

1986

The Parliament of the
Commonwealth of Australia

House of Representatives

Futures Industry Bill 1986

Futures Industry (Fees) Bill 1986

Companies and Securities Legislation Amendment
(Futures Industry) Bill 1986

Explanatory Memorandum

(Circulated by authority of the
Deputy Prime Minister and Attorney-General,
the Honourable Lionel Bowen, M.P.)

**THIS IS AN EXTRACT ONLY
NOT THE COMPLETE EX-MEM**

COMPANIES AND SECURITIES LEGISLATION AMENDMENT
(FUTURES INDUSTRY) BILL 1986
PART I - PRELIMINARY

350. The Companies and Securities Legislation Amendment (Futures Industry) Bill 1986 will make certain amendments to companies and securities legislation that are consequent upon the Futures Industry Bill 1986.

351. For example:

- (a) Members of the NCSC will be required to disclose any financial interest in a futures contract (see cl. 7).
- (b) NCSC appointees or delegates will be precluded from dealing in futures contracts where they have price sensitive information (see cl. 8) and will have to notify the NCSC of any interests they have in a futures contract (cl. 9).
- (c) Futures contracts will be excluded from the definition of "securities" in the SIA (para. 12(a)).

Cl. 1: Short Title

352. The Bill when enacted may be cited as the Companies and Securities Legislation Amendment (Futures Industry) Act 1986 (cl. 1).

Cl. 2: Commencement

353. The bill when enacted will come into operation when the Futures Industry Act comes into operation (cl. 2).

PART II - AMENDMENT OF
COMPANIES (ACQUISITION OF SHARES) ACT 1980

Cl. 3: Principal Act

354. CASA will be referred to as the Principal Act in part II of the Bill (cl. 3).

Cl. 4: Service of documents and publication of notices

355. Background Any document which is not required by CASA to be signed may be served on a stock exchange by a telex message (or similar) to the effect of the document (CASA s-sec. 56(1)).

356. Proposed amendment A reference to "facsimile service" will be inserted into CASA s-sec. 56(1) for avoidance of doubt (Bill paras. 4(a) and (b)). Facsimile service will also be permitted under cl. 56 of the Futures Industry Bill.

PART III - AMENDMENTS OF NATIONAL COMPANIES
AND SECURITIES COMMISSION ACT 1979

Cl. 5: Principal Act

357. The NCSC Act is referred to in Part III of the Bill as the Principal Act.

Cl. 6: Interpretation

358. Proposed amendment A new definition of "futures contract" will be inserted in s.3 of the NCSC Act for the purposes of amendments proposed to be made to ss.19, 48 and 49 of the NCSC Act (Bill cl. 6 - see also cls. 8, 9 and 10).

Cl. 7: Functions and powers of NCSC

358A.Proposed amendment Sub-section 6(3) of the NCSC Act will include a reference to the futures industry.

Cl. 8: Register of financial interests

359. Background The NCSC is required to maintain a Register of Financial Interests in relation to members or acting members of the NCSC and in relation to staff of the NCSC. (NCSC Act s-secs. 19(1) and (3)). For the purposes of this Register, financial interest is defined to mean a company directorship or an interest in non-governmental securities, determined as prescribed by regulation (NCSC Act s-sec. 19(2)).

360. Proposed amendment The Register of Financial Interests will also contain details of interest in futures contracts (Bill cl. 8).

Cl. 9: Restrictions on dealings in securities and futures contracts

361. Background Any person administering the co-operative scheme legislation is prohibited from dealing in securities if the person has price sensitive information that is not generally available (NCSC Act s.48).

362. Proposed amendment Any person administering scheme legislation will also be prohibited from dealing in futures contracts if the person has price sensitive information that is not generally available which, it were, would be likely materially to affect the price for dealing in a futures contract (Bill para. 9(a) - proposed NCSC Act s-sec. 48(1)).

363. A person in breach of this prohibition will be liable to pay compensation to any party who sustains loss as a result of the breach (Bill para. 9(a) - proposed NCSC Act s-sec. 48(2)).

364. No action for recovery can be taken after 2 years from the completion of the transaction (Bill para. 9(b) - proposed NCSC Act s-sec. 48(5)).

Cl. 10: Notification of interests

365. Background Persons administering scheme legislation are required to notify details of interests in securities relevant to any matter they are considering (Bill cl. 49).

366. Proposed amendment Details of interest in futures contracts will also have to be notified (Bill cl. 10).

PART IV - AMENDMENTS OF SECURITIES INDUSTRY ACT 1980

Cl. 11: Principal Act

367. The SIA is referred to as the Principal Act in Part IV of the Bill (cl. 11).

Cl. 12: Interpretation

368. Proposed amendments The definition of "securities" will not include a futures contract (Bill para. 12(a)). The proposed regime that will apply to the various 'products' traded on futures and securities markets is set out at para. 10 of this explanatory memorandum.

369. Dealings in futures contracts will not be regarded as dealings in securities (Bill para. 12(b) - proposed SIA s-sec. 4(5A)).

370. Making of futures contracts on a stock market or stock exchange will be disregarded for the purposes of determining what is a stock market for the purposes of the SIA (Bill para. 12(b) - proposed SIA s-sec. 4(5B)).

Cl. 13: Register of Licence Holders

371. Background The NCSC must keep a Register of Licence Holders which includes the names of the directors and secretary of a corporate licensee (SIA s. 54).

372. Proposed amendment A minor amendment is proposed to cater for the possibility of their being more than one secretary (Bill cl. 13). FIB s-para. 72(2)(a)(ii) is in the same terms.

Cl. 14: Application of Part

373. Proposed amendment Part VI of the SIA, dealing with accounts and audit, will not be affected, and will be deemed never to have affected, the operation of Part VI of the CA, dealing with company accounts and audit, in relation to a corporate futures broker (Bill cl. 14 - proposed SIA s-sec. 7-(2)). FIB s-cl. 82(2) is in similar terms.

Cl. 15: Removal and resignation of auditors

374. Background SIA s. 76, dealing with the removal and resignation of auditors, does not apply to a body corporate in relation to which CA s. 282, dealing with the removal and resignation of company auditors, applies (SIA s-sec. 76(9)).

375. Proposed amendment It will be made clear that SIA s. 76 does not apply in relation to a body corporate (other than an exempt proprietary company) to which CA s. 282 applies (Bill cl. 15). Exempt proprietary companies need not appoint an auditor in certain circumstances (see CA ss. 165A and 165B). FIB cls. 93(8) and (9) are in the same terms.

Cl. 16: Insertion of new section -

103A. Payment to the credit of the fidelity fund of a futures exchange or futures association

376. Proposed SIA s. 103A will empower the Ministerial Council to approve a payment from the fidelity fund maintained under the SIA to the fidelity fund of a securities exchange or related body corporate that becomes a futures exchange or futures association. The provision will enable the SEM to seek approval from the Council to establish its futures industry fidelity fund by a payment from its SIA fidelity fund.

Cl. 17: Restrictions on use of titles "stockbroker", "sharebroker" and "stock exchange"

377. Proposed amendment The penalty for falsely holding oneself out as a stockbroker, sharebroker or stock exchange will be increased from \$500 (see SIA s-sec. 141(6)) to \$2500 or imprisonment for 6 months, or both (Bill cl. 17). There is a similar penalty for falsely holding oneself out as a futures broker, futures exchange or futures association (see FIB cl. 140).