



# Australian Stock Exchange and National Guarantee Fund Act 1987

No. 6 of 1987

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# **Australian Stock Exchange and National Guarantee Fund Act 1987**

**No. 6 of 1987**

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**An Act to amend laws relating to companies and securities,  
and for related purposes**

*[Assented to 13 March 1987]*

**BE IT ENACTED** by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

## **PART I—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Australian Stock Exchange and National Guarantee Fund Act 1987*.

### **Commencement**

**2. (1)** Subject to this section, the provisions of this Act shall come into operation on a day to be fixed by Proclamation.

**(2)** Part I shall come into operation on the day on which this Act receives the Royal Assent.

**PART II—AMENDMENTS OF SECURITIES INDUSTRY  
ACT 1980**

**Principal Act**

3. The *Securities Industry Act 1980*<sup>1</sup> is in this Part referred to as the Principal Act.

**Interpretation**

4. Section 4 of the Principal Act is amended:

(a) by inserting after the definition of “arbitrage transaction” in subsection (1) the following definition:

“ ‘articles’ means articles of association;”;

(b) by omitting from subsection (1) the definition of “business rules” and substituting the following definition:

“ ‘business rules’, in relation to a body corporate, means:

(a) in the case of a body corporate that maintains or provides, or proposes to maintain or provide, a stock market—the provisions of the constituent documents of the body corporate and any other rules, regulations or by-laws made by the body corporate, other than rules, regulations or by-laws that are listing rules of the body corporate; and

(b) in any other case—the provisions of the constituent documents of the body corporate and any other rules, regulations or by-laws made by the body corporate;”;

(c) by omitting from subsection (1) the definition of “committee” and substituting the following definitions:

“ ‘committee’, in relation to a body corporate, means the committee of management, board of directors, council or other governing authority of the body corporate;

‘Corporation’ means a body corporate in relation to which a nomination as the National Securities Exchanges Guarantee Corporation is in force under subsection 122BA (1);”;

(d) by inserting after the definition of “director” in subsection (1) the following definitions:

“ ‘Exchange’ means Australian Stock Exchange Limited;

‘Exchange subsidiary’ means a securities exchange, or a recognised securities exchange, that is a subsidiary of the Exchange;”;

(e) by omitting from subsection (1) the definition of “function” and substituting the following definitions:

“ ‘fidelity fund’, in relation to a securities exchange, means the fidelity fund (if any) that section 100 requires or required the securities exchange to establish and keep;

‘function’ includes a duty;

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- 'Fund'** means the National Guarantee Fund established under subsection 122CA (1);";
- (f) by inserting after the definition of "listing rules" in subsection (1) the following definition:
- "local Exchange subsidiary'** means a securities exchange that is an Exchange subsidiary;";
- (g) by omitting from subsection (1) the definitions of "member" and "member firm" and substituting the following definitions:
- "member'**, in relation to a securities exchange or a recognised securities exchange, means, except in the definition of 'member organisation' and in Part IIA, a person who is, or who is a partner in, a member organisation of the securities exchange or recognised securities exchange;
- 'member firm'**, in relation to a securities exchange or a recognised securities exchange, means a partnership that is a member organisation of the securities exchange or recognised securities exchange;
- 'member organisation'**, in relation to a securities exchange or a recognised securities exchange, means:
- (a) a member of the securities exchange or recognised securities exchange who or that carries on a business of dealing in securities on his, her or its own account and not in partnership; or
- (b) a partnership that carries on a business of dealing in securities and is recognised by the securities exchange or recognised securities exchange as a member organisation or member firm;
- 'memorandum'** means memorandum of association;";
- (h) by inserting after the definition of "recognized licensee" in subsection (1) the following definitions:
- "recognised securities exchange'** means a body corporate that is a securities exchange for the purposes of a corresponding law of a participating State or participating Territory;
- 'recognised stock exchange'** means a body corporate that is a stock exchange for the purposes of a corresponding law of a participating State or participating Territory;";
- (j) by omitting from subsection (1) the definition of "sole trader" and substituting the following definition:
- "sole trader'** means a person who is a member organisation of a securities exchange or of a recognised securities exchange;";
- and
- (k) by omitting from subsection (1) the definition of "stock exchange" and substituting the following definition:
- "stock exchange'** means:

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- (a) the Exchange; or
- (b) a body corporate that is approved by the Ministerial Council under section 38;”.

5. After section 36 of the Principal Act the following Part is inserted:

**“PART IIA—AUSTRALIAN STOCK EXCHANGE LIMITED**

**Interpretation**

“36A. (1) In this Part:

‘AASE’ means Australian Associated Stock Exchanges;

‘nominated exchange’ means the stock exchange (if any) nominated by AASE, for the purposes of this Part, by notice in writing lodged with the Commission before the relevant commencement;

‘relevant commencement’ means the commencement of section 5 of the *Australian Stock Exchange and National Guarantee Fund Act 1987*.

“(2) A person who contravenes a provision of this Part is guilty of an offence neither by virtue of that provision nor by virtue of section 141.

**Incorporation**

“36B. (1) A body corporate by the name of Australian Stock Exchange Limited is incorporated in the Australian Capital Territory.

“(2) Subject to this Part, the Exchange shall be deemed for the purposes of a relevant Act to be incorporated under the *Companies Act 1981* and to be a company limited by guarantee.

“(3) Notwithstanding anything in this Act, the Exchange shall not be taken for the purposes of a law of the Commonwealth, of a State or of a Territory to have been incorporated or established for a public purpose or for a purpose of the Commonwealth.

**Names of Exchange and Exchange subsidiaries**

“36C. (1) The name ‘Australian Stock Exchange Limited’ shall be deemed to have been registered at the relevant commencement, in respect of the Exchange, under subsection 40 (4) of the *Companies Act 1981*.

“(2) The names:

- (a) ‘Australian Stock Exchange (Adelaide) Limited’;
- (b) ‘Australian Stock Exchange (Brisbane) Limited’;
- (c) ‘Australian Stock Exchange (Hobart) Limited’;
- (d) ‘Australian Stock Exchange (Melbourne) Limited’;
- (e) ‘Australian Stock Exchange (Perth) Limited’; and
- (f) ‘Australian Stock Exchange (Sydney) Limited’;



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shall be deemed to have been registered at the relevant commencement under section 45 of the *Companies Act 1981* in respect of:

- (g) The Stock Exchange of Adelaide Limited;
- (h) The Brisbane Stock Exchange Limited;
- (j) The Hobart Stock Exchange Limited;
- (k) The Stock Exchange of Melbourne Limited;
- (m) The Stock Exchange of Perth Limited; and
- (n) The Sydney Stock Exchange Limited;

respectively.

“(3) The registration, under Division 2 of Part III of the *Companies Act 1981*, of each of the names referred to in paragraphs (2) (g) to (n), inclusive, shall be deemed to have been cancelled at the relevant commencement under that Division.

“(4) This section has effect notwithstanding anything in Division 2 of Part III of the *Companies Act 1981*, but nothing in this section prevents the cancellation, in accordance with that Division, of the registration of a name.

**Additional functions and powers**

“36D. (1) In addition to the legal capacity and powers that it has by virtue of section 67 of the *Companies Act 1981*, the Exchange:

- (a) has such functions and powers as are conferred on it by a relevant Act; and
- (b) shall perform any functions, and may exercise any powers, that are conferred, or expressed to be conferred, on it by a State Act or by a regulation or other instrument made under, or by virtue of, a State Act.

“(2) Section 68 of the *Companies Act 1981* does not apply in relation to a function or power conferred, or expressed to be conferred, as mentioned in paragraph (1) (a) or (b) of this section.

“(3) Except so far as the contrary intention appears, a reference in this Act to functions or powers of the Exchange includes a reference to functions or powers conferred, or expressed to be conferred, as mentioned in paragraph (1) (a) or (b).

**Memorandum, articles, listing rules and business rules of Exchange**

“36E. (1) The memorandum of the Exchange is the proposed memorandum of the Exchange that AASE lodged with the Commission before the relevant commencement.

“(2) The articles of the Exchange are the proposed articles of the Exchange that AASE lodged with the Commission before the relevant commencement.

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“(3) The memorandum and articles of the Exchange shall be deemed to have been registered at the relevant commencement under the *Companies Act 1981* and that Act has effect accordingly.

“(4) As from the relevant commencement, the proposed listing rules, and the proposed business rules, of the Exchange that AASE lodged with the Commission before that commencement shall be deemed for the purposes of a relevant Act to be rules made by the Exchange at that commencement under its articles.

**New memorandum and articles of nominated exchange**

“36F. (1) As from the relevant commencement, the memorandum of the nominated exchange is the proposed new memorandum of the nominated exchange that AASE lodged with the Commission before that commencement.

“(2) As from the relevant commencement, the articles of the nominated exchange are the proposed new articles of the nominated exchange that AASE lodged with the Commission before that commencement.

“(3) This section has effect notwithstanding anything in the *Companies Act 1981* but, as from the relevant commencement, that Act applies in relation to the memorandum and articles of the nominated exchange as if they had been registered as such under that Act.

**Membership of Exchange**

“36G. (1) A person who immediately before the relevant commencement was a member of the nominated exchange otherwise than by reason only of being, for the purposes of the nominated exchange’s articles, a Registered Options Member becomes at that commencement a member of the Exchange.

“(2) A person of a kind declared, by a provision of a law of a participating State or participating Territory that corresponds with subsection (1), to become at the relevant commencement a member of the Exchange becomes at that commencement a member of the Exchange.

“(3) Subject to this Act, a person of a kind referred to in subsection (1) or (2) is, in respect of membership of the Exchange, entitled to the same rights, privileges and benefits, and subject to the same duties, liabilities and obligations, as if the person had become a member of the Exchange in accordance with the Exchange’s business rules.

**Membership of nominated exchange**

“36H. (1) A person who immediately before the relevant commencement was a member of the nominated exchange ceases at that commencement to be such a member.

“(2) Notwithstanding section 360 of the *Companies Act 1981*, a person who ceases by virtue of subsection (1) of this section to be a member of the nominated exchange is not by virtue of having been such a member

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liable to contribute to the property of the nominated exchange if the nominated exchange is wound up.

“(3) The Exchange becomes at the relevant commencement a member of the nominated exchange.

“(4) The Exchange becomes at the relevant commencement a member of each body corporate of which the Exchange is declared, by a provision of a law of a participating State or participating Territory that corresponds with subsection (3), to become a member at that commencement.

“(5) In respect of membership of the nominated exchange, the Exchange is entitled to the same rights, privileges and benefits, and subject to the same duties, liabilities and obligations, as if the Exchange had become a member of the nominated exchange in accordance with the nominated exchange’s business rules.

“(6) After the relevant commencement, a person other than the Exchange is not capable of being a member of the nominated exchange.

“(7) Subsection 82 (1) of the *Companies Act 1981* does not apply in relation to a company within the meaning of that Act if, and for so long only as, the company is an Exchange subsidiary.

“(8) A body corporate that is at a particular time:

- (a) a company within the meaning of the *Companies Act 1981*; and
- (b) an Exchange subsidiary;

shall be deemed, for the purposes only of section 250 of that Act, to be at that time an exempt proprietary company.

“(9) A person who immediately before the relevant commencement was a director of the nominated exchange ceases at that commencement to be such a director.

“(10) Subsection 219 (1) of the *Companies Act 1981* does not, at any time during the period of 14 days beginning at the relevant commencement, apply in relation to a company within the meaning of that Act that is an Exchange subsidiary.

**Disciplinary proceedings in respect of past conduct of nominated exchange members**

“36J. (1) In this section, unless the contrary intention appears:

‘AASE exchange’ means:

- (a) the nominated exchange; or
- (b) a body corporate that is the nominated exchange for the purposes of the provisions of a law of a participating State or participating Territory that correspond with this Part;

‘applied rules’ means the former rules as they have effect by virtue of this section;

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**'corresponding provision'** means a provision of a law of a participating State or participating Territory that corresponds with this section;

**'disciplinary proceeding'** means:

- (a) a proceeding that was begun under the former rules and might, if this Part had not been enacted, have resulted in the disciplining of a member for past conduct;
- (b) a proceeding that is begun under the applied rules and may result in the disciplining of a member for past conduct;
- (c) an appeal begun under the former rules, or the applied rules, from a proceeding of the kind referred to in paragraph (a);
- (d) an appeal begun under the applied rules from a proceeding of a kind referred to in paragraph (b); or
- (e) a proceeding in a court, whenever begun, arising out of, or otherwise connected with, a proceeding or appeal of a kind referred to in paragraph (a), (b), (c) or (d);

**'disciplining'**, in relation to a member, includes expulsion from, or suspension of, membership of the nominated exchange or the Exchange;

**'former rules'** means the nominated exchange's business rules as in force at any time before the relevant commencement;

**'member'** means a person who is or has been:

- (a) a member of the nominated exchange; or
- (b) under an obligation to comply with, observe, enforce, or give effect to, the former rules;

**'past conduct'** means an act done, or omitted to be done, before the relevant commencement;

**'relevant time'** means the time immediately before the relevant commencement.

**"(2)** This section has effect notwithstanding section 36F.

**"(3)** The former rules continue after the relevant commencement to have in relation to past conduct the effect that, at the relevant time, they had in relation to that past conduct.

**"(4)** For the purposes of a disciplinary proceeding begun before the relevant commencement, the former rules continue after that commencement to have the effect that, at the relevant time, they had for the purposes of that disciplinary proceeding.

**"(5)** For the purposes of a disciplinary proceeding begun after the relevant commencement, the former rules have the effect that, if that disciplinary proceeding had begun at the relevant time, they would have had at that time for the purposes of that disciplinary proceeding.

**"(6)** The former rules have effect by virtue of subsections (3), (4) and (5):

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- (a) subject to paragraph (b) of this subsection, as if a reference in the former rules to the nominated exchange or to an AASE exchange were, except in relation to a time before the relevant commencement, a reference to the Exchange;
- (b) as if a reference in the former rules to the former rules, or to a provision of the former rules, were, except in relation to a time before that commencement, a reference to the former rules as they have effect, or to that provision as it has effect, as the case may be, by virtue of this section; and
- (c) with such other modifications as the circumstances require.

“(7) The applied rules within the meaning of this section or of a corresponding provision bind an eligible person to the same extent, and in the same manner, as if they were contained in the Exchange’s business rules.

“(8) In subsection (7), ‘eligible person’ means the Exchange or a person who is or has been:

- (a) a member of the Exchange; or
- (b) under an obligation to comply with, observe, enforce, or give effect to, the Exchange’s business rules.

“(9) Without limiting the generality of subsection (7), section 42 applies in relation to the applied rules within the meaning of this section or of a corresponding provision as if they were contained in the Exchange’s business rules.

“(10) At the relevant commencement, the Exchange is substituted for the nominated exchange as a party to each disciplinary proceeding.

“(11) As from the relevant commencement, the Exchange has, subject to this section, the same rights in a disciplinary proceeding as the party for which it was substituted by virtue of subsection (10).

“(12) Where:

- (a) under an AASE exchange’s business rules as in force at any time before the relevant commencement, a person was:
  - (i) suspended for a specified period from some or all of the rights of membership of that AASE exchange; or
  - (ii) prohibited for a specified period from transacting business with or through a member or member organisation of an AASE exchange; and
- (b) as at that commencement, the specified period has not ended;

then, as from that commencement:

- (c) the person is, throughout the remainder of the specified period, suspended from the corresponding rights of membership of the Exchange, or prohibited from transacting business with or through a member or member organisation of the Exchange, as the case may be; and

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- (d) the suspension or prohibition referred to in paragraph (c) is subject to the terms and conditions (if any), with such modifications as the circumstances require, to which the suspension or prohibition referred to in paragraph (a) was subject immediately before the relevant commencement.

**Seat redemption scheme**

“36K. (1) In this section:

‘available money’ means:

- (a) if the Commission determines an amount in writing for the purposes of this paragraph—so much of the amount that the nominated exchange pays to the Exchange under subsection 36M (3) as does not exceed the amount that the Commission so determines;
- (b) amounts of levies imposed:
  - (i) under the Exchange’s business rules;
  - (ii) on local members; and
  - (iii) for the purposes of enabling the Exchange to comply with the Scheme;
- (c) fees payable, in respect of their admission to membership of the Exchange, by persons who immediately after their admission are local members; and
- (d) the interest and profits accruing from the investment of money that is available money by virtue of a previous application or previous applications of this definition;

‘eligible person’ means a person who was throughout the relevant period a member of the nominated exchange;

‘local member’ means a member of the Exchange whose Home Jurisdiction for the purposes of the Exchange’s articles is the Territory;

‘relevant period’ means the period commencing immediately before 1 July 1983 and ending immediately before the relevant commencement;

‘Scheme’ means the seat redemption scheme (if any) of the nominated exchange, being the scheme particulars of which are set out in the notice referred to in the definition of ‘nominated exchange’ in subsection 36A (1).

“(2) After the relevant commencement, the Scheme has effect, with such modifications as the circumstances require, as if the Exchange were substituted for the nominated exchange as a party to the Scheme and, except in relation to a time before that commencement:

- (a) a reference in the provisions of the Scheme to the nominated exchange or to the committee of the nominated exchange were a reference to the Exchange, or to the committee of the Exchange, as the case may be; and

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- (b) a reference in the provisions of the Scheme to a person ceasing to be a member of the nominated exchange were a reference to an eligible person ceasing to be a member of the Exchange.

“(3) An eligible person shall not, by reason only of ceasing by virtue of subsection 36H (1) to be a member of the nominated exchange, be taken for the purposes of the Scheme to have ceased to be a member of the nominated exchange.

“(4) Notwithstanding anything in the Scheme, amounts that the Exchange becomes liable to pay under the Scheme shall be paid only out of available money.

**Exchange to take over main board listing agreements**

“36L. (1) In this section:

‘listed body’ means a body corporate, government, unincorporated body or other person;

‘main board listing agreement’ means an agreement:

- (a) that is or has been in force between the nominated exchange and a listed body;
- (b) that relates or related to the admission of the listed body to the official list of the nominated exchange; and
- (c) under or by virtue of which the listed body is or was under an obligation to comply with, observe, or give effect to, the Listing Requirements of AASE, as adopted as listing rules of the nominated exchange.

“(2) After the relevant commencement, a main board listing agreement in force immediately before that commencement has effect, with such modifications as the circumstances require, as if the Exchange were substituted for the nominated exchange as a party to the agreement and, except in relation to a time before that commencement:

- (a) a reference in the provisions of the agreement to the nominated exchange were a reference to the Exchange;
- (b) a reference in the provisions of the agreement to the Listing Requirements of AASE, or to listing rules of the nominated exchange, were a reference to the listing rules of the Exchange; and
- (c) a reference in the provisions of the agreement to the official list of the nominated exchange were a reference to the official list of the Exchange.

“(3) Where, immediately before the relevant commencement, proceedings:

- (a) to which the nominated exchange was a party; and
- (b) that arose out of, or were otherwise connected with, a main board listing agreement;

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were pending in a court or tribunal, the Exchange shall indemnify the nominated exchange in respect of all liabilities, expenses, costs or charges incurred by the nominated exchange:

- (c) as a party to the proceedings;
- (d) in complying with a judgment or other order given in the proceedings;  
or
- (e) otherwise in connection with the proceedings.

**Transfer of certain assets of nominated exchange**

“36M. (1) Within 3 months after the relevant commencement, the Commission shall, after consulting with the Exchange, determine in writing an amount for the purposes of this section.

“(2) The Commission shall:

- (a) give to the Exchange and to the nominated exchange a copy of its determination under this section; and
- (b) cause a copy of the determination to be published in the *Gazette*; but failure by the Commission to comply with this subsection does not affect the validity of the determination.

“(3) The nominated exchange shall, within 14 days after receiving the Commission’s determination under this section, pay to the Exchange the amount specified in the determination.

**Transfer of Part VIII deposits held by nominated exchange**

“36N. (1) In this section:

‘outstanding deposit’, in relation to a relevant member, means a deposit that:

- (a) the relevant member lodged under Part VIII with the nominated exchange before the relevant commencement; and
- (b) the nominated exchange held, immediately before that commencement, on trust for the relevant member;

‘relevant member’ means a member organisation of the Exchange that was, immediately before the relevant commencement, a member organisation of the nominated exchange.

“(2) An outstanding deposit in relation to a relevant member:

- (a) vests in the Exchange at the relevant commencement; and
- (b) as from that commencement, is held on trust by the Exchange for the relevant member as if the relevant member had lodged the deposit with the Exchange under Part VIII.

“(3) Property in which an outstanding deposit in relation to a relevant member has, before the relevant commencement, been invested by the nominated exchange and that was held by the nominated exchange immediately before that commencement vests at that commencement in the Exchange.



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“(4) For the purposes of the application of Part VIII after the relevant commencement in relation to an outstanding deposit in relation to a relevant member, the relevant member shall be deemed to have lodged and maintained the deposit with the Exchange under that Part.

**How Parts VIII and IX apply in relation to a local Exchange subsidiary**

“36P. (1) Subsections (2) and (3) have effect throughout the period beginning at the relevant commencement and ending on the day on which the Ministerial Council first makes a nomination under subsection 122BA (1).

“(2) The Exchange shall pay money received by way of interest in respect of amounts invested by it under subsection 97 (1) into the fidelity fund of a local Exchange subsidiary.

“(3) The fidelity fund of a local Exchange subsidiary shall guarantee the repayment by the Exchange of the amount of a deposit received by the Exchange under Part VIII.

“(4) After the relevant commencement, Part IX applies in relation to a local Exchange subsidiary, with such modifications as the circumstances require, as if:

- (a) subject to this subsection, a reference in that Part (other than section 99A, 100 or 112) to a securities exchange were a reference to that subsidiary;
- (b) a reference in paragraph 101 (c) or (e) or section 109 to a securities exchange included a reference to the Exchange;
- (c) a reference in that Part to a member of a securities exchange were a reference to a person who is, or who is a partner in, a local member organisation;
- (d) a reference in that Part to a member firm, in relation to a securities exchange, were a reference to a partnership that is a local member organisation;
- (e) a reference in that Part to a sole trader were a reference to a person who is a local member organisation; and
- (f) a reference in subsection 106 (1) to a person being admitted to membership of a securities exchange were a reference to a person becoming at a particular time (otherwise than by virtue of section 36G or a provision of a law of a participating State or participating Territory that corresponds with that section) a member of the Exchange in circumstances where, immediately after that time, the person's Home Jurisdiction for the purposes of the Exchange's articles is the Territory.

“(5) In sub-section (4), ‘local member organisation’ means a member organisation of the Exchange whose Home Jurisdiction for the purposes of the Exchange's articles is the Territory.

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“(6) In addition to the effect that sections 111 to 120, inclusive, have in relation to a local Exchange subsidiary by virtue of subsection (4) of this section, those sections continue after the relevant commencement to have in relation to that subsidiary the effect they would so have if that subsection had not been enacted.

**Appointment of new trustees of certain trusts**

“36Q. (1) In this section:

‘eligible body’ means:

- (a) AASE;
- (b) the nominated exchange;
- (c) a body corporate that is the nominated exchange for the purposes of the provisions of a law of a participating State or participating Territory that correspond with this Part; or
- (d) a subsidiary of AASE, of the nominated exchange or of a body corporate of a kind referred to in paragraph (c);

‘eligible employee’ means an employee of an eligible body;

‘eligible trust’ means:

- (a) a trust established in connection with the affairs of an eligible body; or
- (b) a trust that is a provident, benefit, superannuation or retirement fund established for the benefit of a class of eligible employees;

‘trustee’ has the same meaning as that expression has in the law in force in the Territory relating to trustees, but includes:

- (a) a nominee;
- (b) a custodian trustee; and
- (c) a person charged with the management or administration of property.

“(2) Where, immediately before the relevant commencement, a person (in this section referred to as the ‘retiring trustee’) was a trustee of an eligible trust, the Exchange may, within 12 months after that commencement, appoint in writing a person as a trustee, or persons as trustees, of the trust in place of the retiring trustee and, if the Exchange does so, subsections (3) and (4) have effect.

“(3) The Exchange shall give a copy of the appointment to the Commission and the Commission shall cause such a copy to be published in the *Gazette*.

“(4) Upon publication under subsection (3) of a copy of the appointment, subsections (5), (6), (7) and (8) have effect, notwithstanding any instrument or any other law.

“(5) The retiring trustee ceases to be a trustee of the trust and is wholly discharged from his, her or its duties and obligations relating to the trust.

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“(6) The person appointed becomes a trustee, or the persons appointed become trustees, as the case may be, of the trust in place of the retiring trustee and has or have in relation to the trust the same powers, authorities, discretions, duties and obligations as the retiring trustee had in relation to the trust immediately before his, her or its discharge.

“(7) Property that immediately before the retiring trustee’s discharge was vested in the retiring trustee in his, her or its capacity as trustee of the trust vests in the person appointed, or in the persons appointed as joint tenants, as the case may be.

“(8) Property that immediately before the retiring trustee’s discharge was vested in the retiring trustee and another person or other persons as joint tenants in their capacity as trustees of the trust vests in the person or persons appointed and the other person or other persons as joint tenants.

**Transfer of assets and liabilities of AASE**

“36R. (1) At the relevant commencement:

- (a) the rights, property and assets that immediately before that commencement were vested in AASE vest in the Exchange; and
- (b) the Exchange becomes liable to pay and discharge the debts, liabilities and obligations of AASE that existed immediately before that commencement.

“(2) After the relevant commencement, an agreement or arrangement entered into by or on behalf of AASE as a party and in force immediately before that commencement has effect, with such modifications as the circumstances require, as if:

- (a) the Exchange were substituted for AASE as a party to the agreement or arrangement; and
- (b) a reference to AASE in the provisions of the agreement or arrangement were, except in relation to a time before that commencement, a reference to the Exchange.

“(3) Where, immediately before the relevant commencement, proceedings to which AASE was a party were pending in any court or tribunal, the Exchange is substituted at that commencement for AASE as a party to the proceedings and has the same rights in the proceedings as the party for which it was substituted.

**Transfer of AASE employees**

“36S. (1) In this section, ‘transferred employee’ means a person who becomes an employee of the Exchange by virtue of subsection (2).

“(2) At the relevant commencement, an employee of AASE ceases to be an employee of AASE and becomes an employee of the Exchange.

“(3) A transferred employee’s terms and conditions of employment as an employee of the Exchange:

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- (a) are, until varied, the same as the terms and conditions on which he or she was employed as an employee of AASE immediately before the relevant commencement;
- (b) may be varied to the extent to which, and in the manner in which, the terms and conditions referred to in paragraph (a) could, immediately before that commencement, be varied; and
- (c) may also be varied to the extent to which, and in the manner in which, the general terms and conditions of persons as employees of the Exchange may be varied.

“(4) For the purposes of the application of a law, award, determination, contract or agreement in relation to the employment of a transferred employee as an employee of the Exchange:

- (a) his or her contract of employment shall not be taken to have been broken by the operation of subsection (2); and
- (b) his or her period as an employee of AASE shall be deemed to be a period as an employee of the Exchange.

“(5) A transferred employee is not entitled to receive a payment or other benefit by reason only of ceasing by virtue of subsection (2) to be an employee of AASE.

“(6) Nothing in this section (other than subsection (5)) affects a person’s rights or liabilities under any provident, benefit, superannuation or retirement fund or scheme relating to, or to persons including, employees of AASE.

“(7) A director, secretary or auditor of AASE does not, by virtue of this section, become a director, secretary or auditor of the Exchange.

“(8) This section has effect notwithstanding subsections 36R (1) and (2).

**Part not to prejudice corresponding provisions**

“36T. (1) In this section, ‘corresponding provision’ means a provision of a law of a participating State or participating Territory that corresponds with a provision of this Part.

“(2) Nothing in this Part limits or otherwise prejudices a corresponding provision.

“(3) Without limiting the generality of subsection (2), nothing in this Part prevents a corresponding provision from vesting property in, conferring a right, privilege or benefit on, or imposing a debt, duty, liability or obligation on, the Exchange.

“(4) Nothing in this Part prevents a law of a participating State or participating Territory from imposing on the Exchange, or on the body corporate that is the nominated exchange for the purposes of the provisions of a law of such a State or Territory that correspond with this Part, a liability (whether by way of a tax or otherwise) to pay an amount calculated

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by reference to, or to matters including, the total of the amounts of stamp duty that would have become payable by the Exchange or AASE, or by that body corporate, as the case may be, under a law of the first-mentioned State or Territory if:

- (a) this Part had not been enacted;
- (b) the Exchange had been incorporated under the *Companies Act 1981* as a company limited by guarantee; and
- (c) to the extent that it would have been possible to make under applicable laws the arrangements made by this Part and the corresponding provisions, those arrangements had been made under those applicable laws.”.

6. After section 42A of the Principal Act the following section is inserted in Part III:

**Qualified privilege in respect of disciplinary proceedings**

“42B. (1) In this section:

‘disciplinary proceeding’, in relation to a securities exchange, means:

- (a) a proceeding under the business rules of the securities exchange that may result in the disciplining of a member of the securities exchange; or
- (b) an appeal under the business rules of the securities exchange from a proceeding of a kind referred to in paragraph (a);

whether or not the proceeding or appeal began after the relevant commencement;

‘disciplining’, in relation to a member of a securities exchange, includes expulsion from, or suspension of, membership of the securities exchange;

‘member’, in relation to a securities exchange, includes a person who is under an obligation to comply with, observe, enforce, or give effect to, the business rules of the securities exchange;

‘relevant commencement’ means the commencement of section 6 of the *Australian Stock Exchange and National Guarantee Fund Act 1987*;

‘securities exchange’ includes a recognised securities exchange.

“(2) In the absence of malice, a securities exchange, or a member, officer or employee of a securities exchange, is not liable to an action for defamation in respect of a statement made by a person, orally or in writing, after the relevant commencement and in the course of, or otherwise for the purposes of or in connection with, a disciplinary proceeding of the securities exchange.

“(3) Where:

- (a) an Exchange subsidiary is acting on behalf of the Exchange; or

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- (b) an officer or employee of an Exchange subsidiary is acting on behalf of the Exchange or of a member, officer or employee of the Exchange;

in connection with a disciplinary proceeding of the Exchange, neither the Exchange subsidiary nor an officer or employee of the Exchange subsidiary is, in the absence of malice, liable to an action for defamation in respect of a statement made by a person, orally or in writing, after the relevant commencement and in the course of, or otherwise for the purposes of or in connection with, the disciplinary proceeding.

“(4) A person is not liable for an action for defamation in respect of the publication without malice of:

- (a) a statement made by a person, orally or in writing, after the relevant commencement and in the course of, or otherwise for the purposes of or in connection with; or
- (b) a document prepared, furnished or produced by a person, after the relevant commencement and in the course of, or otherwise for the purposes of or in connection with;

a disciplinary proceeding of a securities exchange.

“(5) This section does not limit or affect a right, privilege or immunity that a person has, apart from this section, as defendant in an action for defamation.”.

7. Sections 94A and 95 of the Principal Act are repealed and the following sections are substituted:

**Interpretation**

“94A. In this Part, unless the contrary intention appears:

- (a) a reference to a stock exchange does not include a reference to an Exchange subsidiary; and
- (b) a reference to a trust account kept or maintained by a person or partnership includes a reference to a trust account kept or maintained by the person or partnership outside the Territory.

**Deposits to be lodged by member organisations**

“95. (1) Subject to this section, a member organisation of a stock exchange shall, in accordance with this Part, lodge and maintain a deposit with:

- (a) unless paragraph (b) applies—the stock exchange; or
- (b) if the member organisation is a member organisation of each of 2 or more stock exchanges—the nominated stock exchange.

“(2) Where:

- (a) a person who, or a partnership that, is a member organisation of at least one stock exchange becomes a member organisation of another stock exchange; or

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- (b) a person or partnership ceases to be a member organisation of a particular stock exchange but remains a member organisation of each of 2 or more other stock exchanges;

the person or partnership shall forthwith inform in writing each stock exchange of which he, she or it is a member organisation of the name of the stock exchange of that kind with which he, she or it proposes to lodge and maintain a deposit under this Part.

“(3) In subsection (1), ‘nominated stock exchange’, in relation to a member organisation of a stock exchange, means the stock exchange named in notices given by the member organisation in accordance with subsection (2) or, if notices have been so given on 2 or more occasions, in the most recent notices so given.

“(4) A deposit under this Part is payable out of money in a trust account kept by the person or partnership lodging and maintaining the deposit.

“(5) An amount paid from a trust account as, or as part of, a deposit lodged with a stock exchange under this Part continues to be money in that trust account notwithstanding that it is so lodged.

“(6) Where a person or partnership contravenes subsection (1) or (2), the person, or each partner in the partnership, as the case may be, is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

“(7) It is a defence to a prosecution for a contravention of subsection (1) if it is established that the contravention was attributable to the making of a payment out of the trust account kept by the person or partnership concerned, being a payment that:

- (a) paragraph 74 (1) (a), (c), (d) or (e) authorised the person or partnership to make out of that trust account; and
- (b) the person or partnership would not have been able to make if the person or partnership had complied with subsection (1).

“(8) A person or partnership is not required to comply with this section unless he, she or it carries on:

- (a) in the Territory; or
- (b) both in the Territory and outside it, whether within Australia or not;

a business of dealing in securities, whether or not that business is part of, or is carried on in conjunction with, any other business.

“(9) A member organisation of a stock exchange is not required to comply with this section if, and for so long only as, the member organisation:

- (a) is a member organisation of a body corporate that is a stock exchange for the purposes of a corresponding law of a participating State or participating Territory; and

- (b) complies with the provisions of a law of that State or Territory that correspond with this Part.”.

**Deposit to be proportion of trust account balances**

8. Section 96 of the Principal Act is amended:

- (a) by omitting from subsections (1), (2) and (4) “sole trader or member firm” (wherever occurring) and substituting “person or partnership”;
- (b) by omitting from subsection (4) “sole trader or a member firm” and substituting “person or partnership”; and
- (c) by omitting the definition of “trading day” from subsection (5) and substituting the following definition:

“‘trading day’, in relation to a stock exchange, means:

- (a) in the case of the Exchange—a day on which a stock market of an Exchange subsidiary; or
- (b) in any case—a day on which a stock market of the stock exchange;

is open for trading in securities;”.

**Deposits to be invested by stock exchange**

9. Section 97 of the Principal Act is amended:

- (a) by omitting from subsection (1) “sole trader or member firm” (twice occurring) and substituting “person or partnership”;
- (b) by omitting subsection (3) and substituting the following subsections:

“(3) A participating exchange shall pay into the Fund money received by way of interest in respect of amounts invested by it under subsection (1).

“(3A) A stock exchange (other than a participating exchange) shall pay money received by way of interest in respect of amounts invested by it under subsection (1) into its fidelity fund.”;

- (c) by omitting from subsections (4), (5) and (6) “sole trader or member firm” (wherever occurring) and substituting “person or partnership”; and
- (d) by omitting subsections (7) and (8) and substituting the following subsections:

“(7) Where a person or partnership contravenes subsection (6), the person, or each partner in the partnership, as the case may be, is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

“(8) The Fund shall guarantee the repayment by a participating exchange of the amount of a deposit received by the participating exchange from a person or partnership.

“(9) The fidelity fund of a stock exchange (other than a participating exchange) shall guarantee the repayment by the stock



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exchange of the amount of a deposit received by the stock exchange from a person or partnership.

“(10) In this section, ‘participating exchange’ means a stock exchange that is, for the purposes of Part IXA, a participating exchange.”.

**Accounts in respect of deposits**

10. Section 98 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) A stock exchange shall establish and keep proper accounts of deposits received by the stock exchange under:

- (a) in the case of the Exchange—this Part or the provisions of a law of a participating State or participating Territory that correspond with this Part; or
- (b) in any other case—this Part;

and shall, within one month after each quarter day, cause a balance sheet to be made out as at that quarter day.”.

**Claims etc. not affected by this Part**

11. Section 99 of the Principal Act is amended by omitting from paragraphs (a) and (b) “sole trader or member firm” and substituting “member organisation of a stock exchange”.

12. Before section 100 of the Principal Act the following section is inserted in Part IX:

**Interpretation**

“99A. In this Part, ‘participating exchange’ means a securities exchange:

- (a) in any case—that is, for the purposes of Part IXA, a participating exchange; or
- (b) if the Exchange is, for the purposes of Part IXA, a participating exchange—that is a local Exchange subsidiary.”.

**Establishment of fidelity fund**

13. Section 100 of the Principal Act is amended by inserting in subsection (1) “(other than the Exchange or a participating exchange)” after “securities exchange” (first occurring).

**Claims against the fund**

14. Section 112 of the Principal Act is amended by inserting in paragraph (2) (a) “or on a day on which the securities exchange was a participating exchange” after “this Act”.

15. After Part IX of the Principal Act the following Part is inserted:

**“PART IXA—THE NATIONAL GUARANTEE FUND**

**“Division 1—Interpretation**

**Interpretation**

“122AA. (1) In this Part, unless the contrary intention appears:

‘Board’ means the committee of the Corporation;

‘claim’ means a claim under Division 6 or 7;

‘eligible exchange’ means:

(a) the Exchange; or

(b) a securities exchange, or a recognised securities exchange, that is neither the Exchange nor an Exchange subsidiary;

‘Fund provisions’ means all of the following provisions:

(a) the provisions of this Part;

(b) the respective provisions of the laws of the participating States and participating Territories that correspond with this Part;

‘minimum amount’ means:

(a) unless paragraph (b) applies—\$15,000,000; or

(b) if a determination is in force under section 122DD—the amount specified in the determination as the minimum amount of the Fund for the purposes of the Fund provisions;

‘obligations’, in relation to a member or member organisation of a participating exchange, in relation to a person, includes obligations arising under a law, under the participating exchange’s business rules or under an agreement between:

(a) in any case—the member or member organisation and the person; or

(b) if the member is a partner in a member organisation of the participating exchange—the last-mentioned member organisation and the person;

‘orderly market’ means an orderly market on a stock market of a participating exchange or of an Exchange subsidiary;

‘participating exchange’ means an eligible exchange that is a member of the Corporation;

‘property’ includes money, securities, and documents of title to, and instruments of transfer relating to, securities;

‘quoted securities’, in relation to a transaction, means securities that, at the time when the agreement for the transaction is made, are quoted on a stock market of a participating exchange or of an Exchange subsidiary;

‘relative’, in relation to a person, means a parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister, of the person;

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**'relevant Act'** means the *Australian Stock Exchange and National Guarantee Fund Act 1987*;

**'relevant commencement'** means the commencement of section 15 of the relevant Act;

**'reportable transaction'** means a sale or purchase, by a member organisation (in this definition referred to as the 'first dealer') of a participating exchange, of quoted securities, where:

- (a) in any case—the participating exchange's business rules, as in force when the agreement for the sale or purchase is made, require the first dealer to report the sale or purchase to the participating exchange; or
- (b) if the sale or purchase is to or from, as the case may be, a member organisation (in this definition referred to as the 'second dealer') of a participating exchange—the last-mentioned participating exchange's business rules, as in force when the agreement for the sale or purchase is made, require the second dealer to report to the last-mentioned participating exchange the purchase or sale of the securities by the second dealer from or to, as the case may be, the first dealer;

**'settlement documents'**, in relation to a transaction, means documents the supply of which in accordance with the agreement for the transaction:

- (a) if the agreement has not been discharged—is sufficient; or
- (b) if the agreement has been discharged, whether by performance or otherwise—would, if the agreement had not been discharged, be sufficient;

to discharge the obligations of the seller under the agreement, in so far as those obligations relate to the supply of documents in connection with the transaction;

**'transaction'** means a sale or purchase of securities.

“(2) Except so far as the contrary intention appears, a reference in section 122CB, 122CD, 122DB or 122DC, subsection 122FC (1), paragraph 122FC (5) (c), subsection 122FC (6), section 122GA, subsection 122GB (3), (4) or (5), 122GB (1), (2), (6) or (7) or 122GD (1), paragraph 122T (1) (b), (3) (a) or (4) (a), section 122W, subsection 122X (4), section 122YD or subsection 122ZA (1), (2) or (4), 122ZD (2) or 122ZF (8) to a provision or provisions of this Act includes a reference to a provision or provisions of a law of a participating State or participating Territory that corresponds or correspond with that provision, or those provisions, of this Act.

“(3) For the purposes of this Part, a sale and purchase of securities shall be taken to consist of 2 distinct transactions, namely, the sale of the securities by the seller to the purchaser and the purchase of the securities by the purchaser from the seller.

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“(4) Except so far as the contrary intention appears, a reference in this Part to a sale, or to a purchase, includes a reference to a sale or purchase the agreement for which is made outside the Territory, whether within Australia or not.

“(5) A reference in this Part to carrying on a business of a particular kind is a reference to carrying on a business of that kind, whether or not as part of, or in conjunction with, any other business.

“(6) A reference in this Part to a business being carried on in the Territory includes a reference to the business being carried on both in the Territory and outside it, whether within Australia or not.

“(7) A person who, or a partner in a partnership that, contravenes a provision of this Part is guilty of an offence neither by virtue of that provision nor by virtue of section 141.

**Excluded persons**

“122AB. (1) In this Part, ‘excluded person’, in relation to a member of a participating exchange, means:

- (a) in any case—the member;
- (b) if the member is a member organisation of the participating exchange and is not a body corporate:
  - (i) a person who is the spouse, or who is a relative, of the member;
  - (ii) a trustee of a trust in relation to which the member or a person of a kind referred to in subparagraph (i) is capable of benefiting; or
  - (iii) a body corporate of which the member is an officer, or in which the member or a person of a kind referred to in subparagraph (i) has, or the member and such a person, the member and 2 or more such persons, or 2 or more such persons, together have, a controlling interest;
- (c) if the member is a member organisation of the participating exchange and is a body corporate:
  - (i) a person who is an officer of the body corporate;
  - (ii) a body corporate that is related to the first-mentioned body corporate;
  - (iii) a person who is the spouse, or who is a relative, of a person of a kind referred to in subparagraph (i);
  - (iv) a trustee of a trust in relation to which a person of a kind referred to in subparagraph (i) or (iii) is capable of benefiting; or
  - (v) a body corporate in which a person of a kind referred to in subparagraph (i) or (iii) has, or 2 or more such persons together have, a controlling interest;

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- (d) if the member is a partner in a member organisation of the participating exchange and is not a body corporate:
  - (i) a person who is a partner in the member organisation;
  - (ii) a person who is the spouse, or who is a relative, of a partner (not being a body corporate) in the member organisation;
  - (iii) a trustee of a trust in relation to which a person of a kind referred to in subparagraph (i) or (ii) is capable of benefiting;
  - (iv) a person who is an officer of a body corporate that is a partner in the member organisation; or
  - (v) a body corporate of which a person of a kind referred to in subparagraph (i), (ii) or (iii) is an officer, or in which such a person has, or 2 or more such persons together have, a controlling interest; or
- (e) if the member is a partner in a member organisation of the participating exchange and is a body corporate:
  - (i) a person who is an officer of a body corporate that is a partner in the member organisation;
  - (ii) a body corporate that is related to the first-mentioned body corporate;
  - (iii) a person who is a partner in the member organisation;
  - (iv) a person who is the spouse, or who is a relative, of a person (other than a body corporate) of a kind referred to in subparagraph (i) or (iii);
  - (v) a trustee of a trust in relation to which a person of a kind referred to in subparagraph (i), (iii) or (iv) is capable of benefiting; or
  - (vi) a body corporate in which a person of a kind referred to in subparagraph (i), (iii) or (iv) has, or 2 or more such persons together have, a controlling interest.

“(2) A reference in subsection (1) to a relative of a person includes a reference to a relative of the spouse (if any) of the person.

“(3) A reference in subsection (1) to an officer of a body corporate is a reference to:

- (a) a director, secretary or executive officer of the body corporate; or
- (b) a person who is an officer of the body corporate by virtue of paragraph (b), (c), (d) or (e) of the definition of ‘officer’ in subsection 4 (1).

### **Becoming insolvent**

“122AC. (1) For the purposes of this Part, a body corporate becomes insolvent at a particular time if, and only if, at that time:

- (a) the body corporate commences to be wound up, comes under official management or ceases to carry on business;

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- (b) a receiver, or a receiver and manager, of property of the body corporate is appointed, whether by a court or otherwise; or
- (c) the body corporate enters into a compromise or arrangement with its creditors.

“(2) For the purposes of this Part, a natural person becomes insolvent at a particular time if, and only if, at that time:

- (a) a creditor’s petition or a debtor’s petition is presented under Division 2 or 3, as the case may be, of Part IV of the *Bankruptcy Act 1966* against:
  - (i) the person;
  - (ii) a partnership in which the person is a partner; or
  - (iii) 2 or more joint debtors who include the person;
- (b) the person’s property becomes subject to control under Division 2 of Part X of the *Bankruptcy Act 1966*;
- (c) the person executes a deed of assignment or deed of arrangement under Part X of the *Bankruptcy Act 1966*; or
- (d) the person’s creditors accept a composition under Part X of the *Bankruptcy Act 1966*.

“(3) A reference in subsection (2) to a Division or Part of the *Bankruptcy Act 1966* includes a reference to provisions of a law of an external Territory, or a country other than Australia or an external Territory, that correspond with that Division or Part.

**Permitted investments**

“122AD. For the purposes of this Part, money shall be taken to be invested in a permitted manner if, and only if, it is invested:

- (a) in any manner in which trustees are for the time being authorised by a law in force in the Territory or in a participating State or participating Territory to invest trust funds; or
- (b) on deposit with a body corporate in respect of which a declaration made under:
  - (i) paragraph 97 (7) (b) of the *Companies Act 1981*; or
  - (ii) a provision of a law of a participating State or participating Territory that corresponds with that paragraph;is in force.

**“Division 2—The Corporation**

**Ministerial Council to nominate**

“122BA. (1) Subject to subsection (3), the Ministerial Council may, by instrument in writing, nominate as the National Securities Exchanges Guarantee Corporation a body corporate (whether incorporated before or after the relevant commencement) that is, for the purposes of the *Companies Act 1981*, a company limited by guarantee.

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“(2) The Commission shall cause a copy of an instrument executed by the Ministerial Council under subsection (1) to be published in the *Gazette*, but failure of the Commission to do so does not affect the validity of the instrument.

“(3) The Ministerial Council shall not nominate a body corporate under subsection (1) unless the Ministerial Council is satisfied that:

- (a) the Exchange is a member of the body corporate;
- (b) none of the members of the body corporate is a person other than:
  - (i) an eligible exchange; or
  - (ii) a nominee of an eligible exchange, being an eligible exchange that is a member of the body corporate;
- (c) the body corporate’s constituent documents provide that no person, other than a person of a kind referred to in subparagraph (b) (i) or (ii), may become or remain a member of the body corporate;
- (d) the body corporate will, if nominated under subsection (1), be able to perform and exercise the Corporation’s functions and powers under the Fund provisions adequately and with due regard to the interests of the public;
- (e) the body corporate has obtained, or will within a reasonable period after being nominated under subsection (1) obtain, indemnity insurance in respect of its liabilities for:
  - (i) negligence in; and
  - (ii) defalcations, or fraudulent misuse of property, by an officer, employee or agent of the body corporate in connection with;  
the performance or exercise of the Corporation’s functions or powers under the Fund provisions, or has made or will make other satisfactory provision for meeting those liabilities; and
- (f) the body corporate’s business rules make satisfactory provision:
  - (i) for ensuring the safety of property received by the body corporate; and
  - (ii) generally for the protection of the interests of the public.

**Functions and powers under Fund provisions**

“122BB. (1) In addition to the legal capacity and powers that it has by virtue of section 67 of the *Companies Act 1981*, the Corporation:

- (a) has such functions and powers as are conferred on it by the provisions of this Part; and
- (b) shall perform any functions, and may exercise any powers, that are conferred, or expressed to be conferred, on it by the provisions of a law of a participating State or participating Territory that correspond with this Part.

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“(2) Section 68 of the *Companies Act 1981* does not apply in relation to a function or power conferred, or expressed to be conferred, as mentioned in paragraph (1) (a) or (b) of this section.

“(3) Except so far as the contrary intention appears, a reference in this Part to functions or powers of the Corporation under the Fund provisions is a reference to functions or powers conferred, or expressed to be conferred, as mentioned in paragraph (1) (a) or (b).

**Commission to be notified of amendments to business rules**

“122BC. (1) Where an amendment is made, by way of rescission, alteration or addition, to the business rules of the Corporation, the Corporation shall, forthwith after the making of the amendment, give written notice of the amendment to the Commission.

“(2) A notice under subsection (1) shall:

- (a) set out the text of the amendment;
- (b) specify the date on which the amendment was made; and
- (c) contain an explanation of the purpose of the amendment.

“(3) If the notice required to be given by subsection (1) is not given within 21 days after the amendment is made, the amendment ceases to have effect.

“(4) Where the Commission receives a notice under this section, it shall forthwith send a copy of the notice to each member of the Ministerial Council.

“(5) The Ministerial Council may, within 28 days after the receipt by the Commission of a notice under this section, disallow the whole or a specified part of the amendment to which the notice relates.

“(6) Where the Ministerial Council disallows the whole or a part of an amendment to which a notice under this section relates, the Commission shall forthwith give notice of the disallowance to the Corporation and, upon receipt by the Corporation of the notice of disallowance, the amendment, to the extent of the disallowance, ceases to have effect.

**“Division 3—The Fund**

**Establishment**

“122CA. (1) The Corporation shall establish and keep a fund, to be known as the National Guarantee Fund, which shall be administered by the Board on behalf of the Corporation.

“(2) The assets of the Fund are the property of the Corporation, but shall be kept separately from all other property and shall be held on trust for the purposes set out in the Fund provisions.



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**Property constituting Fund**

“122CB. The Fund shall consist of:

- (a) money paid into the Fund under subsection 122ZF (1);
- (b) property that has vested in the Corporation, and become part of the Fund, by virtue of subsection 122ZF (2);
- (c) money paid into the Fund under subsection 97 (3);
- (d) money paid into the Fund under section 122EC or 122FB;
- (e) the interest and profits from time to time accruing from the investment of the Fund and paid into the Fund under subsection 122DC (2);
- (f) money recovered by or on behalf of the Corporation in the exercise of a right of action that the Corporation has by virtue of the Fund provisions;
- (g) money paid by an insurer pursuant to a contract of insurance or indemnity entered into by the Corporation under section 122ZC;
- (h) money paid to the Corporation by a person making a claim under section 122K in respect of a purchase of securities; and
- (j) all other money or other property lawfully paid into, or forming part of, the Fund.

**Fund to be kept in separate bank account**

“122CC. The money in the Fund shall, until invested or applied in accordance with the Fund provisions, be kept in a separate account in a bank in Australia.

**Payments out of Fund**

“122CD. (1) Subject to this Part, there shall be paid out of the Fund, in such order as the Board deems proper:

- (a) amounts, including costs, disbursements and interest, that the Fund provisions require to be paid in connection with claims;
- (b) all legal and other expenses incurred in investigating or defending claims or incurred in relation to the Fund or in the exercise by the Corporation or the Board of the rights, powers and authorities vested in it by the Fund provisions in relation to the Fund;
- (c) money payable to a participating exchange under section 122GB;
- (d) to the extent that the money referred to in section 122DC is insufficient for the purpose, premiums payable in respect of contracts of insurance or indemnity entered into by the Corporation under section 122ZC;
- (e) to the extent that the money referred to in section 122DC is insufficient for the purpose, the expenses incurred in the administration of the Fund, including the salaries and wages of persons employed by the Corporation or the Board in relation to the Fund; and

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- (f) all other money payable out of the Fund in accordance with this Act or a corresponding law of a participating State or participating Territory.

“(2) In paragraphs (1) (a) and (b), ‘claim’ means a claim under Division 6 or 7 or a claim that, for the purposes of Division 9, is a transferred claim in relation to a transferring exchange.

“(3) Where:

- (a) an amount is payable out of the Fund in connection with a claim by a person against the Corporation under Division 6 that has been allowed; and
- (b) an amount is payable out of the Fund in connection with a claim by a person against the Corporation under Division 7 that has been allowed;

then, regardless of the order in which those persons became respectively entitled to make those claims, the amount referred to in paragraph (a) shall be paid out of the Fund in priority to the amount referred to in paragraph (b).

#### **Accounts of Fund**

“122DA. (1) The Corporation shall establish and keep proper accounts of the Fund and shall, before 31 August in each year, cause a balance sheet in respect of those accounts to be made out as at the preceding 30 June.

“(2) The Corporation shall appoint a registered company auditor to audit the accounts of the Fund.

“(3) The auditor appointed by the Corporation shall audit the accounts of the Fund and shall audit each balance sheet and shall cause a report on the accounts and balance sheet to be laid before the Board within one month after the balance sheet is made out.

“(4) The Corporation shall, within 14 days after a report is laid before the Board under this section, give to the Commission a copy of the report and a copy of the balance sheet to which the report relates.

“(5) The Corporation shall cause a copy of each report made out under this section, and a copy of the balance sheet to which it relates, to be laid before the annual general meeting of each participating exchange next following the making of that report.

“(6) In subsection (5), ‘annual general meeting’ has the same meaning as that expression has:

- (a) in the *Companies Act 1981*; or
- (b) in the provisions of a law of a participating State or participating Territory that correspond with that Act;

as the case requires.

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**Investment of Fund**

“122DB. (1) Money in the Fund that is not immediately required for its purposes may be invested by the Corporation in a permitted manner.

“(2) Property in which money is invested pursuant to subsection (1) forms part of the Fund.

**Interest and profits from investment of Fund**

“122DC. (1) The interest and profits from time to time accruing from the investment of the Fund shall be applied by the Corporation to pay:

- (a) the expenses incurred in the administration of the Fund, including the salaries and wages of persons employed by the Corporation or the Board in relation to the Fund; and
- (b) all premiums payable in respect of contracts of insurance or indemnity entered into by the Corporation under section 122ZC.

“(2) An amount of interest or profit that accrues from the investment of the Fund and is not immediately required for the purposes referred to in subsection (1) shall be paid into the Fund.

**Minimum amount of Fund**

“122DD. The Corporation may, with the approval in writing of the Ministerial Council, determine, by notice published in the *Gazette*, an amount (whether greater than, or less than, \$15,000,000) to be the minimum amount of the Fund for the purposes of the Fund provisions.

***“Division 4—Levies where Fund less than Minimum Amount***

**Interpretation**

“122EA. In this Division, ‘dealer’ means a member organisation of a participating exchange.

**Levy on reportable transactions**

“122EB. (1) Where the amount in the Fund is less than the minimum amount, the Corporation may, whether or not it also imposes a levy under section 122FB, impose a levy on reportable transactions.

“(2) A levy imposed under this section is payable:

- (a) in respect of a reportable transaction included in a class of transactions, or in any of 2 or more classes of transactions, determined in writing by the Corporation for the purposes of the levy; and
- (b) at a rate or rates so determined.

“(3) The Corporation may determine under subsection (2) different rates of levy in respect of:

- (a) transactions in different kinds of securities; or
- (b) transactions by dealers included in different classes of dealers.

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“(4) Where the Corporation makes or varies a determination under subsection (2), it shall supply to each participating exchange a copy of the determination, or of the variation and of the determination as varied, as the case may be.

“(5) Notwithstanding subsection (2), where an amount of a levy imposed under a provision of a law of a participating State or participating Territory that corresponds with this section was payable in respect of a transaction and has been paid, an amount of a levy imposed under this section is not payable in respect of the transaction.

“(6) In this section, ‘reportable transaction’ means a sale or purchase of securities by a person or partnership, where, as at the time when the agreement for the sale or purchase is made:

- (a) the sale or purchase is a reportable transaction as defined in subsection 122AA (1); and
- (b) the person or partnership is a member organisation of a participating exchange and is carrying on in the Territory a business of dealing in securities.

**Payment by leviable dealer**

“122EC. (1) In subsection (2), ‘leviable dealer’, in relation to a transaction, means:

- (a) if, when the transaction is entered into, a determination under subsection (3) is in force in relation to a class of transactions that includes the first-mentioned transaction—the dealer prescribed by the determination; or
- (b) otherwise:
  - (i) in the case of a sale of securities—the dealer selling the securities; or
  - (ii) in the case of a purchase of securities—the dealer purchasing the securities.

“(2) Where an amount of a levy imposed under section 122EB is payable in respect of a reportable transaction, the leviable dealer in relation to the transaction shall:

- (a) pay the amount of the levy to a participating exchange of which the dealer is a member organisation; and
- (b) if, but for this subsection, the dealer would be required neither by a provision of a law nor by the participating exchange’s business rules to furnish to the participating exchange particulars of the transaction sufficient to enable the participating exchange to ascertain the amount of levy—so furnish such particulars;

within the period, and in the manner, specified by the participating exchange in writing either generally or in relation to a class of transactions that includes the first-mentioned transaction.

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“(3) The Corporation may make a determination in writing prescribing, in relation to a class or classes of reportable transactions, the dealer who is to be the leviable dealer in relation to a transaction included in that class or in any of those classes.

“(4) A participating exchange shall, within the period, and in the manner, specified in writing by the Corporation, pay to the Corporation an amount of levy paid to the participating exchange under subsection (2).

“(5) An amount of levy paid to the Corporation under this section shall be paid into the Fund.

**Revocation of levy on reportable transactions**

“122FA. (1) The Corporation may at any time, whether or not the amount in the Fund exceeds the minimum amount, revoke a levy imposed under section 122EB, but need not revoke such a levy merely because the amount in the Fund exceeds the minimum amount.

“(2) The revocation of a levy does not affect a liability to pay an amount of levy that became payable before the revocation.

**Levy on participating exchanges**

“122FB. (1) Where the amount in the Fund is less than the minimum amount, the Corporation may, whether or not it also imposes a levy under section 122EB, impose a levy:

- (a) unless paragraph (b) applies—on the Exchange; or
- (b) if there are 2 or more participating exchanges that are securities exchanges—on one, or on each of 2 or more, of those participating exchanges.

“(2) A levy imposed under this section on a participating exchange shall be of an amount, and shall be paid within the period, and in the manner, determined in writing by the Corporation for the purposes of the levy.

“(3) Where a levy is imposed under this section, the Corporation shall give to each participating exchange a notice setting out the name of the participating exchange on which the levy is imposed and the amount of the levy.

“(4) For the purposes of paying the whole or a part of a levy imposed under this section, a participating exchange may borrow money on such terms as the committee of the participating exchange thinks fit.

“(5) An amount of levy paid to the Corporation under this section shall be paid into the Fund.

**Levy by participating exchange on members or member organisations**

“122FC. (1) A participating exchange on which a levy has been imposed under section 122FB may impose on members, or on member organisations, of the participating exchange who or that carry on in the Territory businesses of dealing in securities a levy for payment towards the first-mentioned levy.

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“(2) A levy imposed under this section by a participating exchange is payable:

- (a) by a member, or member organisation, as the case requires, of the participating exchange who or that, as at the time when the levy is imposed:
  - (i) carries on in the Territory a business of dealing in securities; and
  - (ii) is included in a class, or in any of 2 or more classes, of members, or of member organisations, of the participating exchange determined in writing by the participating exchange for the purposes of the levy; and
- (b) at a rate or rates determined in writing by the participating exchange for the purposes of the levy.

“(3) A participating exchange may determine under subsection (2) different rates of levy in respect of different classes of members, or different classes of member organisations, of the participating exchange.

“(4) The amount of a levy imposed by a participating exchange under this section shall be paid to the participating exchange within the period, and in the manner, specified in writing by the participating exchange either generally or in relation to particular members, particular classes of members, particular member organisations, or particular classes of member organisations, of the participating exchange.

“(5) Notwithstanding subsections (2) and (4), where an amount of a levy imposed:

- (a) by a participating exchange;
- (b) under a provision of a law of a participating State or participating Territory that corresponds with this section; and
- (c) for payment towards a levy imposed under section 122FB;

was payable by a member, or member organisation, of the participating exchange and has been paid, an amount of a levy imposed under this section by the participating exchange for payment towards the levy referred to in paragraph (c) of this subsection is not payable by the member or member organisation.

“(6) A participating exchange shall pay an amount paid to it by way of levy under this section in payment of the levy imposed under section 122FB.

**“Division 5—Securities Industry Development Accounts**

**Interpretation**

“122GA. In this Division, ‘development account’ means an account kept for the purposes of subsection 122GC (1).

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**Payments where Fund exceeds minimum amount**

“122GB. (1) Where the amount in the Fund exceeds the minimum amount, the Board may, in its discretion, determine in writing that a specified amount equal to the whole or a part of the excess be paid out of the Fund:

- (a) unless paragraph (b) applies—to the Exchange; or
- (b) if there are 2 or more participating exchanges:
  - (i) to a specified participating exchange; or
  - (ii) to 2 or more specified participating exchanges in specified proportions.

“(2) Where there are 2 or more participating exchanges, a determination under subsection (1) shall be just and equitable having regard, in relation to each participating exchange, to:

- (a) the amounts that have been paid into the Fund and that are attributable to, or to members or member organisations of, that participating exchange; and
- (b) the amounts that have been paid out of the Fund and that are so attributable.

“(3) Where a determination is made in accordance with this section, the amount specified in the determination shall be paid out of the Fund in accordance with the determination.

“(4) For the purposes of subsection (2), where:

- (a) money in the fidelity fund of a securities exchange or recognised securities exchange has been paid into the Fund under subsection 122ZF (1); or
- (b) property of the fidelity fund of a securities exchange or recognised securities exchange (other than money in that fidelity fund) has vested in the Corporation, and become part of the Fund, by virtue of subsection 122ZF (2);

the amount of that money shall be taken, or an amount equal to the value of that property shall be deemed, as the case may be, to have been paid into the Fund and to be attributable to:

- (c) in the case of an Exchange subsidiary—the Exchange; or
- (d) in any other case—that securities exchange or recognised securities exchange.

“(5) For the purposes of subsection (2), where an amount is paid out of the Fund in connection with a claim that is, for the purposes of Division 9, a transferred claim in relation to a securities exchange or recognised securities exchange, the amount shall be taken to be attributable to:

- (a) in the case of an Exchange subsidiary—the Exchange; or
- (b) in any other case—that securities exchange or recognised securities exchange.

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**Payments into and out of development account**

“122GC. (1) Subject to this section, a participating exchange shall keep money paid to it under section 122GB in a separate account designated as a securities industry development account.

“(2) A participating exchange shall not make a payment out of a development account unless the payment is made:

- (a) for a purpose in relation to which an approval is in force under subsection (3) in relation to the payment; or
- (b) into the Fund.

“(3) The Ministerial Council may approve in writing, in relation to payments to be made out of development accounts, purposes relating to the development of the securities industry.

“(4) Without limiting the generality of subsection (3), the purpose of reimbursing a person in respect of money that the person spent, before the relevant commencement, for a purpose relating to the development of the securities industry shall be taken, for the purposes of that subsection, to be a purpose relating to the development of the securities industry.

“(5) An approval under subsection (3) may include conditions relating to the payments to which the approval relates.

“(6) A participating exchange that makes, in contravention of subsection (2), a payment out of a development account shall pay into the account, from its general funds, an amount equal to the amount of the first-mentioned payment.

“(7) A participating exchange that:

- (a) makes as permitted by virtue of paragraph (2) (a) a payment out of a development account; and
- (b) contravenes a condition that, when the payment was made, was included in an approval in force under subsection (3) in relation to the payment;

shall pay into the account, from its general funds, an amount equal to the amount of the first-mentioned payment.

“(8) In this section, ‘securities industry’ means the securities industry in Australia or in a part of Australia.

**Investment**

“122GD. (1) Money that is in a development account kept by a participating exchange and is not immediately required for the purposes of making payments as permitted by subsection 122GC (2) may be invested by the participating exchange in a permitted manner.

“(2) The interest and profits from time to time accruing from the investment of money in a development account shall be paid into the account.



## **Accounts**

“122GE. (1) A participating exchange that is a securities exchange shall, in respect of each financial year at any time during which there is money in a development account kept by the participating exchange, lodge with the Commission, before the prescribed day for that financial year, a statement containing, in relation to payments out of such an account during that year, such information as is prescribed.

“(2) In this section:

‘financial year’, in relation to a participating exchange, means a period that is, for the purposes of the *Companies Act 1981*, a financial year of the participating exchange;

‘prescribed day’, in relation to a financial year of a participating exchange, means the day that is 3 months after the end of that financial year.

## **“Division 6—Contract Guarantees**

## **Interpretation**

“122H. In this Division, unless the contrary intention appears:

‘claim’ means a claim under this Division against the Corporation;

‘completion period’, in relation to a sale or purchase of securities by a dealer, means:

- (a) if the business rules of a participating exchange of which the dealer is a member organisation, being those business rules as in force when the agreement for the sale or purchase is made, prescribe a period, for the purposes of this paragraph, in relation to a class of sales or purchases that includes the sale or purchase—that period; or
- (b) otherwise—a period that is reasonable, having regard to all the circumstances relating to the sale or purchase;

‘dealer’ means a person who, or a partnership that, is or has at any time been a member organisation of a participating exchange;

‘prescribed period’, in relation to a sale or purchase of securities by a dealer, means:

- (a) if the business rules of a participating exchange of which the dealer is a member organisation, being those business rules as in force when the agreement for the sale or purchase is made, prescribe a period, for the purposes of this paragraph, in relation to a class of sales or purchases that includes the sale or purchase—that period; or
- (b) otherwise—a period that is reasonable, having regard to all the circumstances relating to the sale or purchase;

‘purchase price’, in relation to a purchase of securities by a dealer on behalf of a person, means the total of:

- (a) the amount of the consideration for the purchase; and

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- (b) any brokerage fees and other charges, and any stamp duty and other duties and taxes, payable by the person to the dealer in connection with the purchase;

'reportable transaction' means a transaction that is or has at any time been a reportable transaction as defined in subsection 122AA (1).

**Claim by selling dealer in respect of default by buying dealer**

"122J. (1) Where, as at the end of the completion period in relation to a reportable transaction that is a sale by a dealer to another dealer:

- (a) the first-mentioned dealer has supplied, or is ready, willing and able to supply, to the other dealer, pursuant to the agreement for the sale, settlement documents in relation to the sale; and
- (b) the other dealer has not paid to the first-mentioned dealer, pursuant to that agreement, the consideration for the sale;

the first-mentioned dealer may make a claim in respect of the sale.

"(2) Where a dealer makes a claim in respect of a sale of securities by the claimant to another dealer and, at a particular time, the Board is satisfied that, as at that time:

- (a) subsection (1) entitles the claimant to make the claim;
- (b) the claimant has:
  - (i) for the purposes of the claim, supplied to the Corporation;  
or
  - (ii) pursuant to the agreement for the sale, supplied to the other dealer;

settlement documents in relation to the sale;

- (c) the consideration for the sale has not been paid to the claimant pursuant to the agreement for the sale; and
- (d) the agreement has not been discharged or otherwise terminated;

the Corporation shall allow the claim and pay to the claimant an amount equal to the amount of the consideration.

**Claim by buying dealer in respect of default by selling dealer**

"122K. (1) Where, as at the end of the completion period in relation to a reportable transaction that is a purchase by a dealer from another dealer:

- (a) the first-mentioned dealer has supplied, or is ready, willing and able to supply, to the other dealer, pursuant to the agreement for the purchase, the consideration for the purchase; and
- (b) the other dealer has not supplied to the first-mentioned dealer, pursuant to that agreement, settlement documents in relation to the purchase;

the first-mentioned dealer may make a claim in respect of the purchase.

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“(2) Where a dealer makes a claim in respect of a purchase of securities by the claimant from another dealer and, at a particular time, the Board is satisfied that, as at that time:

- (a) subsection (1) entitles the claimant to make the claim;
- (b) the claimant has:
  - (i) for the purposes of the claim, paid to the Corporation; or
  - (ii) pursuant to the agreement for the purchase, paid to the other dealer;

the amount of the consideration for the purchase;

- (c) settlement documents in relation to the purchase have not been supplied to the claimant pursuant to the agreement for the purchase; and

- (d) the agreement has not been discharged or otherwise terminated;

the Corporation shall allow the claim and, subject to section 122N, supply to the claimant settlement documents in relation to the purchase.

**Claim by selling client in respect of default by selling dealer**

“122L. (1) Where, as at the end of the prescribed period in relation to a reportable transaction that is a sale by a dealer on behalf of a person:

- (a) the person has supplied to the dealer settlement documents for the purposes of the sale; and
- (b) the dealer’s obligations to the person in respect of the sale, in so far as they relate to the consideration for the sale, have not been discharged;

the person may make a claim in respect of the sale.

“(2) Where a person makes a claim in respect of a sale of securities by a dealer on behalf of the claimant and, at a particular time, the Board is satisfied that, as at that time:

- (a) subsection (1) entitles the claimant to make the claim; and
- (b) the dealer’s obligations to the claimant in respect of the sale, in so far as they relate to the consideration for the sale, have not been discharged;

the Corporation shall allow the claim and pay to the claimant the amount of that consideration less so much (if any) of the total of any brokerage fees and other charges, and any stamp duty and other duties and taxes, payable by the claimant in connection with the sale as has not already been paid by the claimant.

**Claim by buying client in respect of default by buying dealer**

“122M. (1) Where, as at the end of the prescribed period in relation to a reportable transaction that is a purchase by a dealer on behalf of a person:

- (a) the person has paid to the dealer the purchase price in relation to the purchase; and

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- (b) the dealer's obligations to the person in respect of the purchase, in so far as they relate to settlement documents in relation to the purchase, have not been discharged;

the person may make a claim in respect of the purchase.

“(2) Where a person makes a claim in respect of a purchase of securities by a dealer on behalf of the claimant and, at a particular time, the Board is satisfied that, as at that time:

- (a) subsection (1) entitles the claimant to make the claim; and
- (b) the dealer's obligations to the claimant in respect of the purchase, in so far as they relate to settlement documents in relation to the purchase, have not been discharged;

the Corporation shall allow the claim and, subject to section 122N, supply to the claimant settlement documents in relation to the purchase.

**Cash settlement of claim where settlement documents unobtainable**

“122N. Where:

- (a) the Corporation:
  - (i) allows under subsection 122K (2) a claim in respect of a purchase of securities by the claimant from a dealer; or
  - (ii) allows under subsection 122M (2) a claim in respect of a purchase of securities by a dealer on behalf of the claimant;
- (b) it is not reasonably practicable for the Corporation to obtain from the dealer, before the end of:
  - (i) if the business rules of a participating exchange of which the dealer is a member organisation, being those business rules as in force when the Board allows the claim, prescribe a period, for the purposes of this section, in relation to a class of claims that includes the claim—that period; or
  - (ii) otherwise—such period as the Board, having regard to all the circumstances relating to the claim, considers reasonable;
- (c) because:
  - (i) whether by reason that dealing in those securities is suspended or for any other reason, there exists at no time during that period an orderly market in those securities; or
  - (ii) the total number of those securities offered for sale on stock markets of participating exchanges or Exchange subsidiaries at times during that period when there exists an orderly market in those securities is insufficient;

it is not reasonably practicable for the Corporation to obtain before the end of that period, otherwise than from the dealer, settlement documents in relation to the purchase;

the Board may determine to pay to the claimant the amount that, as at the time when the claimant became entitled to make the claim, was the amount

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of the actual pecuniary loss suffered by the claimant in respect of the purchase, and if the Board does so, the Corporation shall pay that amount to the claimant.

**Making of claims**

“122P. (1) Subsection 122J (1) or 122K (1) does not entitle a person to make a claim in respect of:

- (a) a sale of securities by the person to another person; or
- (b) a purchase of securities by the person from another person;

as the case may be, unless, on the day on which the agreement for the sale or purchase was entered into:

- (c) the first-mentioned person was a member organisation of a participating exchange and carried on in the Territory a business of dealing in securities; and
- (d) the other person was a member organisation of a participating exchange.

“(2) Subsection 122L (1) or 122M (1) does not entitle a person to make a claim in respect of:

- (a) a sale of securities by another person on behalf of the first-mentioned person; or
- (b) a purchase of securities by another person on behalf of the first-mentioned person;

as the case may be, unless, on the day on which the agreement for the sale or purchase was entered into, the other person was a member organisation of a participating exchange and carried on in the Territory a business of dealing in securities.

“(3) Where:

- (a) a provision of a law of a participating State or participating Territory that corresponds with subsection 122J (1), 122K (1), 122L (1) or 122M (1) entitles a person to make a claim in respect of a transaction; and
- (b) the Corporation allows the claim;

the Corporation shall not allow a claim that that subsection entitles a person to make in respect of the transaction.

“(4) In subsections (1), (2) and (3), ‘person’ includes a partnership.

“(5) A claim shall be in writing and shall be served on the Corporation within 6 months after the day on which the claimant became entitled to make the claim.

“(6) A claim that is not made within the period prescribed by subsection (5) is barred unless the Board otherwise determines.

**“Division 7—Claims in respect of Insolvent Members**

**Interpretation**

“122Q. (1) In this Division, unless the contrary intention appears:  
‘claim’ means a claim against the Corporation under this Division;  
‘dealer’ means a member of a participating exchange;  
‘member organisation’ means a member organisation of a participating exchange.

“(2) A reference in this Part to property being entrusted to, or received by, a person or partnership includes a reference to the property being entrusted to, or received by, the person or partnership outside the Territory, whether within Australia or not.

**Claim in respect of property entrusted to, or received by, dealer before dealer became insolvent**

“122R. (1) Subject to this Division, where:

- (a) a dealer becomes insolvent at a particular time;
- (b) at an earlier time (whether before, at or after the relevant commencement), property was, in the course of, or in connection with, the dealer’s business of dealing in securities, entrusted to, or received by:
  - (i) unless subparagraph (ii) applies—the dealer or an employee of the dealer; or
  - (ii) if the dealer was, at the earlier time, a partner in a member organisation—the member organisation, or a partner in, or an employee of, the member organisation;

and was so entrusted or received for or on behalf of, or by reason that the dealer was a trustee of the property for, a person (other than an excluded person in relation to the dealer); and

- (c) as at the first-mentioned time, the obligations of the dealer, or of a member organisation in which the dealer is a partner, as the case requires, to the person in respect of the property have not been discharged;

the person may make a claim in respect of the property.

“(2) Where a person makes a claim in respect of property and, at a particular time, the Board is satisfied that:

- (a) by reason of a dealer having become insolvent, this Division entitles the claimant to make the claim; and
- (b) as at that time, the obligations of the dealer, or of a member organisation in which the dealer is a partner, as the case requires, to the claimant in respect of the property have not been discharged;

the Corporation shall allow the claim and:

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- (c) if the property is, or includes, money—pay to the claimant an amount equal to the amount of that money; and
- (d) if the property is, or includes, property other than money—subject to subsection (3) and section 122S, supply the last-mentioned property to the claimant.

“(3) Where:

- (a) the Corporation allows a claim that, by reason of a dealer having become insolvent, this Division entitles a person to make in respect of property that is, or includes, a number of securities of a particular kind or documents of title to a number of securities of a particular kind; and
- (b) it is not reasonably practicable for the Corporation to obtain those securities, or those documents of title to securities, as the case may be, from the dealer or, if the dealer has disposed of them, from the dealer’s successor in title, before the end of:
  - (i) if the business rules of a participating exchange of which the dealer is a member, being those business rules as in force when the Board allows the claim, prescribe a period, for the purposes of this section, in relation to a class of claims that includes that claim—that period; or
  - (ii) otherwise—such period as the Board, having regard to all the circumstances relating to the claim, considers reasonable;

the Corporation shall, subject to section 122S, supply to the person, instead of those securities, or those documents of title to securities, that number of securities of that kind, or documents of title to that number of securities of that kind, as the case may be.

**Cash settlement of claims where property unobtainable**

“122S. (1) Where:

- (a) the Corporation allows a claim that, by reason of a dealer having become insolvent, this Division entitles a person to make in respect of property that is, or includes, a number of securities of a particular kind or documents of title to a number of securities of a particular kind;
- (b) it is not reasonably practicable for the Corporation to obtain those securities, or those documents of title to securities, as the case may be, from the dealer or, if the dealer has disposed of them, from the dealer’s successor in title, before the end of:
  - (i) if the business rules of a participating exchange of which the dealer is a member, being those business rules as in force when the Board allows the claim, prescribe a period, for the purposes of this section, in relation to a class of claims that includes the claim—that period; or

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- (ii) otherwise—such period as the Board, having regard to all the circumstances relating to the claim, considers reasonable; and
- (c) because:
  - (i) whether by reason that dealing in securities of that kind is suspended or for any other reason, there exists at no time during that period an orderly market in such securities; or
  - (ii) the total number of securities of that kind offered for sale on stock markets of participating exchanges or Exchange subsidiaries at times during that period when there exists an orderly market in such securities is insufficient;

it is not reasonably practicable for the Corporation to obtain that number of securities of that kind, or documents of title to that number of securities of that kind, as the case may be, before the end of that period;

the Board may determine to pay to the claimant the amount that, as at the time when the determination is made, is the amount of the actual pecuniary loss suffered by the claimant in respect of the first-mentioned securities, or the first-mentioned documents of title, as the case may be, and if the Board does so, the Corporation shall pay that amount to the claimant.

“(2) Where:

- (a) the Board allows a claim that, by reason of a dealer having become insolvent, this Division entitles a person to make in respect of property that is, or includes, property (in this subsection referred to as the ‘relevant property’) other than money, securities or documents of title to securities; and
- (b) it is not reasonably practicable for the Corporation to obtain the relevant property from the dealer or, if the dealer has disposed of it, from the dealer’s successor in title, before the end of such period as the Board considers reasonable;

the Board may determine to pay to the claimant the amount that, as at the time when the determination is made, is the amount of the actual pecuniary loss suffered by the claimant in respect of the relevant property, and if the Board does so, the Corporation shall pay that amount to the claimant.

**Ordering of alternative claims and prevention of double recovery**

“122T. (1) Where:

- (a) a member organisation has received, pursuant to the agreement for a sale or purchase of securities by the member organisation on behalf of a person, the consideration for the sale or settlement documents in relation to the purchase, as the case may be; and
- (b) subsection 122L (1) or 122M (1), as the case may be, entitles the person to make a claim against the Corporation under Division 6 in respect of the sale or purchase;

subsection (2) has effect.



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“(2) This Division does not, by reason of:

- (a) a dealer, being the member organisation or a partner in the member organisation, having become insolvent at a particular time; and
- (b) the member organisation having received, pursuant to the agreement, the consideration or the settlement documents;

entitle the person to make a claim in respect of the consideration or the settlement documents, as the case may be, unless the member organisation's obligations to the person in respect of the sale or purchase, as the case may be, in so far as those obligations related to the consideration or the settlement documents, were discharged before that time.

“(3) Where:

- (a) by reason of a dealer having become insolvent on a particular day, this Division entitles a person to make a claim (in this subsection referred to as the 'first claim') in respect of property; and
- (b) by reason of a dealer having become insolvent on a later day, this Division entitles the person to make another claim in respect of the property;

the Corporation shall not allow the other claim unless:

- (c) the person has made the first claim and the Corporation has allowed or disallowed it;
- (d) the Board is satisfied that if the first claim had been made the Corporation would have disallowed it; or
- (e) the Board is satisfied that, when the person first became aware of the dealer referred to in paragraph (b) having become insolvent on the later day:
  - (i) the first claim was barred; or
  - (ii) it was no longer reasonably practicable for the person to make the first claim before it became barred.

“(4) Where:

- (a) at a particular time, the Corporation allows a claim made by a person under this Division in respect of property; and
- (b) by reason of:
  - (i) a dealer having become insolvent (whether before, at or after that time); and
  - (ii) the property having, before that time, been entrusted or received as mentioned in paragraph 122R (1) (b);

this Division entitles the person to make another claim in respect of the property;

the Corporation shall not allow the other claim.

**No claim in respect of money lent to dealer**

“122U. Where, as at the time when a dealer becomes insolvent:

- (a) a person has lent money to the dealer; and
  - (b) the liability of the dealer to repay the money remains undischarged;
- this Division does not, by reason of the dealer having become insolvent at that time, entitle the person to make a claim in respect of the money.

**No claim in certain other cases**

“122V. (1) This Division does not, by reason of a person having become insolvent on a particular day, entitle a person to make a claim in respect of property unless the first-mentioned person was on that day a member of a participating exchange and:

- (a) if on that day the first-mentioned person was carrying on (whether on his, her or its own account or in partnership) a business of dealing in securities—that business was carried on in the Territory; or
- (b) otherwise—the last business of dealing in securities that the first-mentioned person carried on (whether on his, her or its own account or in partnership) before that day was carried on in the Territory.

“(2) This Division does not, by reason of a dealer having become insolvent on a particular day, entitle a person to make a claim in respect of property if:

- (a) before that day the property had, in due course of the administration of a trust, ceased to be under the sole control of the dealer; or
- (b) if the Board, or the Court, is satisfied that circumstances that materially contributed to the dealer becoming insolvent on that day were due to, or caused directly or indirectly by, an act or omission of the person.

**Limits of compensation**

“122W. (1) The total of the amounts paid out of the Fund in connection with claims that:

- (a) by reason of:
  - (i) unless subparagraph (ii) applies—a dealer having become insolvent on a particular day; or
  - (ii) if 2 or more partners in the same member organisation have become insolvent on a particular day—those partners having become insolvent on that day;

this Division entitles persons to make; and

- (b) are allowed by the Corporation;

shall not exceed an amount equal to 14% of the minimum amount of the Fund as at the end of that day.

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“(2) The amount, or the total of the amounts, paid out of the Fund in connection with a claim or claims that:

- (a) by reason of:
  - (i) unless subparagraph (ii) applies—a dealer having become insolvent on a particular day; or
  - (ii) if 2 or more partners in the same member organisation have become insolvent on a particular day—those partners having become insolvent on that day;

this Division entitles a person to make; and

- (b) is or are allowed by the Corporation;

shall not exceed:

- (c) if, as at the end of that day, an amount greater than \$50,000 is prescribed for the purposes of this subsection—that amount; or
- (d) in any other case—\$50,000.

“(3) In determining, for the purposes of subsection (1) or (2), the amount, or the total of the amounts, paid out of the Fund in connection with a claim or claims in respect of property:

- (a) an amount paid out of the Fund in connection with the claim or any of the claims shall, to the extent to which it is repaid to the Fund, be disregarded; and

- (b) where, by virtue of the exercise of a right or remedy in relation to property that is, or is included in, the first-mentioned property, being a right or remedy of the claimant, or of any of the claimants, to which the Corporation is to be deemed, by virtue of section 122ZA, to be subrogated, money or other property has been recovered by, or on behalf of, the Corporation—so much of the amount, or of the total of the amounts, paid out of the Fund in connection with the claim or claims as does not exceed:

- (i) the amount of that money; or
  - (ii) the value of so much (if any) of that other property as has not been, and is not required to be, supplied under subsection 122R (2) in respect of the claim or any of the claims;
- as the case may be, shall be disregarded.

“(4) In order to ensure compliance with subsections (1) and (2) as they apply in relation to a particular claim or particular claims:

- (a) the Board may, in relation to that claim, or in relation to each of those claims, as the case may be, determine in writing an amount to be the maximum amount in relation to the claim; and

- (b) where paragraph (a) empowers the Board to make determinations in relation to the respective claims of 2 or more claimants—the Board shall, in making those determinations:

- (i) take into account, in relation to each of those claimants, any money or other property that the claimant has received, or

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is likely to receive, from sources other than the Fund as compensation for property to which the claimant's claim relates; and

- (ii) endeavour to ensure that the proportion of the property to which a claim relates that is represented by the money and other property received from all sources (including the Fund) as compensation for property to which the claim relates is, as nearly as practicable, the same for each of those claimants.

“(5) Where a determination of an amount as the maximum amount in relation to a claim is in force under subsection (4), the amount, or the total of the amounts, paid out of the Fund in connection with the claim shall not exceed the first-mentioned amount.

“(6) In this section, ‘claim’ means a claim under this Division.

**Making of claims**

“122X. (1) The Corporation may cause to be published in a daily newspaper circulating generally in the Territory (and if, in any State or other Territory, that newspaper does not circulate generally, in a newspaper that does so circulate in that State or other Territory) a notice in the prescribed form specifying a day, not being earlier than 3 months after the publication of the notice, on or before which claims against the Corporation may be made, being claims that, by reason of a dealer specified in the notice having become insolvent, this Division entitles persons to make.

“(2) Where, by reason of a dealer having become insolvent on a particular day, this Division entitles a person to make a claim, the claim shall be in writing and shall be served on the Corporation:

- (a) in a case where there has been published in accordance with subsection (1) a notice specifying a day on or before which claims may be made, being claims that, by reason of the dealer having become insolvent on that day, this Division entitles persons to make—on or before that day; or
- (b) in any other case—within 6 months after the person becomes aware of the dealer having become insolvent on that day.

“(3) A claim that is not made in accordance with subsection (2) is barred unless the Board otherwise determines.

“(4) It is a defence to an action for damages against the Corporation, a member of the Board, or an employee of, or a person acting on behalf of, the Corporation, in respect of the publication of a notice under subsection (1), if the defendant establishes that the notice was published in good faith and for the purposes of this section.

**“Division 8—Claims under Divisions 6 and 7**

**Power of Corporation to allow and settle claim**

“122YA. Subject to this Part, the Corporation may, at any time after a person becomes entitled to make a claim, allow and settle the claim.

**Successful claimant entitled to costs and disbursements**

“122YB. Where a claim is allowed, then, in addition to the claimant’s other rights under this Part, the claimant is entitled to be paid out of the Fund an amount equal to the total of the reasonable costs of, and the reasonable disbursements incidental to, the making and proof of the claim.

**Interest**

“122YC. (1) In addition to an amount that is payable to a person out of the Fund in respect of a claim, interest at the rate of 5% per annum or, if another rate is prescribed, at that other rate, is payable to the person out of the Fund, on so much of that amount as is not attributable to costs and disbursements, in respect of the period beginning on the day on which the person became entitled to make the claim and ending on:

- (a) unless paragraph (b) or (c) applies—the day on which that amount is paid to the person;
- (b) if the Board has made a determination under subsection 122ZD (1) to pay that amount in instalments—the day on which that amount would, if no such determination had been made and the money in the Fund were unlimited, have been paid to the person; or
- (c) if, because of insufficiency of the Fund, no part of that amount is paid to the person on the day on which that amount would, if the money in the Fund were unlimited, have been so paid—the last-mentioned day.

“(2) Where:

- (a) under subsection (1), interest is payable to a person on an amount in respect of a period; and
- (b) that amount, or a part of that amount, remains unpaid throughout a period commencing immediately after the period referred to in paragraph (a);

then, in addition to that amount and that interest, interest at the prescribed rate is payable to the person out of the Fund on that amount, or on that part of that amount, as the case may be, in respect of the period first referred to in paragraph (b).

**Application of Fund in respect of certain claims**

“122YD. (1) The Corporation:

- (a) may purchase securities for the purpose of complying with subsection 122K (2), 122M (2) or 122R (3); and

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- (b) may pay money out of the Fund for the purpose of so purchasing securities or for any other purpose connected with complying with that subsection.

“(2) Securities purchased by the Corporation as mentioned in subsection (1) form part of the Fund until they are supplied in accordance with this Part to a claimant or sold in accordance with subsection (3).

“(3) Where:

(a) the Board:

- (i) makes in relation to a claim in respect of a purchase of securities a determination under section 122N; or
- (ii) makes in relation to a claim a determination under subsection 122S (1); and

(b) the Corporation has, before making the determination, purchased securities for the purpose of:

- (i) supplying to the claimant settlement documents in relation to the purchase; or
- (ii) supplying under subsection 122R (3), in respect of the claim, securities or documents of title to securities;

as the case may be;

the Corporation shall, as soon as practicable after making the determination, sell the securities so purchased and pay the proceeds of sale into the Fund.

“(4) In this section, ‘claim’ means a claim under Division 6 or 7.

**Allowing of claim not to constitute admission**

“122YE. Where the Corporation allows a claim, neither the allowing of the claim, nor any act done by the Corporation as a result of allowing the claim, shall be taken for any purpose to constitute an admission by any person of liability in respect of any matter, other than an admission by the Corporation of its liability in respect of the claim.

**Corporation to notify claimant where claim disallowed**

“122YF. The Corporation shall, after wholly or partly disallowing a claim, serve on the claimant, or on the claimant’s solicitor, notice of the disallowance in the prescribed form.

**Proceedings in the Court**

“122YG. (1) Where the Corporation has disallowed a claim, the claimant may, within 3 months after notice of the disallowance has been served on the claimant, or on the claimant’s solicitor, in accordance with section 122YF, commence proceedings in the Court to establish the claim.

“(2) Where, as at the end of a reasonable period after a claim was made, the Corporation has neither allowed nor disallowed the claim, the claimant may commence proceedings in the Court to establish the claim.

**Arbitration of amount of cash settlement of certain claims**

“122YH. (1) Where:

- (a) section 122N or subsection 122S (1) or (2) requires the Corporation to pay to a person the amount that was at a particular time the amount of the actual pecuniary loss suffered by the person in respect of a purchase of securities, or in respect of particular property, as the case may be; and
- (b) that amount cannot be determined by agreement between the Corporation and the person;

that amount shall be determined by arbitration in accordance with this section.

“(2) The reference to arbitration shall be made to persons appointed, in accordance with subsection (3), for the purposes of the reference and the law in force in the Territory relating to arbitration applies in relation to the reference.

“(3) The participating exchange shall appoint, or the participating exchanges shall jointly appoint, as the case requires, for the purposes of the reference to arbitration, 3 persons whose appointment under this subsection has been approved in writing by the Ministerial Council and at least 2 of whom are neither members of a participating exchange nor officers or employees of the Corporation, of a participating exchange, or of a member organisation of a participating exchange.

**Form of order of Court establishing claim**

“122YJ. (1) Where, in a proceeding to establish a claim, the Court is satisfied that the claim should be allowed, the Court:

- (a) shall, by order, make a declaration accordingly and direct the Corporation to allow the claim and deal with it in accordance with this Act; and
- (b) may, at any time after making the order, give, upon application made by the claimant or the Corporation, such directions relating to the claim as the Court thinks fit.

“(2) In a proceeding to establish a claim, or in an application under paragraph (1) (b), all questions of costs are in the discretion of the Court.

**Power of Board to require production of securities etc.**

“122YK. (1) The Board may, by notice in writing served on a person, require the person to furnish to the Corporation specified securities, documents, or statements of evidence, necessary to support a claim or necessary for the purpose of:

- (a) exercising the Corporation’s rights against a member, or a member organisation, of a participating exchange or against any other person; or
- (b) enabling criminal proceedings to be taken against a person.

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“(2) Where a person fails, without reasonable excuse, to comply with a requirement under subsection (1), the Corporation may disallow a claim made by the person.

**Subrogation of Corporation to claimant's rights etc.**

“122ZA. (1) Where the Corporation:

- (a) allows under subsection 122J (2) or 122L (2) a claim made under Division 6 in respect of a sale of securities; or
- (b) allows under subsection 122K (2) or 122M (2) a claim made under Division 6 in respect of a purchase of securities;

the Corporation shall be deemed to be subrogated to all the claimant's rights

“(?) Where the Board allows a claim made under Division 7 in respect



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**Corporation may enter into contracts of insurance or indemnity**

“122ZC. (1) The Corporation may, in its discretion, enter into a contract with a person carrying on fidelity insurance business whereby the Corporation will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims.

“(2) A contract entered into under subsection (1) may relate to dealers generally, particular classes of dealers specified in the contract, particular dealers so specified, or dealers generally with the exclusion of particular

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**'joining exchange'** means a securities exchange that:

- (a) at a particular time after the nomination day, becomes a local Exchange subsidiary or a participating exchange; and
- (b) was not, immediately before that time, a participating exchange, or a local Exchange subsidiary, as the case may be;

**'liability provisions'** means:

- (a) sections 111 to 120, inclusive; or
- (b) sections 111 to 120, inclusive, as they have effect by virtue of subsection 36P (4) or (6);

as the case requires;

**'nomination day'** means the day on which the Ministerial Council first makes a nomination under subsection 122BA (1);

**'transfer day'**, in relation to a transferring exchange, means:

- (a) in the case of a founding exchange—the nomination day; or
- (b) in the case of a joining exchange—the day on which the joining exchange became a local Exchange subsidiary, or a participating exchange, as the case requires;

**'transferred claim'**, in relation to a transferring exchange, means:

- (a) a claim made, before the transfer day in relation to the transferring exchange, for compensation from the transferring exchange's fidelity fund;
- (b) a claim that, as at the time immediately before the transfer day in relation to the transferring exchange, the liability provisions entitled a person to make for compensation from the transferring exchange's fidelity fund, but that, as at that time, had not been made; or
- (c) a claim that purports to be a claim of a kind referred to in paragraph (b);

**'transferring exchange'** means a founding exchange or a joining exchange.

**Assets and liabilities of transferring exchange's fidelity fund**

"122ZF. (1) The money that at the end of the transfer day in relation to a transferring exchange was in the transferring exchange's fidelity fund shall, as soon as practicable after that day, be paid out of that fidelity fund and into the Fund.

"(2) At the beginning of the next day after the transfer day in relation to a transferring exchange:

- (a) the investments and other property of the transferring exchange's fidelity fund that at the end of the transfer day were vested in the transferring exchange vest in the Corporation and become part of the Fund;

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- (b) the rights that at the end of the transfer day the transferring exchange had, whether under or by virtue of Part IX or otherwise, in connection with the administration of the transferring exchange's fidelity fund vest in the Corporation; and
- (c) the Corporation becomes liable to pay and discharge the debts, liabilities and obligations of the transferring exchange that arose, whether under or by virtue of Part IX or otherwise, in connection with the administration of the transferring exchange's fidelity fund and that existed at the end of the transfer day.

“(3) A reference in subsection (2) to rights or to debts, liabilities and obligations does not include a reference to rights, or to debts, liabilities and obligations, as the case may be, arising under a contract of employment or under a contract for services.

“(4) Investments that at the end of the transfer day in relation to a transferring exchange were held, by a person other than the transferring exchange, for the purposes of the transferring exchange's fidelity fund are held after that day for the purposes of the Fund.

“(5) After the transfer day in relation to a transferring exchange, an agreement or arrangement (other than a contract of employment or a contract for services) that was entered into:

- (a) by or on behalf of the transferring exchange as a party; and
- (b) in connection with the administration of the transferring exchange's fidelity fund;

and was in force at the end of that day has effect, with such modifications as the circumstances require, as if:

- (c) the Corporation were substituted for the transferring exchange as a party to the agreement or arrangement; and
- (d) a reference in the provisions of the agreement or arrangement to the transferring exchange were, except in relation to a time on or before that day, a reference to the Corporation.

“(6) Without limiting the generality of another provision of this section, where, as at the end of the transfer day in relation to a transferring exchange, an amount advanced under subsection 109 (1) by the transferring exchange to its fidelity fund had not been repaid, an amount equal to the first-mentioned amount is, after that day, payable, on demand, by the Corporation to the transferring exchange.

“(7) Where, at the end of the transfer day in relation to a transferring exchange, proceedings:

- (a) to which the transferring exchange was a party; and
- (b) that arose out of, or were otherwise connected with, the administration of the transferring exchange's fidelity fund;

were pending in a court or tribunal, the Corporation is, at the beginning of the next day after the transfer day, substituted for the transferring exchange

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as a party to the proceedings and has the same rights in the proceedings as the party for which it was substituted.

“(8) An amount that, as a result of the operation of this section, is or becomes payable by the Corporation is payable out of the Fund.

“(9) This section has effect subject to section 122ZH.

**Final accounts in respect of transferring exchange’s fidelity fund**

“122ZG. (1) A transferring exchange shall, as soon as practicable, and in any event within 2 months, after the transfer day in relation to the transferring exchange:

- (a) cause to be prepared a statement of the assets and liabilities of its fidelity fund as on that day; and
- (b) appoint a registered company auditor to audit the statement.

“(2) Without limiting the generality of subsection (1), a statement prepared under that subsection shall set out full particulars so far as known

**PART III—AMENDMENTS OF COMPANIES (ACQUISITION OF  
SHARES) ACT 1980**

**Principal Act**

16. The *Companies (Acquisition of Shares) Act 1980*<sup>2</sup> is in this Part referred to as the Principal Act.

**Definitions**

17. Section 6 of the Principal Act is amended:

(a) by inserting before the definition of “business rules” the following definition:

“‘board’, in relation to a body corporate, means the committee of management, board of directors, council or other governing authority of the body corporate;”;

(b) by omitting the definition of “home stock exchange” and substituting the following definitions:

“‘dealer’ means a member of the Exchange;

‘Exchange’ means Australian Stock Exchange Limited;

‘Exchange subsidiary’ means a securities exchange, or a stock exchange, that is a subsidiary of the Exchange;

‘home stock exchange’, in relation to a stock exchange listed company, means the stock exchange designated to the company, for the purposes of the Exchange’s listing rules, as the company’s Home Exchange;”;

(c) by omitting “a securities exchange (not being a stock exchange)” from paragraph (b) of the definition of “notifiable securities exchange” and substituting “a securities exchange (other than the Exchange), or a stock exchange (other than the Exchange);”;

(d) by inserting before the definition of “renounceable option” the following definition:

“‘relevant official meeting’, in relation to an announcement relating to shares included in a class of shares in a company, means an official meeting of the Exchange:

(a) held on a stock market of the company’s home stock exchange; and

(b) of a kind at which shares included in that class are usually dealt in;

whether or not shares included in that class are dealt in at that official meeting;”;

(e) by inserting after the definition of “renounceable option” the following definition:

“‘representative’, in relation to a dealer, includes:

(a) in any case—an employee of the dealer; and

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- (b) if the dealer is a partner in a partnership that carries on a business of dealing in securities:
  - (i) another partner in the partnership; or
  - (ii) an employee of the partnership;”;
- (f) by inserting “the Exchange or” after “means” in the definitions of “securities exchange” and “stock exchange”; and
- (g) by omitting “a stock exchange” from the definition of “stock exchange listed company” and substituting “the Exchange”.

**Other interpretative and evidentiary provisions**

**18.** Section 8 of the Principal Act is amended by inserting after subsection (9) the following subsections:

“(9A) Unless the contrary intention appears, a reference in this Act to a stock market of a securities exchange or of a stock exchange includes, in the case of the Exchange, a reference to a stock market of a securities exchange. or of a stock exchange. as the case may be. that is a subsidiary of

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- (ii) because dealings in shares included in that class are not permitted at that official meeting; or
  - (iii) for any other reason;  
by a notice in writing that is signed by or on behalf of a holder of shares included in that class and is served on the company's home stock exchange on the day of that official meeting.”;
- (b) by omitting subsections (4) and (5) and substituting the following subsection:
- “(5) Where:
    - (a) a dealer has made an announcement, in accordance with this section or a provision of a law of a participating State or participating Territory that corresponds with this section, at a relevant official meeting held on a stock market maintained or provided in the Territory; and
    - (b) a notice accepting an offer made by virtue of the announcement is served on a stock exchange in accordance with this section or that provision, as the case may be;  
the stock exchange shall, as soon as practicable, notify the dealer of the acceptance of the offer.”;
- (c) by omitting from subsection (11) “an announcement to be made on behalf of the on-market offeror by a member of the stock exchange that is referred to in subsection (2) at an official meeting of that stock exchange” and substituting “a dealer to make on the on-market offeror's behalf at a relevant official meeting an announcement”;
- (d) by omitting subsection (12) and substituting the following subsection:
- “(12) An on-market offeror who has made offers constituted by a take-over announcement may cause a dealer to make on the on-market offeror's behalf, before the end of the sixth trading day of the target company's home stock exchange before:
    - (a) the end of the period of one month referred to in subsection (2); or
    - (b) if that period has been extended pursuant to the previous exercise on at least one occasion of the power conferred by this subsection—the end of the extended period;  
an announcement at a relevant official meeting extending that period or that extended period, as the case may be, for a further period of one month, but so that the total period for which the offers remain open does not exceed 6 months.”;
- (e) by inserting in subsection (13) “in relation to a company” after “(12)”;
- (f) by omitting paragraph (13) (a) and substituting the following paragraph:

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- “(a) serve on the company and on the company’s home stock exchange; and”;
- (g) by omitting subsection (15) and substituting the following subsection:

“(15) Where:

- (a) a dealer makes an announcement, in accordance with this section or a provision of a law of a participating State or participating Territory that corresponds with this section, at a relevant official meeting held on a stock market maintained or provided in the Territory; and
- (b) a person (whether on the person’s own behalf or on behalf of another) accepts an offer that is made by virtue of the announcement;

then:

- (c) unless paragraph (d) applies—the dealer; or
- (d) if the dealer is acting as agent for another dealer—the other dealer;

shall be deemed to have contracted as principal with that person to acquire the shares to which the acceptance relates, but nothing in this subsection affects the rights and obligations between the dealer, or the other dealer, as the case may be, and the on-market offeror.”;

- (h) by omitting from subsection (16) “member of a stock exchange” and substituting “dealer”;
- (j) by omitting from subsection (16) “member arising by reason of his” and substituting “dealer arising because of the dealer”; and
- (k) by omitting subsections (18) and (19) and substituting the following subsections:

“(17A) In relation to an announcement that was made before the commencement of Part III of the *Australian Stock Exchange and National Guarantee Fund Act 1987* of the Commonwealth and related to shares included in a class of shares in a company, this Act as in force after that commencement applies as if:

- (a) a person who, at a particular time during the period beginning immediately before the announcement was made and ending immediately after that commencement, was a member of the company’s home stock exchange had been a dealer at that time; and
- (b) an official meeting of the company’s home stock exchange that was held at a particular time during that period had been a relevant official meeting in relation to the announcement.

“(17B) In subsection (17A) and in this subsection:

‘company’ means a body corporate that is a stock exchange listed company for the purposes of this Act or of a corresponding law of a participating State or participating Territory;



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‘home stock exchange’, in relation to a company, in relation to a particular time, means the stock exchange that was at that time the company’s home stock exchange for the purposes of this Act or of a corresponding law of a participating State or participating Territory.”.

**Declaration where take-over offers are conditional**

**20.** Section 28 of the Principal Act is amended by omitting from paragraph (8) (b) “listed public” and substituting “stock exchange listed”.

**Withdrawal of on-market offers**

**21.** Section 33 of the Principal Act is amended:

(a) by omitting from subsection (1) all the words after “that period,” and substituting “by causing a dealer to make on the on-market offeror’s behalf at a relevant official meeting an announcement to that effect, withdraw such of the offers as have not been accepted.”;

(b) by omitting subsection (5) and substituting the following subsections:

“(5) If, after the making of a take-over announcement and before the end of the period in which offers constituted by the take-over announcement remain open, the relevant dealer in relation to the take-over announcement:

(a) in any case:

(i) becomes bankrupt; or

(ii) is directed by the board of the Exchange to cease carrying on the business of dealing in securities; or

(b) if the relevant dealer carries on a business of dealing in securities otherwise than as a partner in a partnership:

(i) dies; or

(ii) is declared by a court to be incapable of managing the relevant dealer’s affairs;

such of the offers made by virtue of the take-over announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the relevant dealer became bankrupt, was so directed, died or was so declared, as the case may be.

“(5A) In subsection (5), ‘relevant dealer’, in relation to a take-over announcement, means:

(a) unless paragraph (b) applies—the dealer who made the announcement; or

(b) if the dealer who made the announcement is acting as agent for another dealer—the other dealer.”; and

(c) by omitting paragraphs (6) (a) and (b) and substituting the following paragraphs:

“(a) the on-market offeror may, with the consent of the Commission, by causing a dealer to make on the on-market

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offeror's behalf at a relevant official meeting an announcement to that effect, withdraw such of the offers as have not been accepted; or

- (b) the dealer who made the take-over announcement on behalf of the on-market offeror may, with the consent of the Commission, by making at a relevant official meeting an announcement to that effect, withdraw such of the offers as have not been accepted.”.

**Suspension of acceptance of offers made by virtue of take-over announcement**

22. Section 34 of the Principal Act is amended by omitting “member of the stock exchange that is referred to in subsection 17 (2)” and substituting “dealer”.

**PART IV—AMENDMENTS OF COMPANIES ACT 1981**

**Principal Act**

23. The *Companies Act 1981*<sup>3</sup> is in this Part referred to as the Principal Act.

**Interpretation**

24. Section 5 of the Principal Act is amended by inserting after the definition of “emoluments” in subsection (1) the following definition:

“‘Exchange’ means Australian Stock Exchange Limited;”.

**Copy of notice to be served on securities exchanges**

25. Section 141 of the Principal Act is amended:

- (a) by omitting from subsection (1) “, shall ” and substituting “shall,”;
- (b) by omitting from paragraph (1) (a) “a stock exchange in Australia” and substituting “the Exchange”;
- (c) by omitting from paragraph (1) (b) “a stock exchange” and substituting “the Exchange”; and
- (d) by omitting from subsection (2) “Australian Associated Stock Exchanges” and substituting “Exchange”.

**PART V—AMENDMENTS OF COMPANIES AND SECURITIES  
(INTERPRETATION AND MISCELLANEOUS PROVISIONS)  
ACT 1980**

**Principal Act**

26. The *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*<sup>4</sup> is in this Part referred to as the Principal Act.

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**Definitions**

27. Section 9 of the Principal Act is amended:
- (a) by inserting after the definition of "Northern Territory" the following definition:

" 'Northern Territory enactment' means an enactment within the meaning of the *Northern Territory (Self-Government) Act 1978*;" and
  - (b) by adding "or a Northern Territory enactment" at the end of the definition of "State Act".

**PART VI—AMENDMENTS OF NATIONAL COMPANIES AND  
SECURITIES COMMISSION ACT 1979**

**Principal Act**

28. The *National Companies and Securities Commission Act 1979*<sup>s</sup> is in this Part referred to as the Principal Act.

**Interpretation**

29. Section 3 of the Principal Act is amended by omitting from subsection (1) the definitions of "Northern Territory enactment" and "State Act".

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**NOTES**

1. No. 66, 1980, as amended. For previous amendments, see Nos. 3, 96 and 153, 1981; No. 26, 1982; No. 108, 1983; No. 13, 1984; No. 192, 1985; and No. 74, 1986.
2. No. 64, 1980, as amended. For previous amendments, see Nos. 2, 94 and 153, 1981; No. 26, 1982; No. 108, 1983; No. 192, 1985; and Nos. 68 and 74, 1986.
3. No. 89, 1981, as amended. For previous amendments, see No. 153, 1981; Nos. 26 and 80, 1982; No. 108, 1983; No. 13, 1984; Nos. 140, 192 and 193, 1985; and Nos. 68 and 163, 1986.
4. No. 68, 1980, as amended. For previous amendments, see Nos. 4, 98, and 153, 1981; No. 108, 1983; No. 13, 1984; and No. 192, 1985.
5. No. 173, 1979, as amended. For previous amendments, see Nos. 1 and 153, 1981; No. 108, 1983; No. 63, 1984; No. 192, 1985; and No. 74, 1986.

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[*Minister's second reading speech made in—  
House of Representatives on 18 February 1987  
Senate on 25 February 1987*]