

Bills Committee on Securities
(Margin Financing)(Amendment) Bill 2000
Meeting on 22 February 2000

INTRODUCTION

At its meeting on 21 February 2000, the Bills Committee on Securities (Margin Financing)(Amendment) Bill 2000 deliberated on the 2nd draft of the proposed Division 4 concerning “Agreements with Unregistered Financiers”. Under the proposed clause 121AD(3), the client of an unregistered securities margin financier may be entitled to recover compensation for loss that is a direct result of the financier being unregistered and within the reasonable contemplation of the parties. This short note explains the legal considerations of the Administration behind the formulation of this proposed clause.

DETAILS

2. The purpose of the Division 4 is to provide a remedy to the client who has entered into an agreement with an unregistered margin financier. The compensation awarded under section 121AD(3) is akin to damages for breach of contract under common law, which, according to our legal advice, is confined to losses that are direct and within the reasonable contemplation of the parties only. Therefore, for the sake of consistency with the common law, we consider the present formulation appropriate. We see no compelling reasons to advantage a plaintiff or disadvantage a defendant in these circumstances more than would be the case if it were a contractual claim for breach of a warranty of authority to act.

3. In addition, if we were to extend the scope of clause 121AD(3) to enable recovery of indirect or remote losses, it would result in a disparity in the law.

At present, clients of registered financiers, dealers or investment advisers and clients of unregistered dealers or investment advisers do not have similar statutory or common law rights to claim compensation for indirect or remote losses.

4. In view of the above, the Administration takes the view that the present formulation of the basis of compensation is consistent with common law principles and therefore no further change is proposed.

Financial Services Bureau
21 February 2000