provisions are those of CB]

para.12(f)	cl.626
para.12(g)	cl.623
para.12(h)	cl.627
para.12(j)	cl.628
para.12(k)	cl.629
para.12(l)	cl.630
para.12(m)	cl.632
paras.12(n), (o)	cl.633
sub-ss.13(1), (2)	cl.619
sub-ss.13(3), (4), (5)	cl.620
s.14	cl.621
s.15	cl.618
sub-s.16(1)	cl.616
sub-s.16(2)	cl.634
para.16(2)(a)	cl.635
paras.16(2)(b) and (c)	cl.636
paras.16(2)(d) and (e)	cl.637
para.16(2)(f)	cl.638
sub-para.16(2)(f)(viii)	cl.639
-	cl.640 (new)
para.16(2)(g)	cl.641
paras.16(2)(h) and (j)	cl.642
sub-ss.16(2AA), (2AB)	cl.641
para.16(2A)(a)	cl.750 Part A cl.18
sub-s.16(3)	cl.643
sub-s.17(1)	cls.617, 673
sub-ss.17(2), (3)	cl.674
(no sub-s.17(4))	
sub-ss.17(2A), (5)	cl.675
sub-ss.17(6), (7)	cl.676
sub-ss.17(8), (9)	cl.677
sub-s.17(14)	cl.678

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Acquisition of
Shares) Act[Unless otherwise indicated,
provisions are those of CB]

sub-ss.17(10), (17)	cl.679
-	cl.680
sub-ss.17(11), (12), (13)	cl.681
sub-ss.17(15), (16)	cl.682
s.18	cl.644
sub-s.18(2A)	sub-cl.662(2)
s.19	cl.645
s.20	cl.662
s.21	cl.653
s.22	cl.647
s.23	cl.648
s.24	cl.646
s.25	cl.649
s.25A	cl.650
s.25B	cl.651
s.25C	cl.652
sub-ss.27(1) to (3)	cl.654
sub-ss.27(4) to (7)	cl.655
sub-ss.27(8) to (9)	cl.656
sub-ss.27(10), (11)	cl.657
sub-s.27(12)	cl.658
sub-ss.27(13) to (15)	cl.659
sub-s.27(16)	cl.660
sub-s.27(17)	cl.661
s.28	cl.663
s.30	cl.664
sub-s.31(1)	cl.665
sub-s.31(2)	cl.666
sub-ss.31(3), (5)	cl.667
sub-s.31(4)	cl.668
sub-s.31A(1)	cl.669
sub-s.31A(8)	cl.670

<u>Existing Provision</u>	<u>CB OR ASC BILL PROVISION</u>
<u>Companies Acquisition of Shares) Act</u>	[Unless otherwise indicated, provisions are those of CB]
sub-ss.31A(2) to (7)	cl.671
s.31B	cl.672
s.32	cl.683
s.33	cl.684
s.34	cl.685
s.35	cl.686
s.36	cl.699
s.37	-
s.38	-
para.39(1)(a)	cl.687
para.39(1)(b)	cl.688
sub-s.39(2)	cl.689
sub-s.39(3)	cl.690
sub-s.39(4)	cl.691
sub-ss.39(5), (8)	cl.692
sub-s.39(6)	cl.695
sub-s.39(7)	cl.694
sub-ss.39(9) to (12)	cl.693
s.39A	cl.696
s.39B	cls.9 and 697
s.40	cl.698
s.41	cl.700
sub-ss.42(1) to (13)	cl.701
sub-ss.42(14) to (18)	cl.702
s.43	cl.703
sub-ss.44(1) to (4), (9) to (12), (15), (16), (18)	cl.704
sub-ss.44(5)-(8), (10), (14), (17), (19)	cl.705
sub-s.44(13)	cl.7806 (new)
s.45	cl.737
s.46	cl.738

Existing ProvisionCB OR ASC BILL PROVISIONCompanies Acquisition of
Shares) Act[Unless otherwise indicated,
provisions are those of CB]

s.47	cl.739
s.48	cl.743
s.49	cl.744
s.50	cl.740
s.51	cl.745
s.52	cl.746
(no ss.53, 54)	
s.55	-
s.56	cl.747
sub-ss.57(1) to (3)	cl.728
sub-s.57(4)	cl.729
s.58	cl.730
s.59	cl.731
sub-ss.60(1), (3), (6), (7)	cl.732
sub-ss.60(2), (4), (5)	cl.733
sub-ss.60A(1) to (3), (7) to (9)	cl.734
sub-s.60A(4)	cl.735
sub-ss.60A(5) to (9)	-
s.61	cl.736
-	cls.748, 749 (new)
Schedule	cl.750
-	cls.751-759 (new)

Existing ProvisionCB OR ASC BILL PROVISIONNational Companies and
Securities Commission Act 1979[Unless otherwise indicated,
provisions are those of CB]

s.1	ASC Bill cl.1
s.2	ASC Bill cl.2
s.3	cl.9 and ASC Bill cl.5
s.4	ASC Bill cl.4
s.5	ASC Bill cl.7
s.6	ASC Bill cl.11
s.7	ASC Bill cl.12
s.8	-
s.9	-
s.10	ASC Bill cls.8, 218, 219
s.11	ASC Bill cls.9, 216
s.12	ASC Bill cl.108
s.13	ASC Bill cls.10, 109, 110
s.14	ASC Bill cl.112
s.15	ASC Bill cl.113
s.16	ASC Bill cl.110
s.17	ASC Bill cls.117 to 119 and 216
s.18	ASC Bill cl.111
s.19	ASC Bill cl.123
s.20	ASC Bill cls.103 to 107
s.21	ASC Bill cls.97 to 100, 104
s.22	ASC Bill cl.120
s.23	ASC Bill cl.120
s.24	ASC Bill cl.122
s.25	ASC Bill cl.121
s.26	ASC Bill cl.133

Existing ProvisionCB OR ASC BILL PROVISIONNational Companies and
Securities Commission Act 1979[Unless otherwise indicated,
provisions are those of CB]

s.27	-
s.28	ASC Bill cl.134
s.29	ASC Bill cl.135
s.30	ASC Bill cl.138
s.31	ASC Bill cl.136
s.32	ASC Bill cl.138
s.33	ASC Bill cl.137
s.34	ASC Bill cl.138
s.35	ASC Bill cl.139
s.36	ASC Bill cls.51 to 57, 60
s.37	ASC Bill cl.58
s.38	ASC Bill cls.58, 59, 89
s.39	ASC Bill cls.64, 69, 70
s.40	ASC Bill cl.66
s.41	ASC Bill cls.62, 217
s.42	ASC Bill cl.88
s.43	ASC Bill cls.140 to 144
s.43A	-
s.44	-
s.44A	-
s.45	ASC Bill cl.102
s.46	ASC Bill cl.102
s.47	ASC Bill cl.127
s.48	ASC Bill cls.128 to 132
s.49	ASC Bill cl.125, 126
(no s.50)	
s.51	-
s.52	ASC Bill cl.138
s.53	ASC Bill cl.233

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The relevant provisions have been consolidated into the dictionary and interpretations provisions of CB Chapter 1 (see especially CB Part 1.2 Division 8, cls.100 to 109.)

