

FIRST PRINT

**FUTURES INDUSTRY (APPLICATION OF LAWS) BILL
1986**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

National Companies and Securities Commission (State Provisions) Amendment Bill 1986;

Securities Industry (Application of Laws) Amendment Bill 1986.

The proposed Futures Industry Act 1986 of the Commonwealth ("the Commonwealth Futures Industry Act") is intended to regulate the establishment and maintenance of futures markets in the Australian Capital Territory. It will also regulate dealing in futures contracts otherwise than on their own account in that Territory by requiring persons who deal in futures contracts or act as futures advisers, and persons who are employed by dealers or advisers, to hold licences. The proposed Commonwealth Futures Industry Act also regulates other aspects of the futures industry in the Territory such as requiring dealers in futures contracts to keep segregated accounts and maintain proper accounting records.

An agreement between the Commonwealth and the States made on 22 December 1978 provides for the Commonwealth and the States to make uniform laws relating to companies and securities matters. The agreement has since been extended to cover the futures industry. In accordance with the agreement (as amended), it has been agreed by the Ministerial Council established under the agreement that the provisions of the proposed Commonwealth Futures Industry Act should be given legislative effect, with appropriate modifications, in each of the States and the Northern Territory.

The object of this Bill is to provide for the adoption, as laws of New South Wales, of the provisions of the proposed Commonwealth Act and the provisions of certain regulations that are expected to be made under that Act. This Bill further provides for the adoption in New South Wales of the fees set out in the Schedule to the Futures Industry (Fees) Regulations (the "Commonwealth Fees Regulations") that are expected to be made under the authority of the proposed Futures Industry (Fees) Act 1986 of the Commonwealth. Also under the Bill the provisions as so applied may be reprinted in the form in which they apply to New South Wales. It is further provided that the provisions of the Commonwealth Futures Industry Act so applying may be cited as the "Futures Industry (New South Wales) Code".

Clause 1 specifies the short title of the Bill.

Clause 2 provides that the Bill will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is an interpretation provision for the provisions of the proposed Act. In particular, the expression "the applied provisions" is defined as the proposed Commonwealth Futures Industry Act applying as laws of New South Wales by virtue of the proposed sections 5 and 6 of the Bill.

Clause 4 provides that the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981 applies to the proposed Futures Industry (New South Wales) Code. The effect is that the provisions of the proposed Code will be interpreted in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code.

Clause 5 applies the provisions of the proposed Commonwealth Futures Industry Act as laws of New South Wales, with the modifications set out in Schedule 1.

Clause 6 applies provisions of the regulations in force under the proposed Commonwealth Futures Industry Act as regulations made under the provisions applying by virtue of clause 5, with modifications to those regulations as set out in Schedule 2.

Clause 7 requires fees to be paid out to the Corporate Affairs Commission in respect of documents lodged and other matters connected with the National Companies and Securities Commission. The fees that will apply in New South Wales will be the same as those applying in the Australian Capital Territory by virtue of the proposed Commonwealth Fees Regulations. (These regulations will be made under the authority of the proposed Futures Industry (Fees) Act 1986 of the Commonwealth.)

Clause 8 empowers regulations to be made by the Governor-in-Council which are to have the effect of varying the provisions of regulations applying by virtue of clause 6.

Clauses 9–11 authorise the application of the various “applied laws” in the form of documents as they will apply in New South Wales. These documents will respectively be called the “Futures Industry (New South Wales) Code”, the “Futures Industry (New South Wales) Regulations” and the “Futures Industry (Fees) (New South Wales) Regulations”.

Clause 12 authorises the publication of provisions of the applied laws following amendments of the proposed Commonwealth Futures Industry Act 1986. The clause also authorises the publication of the fees (as set out in the Commonwealth Fees Regulations) that will be payable under clause 7.

Clause 13 provides that a reference in any State law to a provision of the proposed Futures Industry (New South Wales) Code, the proposed Futures Industry (New South Wales) Regulations or the Schedule to the proposed Futures Industry (Fees) (New South Wales) Regulations is to be construed as a reference to the provision of the proposed Commonwealth Futures Industry Act applying by virtue of clause 5, the regulations made under that Act applying by virtue of clause 6 or, as the case may be, the Schedule to the Commonwealth Fees Regulations.

Clause 14 enables certain amendments to the Bill to be made by regulations if the Ministerial Council agrees.

Clause 15 repeals those enactments specified in Schedule 7 to the Bill.

Clause 16 gives effect to Schedule 8 which contains provisions of a savings or transitional nature.

Schedule 1 makes certain necessary modifications to the provisions of the proposed Commonwealth Futures Industry Act for the purpose of enabling those provisions to be applied as laws of New South Wales.

Schedules 2 and 3 make certain necessary modifications to the provisions of regulations made under the proposed Commonwealth Futures Industry Act and the Schedule to the proposed Commonwealth Fees Regulations for the purpose of enabling those provisions to be applied as laws of New South Wales.

Schedules 4–6 specify the headings and preliminary provisions to be included in the provisions to be published under clauses 9–11.

Schedule 7 specifies the enactments that will be repealed by clause 15. These enactments are the Futures Markets Act 1979 and the Futures Markets (Amendment) Act 1982.

Schedule 8 provides for certain savings and makes certain transitional arrangements. In the main, these are consequential on the repeal of the Futures Markets Act 1979. One of the clauses of the Schedule provides for an existing futures exchange to be treated as an “approved futures exchange” for the purposes of the proposed Futures Industry (New South Wales) Code and another provides for the International Clearing House Limited to be regarded as an “approved clearing house” for the purposes of that Code.

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**FUTURES INDUSTRY (APPLICATION OF LAWS) BILL
1986**

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act relating to the futures industry in New South Wales.

See also National Companies and Securities Commission (State Provisions) Amendment Bill 1986; Securities Industry (Application of Laws) Amendment Bill 1986.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

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PART 1

PRELIMINARY

Short title

1. This Act may be cited as the "Futures Industry (Application of Laws) Act 1986".

10 **Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation
15 published in the Gazette.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

20 "Agreement" means the agreement made on 22 December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry, as amended or affected by subsequent agreements;

25 "Commission" or "National Commission" means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth;

"Ministerial Council" means the Ministerial Council for Companies and Securities established by the Agreement;

30 "State Commission" means the Corporate Affairs Commission continued in existence by the Corporate Affairs Commission Act 1981;

"the applied provisions" means the provisions applying by reason of sections 5 and 6;

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“the Commonwealth Act” means the Futures Industry Act 1986 of the Commonwealth.

(2) In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

Interpretation of Futures Industry (New South Wales) Code

4. The Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981 applies to the Futures Industry (New South Wales) Code.

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PART 2

APPLICATION OF LAWS

Application of Commonwealth Act

5. Subject to this Act, the provisions of the Commonwealth Act (other than sections 1, 2 and 3) apply—

15

(a) as if amended as set out in Schedule 1; and

(b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981,

as laws of New South Wales.

20 Application of Futures Industry Regulations

6. Subject to this Act, the provisions of regulations in force for the time being under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) apply—

(a) as if amended as set out in Schedule 2; and

25

(b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981,

as regulations made under the provisions applying by reason of section 5.

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Fees payable

7. (1) There shall be paid to the State Commission, for and on behalf of the State, for or in respect of—

- 5 (a) the lodgment of documents with the National Commission under the applied provisions;
- (b) the registration of documents under the applied provisions or the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- 10 (c) the production by the National Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the issuing of documents or copies of documents, the granting of licences, consents or approvals or the doing of other acts or things
15 by the Ministerial Council or the National Commission under the applied provisions;
- (e) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- 20 (f) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Futures Industry (Fees) Act 1986 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in
25 Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of the lodgment of a document with the National Commission and the document is submitted
30 for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.

(3) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of any matter involving the doing of any act or thing by the Ministerial Council or the National
35 Commission, the Ministerial Council or the National Commission shall not do that act or thing until the fee has been paid.

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(4) This section has effect notwithstanding anything contained in the applied provisions.

(5) Nothing in this section prevents the State Commission for and on behalf of the State from—

- 5 (a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section; or
- (b) refunding in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.

10 (6) In this section, unless the contrary intention appears, expressions used have the same respective meanings as in the applied provisions.

Amendment of regulations pursuant to Agreement

8. (1) Where, under the Agreement, the Ministerial Council approves a proposed amendment of the regulations in force for the time being under the Commonwealth Act or the Futures Industry (Fees) Act 1986 of the Commonwealth and, on the expiration of 6 months after the date on which the Ministerial Council so approved, the amendment has not been made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason, the Governor may make regulations in accordance with the proposed amendment approved by the Ministerial Council amending the provisions of regulations applying by reason of section 6 or the regulations referred to in section 7, as the case may be.

(2) Regulations made by the Governor under subsection (1) may amend Schedule 2 or 3, and that Schedule as so amended shall be Schedule 2 or 3, as the case may be, to this Act.

25 (3) In this Act—

- (a) a reference to provisions of regulations applying by reason of section 6 includes a reference to provisions as so applying as amended in accordance with this section; and
- 30 (b) a reference to fees prescribed by regulations under the Futures Industry (Fees) Act 1986 of the Commonwealth includes a reference to those regulations as amended in accordance with this section.

Publication of Futures Industry (New South Wales) Code

9. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2 and 3), amended as set out in Schedule 1 and in
5 operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

(a) shall include the headings and sections set out in Schedule 4;

10 (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;

(c) shall include a statement of the date on which the Minister authorized the publication; and

(d) may be cited as the "Futures Industry (New South Wales) Code".

15 (3) A document that is, or purports to be, a copy of the Futures Industry (New South Wales) Code that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Commonwealth Act applying by reason of section 5 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

20 Publication of Futures Industry (New South Wales) Regulations

10. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations), amended as set out in Schedule 2 and
25 in operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

(a) shall include the heading and provisions set out in Schedule 5;

30 (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;

(c) shall include a statement of the date on which the Minister authorized the publication; and

(d) may be cited as the "Futures Industry (New South Wales) Regulations".

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(3) A document that is, or purports to be, a copy of the Futures Industry (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions applying by reason of section 6 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

Publication of Futures Industry (Fees) (New South Wales) Regulations

11. (1) The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the Futures Industry (Fees) Act 1986 of the Commonwealth, amended as set out in Schedule 3 and in operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

- (a) shall include the heading and provisions set out in Schedule 6;
- 15 (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- 20 (d) may be cited as the "Futures Industry (Fees) (New South Wales) Regulations".

(3) A document that is, or purports to be, a copy of the Futures Industry (Fees) (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Schedule to regulations referred to in section 7 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

Publication of provisions of amended Code or regulations

12. (1) The Minister may from time to time authorize the publication by the Government Printer of a document setting out—

- (a) provisions that by reason of—
 - (i) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and
 - 35 (ii) the operation of section 5 (including the operation, if applicable, of Schedule 1),

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apply, or will apply, as laws of New South Wales;

(b) provisions that by reason of—

(i) regulations under the Commonwealth Act; and

(ii) the operation of section 6 (including the operation, if applicable, of Schedule 2),

apply, or will apply, as regulations made under the provisions applying by reason of section 5; or

(c) fees that by reason of—

(i) regulations under the Futures Industry (Fees) Act 1986 of the Commonwealth; and

(ii) the operation of section 7 (including the operation, if applicable, of Schedule 3),

are, or will be, payable under that section.

(2) A document published under subsection (1) shall include a notification of the date, or dates, on which the provisions or fees set out in the document came, or come, into operation in New South Wales.

(3) A document that has been, or purports to have been, published in accordance with this section is prima facie evidence of provisions or fees referred to in subsection (1) set out in the document.

20 Interpretation of references to the applied provisions

13. (1) Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under this or any other Act or in any other document made by or under the authority of, or for the purposes of, a law of New South Wales—

(a) a reference to the Futures Industry (New South Wales) Code is a reference to the provisions of the Commonwealth Act applying by reason of section 5;

(b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying;

(c) a reference to the Futures Industry (New South Wales) Regulations is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 6;

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- (d) a reference to a provision of those regulations is a reference to the corresponding provision of the regulations in force under the Commonwealth Act as so applying;
- 5 (e) a reference to the Futures Industry (Fees) (New South Wales) Regulations is a reference to the Schedule to regulations prescribing fees in force under the Futures Industry (Fees) Act 1986 of the Commonwealth as referred to in section 7; and
- 10 (f) a reference to a provision of that Schedule is a reference to the corresponding provision of the Schedule to regulations prescribing fees in force under that Act as referred to in section 7.

(2) In subsection (1), "provision" includes Part, Division, section, subsection, paragraph, sub-paragraph, Schedule, form, regulation, clause, sub-clause and other division.

Amendment of certain provisions in accordance with approval of Ministerial Council

14. Where, under the Agreement, the Ministerial Council—

- (a) approves—
- 20 (i) a proposed amendment of the Commonwealth Act;
- (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);
- (iii) a proposed amendment of the Futures Industry (Fees) Act 1986 of the Commonwealth; or
- 25 (iv) regulations proposed to be made under the Act referred to in subparagraph (iii) (whether or not amending other regulations); and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),

30 the Governor may make regulations amending Schedule 1, 2 or 3 or section 7, as the case may be, in accordance with that approval, and that Schedule or section as so amended shall be Schedule 1, 2 or 3 or section 7, as the case may be, of this Act.

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PART 3

MISCELLANEOUS PROVISIONS

Repeals

15. The Acts specified in Schedule 7 are repealed.

5 Savings and transitional provisions

16. Schedule 8 has effect.
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SCHEDULE 1

(Sec. 5)

MODIFICATIONS TO THE COMMONWEALTH ACT

- 10 The provisions of the Commonwealth Act apply as if—
1. unless inconsistent with another provision of this Schedule—
- (a) for the words “this Act” in the Commonwealth Act (wherever occurring except where occurring in conjunction with the words “commencement of”) there were substituted the words “this Code”;
- 15 (b) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “New South Wales”;
- (c) for the words “law of a participating State or participating Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in a participating State or in a participating Territory”;
- 20 (d) for the words “law of a State or of another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in another State or in a Territory”;
- (e) for the words “law of a State or Territory” (wherever occurring) there were substituted the words “law in force in a State or in a Territory”;
- 25 (f) for the words “commencement of this Act” in the Commonwealth Act (wherever occurring) there were substituted the matter “commencement of the Futures Industry (Application of Laws) Act 1986”;
- (g) for the words “of a participating State or of” in the Commonwealth Act (wherever occurring) there were substituted the words “in force in a participating State or in”;
- 30 (h) for the words “relevant Act” in the Commonwealth Act (wherever occurring) there were substituted the words “relevant Code”;

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SCHEDULE 1—*continued*

MODIFICATIONS TO THE COMMONWEALTH ACT—*continued*

- (i) after the matter "*Banking Act 1959*" in the Commonwealth Act (wherever occurring) there were inserted the words "of the Commonwealth";
- (j) after the matter "*Bankruptcy Act 1966*" in the Commonwealth Act (wherever occurring) there were inserted the words "of the Commonwealth";
- 5 (k) after the matter "*National Companies and Securities Commission Act 1979*" in the Commonwealth Act (wherever occurring) there were inserted the words "of the Commonwealth";
- (l) for the matter "*Securities Industry Act 1980*" in the Commonwealth Act (wherever occurring) there were substituted the words "Securities Industry
10 (New South Wales) Code";
- (m) for the matter "*Companies Act 1981*" in the Commonwealth Act (wherever occurring) there were substituted the words "Companies (New South Wales) Code";
2. in section 4 (1) of the Commonwealth Act—
- 15 (a) after the definition of "commodity agreement" there were inserted the following definition:
- "Commonwealth Minister" means the Minister of State for the Commonwealth for the time being administering the *Futures Industry Act 1986* of the Commonwealth;
- 20 (b) after the definition of "futures exchange" there were inserted the following definition:
- "Futures Industry (New South Wales) Code" or "Code" means the provisions applying by reason of section 5 of the *Futures Industry (Application of Laws) Act 1986*;
- 25 (c) in the definition of "local recognised futures exchange" for the words "law of that State or Territory" there were substituted the words "law in force in that State or Territory";
- (d) after the definition of "local recognised futures exchange" there were inserted the following definition:
- 30 "Minister" means the Minister of State for New South Wales for the time being administering the *Futures Industry (Application of Laws) Act 1986*;
- (e) after the definition of "registered company auditor" there were inserted the following definition:
- 35 "regulations" means the provisions applying as regulations made under this Code by reason of section 6 of the *Futures Industry (Application of Laws) Act 1986*;

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SCHEDULE 1—*continued*

MODIFICATIONS TO THE COMMONWEALTH ACT—*continued*

3. in section 4 (6) of the Commonwealth Act after the matter “Act 1974” there were inserted the words “of the Commonwealth”;
4. in section 4 (11) of the Commonwealth Act for the words “that Act” there were substituted the words “that Code”;
- 5 5. after section 4 (11) of the Commonwealth Act there were inserted the following sub-sections:
- (12) In this Code, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.
- 10 (13) In this Code—
- (a) a reference to a previous law, or provision of a previous law, or previous enactment, of New South Wales corresponding to, or to a provision of, the Companies (New South Wales) Code includes a reference to, or to a provision of, the Companies Act 1961; and
- 15 (b) a reference to a previous law, or provision of a previous law, or previous enactment, of another State or of a Territory corresponding to, or to a provision of, the Companies (New South Wales) Code includes a reference to, or to a provision of, the law in force in that State or Territory corresponding to the Companies Act 1961.
- 20 6. in sections 10 (3), 23, 41, 49 and 52 of the Commonwealth Act after the word “Gazette” (wherever occurring) there were inserted the words “and the *Government Gazette*”;
7. in section 13 (1) (a) (i) of the Commonwealth Act there were omitted the matter “(other than the exercise of a power of the Commission under sub-section 6 (3) of the
- 25 *National Companies and Securities Commission Act 1979*”;
8. in section 14 (1) of the Commonwealth Act for the words “Australian Federal Police” there were substituted the words “police force of New South Wales”;
9. in section 21 of the Commonwealth Act for paragraph (a) of the definition of “relevant authority” in sub-section (1) there were substituted the following paragraphs:
- 30 (a) in the case of a direction given by the Commonwealth Minister other than a direction that has been approved by the Ministerial Council under sub-section 22 (6)—the Commonwealth Minister;
- (aa) in the case of a direction given by the Minister other than a direction that has
- 35 been approved by the Ministerial Council under sub-section 22 (6)—the Minister; or

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SCHEDULE 1—*continued*

MODIFICATIONS TO THE COMMONWEALTH ACT—*continued*

10. in section 22 of the Commonwealth Act—
- (a) in sub-section (2) for the words “the Minister” (where twice occurring) there were substituted the words “the Commonwealth Minister”;
 - 5 (b) in sub-section (4) for the words “request the Minister in writing to exercise the Minister’s powers under sub-section (1) or (2)” there were substituted the words “, in writing, request the Minister to exercise the Minister’s powers under sub-section (1), or request the Commonwealth Minister to exercise that Minister’s powers under sub-section (2),”;
 - 10 (c) in sub-section (6) for the matter “or (2)” there were substituted the matter “, or by the Commonwealth Minister under sub-section (2)”;
11. section 25 (3) of the Commonwealth Act were repealed;
12. in section 26 of the Commonwealth Act for the matter “Part V of the *Evidence Ordinance 1971*, be deemed to be a proceeding” there were substituted the matter “Part IV of the Evidence Act 1898 be deemed to be a legal proceeding”;
- 15 13. in section 36 of the Commonwealth Act—
- (a) in sub-section (4) (a) the word “and” (where lastly occurring) were repealed;
 - (b) in sub-section (4) (b) for the word “Commonwealth.” there were substituted the words “State; and”;
 - (c) after sub-section (4) (b) there were inserted the following paragraph:
 - 20 (c) the Commonwealth Minister may cause to be printed and published the whole or any part of a report under this Division that relates to an investigation the expenses of which are, under the Agreement, to be borne by the Commonwealth.
 - 25 (d) in sub-section (5) for the words “Ministerial Council or the Minister” (wherever occurring) there were substituted the words “Ministerial Council, the Minister or the Commonwealth Minister”;
 - (e) after sub-section (11) there were inserted the following sub-section:
 - (12) Nothing in this section operates to diminish the protection afforded to witnesses by the Evidence Act 1898.
- 30 14. in section 66 (1) (b) of the Commonwealth Act for the words “of a State or of another Territory” (where twice occurring) there were substituted the words “in force in another State or in a Territory”;
15. in section 86 of the Commonwealth Act—
- 35 (a) in sub-section (6) for the words “that Act” (where twice occurring) there were substituted the words “that Code”;

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SCHEDULE 1—*continued*

MODIFICATIONS TO THE COMMONWEALTH ACT—*continued*

- (b) in sub-section (6) (a) for the words "law of that State or Territory" there were substituted the words "law in force in that State or Territory";
16. in section 89 (2) of the Commonwealth Act for the words "that Act" there were substituted the words "that Code";
- 5 17. in section 92 of the Commonwealth Act—
- (a) in sub-section (3) (e) for the matter "*Business Names Ordinance 1963*" there were substituted the matter "*Business Names Act 1962*";
- (b) in sub-section (20) for the words "that Act" there were substituted the words "that Code";
- 10 18. in section 93 (9) of the Commonwealth Act for the words "that Act" there were substituted the words "that Code";
19. in section 99 of the Commonwealth Act—
- (a) in sub-section (1) for the words "In the absence of malice, an auditor is not liable to an action for defamation in respect of" there were substituted the words "An auditor has qualified privilege in proceedings for defamation in respect of";
- 15 (b) in sub-section (2) for the words "In the absence of malice, a" there were substituted the word "A";
- (c) in sub-section (2) for the words "is not liable for any action for defamation" there were substituted the words "has qualified privilege in proceedings for defamation";
- 20 (d) in sub-section (3) for the words "is not liable to any action for defamation in respect of the publishing without malice of" there were substituted the words "has qualified privilege in proceedings for defamation in respect of the publishing of";
- 25 (e) in sub-section (4) for the words "an action" there were substituted the word "proceedings";
20. in section 117 (2) of the Commonwealth Act for the word "A" there were substituted the words "Except as provided by Schedule 8 to the Futures Industry
- 30 (*Application of Laws*) Act 1986, a";
21. in section 119 (1) of the Commonwealth Act—
- (a) for the words "any State or other Territory" there were substituted the words "any State other than New South Wales or in any Territory";
- 35 (b) for the words "that State or other Territory" there were substituted the words "that other State or that Territory";

Futures Industry (Application of Laws) 1986

SCHEDULE 1—*continued*

MODIFICATIONS TO THE COMMONWEALTH ACT—*continued*

22. in section 149 of the Commonwealth Act—
- (a) in sub-section (2) (b) for the matter “*Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*” there were substituted the words
5 “Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code”;
- (b) in sub-section (6) for the words “any other Act” there were substituted the words “any other Code or any Act”;
23. in section 153 of the Commonwealth Act—
- (a) for the words “a State or in another Territory” there were substituted the words
10 “a State other than New South Wales or in a Territory”;
- (b) for the words “law of that State or Territory” there were substituted the words “law in force in that State or Territory”;
24. for section 159 of the Commonwealth Act there were substituted the following section:
- 15 **Rules of court**
159. (1) Rules of court may be made under the Supreme Court Act 1970 with respect to proceedings, and the practice and procedure, of the Court under this Code and, in particular, with respect to costs of and incidental to any such proceedings.
- (2) Sub-section (1) does not limit the rule-making powers conferred by the
20 Supreme Court Act 1970.
25. section 160 of the Commonwealth Act were repealed.

SCHEDULE 2

(Sec. 6)

25 MODIFICATIONS TO REGULATIONS IN FORCE UNDER THE
COMMONWEALTH ACT

The provisions of regulations in force for the time being under the Commonwealth Act apply as if in those regulations—

1. for the matter “Futures Industry Regulations 1986” (wherever occurring) there were substituted the words “Futures Industry (New South Wales) Regulations”;
- 30 2. for the words “the Act” (wherever occurring) there were substituted the words “the Code”;

Futures Industry (Application of Laws) 1986

SCHEDULE 2—*continued*

MODIFICATIONS TO REGULATIONS IN FORCE UNDER THE
COMMONWEALTH ACT—*continued*

3. for the matter "*Futures Industry Act 1986*" (wherever occurring) there were substituted the words "Futures Industry (New South Wales) Code";
4. for the words "the Territory" (wherever occurring, Form 20 in Schedule 1 excepted) there were substituted the words "New South Wales";
- 5 5. for the matter "*Bankruptcy Act 1966*" (wherever occurring) there were substituted the matter "*Bankruptcy Act 1966* of the Commonwealth";
6. for the matter "*Companies Act 1981*" (wherever occurring) there were substituted the words "Companies (New South Wales) Code";
- 10 7. in Form 20 in Schedule 1 for the words "Corporate Affairs Commission for the Territory" (wherever occurring) there were substituted the words "Corporate Affairs Commission".

SCHEDULE 3

(Sec. 7)

15 MODIFICATIONS TO REGULATIONS IN FORCE UNDER THE *FUTURES
INDUSTRY (FEES) ACT 1986* OF THE COMMONWEALTH

The provisions of regulations in force under the *Futures Industry (Fees) Act 1986* of the Commonwealth apply as if in those regulations—

1. A reference in the Schedule to a section or sub-section, without an enactment being cited, were to be taken as a reference to that section or sub-section of the Futures Industry 20 (New South Wales) Code.

SCHEDULE 4

(Sec. 9)

PUBLICATION OF FUTURES INDUSTRY (NEW SOUTH WALES) CODE

- 25 The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 9:

Futures Industry (Application of Laws) 1986

SCHEDULE 4—*continued*

PUBLICATION OF FUTURES INDUSTRY (NEW SOUTH WALES) CODE—
continued

FUTURES INDUSTRY (NEW SOUTH WALES) CODE

relating to the futures industry in New South Wales

PART 1—PRELIMINARY

1. This Code may be cited as the Futures Industry (New South Wales) Code.
- 5 2. This Code comes into operation on the day on which the Futures Industry (Application of Laws) Act 1986 commences.
3. This Code shall be read and construed together with the agreement made on 22 December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry, as amended or affected by subsequent agreements, and has effect subject to and in accordance with—
 - 10 (a) the Futures Industry (Application of Laws) Act 1986; and
 - (b) the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981.

15

SCHEDULE 5

(Sec. 10)

PUBLICATION OF FUTURES INDUSTRY (NEW SOUTH WALES)
REGULATIONS

- 20 The following heading and provisions shall be included in the publication under section 10 of the provisions of regulations in force for the time being under the Commonwealth Act:

FUTURES INDUSTRY (NEW SOUTH WALES) REGULATIONS

1. (1) These Regulations may be cited as the Futures Industry (New South Wales) Regulations.
 - 25 (2) These Regulations come into operation on the day on which the Futures Industry (Application of Laws) Act 1986 commences.
-

Futures Industry (Application of Laws) 1986

SCHEDULE 6

(Sec. 11)

PUBLICATION OF FUTURES INDUSTRY (FEES) (NEW SOUTH WALES)
REGULATIONS

- 5 The following heading and provisions shall be included in the publication under section 11 of the Schedule to regulations in force for the time being prescribing fees under the *Futures Industry (Fees) Act 1986* of the Commonwealth:

FUTURES INDUSTRY (FEES) (NEW SOUTH WALES) REGULATIONS

- 10 1. (1) These Regulations may be cited as the Futures Industry (Fees) (New South Wales) Regulations.
- (2) These Regulations come into operation on the day on which the Futures Industry (Application of Laws) Act 1986 commences.
- 15 2. In Schedule 1, a reference to a section or sub-section, without an enactment being cited, shall be taken as a reference to that section or sub-section of the Futures Industry (New South Wales) Code.
3. The fees payable for the purposes of section 7 of the Futures Industry (Application of Laws) Act 1986 are the fees specified in Schedule 1 in relation to the respective matters so specified.

SCHEDULE 1

20

(Reg. 3)

FEES

SCHEDULE 7

(Sec. 15)

REPEALS

- 25 Futures Markets Act 1979 No. 176.
- Futures Markets (Amendment) Act 1982 No. 128.
-

SCHEDULE 8

(Sec. 16)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

5 1. In this Schedule—

“the Code” means the Futures Industry (New South Wales) Code;

“the Minister” means the Minister administering the repealed Act;

“the repealed Act” means the Futures Markets Act 1979.

Effect of approval as a futures exchange under the repealed Act

10 2. For the purposes of the Code, a futures exchange within the meaning of the repealed Act shall be deemed to be a body corporate approved under section 41 of the Code as a futures exchange.

International Commodities Clearing House Limited deemed to be approved as a clearing house

15 3. For the purposes of the Code, the International Commodities Clearing House Limited shall be deemed to be a body corporate approved under section 43 of the Code as a clearing house for the Sydney Futures Exchange.

Amendment of business rules of futures exchange

20 4. (1) Where the business rules of a futures exchange within the meaning of the repealed Act have been amended and the futures exchange has, within the period of 21 days immediately preceding the commencement of this Act, given notice of the amendment to the Minister in accordance with section 4 of the repealed Act, the provisions of that section shall continue to apply with respect to that amendment as if this Act had not commenced.

25 (2) Except as provided by subclause (1), section 48 of the Code shall apply to an amendment made to the business rules of a futures exchange within the meaning of the repealed Act notwithstanding that the amendment was made before the commencement of this Act.

Certain information deemed to have been given to the National Commission30 5. (1) Where a futures exchange within the meaning of the repealed Act has, before the commencement of this Act, given to the State Commission particulars under section 5 (2) of the repealed Act in relation to a member of the futures exchange whom it has reprimanded, fined, suspended or expelled or against whom it has otherwise taken disciplinary action, those particulars shall be deemed to have been given to the National
35 Commission as required by section 50 of the Code.

*Futures Industry (Application of Laws) 1986*SCHEDULE 8—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) Where a futures exchange within the meaning of the repealed Act has, before the commencement of this Act, reprimanded, fined, suspended, expelled or otherwise taken disciplinary action against a member of the futures exchange but has not before that commencement given to the State Commission particulars of the name of the member, the reason for and nature of the action taken and, where the member was fined, the amount of the fine, the provisions of section 50 (2) of the Code shall apply to the futures exchange with respect to the reprimand, fine, suspension, expulsion or other disciplinary action notwithstanding that it was imposed or taken before the commencement of this Act.

10 Enforcement of business rules of futures exchange

6. Where the Supreme Court has, before the commencement of this Act, made an order under section 6 of the repealed Act and the directions specified in that order have not been complied with before that commencement, the order shall continue to have effect after that commencement as if it were an order made under section 51 of the Code.

15 Certain futures contracts not gaming or wagering

7. Where a futures contract which was made before the commencement of this Act on a futures market maintained by a futures exchange within the meaning of the repealed Act and the futures contract has not been closed out before that commencement, section 53 of the Code shall apply to the futures contract as if it had been made after that commencement on a futures market of a futures exchange within the meaning of the Code.

Fidelity fund

8. (1) Where—

25 (a) a futures exchange within the meaning of the repealed Act has, before the commencement of this Act, established and kept a fidelity fund for the purpose of, or for purposes which included, compensating persons for pecuniary loss suffered because of defalcation, or fraudulent misuse of money or other property, by—

30 (i) persons who were, at the time of the defalcation or misuse, members of the futures exchange;

(ii) directors, partners, officers or employees of persons who were at that time members of the futures exchange; or

(iii) partners in, or employees of, a partnership who were at that time members of the futures exchange; and

35 (b) immediately before that commencement, the fidelity fund had a credit balance, that amount shall form part of the fidelity fund of the futures exchange under Part VIII of the Code, after making provision for the total amount of all claims allowed, established or otherwise determined as provided by subclause (3).

*Futures Industry (Application of Laws) 1986*SCHEDULE 8—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) Where the whole or any part of an amount referred to in subclause (1) was, immediately before the commencement of this Act, invested in any manner in which trustees were, at the time of the investment, authorised to invest trust funds on deposit with a corporation in respect of which a declaration under section 97 (7) (b) of the
5 Companies (New South Wales) Code was then in force, that amount, or part, shall be deemed to be invested by the futures exchange in accordance with section 115 of the Code.

(3) Where a futures exchange within the meaning of section 2 of the repealed Act has, before the commencement of this Act, established and kept a fidelity fund of the kind
10 referred to in subclause (1) and a person who has suffered pecuniary loss has made a claim which has not been determined before that commencement, that claim may be allowed, established or otherwise determined in accordance with the rules of the futures exchange established for the purpose of administering that fund as if this Act had not commenced.

15 **Proceedings by or against State Commission to be proceedings by or against National Commission**

9. (1) Where, before the commencement of this Act, a proceeding under the repealed Act had been commenced by or against the State Commission, the proceeding may be continued by or against the National Commission.

20 (2) Where, but for the enactment of this Act, a proceeding under the repealed Act could have been commenced by or against the State Commission, the proceeding may be commenced by or against the National Commission.

Regulations

25 10. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from and including the day on which this Act commenced or a later day.

30 (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

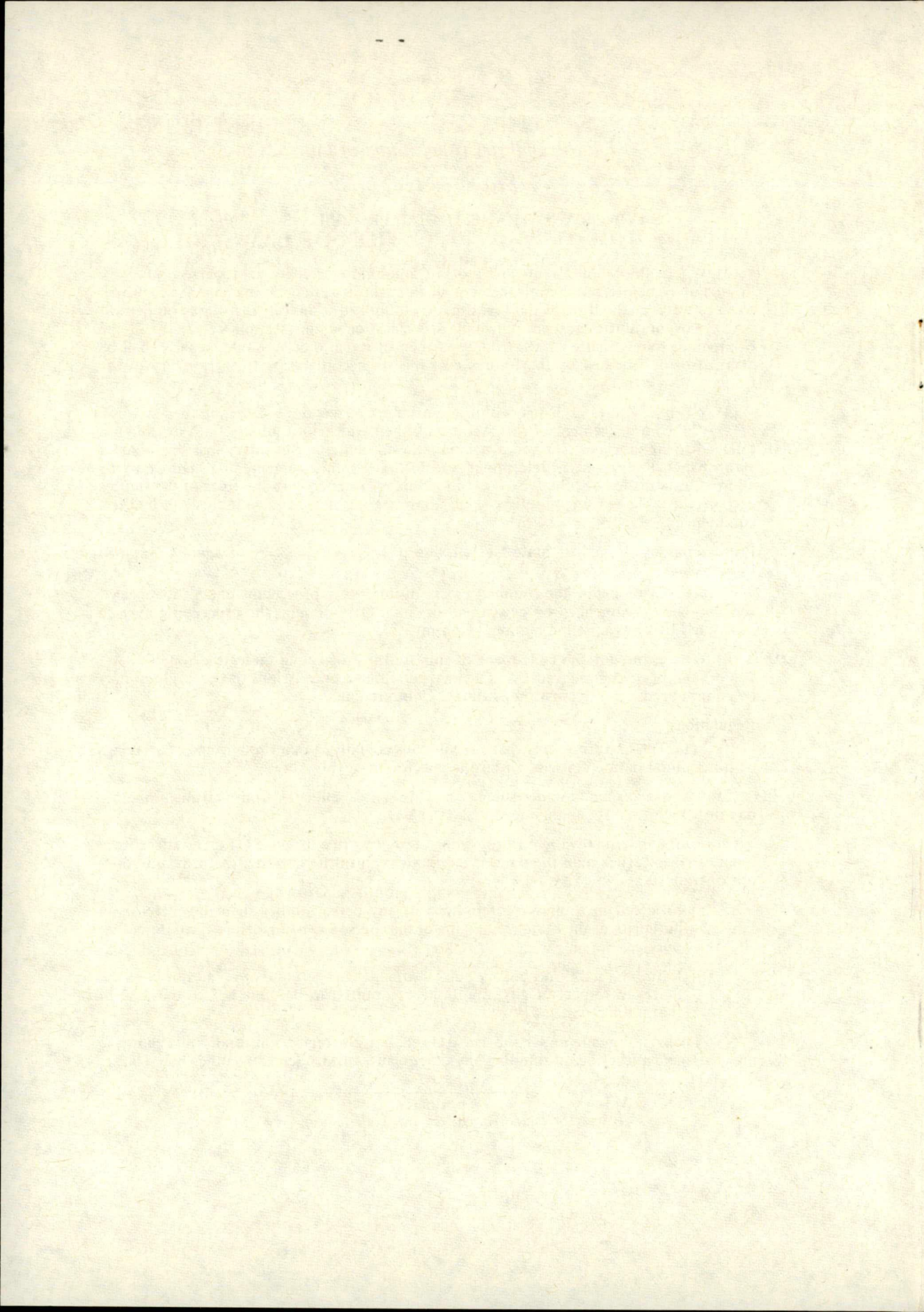
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or

35 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule, other than clauses 2 and 3.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986



FUTURES INDUSTRY (APPLICATION OF LAWS) ACT 1986
No. 66

NEW SOUTH WALES



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FUTURES INDUSTRY (APPLICATION OF LAWS) ACT 1986 No. 66

NEW SOUTH WALES



Act No. 66, 1986

An Act relating to the futures industry in New South Wales. [Assented to,
21 May 1986]

See also National Companies and Securities Commission (State Provisions) Amendment Act 1986; Securities Industry (Application of Laws) Amendment Act 1986.

Futures Industry (Application of Laws) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Futures Industry (Application of Laws) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"Agreement" means the agreement made on 22 December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry, as amended or affected by subsequent agreements;

"Commission" or "National Commission" means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth;

"Ministerial Council" means the Ministerial Council for Companies and Securities established by the Agreement;

"State Commission" means the Corporate Affairs Commission continued in existence by the Corporate Affairs Commission Act 1981;

"the applied provisions" means the provisions applying by reason of sections 5 and 6;

Futures Industry (Application of Laws) 1986

“the Commonwealth Act” means the Futures Industry Act 1986 of the Commonwealth.

(2) In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

Interpretation of Futures Industry (New South Wales) Code

4. The Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981 applies to the Futures Industry (New South Wales) Code.

PART 2

APPLICATION OF LAWS

Application of Commonwealth Act

5. Subject to this Act, the provisions of the Commonwealth Act (other than sections 1, 2 and 3) apply—

- (a) as if amended as set out in Schedule 1; and
- (b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981,

as laws of New South Wales.

Application of Futures Industry Regulations

6. Subject to this Act, the provisions of regulations in force for the time being under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) apply—

- (a) as if amended as set out in Schedule 2; and
- (b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981,

as regulations made under the provisions applying by reason of section 5.

Futures Industry (Application of Laws) 1986

Fees payable

7. (1) There shall be paid to the State Commission, for and on behalf of the State, for or in respect of—

- (a) the lodgment of documents with the National Commission under the applied provisions;
- (b) the registration of documents under the applied provisions or the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (c) the production by the National Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the issuing of documents or copies of documents, the granting of licences, consents or approvals or the doing of other acts or things by the Ministerial Council or the National Commission under the applied provisions;
- (e) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (f) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Futures Industry (Fees) Act 1986 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of the lodgment of a document with the National Commission and the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.

(3) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of any matter involving the doing of any act or thing by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act or thing until the fee has been paid.

Futures Industry (Application of Laws) 1986

(4) This section has effect notwithstanding anything contained in the applied provisions.

(5) Nothing in this section prevents the State Commission for and on behalf of the State from—

- (a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section; or
- (b) refunding in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.

(6) In this section, unless the contrary intention appears, expressions used have the same respective meanings as in the applied provisions.

Amendment of regulations pursuant to Agreement

8. (1) Where, under the Agreement, the Ministerial Council approves a proposed amendment of the regulations in force for the time being under the Commonwealth Act or the Futures Industry (Fees) Act 1986 of the Commonwealth and, on the expiration of 6 months after the date on which the Ministerial Council so approved, the amendment has not been made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason, the Governor may make regulations in accordance with the proposed amendment approved by the Ministerial Council amending the provisions of regulations applying by reason of section 6 or the regulations referred to in section 7, as the case may be.

(2) Regulations made by the Governor under subsection (1) may amend Schedule 2 or 3, and that Schedule as so amended shall be Schedule 2 or 3, as the case may be, to this Act.

(3) In this Act—

- (a) a reference to provisions of regulations applying by reason of section 6 includes a reference to provisions as so applying as amended in accordance with this section; and
- (b) a reference to fees prescribed by regulations under the Futures Industry (Fees) Act 1986 of the Commonwealth includes a reference to those regulations as amended in accordance with this section.

Publication of Futures Industry (New South Wales) Code

9. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2 and 3), amended as set out in Schedule 1 and in operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

- (a) shall include the headings and sections set out in Schedule 4;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the "Futures Industry (New South Wales) Code".

(3) A document that is, or purports to be, a copy of the Futures Industry (New South Wales) Code that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Commonwealth Act applying by reason of section 5 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

Publication of Futures Industry (New South Wales) Regulations

10. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations), amended as set out in Schedule 2 and in operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

- (a) shall include the heading and provisions set out in Schedule 5;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the "Futures Industry (New South Wales) Regulations".

Futures Industry (Application of Laws) 1986

(3) A document that is, or purports to be, a copy of the Futures Industry (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions applying by reason of section 6 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

Publication of Futures Industry (Fees) (New South Wales) Regulations

11. (1) The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the Futures Industry (Fees) Act 1986 of the Commonwealth, amended as set out in Schedule 3 and in operation, or to come into operation, in New South Wales.

(2) A document published under subsection (1)—

- (a) shall include the heading and provisions set out in Schedule 6;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the "Futures Industry (Fees) (New South Wales) Regulations".

(3) A document that is, or purports to be, a copy of the Futures Industry (Fees) (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Schedule to regulations referred to in section 7 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

Publication of provisions of amended Code or regulations

12. (1) The Minister may from time to time authorize the publication by the Government Printer of a document setting out—

(a) provisions that by reason of—

- (i) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and
- (ii) the operation of section 5 (including the operation, if applicable, of Schedule 1),

Futures Industry (Application of Laws) 1986

apply, or will apply, as laws of New South Wales;

(b) provisions that by reason of—

(i) regulations under the Commonwealth Act; and

(ii) the operation of section 6 (including the operation, if applicable, of Schedule 2),

apply, or will apply, as regulations made under the provisions applying by reason of section 5; or

(c) fees that by reason of—

(i) regulations under the Futures Industry (Fees) Act 1986 of the Commonwealth; and

(ii) the operation of section 7 (including the operation, if applicable, of Schedule 3),

are, or will be, payable under that section.

(2) A document published under subsection (1) shall include a notification of the date, or dates, on which the provisions or fees set out in the document came, or come, into operation in New South Wales.

(3) A document that has been, or purports to have been, published in accordance with this section is prima facie evidence of provisions or fees referred to in subsection (1) set out in the document.

Interpretation of references to the applied provisions

13. (1) Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under this or any other Act or in any other document made by or under the authority of, or for the purposes of, a law of New South Wales—

(a) a reference to the Futures Industry (New South Wales) Code is a reference to the provisions of the Commonwealth Act applying by reason of section 5;

(b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying;

(c) a reference to the Futures Industry (New South Wales) Regulations is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 6;

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- (d) a reference to a provision of those regulations is a reference to the corresponding provision of the regulations in force under the Commonwealth Act as so applying;
- (e) a reference to the Futures Industry (Fees) (New South Wales) Regulations is a reference to the Schedule to regulations prescribing fees in force under the Futures Industry (Fees) Act 1986 of the Commonwealth as referred to in section 7; and
- (f) a reference to a provision of that Schedule is a reference to the corresponding provision of the Schedule to regulations prescribing fees in force under that Act as referred to in section 7.

(2) In subsection (1), "provision" includes Part, Division, section, subsection, paragraph, sub-paragraph, Schedule, form, regulation, clause, sub-clause and other division.

Amendment of certain provisions in accordance with approval of Ministerial Council

14. Where, under the Agreement, the Ministerial Council—

- (a) approves—
 - (i) a proposed amendment of the Commonwealth Act;
 - (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);
 - (iii) a proposed amendment of the Futures Industry (Fees) Act 1986 of the Commonwealth; or
 - (iv) regulations proposed to be made under the Act referred to in subparagraph (iii) (whether or not amending other regulations); and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),

the Governor may make regulations amending Schedule 1, 2 or 3 or section 7, as the case may be, in accordance with that approval, and that Schedule or section as so amended shall be Schedule 1, 2 or 3 or section 7, as the case may be, of this Act.

PART 3

MISCELLANEOUS PROVISIONS

Repeals

15. The Acts specified in Schedule 7 are repealed.

Savings and transitional provisions

16. Schedule 8 has effect.
-

SCHEDULE 1

(Sec. 5)

MODIFICATIONS TO THE COMMONWEALTH ACT

The provisions of the Commonwealth Act apply as if—

1. unless inconsistent with another provision of this Schedule—
 - (a) for the words “this Act” in the Commonwealth Act (wherever occurring except where occurring in conjunction with the words “commencement of”) there were substituted the words “this Code”;
 - (b) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “New South Wales”;
 - (c) for the words “law of a participating State or participating Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in a participating State or in a participating Territory”;
 - (d) for the words “law of a State or of another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in another State or in a Territory”;
 - (e) for the words “law of a State or Territory” (wherever occurring) there were substituted the words “law in force in a State or in a Territory”;
 - (f) for the words “commencement of this Act” in the Commonwealth Act (wherever occurring) there were substituted the matter “commencement of the Futures Industry (Application of Laws) Act 1986”;
 - (g) for the words “of a participating State or of” in the Commonwealth Act (wherever occurring) there were substituted the words “in force in a participating State or in”;
 - (h) for the words “relevant Act” in the Commonwealth Act (wherever occurring) there were substituted the words “relevant Code”;

Futures Industry (Application of Laws) 1986

SCHEDULE 1—*continued*

MODIFICATIONS TO THE COMMONWEALTH ACT—*continued*

- (i) after the matter "*Banking Act 1959*" in the Commonwealth Act (wherever occurring) there were inserted the words "of the Commonwealth";
 - (j) after the matter "*Bankruptcy Act 1966*" in the Commonwealth Act (wherever occurring) there were inserted the words "of the Commonwealth";
 - (k) after the matter "*National Companies and Securities Commission Act 1979*" in the Commonwealth Act (wherever occurring) there were inserted the words "of the Commonwealth";
 - (l) for the matter "*Securities Industry Act 1980*" in the Commonwealth Act (wherever occurring) there were substituted the words "Securities Industry (New South Wales) Code";
 - (m) for the matter "*Companies Act 1981*" in the Commonwealth Act (wherever occurring) there were substituted the words "Companies (New South Wales) Code";
2. in section 4 (1) of the Commonwealth Act—
- (a) after the definition of "commodity agreement" there were inserted the following definition:

"Commonwealth Minister" means the Minister of State for the Commonwealth for the time being administering the *Futures Industry Act 1986* of the Commonwealth;
 - (b) after the definition of "futures exchange" there were inserted the following definition:

"Futures Industry (New South Wales) Code" or "Code" means the provisions applying by reason of section 5 of the *Futures Industry (Application of Laws) Act 1986*;
 - (c) in the definition of "local recognised futures exchange" for the words "law of that State or Territory" there were substituted the words "law in force in that State or Territory";
 - (d) after the definition of "local recognised futures exchange" there were inserted the following definition:

"Minister" means the Minister of State for New South Wales for the time being administering the *Futures Industry (Application of Laws) Act 1986*;
 - (e) after the definition of "registered company auditor" there were inserted the following definition:

"regulations" means the provisions applying as regulations made under this Code by reason of section 6 of the *Futures Industry (Application of Laws) Act 1986*;

Futures Industry (Application of Laws) 1986

SCHEDULE 1—*continued*

MODIFICATIONS TO THE COMMONWEALTH ACT—*continued*

3. in section 4 (6) of the Commonwealth Act after the matter “Act 1974” there were inserted the words “of the Commonwealth”;

4. in section 4 (11) of the Commonwealth Act for the words “that Act” there were substituted the words “that Code”;

5. after section 4 (11) of the Commonwealth Act there were inserted the following sub-sections:

(12) In this Code, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

(13) In this Code—

(a) a reference to a previous law, or provision of a previous law, or previous enactment, of New South Wales corresponding to, or to a provision of, the Companies (New South Wales) Code includes a reference to, or to a provision of, the Companies Act 1961; and

(b) a reference to a previous law, or provision of a previous law, or previous enactment, of another State or of a Territory corresponding to, or to a provision of, the Companies (New South Wales) Code includes a reference to, or to a provision of, the law in force in that State or Territory corresponding to the Companies Act 1961.

6. in sections 10 (3), 23, 41, 49 and 52 of the Commonwealth Act after the word “Gazette” (wherever occurring) there were inserted the words “and the *Government Gazette*”;

7. in section 13 (1) (a) (i) of the Commonwealth Act there were omitted the matter “(other than the exercise of a power of the Commission under sub-section 6 (3) of the *National Companies and Securities Commission Act 1979*)”;

8. in section 14 (1) of the Commonwealth Act for the words “Australian Federal Police” there were substituted the words “police force of New South Wales”;

9. in section 21 of the Commonwealth Act for paragraph (a) of the definition of “relevant authority” in sub-section (1) there were substituted the following paragraphs:

(a) in the case of a direction given by the Commonwealth Minister other than a direction that has been approved by the Ministerial Council under sub-section 22 (6)—the Commonwealth Minister;

(aa) in the case of a direction given by the Minister other than a direction that has been approved by the Ministerial Council under sub-section 22 (6)—the Minister; or

*Futures Industry (Application of Laws) 1986*SCHEDULE 1—*continued*MODIFICATIONS TO THE COMMONWEALTH ACT—*continued*

10. in section 22 of the Commonwealth Act—
 - (a) in sub-section (2) for the words “the Minister” (where twice occurring) there were substituted the words “the Commonwealth Minister”;
 - (b) in sub-section (4) for the words “request the Minister in writing to exercise the Minister’s powers under sub-section (1) or (2)” there were substituted the words “, in writing, request the Minister to exercise the Minister’s powers under sub-section (1), or request the Commonwealth Minister to exercise that Minister’s powers under sub-section (2),”;
 - (c) in sub-section (6) for the matter “or (2)” there were substituted the matter “, or by the Commonwealth Minister under sub-section (2)”;
11. section 25 (3) of the Commonwealth Act were repealed;
12. in section 26 of the Commonwealth Act for the matter “Part V of the *Evidence Ordinance 1971*, be deemed to be a proceeding” there were substituted the matter “Part IV of the Evidence Act 1898 be deemed to be a legal proceeding”;
13. in section 36 of the Commonwealth Act—
 - (a) in sub-section (4) (a) the word “and” (where lastly occurring) were repealed;
 - (b) in sub-section (4) (b) for the word “Commonwealth.” there were substituted the words “State; and”;
 - (c) after sub-section (4) (b) there were inserted the following paragraph:
 - (c) the Commonwealth Minister may cause to be printed and published the whole or any part of a report under this Division that relates to an investigation the expenses of which are, under the Agreement, to be borne by the Commonwealth.
 - (d) in sub-section (5) for the words “Ministerial Council or the Minister” (wherever occurring) there were substituted the words “Ministerial Council, the Minister or the Commonwealth Minister”;
 - (e) after sub-section (11) there were inserted the following sub-section:
 - (12) Nothing in this section operates to diminish the protection afforded to witnesses by the Evidence Act 1898.
14. in section 66 (1) (b) of the Commonwealth Act for the words “of a State or of another Territory” (where twice occurring) there were substituted the words “in force in another State or in a Territory”;
15. in section 86 of the Commonwealth Act—
 - (a) in sub-section (6) for the words “that Act” (where twice occurring) there were substituted the words “that Code”;

*Futures Industry (Application of Laws) 1986*SCHEDULE 1—*continued*MODIFICATIONS TO THE COMMONWEALTH ACT—*continued*

- (b) in sub-section (6) (a) for the words "law of that State or Territory" there were substituted the words "law in force in that State or Territory";
16. in section 89 (2) of the Commonwealth Act for the words "that Act" there were substituted the words "that Code";
17. in section 92 of the Commonwealth Act—
- (a) in sub-section (3) (e) for the matter "*Business Names Ordinance 1963*" there were substituted the matter "Business Names Act 1962";
- (b) in sub-section (20) for the words "that Act" there were substituted the words "that Code";
18. in section 93 (9) of the Commonwealth Act for the words "that Act" there were substituted the words "that Code";
19. in section 99 of the Commonwealth Act—
- (a) in sub-section (1) for the words "In the absence of malice, an auditor is not liable to an action for defamation in respect of" there were substituted the words "An auditor has qualified privilege in proceedings for defamation in respect of";
- (b) in sub-section (2) for the words "In the absence of malice, a" there were substituted the word "A";
- (c) in sub-section (2) for the words "is not liable for any action for defamation" there were substituted the words "has qualified privilege in proceedings for defamation";
- (d) in sub-section (3) for the words "is not liable to any action for defamation in respect of the publishing without malice of" there were substituted the words "has qualified privilege in proceedings for defamation in respect of the publishing of";
- (e) in sub-section (4) for the words "an action" there were substituted the word "proceedings";
20. in section 117 (2) of the Commonwealth Act for the word "A" there were substituted the words "Except as provided by Schedule 8 to the Futures Industry (Application of Laws) Act 1986, a";
21. in section 119 (1) of the Commonwealth Act—
- (a) for the words "any State or other Territory" there were substituted the words "any State other than New South Wales or in any Territory";
- (b) for the words "that State or other Territory" there were substituted the words "that other State or that Territory";

Futures Industry (Application of Laws) 1986

SCHEDULE 1—*continued*

MODIFICATIONS TO THE COMMONWEALTH ACT—*continued*

22. in section 149 of the Commonwealth Act—
- (a) in sub-section (2) (b) for the matter "*Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*" there were substituted the words "Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code";
 - (b) in sub-section (6) for the words "any other Act" there were substituted the words "any other Code or any Act";
23. in section 153 of the Commonwealth Act—
- (a) for the words "a State or in another Territory" there were substituted the words "a State other than New South Wales or in a Territory";
 - (b) for the words "law of that State or Territory" there were substituted the words "law in force in that State or Territory";
24. for section 159 of the Commonwealth Act there were substituted the following section:

Rules of court

159. (1) Rules of court may be made under the Supreme Court Act 1970 with respect to proceedings, and the practice and procedure, of the Court under this Code and, in particular, with respect to costs of and incidental to any such proceedings.

(2) Sub-section (1) does not limit the rule-making powers conferred by the Supreme Court Act 1970.

25. section 160 of the Commonwealth Act were repealed.

SCHEDULE 2

(Sec. 6)

MODIFICATIONS TO REGULATIONS IN FORCE UNDER THE
COMMONWEALTH ACT

The provisions of regulations in force for the time being under the Commonwealth Act apply as if in those regulations—

1. for the matter "Futures Industry Regulations 1986" (wherever occurring) there were substituted the words "Futures Industry (New South Wales) Regulations";
2. for the words "the Act" (wherever occurring) there were substituted the words "the Code";

Futures Industry (Application of Laws) 1986

SCHEDULE 2—*continued*

MODIFICATIONS TO REGULATIONS IN FORCE UNDER THE
COMMONWEALTH ACT—*continued*

3. for the matter "*Futures Industry Act 1986*" (wherever occurring) there were substituted the words "Futures Industry (New South Wales) Code";
 4. for the words "the Territory" (wherever occurring, Form 20 in Schedule 1 excepted) there were substituted the words "New South Wales";
 5. for the matter "*Bankruptcy Act 1966*" (wherever occurring) there were substituted the matter "*Bankruptcy Act 1966* of the Commonwealth";
 6. for the matter "*Companies Act 1981*" (wherever occurring) there were substituted the words "Companies (New South Wales) Code";
 7. in Form 20 in Schedule 1 for the words "Corporate Affairs Commission for the Territory" (wherever occurring) there were substituted the words "Corporate Affairs Commission".
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SCHEDULE 3

(Sec. 7)

MODIFICATIONS TO REGULATIONS IN FORCE UNDER THE *FUTURES
INDUSTRY (FEES) ACT 1986* OF THE COMMONWEALTH

The provisions of regulations in force under the *Futures Industry (Fees) Act 1986* of the Commonwealth apply as if in those regulations—

1. A reference in the Schedule to a section or sub-section, without an enactment being cited, were to be taken as a reference to that section or sub-section of the Futures Industry (New South Wales) Code.
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SCHEDULE 4

(Sec. 9)

PUBLICATION OF FUTURES INDUSTRY (NEW SOUTH WALES) CODE

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 9:

Futures Industry (Application of Laws) 1986

SCHEDULE 4—*continued*

PUBLICATION OF FUTURES INDUSTRY (NEW SOUTH WALES) CODE—
continued

FUTURES INDUSTRY (NEW SOUTH WALES) CODE

relating to the futures industry in New South Wales

PART 1—PRELIMINARY

1. This Code may be cited as the Futures Industry (New South Wales) Code.
2. This Code comes into operation on the day on which the Futures Industry (Application of Laws) Act 1986 commences.
3. This Code shall be read and construed together with the agreement made on 22 December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry, as amended or affected by subsequent agreements, and has effect subject to and in accordance with—
 - (a) the Futures Industry (Application of Laws) Act 1986; and
 - (b) the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981.

SCHEDULE 5

(Sec. 10)

PUBLICATION OF FUTURES INDUSTRY (NEW SOUTH WALES)
REGULATIONS

The following heading and provisions shall be included in the publication under section 10 of the provisions of regulations in force for the time being under the Commonwealth Act:

FUTURES INDUSTRY (NEW SOUTH WALES) REGULATIONS

1. (1) These Regulations may be cited as the Futures Industry (New South Wales) Regulations.
 - (2) These Regulations come into operation on the day on which the Futures Industry (Application of Laws) Act 1986 commences.
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Futures Industry (Application of Laws) 1986

SCHEDULE 6

(Sec. 11)

PUBLICATION OF FUTURES INDUSTRY (FEES) (NEW SOUTH WALES)
REGULATIONS

The following heading and provisions shall be included in the publication under section 11 of the Schedule to regulations in force for the time being prescribing fees under the *Futures Industry (Fees) Act 1986* of the Commonwealth:

FUTURES INDUSTRY (FEES) (NEW SOUTH WALES) REGULATIONS

1. (1) These Regulations may be cited as the Futures Industry (Fees) (New South Wales) Regulations.

(2) These Regulations come into operation on the day on which the Futures Industry (Application of Laws) Act 1986 commences.

2. In Schedule 1, a reference to a section or sub-section, without an enactment being cited, shall be taken as a reference to that section or sub-section of the Futures Industry (New South Wales) Code.

3. The fees payable for the purposes of section 7 of the Futures Industry (Application of Laws) Act 1986 are the fees specified in Schedule 1 in relation to the respective matters so specified.

SCHEDULE 1

(Reg. 3)

FEES

SCHEDULE 7

(Sec. 15)

REPEALS

Futures Markets Act 1979 No. 176.

Futures Markets (Amendment) Act 1982 No. 128.

Futures Industry (Application of Laws) 1986

SCHEDULE 8

(Sec. 16)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

“the Code” means the Futures Industry (New South Wales) Code;

“the Minister” means the Minister administering the repealed Act;

“the repealed Act” means the Futures Markets Act 1979.

Effect of approval as a futures exchange under the repealed Act

2. For the purposes of the Code, a futures exchange within the meaning of the repealed Act shall be deemed to be a body corporate approved under section 41 of the Code as a futures exchange.

International Commodities Clearing House Limited deemed to be approved as a clearing house

3. For the purposes of the Code, the International Commodities Clearing House Limited shall be deemed to be a body corporate approved under section 43 of the Code as a clearing house for the Sydney Futures Exchange.

Amendment of business rules of futures exchange

4. (1) Where the business rules of a futures exchange within the meaning of the repealed Act have been amended and the futures exchange has, within the period of 21 days immediately preceding the commencement of this Act, given notice of the amendment to the Minister in accordance with section 4 of the repealed Act, the provisions of that section shall continue to apply with respect to that amendment as if this Act had not commenced.

(2) Except as provided by subclause (1), section 48 of the Code shall apply to an amendment made to the business rules of a futures exchange within the meaning of the repealed Act notwithstanding that the amendment was made before the commencement of this Act.

Certain information deemed to have been given to the National Commission

5. (1) Where a futures exchange within the meaning of the repealed Act has, before the commencement of this Act, given to the State Commission particulars under section 5 (2) of the repealed Act in relation to a member of the futures exchange whom it has reprimanded, fined, suspended or expelled or against whom it has otherwise taken disciplinary action, those particulars shall be deemed to have been given to the National Commission as required by section 50 of the Code.

*Futures Industry (Application of Laws) 1986*SCHEDULE 8—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) Where a futures exchange within the meaning of the repealed Act has, before the commencement of this Act, reprimanded, fined, suspended, expelled or otherwise taken disciplinary action against a member of the futures exchange but has not before that commencement given to the State Commission particulars of the name of the member, the reason for and nature of the action taken and, where the member was fined, the amount of the fine, the provisions of section 50 (2) of the Code shall apply to the futures exchange with respect to the reprimand, fine, suspension, expulsion or other disciplinary action notwithstanding that it was imposed or taken before the commencement of this Act.

Enforcement of business rules of futures exchange

6. Where the Supreme Court has, before the commencement of this Act, made an order under section 6 of the repealed Act and the directions specified in that order have not been complied with before that commencement, the order shall continue to have effect after that commencement as if it were an order made under section 51 of the Code.

Certain futures contracts not gaming or wagering

7. Where a futures contract which was made before the commencement of this Act on a futures market maintained by a futures exchange within the meaning of the repealed Act and the futures contract has not been closed out before that commencement, section 53 of the Code shall apply to the futures contract as if it had been made after that commencement on a futures market of a futures exchange within the meaning of the Code.

Fidelity fund

8. (1) Where—

(a) a futures exchange within the meaning of the repealed Act has, before the commencement of this Act, established and kept a fidelity fund for the purpose of, or for purposes which included, compensating persons for pecuniary loss suffered because of defalcation, or fraudulent misuse of money or other property, by—

(i) persons who were, at the time of the defalcation or misuse, members of the futures exchange;

(ii) directors, partners, officers or employees of persons who were at that time members of the futures exchange; or

(iii) partners in, or employees of, a partnership who were at that time members of the futures exchange; and

(b) immediately before that commencement, the fidelity fund had a credit balance,

that amount shall form part of the fidelity fund of the futures exchange under Part VIII of the Code, after making provision for the total amount of all claims allowed, established or otherwise determined as provided by subclause (3).

*Futures Industry (Application of Laws) 1986*SCHEDULE 8—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) Where the whole or any part of an amount referred to in subclause (1) was, immediately before the commencement of this Act, invested in any manner in which trustees were, at the time of the investment, authorised to invest trust funds on deposit with a corporation in respect of which a declaration under section 97 (7) (b) of the Companies (New South Wales) Code was then in force, that amount, or part, shall be deemed to be invested by the futures exchange in accordance with section 115 of the Code.

(3) Where a futures exchange within the meaning of section 2 of the repealed Act has, before the commencement of this Act, established and kept a fidelity fund of the kind referred to in subclause (1) and a person who has suffered pecuniary loss has made a claim which has not been determined before that commencement, that claim may be allowed, established or otherwise determined in accordance with the rules of the futures exchange established for the purpose of administering that fund as if this Act had not commenced.

Proceedings by or against State Commission to be proceedings by or against National Commission

9. (1) Where, before the commencement of this Act, a proceeding under the repealed Act had been commenced by or against the State Commission, the proceeding may be continued by or against the National Commission.

(2) Where, but for the enactment of this Act, a proceeding under the repealed Act could have been commenced by or against the State Commission, the proceeding may be commenced by or against the National Commission.

Regulations

10. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from and including the day on which this Act commenced or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

Futures Industry (Application of Laws) 1986

SCHEDULE 8—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule, other than clauses 2 and 3.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986