

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

**Securities and Futures Bill
Part X – Powers of Intervention and Proceedings**

INTRODUCTION

This paper outlines the major elements of Part X of the Securities and Futures Bill (“the Bill”) which is principally concerned with the powers of the Securities and Futures Commission (“SFC”) to protect the interests of the investing public by intervening in the business or affairs of licensed corporations (as defined in Part 1 of Schedule 1 to the Bill), and with relevant provisions dealing with application to courts for orders and civil remedies.

2. Much of Part X is based on Part V of the Securities and Futures Commission Ordinance (Cap. 24) (“SFCO”) and Part VIII of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) (“LFETO”). A table comparing the provisions contained in Part X of the Bill with existing law is at **Annex 1**.

POLICY OBJECTIVES AND MAJOR PROPOSALS

3. Part X of the Bill empowers the SFC to protect the assets of the clients of a licensed corporation when there is a risk that the assets may be dissipated, misappropriated or improperly dealt with. These powers include those that enable the SFC to intervene in the business and operations of licensed persons, which are dealt with in clauses 196 to 204. Part X also enables the SFC and others to apply to the Court for a range of orders and other relief against licensed persons, listed corporations and certain other persons, which are dealt with in clauses 205 to 207. Clause 208 expressly provides for a claim for damages where a person has suffered pecuniary loss as a result of relying on any public communication relating to securities or futures contracts, which is false or misleading.

Powers of intervention

4. The SFC's powers of intervention under Part X build on its existing powers under sections 38 to 43 of the SFCO (and the corresponding sections 49 to 54 of the LFETO). To this end, the Bill preserves the SFC's existing powers to issue notices which –

- (a) impose restrictions on a licensed corporation in relation to the carrying on of its business (clause 196);
- (b) impose restrictions with regard to the disposal of property by a licensed corporation or the manner in which such a corporation may deal with property (clause 197); or
- (c) require a licensed corporation to maintain assets which are sufficient to ensure that it can meet its liabilities in connection with the business for which it is licensed (clause 198);

Requirement to transfer custody of property (clause 199)

5. This clause is new. It is based on section 67 of the Financial Services Act 1986 (UK) and resembles section 48 of the Financial Services and Markets Act 2000 (UK). It empowers the SFC to require a licensed corporation, or any other person, temporarily to transfer the custody of property held by the licensed corporation or property connected with the licensed corporation's business to the safe custody of the SFC or another person appointed by the SFC.

6. This clause is designed for use in situations when there is a danger that a licensed person may not comply with the terms of a notice prohibiting or requiring him to handle or deal with client property, or property forming part of the licensed person's regulated business, in the manner specified by the SFC, hence leaving the clients and creditors of the licensed corporation in a vulnerable position, and at the risk of losing their property or recourse to recovery. The clause is primarily intended as an investor protection measure, for example, to prevent the property of a licensed corporation or its clients from being removed from the jurisdiction of Hong Kong until such time as entitlement to the property is properly resolved by the Court.

7. In drafting clause 199, we have taken due care to strike a reasonable balance between protecting individual property rights and protecting the wider interest of the investing public. A number of safeguards are included in the Bill with respect to the exercise of the powers under clause 199, as follows –

- (a) the scope of the provision is limited to property held by a licensed corporation within the capacity for which it is licensed on behalf of its clients or held on behalf or to the order of the licensed corporation, or which the SFC reasonably believes to be connected with the business of a licensed corporation (“relevant property” as defined in clause 199(7));
- (b) under clause 199(3), the SFC, or the person appointed by the SFC to take custody of the relevant property, has a duty to take all reasonable steps to preserve the property;
- (c) under clause 199(4), the SFC has an obligation to apply to the Court of First Instance as soon as reasonably practicable, after the custody of any relevant property has been transferred to the SFC, for orders to be made in relation to the property. A licensed corporation or other person against whom action is taken under this clause has the right at any time to seek a court order in relation to property affected by such action (clause 199(5)); and
- (d) clause 199(6) prescribes that the transfer of property under the clause shall not affect any legal or equitable title to any of the relevant property. There are other procedural safeguards preserved from existing law which further stipulate the conditions for the exercise of the new power (see paragraphs 8-10 below).

Imposition of prohibition or requirement under section 196, 197, 198 or 199

8. Clauses 200 and 201 stipulate respectively (a) the circumstances which must prevail before the SFC may act under clauses 196 to 199; and (b) those under which the prohibitions or requirements under clauses 196 to 199 are to be withdrawn, varied or superseded by other prohibitions or requirements. The following criteria for the exercise of the aforesaid powers are specified in clause 200 –

- (a) any property of a licensed corporation or its clients, or any property connected with the business which constitutes a regulated activity for which it is licensed, might be dissipated, transferred or otherwise dealt with in a manner prejudicial to the interest of its clients or creditors;

- (b) the licensed corporation is not a fit and proper person to remain licensed or to carry on any regulated activity for which it is licensed;
- (c) the licensed corporation has failed to comply with certain regulatory requirements referred to in clause 200 or has furnished SFC with false or misleading information in a material particular;
- (d) the licence of the licensed corporation may be revoked or suspended on any of the grounds referred to in clause 200; or
- (e) the imposition of the prohibition or requirement is desirable in the interest of the investing public or in the public interest.

9. Clause 202, which is based on section 42 of the SFCO and section 53 of the LFETO, sets out the requirements with which the SFC must comply when taking action under clauses 196, 197, 198, 199 and 201, including –

- (a) the giving of reasons for its actions (clause 202(2), (3) and (4));
- (b) in the case of action taken under clause 199 or 201, the SFC is also obliged to take all reasonable steps as soon as reasonably practicable to identify and notify third parties affected by its action (clause 202(5)); and
- (c) where exchange or clearing participants are proceeded against under clause 196, 197, 198, 199 or 201, the SFC is obliged to use its best endeavours to inform the recognized exchange company or recognized clearing house concerned (clause 202(10)).

10. Action taken by the SFC under clauses 196, 197, 198, 199 and 201 takes effect at the time of service of the notice or the time specified in the notice, whichever is the later (clause 202(1)). With the exception of action taken under clause 199, a decision by the SFC to proceed under these provisions will be reviewable by the Securities and Futures Appeals Tribunal (set up under Part XI of the Bill). The reason for excluding a decision to take action under clause 199 from a review by the Tribunal is that clause 199 provides for all issues concerning the entitlement to property which is taken into safe custody under that provision to be resolved by the Court of First Instance.

Revocation or suspension of a licensed corporation's licence

11. Clause 203 contains a set of provisions for the avoidance of doubt

designed to preserve the effectiveness of the SFC's action under clauses 196, 197, 198, 199 and 201, notwithstanding that a licensed corporation's licence is subsequently revoked or suspended. It avoids the possibility of an argument that such action by the SFC automatically ceases to be effective when a licensed corporation's licence is revoked or suspended because the provisions of clauses 196, 197, 198, 199 and 201 only permit action to be taken against *licensed corporations*. Clause 203(2) expressly provides that compliance with a prohibition or requirement under clauses 196, 197, 198, 199 and 201 will not constitute contravention of clause 114 (requirement to be licensed to carry out regulated activities), notwithstanding clause 192(1) (which prescribes the effect of a suspension). Clause 203(3) expressly provides, for the avoidance of doubt, that action may be taken under clauses 196, 197, 198, 199 and 201 before revocation or suspension of a licence takes effect.

Certification to Court of First Instance relating to non-compliance

12. Clause 204 is a new provision which resembles section 33(13) of the SFCO and section 44(14) of the LFETO. It concerns the exercise of the SFC's investigatory and supervisory functions on intermediaries. It permits the SFC to seek a court order compelling compliance with a prohibition or requirement under clauses 196, 197, 198, 199 and 201 where this has not occurred. The clause also permits the Court of First Instance to punish a person for non-compliance as if he had been guilty of contempt of court, if the Court is satisfied that the non-compliance was without reasonable excuse. The inclusion of this new provision will facilitate the effective discharge of the SFC's functions under Part X.

Winding-up orders, bankruptcy orders and injunctions, etc.

13. Clauses 205 to 207 are all based on existing law, which empower the SFC and others to apply for a range of orders and civil remedies from the courts to protect the investing public.

14. Clause 205 specifies that the SFC may initiate proceedings on specified grounds to petition for the winding up of a corporation or the bankruptcy of a licensed person. Clause 206 specifies that the SFC may apply to the Court of First Instance for a variety of injunctive orders against persons who have contravened or may contravene any of the relevant provisions or any requirements issued pursuant thereto. The clause also expands the scope of the SFC's existing powers so that the SFC may initiate proceedings for such orders against not only licensed persons, but also other persons who have assisted or participated in the offending act (clause 206(1)(a)).

15. Clause 207 is adapted from section 37A of the SFCO, which was introduced in 1994 to empower the SFC to seek appropriate orders from the Court after a preliminary inquiry into a listed company under section 29A of the SFCO. It allows SFC to apply to the Court of First Instance for various orders where the business or affairs of a listed corporation have been conducted in a manner which generally is prejudicial to the interests of its members. The range of measures is also expanded when compared with existing law. In particular, the provision now expressly empowers the SFC to seek an order disqualifying a person from being involved in the management of any corporation. Again, this allows the SFC to discharge its functions more effectively to ensure better investor protection.

Civil liability for false or misleading public communications

16. Clause 208 is a new provision which resembles section 40 of the Companies Ordinance (Cap. 32). There is market consensus that the quality of disclosure under the various regulatory requirements, especially those relating to listings, takeovers and mergers, needs to be enhanced. In this regard, clause 208 provides that a person will be civilly liable for knowingly, recklessly or negligently disclosing to the public false or misleading information that concerns or might affect the price of securities or futures contracts. A victim who has suffered pecuniary loss as a result of relying on such disclosure may claim damages from the person who is responsible for the disclosure provided that the person has either assumed responsibility with respect to the victim in relation to the disclosure, or it is fair, just and reasonable that the person should be liable (clause 208(3)).

17. The clause provides that persons acting as “conduits” for disseminating information, like printers and publishers (clause 208(4)), broadcasters (clause 208(6)), and those who *re-transmit* information provided by third party sources such as internet information services providers and web portals (clause 208(5)), shall not be liable. The clause also provides a defence for a person who only participates in the making of part of a statement, where that part is not false or misleading, or who knows that the information is false but opposes its disclosure (clause 208(7)). This defence will be available to a director of a listed corporation who is aware of the false statement but opposes its issue.

RESPONSE TO MARKET COMMENTS

18. Market comments in relation to Part X of the White Bill mainly

relate to the two new clauses, namely clause 199 (on transfer of property) and clause 208 (on civil liability for false or misleading public communications).

19. An accounting firm commented that the SFC's power to require the transfer of property under clause 199 should be subject to prior approval of the court. We do not agree. It is anticipated that clause 199 would be exercised only in situations in which the SFC is apprehensive that property is in immediate peril. Accordingly, we consider that the delays which would be occasioned by obtaining a court order in such circumstances would potentially render this provision ineffective. Instead, we have built in statutory safeguards under clause 199(4) to require the SFC to apply to the Court of First Instance as soon as reasonably practicable after acting under clause 199(1) for orders in relation to property affected by such action to preserve the property and to ascertain who has interest in the property. We believe that the Bill has struck the right balance between the effective exercise of the SFC's power and protecting an individual's property right.

20. We welcome the Consumer Council's support for clause 208 as a means to protecting investors.

21. Some investment banks and professional bodies commented that the scope of persons who might face liability under clause 208 is too broad and that it might give rise to spurious claims. We consider that, as a matter of principle, any person making false or misleading communication to a person or to a group of persons in respect of whom he has assumed responsibility should face potential liability for resulting losses. The defences which are provided for in clause 208(4) to (7) and the provisions of clause 208(3) adequately protect those who should not be subject to liability under this provision. In response to market comments that the original provision in the White Bill imposed a reverse burden of proof on the defendant in a claim against him, we have now included a new clause 208(1)(d), which requires the plaintiff to prove knowledge, recklessness or negligence on the part of the defendant in a claim for damages instituted under the clause.

22. During the White Bill consultation, we liaised with automated trading service providers and identified ways to refine the Bill to provide that these persons shall not be legally liable for disclosure of false information to the public if they act in the capacity of a "conduit" in disseminating information from third parties (in certain cases via hyperlinks) through their websites, without editing the contents or in such a way as to adopt them (now included as clause 208(5)).

23. We also discussed with the Bar Association of Hong Kong the scope of clause 208. We clarified that the provision sought to articulate the common law principles. To this end, we have further refined the relevant provision to stipulate the applicable common law test for liability to arise (i.e. clause 208(3), see paragraph 16 above).

24. Some respondents questioned that the private cause of action provided for by clause 208 might overlap with other civil causes of action in Parts X, XIII and XIV of the Bill and that they should be merged. The policy intention and purpose of the each civil right of action is different. In the case of clause 208, we intend to send a signal to the market that any person responsible for issuing public communications concerning securities or futures contracts or which are price sensitive owes a duty of care to the public and that investors should be made aware of their rights in this regard. We believe that the present approach of spelling out the causes of action in distinct clauses provides greater clarity as to the circumstances under which an investor may resort to a private action to claim damages. As we have indicated in Paper No. 4/01 (paragraph 14 therein), we shall provide Members with a full picture for all these clauses after Members have considered Parts XIII and XIV.

INTERNATIONAL COMPARISON

25. A summary of the position in the UK, US and Australia as relevant to Part X of the Bill is at **Annex 2**.

Securities and Futures Commission
Financial Services Bureau
12 April 2000

**Securities and Futures Bill
Part X**

Comparison Table

Legend:

- CL – Corporations Law (Australian)
- CTO – Commodities Trading Ordinance (Cap. 250)
- FSA – Financial Services Act 1986 (UK)
- FSMA – Financial Services and Markets Act 2000 (UK)
- LFETO – Leveraged Foreign Exchange Trading Ordinance (Cap. 451)
- SO – Securities Ordinance (Cap. 333)
- SFCO – Securities and Futures Commission Ordinance (Cap. 24)
- sc. – subclause

Clause	Contents	Derivation	Notes
Part X – Powers of Intervention and Proceedings			
<i>Division 1 – Powers of intervention</i>			
196	Restriction of business	s 39 SFCO & s 50 LFETO	Clause 196(1) reproduces the existing law in s 39 SFCO and s 50 LFETO with refinement in wording. Clause 196(2) reproduces s 39(2) SFCO.
197	Restriction on dealing with property	s 40 SFCO & s 51 LFETO	Clause 197 reproduces the existing law in s 40 SFCO & s 51 LFETO but extends it from assets to all property to end arguments as to whether some forms of property which may be in need of protection are covered.
198	Maintenance of property	s 41 SFCO & s 52 LFETO	Clauses 198(1) & (2) reproduce existing law in s 41 SFCO and s 52 LFETO with refinement in wording.

Clause	Contents	Derivation	Notes
199	Requirement to transfer custody of property	New, s 67 FSA & s 48 FSMA	Clause 199(1) is new and partially modelled on s 67 FSA and s 48 FSMA. Clauses 199(2)-(7) are new.
200	Imposition of prohibition or requirement under section 196, 197, 198 or 199	New, s 38(1) SFCO & s 49(1) LFETO	Clause 200(a) is new. Clause 200(b), (c) and (e) reproduce existing law in s 38 SFCO and s 49 LFETO. Clause 200(c) is a narrower version of ss 38(1)(c) SFCO & s 49(1)(c) LFETO.
201	Withdrawal, substitution or variation of prohibitions or requirements under section 196, 197, 198 or 199	New, s 43 SFCO & s 54 LFETO	Clause 201(1) reproduces s 43 SFCO & s 54 LFETO. Clause 201(2) is new and an ancillary provision to new clause 199. Clause 201(3) is a logical clarification of s 42(1) SFCO & s 53(1) LFETO. Clauses 201(4)-(5) are new as logical ancillary provisions to the other provisions in Division 1.
202	General provisions relating to sections 196, 197, 198, 199 or 201	New, ss 38(3) & 42 SFCO & s 53 LFETO	Clause 202(1) reproduces s 42(2) SFCO & s 53(2) LFETO. Clause 202(2) reproduces s 42(3) SFCO & s 53(3) LFETO. Clause 202(3) reproduces and elaborates on s 43(2) SFCO & s 54(2) LFETO. Clause 202(4) reproduces and elaborates on s 42(4) SFCO & s 53(4) LFETO. Clauses 202(5) & (6) are new. Clauses 202(7) & (8) build on s 42(5) SFCO & s 53(5) LFETO in that they allow publication of a notice other than in the Gazette. Clause 202(9) reproduces s 42(6) SFCO & s 53(6) LFETO. Clause 202(10) reproduces s 38(3) SFCO but imposes a best endeavours standard for notification before imposition of the restriction instead of a strict standard. Clauses 202(11) & (12) reproduce s 42(7)(a) & (b) SFCO respectively. Clause 202(13) is new.
203	Cases of revocation or suspension of licensed corporations' licences	New, s 38(2) SFCO & s 49(2) LFETO	Clause 203(1) is new. Clause 202(2) is new. Clause 202(3) reproduces and clarifies the effect of s 38(2) SFCO and s 49(2) LFETO.
204	Certification to Court of First Instance relating to non-compliance with prohibitions or requirements under section 196, 197, 198, 199 or 201	New, ss 32 & 33(13) SFCO & s 43 & 44(14) LFETO	Clause 204(1) is new but modelled on provisions in ss 32 & 33(13) SFCO & ss 43 & 44(14) LFETO. Clause 204(2) is new. Clause 204(3) is new.

Clause	Contents	Derivation	Notes
	<i>Division 2 – Other powers and proceedings</i>		
205	Winding-up orders and bankruptcy orders	ss 45 & 46 SFCO & ss 59 & 60 LFETO	Clause 205(1) reproduces s 45(1) SFCO and is similar to the narrower s 59 LFETO but excludes authorised financial institutions from the reach of the provision. Clause 205(2) reproduces s 46(1) SFCO and is similar to the narrower s 60 LFETO. Clause 205(3) reproduces ss 45(2) & 46(2) SFCO but imposes a best endeavours standard for notification before presenting the petition instead of a strict standard.
206	Injunctions and other orders	New, s 55 SFCO, s 144 SO, s 13 & 55 LFETO, s 1324 CL	Clause 206(1)(a) builds on s 55 SFCO and s 55 LFETO by adopting (with some changes) from s 1324(1) CL the circumstances in relation to which an injunction or other order should be available. Clause 206(1)(b) is new and clarifies the circumstances in which an injunction or other order may be obtained. Clause 206(2)(a) & (c)-(d) basically reproduce s 55 SFCO, s 144 SO & ss 13 & 55 LFETO. Clause 206(2)(b) is new. Clause 206(3) reproduces s 55(2) SFCO but imposes a best endeavours standard for notification before making the application instead of a strict standard. Clause 206(4) largely reproduces s 144(2) SO & s 13(4) LFETO. Clause 206(5) reproduces s 144 SFCO & s 13(2) LFETO with refinement in wording. Clause 206(6) is new and modelled on s 1324(4) CL but clarifies the court's existing jurisdiction. Clause 206(7) is new and modelled on 1324(8) but reproduces existing case law relating to public bodies enforcing the law. Clause 206(8) is new and modelled on s 1324(6) CL. Clause 206(9) is new and modelled on s 1324(10) CL. Clause 206(10) is new and modelled on s 1324(5) CL. Clause 206(11) is new but merely for the avoidance of doubt.

Clause	Contents	Derivation	Notes
207	Remedies in case of unfair prejudice, etc to interests of members	s 37A SFCO, new	Clause 207(1) reproduces ss 37A(1) & (6) SFCO but does not require the SFC to exercise the power on the basis of any information gathered during a listed corporation inquiry, expands the grounds for applying for an order and allows an order to be applied for even though the corporation is no longer listed. Clause 207(2) largely reproduces s 37A(2) but expands the grounds for the court to make an order and gives the express power for the court to disqualify people from being involved in the management of the corporation. Clause 207(3) & (4) are new. Clauses 207(5) & (6) reproduce s 37A(4) SFCO. Clause 207(7) & (8) reproduce s 37A(4).
208	Civil liability for false or misleading public communications concerning securities or futures contracts	New	New.

INTERNATIONAL COMPARISON

The following international comparison is divided into five parts containing summaries, where we have been able to ascertain that equivalent provisions exist, of the position in the US, UK and Australia, in respect of each part.

Clauses 196 to 199 – Restrictions on business and property

United Kingdom

2. Sections 380 and 381 of the Financial Services and Markets Act 2000 (“FSMA”) enable the Financial Services Authority (“FSA”) to seek injunctions from the High Court against any person e.g. where it appears to the Court that a requirement under the FSMA has been or might have been contravened, or there is a reasonable likelihood that any person will engage in market abuse.

3. The Court may make an order restraining the person from disposing of, or otherwise dealing with, any of his assets which the Court is satisfied that he is reasonably likely to dispose of, or otherwise deal with.

Australia

4. Section 1323 of the Corporations Law (“CL”) provides that if any person engages in conduct that may constitute a contravention of the CL, the Australian Securities and Investment Commission (“ASIC”) or a person whose interests are, have been, or would be affected by the conduct, can apply to the Court. The Court may issue an order prohibiting the payment or transfer of money, securities, futures contracts or any other property held by the person engaging in the conduct if the Court considers that it is desirable to do so to protect the interests of any person.

Clause 205 – Winding up orders and bankruptcy orders

United States

5. The Securities and Exchange Commission (“SEC”) has the authority to bring an action in the US Federal Court under section 21 of the Securities and

Exchange Act (“SE Act”) to request the Court to use its general equity powers to issue an order to wind up a company.

United Kingdom

6. Part XXIV of the FSMA provides that the FSA can apply to the Court for an administration order or a winding up order in relation to a company or a partnership that carries on regulated business. The FSA can also present a petition to the Court to bankrupt an individual who appears to be unable to pay a debt in relation to regulated activities.

Australia

7. Sections 460 to 464 of the CL allow the ASIC to present a petition to wind up a company on various grounds, including the “just and equitable” ground.

Clause 206 – Injunctions and other orders

United States

8. Under section 21(d) of the SE Act, when it appears to the SEC e.g. that any person is engaging in any acts constituting a violation of any provision of the SE Act, the SEC may apply to the Court to enjoin such acts. The Court may grant a permanent or temporary injunction restraining the acts or grant orders commanding the persons concerned to do certain things. Similar powers are given to the Commodity Futures Trading Commission under the Commodity Exchanges Act.

United Kingdom

9. As noted above in relation to Clauses 196-199, under sections 380 and 381 of the FSMA the FSA may seek injunctions from the High Court in certain circumstances. In addition to making an order freezing assets, as noted above, the Court may make an order restraining the contravention of certain requirements; restraining the market abuse; or directing remedial action to be taken.

Australia

10. Section 1324 of the CL provides e.g. that if any person is engaging in conduct that may constitute a contravention of the CL, the ASIC or a person whose interests are, have been, or would be affected by the conduct, can apply to the Court. The Court may grant an injunction restraining the contravener from engaging in the conduct or requiring him to do certain acts. The Court may, either in addition to or in substitution for the grant of the injunction, order that the contravener pay damages to any other person.

Clause 207 – Remedies in cases of unfair prejudice, etc. to interest of members

United States

11. As noted above in relation to clause 206, the SEC has the authority to bring an action in the US Federal Court under section 21 of the SE Act to request the Court to use its general equity powers. Such powers extend to issuing an order to protect the interests of investors.

United Kingdom

12. Under section 460 of the Companies Act 1985, the Secretary of State may petition the Court where, based on an inspection report, it appears to him that the company's affairs are being conducted, or have been conducted, in a manner which is prejudicial to some or all of the members of the company. The Court may make such orders as it thinks fit for giving relief.

13. If it appears from the inspection report that it is expedient in the public interest that a disqualification order should be made against any person who is or has been a director of any company, the Secretary of State may apply to the Court for such order under section 8 of the Companies Director Disqualification Act 1986. The maximum disqualification period is 15 years.

Australia

14. Under sections 232 to 234 of the CL certain persons may apply to the Court for relief if the conduct of a company's affairs is not in the interests of the members as a whole or is oppressive or unfairly prejudicial to a member or members. The persons who may apply for such relief are members of the company, ex-members under certain circumstances, or a person whom the ASIC

thinks appropriate having regard to its investigations. The Court can make an order winding up the company, requiring certain persons to do certain things or restraining them from doing certain things, regulating the conduct of the company's affairs or appointing a receiver or manager of any or all of the company's property.

15. If a director fails to act in good faith in discharge of his duties, or fails to discharge his duties with the appropriate degree of care and diligence, the ASIC can apply to the Court for the disqualification of that person from management of corporations. The Court has power to disqualify such person for any period it considers appropriate (sections 206C and 206E of the CL).

16. The ASIC itself can also disqualify a person from managing corporations for up to 5 years. It may do so where a person has been an officer of two or more corporations and each of them was wound up while he was an officer or within 12 months of him ceasing to be an officer (under section 206F of the CL).

Clause 208 – Civil Liability for false misleading public communications concerning securities and futures contracts

United States

17. Several private causes of action are provided for in US legislation. One example is section 12 of the Securities Act which provides such a cause of action to any person acquiring a security in relation to a prospectus or any associated communications in relation to that security. Such an action may be taken against the offeror or the seller of the security if they make an untrue statement of a material fact or omit to state a material fact necessary in order to make a statement not misleading.

United Kingdom

18. Under section 90 of the FSMA, a person responsible for listing particulars is liable to pay compensation to those who suffer loss as a result of untrue or misleading statements or the omission of any information which must be contained in those documents.

Australia

19. As mentioned above, section 1324 of the CL allows a private

individual to apply to the Court for an injunction and damages if he is affected by the conduct of another person, where such conduct is in contravention of the CL.