

Securities and Futures Act

**Section 197-204
Market Conduct**

**COE
Section (15)**

PART XII

MARKET CONDUCT

Division 1 — Prohibited Conduct — Securities

False trading and market rigging transactions

197. —

(1) No person shall create, or do anything that is intended or likely to create a false or misleading appearance —

(a) of active trading in any securities on a securities market; or

(b) with respect to the market for, or the price of, such securities.

(2) No person shall, by means of any purchase or sale of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

(3) Without prejudice to the generality of subsection (1), a person who —

(a) effects, takes part in, is concerned in or carries out, directly or indirectly, any transaction of purchase or sale of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;

(b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or

(c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price, shall be deemed to have created a false or misleading appearance of active trading in securities on a securities market.

(4) In any proceedings against a person for a contravention of subsection (1) because of an act referred to in subsection(3), it is a defence if the defendant establishes that the purpose or

purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities market.

(5) For the purposes of this section, a purchase or sale of securities does not involve a change in the beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In any proceedings against a person for a contravention of subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in subsection(3) (a) to a transaction of purchase or sale of securities includes —

(a) a reference to the making of an offer to purchase or sell securities; and

(b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to purchase or sell securities.

[SIA, s. 97; Aust. Corporations 2001, s. 998]

Securities market manipulation
198. —

(1) No person shall effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the corporation on a securities market, with intent to induce other persons to subscribe for, purchase or sell securities of the corporation or of a related corporation.

(1A) No person shall effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities of a business trust, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the business trust on a securities market, with intent to induce other persons to subscribe for, purchase or sell securities of the business trust.

[1/2005]

(2) A reference in subsection (1) or (1A) to transactions in securities of a corporation or securities of a business trust, as the case may be, includes —

(a) a reference to the making of an offer to purchase or sell such securities of the corporation or such securities of the business trust, as the case may be; and

(b) a reference to the making of an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities of the corporation or such securities of the business trust, as the case may be.

[1/2005]

[SIA, s. 98]

False or misleading statements, etc.

199. No person shall make a statement, or disseminate information, that is false or misleading in a material particular and is likely —

- (a) to induce other persons to subscribe for securities;
- (b) to induce the sale or purchase of securities by other persons; or
- (c) to have the effect of raising, lowering, maintaining or stabilising the market price of securities, if, when he makes the statement or disseminates the information —
 - (i) he does not care whether the statement or information is true or false; or
 - (ii) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

[SIA, s. 99; Aust. Corporations 2001, s. 999]

Fraudulently inducing persons to deal in securities

200. —(1) No person shall —

- (a) by making or publishing any statement, promise or forecast that he knows or ought reasonably to have known to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular, induce or attempt to induce another person to deal in securities.

(2) In any proceedings against a person for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1) (d), it is a defence if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

(3) In any proceedings against a person for a contravention of subsection (1), the opinion of any registered or public accountant as to the financial position of any company at any time or during

any period in respect of which he has made an audit or examination of the affairs of the company according to recognised audit practice shall be admissible, for any party to the proceedings, as evidence of the financial position of the company at that time or during that period, notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

[SIA, s. 100; Companies, s. 404 (4)]

Employment of manipulative and deceptive devices

201. No person shall, directly or indirectly, in connection with the subscription, purchase or sale of any securities —

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;
- (c) make any statement he knows to be false in a material particular; or
- (d) omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

[SIA, s.102]

Dissemination of information about illegal transactions

202. No person shall circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation or any securities of a business trust will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to securities of that corporation, or of a corporation that is related to that corporation, or securities of that business trust, as the case may be, which to his knowledge, was entered into or done in contravention of section 197, 198, 199, 200 or 201 or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201 if —

- (a) the person, or a person associated with the person, has entered into or purports to enter into any such transaction or has done or purports to do any such act or thing; or
- (b) the person, or a person associated with the person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination, the statement or information.

[1/2005]

[SIA, s. 101]

Continuous disclosure

203. —(1) This section shall apply to —

- (a) an entity the securities of which are listed for quotation on a securities exchange;

(b) a trustee of a business trust, where the securities of the business trust are listed for quotation on a securities exchange; or

(c) a responsible person of a collective investment scheme, where the units of the collective investment scheme are listed for quotation on a securities exchange, if the entity, trustee or responsible person is required by the securities exchange under the listing rules or any other requirement of the securities exchange to notify the securities exchange of information on specified events or matters as they occur or arise for the purpose of the securities exchange making that information available to a securities market operated by the securities exchange.

[1/2005]

(2) The persons specified in subsection (1) (a), (b) or (c) shall not intentionally, recklessly or negligently fail to notify the securities exchange of such information as is required to be disclosed by the securities exchange under the listing rules or any other requirement of the securities exchange.

[1/2005]

(3) Notwithstanding section 204, a contravention of subsection (2) shall not be an offence unless the failure to notify is intentional or reckless.

[Aust. Corporations 2001, s. 1001A]

Penalties under this Division

204. —

(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after a court has made an order against him for the payment of a civil penalty under section 232 in respect of the contravention.

[SIA, s. 104]