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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SECURITIES INDUSTRY AMENDMENT

BILL (NO. 2) 1981

SECURITIES INDUSTRY (FEES) AMENDMENT

BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Business and
Consumer Affairs, the Honourable John Moore, M.P.)

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OUTLINE

Securities Industry Amendment Bill (No. 2) 1981

Securities Industry (Fees) Amendment Bill 1981

1. The Securities Industry Amendment Bill (No. 2) 1981 (hereafter referred to as 'the Amendment Bill') makes various amendments to the Securities Industry Act 1980, one of the initial Commonwealth Acts under the co-operative companies and securities scheme (further background on the Act and the scheme is at paras 5 to 12 of this explanatory memorandum).
2. The amendments in Part II of the Amendment Bill deal with various miscellaneous matters (see e.g. Amendment Bill cl 3 which provides for the inclusion of a definition of "insolvent under administration").
3. The amendments in Part III of the Amendment Bill are consequential on the enactment of the Companies Bill 1981. The Companies Bill, which will repeal the A.C.T. Companies Ordinance 1962, sets out the substantive provisions of the new companies code and applies those provisions in the A.C.T. Part III of the Amendment Bill alters references to provisions of the A.C.T. Companies Ordinance 1962 in the Securities Industry Act to references to the relevant provisions in the Companies Bill 1981, (see e.g. Amendment Bill cl. 29).
4. The Securities Industry (Fees) Amendment Bill 1981 amends the Securities Industry (Fees) Act 1980 to enable a fee to be prescribed for the submission of documents to the NCSC for examination by the NCSC.

PROPOSED NEW AUSTRALIAN SECURITIES INDUSTRY CODE

5. The remainder of this explanatory memorandum contains a brief outline of the co-operative companies and securities scheme and the Securities Industry Act 1980 (hereafter referred to as 'the Principal Act') and then deals sequentially with each clause of the Amendment Bill, and the Securities Industry (Fees) Amendment Bill.

Formal Agreement

6. On 22 December 1978 the Commonwealth and the six States executed a Formal Agreement that provided the framework for a co-operative Commonwealth-State scheme for a uniform system of law and administration in relation to company law and the regulation of the securities industry in the six States and the Australian Capital Territory.

7. Additional background material on the Formal Agreement and on the four basic elements of the co-operative companies and securities scheme are contained in paras 7 to 36 of the separate explanatory memorandum to the Companies Bill 1981.

8. The initial Commonwealth legislation under the scheme can be divided into five groups:

- the NCSC Act;
- the interpretation code;

- the new Australian code to regulate the acquisition of shares, etc. in companies;
- the new Australian securities industry code; and
- the new Australian companies code.

Proposed new Australian securities industry code

9. In accordance with the Formal Agreement the proposed new Australian securities industry code is based, with modifications, on the Securities Industry Acts of the four States which are parties to the Interstate Corporate Affairs Agreement (these Acts are hereafter referred to as 'ICAC SIAs').

10. Some of the more important modifications are as follows:

- (i) provisions have been included to allow evidence gathered in an examination to be admissible in both civil and criminal proceedings against the person examined (see Principal Act ss. 23 - 27);
- (ii) a power vested in the NCSC to prohibit trading of securities on a stock market has been included (see Principal Act s. 40);

- (iii) provisions dealing with conditions relating to a dealers licence have been extended (see Principal Act s. 51);
- (iv) a register of interests, required to be maintained under Part VII of the Act, will be able to be kept at any place in Australia covered by the scheme (see Principal Act s. 89);
- (v) provisions dealing with stock market manipulation have been re-drafted and provisions relating to the dissemination of information about illegal transactions have been included (see Principal Act ss. 123 and 127); and
- (vi) provisions dealing with court orders prohibiting persons subject to investigations from taking property out of the relevant State or Territory, and the power of the NCSC to intervene in proceedings and provisions dealing with injunctions, have been included (see Principal Act ss. 147 - 149).

11. The Securities Industry Act sets out the substantive provisions of the code and applies those provisions in the A.C.T. (see Principal Act s. 3). The substantive provisions of the legislation are in an appropriate form for application in any State or Territory by an Act of that State or Territory adopting these provisions as law of that State or Territory.

The legislation will be administered by the NCSC which, so far as practicable, will delegate its administrative responsibilities to the relevant corporate affairs office in each jurisdiction.

12. Following further work on the scheme legislation and, in particular, on the Companies Bill 1981 (hereafter referred to as the 'CB') it has become apparent that there is a need for amendment to the Securities Industry Act. The remainder of this explanatory memorandum deals, sequentially, with each clause of the Amendment Bill, and the Securities Industry (Fees) Amendment Bill 1981.

SECURITIES INDUSTRY AMENDMENT BILL (NO. 2) 1980

PART I - PRELIMINARY

Cl. 1 : Short title &c.

13. When enacted the Amendment Bill will be cited as the Securities Industry Amendment Act (No. 2) 1981 and the Securities Industry Act 1980 is referred to as the 'Principal Act' (Amendment Bill cl. 1).

Cl. 2 : Commencement

14. Part I of the Amendment Bill will come into operation on the day the Bill receives Royal Assent. Part II of the Amendment Bill will come into operation on a date fixed by Proclamation. It is intended that Part II of the Amendment Bill come into operation as early as possible after the Principal Act comes into operation, and once any necessary translator regulations have been made by the States (see para 23(c) of the separate explanatory memorandum to the CB). Part III of the Amendment Bill will come into operation on the day on which the CB comes into operation (Amendment Bill cl. 2).

PART II - MISCELLANEOUS AMENDMENTS

Cl. 3 : Interpretation

15. Section 4 of the Principal Act contains a series of definitions for the purposes of the code. A definition of

"insolvent under administration" will be included (Amendment Bill cl 3).

16. The definition of "insolvent under administration" will be same as that in CB s-cl 5(1). This definition is based on the definition of undischarged bankrupt in ICAC Cas s-sec 5(1) but has been modified so that persons who are undischarged bankrupts under the laws in force in any country which has bankruptcy provisions similar to those in force in Australia will be subject to the same prohibitions and limitations as bankrupts under Australian law. The meaning of "insolvent under administration" will also apply to persons whose financial affairs are subject to an administration under Part X of the Commonwealth Bankruptcy Act 1966 other than a deed of assignment, or under the corresponding provisions of a law of an external territory or a country other than Australia.

Cl. 4 : Relevant interests in securities

17. In conjunction with s. 4 of the Securities Industry Amendment Act 1981 (No. 3 of 1981), s. 5 of the Principal Act provides, among other things, that where a person has the power to exercise, or to control the exercise of, the voting power attached to no less than the prescribed percentage of the voting shares in a body corporate then:-

- (a) that person shall be deemed to have the same power as the body corporate in relation to securities in which it has the power set out in paras (a) or (b) of s-sec 5(4); and

- (b) the person will be deemed to have a relevant interest in any securities that the body corporate is deemed to have an interest in under s-sec 5(6).

18. The reference to "the prescribed percentage" will be amended to a reference to 20%, or if a lesser percentage is prescribed by regulation under s. 11 of the Companies (Acquisition of Shares) Act 1980, that lesser percentage (Amendment Bill cl 3). This amendment will bring the provisions relating to relevant interests into line with the corresponding provisions (s. 9) in the Companies (Acquisition of Shares) Act 1980 and will ensure that only one regulation will be required if the threshold figure is lowered.

19. Certain relevant interests are disregarded for the purposes of the Principal Act, including that of a person who has been appointed as a proxy or representative to vote at a meeting and who has not received consideration for the appointment (see Principal Act 5(8)(c)). This relevant interest will now be excluded where the only reason a person has a relevant interest is this appointment for a particular meeting (Amendment Bill cl 4).

Cl. 5 : Associated persons

20. Section 6 of the Principal Act sets out the circumstances in which one person will be deemed to be associated with another.

21. Certain legitimate commercial relationships are excluded from these provisions. These exclusions will be extended to a person who advises or acts on behalf of another person in performing functions attaching to his professional capacity or to his business relationship (Amendment bill cl 5 - proposed s-sec 6(4)).

Cl. 6 : Power of Commission to require production of books

22. The NCSC has a general power to require the production of books relating to the securities industry (Principal Act s. 8).

23. The powers of the NCSC or an authorised person to require the production of books will only be able to be exercised for purposes connected with functions or powers conferred by scheme legislation or where there is a contravention or suspected contravention of scheme legislation or an offence involving fraud (Principal Act s 8(1A)).

24. The power of the NCSC or an authorised person to require the production of books will be exercisable throughout Australia. The NCSC will not be able to require the production of books in performing its functions of making recommendations to the Ministerial Council for law reform under s-sec. 6(3) of the NCSC Act (Amendment Bill para 6(a)).

25. A person authorised by the NCSC to require the production of books will be able to specify a time and place at which the books are to be produced (Amendment Bill paras 6(c) and (d)).

26. A person will not be subject to any liability for complying with a direction to produce books made by the NCSC or an authorised person (Amendment Bill para 6(e) - proposed s-sec 8(6A)).

Cl. 7 : Power of Magistrate to issue a warrant to seize books

27. The amendments proposed to s 9 of the Principal Act will bring these provisions into line with equivalent provisions in the CB (see paras 82 to 83 of the separate explanatory memorandum to the CB).

28. A magistrate is empowered to issue a warrant if satisfied on an information laid before him that there are, on particular premises, books that have not been produced in compliance with s 8 of the Principal Act (Principal Act s 9).

29. The information to be laid before the magistrate will state that the informant suspects the the relevant books are on particular premises and contain specific grounds for that belief (Amendment Bill cl 7 - proposed s-sec 9(2)).

30. Where the magistrate issues a warrant he will endorse on the warrant which of the grounds contained in the information that he has relied upon, and he will also include particulars of any other grounds (Amendment Bill cl 7 - proposed s-sec 9(2A)).

31. The warrant will state the time for which it is to remain in force (7 days after the date of issue) and whether the entry is to be made by day or night or during specified hours of the day or night (Amendment Bill cl 7 - proposed s-sec 9(2B)).

Cl. 8 : Offences

32. Failing to comply without reasonable excuse with a requirement made under ss 8 or 9 of the Principal Act is an offence (Principal Act s 10).

33. It will be no excuse that an explanation of any matter relating to the books or their compilation made in accordance with ss 8 or 9 of the Principal Act might incriminate a person, but where a person claims before making a statement that it may incriminate him the explanation is not admissible evidence in criminal proceedings other than proceedings under this provision (Amendment Bill cl 8 - proposed s-sec 10(5)) - this amendment will bring this provisions into line with the equivalent provision in the CB (see CB s-cl 14(6)).

Cl. 4 : Copies or extracts of books to be admitted in evidence

34. The reference to Commissioner in s-sec 8(3) of the Securities Industry Amendment Act 1981 (no. 3 of 1981) has been omitted to correct a typographical error (Amendment Bill cl 9).

Cl. 10 : Privilege

35. A lawyer will be able to refuse to comply with a requirement of the NCSC or an authorised person (see Principal Act ss 8 and 9) in respect of a document that contains a privileged communication unless the person to whom or by whom or on behalf of whom the communication was made agrees to the lawyer's complying with the requirement (Principal Act s-sec 11(1)).

36. The lawyer may also refuse to comply if he is required to provide a statement explaining any matter relating to the books or their compilation, except that he must comply to the extent that he is able to provide the explanation without disclosing a privileged communication. If the lawyer refuses to produce the document or provide the explanation of the books he must if he knows the name and address of the person to whom or by whom the communication was made, furnish that name and address to the NCSC (Amendment Bill cl 10 - proposed s-sec 11(2). Similar provisions contained in CB cl 16).

Cl. 11 : Disclosure to NCSC

37. The provisions dealing with disclosure to the NCSC are set out in s 12 of the Principal Act. Amendments to these provisions, giving the NCSC additional powers to obtain information, were made in s 10 of the Securities Industry

Amendment Act 1981 (No 3 of 1981). Details of those amendments are in paras 30 to 39 of the separate explanatory memorandum to the Securities Industry Amendment Act 1981.

38. The penalty for failing to comply with a requirement of the NCSC under s 12 of the Principal Act will be increased to \$10,000 or imprisonment for 2 years (Amendment Bill para 11(b)) cl 11).

39. A person will not be subject to any liability for complying with a requirement made under s 12 of the Principal Act (Amendment Bill para 11(c) - proposed s-sec. 12(8)).

Cl. 12 : Conduct of investigations

40. Section 17 of the Principal Act deals with the conduct of special investigations. Under s-sec 17(9) certain certificates are prima facie evidence of the matters stated in the certificate and, where an investigation is being carried out by an inspector, that the inspector has been duly appointed.

41. Section 45 of the NCSC Act deals with delegations by the NCSC. The NCSC is able to delegate any of its functions or powers under co-operative scheme legislation either to a State or Territory administration or to an officer of that administration (NCSC Act s-sec 45(1)). The delegate will be able to authorise another person to perform any powers or functions delegated to the delegate (NCSC Act s-sec 45(4)).

42. The effect of s-sec 17(9) of the Principal Act and s-secs 45(1) and 45(4) of the NCSC Act is that a certificate by the NCSC, its delegate or a person authorised by a delegate is prima facie evidence of the relevant matters. The drafting change in cl 12 of the Amendment Bill will ensure that references to powers of the NCSC in the legislation are consistent.

Cl. 13 : Powers of inspectors

43. The powers of inspectors are set out in s 19 of the Principal Act. A lawyer will be able to attend his clients examination by an inspector, and he will be able to address the inspector and examine his client at such times during the examination as the inspector permits (Amendment Bill para 13(a)), provided that he does not obstruct the examination (Amendment Bill para 13(b) - proposed s-secs 19(12A) and (12B)).

44. These amendments will bring these provisions into line with similar provisions in CB cl 296.

Cl. 14 : Investigation deemed to be a proceeding

45. An investigation under Division 2 of Part II of the Principal Act is deemed to be a proceeding for the purposes of Part V of the Evidence Ordinance 1971 (Principal Act s 20). A drafting alteration will be made by omitting the words "of the Territory" (Amendment Bill cl 14).

Cl. 15 : Admissibility of record of examination in evidence in proceedings against persons examined

46. Evidence of a question asked an answer given at an examination of a person is admissible in evidence against the person examined in any civil or criminal proceedings (Principal Act s-sec 23(1)).

47. There are four exceptions relating to:

- (a) self-incrimination (in criminal proceedings);
- (b) relevance;
- (c) the record being misleading by virtue of associated evidence not having been tendered in the proceedings; and
- (d) the answer discloses matters that could be the basis for a claim of legal professional privilege.

48. To gain the advantage of exception (a), a person must claim before answering that the answer may incriminate him. To gain the advantage of exceptions (b) (c) or (d), the person must object to admission of the answer in evidence. (Amendment Bill cl 15 - proposed s-sec 23(2)). These provisions have been amended to bring them into line with equivalent provisions in CB cl 299.

CL. 16 : Power of court to order observance or enforcement of business rules or listing rules of stock exchange.

49. The power of the Supreme Court to give directions where a person has failed to comply with, observe, enforce or give effect to business or listing rules is dealt with in s 42 of the Principal Act.

50. Under s-sec 42(2) of the Principal Act a public listed company is deemed to be under an obligation to comply with the listing rules. The provision will be amended to ensure that this obligation continues as long as the company remains on the official list of a stock exchange, even though its securities may be suspended from quotation (Amendment Bill cl. 16 - proposed s-sec 42(2)).

Cl. 17 : Grant of dealers licence or investment advisers licence

51. The NCSC must grant a licence under s 48 of the Principal Act if the conditions referred to in that provision are satisfied. One of those conditions is that the applicant not be an "undischarged bankrupt" (Principal Act s-para 48(a)(i).

52. The reference to undischarged bankrupt will be omitted and substituted by "insolvent under administration" (Amendment Bill cl 17). This expression will be defined for the purposes of the Principal Act in s 4 of that Act (see Amendment Bill cl 3 and paras 15 to 16 of this explanatory memorandum).

Cl. 18 : Conditions to which licence is subject

53. A licence granted by the NCSC may be subject to conditions and restrictions (Principal Act s 51).

54. The NCSC may impose a condition that the holder of a dealers licence or an investment advisers licence lodge with the local authority a security not exceeding \$20,000 (Principal Act para 51(2)(d) as amended by Securities Industry Amendment Act 1981 (No. 3 of 1981) s 17). An additional provision will be included enabling the regulations to make provision for the discharge of all or part of this security (Amendment Bill cl 18 - proposed s-sec 51(9A)).

Cl. 19 : Revocation and suspension of licences

55. The NCSC will be able to revoke or suspend a licence in certain specified circumstances (Principal Act s 59). One of those circumstances relates to the bankruptcy etc of the holder of a licence (Principal Act s-para 59(1)(a)(i)). This circumstance will be amended to refer to a licence holder "who becomes an insolvent under administration" (Amendment Bill cl 19).

56. The expression "insolvent under administration" will be defined for the purposes for the Principal Act in s 4 of that Act (see Amendment Bil cl 3 and paras 15 to 16 of this explanatory memorandum).

Cl. 20 : Further provisions relating to revocation and suspension of licences

57. The NCSC will be able to revoke a licence in certain circumstances provided the licensee is given an opportunity for hearing under s 62 of the Principal Act (Principal Act s. 60). Under para. 60(1)(b) of the Principal Act the NCSC may revoke a licence where it is satisfied that the holder is not a fit and proper person to hold the licence.

58. The grounds for revocation will be altered from 'not a fit and proper person' to 'not performed the duties of a holder of such a licence efficiently, honestly and fairly' (Amendment Bill cl. 20). This amendment will ensure that this ground for revocation is similar to the conditions for granting a licence set out in paras 48(a), 48(b) and s-sec 49(1) of the Principal Act.

Cl. 21 : Defamation

59. Auditors and certain other persons are given qualified privilege under the laws of defamation in respect of statements and reports of auditors in course of their duties (Principal Act s 81).

60. This provision has been redrafted to bring it into line with a similar provision in CB cl 30 (Amendment Bill cl 21).

Cl. 22 : Power of NCSC to require certain information to be supplied to NCSC

61. The NCSC will be able, by written notice, to require the proprietor or publisher of a newspaper or periodical to supply the name and address of a person who contributed to or prepared any article, analysis or report concerning securities (Principal Act s-sec 93(1)).

62. A drafting alteration will be made to s-sec 93(1) of the Principal Act by the insertion of the words "or periodical" in the second last line of that provision (Amendment Bill cl. 22).

Cl. 23 : Prohibition of dealings in securities by insiders

63. Section 128 of the Principal Act prohibits insider trading as defined in the section. In brief, a person will be prohibited from dealing in securities in three sets of circumstances:-

- (a) If he is or has been in the past 6 months, connected with a body corporate and has price sensitive information in relation to that body corporate as a result of his connection he must not deal in its securities (Principal Act s-sec 128(1)).

- (b) If he is or has been in the past 6 months connected with a body corporate and, as a result of his connection, has price sensitive information in relation to a second body corporate, he must not deal in securities of the second body corporate (Principal Act s-sec 128(2)).

- (c) If he is not otherwise prohibited, he must not deal in securities where he has price sensitive information about them if:
 - (i) he obtained the inside information from another person and is aware or ought to be aware that that person is prohibited from dealing; and

 - (ii) when the information was obtained he was associated with the other person or had an arrangement with him for the communication of such information with a view of dealings by him and/or the other person

(Principal Act s-sec 128(3)).

64. In relation to the second set of prohibitions, a person will be regarded as connected with a body corporate for the purpose of the provisions relating to insider trading if, being an individual -

- (a) he is an officer of that body corporate or a related body corporate;
- (b) he is a substantial shareholder (within the meaning of Division 3A of Part IV of the ACT Companies Ordinance) of that corporation or a related corporation; or
- (c) he occupies a position that may reasonably be expected to give him, by virtue of a professional or business relationship or by virtue of being an officer of a substantial shareholder (within the meaning of Division 3A of Part IV of the ACT Companies Ordinance), access to information of a kind to which s-secs 128(1) and (2) apply (Principal Act s-sec. 128(8)).

65. A person is regarded as connected with a body corporate if he is an officer of that body corporate or a related body corporate (see para 64 of this explanatory memorandum). The definition of "officer" (Principal Act s-sec 128(11)) will be amended to include a person who is an executive officer. An officer will include a trustee etc administering a compromise or scheme of arrangement made between a body corporate and other persons (Amendment Bill cl 23).

Cl. 24 : Compensation for loss, &c

66. Section 130 of the Principal Act provides for the payment of compensation in certain circumstances to persons who suffer losses from some of the contraventions of the basic prohibitions in relation to trading in securities (see ss. 123 to 128 of the Principal Act).

67. Similar changes as those in Amendment Bill cl 23 will be made to the definition of 'officer' in Principal Act s 130 (Amendment Bill cl 24).

Cl. 25 : False or misleading statements

68. A person will be prohibited from making a false or misleading statement in an application for a licence and from lodging a document that contains a false or misleading statement (Principal Act s 135).

69. Alterations to this provision will make it clear that a person making an application for a licence will be prohibited from:-

- (a) making a false or misleading statement; or
- (b) knowingly omitting to state any matter which will make the application misleading.

(Amendment Bill cl 25).

70. The offence in relation to omitting has been changed from "wilfully" to "knowing". This will ensure consistency with similar provisions in the CB (see e.g. CB cl. 563).

Cl. 26 : Falsification of records

71. A person will be prohibited from recording false material, destroying recorded matter or not recording matter that is required to be used in connection with the keeping of a book under the Principal Act (Principal Act s. 138).

72. The word 'wilfully' will be omitted from the offence (Amendment Bill cl. 26).

Cl. 24 : Offences by bodies corporate

73. An officer of a body corporate who was in any way knowingly concerned in the commission of an offence by the body corporate is also guilty of that offence (Principal Act s 143).

74. The definition of 'officer' will be amended so that the reference will be to a trustee etc administering a compromise or arrangement made between the body corporate and 'another person or other persons' (Amendment Bill cl 27).

Cl. 28 : Injunctions

75. The power of the Supreme Court in s 149 of the Principal Act to grant an injunction restraining a person from engaging in certain conduct will be amended to include a power

to grant an injunction requiring that person to do any act or thing if the Court thinks it desirable (Amendment Bill para 28(a)).

76. The Supreme Court will be able to grant an injunction requiring a person to do an act or thing where refusal or failure to do that act or thing would be an offence against the Principal Act on the application of the NCSC or a person affected by the refusal or failure (Amendment Bill para 28(b) - proposed s-sec 149(1A)).

77. The Court will have a wide discretion in exercising its power to grant an injunction requiring a person to do a particular act or thing (Amendment Bill para 28(d) - proposed s-sec 149(4A)).

78. The Supreme Court will also be empowered to award damages either in substitution or addition to the granting of an injunction (Amendment Bill para 28(e) - proposed s-sec 149(6)).

79. The amendments to s 149 of the Principal Act will bring these provisions into line with similar provisions in CB cl. 574.

PART III - AMENDMENTS CONSEQUENTIAL ON ENACTMENT OF COMPANIES

ACT 1981

80. The amendments contained in Part III will come into operation when the CB comes into operation (see Amendment Bill s-cl. 2(3)).

Cl. 29 : Interpretation

81. Section 4 of the Principal Act contains a series of definitions for the purposes of the Securities Industry Act.

Three of these definitions refer to the A.C.T. Companies Ordinance:-

- (a) - 'exempt dealer' means, among other things,:-
 - '(a) a corporation that is declared, pursuant to paragraph 38(7)(b) of the Companies Ordinance 1962 to be an authorized dealer in the short term money market;'
- (b) - 'registered company auditor' has the same meaning as in the Companies Ordinance 1962; and
- (c) - references in s-sec 4(7) to related bodies corporate.

82. These references to the "Companies Ordinance 1962" and "that ordinance" will be changed to references to the 'Companies Act 1981' and "that Act" (Amendment Bill cl. 29).

Cl. 30 : Disclosure to NCSC

83. Under s. 10 of the Securities Industry Amendment Act 1981 (no. 3 of 1981), the NCSC has been given extra powers to obtain information concerning any dealing in securities. Among other things, these powers may be exercised where the NCSC considers that a person may have contravened the substantial shareholder provisions of the ACT Companies Ordinance (Principal Act para 12(3A)(c)). The reference in para. 12(3A)(c) of the Principal Act to "Division 3A of Part IV of the Companies Ordinance 1962" will be replaced by a reference to "Division 4 of Part IV of the Companies Act 1981" (Amendment Bill cl. 30). In each case, the Division referred to is the Division dealing with substantial shareholdings. A similar amendment will be made to s. 128 of the Principal Act dealing with insider trading (see Amendment Bill cl. 38).

Cl. 31 : Grant of dealers licence or investment advisers
licence

84. Section 48 of the Principal Act is concerned with the granting of a dealers licence or an investment advisers licence. Among other things a body corporate cannot obtain a licence if it is under official management, in the course of being wound up, or has had a receiver (or a receiver and manager appointed)

under the existing Companies legislation of the 6 States or 2 mainland Territories (Principal Act s-paras 48(b)(i) and (ii)). These prohibitions will now apply where the same circumstances arise under the CB wherever it is in force as well as under the existing State and Territory companies legislation (Amendment Bill cl. 31).

Cl. 32 : Dealings as principal

85. Section 66 of the Principal Act prohibits, except in certain circumstances, a dealer from dealing as principal unless he first informs the person with whom he is dealing, that he is acting as principal in the transaction and not as agent. The prohibition (see Principal Act s-sec. 66(4)) on a dealer charging brokerage, commission or any other fee when he enters into a transaction as principal with a person who is not a dealer does not apply in relation to a dealer who:-

- (a) enters into a transaction as principal under an approved deed within the meaning of the 'interest' provisions of the A.C.T. Companies Ordinance (Division 5 of Part IV); and
- (b) charges brokerage etc in accordance with that approved deed. (Principal Act s-sec. 66(6)).

86. The reference (in Principal Act s-sec 66(6)) to the interest provisions of the Companies Ordinance will be changed to a reference to the 'prescribed interest' provisions (Division 6 of Part IV) of the CB(Amendment Bill cl. 32).

Cl. 33 : Appointment of auditor by dealer

87. There will be new provisions relating to the appointment of an auditor by a dealer (Amendment Bill cl 33 - replacing Principal Act s 75). These provisions will bring the Principal Act into line with corresponding provisions in CB cl 277.

88. This provision is based on ICAC SIAs s. 61 but with the following modifications :-

- (a) The amount of permitted indebtedness has been increased from \$2000 to \$5000 (proposed paras 75(2)(e) and (5)(f)).
- (b) A person will be disqualified from acting as auditor of a dealer if any body corporate in which that auditor has a substantial shareholding is indebted to the dealer in an amount exceeding \$5000 (proposed para 75(2)(e)).

- (c) A firm will be disqualified from acting as auditor of a dealer if a member of the firm or if a body corporate in which any member of the firm is a substantial shareholder owes the dealer an amount exceeding \$5000 (proposed para 75(3)(f)).

- (d) The prohibitions on the level of indebtedness to a body corporate will not include indebtedness to a banking or life insurance corporation where the indebtedness arose as a result of a loan made by the body corporate in the ordinary course of its ordinary business for the purchase price of premises to be used by the person as his principal place of residence (proposed s-sec 75(4)).

- (e) It will no longer necessary for all members of a firm to be registered company auditors (proposed para 75(3)(d)).

- (f) The provisions of proposed s. 75 will not apply to a body corporate in relation to which CB cl 280 applies (CB cl 280 deals with the appointment of auditors by a company) (proposed s-sec 75(19)).

Cl. 34 : Removal and resignation of auditors

89. Section 76 of the Principal Act deals with the removal and resignation of a dealer's auditor.

90. Two typographical errors in s-secs 76(4) and (5) the Principal Act are corrected (Amendment Bill paras 34(a) and 34(b)).

91. The provisions in s 76 of the Principal Act will not apply to a body corporate in relation to which CB cl 282 applies (CB cl 282 deals with the removal and resignation of auditors) (Amendment Bill para 34(c)).

Cl. 35 : Dealers' accounts

92. Section 78 of the Principal Act requires persons who carry on a business of dealing in securities to prepare accounts and lodge them with the NCSC in relation to each financial year. Where the person is a body corporate the financial year is its 'financial year' within the meaning of the A.C.T. Companies Ordinance (Principal Act s-sec 78(1)). That Ordinance (in s-sec 5(1)) defines 'financial year', in relation to a corporation, to mean:-

'the period in respect of which any profit and loss account of the corporation laid before it in general meeting is made up, whether that period is a year or not;'

The reference in s-sec. 78(1) of the Principal Act will be changed from "Companies Ordinance 1962" to "Companies Act 1981" (Amendment Bill cl. 35).

93. The CB (in s-cl. 5(1)) also defines 'financial year'. This definition was inserted to enable the obligation to prepare accounts under cl. 269 to be expressed as a requirement to cause accounts to be made out in respect of an identifiable period viz., 'a financial year' and to take account of the decision of the VIC Supreme Court in Jensen v. Viney (1979) V.R. 597.

Cl. 36 : Deposits to be invested by stock exchange

94. Each sole trader and member firm is required by s. 95 of the Principal Act to lodge a deposit with its home stock exchange. (The fidelity fund of the stock exchange will consist, among other things, of the interest that the stock exchange receives from these deposits). The deposits received by a stock exchange must be held on trust for the sole trader or member from lodging it and must be invested either on interest bearing term deposit or on deposit with an authorised short term money market dealer declared under para 38(7)(b) of the A.C.T. Companies Ordinance (Principal Act s-sec 97(1)).

95. The following corporations have been so declared:-

All States Discount Limited
A.M.P. Discount Corporation Limited
A.U.C. Discount Limited

Capel Court Securities Limited
Delphin Discount Company Limited
First Federation Discount Company Limited
National Discount Corporation Limited
Short Term Acceptance Limited
Trans City Discount Limited.

96. The reference to a declaration (by the Minister) under para 38(7)(b) of the A.C.T. Companies Ordinance will be changed to a reference to a declaration by the NCSC under the corresponding provision (para 97(7)(b)) of the proposed CB (Amendment Bill cl. 36).

Cl. 37 : Investment of fund

97. Moneys held by the stock exchange in its fidelity fund that are not immediately required may be invested in 'trustee' investments or on deposit with authorised short term money market dealers declared under para 38(7)(b) of the A.C.T. Companies Ordinance (Principal Act s. 110). A list of the dealers so declared is at para 95 of this explanatory memorandum.

Cl. 38 : Prohibition of dealings in securities by insiders

98. Background on s 128 of the Principal Act is set out in paras 63 to 64 of this explanatory memorandum.

99. The reference in Principal Act s-sec 128(8) to the substantial shareholding provisions of the A.C.T. Companies Ordinance (Division 3A of Part IV) will be changed to references to the corresponding provisions (Division 4 of Part IV) of the CB (Amendment Bill cl. 38). Similar amendment will be made to s. 12 of the Principal Act dealing with disclosure to the NCSC (see Amendment Bill cl. 30).

Cl. 39 : Compensation for loss &c

100. Background on s 130 of the Principal Act is set out in para 66 of this explanatory memorandum.

101. Where an insider has been found liable to pay moneys under para 124(3)(a) of the ACT Companies Ordinance in respect of the same act or transaction, the amount of compensation that is to be paid is reduced by the amount that the insider is liable to pay under para 124(3)(a) of the Ordinance (Principal Act para 130(3)(b)). This provision will be amended so that it now also applies to amounts that the insider is liable to pay under the corresponding provision (s-cl. 229(5)) of the CB (Amendment Bill cl. 39).

SECURITIES INDUSTRY (FEES) AMENDMENT BILL 1981

102. The fees that will be charged in connexion with the Securities Industry Act will be set out in regulations to be made under the Securities Industry (Fees) Act 1980.

Cl. 1 : Short title

103. When enacted the Bill will be cited as the Securities Industry (Fees) Amendment Act 1981.

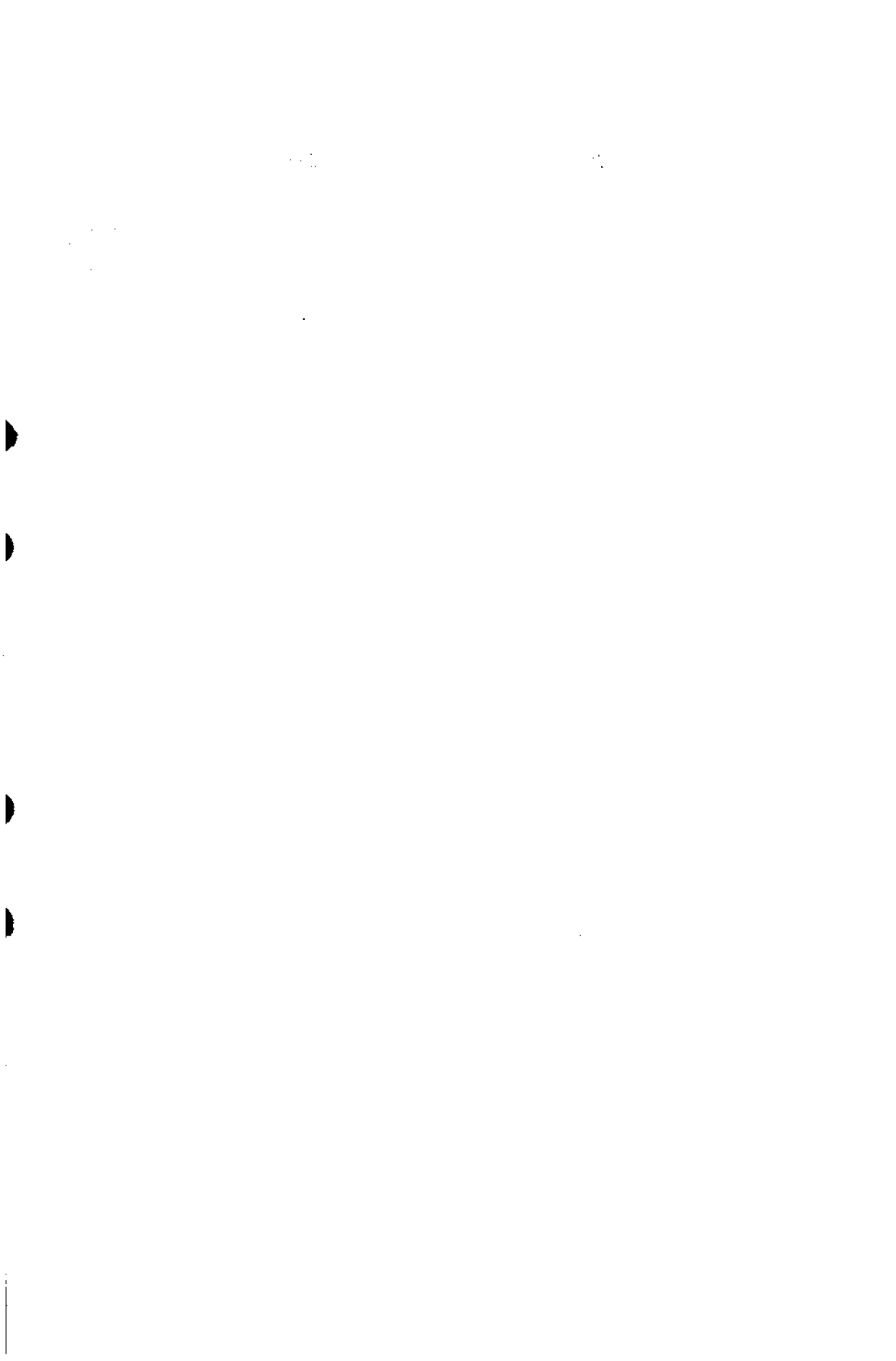
Cl. 2 : Commencement

104. The Bill will come into operation on a date fixed by Proclamation.

Cl. 3 : Fees payable

105. The fees payable are those that will be prescribed under s. 4 of the Securities Industry (Fees) Act 1980.

106. In addition to those fees, a fee will be prescribed for submitting documents to the NCSC for examination by the NCSC. This amendment will bring these provisions into line with corresponding provisions in the Companies (Fees) Bill.





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