



New Securities Law
for Investment Advisers
and Market Participants

New Securities Law 2007

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New Securities Law
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Securities Legislation Bill

- Passed in October 2006
- Amends various Acts including the Securities Markets Act 1988 & the Securities Act 1978
- Abolishes the Investment Advisers (Disclosure) Act 1996
- Most changes will come into force when regulations are settled



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New law in 2007

- Changes to law on
 - insider trading
 - substantial security holder disclosure
- New law on
 - market manipulation
 - disclosure by investment advisers
- Increased powers for the Commission



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Insider trading

- New focus on threat to market integrity & confidence
- Liability not limited to people connected with or related to the issuer
- A person becomes an insider by possessing inside information – not by connection with the company

Information insider

A person

- who has material information* about a public issuer that is not generally known, and
 - who knows or should know that the information is material and not generally known
- * Information that would be expected to materially affect the issuer's share price if it were generally known.



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Information insider rules

An information insider must not

- trade in securities
- disclose the information to others to trade on
- advise or encourage anyone else to trade or hold securities



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Penalties for insider trading

- Maximum civil penalties for breaches will be the greater of
 - the consideration paid for the shares
 - 3 x any profit made or loss avoided
 - \$1 million
- Knowingly breaching the law is a criminal offence with penalties of
 - up to 5 years in prison
 - \$300,000 individual or \$1m corporate fine



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Exceptions & defences

Including

- Independent research or analysis
- Trading to a fixed plan
- Underwriting agreements
- Agents & advisers acting on instructions
- Certain takeover activities
- Protection by Chinese walls



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Substantial Security Holders

- Disclosure aims to
 - promote an informed market
 - deter insider trading, market manipulation & secret dealing
- Disclosure aims to ensure that all market participants have information on trading by those who control or influence significant voting rights in a public issuer



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SSH disclosure – changes

- Changes to how a subsubstantial security holding is calculated
- Disclosure only applies to listed securities
- Beefed up enforcement by the Commission
- Electronic disclosure on a new form



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Penalties for non-disclosure

- Non-compliance with SSH obligations a criminal offence
- Fine of up to \$30,000
- Civil penalties of up to \$1m can be imposed by the Court
- Court can make various orders including orders to forfeit or dispose of securities



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Market manipulation

- New law which prohibits
 - making false or misleading statements or spreading false information that is likely to induce someone to trade or which might affect the share price
 - creating a false or misleading appearance of securities trading e.g. matching buy and sell orders



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Market manipulation - penalties

- Similar to those for insider trading
- Criminal offence
- Conduct that is likely to mislead or deceive is prohibited (similar to Fair Trading Act)
- Commission can order correction of disclosure
- Liable for compensation to anyone who suffers loss as a result of the conduct



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Investment adviser

- Anyone who
 - in their business
 - gives recommendations, guidance or opinion
 - on buying or selling securities
 - to members of the public
- Exceptions – journalists, issuers



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Adviser & broker disclosure

Mandatory disclosure must be given

- before advice is given to a member of the public or investment money is received
- in a written disclosure statement
- without the client having to ask



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Adviser disclosure

Advisers must disclose

- criminal convictions
- experience & qualifications
- types of securities advised on
- nature & level of fees charged
- other interests & relationships
(includes all remuneration, soft commissions, etc)



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Disclosure statement

- The disclosure statement must be kept up-to-date
- Disclosure statement must not deceive, mislead or confuse the investor



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Advertisements

- Ads by advisers & brokers must comply with the new law
- “Advertisement” - any form of communication containing investment advice or promoting securities
- Includes newsletters, seminar presentations, paid advertising in any media, articles & broadcasts



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Types of advertisement

- Advice advertisements
- Product advertisements
- Broker advertisements

Advertisements must not deceive, mislead or confuse investors & must say a disclosure statement is available free of charge



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Penalties

- For misleading disclosure statements or misleading advertising – criminal penalties of up to \$300,000
- Further penalties of up to \$10,000 per day can be imposed if offending continues



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Illegal offers of securities

- Advisers & brokers must not recommend illegal offers of securities or receive investment money for illegal offers
- A breach is a criminal offence if the adviser or broker knew or ought to have known that the offer was illegal



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Enforcement

- Commission has powers to make prohibition orders, corrective orders, disclosure orders & temporary banning orders
- Courts can make orders banning people from acting as investment advisers for up to 10 years



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Penalties

For failure to comply with disclosure obligations

- fines of up to \$300,000



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Guide to the new law

- Commission is preparing a *Guide to New Securities Law*
- Available when regulations are finalised
- Law expected to come into later in 2007
- Visit www.newsecuritieslaw.govt.nz



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