

# CAPITAL MARKETS AND SERVICES ACT 2007

## (Act 671)

An Act to consolidate the Securities Industry Act 1983 [Act 280] and Futures Industry Act 1993 [Act 499], to regulate and to provide for matters relating to the activities, markets and intermediaries in the capital markets, and for matters consequential and incidental thereto.

ENACTED by the Parliament of Malaysia as follows:

### PART I

#### PRELIMINARY

##### Short title, commencement and application

1. (1) This Act may be cited as the Capital Markets and Services Act 2007.
- (2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of—
  - (a) different provisions of this Act; or
  - (b) all or different provisions of this Act in respect of different classes or categories of persons, securities or futures contracts.

##### Interpretation

2. (1) In this Act, unless the context otherwise requires—

“accounting records”, in relation to a corporation, includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up and howsoever compiled, recorded or stored;

“adjustment agreement” means one of two or more standardised agreements the effect of which—

  - (a) a particular person will either be under an obligation to pay, or will have a right to receive, an amount of money depending on a state of affairs existing at a particular future time including, without prejudice to the generality of

the foregoing, a state of affairs that relates to fluctuations in the value or price of an instrument or other property, or in the numerical level of an index, an interest rate or other factor; and

- (b) the amount of money will be calculated in a particular manner by reference to that state of affairs,

whether or not the agreement is capable of being varied or discharged before that future time;

“advising on corporate finance” has the same meaning as in Part 2 of Schedule 2;

“affiliate”, in relation to a futures exchange or a clearing house of a futures exchange, means any person, however described, who is a party to a subsisting contract with the futures exchange or clearing house of a futures exchange, as the case may be, under which the person agrees to be bound by its rules;

“approved clearing house” means a clearing house that has been approved under section 38;

“assets”, in relation to a holder of a Capital Markets Services Licence, means all the assets of the holder, whether or not used in connection with the carrying on of the regulated activity by the holder;

“associated person” shall be construed as provided in section 3;

“auditor” means an approved company auditor within the meaning of the Companies Act 1965 [Act 125];

“Bank Negara” means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 1958 [Act 519];

“board”, in relation to a corporation, means the board of directors or other governing authority of the corporation;

“books” include–

- (a) a register;
- (b) any other record of information;
- (c) accounts or accounting records, however compiled, recorded or stored; and
- (d) a document;

“borrower”, in relation to a debenture, means the corporation that is or will be liable to repay money under the debenture;

“Capital Markets Services Licence” means a licence that is granted or renewed under section 61;

“Capital Markets Services Representative’s Licence” means a licence that is granted or renewed under section 61;

“central depository” means a central depository which has been approved by the Minister under subsection 5(1) of the Securities Industry (Central Depositories) Act 1991 [Act 453]–

- (a) to establish and operate a system for the central handling of securities, whether or not listed on any stock exchange–
  - (i) whereby all such securities are deposited with and held in custody by, or registered in the name of, the company or its nominee company for the depositors and dealings in respect of these securities are effected by means of entries in securities accounts without the physical delivery of scrips; or
  - (ii) which permits or facilitates the settlement of securities transactions or dealings in securities without the physical delivery of scrips; and
- (b) to provide other facilities and services incidental thereto;

“Chairman” means the Chairman of the Commission appointed under paragraph 4(1)(a) of the Securities Commission Act 1993 [Act 498];

“chief executive”, in relation to a corporation, means the principal executive officer of the corporation for the time being, by whatever name called, and whether or not he is a director;

“clearing facilities” means–

- (a) a facility for the clearing or settlement of–
  - (i) transactions in securities traded on a stock exchange; or
  - (ii) futures contracts traded on a futures market;
- (b) a facility for the guarantee of settlement of transactions referred to in paragraph (a); or
- (c) such other clearing or settlement facility or class of clearing or settlement facilities as the Commission with the approval of the Minister may allow;

“clearing house” means a person whose activities or objects include the provision of clearing facilities;

“client”, in relation to a holder of a Capital Markets Services Licence, means–

- (a) a person on whose behalf the holder carries on or will carry on any regulated activity; or
- (b) any other person with whom the holder, as principal, enters or will enter into transactions—
  - (i) for purposes of dealing in securities; or
  - (ii) for purposes of trading in futures contracts,

but does not include such person or class of persons as may be prescribed;

“close out”, in relation to a futures contract, means to discharge the obligations of a person in the long position or short position under a futures contract and shall include the discharge of these obligations as a result of the matching up of the futures contract with a futures contract of the same kind under which the person has assumed an offsetting short position or offsetting long position, as the case may be;

“Commission” means the Securities Commission established under the Securities Commission Act 1993;

“company” has the meaning assigned to it in the Companies Act 1965;

“constitution”, in relation to a company, means the memorandum of association and articles of association of the company;

“contract note” means the document issued by a holder of a Capital Markets Services Licence as prescribed by the Minister under section 90;

“corporation” means any body corporate formed or incorporated or existing within or outside Malaysia and includes any foreign company but does not include—

- (a) any body corporate that is incorporated within Malaysia and is, by notice of the Minister charged with the responsibility for companies published in the *Gazette*, declared to be a public authority or an instrumentality or agency of the Government of Malaysia or of any State or to be a body corporate which is not incorporated for commercial purposes;
- (b) any corporation sole;
- (c) any society registered under any written law relating to co-operative societies; or
- (d) any trade union registered under any written law as a trade union;

“dealing in securities” has the same meaning as in Part 2 of Schedule 2;

“debenture” includes debenture stock, bonds, notes and any other evidence of indebtedness of a corporation for borrowed monies, whether or not constituting

a charge on the assets of the corporation, but shall not be construed as applying to any of the following:

- (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business;
- (b) a cheque, banker's draft or any other bill of exchange or a letter of credit;
- (c) a banknote, guarantee or an insurance policy;
- (d) a statement, passbook or other document showing any balance in a current, deposit or savings account;
- (e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement; or
- (f) any instrument or product or class of instruments or products as the Minister may, on the recommendation of the Commission, prescribe by order published in the *Gazette*;

"depository participant" means a person to whom the provisions of section 9 of the Securities Industry (Central Depositories) Act 1991 applies;

"Deputy Chief Executive" means the Deputy Chief Executive appointed under paragraph 4(1)(aa) of the Securities Commission Act 1993;

"director" has the meaning assigned to it in the Companies Act 1965, includes a reference to—

- (a) a person occupying or acting in the position of director of a corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position;
- (b) a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;
- (c) an alternate or substitute director; or
- (d) in the case of a corporation formed or incorporated or existing outside Malaysia—
  - (i) a member of the corporation's board of directors or governing body;
  - (ii) a person occupying or acting in the position of a member of the corporation's board, by whatever name called and whether or not

validly appointed to occupy, or duly authorised to act in the position;  
or

- (iii) a person in accordance with whose directions or instructions the members of the corporation's board are accustomed to act;

"document" has the meaning assigned to it in the Evidence Act 1950 [Act 56];

"eligible delivery agreement" means an agreement that is one of two or more standardised agreements the effect of which is that a person is under an obligation to make or accept delivery at a particular future time of a particular quantity of a particular instrument—

- (a) for a particular price; or
- (b) for a price to be calculated in a particular manner,

whether or not—

- (i) the subject matter of the agreement is in existence; or
- (ii) the agreement is capable of being varied or discharged before that future time,

and in respect of which it appears likely at the relevant time, having regard to all relevant circumstances, that—

- (A) the obligation of the person in the short position to make delivery will be discharged except by the person making the delivery;
- (B) the obligation of the person in the long position to accept delivery will be discharged except by the person accepting the delivery; or
- (C) the person in the short position or long position will assume an offsetting long position or offsetting short position, as the case may be, under another agreement of the same kind;

"eligible exchange-traded option" means a contract that is entered into on a futures market of a futures exchange under which a party acquires from another party an option or right, exercisable at or before a stated time—

- (a) to buy from, or to sell to, that other party a stated quantity of a named instrument at a price stated in, or to be determined in accordance with, the contract; or
- (b) to be paid by that other party, at the time when the option or right is exercised, an amount of money to be determined by reference to a state of affairs that relates to fluctuations in the value or price of an instrument or other property, or in the numerical level of an index, an interest rate or other factor;

“exchange holding company” means a body corporate that is the holding company of any body corporate approved as a stock exchange, futures exchange, central depository or approved as a clearing house and that has been approved as an exchange holding company under section 15;

“exempt futures market” means a futures market which is declared to be an exempt futures market under paragraph 7(3)(a);

“exempt stock market” means a stock market which is declared to be an exempt stock market under paragraph 7(3)(a);

“financial planning” has the same meaning as in Part 2 of Schedule 2;

“fund management” has the same meaning as in Part 2 of Schedule 2;

“futures contract” means—

- (a) an agreement that is, or has at any time been, an eligible delivery agreement or adjustment agreement;
- (b) a futures option;
- (c) an eligible exchange-traded option; or
- (d) any other agreement, or any other agreement in a class of agreements, prescribed to be futures contracts under section 5,

but does not include an agreement—

(A) which is—

- (i) a currency swap;
- (ii) an interest rate swap;
- (iii) a forward exchange rate contract; or
- (iv) a forward interest rate contract,

authorised by Bank Negara and to which a licensed institution is a party;

- (B) which, when entered into, is in a class of agreements prescribed not to be futures contracts; or
- (C) which is prescribed to be an agreement that is not to be traded on a futures market;

“futures exchange” means any body corporate in relation to which an approval under subsection 8(2) is in force;

“futures market” means a market or other place at which, or a facility by means of which, futures contracts are regularly traded;

“futures option” means an option or right to assume, at a stated price or value and within a stated period, a long position or a short position, in relation to a futures contract;

“futures report” means an analysis or report that contains recommendations about trading in futures contracts;

“guarantor”, in relation to a debenture, means a person who guarantees or has agreed to guarantee the repayment of any money secured or payable under the debenture;

“holding company” has the meaning assigned to it in sections 5 and 5A of the Companies Act 1965;

“information service” means—

- (a) a broadcasting service;
- (b) an interactive or broadcast videotext or teletext service or other similar service;
- (c) an online database service or other similar service; or
- (d) any other service as may be prescribed by the Commission,

but does not include bond pricing facilities;

“instrument”, in relation to futures contracts, means—

- (a) anything that is capable of delivery under an agreement for its delivery, including a commodity, or a document creating or evidencing a thing in action; or
- (b) any other thing that is prescribed to be an instrument for the purposes of this Act;

“investment advice” has the same meaning as in Part 2 of Schedule 2;

“Islamic bank” means a bank licensed under the Islamic Banking Act 1983 [Act 276];

“issue” means—

- (a) in relation to securities, to bring or cause to be brought into existence those securities; and

- (b) in relation to a notice, prospectus or other document, to circulate, distribute or disseminate such notice, prospectus or document;

“issuer” means–

- (a) in the case of shares or debentures, the corporation whose shares or debentures are being issued, offered for subscription or purchase or in respect of which an invitation to subscribe or purchase has been made;
- (b) in the case of units of a unit trust scheme or prescribed investment scheme, the management company; and
- (c) in the case of any other securities, the person making available, issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, such securities;

“licence” means a Capital Markets Services Licence or a Capital Markets Services Representative’s Licence granted or renewed under section 61;

“licensed bank” means a bank licensed under the Banking and Financial Institutions Act 1989 [Act 372];

“licensed institution” has the meaning assigned to it in the Banking and Financial Institutions Act 1989;

“licensed merchant bank” has the meaning assigned to it in the Banking and Financial Institutions Act 1989;

“licensed person” means a person holding a Capital Markets Services Licence and includes a person holding a Capital Markets Services Representative’s Licence;

“listed”, in relation to a security or a corporation, as the case may be, means such security or corporation whose securities or any class of its securities having gained admission to be quoted on a stock market of a stock exchange;

“listed corporation” means a corporation whose securities or any class of its securities have gained admission to be quoted on a stock market of a stock exchange;

“listing requirements”, in relation to a body corporate which establishes or operates, or proposes to establish or operate, a stock market of a stock exchange, means the rules governing or relating to–

- (a) the admission to the official list of any body corporate, government, unincorporated body or any other person for the purpose of the quotation on the stock market, securities issued or made available by a body corporate, government, unincorporated body or any other person or the removal from that official list and for other purposes; or

- (b) the activities or conduct of any body corporate, government, unincorporated body and any other person who are admitted to that list,

whether those rules—

- (A) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or
- (B) are made by another person and adopted by the body corporate;

“long position”,—

- (a) in relation to an eligible delivery agreement, or in relation to a futures contract that is an eligible delivery agreement, means the position of a person who, because of the agreement, is under an obligation to accept delivery in accordance with the agreement;
- (b) in relation to a futures contract that is an adjustment agreement, means the position of a person who, because of the agreement—
  - (i) will, if the value or worth of the agreement (as determined in accordance with the agreement) as at a particular future time is less, by a particular amount, than the value or worth of the agreement (as so determined) as at a particular earlier time, be under an obligation to pay that amount; and
  - (ii) will, if the value or worth of the agreement (as so determined) as at a particular future time is greater, by a particular amount, than the value or worth of the agreement (as so determined) as at a particular earlier time, have a right to receive that amount; or
- (c) in any other case, has such meaning as may be prescribed;

“management company” means a company by which or on whose behalf a unit of a unit trust scheme or prescribed investment scheme—

- (a) has been or is proposed to be issued or offered for subscription or purchase; or
- (b) in respect of which an invitation to subscribe or purchase has been made,

and includes any person for the time being exercising the functions of the management company;

“Minister” means the Minister for the time being charged with the responsibility for finance;

“officer”, in relation to—

- (a) the Commission, has the meaning assigned to it in the Securities Commission Act 1993;

- (b) a corporation, includes–
- (i) any director, secretary or employee of the corporation;
  - (ii) a receiver and manager, appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation; and
  - (iii) any liquidator of a corporation appointed in a voluntary winding up,

but does not include–

- (A) any receiver who is not also a manager;
- (B) any receiver and manager appointed by the court; or
- (C) any liquidator appointed by the court or by the creditors;

“official list”, in relation to a stock market of a stock exchange, means a list specifying all securities which have been admitted for quotation on the stock market of the stock exchange;

“participant” means–

- (a) a person who may participate in one or more of the services provided by a stock exchange or futures exchange; or
- (b) a person who, under the rules of an approved clearing house, may participate in one or more of the services provided by the approved clearing house;

“participating organisation” means any person who carries on the business of dealing in securities and is recognised as a participating organisation by the rules of the stock exchange;

“party”, in relation to a proposed or discharged agreement, means a person who would be a party to the agreement if it were in effect;

“premises” means any place (whether enclosed or built on or not) and in particular, includes–

- (a) a building, aircraft, vehicle or vessel;
- (b) any structure, whether fixed or movable; and
- (c) a part of premises (including a part of premises of a kind referred to in paragraph (a) or (b));

“prescribed” means prescribed by the Minister under this Act or any regulations

made under this Act, and where no mode is mentioned means prescribed by order published in the *Gazette*, and a power to prescribe includes the power to prescribe differently for different persons, securities, futures contracts or transactions, or different classes, categories or descriptions of persons, securities, futures contract or transactions;

“prescribed investment” means an interest as defined under subsection 84(1) of the Companies Act 1965 that has been exempted under section 96 of the Companies Act 1965 and in respect of which the Minister has made a prescription under section 5;

“prescribed investment scheme” means an undertaking, scheme, enterprise, contract or arrangement in relation to a prescribed investment;

“public interest directors”, in relation to a stock exchange, futures exchange or an exchange holding company, means persons who are appointed by the Minister under section 10;

“record” includes information stored or recorded by means of a computer, electronic or digital medium or any other means of recording or storage;

“registered person” means a person registered under section 76;

“Registrar” means the Registrar of Companies under the Companies Act 1965 and includes any Regional Registrar, Deputy or Assistant Registrar of Companies;

“regulated activity” means any of the types of regulated activities specified in Part 1 of Schedule 2;

“related corporation”, in relation to a corporation, means a corporation that is related to the first-mentioned corporation by virtue of section 6 of the Companies Act 1965;

“relevant circumstances”, in relation to an eligible delivery agreement, includes—

- (a) the provisions of any agreement;
- (b) the rules and practices of any market; and
- (c) the manner in which the respective obligations of persons in short positions and persons in long positions under agreements of the same kind as the agreement concerned are generally discharged,

but does not include the respective intentions of the person in the short position and the person in the long position under the agreement concerned;

“relevant time”, in relation to an eligible delivery agreement, means the time—

- (a) when the agreement concerned is entered into; or

- (b) if the agreement concerned is not a delivery agreement at the time when it is entered into, becomes a delivery agreement;

“representative” means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such regulated activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“rules”, in relation to—

- (a) a stock exchange, means the memorandum of association and the articles of association, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the stock exchange, or the conduct of its participating organisations and, without limiting the generality of the foregoing, includes—
- (i) rules contained in the memorandum of association and the articles of association or other constituent document of the stock exchange;
  - (ii) rules and procedures governing the quotation of securities on the stock market of the stock exchange and listing requirements;
  - (iii) rules to ensure compliance by participating organisations of any obligations imposed by this Act or any other written law; and
  - (iv) rules in respect of such other matters as may be necessary or desirable for the proper and efficient operation and management of the stock exchange, including rules specifying fees and charges;
- (b) an approved clearing house, means the memorandum of association and the articles of association, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the approved clearing house and, without limiting the generality of the foregoing, includes rules and directions relating to—
- (i) the provision of clearing and settlement services, and the suspension or withdrawal of such services;
  - (ii) the provision of services other than the services referred to in subparagraph (i);
  - (iii) the persons who may participate in one or more of the services referred to in subparagraph (i) or (ii);
  - (iv) the specification of fees and charges; and

- (v) the default rules;
- (c) a central depository, has the meaning assigned to it in the Securities Industry (Central Depositories) Act 1991;
- (d) a futures exchange, means the memorandum of association and the articles of association, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the futures exchange or the conduct of its affiliates;
- (e) an exchange holding company, means the memorandum of association and articles of association, including the rules regulating the activities and conduct of the company in its capacity as an exchange holding company; and
- (f) a recognised self-regulatory organisation, means the memorandum of association and the articles of association of a recognised self-regulatory organisation, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of a recognised self-regulatory organisation or the conduct of the members of the recognised self-regulatory organisation;

“securities” means–

- (a) debentures, stocks or bonds issued or proposed to be issued by any government;
- (b) shares in or debentures of, a body corporate or an unincorporated body; or
- (c) unit trusts or prescribed investments,

and includes any right, option or interest in respect thereof, but does not include futures contracts;

“securities laws” has the meaning assigned to it in the Securities Commission Act 1993;

“self-regulatory organisation” means an organisation that is recognised by the Commission pursuant to section 323;

“settlement”, in relation to a market contract, means the discharge of the rights and liabilities of the parties to the market contract whether by performance, compromise or otherwise; and includes partial settlement effected in accordance with the rules of an approved clearing house;

“short position”–

- (a) in relation to an eligible delivery agreement, or in relation to a futures contract that is an eligible delivery agreement, means the position of a

person who, because of the agreement, is under an obligation to make delivery in accordance with the agreement;

- (b) in relation to a futures contract that is an adjustment agreement, means the position of a person who, because of the agreement—
  - (i) will, if the value or worth of the agreement (as determined in accordance with the agreement) as at a particular future time is greater, by a particular amount than the value or worth of the agreement (as so determined) as at a particular earlier time, be under an obligation to pay that amount; and
  - (ii) will, if the value or worth of the agreement (as so determined) as at a particular future time is less by a particular amount than the value or worth of the agreement (as so determined) as at a particular earlier time, have a right to receive that amount; or
- (c) in any other case, has such meaning as may be prescribed;

“Specified Exchange” means a person or body that operates a futures market outside Malaysia and is specified as a Specified Exchange under section 105;

“specified person” means a person or classes of person specified in Schedule 3;

“specify”, where no mode is mentioned, means specify in writing, and a power to specify includes the power to specify differently for different persons, securities, futures contracts or transactions, or different classes, categories or descriptions of persons, securities, futures contracts or transactions;

“stock exchange” means any body corporate in relation to which an approval under subsection 8(2) is in force;

“stock market” means a market or other place at which, or a facility by means of which—

- (a) offers to sell, purchases or exchanges of securities are regularly made or accepted;
- (b) offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities, are regularly made; or
- (c) information concerning the prices at which or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected to sell, purchase or exchange securities is regularly provided;

“subsidiary” has the meaning assigned to it in section 5 of the Companies Act 1965;

“trading in futures contracts” has the same meaning as in Part 2 of Schedule 2;

“trust account” means a trust account referred to in section 111 or 122;

“unit”, in relation to a unit trust scheme or prescribed investment scheme, means any right or interest therein by whatever name called and includes any subunit thereof;

“unit holder” means the unit holder of a unit trust scheme or prescribed investment scheme, as the case may be;

“unit trust scheme” means any arrangement made for the purpose, or having the effect, of providing facilities for the participation of persons as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of—

- (a) securities;
- (b) futures contracts; or
- (c) any other property;

“unlisted recreational club” means a corporation which provides the holders of its shares or debentures the right to use or enjoy any recreational, holiday or other related facilities and whose shares or debentures are not listed or proposed to be listed for quotation on any stock market of a stock exchange;

“value”, in relation to an asset, includes amount;

“voting shares” has the meaning assigned to it in section 4 of the Companies Act 1965.

- (2) Any reference in this Act to “this Act” or “securities law” shall, unless otherwise expressly stated, include a reference to any regulations, rules, order, notification or other subsidiary legislation made under this Act or securities law, as the case may be.

### **Associated person**

- 3. (1) A reference in this Act to a person associated with another person shall be construed as a reference to—
  - (a) the spouse, or any minor child (natural or adopted) or minor step child, of the person;
  - (b) any employee or partner of the person;
  - (c) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;

- (d) where the other person is a body corporate–
  - (i) a director or secretary of the body corporate;
  - (ii) a body corporate that is related to the other person; or
  - (iii) a director or secretary of such a related body corporate;
- (e) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied–
  - (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the body corporate;
  - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or
  - (iii) under which either of those persons may acquire from the other of them shares in the body corporate or may be required to dispose of such shares in accordance with the directions of the other of them;
- (f) where the matter to which the reference relates is a matter other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate–
  - (i) a corporation in partnership with which the other person carries on a business of trading in futures contracts;
  - (ii) subject to subsection (2), a person who is a partner of the other person, otherwise than as a result of him dealing in securities or trading in futures contracts in partnership with the other person;
  - (iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
  - (iv) a person who is a director of a body corporate that carries on a business of dealing in securities or trading in futures contracts and of which the other person is also a director; or
  - (v) subject to subsection (2), a person who is a director of a body

corporate of which the other person is a director, not being a body corporate that carries on a business of dealing in securities or trading in futures contracts;

- (g) a person with whom the other person is, by virtue of any regulation that may be introduced, to be regarded as associated in respect of the matter to which the reference relates;
  - (h) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
  - (i) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in any of the preceding paragraphs, that last mentioned person.
- (2) Where, in proceedings under this Act, it is alleged that a person referred to in subparagraph (1)(f)(ii) or (v) was associated with another person at a particular time, that person shall be deemed not to have been so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.
- (3) A person shall not be taken to be associated with another person by virtue of paragraph (1)(e), (g) or (h) by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in a professional capacity.

## **Interest in securities**

- 4.** (1) Where any property held in trust consists of or includes securities in which a person knows or has reasonable grounds for believing that he has an interest, he shall be deemed to have interest in those securities.
- (2) A right does not constitute an interest in a security where—
- (a) a right, being a right or an interest described in the definition of “interest” in section 84 of the Companies Act 1965, was issued or offered to the public for subscription or purchase;
  - (b) the public was invited to subscribe for or purchase such a right, and the right was so subscribed for or purchased; or
  - (c) such a right is held by the management company and was issued for the purpose of an offer to the public within the meaning of section 84 of the Companies Act 1965.
- (3) A person shall be deemed to have an interest in a security where a body corporate has an interest in a security and—

- (a) the body corporate is, or its directors are accustomed, or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of that person in relation to that security;
  - (b) that person has a controlling interest in the body corporate; or
  - (c) that person, or the associates of that person or that person and his associates are entitled to exercise or control the exercise of not less than fifteen per centum of the votes attached to the voting shares in the body corporate.
- (4) For the purposes of paragraph (3)(c), a person is an associate of another person, if the first-mentioned person is—
- (a) a corporation which, by virtue of section 6 of the Companies Act 1965 is deemed to be related to that other person;
  - (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (3);
  - (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security;
  - (d) a body corporate which is, or the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or
  - (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.
- (5) A person shall be deemed to have an interest in a security in any one or more of the following circumstances where he—
- (a) has entered into a contract to purchase a security;
  - (b) has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
  - (c) has the right or power to acquire a security or an interest in a security, under an option, whether the right or power is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
  - (d) is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a

class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.

- (6) A person shall be deemed to have an interest in a security if that security is held jointly with another person.
- (7) For the purpose of determining whether a person has an interest in a security it is immaterial that the interest cannot be related to a particular security.
- (8) There shall be disregarded—
  - (a) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purpose of a transaction entered into in the ordinary course of business in connection with the lending of money;
  - (b) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and
  - (c) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.
- (9) An interest in a security shall not be disregarded by reason only of—
  - (a) its remoteness;
  - (b) the manner in which it arose; or
  - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

## **Prescription of securities and futures contracts**

5. (1) Notwithstanding the definition of “securities” or “futures contract” under this Act and “interest” as defined in subsection 84(1) of the Companies Act 1965, the Minister may, on the recommendation of the Commission, by order published in the *Gazette*, prescribe any instrument or product or class of instruments or products to be—
  - (a) securities; or
  - (b) futures contracts,for the purposes of securities laws.
- (2) Where an exemption has been granted under section 96 of the Companies Act 1965, the Minister may, on the recommendation of the Commission, by order published in the *Gazette*, prescribe an exempted interest or a class or category of exempted interests to be—

- (a) securities for the purposes of this Act or any particular provision of this Act; or
  - (b) a futures contract for the purposes of this Act or any particular provision of this Act.
- (3) In a prescription made under subsection (1) or (2) in respect of securities or futures contracts, as the case may be, the Minister may–
- (a) for the purposes of regulating the issue, offer for subscription or purchase, or the making of an invitation to subscribe for or purchase, any securities, specify in the prescription any provision of this Act to apply to such securities;
  - (b) in the case of futures contracts, specify in the prescription any provision of this Act to apply to such a futures contract.
- (4) For the purposes of this section, “interest” means an interest as defined in subsection 84(1) of the Companies Act 1965.

### **Consequences of agreements becoming futures contracts**

6. If an agreement that was not a futures contract when it was entered into becomes a futures contract as a result of an action taken by any of the parties to the agreement at a later time–
- (a) the parties to the agreement shall be deemed to have entered into a futures contract at that later time; and
  - (b) the agreement shall constitute the futures contract referred to in paragraph (a).