

**Bills Committee
on Securities and Futures Bill and Banking (Amendment) Bill 2000**

**Parts XIII and XIV – Market Misconduct
Reference to Australian Corporations Law**

At the Bills Committee meeting on 11 May 2001, Members asked for copy of the provisions in the Australian Corporations Law that we have made reference to in creating the market misconduct regime under the Securities and Futures Bill. The information required is at the Annex for Members' reference.

Securities and Futures Commission
Financial Services Bureau
1 June 2001

Extract from the Australian Corporations Law

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997 Stock market manipulation

- (1) A person shall not enter into or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of increasing the price of securities of the body corporate on a stock market, with intention to induce other persons to buy or subscribe for securities of the body corporate or of a related body corporate.

- (4) A person shall not enter into, or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of reducing the price of securities of the body corporate on a stock market, with intent to induce other persons to sell securities of the body corporate or of a related body corporate.

- (7) A person shall not enter into, or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of maintaining or stabilising the price of securities of the body corporate on a stock market, with intent to induce other persons to sell, buy or subscribe for securities of the body corporate or of a related body corporate.

- (10) A reference in this section to a transaction, in relation to securities, includes:
 - (a) a reference to the making of an offer to sell or buy securities; and
 - (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or buy securities.

998 False trading and market rigging transactions

- (1) A person shall not create, or do anything that is intended or likely to create, a false or misleading appearance of active trading in any securities on a stock market or a false or misleading appearance with respect to the market for, or the price of, any securities.

- (3) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities or by any fictitious transactions or devices, maintain, increase, reduce, or cause fluctuations in, the market price of any securities.

- (5) Without limiting the generality of subsection (1), a person who:
 - (a) enters into, or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;

- (b) offers to sell any securities at a specified price where the person has made or proposes to make, or knows that an associate of the person has made or proposes to make, an offer to buy the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
- (c) offers to buy any securities at a specified price where the person has made or proposes to make, or knows that an associate of the person has made or proposes to make, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price;

shall be deemed to have created a false or misleading appearance of active trading in those securities on a stock market.

- (6) In a prosecution of a person for a contravention of subsection (1) constituted by an act referred to in subsection (5), it is a defence if it is proved that the purpose or purposes for which the person did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a stock market.
- (7) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or an associate of the person in relation to those securities, has an interest in the securities after the purchase or sale.
- (8) In a prosecution for a contravention of subsection (3) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if it is proved that the purpose or purposes for which the securities were bought or sold was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.
- (9) The reference in paragraph (5)(a) to a transaction of sale or purchase of securities includes:
 - (a) a reference to the making of an offer to sell or buy securities; and
 - (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or buy securities.

999 False or misleading statements in relation to securities

A person must not make a statement, or disseminate information, that is false in a material particular or materially misleading and:

- (aa) is likely to induce other persons to subscribe for securities; or
- (a) is likely to induce the sale or purchase of securities by other persons; or
- (b) is likely to have the effect of increasing, reducing, maintaining or stabilising the market price of securities;

if, when the person makes the statement or disseminates the information:

- (c) the person does not care whether the statement or information is true or false; or
- (d) the person knows or ought reasonably to have known that the statement or information is false in a material particular or materially misleading.

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1001 Dissemination of information about illegal transactions

- (1) A person shall not circulate or disseminate any statement or information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained because of any transaction entered into or other act or thing done in relation to securities of that body corporate or of a body corporate that is related to that body corporate, in contravention of section 997, 998, 999 or 1000 if:
- (a) the person, or an associate of the person, has entered into any such transaction or done any such act or thing; or
 - (b) the person, or an associate of the person, has received, or expects to receive, directly or indirectly, any consideration or benefit in respect of the circulation or dissemination of the statement or information.

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1258 Dealings by futures broker on behalf of others

A futures broker shall not deal in a futures contract on behalf of another person unless the dealing is effected:

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

1259 Futures market manipulation

A person must not, in this jurisdiction or elsewhere, take part in, be concerned in, or carry out, whether directly or indirectly:

- (a) a transaction (whether a dealing in a futures contract or not) that has, is intended to have, or is likely to have; or
- (b) 2 or more transactions (whether any of them is a dealing in a futures contract or not) that have, are intended to have, or are likely to have:

the effect of:

- (c) creating an artificial price for dealings in futures contracts on a futures market in this jurisdiction; or

- (d) maintaining at a level that is artificial (whether or not it was previously artificial) a price for dealings in futures contracts on a futures market in this jurisdiction.

1260 False trading and market rigging

- (1) A person must not, in this jurisdiction or elsewhere, create, cause to be created, or do anything that is calculated to create, a false or misleading appearance:
 - (a) of active dealing in futures contracts on a futures market in this jurisdiction; or
 - (b) with respect to the market for, or the price for dealings in, futures contracts on a futures market in this jurisdiction.
- (2) A person must not, in this jurisdiction or elsewhere, by any fictitious or artificial transactions or devices, maintain, inflate, depress, or cause fluctuations in, the price for dealings in futures contracts on a futures market in this jurisdiction.
- (3) In determining whether a transaction is fictitious or artificial for the purposes of subsection (2), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive.

1261 False or misleading statements etc.

A person contravenes this section if the person:

- (a) in this jurisdiction or elsewhere, makes a statement, or disseminates information, that is false or misleading in a material particular and is likely:
 - (i) to induce other persons to deal in futures contracts on a futures market in this jurisdiction; or
 - (ii) to have the effect of raising, lowering, maintaining or stabilising the price for dealings in futures contracts, or in a class of futures contracts, on a futures market in this jurisdiction; and
- (b) when making the statement, or disseminating the information:
 - (i) is recklessly indifferent as to whether the statement or information is true or false; or
 - (ii) knows, or ought reasonably to know, that the statement is false or misleading in a material particular.

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1263 Dissemination of information about illegal transactions

Where:

- (a) in this jurisdiction or elsewhere, a person circulates or disseminates, or authorises or is concerned in the circulation or dissemination of, any statement or information to the effect that the price for dealings in futures contracts, or in a class of futures contracts, on a futures market in this jurisdiction will, or is likely to, rise or fall or be maintained because of a transaction, or other act or thing done, in relation to such futures contracts or futures contracts included in that class, being a transaction, or other act or thing, that constitutes a contravention of section 1259, 1260, 1261 or 1262; and
- (b) the person, or an associate of the person:
 - (i) has entered into such a transaction or done such an act or thing; or
 - (ii) has received, or expects to receive, directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination of, the statement or information;

the first-mentioned person contravenes this section.

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