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# ELIZABETHAE II REGINAE

A.D. 1988

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No. 96 of 1988

An Act to amend the Companies (Application of Laws) Act, 1982, the Companies (Acquisition of Shares) (Application of Laws) Act, 1981, the Securities Industry (Application of Laws) Act, 1981, and the Futures Industry (Application of Laws) Act, 1986.

[Assented to 15 December 1988]

The Parliament of South Australia enacts as follows:

## PART I

### PRELIMINARY

#### Short title

1. (1) This Act may be cited as the *Statutes Amendment (Companies, Securities Industry and Futures Industry—Penalty Notices) Act, 1988*.

#### Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

## PART II

### AMENDMENT OF COMPANIES (APPLICATION OF LAWS) ACT, 1982

#### Interpretation

3. The *Companies (Application of Laws) Act, 1982*, is in this Part referred to as “the principal Act”.

#### Insertion of new s. 16a

4. The following section is inserted in Part II of the principal Act after section 16:

#### Regulations for penalty notices

16a. (1) The Governor may make regulations that—

- (a) prescribe offences against the *Companies (South Australia) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds six months or a pecuniary penalty that exceeds \$2 500), or offences against the *Companies (South Australia) Regulations*, for the purposes of section 570A of the *Companies (South Australia) Code*,

and

(b) in relation to each offence that is prescribed pursuant to this subsection—

(i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 570A of the *Companies (South Australia) Code* in relation to the offence;

and

(ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on the person under section 570A of the *Companies (South Australia) Code* in relation to the offence.

(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 570 of the *Companies (South Australia) Code*.

(3) Unless the regulations otherwise prescribe, the particulars of an offence required to be prescribed by subsection (1) (b) (i) are to be set out in the form prescribed by the *Companies (South Australia) Regulations* for the purposes of section 570A of the *Companies (South Australia) Code* in relation to the offence.

(4) A provision of the *Companies (South Australia) Regulations* that is inconsistent with a provision of regulations made under this section has no effect.

(5) Except as provided in subsection (4), regulations under this section shall be read and construed as one with the *Companies (South Australia) Regulations*.

#### Amendment of schedule 1

5. Schedule 1 to the principal Act is amended—

(a) by striking out the word “and” between paragraphs (b) and (c) of clause 69a;

and

(b) by inserting after paragraph (c) of clause 69a the following word and paragraph:

and

(d) for subsection (8) there were substituted the following subsection:

(8) In this section—

“authority” includes a person:

“prescribed” means prescribed by the *Companies (Application of Laws) Act, 1982*, or by the *Companies (South Australia) Regulations*.

### PART III

#### AMENDMENT OF COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) ACT, 1981

##### Interpretation

6. The *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, is in this Part referred to as “the principal Act”.

##### Insertion of new s. 16a

7. The following section is inserted after section 16 of the principal Act:

**Regulations for penalty notices**

16a. (1) The Governor may make regulations that—

(a) prescribe offences against the *Companies (Acquisition of Shares) (South Australia) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds six months or a pecuniary penalty that exceeds \$2 500), or offences against the *Companies (Acquisition of Shares) (South Australia) Regulations*, for the purposes of section 53A of the *Companies (Acquisition of Shares) (South Australia) Code*,

and

(b) in relation to each offence that is prescribed pursuant to this subsection—

(i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 53A of the *Companies (Acquisition of Shares) (South Australia) Code* in relation to the offence;

and

(ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on the person under section 53A of the *Companies (Acquisition of Shares) (South Australia) Code* in relation to the offence.

(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 49 or 53 of the *Companies (Acquisition of Shares) (South Australia) Code*.

(3) Unless the regulations otherwise prescribe, the particulars of an offence required to be prescribed by subsection (1) (b) (i) are to be set out in the form prescribed by the *Companies (South Australia) Regulations* for the purposes of section 570A of the *Companies (South Australia) Code*.

(4) A provision of the *Companies (Acquisition of Shares) (South Australia) Regulations* that is inconsistent with a provision of regulations made under this section has no effect.

(5) Except as provided in subsection (4), regulations under this section shall be read and construed as one with the *Companies (Acquisition of Shares) (South Australia) Regulations*.

**Amendment of schedule 1**

8. Schedule 1 to the principal Act is amended by inserting after clause 5a the following clause:

5b. After section 53 of the Commonwealth Act there were inserted the following section:

**Penalty notices**

53A. (1) Where the Commission has reason to believe that a person has committed a prescribed offence, the Commission may, subject to subsection (2), serve on the person a notice in the prescribed form—

(a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence;

(b) setting out the prescribed penalty in respect of the prescribed offence;

and

(c) stating—

(i) in the case of a prescribed offence constituted by a failure to do a particular act or thing—

(A) that the obligation to do the act or thing continues notwithstanding the service of the notice or the payment of the prescribed penalty;

(B) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the act or thing, no further action will be taken against the person in relation to the prescribed offence;

and

(C) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the act or thing, proceedings may be instituted against the person;

or

(ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—

(A) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence;

and

(B) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, proceedings may be instituted against the person.

(2) Subsection (1) does not empower the Commission—

(a) to serve on a person more than one notice under that subsection in relation to an alleged commission by that person of a particular prescribed offence;

or

(b) to serve on a person a notice under that subsection in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 34 of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code*.

(3) A notice under subsection (1) may be served on a natural person either personally or by post.

(4) Where a notice under subsection (1) is served on a person in relation to a prescribed offence constituted by a failure to do a particular act or thing—

- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence;
- (b) if, at the expiration of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice but has not done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 571 of the *Companies (South Australia) Code* applies (subject to section 53 (5) of the *Companies (Acquisition of Shares) (South Australia) Code*) in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty, the person had been convicted of an offence constituted by a failure to do that act or thing;
- (c) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but has done the act or thing—proceedings may be instituted against the person in respect of the prescribed offence;

or

- (d) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the act or thing—the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.

(5) Where a notice under subsection (1) is served on a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—

- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice—no proceedings may be instituted against the person in respect of the prescribed offence;

or

- (b) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice—proceedings may be instituted against the person in respect of the prescribed offence.

(6) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence shall not be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

(7) Except as provided by paragraphs (4) (a) and (b) and (5) (a), this section does not affect the operation of any provision of this Code, of the regulations, of the rules or of any other Code or any Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.

(8) In this section—

“authority” includes a person:

“prescribed” means prescribed under the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*, or by the *Companies (Acquisition of Shares) (South Australia) Regulations*.

PART IV

AMENDMENT OF SECURITIES INDUSTRY (APPLICATION OF LAWS) ACT, 1981

**Interpretation**

9. The *Securities Industry (Application of Laws) Act, 1981*, is in this Part referred to as “the principal Act”.

**Insertion of new s. 15b**

10. The following section is inserted in Part II of the principal Act after section 15a:

**Regulations for penalty notices**

15b. (1) The Governor may make regulations that—

(a) prescribe offences against the *Securities Industry (South Australia) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds six months or a pecuniary penalty that exceeds \$2 500), or offences against the *Securities Industry (South Australia) Regulations*, for the purposes of section 141A of the *Securities Industry (South Australia) Code*,

and

(b) in relation to each offence that is prescribed pursuant to this subsection—

(i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 141A of the *Securities Industry (South Australia) Code* in relation to the offence;

and

(ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on the person under section 141A of the *Securities Industry (South Australia) Code* in relation to the offence.

(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 141 of the *Securities Industry (South Australia) Code*.

(3) Unless the regulations otherwise prescribe, the particulars of an offence required to be prescribed by subsection (1) (b) (i) are to be set out in the form prescribed by the *Securities Industry (South Australia) Regulations* for the purposes of section 141A of the *Securities Industry (South Australia) Code* in relation to the offence.

(4) A provision of the *Securities Industry (South Australia) Regulations* that is inconsistent with a provision of regulations made under this section has no effect.

(5) Except as provided in subsection (4), regulations under this section shall be read and construed as one with the *Securities Industry (South Australia) Regulations*.

**Amendment of schedule 1**

11. Schedule 1 to the principal Act is amended—

(a) by striking out the word “and” between paragraphs (b) and (c) of clause 22A;

and

(b) by inserting after paragraph (c) of clause 22A the following word and paragraph:

and

(d) for subsection (8) there were substituted the following subsection:

(8) In this section—

“authority” includes a person:

“prescribed” means prescribed by the *Securities Industry (Application of Laws) Act, 1981*, or by the *Securities Industry (South Australia) Regulations*.

## PART V

### AMENDMENT OF FUTURES INDUSTRY (APPLICATION OF LAWS) ACT, 1986

#### Interpretation

12. The *Futures Industry (Application of Laws) Act, 1986*, is in this Part referred to as “the principal Act”.

#### Insertion of new s. 14a

13. The following section is inserted after section 14 of the principal Act:

##### Regulations for penalty notices

14a. (1) The Governor may make regulations that—

(a) prescribe offences against the *Futures Industry (South Australia) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds six months or a pecuniary penalty that exceeds \$2 500), or offences against the *Futures Industry (South Australia) Regulations*, for the purposes of section 149 of the *Futures Industry (South Australia) Code*;

and

(b) in relation to each offence that is prescribed pursuant to this subsection—

(i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 149 of the *Futures Industry (South Australia) Code* in relation to the offence;

and

(ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on the person under section 149 of the *Futures Industry (South Australia) Code* in relation to the offence.

(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 148 of the *Futures Industry (South Australia) Code*.

(3) Unless the regulations otherwise prescribe, the particulars of an offence required to be prescribed by subsection (1) (b) (i) are to be set out in the form prescribed by the *Futures Industry (South Australia) Regulations* for the purposes of section 149 of the *Futures Industry (South Australia) Code* in relation to the offence.

(4) A provision of the *Futures Industry (South Australia) Regulations* that is inconsistent with a provision of regulations made under this section has no effect.

(5) Except as provided in subsection (4), regulations under this section shall be read and construed as one with the *Futures Industry (South Australia) Regulations*.

**Amendment of schedule 1**

14. Schedule 1 to the principal Act is amended by inserting after paragraph (b) of clause 23 the following paragraph:

(c) for subsection (7) there were substituted the following subsection:

(7) In this section—

“authority” includes a person:

“prescribed” means prescribed by the *Futures Industry (Application of Laws) Act, 1986*, or by the *Futures Industry (South Australia) Regulations*.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor