

FUTURES MARKETS ACT, 1979, No. 176

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 176, 1979.

An Act with respect to the establishment and maintenance of markets at which futures contracts may be made. [Assented to, 14th December, 1979.]

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title. **1.** This Act may be cited as the "Futures Markets Act, 1979".

Interpre- **2.** In this Act, except in so far as the context or subject-matter
tation. otherwise indicates or requires—

"Australian currency" means the currency of Australia provided for by the Currency Act 1965 of the Parliament of the Commonwealth, as amended by subsequent Acts of that Parliament;

"business rules" in relation to a body corporate that maintains, or proposes to maintain, a futures market means rules, regulations and by-laws governing—

- (a) the activities and conduct of the body corporate and its members;
- (b) the activities and conduct of a clearing house that guarantees performance of the contracts made in the market; and
- (c) the activities and conduct of other persons in relation to the market,

being rules, regulations and by-laws made by the body corporate or clearing house or contained in its memorandum of association or articles of association;

"clearing house" in relation to a futures market means a body corporate that guarantees to its members performance of contracts made in the futures market;

"Commission" means the Corporate Affairs Commission constituted under the Securities Industry Act, 1975;

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“commodity futures contract” means a contract the effect of which is that one party agrees to deliver to the other party at a specified future time a specified quantity of a specified commodity at a specified price payable at that time;

“Court” means the Supreme Court of New South Wales;

“currency futures contract” means a contract the effect of which is that the parties will make an adjustment between them at a specified future time in Australian currency according to whether a specified amount of foreign currency is worth more, or worth less, in Australian currency at that time than it was worth in Australian currency at the time of the making of the contract, the rates of exchange applicable at those times being specified in, or determined in accordance with, the contract;

“foreign currency” means currency that is not Australian currency;

“futures contract” means a commodity futures contract or a currency futures contract;

“futures exchange” means—

- (a) Sydney Futures Exchange Limited; or
- (b) a body corporate approved by the Minister under section 3;

“futures market” means a market, exchange or other place at which futures contracts are regularly made.

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Approval
as futures
exchange.

3. The Minister may, upon application by a body corporate and the provision of such information with respect to the application as the Minister requires, approve the body corporate as a futures exchange if he is satisfied—

- (a) that the business rules of the body corporate make satisfactory provision—
 - (i) for the exclusion from membership of persons who are not of good character and high business integrity;
 - (ii) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the business rules of the proposed futures exchange;
 - (iii) with respect to the conditions under which futures contracts may be made in the futures market of the proposed futures exchange;
 - (iv) with respect to the conditions under which futures contracts are made by members;
 - (v) with respect to the classes of futures contracts that may be made by members;
 - (vi) generally for carrying on the business of the proposed futures exchange with due regard to the interests and protection of the public; and
- (b) that the interests of the public will be served by granting the application.

Amendment
of business
rules.

4. (1) Where the business rules of a futures exchange are amended by way of rescission, alteration or addition the futures exchange shall, forthwith after the making of the amendment, give written notice to the Minister of—

- (a) the text of the amendment;

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- (b) the date on which the amendment was made; and
- (c) the purpose and effect of the amendment.

(2) An amendment of which notice is required to be given under subsection (1) ceases to have effect if the notice is not given within 21 days after the making of the amendment.

(3) Where the Minister, within 21 days after receiving from a futures exchange a notice under subsection (1), notifies the futures exchange in writing that he disallows the whole or a specified part of the amendment, the amendment ceases, to the extent of the disallowance, to have effect.

(4) Without derogating from the operation of the other provisions of this section, where the Minister, at any time during the period of 3 months that next succeeds the commencement of this Act, notifies Sydney Futures Exchange Limited in writing that he disallows any part of its business rules, those business rules cease, to the extent of the disallowance, to have effect.

5. (1) A futures exchange shall provide such assistance to the Commission, or to a person authorised by the Commission to do any act or thing for the purposes of this section, as the Commission or, as the case may be, that person reasonably requires for the performance of its or his functions and duties under this Act. Assistance to Commission.

(2) Where a futures exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the futures exchange, it shall forthwith give to the Commission in writing particulars of the name of the member, the reason for and nature of the action taken, the amount of any fine and the period of any suspension.

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(3) A person authorised by the Commission to do any act or thing for the purposes of this section is entitled at all reasonable times to full and free access for any of the purposes of this Act to the trading floor of a futures market maintained by a futures exchange and to all records kept by the futures exchange and its clearing house and may make copies of, or take extracts from, any such records.

(4) A person who refuses or fails without lawful excuse—

(a) to allow a person referred to in subsection (3) access in accordance with that subsection to the trading floor of a futures exchange or to the records of a futures exchange or its clearing house; or

(b) to produce at the request of a person so authorised a statement written in the English language specifying the particulars contained in any such record that is not written or not written in the English language,

is guilty of an offence and liable on conviction to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding 6 months.

(5) In this section “trading floor” in relation to a futures market maintained by a futures exchange means any place or facility provided by the futures exchange for the making of futures contracts.

Enforcement etc., of business rules of futures exchange. **6.** Where a person is under an obligation to observe, enforce or give effect to a business rule of a futures exchange and fails so to do, the Commission, or a person aggrieved by the failure, may apply to the Court for, and the Court may make, an order giving such directions as the Court thinks necessary to secure the observance or enforcement of, or the giving effect to, the business rule in respect of which the failure occurred.

Futures contract not gaming or wagering. **7.** For the purposes of any Act or law, a futures contract made at a futures market maintained by a futures exchange is not a contract by way of gaming or wagering.

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8. Section 13 of the Securities Industry Act, 1975, applies to *Secrecy.* a person appointed or employed for the purposes of this Act, or authorised by the Commission to do any act or thing for the purposes of this Act, in the same way as it applies to a person appointed or employed for the purposes of the Securities Industry Act, 1975.

9. (1) A person who contravenes or fails to comply with a *Offences.* provision of this Act is guilty of an offence and, where no other penalty for the offence is prescribed by this Act, is liable on conviction to a penalty not exceeding \$500.

(2) Where a body corporate is guilty of an offence under this Act, any officer of the body corporate within the meaning of the Securities Industry Act, 1975, who was knowingly a party to the commission of the offence is also guilty of the offence.

(3) Proceedings for an offence under this Act may be taken by the Commission or, with the approval of the Minister, by any other person.

(4) Notwithstanding anything in any Act, proceedings for an offence under this Act may be taken within 3 years after the time at which the offence is alleged to have been committed.

(5) Proceedings for an offence under this Act may be taken before a stipendiary magistrate sitting alone.