

Futures Industry Act 1993

(Act 499)

Incorporating all amendments up to
5 January 2004

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LAWS OF MALAYSIA
FUTURES INDUSTRY ACT 1993
(Incorporating latest amendment – Act A1215/2003)
Act 499

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FUTURES INDUSTRY ACT 1993

(Act 499)

An Act to provide for the establishment of futures exchanges, and to regulate trading in futures contracts, and to provide for matters connected therewith or incidental thereto.

[1 March 1993, P.U.(B) 58/93]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

DIVISION 1

Preliminary

1. Short title and commencement.

- (1) This Act may be cited as the Futures Industry Act 1993.

[Am. Act A1215:s.2]

- (2) This Act shall come into force on such date as the Minister may, by notification in the Gazette, appoint.

[Am. Act A927:s.1]

2. Interpretation.

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

[Am. Act A1215:s.2]

“accounting records” has the same meaning as in the Companies Act 1965 [Act 125];

“accredited”, in relation to a director or employee of a corporation, means a person who, in his capacity as such a director or employee, is authorised by the corporation—

- (a) if the corporation carries on a futures broking business, to do any act or to engage in conduct as a futures broker’s representative of the corporation;
- (b) if the corporation carries on a futures advice business, to do any act or to engage in conduct as a futures trading adviser’s representative of the corporation; or
- (c) if the corporation carries on a futures fund management business, to do any act or to engage in conduct as a futures fund manager’s representative of the corporation;

[Ins. Act A927:s.4]

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

- (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;

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

[Ins. Act A927:s.4]

“agreement” means an agreement, arrangement or understanding—

- (a) whether formal or informal or partly formal and partly informal;
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

[Ins. Act A927:s.4]

“assets”, in relation to the holder of a futures broker’s licence, means all the assets of the holder, whether or not used in connection with a business of trading in futures contracts;

[Ins. Act A927:s.4]

“associate” has the meaning given under Division 3 of Part I;

[Ins. Act A927:s.4]

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

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

[Subs. Act A927:s.4]

“books” includes—

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

[Ins. Act A927:s.4]

“business” in relation to a particular kind of business, includes a business of that kind that is part of or is carried on in conjunction with any other business;

[Ins. Act A927:s.4]

“business rules” means–

- (a) in relation to an exchange holding company, the constitution of the exchange holding company, including rules regulating the activities and conduct of the company in its capacity as an exchange holding company;
[Ins. Act 1215:s.2]
- (b) in relation to an exchange company, rules, by whatever name called, regulating the activities and conduct of the company in its capacity as an exchange company or regulating a futures market operated by it; or
- (c) in relation to a clearing house, rules, by whatever name called, regulating the provision by it of clearing house facilities for a futures market of an exchange company,

whether those rules are made by the exchange holding company or clearing house or are amended by the Commission under subsection 6(3) or 6D(5);

[Subs. Act A927:s.4; Am. Act A1215:s.2]

“clearing house” means–

- (a) in relation to an exchange company, a company in relation to which an approval as a clearing house for that exchange company is in force under subsection 6B(1); or
- (b) in relation to a futures market of an exchange company, a company in relation to which an approval as a clearing house for that futures market is in force under subsection 6B(1);

[Subs. Act A927:s.4]

“clearing house facilities”, in relation to a futures market, includes any one or more of the following in relation to futures contracts traded on that futures market:

- (a) trade matching;
- (b) registration;
- (c) settlement;
- (d) guaranteeing or being a counterparty;
- (e) margining;

[Ins. Act A927:s.4]

“client” means–

- (a) in relation to a futures broker, a person–
 - (i) on whose behalf the futures broker trades; or
 - (ii) from whom the futures broker accepts instructions to trade, in futures contracts; or
- (b) in relation to a futures fund manager, a person–

- (i) on whose behalf the futures fund manager invests money; or
 - (ii) from whom the futures fund manager accepts instructions to invest money,
- in relation to trading in futures contracts;

[Ins. Act A927:s.4]

“clients’ segregated account”, in relation to a person, means an account that–

- (a) the person keeps, whether in Malaysia or elsewhere, with a licensed bank or other prescribed bank; and
- (b) is designated as a clients’ segregated account; and
- (c) does not contain money other than money deposited by the person in the account under section 52A;

[Ins. Act A927:s.4]

“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;

[Ins. Act A927:s.4]

“Commission” means the Securities Commission established under the Securities Commission Act 1993 [Act 498];

[Ins. Act A927:s.4]

“company” has the same meaning as in the Companies Act 1965;

[Ins. Act A927:s.4]

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

“corporation” means any body corporate formed or incorporated or existing within Malaysia 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;

“courts” [Repealed by Am. Act A927:4]

“customers” [Repealed by Am. Act A927:4]

“director” means any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act and an alternate or a substitute director;

“document” has the same meaning as in the Evidence Act 1950 [Act 56];

[Ins. Act A927:s.4]

“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—

(aa) the subject-matter of the agreement is in existence; or

(bb) 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—

(aaa) the obligation of the person in the short position to make delivery will be discharged except by the person making delivery;

(bbb) the obligation of the person in the long position to accept delivery will be discharged except by the person accepting delivery; or

(ccc) 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;

[Ins. Act A927:s.4]

“eligible exchange-traded option” means a contract that is entered into on a futures market of an exchange company 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;

[Ins. Act A927:s.4]

“estate” includes any interest, charge, right, title, claim, demand, lien or encumbrance, at law or in equity;

[Ins. Act A927:s.4]

“exchange company” means a company in relation to which an approval under subsection 4(1) is in force;

[Ins. Act A927:s.4]

“exchange holding company” has the same meaning as in the Securities Industry Act 1983;
[Ins. Act A1215:s.2]

“exempt futures broker” means a person exempted under subsection 20(1);
[Ins. Act A927:s.4]

“exempt futures fund manager” means a person exempted under subsection 20(1);
[Ins. Act A927:s.4]

“exempt futures market” means a futures market exempted under section 3A;
[Ins. Act A927:s.4]

“exempt futures trading adviser” means a person exempted under subsection 20(1);
[Ins. Act A927:s.4]

“fidelity fund”, in relation to an exchange company, means a fidelity fund established under section 58;
[Ins. Act A927:s.4]

“foreign company” has the same meaning as in the Companies Act 1965;
[Ins. Act A927:s.4]

“futures advice business”, in relation to a person, means—

- (a) a business of advising other persons about trading in futures contracts; or
- (b) a business in the course of which the person publishes futures reports,

but does not include—

- (aa) any such act by an advocate, or an accountant in public practice, which is incidental to the practice of his profession;
- (bb) an act of giving, or holding out as giving, of advice about futures contracts, publishing or holding out as publishing of futures reports, by a person in a newspaper or periodical of which the person is the proprietor or publisher and the newspaper or periodical is generally available to the public otherwise than only on subscription where the sole or principal purpose of the newspaper or periodical is other than to advise persons on futures contracts or to publish futures reports;
- (cc) an act in the course of or by means of transmissions through an information service that the person owns, operates or makes available, which transmissions are generally available to the public where the sole or principal purpose of the transmissions is other than to advise persons on futures contracts or to publish futures reports; or
- (dd) any such act of a person—
 - (i) while employed by, or acting for or by arrangement with, another person; and
 - (ii) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and
 - (iii) in connection with a futures advice business carried on by the other person;

[Ins. Act A927:s.4]

“futures broker” means–

- (a) a person who carries on, or two or more persons who together carry on, a futures broking business, whether or not the person, or any of the persons, also trades in futures contracts on the person’s own account; or
- (b) the holder of a futures broker’s licence;

[Ins. Act A927:s.4]

“futures broker’s representative” means a person who–

- (a) being a person in the employment of or acting for a futures broker; or
- (b) by arrangement with a futures broker,

performs for that futures broker any of the functions of that futures broker in connection with a futures broking business carried on by the futures broker;

[Ins. Act A927:s.4]

“futures broking business”, in relation to a person, means a business of trading in futures contracts on behalf of other persons but does not include the business of trading in futures contracts by a holder of a futures fund manager’s licence on another person’s behalf for the purposes of his futures fund management business;

[Ins. Act A927:s.4; Ins. Act A1042:s.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 2B,

but does not include an agreement–

(aa) 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;

(bb) which, when entered into, is in a class of agreements prescribed not to be futures contracts; or

(cc) which is prescribed to be an agreement that is not to be traded in on a futures market;

[Ins. Act A927:s.4]

“futures exchange” [Repealed by Act A927:s.4]

“futures fund management business”, in relation to a person, means a business of–

- (a) trading, under a discretionary authority or otherwise granted under an agreement with any other person or persons, in futures contracts for the benefit of such other person who is a party or persons who are parties to the agreement, on the basis that any money, property or interest acquired by such party or parties to such agreement may not be used or employed in common with any money, property or interest of any other person under like circumstances;
- (b) offering to any person for subscription, or inviting any person to subscribe for interests to which Division 5 of Part IV of the Companies Act 1965 applies where any of the money raised is intended to be applied in relation to trading in futures contracts;
[Ins. Act A1075:s.2]
- (c) offering to any person for subscription, or inviting any person to subscribe for interests entitling such person to participate as a beneficiary under a trust in profits or income which comprise or include profits or income arising from trading in futures contracts; or
[Ins. Act A1075:s.2]
- (d) offering to any person for subscription or purchase, or inviting any person to subscribe for or purchase, units in a prescribed investment scheme;
[Ins. Act A1075:s.2]

but does not include an act that a person does–

- (aa) while employed by, or acting for, or by arrangement with, another person;
- (bb) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and
- (cc) in connection with a futures fund management business carried on by the other person;
[Ins. Act A1042:s.2]

“futures fund manager” means–

- (a) a person who carries on, or two or more persons who together carry on, a futures fund management business; or
- (b) the holder of a futures fund manager’s licence;
[Ins. Act A927:s.4]

“futures fund manager’s representative” means a person who–

- (a) being a person in the employment of or acting for a futures fund manager; or
- (b) by arrangement with a futures fund manager,

performs for that futures fund manager any of the functions of that futures fund manager in connection with a futures fund management business carried on by the futures fund manager;

[Ins. Act A927:s.4]

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

[Subs. Act A927:s.4]

“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;

[Subs. Act A927:s.4]

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

[Ins. Act A927:s.4]

“futures trading adviser” means—

- (a) a person who carries on, or two or more persons who together carry on, a futures advice business; or
- (b) the holder of a futures trading adviser’s licence;

[Subs. Act A927:s.4]

“futures trading adviser’s representative” means a person who—

- (a) being a person in the employment of or acting for a futures trading adviser; or
- (b) by arrangement with a futures trading adviser, performs for that futures trading adviser any of the functions of that futures trading adviser in connection with a futures advice business carried on by the futures trading adviser;

[Subs. Act A927:s.4]

“information service” means—

- (a) a broadcasting service;
- (b) an interactive or broadcast videotext or teletext service or other similar service;
- (c) an on-line database service or other similar service; or
- (d) any other prescribed service;

[Ins. Act A927:s.4]

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

“instrument” 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;

[Subs. Act A987:s.3]

[Subs. Act A927:s.4]

“licence” means—

- (a) a futures broker’s licence;
- (b) a futures broker’s representative’s licence;
- (c) a futures trading adviser’s licence;
- (d) a futures trading adviser’s representative’s licence;
- (e) a futures fund manager’s licence; or
- (f) a futures fund manager’s representative’s licence,

granted or renewed under Part III;

[Subs. Act A927:s.4]

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

“licensed institution” means any institution licensed or deemed to be licensed under subsection 6(4) of the Banking and Financial Institutions Act 1989;

“Licensing Officer” [Repealed by Act A927:s.4]

“licensed person” means a person licensed under Part III;

“liquidating trade” means a transaction by which, for the purpose of closing out a futures contract, the person in the long position or short position, under the futures contract assumes an offsetting short position or offsetting long position, as the case may be, under another futures contract;

[Ins. Act A927:s.4]

“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;

[Ins. Act A927:s.4]

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

“officer”, in relation to—

- (a) the Commission, has the same meaning as in the Securities Commission Act 1993 [Act 498];
- (b) a corporation, means—
 - (i) a director, secretary, executive officer or employee of the corporation;
 - (ii) a receiver and manager, appointed in writing, of property of the corporation; and
 - (iii) a liquidator of the corporation appointed in a voluntary winding-up of the corporation,

but does not include—

- (aa) a receiver who is not also a manager;
- (bb) a receiver and manager appointed by a court; and
- (cc) a liquidator appointed by a court;

[Ins. Act A927:s.4]

“on”, in relation to a futures market, includes at or by means of;

[Ins. Act A927:s.4]

“own account”, in relation to a person trading in a futures contract, has a meaning as provided under section 2E;

[Ins. Act A927:s.4]

“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;

[Ins. Act A927:s.4]

“premises” includes 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));

[Ins. Act A927:s.4]

“prescribed” means prescribed by the Minister by or under this Act or any regulations made under this Act, and where no mode is mentioned means prescribed from time to time by order published in the Gazette;

[Ins. Act A927:s.4]

“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 subsection 2B(3) of the Securities Commission Act 1993;

[Ins. Act A1075:s.2]

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

[Ins. Act A1075:s.2]

“property” means any estate (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action;

[Ins. Act A927:s.4]

“public interest directors” has the same meaning as in the Securities Industry Act 1983;

[Ins. Act A1215:s.2]

“record” includes information stored or recorded by means of a computer;

[Ins. Act A927:s.4]

“regulations” means regulations made under this Act;

[Ins. Act A927:s.4]

“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;

[Ins. Act A927:s.4]

“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 when the agreement concerned—

- (a) 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;

[Ins. Act A927:s.4]

“representative” means a futures broker’s representative, a futures fund manager’s representative or a futures trading adviser’s representative;

[Ins. Act A927:s.4]

“representative’s licence” means a futures broker’s representative’s licence, a futures fund manager’s representative’s licence or a futures trading adviser’s representative’s licence;

[Ins. Act A927:s.4]

“securities laws” has the same meaning as in the Securities Commission Act 1993;
[Ins. Act A1215:s.2]

“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;

[Ins. Act A927:s.4]

“Specified Exchange” means a person or body that operates a futures market outside Malaysia and is prescribed as a Specified Exchange under section 102;

[Subs. Act A927:s.4]

“trade”, in relation to a futures contract, has a meaning as provided under section 2C;

[Ins. Act A927:s.4]

“trading in futures contract” [Deleted by Act A927:s.4]

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

[Am. Act A927, A987, A1042, A1075]

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

[Ins. Act A1215:s.2]

DIVISION 2

Futures Contracts

[Am. Act A927, A987, A1042, A1075]

2A. Consequences of agreements becoming futures contracts.

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).
[Ins. Act A927:s.5]

2B. Prescription of futures contracts.

- (1) The Minister may, by order published in the Gazette, prescribe any agreement or class of agreements to be a futures contract.
- (2) Where the order under subsection (1) affects or changes the obligations of the parties under the agreement, the Minister shall prescribe a reasonable time for the parties to comply with the requirements of this Act.

[Ins. Act A927:s.5]

2C. Trading in futures contracts.

- (1) Subject to section 2D, a person trades in a futures contract only if the person—
- (a) enters into, or takes an assignment of, the futures contract, whether or not on another person's behalf;
 - (b) takes or causes to be taken, action that closes out the futures contract, whether or not on another person's behalf;
 - (c) in relation to a futures contract that is an eligible exchange-traded option, a futures option or an agreement prescribed to be a futures contract—
 - (i) exercises any option or right under the futures contract; or
 - (ii) allows any option or right under the futures contract to lapse, whether or not on another person's behalf;
 - (d) offers to do any act referred to in paragraph (a), (b) or (c); or
 - (e) induces or attempts to induce any other person to do any act referred to in paragraph (a), (b) or (c).
- (2) Subject to section 2D, a person trades in a futures contract on another person's behalf only if the first-mentioned person—
- (a) enters into, or takes an assignment of the futures contract;
 - (b) takes or causes to be taken, action that closes out the futures contract;
 - (c) in relation to a futures contract that is an eligible exchange-traded option, a futures option or an agreement prescribed to be a futures contract—
 - (i) exercises any option or right under the futures contract; or
 - (ii) allows any option or right under the futures contract to lapse; or
 - (d) offers to do any act referred to in paragraph (a), (b) or (c),

on the other person's behalf but does not include—

- (aa) in relation to whether a non-resident of Malaysia trades in a futures contract on another person's behalf, anything that the holder of a futures broker's licence or an exempt futures broker does on behalf of the non-resident; and
- (bb) anything that a person does—
 - (i) while employed by or acting for or by arrangement with, a futures broker; and
 - (ii) as employee or agent, of or otherwise on behalf of, on account of, or for the benefit of, the futures broker; and
 - (iii) in connection with a business of trading in futures contracts that the futures broker carries on.

[Ins. Act A927:s.5]

2D. Trading in futures contracts through other persons.

- (1) If a person trades in a futures contract on behalf of another person, the other person shall be deemed to also trade in that futures contract.
- (2) If a person ("the first-mentioned person") is deemed to trade in a futures contract because of an application of subsection (1) and such person had traded on behalf of another person ("the second-mentioned person")—
 - (a) the second-mentioned person shall be deemed to trade in that futures contract; and
 - (b) the first-mentioned person and any person who traded in that futures contract on the first-mentioned person's behalf are each deemed to trade in that futures contract on the second-mentioned person's behalf.
- (3) If a person ("the first-mentioned person") is deemed to trade in a futures contract because of an application of subsection (1) with any one or more applications of this subsection and such person had traded on behalf of another person ("the second-mentioned person")—
 - (a) the second-mentioned person shall be deemed to trade in that futures contract; and
 - (b) the first-mentioned person and any person who traded, or is deemed to trade, in that futures contract on the first-mentioned person's behalf are each deemed to trade in that futures contract on the second-mentioned person's behalf.

[Ins. Act A927:s.5]

2E. Own account trading and transactions.

- (1) A reference to a person trading in a futures contract, or entering into a transaction in relation to a futures contract, on the person's own account includes a reference to a person so trading, or entering into such a transaction, as the case may be, as principal or on behalf of—
 - (a) an associate of the person;
 - (b) a corporation in which the person has a controlling interest; or

- (c) if the person carries on a futures broking business in partnership, a corporation in which the person's interests and the interests of the other partners together constitute a controlling interest.
- (2) A futures broker that is an affiliate of an exchange company shall not be construed as trading in a futures contract or entering into a transaction in relation to a futures contract, on the futures broker's own account merely because the trading is with or the transaction is entered into with, another futures broker who is an affiliate of the exchange company.
- (3) A person shall not be construed as an associate of another person for the purposes of subsection (1) merely because the first-mentioned person is either or both of the following:
 - (a) a partner of the other person otherwise than because of carrying on in partnership with the other person a business of trading in futures contracts;
 - (b) a director of a corporation of which the other person is also a director, whether or not the corporation carries on a business of trading in futures contracts.

[Ins. Act A927:s.5]

DIVISION 3

Associates

2F. Application of Division.

- (1) This Division shall apply for the purpose of interpreting a reference (the "associate reference"), in relation to a person (the "primary person"), to an associate.
- (2) A person is not an associate of the primary person except as provided in this Division.
- (3) Nothing in this Division limits the generality of anything else in it.

[Ins. Act A927:s.5]

2G. Associates of bodies corporate.

If the primary person is a corporation, the associate reference includes a reference to—

- (a) a director or secretary of the corporation;
- (b) a related corporation; and
- (c) a director or secretary of a related corporation.

[Ins. Act A927:s.5]

2H. Partners, trustees and directors.

The associate reference includes a reference to—

- (a) a corporation in partnership with which the primary person carries on a business of trading in futures contracts;
- (b) subject to subsection 2J(2), a person who is a partner of the primary person otherwise than because of carrying on in partnership with the primary person a business of trading in futures

contracts;

- (c) a trustee of a trust in relation to which the primary person benefits, or is capable of benefiting, otherwise than because of transactions entered into in the ordinary course of business in connection with the lending of money;
- (d) a director of a corporation of which the primary person is also a director and which carries on a business of trading in futures contracts; and
- (e) subject to subsection 2J(2), a director of the corporation of which the primary person is also a director and which does not carry on a business of trading in futures contracts.

[Ins. Act A927:s.5]

2I. General.

- (1) The associate reference includes a reference to—
 - (a) a person in concert with whom the primary person is acting, or proposes to act in respect of the matter to which the associate reference relates;
 - (b) a person who, under the regulations, is, for the purposes of the provision in which the associate reference occurs, an associate of the primary person in respect of the matter to which the associate reference relates; or
 - (c) a person with whom the primary person is, or proposes to become, associated in any other way, whether formally or informally, in respect of the matter to which the associate reference relates.
- (2) If the primary person has entered or proposes to enter into a transaction, or has done or proposes to do any act or thing, in order to become associated with another person as mentioned in an applicable provision of this Division, the associate reference includes a reference to that other person.

[Ins. Act A927:s.5]

2J. Exclusions.

- (1) A person is not an associate of another person because of subsection 2I(1) or because of subsection 2I(2) as it applies in relation to subsection 2I(1), merely because one of them gives advice to the other or acts on the other's behalf in the proper performance of the functions attaching to a professional capacity or a business relationship.
- (2) For the purposes of proceedings under this Act in which it is alleged that a person was an associate of another person because of paragraph 2H(b) or (e), the first-mentioned person is not to be taken to have been an associate of the other person in relation to a matter because of that paragraph unless it is proved that the first-mentioned person knew, or ought to have known, at the relevant time, the material particulars of the matter.

[Ins. Act A927:s.5]

2K. Associates of composite persons.

A reference to an associate, in relation to a futures broker or futures trading adviser, is, if two or more persons constitute the futures broker or futures trading adviser, a reference to an associate of any of those persons.

[Ins. Act A927:s.5]

PART II

ESTABLISHMENT OF FUTURES MARKETS

3. Establishment of futures market.

- (1) No person shall establish, operate or maintain or assist in establishing, operating or maintaining or hold himself out as providing, operating or maintaining a futures market that is neither a futures market of an exchange company nor an exempt futures market.
[Am. Act A927:s.7]
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

3A. Exempt futures market.

The Minister may, by order published in the Gazette, declare a futures market to be an exempt futures market subject to such terms and conditions as the Minister thinks fit.

[Ins. Act A927:s.8]

3B. Restriction on establishment of futures market on certain futures contracts.

- (1) No person shall establish, operate, maintain or assist in establishing, operating or maintaining or hold himself out as providing, operating or maintaining a futures market within or outside Malaysia, where futures contracts that are based on, or may be settled by reference to, or in respect of any of the following, are regularly traded:
 - (a) a security that has gained admission to be quoted on a stock market of a stock exchange approved under subsection 8(1) of the Securities Industry Act 1983 [Act 280];
 - (b) a numerical value level of any index comprising the value or price or constituted by reference to the value or price of any security referred to in paragraph (a);
 - (c) a futures contract traded on an exchange company;
 - (d) an underlying instrument of a futures contract referred to in paragraph (c) or a numerical value level of an index, interest rate or other factor used in respect of such futures contract;
 - (e) the local currency within the meaning of subsection 2(1) of the Exchange Control Act 1953 [Act 17] or its equivalent value; or
 - (f) any other instrument, index or factor as may be prescribed by the Minister by order published in the Gazette.
- (2) No person shall participate or assist in or facilitate—
 - (a) any transaction involving a futures contract; or
 - (b) any trading in a futures contract,

on a futures market referred to in subsection (1).

- (3) Subsections (1) and (2) do not apply to an exempt futures market, a futures market of an exchange company or a clearing house.
- (4) Subsection (2) does not apply to the participation in, assistance to or facilitation of any transaction involving, or any trading in, a futures contract on a futures market referred to in subsection (1) that are traded on an exempt futures market, a futures market of an exchange company or a clearing house.
- (5) The Minister may, by order published in the Gazette, declare that subsection (1)–
 - (a) shall not be applicable to a futures market either within or outside Malaysia in relation to such futures contracts or categories of futures contracts specified in the order; or
 - (b) shall only be applicable to the futures market referred to in paragraph (a) in such manner and subject to such terms and conditions as the Minister thinks fit.
- (6) Nothing in this section shall affect a futures market that is a Specified Exchange insofar as the trading in futures contracts is not in relation to a futures contract referred to in subsection (1).
- (7) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

4. Approval of exchange company.

- (1) The Minister may, on the recommendation of the Commission, on application made to him by a company, approve in writing the establishment and operation by the company of a futures market if he is satisfied that the company complies with the requirements specified in subsection (3).

[Subs. Act A927:s.9; Am. Act A1215:s.3]

- (1A) An application under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation, to the Minister.

[Ins. Act A1215:s.3]

- (2) An application under subsection (1) shall be made in writing and shall be accompanied by–
 - (a) a copy of the constitution of the company; and
 - (b) such information as the Minister or the Commission considers necessary in relation to the application;

[Subs. Act A1215:s.3]

- (3) The requirements referred to in subsection (1) are–

- (a) that among the objects contained in the constitution of the company is a provision for the establishment and operation of a futures market;

[Subs. Act A927:s.9]

- (b) that the company shall–

(i) maintain to the satisfaction of the Minister an adequate and properly equipped place of business and facilities;

[Ins. Act A927:s.9]

(ii) establish, operate and maintain futures markets, and facilitate the execution of trades on a futures market only at places approved by the Minister; and

[Subs. Act A927:s.9]

(iii) in respect of each futures market that the company proposes to operate, make arrangements, to the satisfaction of the Minister, for a clearing house to provide clearing house facilities for the company for that market;

[Subs. Act A927:s.9]

(iv) [Repealed by Act A927]

(ba) that the constitution of the company includes an object to act in the public interest;

[Ins. Act A927:s.9]

(c) that the constitution of the company provides for the making of business rules;

[Am. Act A927:s.9]

(d) that the constitution of the company provides that no amendments to the company's constitution and none of its business rules shall be effective unless approved in writing by the Commission; and

[Subs. Act A927:s.9]

(e) that the company shall make arrangements for the establishment of a fidelity fund under Part VI.

(4) The Minister may in writing, on the recommendation of the Commission, amend, revoke or impose new terms and conditions, if the Minister is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the futures market.

[Subs. Act A1215:s.3]

4A. Arrangements as to the discharge of duties of exchange holding company, exchange company and clearing house.

The relevant provisions of sections 11D and 11J of the Securities Industry Act 1983 shall apply to an exchange holding company and to an exchange company or clearing house that is a subsidiary of an exchange holding company.

[Ins. Act A1215:s.4]

5. Appointment of directors of exchange holding company and exchange company.

(1) In relation to an exchange holding company or an exchange company other than an exchange company that is referred to in subsection (2)–

(a) one third of the number of directors on the Board of such exchange holding company or exchange company, as the case may be, shall be appointed by the Minister, in consultation with the Commission, to be public interest directors of the exchange holding company or exchange company and, notwithstanding the provision of any other written law, such public interest directors so appointed–

- (i) shall have the same rights, powers, duties and obligations, liberties and privileges as any director of the exchange holding company or exchange company; and
 - (ii) shall hold office for a period specified by the Minister who may at any time revoke such an appointment; and
 - (b) no person other than a public interest director referred to in paragraph (a) shall accept appointment or election as a director of the exchange holding company or exchange company unless the concurrence of the Commission is obtained.
- (2) Notwithstanding the provisions of subsection (1), in relation to the Board of an exchange company that is a subsidiary of the exchange holding company, no person shall accept appointment or election as a director of such exchange company unless the concurrence of the Commission is obtained.
- (3) The Minister shall, in consultation with the Commission, appoint one person from amongst the public interest directors appointed under subsection (1) to be the non-executive Chairman of the Board of the exchange holding company or exchange company, as the case may be, whose remuneration shall be determined by the Board of the exchange holding company or exchange company, as the case may be.
- (4) Where the concurrence of the Commission is required under subsection (1) or (2), the Commission may refuse to concur if—
 - (a) any proposed director is an undischarged bankrupt, whether in Malaysia or elsewhere;
 - (b) a judgment debt of the proposed director has not been satisfied in whole or in part;
 - (c) the proposed director has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
 - (d) the proposed director—
 - (i) has been convicted, whether in Malaysia or elsewhere, of an offence, involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or
 - (ii) has been convicted for an offence under any of the securities laws; or
 - (e) the Commission is not satisfied that the proposed director is a person of integrity and is fit and proper to be a director.
- (5) For the purposes of subsection (1)—
 - (a) the Minister may, on the recommendation of the Commission, reduce the number of public interest directors on the Board of the exchange holding company or the exchange company, as the case may be; and
 - (b) all public interest directors appointed under subsection (1) shall retire after a term of three years or on the expiry of the term specified by the Minister under subparagraph (1)(a)(ii) and are eligible for reappointment.

[Subs. Act A1215:s.5]

6. Approval of amendment of constitution and business rules of exchange company.

(1) An exchange company shall, as soon as practicable, submit or cause to be submitted to the Commission for its approval—

(a) any proposed amendment to its constitution; and

(b) any proposed business rules or any proposed amendments to existing business rules.

[Ins. Act A927:s.11]

(1A) A submission under subsection (1) shall—

(a) set out the text of the proposed amendment or business rules concerned; and

(b) contain an explanation of the purpose of the proposed amendment or business rules.

[Subs. Act A927:s.11]

(1B) Where—

(a) proposed business rules or amendments to existing business rules involve the introduction of a class of futures contracts, the instrument in respect of which is a commodity, to be offered for trading on a futures market of the exchange company; and

(b) the Minister responsible in respect of the commodity is the Minister for the time being charged with the responsibility for primary industries,

the Commission shall consult that Minister before notifying the exchange company of its decision under subsection (2).

[Ins. Act A987:s.4]

(2) Except in the case of the first business rules to be made after the incorporation of the exchange company, the Commission shall, within six weeks or such longer period as may be agreed between the Commission and the exchange company after the receipt of anything submitted under subsection (1), notify the exchange company in writing of its decision on the proposed amendment or the proposed business rules, as the case may be.

[Subs. Act A927:s.11]

(2A) Where the Commission does not approve any proposed amendment or business rule, the notice under subsection (2) shall identify or specify it.

[Ins. Act A927:s.11]

(3) In addition to the power conferred upon the Commission under subsection (2), the Commission may, by notice in writing to the exchange company, amend or supplement its constitution or any of its business rules.

[Ins. Act A927:s.11]

(4) A notice by the Commission to the exchange company under subsection (3)—

(a) may contain provisions as to the manner in which the amendments made by the Commission shall take effect; and

(b) shall state when the amendments shall take effect.

[Ins. Act A927:s.11]

- (5) An exchange company shall comply with a notice given to it under subsection (3).
- (6) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both.

[Ins. Act A927:s.11]

6A. Providing unauthorised clearing house facilities.

- (1) A person shall not provide or hold out that the person provides, clearing house facilities for a futures market unless—
 - (a) (i) the person is a company; and
 - (ii) there is in force an approval under section 6B to provide clearing house facilities for that exchange company in respect of that futures market; and
 - (b) that futures market is operated by an exchange company.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.
- (3) Subsection (1) shall not apply to any person providing, or holding out as providing, clearing house facilities for an exempt futures market.

[Ins. Act A927:s.12]

6B. Approval of clearing house.

- (1) If a company (the “clearing house”) that proposes to provide clearing house facilities for a futures market of an exchange company (the “relevant exchange company”) applies to the Minister for approval as a clearing house for the relevant exchange company in respect of that futures market, the Minister may in writing on the recommendation of the Commission approve the applicant as a clearing house for the relevant exchange company in respect of that futures market if he is satisfied that—
 - (a) the constitution of the clearing house includes an object to act in the public interest; and
 - (b) the applicant complies with the prescribed requirements.
- (2) An application under subsection (1) shall be in writing and shall be accompanied by—
 - (a) a copy of the constitution of the clearing house; and
 - (b) any other documents and information as may be required by the Minister or the Commission.
- (3) The Minister may approve a company as a clearing house for such number of futures markets or exchange companies as the Minister, on the recommendation of the Commission, thinks fit.

[Am. Act A1215:s.6]

[Am. Act A1215:s.6]

6C. [Deleted by Act A1215:s.6]

6D. Approval of amendment of constitution and business rules of clearing house.

- (1) If a clearing house proposes to make—
 - (a) any amendment to its constitution;
 - (b) any business rules; or
 - (c) any amendments to its existing business rules,the clearing house shall, as soon as practicable, give a written notice in accordance with subsection (2) to the Commission of—
 - (aa) the proposed amendments to its constitution;
 - (bb) the proposed business rules; or
 - (cc) the proposed amendments to its existing business rules,as the case may be.
- (2) The notice shall—
 - (a) set out the text of the proposed amendment or business rules concerned;
 - (b) state the date on which the amendment or business rules are proposed to be put into force; and
 - (c) contain an explanation of the purpose of the proposed amendment or business rules.
- (3) Except in the case of the first business rules to be made after the incorporation of the clearing house, the Commission shall, within six weeks or such longer period as may be agreed between the Commission and the clearing house after the receipt of anything submitted under subsection (1), notify the clearing house in writing of its decision on the proposed amendment or the proposed business rules, as the case may be.
- (4) Where the Commission does not approve any proposed amendment or business rule, the notice under subsection (3) shall identify or specify it.
- (5) In addition to the power conferred upon the Commission under subsection (3), the Commission may, by notice in writing to the clearing house, amend the company's constitution or any of its business rules.
- (6) A notice by the Commission to the clearing house under subsection (5)—
 - (a) may contain provisions as to the manner in which the amendments made by the Commission shall take effect; and
 - (b) shall state when the amendments shall take effect.

- (7) A clearing house shall comply with a notice given to it under subsection (5).
- (8) Any person who contravenes subsection (1) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both.

[Ins. Act A927:s.12]

6E. Rights of exchange company or clearing house or parties to futures contracts not to be affected by laws relating to contracts.

Nothing in any law relating to contracts, to the extent of its inconsistency with the provisions of this Act or the business rules, shall render unenforceable or otherwise adversely affect—

- (a) any rights purported to be conferred on an exchange company or clearing house in relation to a futures contract under this Act or its business rules;
- (b) any rights purported to be conferred on a party to a futures contract entered into on a futures market of an exchange company or an exempt futures market under this Act or the business rules of an exchange company or clearing house; or
- (c) anything done or omitted to be done under or in relation to a futures contract entered into on a futures market of an exchange company or an exempt futures market.

[Ins. Act A927:s.12]

7. Withdrawal of approval of exchange company.

- (1) The Minister may, on the recommendation of the Commission, by notice published in the Gazette, and by such other means as the Commission considers appropriate—
 - (a) withdraw an approval granted under section 4 to the exchange company with effect from the date specified in the notice; or
 - (b) direct the exchange company to cease to provide or operate such facilities, or provide such services, as are specified in the notice, with effect from the date specified in the notice.
- (2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest, or for the proper regulation of the futures market, where any of the following circumstances occurs:
 - (a) the exchange company ceases to operate a futures market;
 - (b) the exchange company is being wound up or otherwise dissolved, whether in Malaysia or elsewhere;
 - (c) the exchange company has contravened any term or condition of its approval or is charged with any offence under any of the securities laws;
 - (d) the exchange company has failed to comply with a condition, requirement or direction given under section 10 of this Act or section 11L of the Securities Industry Act 1983;
 - (e) any information provided for the purposes of section 4 was false or misleading in a material particular;

- (f) a judgment debt of the exchange company has not been satisfied in whole or in part;
 - (g) a receiver, a receiver and manager, or an equivalent person has been appointed, whether in Malaysia or elsewhere, in relation to or in respect of any property of the exchange company;
 - (h) the exchange company has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
 - (i) the exchange company, on its own accord, applies to the Minister to withdraw the approval granted to it under section 4 and the Minister, on the recommendation of the Commission, deems it fit to do so.
- (3) For the purposes of paragraph (2)(a), an exchange company shall be deemed to have ceased to operate its futures market if it has ceased to operate its futures market for a period of one month unless it has obtained the prior approval of the Minister to do so.
- (4) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1), the Minister may permit the exchange company to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purpose of—
- (a) closing down the operations of the exchange company or ceasing to provide the services specified in the notice; or
 - (b) protecting the interest of investors or the public interest.
- (5) Where the Minister has granted permission to an exchange company under subsection (4), the exchange company shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 3.
- (6) The Minister shall not take any action under subsection (1) without giving an opportunity to be heard.

[Subs. Act A1215:s.8]

7A. Withdrawal of approval of clearing house.

- (1) The Minister may, on the recommendation of the Commission, by notice published in the Gazette, and by such other means as the Commission considers appropriate—
- (a) withdraw the approval granted under section 6B to a clearing house with effect from the date specified in the notice; or
 - (b) direct the clearing house to cease to provide or operate such facilities, or to cease to provide such services, as specified in such notice, with effect from the date specified in the notice.
- (2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, or on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of the futures market, where any of the following circumstances occurs:
- (a) the clearing house ceases to provide clearing house facilities;

- (b) the clearing house is being wound up or otherwise dissolved, whether in Malaysia or elsewhere;
 - (c) the clearing house has contravened any of the terms or conditions of its approval or the provisions of section 6D or is charged with any offence under any of the securities laws;
 - (d) the clearing house has failed to comply with a condition, requirement or direction given under section 10 of this Act or section 11L of the Securities Industry Act 1983;
 - (e) any information provided for the purposes of the section 6B was false or misleading in a material particular;
 - (f) a judgment debt of the clearing house has not been satisfied in whole or in part;
 - (g) a receiver, a receiver and manager, or equivalent person has been appointed, whether in Malaysia or elsewhere, in relation to or in respect of any property of the clearing house;
 - (h) the clearing house has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
 - (i) the clearing house, on its own accord, applies to the Minister to withdraw the approval granted to it under section 6B and the Minister, on the recommendation of the Commission, deems it fit to do so.
- (3) For the purposes of paragraph (2)(a), a clearing house shall be deemed to have ceased to provide clearing house facilities if it has ceased to provide such facilities for a period of one month unless it has obtained the prior approval of the Minister to do so.
- (4) Notwithstanding the withdrawal of an approval or issuance of a direction under subsection (1), the Minister may permit the clearing house to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purpose of—
- (a) closing down the operations of the clearing house or ceasing to provide the facilities specified in the notice; or
 - (b) protecting the interest of investors or the public interest.
- (5) Where the Minister has granted permission to a clearing house under subsection (4), the clearing house shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 6A.
- (6) The Minister shall not take any action under subsection (1) without giving an opportunity to be heard.

[Subs. Act A1215:s.9]

7B. Effect of withdrawal of approval.

- (1) Any withdrawal of approval or direction issued under section 7 shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement entered into on the futures market operated by the exchange company, whether the agreement, transaction or arrangement was entered into before or, where subsection 7(4) applies, after the withdrawal of the approval or issuance of the direction under subsection 7(1); or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[Ins. Act A1215:s.10]

- (2) Any withdrawal of approval or direction issued under section 7A shall not operate so as to—
 - (a) avoid or affect any agreement, transaction or arrangement entered into through the clearing house facilities operated by the clearing house, whether the agreement, transaction or arrangement was entered into before or, where subsection 7A(4) applies, after, the withdrawal of the approval or issuance of the direction under subsection 7A(1); or
 - (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

8. Suspension of trading in lieu of withdrawal of approval.

[Am. Act A1215:s.11]

- (1) Where an exchange company has ceased to comply with any requirement specified in subsection 4(3), or where the Minister receives a recommendation from the Commission under section 11, the Minister may, instead of withdrawing the approval under section 7, direct that trading on the futures market of the exchange company be suspended until such time as the exchange company has, to the satisfaction of the Minister, complied with such requirement, or rectified the matter forming the basis of the recommendation by the Commission, or until the Minister revokes the direction.

[Subs. Act A927:s.15; Am. Act A1215:s.11]

- (2) The Minister shall give the exchange company not less than 14 days' notice in writing of his intention to direct suspension of trading under subsection (1) and the notice shall specify the grounds for the suspension.

9. Closure of the exchange in an emergency.

- (1) The Minister may direct the exchange company to close a futures market of the exchange company for a period not exceeding five days if the Minister is of the opinion that an orderly and fair market for trading in futures contracts on the futures market is being or is likely to be prevented because—

- (a) an emergency or natural disaster has occurred in Malaysia; or
- (b) there exists an economic or financial crisis or any other circumstances in Malaysia or elsewhere.

[Subs. Act A927:s.16]

- (2) The Minister may extend the closure of the futures market under subsection (1) for further periods each not exceeding five days.

[Subs. Act A927:s.16]

- (3) The Minister shall specify the grounds for the closure in the direction given under subsection (1) and the grounds for any extension of closure under subsection (2).
- (4) For the purposes of this section, "fair market" includes but is not limited to a market that reflects the forces of supply and demand.

[Ins. Act A927:s.16]

10. Power of the Commission to take action against exchange company, clearing house, etc. for failure to comply with rules, regulations, etc.

(1) Where it is shown that—

- (a) an exchange holding company, exchange company or clearing house, as the case may be, has failed to comply with, observe, enforce or give effect to the business rules of an exchange company or a clearing house, as the case may be; or

[Subs. Act A1215:s.12]

- (b) an exchange holding company, exchange company or clearing house or any director on the Board of the exchange holding company, exchange company or clearing house, or any officer of the exchange holding company, the exchange company or clearing house, or any affiliate of the exchange company or clearing house has acted in any way relating to the operation of the exchange company, of the clearing house or of any futures market that is operated by the exchange company or in respect of which the clearing house provides clearing house facilities which has prejudiced or is likely to prejudice the public interest; or

[Am. Act A1215:s.12]

- (c) an exchange holding company, exchange company, clearing house or any director on the Board of an exchange holding company, exchange company or clearing house or any officer of the exchange holding company, exchange company or clearing house, or any affiliate of the exchange company or clearing house or any other person upon whom an obligation has been imposed under the provisions of this Act—

- (i) has contravened any provision of this Act; or
- (ii) has failed to comply with, observe, enforce or give effect to any directions given by the Commission under this Act,

[Ins. Act A1215:s.12]

the Commission may take one or more of the following actions:

- (aa) direct the exchange holding company or exchange company, as the case may be—

[Am. Act A1215:s.12]

- (i) to suspend trading on the futures market in a particular class of futures contracts;
- (ii) to limit transactions on the futures market to the closing out of futures contracts;
- (iii) to defer for a stated period the completion date for all futures contracts or for a particular class of futures contracts entered into on the futures market;
- (iv) to cause a particular futures contract entered into on the futures market or each futures contract included in a particular class of futures contracts so entered into, to be—

- (A) closed out immediately as the result of the matching up of the futures contract with a futures contract of the same kind whose price or value is equal to a price or value determined by the exchange company; or
 - (B) invoiced back to a stated date at a price or value determined by the exchange company;
- (v) to require a futures contract entered into on the futures market or each futures contract included in a particular class of futures contracts so entered into, to be discharged by—
 - (A) the tendering of a merchantable lot of an instrument determined by the exchange company, that is of a quality or standard determined by the exchange company, that is different from the quality or standard of the instrument stated in the futures contract; and
 - (B) the tendering of a price adjusted by an amount determined by the exchange company that is appropriate having regard to the quality or standard of the instrument referred to in subsubparagraph (A);
- (vi) to require any affiliates of the exchange company to act in a particular manner in relation to trading in futures contracts on the futures market of that exchange company or in relation to trading in a particular class of futures contracts;
- (bb) direct the exchange holding company, exchange company, clearing house, director, officer or affiliate concerned to enforce or comply with, as the case may be, any such business rules, provisions or directions referred to in paragraph (1)(a) or cease any such acts referred to in paragraph (1)(a) or (b);

[Am. Act A1215:s.12]
- (cc) in respect of the exchange holding company, exchange company or clearing house, impose a penalty in proportion to the severity and gravity of the breach, but which in any event shall not exceed RM500,000;

[Subs. Act A1215:s.12]
- (dd) in respect of—
 - (i) a director on the Board of the exchange holding company, exchange company or clearing house;
 - (ii) an officer of the exchange holding company, exchange company or clearing house;
 - (iii) a director on the Board of an affiliate of an exchange company or clearing house; or
 - (iv) an officer of an affiliate of an exchange company or clearing house,

impose a penalty in proportion to the severity and gravity of the breach, but which in any event shall not exceed RM250,000;

[Subs. Act A1215:s.12]
- (ee) reprimand the exchange holding company, exchange company, clearing house or individual concerned; and

[Am. Act A1215:s.12]

- (ff) require the exchange holding company, exchange company, clearing house, director, officer or affiliate concerned or any other person concerned, to take such steps as the Commission may direct to remedy or mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

[Ins. Act A1215:s.12]

- (2) The Commission shall give the exchange holding company, exchange company, clearing house, director of the Board, officer or affiliate, as the case may be, not less than 14 days' notice of its intention to take any of the actions under subsection (1) and the notice shall specify the grounds for the action taken.

[Subs. Act A927:s.17; Am. Act A1215:s.12]

- (3) A direction, penalty or reprimand under subsection (1) shall be conclusive unless, within 14 days thereafter, the exchange holding company, exchange company, clearing house or individual concerned appeals to the Minister in writing against the direction, penalty or reprimand, as the case may be.

[Am. Act A1215:s.12]

- (4) An appeal under subsection (3) shall not act as a stay of a direction given under subsection (1) unless otherwise determined by the Commission.

[Subs. Act A927:s.17]

- (5) The Minister may affirm or set aside any of the actions of the Commission taken under subsection (1) or direct the Commission to modify its action, and the decision of the Minister shall be final.

- (6) For the purpose of paragraph (1)(ff), in determining whether or not restitution is to be made by an exchange holding company, exchange company, clearing house, director, officer or affiliate concerned, or any other person concerned, the Commission shall have regard to—

- (a) the profits that have accrued to such exchange holding company, exchange company, clearing house, director, officer or affiliate concerned or any other person concerned; or
- (b) whether any person has suffered or loss or been otherwise adversely affected as a result of the breach.

[Ins. Act A1215:s.12]

- (7) The Commission shall not take any action under subsection (1) without giving an opportunity to be heard.

[Ins. Act A1215:s.12]

- (8) Where an action taken by the Commission under subsection (1) is against any person other than the exchange holding company, exchange company or clearing house, the Commission shall serve the a written notice on the exchange holding company, exchange company or clearing house, as the case may be, of the grounds and the proposed action to be taken by the Commission.

[Ins. Act A1215:s.12]

- (9) Nothing in this section shall preclude—

- (a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and

- (b) the exchange holding company, exchange company and clearing house, as the case may be, from taking any action under its business rules.

[Ins. Act A1215:s.12]

(10) For the purposes of this section, “breach” means–

- (a) a failure to comply with, observe, enforce or give effect to–
 - (i) the business rules of an exchange, company or clearing house;
 - (ii) the provisions of this Act; or
 - (iii) any direction given by the Commission under this Act, whilst under any obligation to do so; or
- (b) any effect referred to in paragraph (1)(b).

[Ins. Act A1215:s.12]

11. Commission may recommend revocation of approval.

Where the Commission is of the opinion that the act or omission of the exchange company, or of any officer of the exchange company, referred to in section 10, is of such a serious nature as to warrant a revocation of the approval granted to the exchange company under section 4, the Commission may make a recommendation to the Minister to revoke the approval granted by him to the exchange company.

11A. Power of court to order compliance with or enforcement of business rules.

- (1) Where a person who is under an obligation to comply with or has the power to enforce the business rules of an exchange company or clearing house fails to comply with or enforce any of those business rules, the Commission or any person aggrieved by the failure may apply to the court for an order of such compliance or enforcement.
- (2) The court may, if it is satisfied that there has been a failure by any person to comply with or enforce the business rules of an exchange company or clearing house, order such person to comply with or to enforce such business rules.

[Ins. Act A927:s.18]

12. Publication of notice of suspension of trading or closure.

Where an action is taken by the Minister or the Commission under section 8, 9, 10 or 15, the Commission shall publish a notice of the action taken in such manner as it considers appropriate.

[Subs. Act A927:s.19; Subs. Act A1215:s.13]

13. Directions to be complied with.

- (1) An exchange company or a clearing house shall comply with any direction given to it under section 8, 9, 10, 15 or 15A.
- (1A) A person shall not trade in a futures contract or do any other thing that is inconsistent with any direction given under section 8, 9, 10, 15 or 15A.

[Subs. Act A927:s.20]

- (2) Any person who contravenes subsection (1) or (1A) shall be guilty of an offence and is liable on conviction to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both.

[Subs. Act A927:s.20]

14. Prevention of entry into premises or use of facilities of exchange company.

- (1) Where trading in any futures contract on a futures market of an exchange company is suspended under section 8, 10 or 15 or a futures market of an exchange company is closed under section 9, any officer of the Commission authorised in writing by the Commission to act under this section or any police officer not below the rank of Inspector may, during the period of suspension or closure, take such steps as may be necessary to ensure that the premises or facilities of the exchange company provided for trading in futures contracts are locked and secured.

[Subs. Act A927:s.21]

- (2) Any person who without the authority of an officer of the Commission authorised in writing by the Commission or a police officer not below the rank of Inspector, enters any premises or uses the facilities which are locked and secured under subsection (1) shall be guilty of an offence and is liable on conviction to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding three years or to both.

[Ins. Act A927:s.21]

15. Powers of the Commission.

- (1) Whenever the Commission has reason to believe that an emergency exists, it may take such action as it considers necessary to maintain or restore orderly trading on a futures market of an exchange company.

[Subs. Act A927:s.22]

- (2) Without prejudice to the generality of its powers under subsection (1), the powers of the Commission shall include the powers to—

- (a) direct the exchange company to take any one or more of the actions mentioned in paragraph 10(1)(aa);
- (b) direct the clearing house to take any action considered appropriate by the Commission which may include any one or more of the following:
 - (i) ordering the liquidation of all positions or part thereof or the reduction of such positions;
 - (ii) altering conditions of delivery or settlement;
 - (iii) fixing the settlement price at which any class or type of futures contracts is to be liquidated;
 - (iv) requiring additional margins for any futures contracts or class or type of futures contracts;
- (c) modify trading days or hours not amounting to a closure of a futures market for any one day; and

(d) modify or suspend the application of any of the business rules of the exchange company or clearing house.

[Subs. Act A927:s.22]

(3) If–

(a) a direction is given under subsection (2) to an exchange company or clearing house requiring it to perform any act; and

(b) the exchange company or clearing house fails to comply with the direction,

the Commission may itself perform that act.

[Subs. Act A927:s.22]

(4) In this section, “emergency” means a situation or the occurrence of any event including–

(a) market manipulations and cornering;

(b) any act of any person affecting an instrument;

(c) any major market disturbance howsoever caused which prevents the markets from accurately reflecting the forces of supply and demand for such instrument; and

(d) any other undesirable market situations or practices,

which, in the opinion of the Commission, is likely to affect the proper operation of a clearing house for a futures market of an exchange company or is likely to affect or cause a disruption to the orderly trading of futures contracts on such futures market.

[Subs. Act A927:s.22]

(5) Any person who is aggrieved by any action taken by the Commission under this section may appeal to the Minister whose decision shall be final.

(6) Notwithstanding any appeal under subsection (5), any emergency action taken by the Commission shall continue to have force and effect until such time as the Minister makes a decision on the appeal.

15A. Direction to clearing house.

As soon as practicable after a direction has been given under section 8, 9, 10 or 15 to an exchange company in relation to a futures market, the Commission shall give to the clearing house for that futures market–

(a) a copy of the direction; and

(b) a written direction prohibiting the clearing house from acting in a manner inconsistent with, and requiring the clearing house to do all that it is reasonably capable of doing to give effect to, the direction under section 8, 9, 10 or 15 while the last-mentioned direction remains in force.

[Ins. Act A927:s.23]

PART III

LICENSING OF FUTURES BROKERS, FUTURES FUND MANAGERS, FUTURES TRADING ADVISERS AND REPRESENTATIVES

16. Futures brokers to be licensed.

- (1) Subject to section 20, a person shall not—
 - (a) trade in a futures contract on another person's behalf; or
 - (b) hold out that the person carries on a futures broking business,unless the first-mentioned person holds a futures broker's licence. [Subs. Act A927:s.25]
- (2) No corporation shall carry on futures broking business unless every director or employee who is accredited to the corporation is licensed as a futures broker's representative under this Act. [Del. Act A927:s.25]
- (2A) Subsections (1) and (2) shall not apply to a person who is a holder of a futures fund manager's licence whose trading in futures contracts on another person's behalf is for the purposes of the first-mentioned person's futures fund management business. [Ins. Act A1042:s.5]
- (3) For the purposes of subsection (2), a director or employee of a corporation shall be deemed to be accredited to the corporation if he is, in his capacity as such director or employee, duly authorised by the corporation to act for or on behalf of that corporation for the purpose of trading in futures contracts.
- (4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

16A. Futures fund managers to be licensed.

- (1) Subject to section 20, a person shall not—
 - (a) carry on a futures fund management business; or
 - (b) hold himself out as a futures fund manager,unless the person holds a futures broker's licence or a futures fund manager's licence.
- (2) A corporation shall not carry on a futures fund management business unless every director or employee of the corporation who is accredited to the corporation holds a futures fund manager's representative's licence.
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both. [Ins. Act A927:s.26]

17. Futures trading advisers to be licensed.

(1) Subject to section 20, a person shall not—

- (a) carry on a futures advice business; or
- (b) hold himself out as a futures trading adviser,

unless the person holds a futures broker's licence, a futures fund manager's licence or a futures trading adviser's licence.

[Subs. Act A927:s.27]

(2) A corporation shall not carry on a futures advice business unless every director or employee of the corporation who is accredited to the corporation holds a futures trading adviser's representative's licence.

[Subs. Act A927:s.27]

(3) [Repealed by Act A927]

(4) [Repealed by Act A927]

(5) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Ins. Act A987:s.5]

18. Futures broker's representative to be licensed.

(1) Subject to section 20, a person shall not do an act as a representative of a futures broker unless—

- (a) that futures broker holds a futures broker's licence; and
- (b) the person holds a futures broker's representative's licence in relation to that futures broker.

[Subs. Act A927:s.28]

(1A) Subject to subsection (1B), a person does an act or engages in conduct, as a futures broker's representative of another person if the first-mentioned person does the act or engages in the conduct—

- (a) in connection with a futures broking business carried on by the other person; and
- (b) while the first-mentioned person is a futures broker's representative of the other person; and
- (c) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and
- (d) otherwise than in the course of work of a kind ordinarily done by accountants, clerks or cashiers.

[Ins. Act A927:s.28]

- (1B) A person who holds himself out to be a futures broker's representative of another person is, by the holding out, to be taken to do an act of a futures broker's representative of the other person except for the purpose of determining whether the other person is liable for acts done by the first-mentioned person.

[Ins. Act A927:s.28]

- (2) Any person who contravenes subsection (1) shall be guilty of an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

18A. Futures fund manager's representatives to be licensed.

- (1) Subject to section 20, a person shall not do an act as a representative of a futures fund manager unless—
- (a) that futures fund manager holds a futures broker's licence or a futures fund manager's licence; and
 - (b) the person holds a futures fund manager's representative's licence in relation to that futures fund manager.
- (2) Subject to subsection (3), a person does an act or engages in conduct, as a futures fund manager's representative of another person if the first-mentioned person does the act or engages in the conduct—
- (a) in connection with a futures fund management business carried on by the other person; and
 - (b) while the first-mentioned person is a futures fund manager's representative of the other person; and
 - (c) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and
 - (d) otherwise than in the course of work of a kind ordinarily done by accountants, clerks or cashiers.
- (3) A person who holds himself out to be a futures fund manager's representative of another person is, by the holding out, to be taken to do an act of a futures fund manager's representative of the other person except for the purpose of determining whether the other person is liable for acts done by the first-mentioned person.
- (4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Ins. Act A927:s.29]

19. Futures trading adviser's representative to be licensed.

- (1) Subject to section 20, a person shall not do an act as a representative of a futures trading adviser unless—
- (a) that futures trading adviser holds a futures broker's licence, a futures fund manager's licence or a futures trading adviser's licence; and

- (b) the person holds a futures trading adviser's representative's licence in relation to that futures trading adviser.

[Subs. Act A927:s.30]

- (1A) Subject to subsection (1B), a person does an act or engages in conduct, as a futures trading adviser's representative of another person if the first-mentioned person does the act or engages in the conduct—

- (a) in connection with a futures advice business carried on by the other person; and
- (b) while the first-mentioned person is a futures trading adviser's representative of the other person; and
- (c) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and
- (d) otherwise than in the course of work of a kind ordinarily done by accountants, clerks or cashiers.

[Ins. Act A927:s.30]

- (1B) A person who holds himself out to be a futures trading adviser's representative of another person is, by the holding out, to be taken to do an act of a futures trading adviser's representative of the other person except for the purpose of determining whether the other person is liable for acts done by the first-mentioned person.

[Ins. Act A927:s.30]

- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

20. Persons exempt from being licensed under this Act.

- (1) The following persons shall be exempted from the provisions of section 16, 16A, 17, 18, 18A or 19:

[Am. Act A1215:s.1]

- (a) person or persons or class of persons as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette; such exemption shall be subject to such conditions, limitations and restrictions as the Minister may, on the recommendation of the Commission, specify in the same order; and
- (b) without prejudice to the generality of the provisions in paragraph (a)—
 - (i) an official receiver or a trustee under the Bankruptcy Act 1967 [Act 360];
 - (ii) a receiver, receiver and manager, or liquidator, appointed by a court;
 - (iii) a receiver, receiver and manager, or liquidator, appointed otherwise than by a court;
 - (iv) a person appointed by a court;
 - (v) a trustee or other person administering a compromise or arrangement between

a body corporate and any other person or persons; and

(vi) any other prescribed person,

who, in the course of discharging his duties in such capacity pursuant to any written law or court order, does an act of a futures broker, futures fund manager, futures trading adviser or representative.

- (2) Nothing in subsection (1) shall be deemed to exempt the person or persons or class of persons prescribed or specified therein from complying with other provisions of this Act unless the Minister, on the recommendation of the Commission, specifically exempts that person or those persons or class of persons from complying with those other provisions, by order published in the Gazette, subject to conditions, limitations and restrictions as the Minister may, on the recommendation of the Commission, specify in the same order.

[Ins. Act A1042:s.6]

21. [Repealed by Act A927:s.32]

22. Licensing of persons under this Part.

- (1) Subject to subsection (1A) and sections 23 and 24, the Commission may, on application made to it by any person in the prescribed manner and on payment of the prescribed fee, license that person as—

[Subs. Act A927:s.33]

(a) a futures broker;

(b) a futures trading adviser;

(c) a futures broker's representative;

[Am. Act A927:s.33]

(d) a futures trading adviser's representative;

[Subs. Act A927:s.33]

(e) a futures fund manager; or

[Ins. Act A927:s.33]

(f) a futures fund manager's representative,

[Ins. Act A927:s.33]

as the case may be.

- (1A) A futures broker's licence may only be granted or renewed by the Commission with the approval of the Minister.

[Ins. Act A927:s.33]

- (2) Unless otherwise specified by the Commission with the consent of the applicant, a licence granted under subsection (1) shall—

[Am. Act A1215:s.15]

(a) be valid for a period of 12 months beginning with the day on which it is granted; and

(b) be subject to such conditions as the Commission may determine when granting the

licence.

[Subs. Act A927:s.33]

- (3) The conditions referred to in paragraph (2)(b) may be varied or added to by the Commission at any time—
- (a) while the licence is in force; or
 - (b) when it renews a licence:

Provided that where the proposed variation or addition is likely to substantially prejudice the interests of the licensed person, the Commission shall give such person an opportunity to be heard.

[Subs. Act A927:s.33]

(3A) A licence shall—

- (a) state the name of the person to whom the licence is granted;
- (b) state whether the licence is a futures broker's licence, a futures fund manager's licence, a futures trading adviser's licence, a futures broker's representative's licence, a futures fund manager's representative's licence or a futures trading adviser's representative's licence, as the case may be;
- (c) if the licence is a representative's licence, state the name of the futures broker, futures fund manager or futures trading adviser of which or of whom the licensed person is a representative;
- (d) state the conditions of the licence that are applicable when it was granted or last renewed, as the case may be; and
- (e) state the day on which the licence was granted or renewed.

[Ins. Act A927:s.33]

- (4) The granting or renewal of a futures broker's licence, a futures fund manager's licence or a futures trading adviser's licence to a person shall not authorise such person to carry on a futures broking business, a futures fund management business or a futures advice business, as the case may be, under any name other than that specified in the licence.

[Subs. Act A927:s.33]

- (5) All fees received by the Commission for the grant or renewal of licences shall be paid into the Consolidated Fund.

[Ins. Act A927:s.33]

23. Restriction on grant of licence.

- (1) A futures broker's licence or a futures fund manager's licence may only be granted to a corporation.
[Subs. Act A927:s.34]
- (2) A futures trading adviser's licence may be granted to an individual or a corporation.
[Subs. Act A927:s.34]
- (3) A representative's licence may only be granted to an individual.

[Subs. Act A927:s.34]

24. Refusal to grant a licence.

- (1) The Commission may refuse to grant a licence on any of the grounds prescribed by the Minister.
- (2) For the purposes of subsection (1), the Minister may prescribe grounds that relate to considerations of public interest and the appropriate level of professional and financial standards, professional qualifications, skills and capabilities for the performance of the functions and duties of the holder of a licence granted under this Part.

[Subs. Act A927:s.35]

25. Renewal of licence.

- (1) Subject to subsection (3), the Commission may, on an application made by a licensed person in the prescribed manner not later than 30 days before the day on which his licence, if not renewed, would expire and on payment of the prescribed fee, renew such licence.

[Am. Act A927:s.36]

- (2) The Commission may require an applicant under subsection (1) to supply the Commission with any further information that the Commission considers necessary to deal with the application.

[Subs. Act A927:s.36]

- (3) The Commission may refuse to renew a licence under subsection (1)–

- (a) on any ground prescribed under section 24 on which the Commission may refuse to grant a licence;

[Subs. Act A927:s.36]

- (b) on any ground on which the Commission may revoke a licence under section 26 or 28; or

[Subs. Act A927:s.36]

- (c) on the grounds that such person has failed to comply with subsection (1) or with any requirement of the Commission under subsection (2).

- (4) A licence renewed under subsection (1) shall–

- (a) be valid for a period of 12 months beginning at the end of the period for which it was granted or last renewed unless otherwise specified by the Commission with the consent of the licensed person; and

[Subs. Act A927:s.36; Am. Act A1215:s.16]

- (b) be subject to such conditions as the Commission may determine when renewing the licence or during the period of the renewal.

[Subs. Act A927:s.36]

- (5) Nothing in this section shall be construed as preventing a licence that has been renewed from being further renewed under this section.

- (6) The Commission shall not refuse under subsection (3) to renew the licence of a licensed person without first giving such person an opportunity of being heard.

[Subs. Act A927:s.36]

- (7) Where the Commission refuses, under subsection (3), to renew the licence of a licensed person the Commission shall notify such person in writing to that effect stating the reasons for the refusal.

[Subs. Act A927:s.36]

26. Revocation of licence.

- (1) A licence is deemed to be revoked—

- (a) if the licensed person is an individual, when the individual dies or ceases to be a representative of the futures broker, futures fund manager or futures trading adviser in relation to whom the licence was granted; or

[Subs. Act A927:s.37]

- (b) if the licensed person is a corporation, when the corporation is wound up.

- (2) The Commission may revoke a licence—

- (a) granted to an individual—

- (i) on any ground prescribed under section 24 on which the Commission may refuse to grant a licence;

[Subs. Act A927:s.37]

- (ii) if a levy of execution in respect of him has not been satisfied;

- (iii) if he fails or ceases to carry on business for which he was licensed for a continuous period of three months;

- (iv) if the licence is a representative's licence, if the licence of the futures broker, futures fund manager or futures trading adviser in relation to whom the representative's licence was granted is revoked;

[Ins. Act A927:s.37]

- (v) if the licensed person contravenes or fails to comply with any business rules of an exchange company or clearing house or any condition or restriction applicable in respect of the licence; or

[Subs. Act A927:s.37]

- (vi) if the licensed person fails to pay a penalty imposed under paragraph 28(2)(d);

[Ins. Act A927:s.37]

- (b) granted to a corporation—

- (i) on any ground on which the Commission may refuse under section 24 to grant a licence;

[Subs. Act A927:s.37]

- (ii) if it is being or has been wound up;

- (iii) if a levy of execution in respect of it has not been satisfied;

- (iv) if it has entered into any composition or arrangement with its creditors;
- (v) if it fails or ceases to carry on the business for which it was licensed for a continuous period of three months;
[Del. Act A927:s.37]
- (vi) if the licensed person contravenes or fails to comply with any of the business rules of an exchange company or clearing house or any conditions or restrictions applicable in respect of the licence;
[Subs. Act A927:s.37]
- (vii) if a receiver or a receiver and manager, has been appointed (whether or not by a court), in respect of the property of the corporation;
[Ins. Act A927:s.37]
- (viii) if the corporation has entered into a compromise or arrangement with another person the administration of which has not been concluded; or
[Ins. Act A927:s.37]
- (ix) if the corporation fails to pay a penalty imposed under paragraph 28(2)(d).
[Ins. Act A927:s.37]

(3) The Commission shall not revoke the licence of a licensed person under subsection (2) without first giving such person an opportunity of being heard.
[Subs. Act A927:s.37]

(4) Where the Commission revokes the licence of a licensed person under subsection (2) the Commission shall notify such person in writing to that effect stating the reasons for the revocation and specifying the date on which the revocation shall take effect.
[Subs. Act A927:s.37]

27. Surrender of licence.

- (1) A licensed person may surrender his licence to the Commission by forwarding it to the Commission with a written notice of its surrender.
- (2) The surrender of a licence under subsection (1) shall not take effect unless the Commission is satisfied that adequate arrangements have been made to meet all liabilities of the licensed person outstanding at the time when the notice of surrender was given by the licensed person.

[Subs. Act A927:s.38]

28. Powers of Commission in cases of misconduct, etc.

- (1) Without prejudice to section 10, the Commission may, at any time, make inquiry into any allegation that a licensed person—
[Am. Act A1215:s.17]
 - (a) is or has been guilty of any misconduct; or
 - (b) is no longer a fit and proper person to continue to remain licensed by reason of any other circumstances which have led, or are likely to lead, to the improper conduct of business by him or which reflect discredit on the method of conducting his business.

- (1A) The Commission may, if it thinks appropriate in the public interest, during an inquiry under subsection (1) suspend the licence of a licensed person for such period as it thinks fit ending on or before the date it makes a decision under subsection (2).
[Ins. Act A927:s.39]
- (2) If the Commission thinks fit, after an inquiry under subsection (1) or (5) against a licensed person, the Commission may take one or more of the following actions:
[Subs. Act A927:s.39; Am. Act A1215:s.17]
- (a) revoke the licence of such person;
 - (b) suspend the licence of such person for such period, or until the happening of such event, as the Commission may determine;
 - (c) reprimand him or, in the case of a licensed person that is a corporation, reprimand any director or person concerned in its management;
[Am. Act A1215:s.17]
 - (d) direct such person to comply with, observe, enforce or give effect to any requirement or provision of this Act, any regulation made under this Act, any condition imposed under or pursuant to this Act or any requirement or condition of the business rules of an exchange company or a clearing house;
[Subs. Act A1215:s.17]
 - (e) require such person to take such steps as the Commission may direct to remedy the misconduct or mitigate the effect of such misconduct, including making restitution to any other person aggrieved by such misconduct;
[Ins. Act A1215:s.17]
 - (f) impose a penalty in proportion to the severity and the gravity of the misconduct, but which in any event shall not exceed RM500,000.
[Ins. Act A1215:s.17]
- (3) The Commission shall, at the hearing of an inquiry into an allegation under subsection (1) against a licensed person, give such person an opportunity of being heard.
- (3A) For the purposes of paragraph (2)(e), in determining whether or not restitution is to be made by a person, the Commission shall have regard to—
- (a) the profits that have accrued to such person; or
 - (b) whether any person has suffered loss or been otherwise adversely affected as a result of the misconduct.
[Ins. Act A1215:s.17]
- (3B) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against a licensed person guilty of misconduct.
[Ins. Act A1215:s.17]
- (4) If the Commission takes action under subsection (1), it shall give written notice—
- (a) to the licensed person;
 - (b) if the licensed person is accredited to a corporation, to the corporation; and

- (c) if the licensed person is an affiliate of an exchange company or clearing house, to the exchange company or clearing house.

[Subs. Act A927:s.39]

- (5) Without prejudice to the powers of the Commission under subsections (1) and (2), the Commission may, if the licensed person is a futures broker, direct the exchange company of which the licensed person is an affiliate to conduct an inquiry into any allegation of misconduct by a licensed person.

[Subs. Act A927:s.39]

- (6) For the purpose of subsection (5), the exchange company shall, as soon as practicable, by notice inform the Commission of the findings of every inquiry conducted by it under this section but any delay or failure informing the Commission shall not invalidate the validity of the inquiry or the findings of the exchange company.

- (7) For the purpose of this section, "misconduct" means—

- (a) any failure to comply with, observe, enforce or give effect to any requirement or provision of this Act, any regulation made under this Act, any condition imposed under or pursuant to this Act, or any requirement of, or condition imposed by, the business rules of an exchange company or a clearing house, in the circumstances where the licensed person is under an obligation to comply with, observe, enforce or give effect to such requirement; or

[Subs. Act A927:s.39; Subs. Act A1215:s.17]

- (b) any act or omission by a licensed person, in respect of a futures broking business, futures advice business or futures fund management business carried on by the person or by a person in relation to whom the licensed person is a representative, that is or is likely to be—

- (i) prejudicial to the interests of the clients of the person; or

- (ii) prejudicial to the public interest.

[Subs. Act A927:s.39]

29. Effect of revocation, suspension or surrender of licence.

- (1) A revocation, suspension or surrender of the licence of a licensed person shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement relating to the trading in futures contracts entered into by such person before the revocation, suspension or surrender takes effect; or

[Subs. Act A927:s.40]

- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

- (2) A person whose licence is revoked under section 26, other than subparagraph (2)(a)(iii) or (2)(a)(iv) or (2)(b)(ii) or (2)(b)(v) of that section, or suspended under paragraph 28(2)(b) and such suspension has not been lifted before the expiry of his licence under this Act, may not apply to be licensed under this Part until the expiration of at least 12 months from the date of revocation or suspension.

30. Appeal to the Minister against refusal to grant a licence, etc.

Where the Commission—

- (a) refuses to grant a licence under section 24;
- (b) refuses to renew a licence under section 25;
- (c) revokes or suspends a licence under section 26; or
- (d) revokes or suspends a licence or imposes a penalty under section 28,

the person who is aggrieved by the decision of the Commission may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

[Subs. Act A927:s.41]

31. [Repealed by Act A927:s.42]

32. Information to be provided by licensed persons.

- (1) Every licensed person shall forthwith notify the Commission of any change which, while his licence is in force, may occur—

- (a) in the address in Malaysia at which he carries on business as a licensed person;
- (b) in the business name under which the licensed person carries on that business or in the name of the licensed person; or

[Subs. Act A927:s.43]

- (c) in any information required under section 22 or 25 to be supplied in or in connection with his application for licence or renewal of licence,

[Subs. Act A927:s.43]

as the case may be.

- (2) Every licensed person shall forthwith, on ceasing to carry on the business for which he is licensed, notify the Commission of that fact.

- (3) If, at any time while a corporation is licensed as a futures broker, futures fund manager or futures trading adviser, any director or employee of the corporation becomes or ceases to be accredited to the corporation, the corporation shall, within seven days after that event, notify the Commission of the name and address of that director or employee.

[Ins. Act A927:s.43]

- (4) If a person becomes or ceases to be a representative, the person shall within seven days after that event notify the Commission of that fact.

[Ins. Act A927:s.43]

- (5) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding two years or to both.

[Subs. Act A927:s.43]

33. Register of licensed persons.

- (1) The Commission shall keep in such form as it thinks fit a register of licensed persons specifying—
 - (a) in relation to a person licensed as a futures broker, futures fund manager or futures trading adviser—
 - (i) the name of the person;
 - (ii) in the case of a corporation, the names of the directors and secretaries of the corporation; and
 - (iii) the address of the principal place of business and any branches at which the person carries on the business in respect of which the licence was granted;
 - (b) in relation to a person licensed as a representative—
 - (i) the name of the person; and
 - (ii) the name of the futures broker, futures fund manager or futures trading adviser in relation to whom the licence was granted;
 - (c) such other information as the Commission thinks relevant. [Subs. Act A927:s.44]
- (2) The Commission shall remove from the register every entry relating to any person who ceases to be licensed under this Part. [Subs. Act A927:s.44]
- (3) Any person may, upon payment of the prescribed fee, inspect and take extracts from the register kept under subsection (1), and any such extract, purported to be signed by the Commission, shall be admissible as evidence in any legal proceedings.

34. Publication of names and addresses.

- (1) The Commission shall cause to be published in the Gazette, in such manner as the Commission thinks fit, the names and addresses of all licensed persons. [Subs. Act A927:s.45]
- (2) The information required to be published under subsection (1) shall be published at least once in each year.
- (3) If the Commission at any time amends the register kept under section 33, it shall cause particulars of the amendment to be published in the Gazette as soon as practicable after the amendment is made. [Subs. Act A927:s.45]

35. Exchange holding company, exchange company and clearing house to provide assistance to Commission.

- (1) An exchange holding company and an exchange company and a clearing house for an exchange company, shall each provide such assistance to the Commission as it reasonably requires for the performance of its functions. [Subs. Act A927:s.46; Am. Act A1215:s.18]

- (2) Where an exchange holding company, exchange company or clearing house reprimands, fines, suspends, expels or otherwise takes disciplinary action against a licensed person, it shall within seven days give written notice to the Commission setting out the name and the address of the place of business of the licensed person, the reasons for and nature of the action taken, the amount of the fine, if any, and the period of suspension, if any.

[Subs. Act A927:s.46; Am. Act A1215:s18]

PART IIIA

AGREEMENTS WITH UNLICENSED PERSONS

35A. Interpretation.

In this Part, unless the context otherwise requires—

“client” means a person who enters into an agreement with an unlicensed person in the circumstances referred to in section 35B, 35C or 35D, as the case requires, but does not include an excluded client;

“excluded client” means—

- (a) a futures broker;
- (b) a futures fund manager;
- (c) a futures trading adviser; or
- (d) one of two or more persons who together constitute a futures broker, futures fund manager or futures trading adviser,

and includes a person who is an associate of another person if that person knows, or ought reasonably to know, that that other person is an unlicensed person;

“unlicensed person” means—

- (a) in relation to section 35B, a person who does not hold a futures broker’s licence;
- (b) in relation to section 35C, a person who does not hold a futures broker’s licence or a futures fund manager’s licence;
- (c) in relation to section 35D, a person who does not hold a futures broker’s licence or a futures fund manager’s licence or a futures trading adviser’s licence; and
- (d) in relation to the rest of this Part, a person who does not hold any of the licences referred to in paragraphs (a), (b) and (c).

[Ins. Act A987:s.6]

35B. Agreement about a trading in breach of section 16.

If—

- (a) an unlicensed person and a client enter into an agreement relating to a trading or proposed trading in a futures contract by the unlicensed person on the client’s behalf; and

(b) the trading or proposed trading involves a contravention of section 16,

this Part applies whether or not any other person is a party to the agreement.

[Ins. Act A987:s.6]

35C. Agreement with a person acting in breach of section 16A.

If, during a period when an unlicensed person carries on a futures fund management business or holds himself out as a futures fund manager, the unlicensed person and a client enter into an agreement that relates to an offer or invitation of a kind mentioned in the definition of “futures fund management business”, this Part applies whether or not any other person is a party to the agreement.

[Ins. Act A987:s.6]

35D. Agreement with a person acting in breach of section 17.

If, during a period when an unlicensed person carries on a futures advice business or holds himself out as a futures trading adviser, the unlicensed person and a client enter into an agreement that relates to the giving of advice to the client about futures contracts or to giving the client futures reports, this Part applies whether or not any other person is a party to the agreement.

[Ins. Act A987:s.6]

35E. Client may give notice of rescission.

(1) Subject to this section, a client may, whether before or after the completion of the agreement referred to in section 35B, 35C or 35D, give to the unlicensed person a written notice stating that the client wishes to rescind the agreement.

(2) The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.

(3) The client shall not be entitled to give a notice under this section if the client engages in conduct because of which the client would, if the entitlement to give such a notice were a right to rescind the agreement for misrepresentation by the unlicensed person, be taken to have affirmed the agreement.

[Ins. Act A987:s.6]

(4) The client shall not be entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the unlicensed person informs the client (whether or not in writing) that—

(a) the unlicensed person does not hold a futures broker's licence;

(b) the unlicensed person does not hold a futures broker's licence or a futures fund manager's licence; or

(c) the unlicensed person does not hold a futures broker's licence or a futures fund manager's licence or a futures trading adviser's licence, as the case requires.

(5) If, at a time when a futures broker's licence, futures fund manager's licence, or futures trading adviser's licence held by the unlicensed person was suspended, the unlicensed person informs the client that the licence has been suspended, the unlicensed person shall

be taken for the purpose of subsection (4) to have informed the client at that time that the unlicensed person does not hold a licence as mentioned in paragraph (4)(a), (4)(b) or (4)(c).

[Ins. Act A987:s.6]

35F. Effect of notice under section 35E.

- (1) A notice given under section 35E rescinds the agreement unless rescission of the agreement would prejudice a right acquired by a person (other than the unlicensed person) in good faith, for valuable consideration and without notice of the facts entitling the client to give such notice.
- (2) The non-rescission of the agreement does not affect a client's right to give a notice under section 35E.

[Ins. Act A987:s.6]

35G. Client may apply to court for variation of the agreement.

- (1) If the client gives a notice under section 35E but the notice does not rescind the agreement because rescission of the agreement would prejudice a right referred to in section 35F, the client may, within a reasonable period after giving the notice, apply to a court for an order under subsection (3).
- (2) If an application is made under subsection (1), the court may, without prejudice to any power it has otherwise than under this section, make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 35F and the application were for orders under section 35H.
- (3) On an application under subsection (1), the court may make an order—
 - (a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing a right referred to in section 35F acquired before the order is made, as if the agreement had not been entered into; and
 - (b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.
- (4) If the court makes an order under subsection (3), the agreement shall be taken for the purposes of section 35H to have been rescinded under section 35F.
- (5) An order under subsection (3) does not affect the application of section 35J or 35L in relation to the agreement as originally made or as varied by the order.

[Ins. Act A987:s.6]

35H. Court may make consequential orders.

- (1) Subject to subsection (2), a court may, on the application of the client or the unlicensed person, make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the unlicensed person.
- (2) The court is not empowered to make an order under subsection (1) if the order would prejudice a right acquired by a person (other than the unlicensed person) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

[Ins. Act A987:s.6]

35I. Agreement unenforceable against client.

- (1) This section applies—
 - (a) where—
 - (i) the client is entitled to give a notice under section 35E; and
 - (ii) a notice so given will result under section 35F in rescission of the agreement; and
 - (b) after the agreement is rescinded under section 35F,
but does not otherwise apply.
- (2) The unlicensed person is not entitled, as against the client—
 - (a) to enforce the agreement, whether directly or indirectly; or
 - (b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

[Ins. Act A987:s.6]

35J. Unlicensed person not entitled to recover commission.

- (1) Without limiting the generality of section 35I, this section applies—
 - (a) where the client is entitled to give a notice under section 35E; and
 - (b) after the client gives such a notice, even if the notice does not result under section 35F in rescission of the agreement,
but does not otherwise apply.
- (2) The unlicensed person is not entitled to recover by any means, including set-off or a claim on quantum meruit, any brokerage, commission or other fee for which the client would, apart from this section, have been liable to the unlicensed person under or in connection with the agreement.

[Ins. Act A987:s.6]

35K. Onus of establishing non-application of section 35I or 35J.

For the purposes of determining, in a proceeding in a court, whether or not the unlicensed person is, or was at a particular time, entitled as mentioned in subsection 35I(2) or 35J(2), it shall be presumed, unless the contrary is proved, that section 35I or 35J, as the case may be, applies, or applied at that time, as the case may be.

[Ins. Act A987:s.6]

35L. Client may recover commission paid to unlicensed person.

- (1) Without limiting the generality of section 35H, if the client gives a notice under section 35E, the client may, even if the notice does not result under section 35F in rescission of the agreement, recover from the unlicensed person as a debt the amount of any brokerage, commission or other fee that the client has paid to the unlicensed person under or in connection with the agreement.

[Ins. Act A987:s.6]

- (2) The Commission may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

35M. Remedies under this Part additional to other remedies.

The client's rights and remedies under this Part are additional to, and do not affect and not prejudicial to, any other right or remedy of the client.

[Ins. Act A987:s.6]

PART IV

ACCOUNTS AND AUDIT

36. Accounts to be kept by exchange companies, clearing houses, futures brokers and futures fund managers.

- (1) The Minister may by regulations prescribe for and with respect to the keeping of accounting records and the preparation and submission to the Commission of profit and loss accounts and balance sheets, by corporations that are exchange companies, clearing houses for exchange companies, futures brokers and futures fund managers.
- (2) A corporation shall comply with the requirements contained in any regulations made under subsection (1).
- (3) The regulations may make provision for and with respect to the keeping of records by futures brokers in respect of trading in futures contracts on their own account.
- (4) A futures broker shall comply with any requirements of the regulations made under subsection (3).
- (5) A person who contravenes subsection (2) or (4) commits an offence and is liable on conviction to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both.

[Subs. Act A927:s.47]

36A. Exchange company, clearing house, futures broker, futures fund manager to lodge auditor's report.

- (1) An exchange company, a clearing house, a futures broker or a futures fund manager shall, within three months after the close of each financial year, or such further period as the Commission may permit under subsection (2), lodge with the Commission the auditor's report containing information on such matters as may be prescribed.
- (2) Where an application for the extension of the period of three months specified in subsection (1) is made by an exchange company, a clearing house, a futures broker or a futures fund manager to the Commission and if the Commission is satisfied that there are special reasons for requiring the extension, the Commission may extend that period by a further period not exceeding three months subject to such conditions as the Commission thinks fit to impose.
- (3) An exchange company, a clearing house, a futures broker or a futures fund manager who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding three years or to both.
- (4) For the purposes of subsection (1), "financial year" in relation to an exchange company, a clearing house, a futures broker or a futures fund manager, has the same meaning as in the Companies Act 1965.

[Ins. Act A1215:s.19]

37. [Repealed by Act A927:s.48]

38. [Repealed by Act A927:s.48]

39. Reports by auditor to the Commission in certain cases.

- (1) If an auditor, in the course of the performance of duties as an auditor of an exchange company, a clearing house, a futures broker or a futures fund manager, is satisfied that—
- (a) there has been a contravention of this Act;
 - (b) an offence in connection with the business of the exchange company, clearing house, futures broker or futures fund manager, as the case may be, has been committed;
 - (c) in the case of a futures broker or a futures fund manager, there has been a contravention of the business rules of an exchange company or a clearing house of which the futures broker or futures fund manager is an affiliate;
 - (d) an irregularity has occurred in the conduct of the business of an exchange company, clearing house, futures broker or futures fund manager in relation to futures contracts, including any irregularity that jeopardises the funds, securities or property of any client of a futures broker or futures fund manager; or
 - (e) the auditor is unable to confirm whether the assets of a futures broker or futures fund manager are sufficient to meet the claims of creditors of the broker or fund manager,
- the auditor shall immediately report the matter to the Commission.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM500,000.

[Subs. Act A927:s.49]

40. Power of Commission to appoint an independent auditor.

- (1) Where—
- (a) a corporation fails to submit to the Commission any accounts that the corporation is required to submit to the Commission under this Part; or
 - (b) the Commission receives a report under section 39 in relation to a corporation, and the Commission is satisfied that it is in the interest of—
 - (aa) the corporation;
 - (bb) if the corporation is a futures broker or futures fund manager, the corporation's clients; or
 - (cc) the general public,
- to do so, it may appoint in writing, at a remuneration to be determined by the Commission, an independent auditor to examine and audit, either generally or in relation to any particular matter, the books, accounts and records of the corporation.
- (2) Where the Commission is of the opinion that the whole or any part of the costs and expenses of an independent auditor appointed under subsection (1) should be borne by the

[Subs. Act A927:s.50]

corporation, the Commission may, by order in writing, direct the corporation to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified in the order.

[Subs. Act A927:s.50]

- (3) If a corporation fails to pay an amount as required by an order under subsection (2), that amount may be sued for and recovered by the Commission as a civil debt.

[Subs. Act A927:s.50]

- (4) [Repealed by Act A927:s.50]

41. Power of auditors appointed by the Commission.

- (1) An independent auditor appointed under section 40 may, for the purpose of carrying out the examination and audit under that section—

- (a) examine on oath any of the corporation's directors, employees or agents and any other auditor appointed in relation to the books, accounts and records referred to in that section;

[Subs. Act A927:s.51]

- (b) require any of the corporation's directors, employees or agents to produce any books, accounts and records held by or on behalf of the corporation relating to his business and make copies of or take extracts from or retain possession of the books, accounts and records for such period as is necessary to enable them to be inspected;

[Subs. Act A927:s.51]

- (c) require an auditor appointed by the corporation to produce any book, account and record held by him relating to the business of the corporation;

[Subs. Act A927:s.51]

- (d) if the auditor is carrying out an examination and audit in relation to a futures broker, require an exchange company or a clearing house to produce any book, account and record held by it relating to the business of the futures broker;

[Ins. Act A927:s.51]

- (e) if the auditor is carrying out an examination and audit in relation to a futures broker, require an exchange company or clearing house to provide any information in its possession relating to the business of the futures broker;

[Ins. Act A927:s.51]

- (f) employ such persons as he considers necessary to assist him in carrying out the examination and audit; and

- (g) by instrument in writing under his hand, authorise any person employed by him to do, in relation to the examination and audit, any act or thing that he could do himself as an independent auditor, except the examination of any person on oath, under this subsection.

- (2) Any person who refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an independent auditor appointed under section 40, or a person authorised under paragraph (1)(g), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both.

- (3) [Repealed by Act A927]
42. [Repealed by Act A927:s.52]
43. Restriction on auditor's and employee's right to divulge certain matters.
- Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an independent auditor appointed under section 40 and any employee of such auditor shall not divulge any information which may come to his knowledge in the course of performing his duties as such auditor or employee, as the case may be, to any person other than—
- (a) the Commission; and
 - (b) in the case of an employee, the auditor by whom he is employed.
44. Additional obligations on futures broker or futures fund manager.
- (1) The Commission or an exchange company may impose on a futures broker, by written direction given to the futures broker, any further requirement that either of them thinks necessary with respect to the matters mentioned in subsection (3).
 - (2) The Commission may impose on a futures fund manager, by written direction given to the futures fund manager, any further requirement that it thinks necessary with respect to the matters mentioned in subsection (3).
 - (3) The matters referred to in subsections (1) and (2) are—
 - (a) the audit of accounts;
 - (b) the information to be given in reports by auditors; and
 - (c) the keeping of books.
 - (4) A futures broker or futures fund manager shall comply with a requirement imposed under subsection (1) or (2).
 - (5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both.
- [Subs. Act A927:s.52]
45. [Repealed by Act A927:s.54]
46. [Repealed by Act A927:s.54]
47. Additional powers of the Commission in respect of auditors.
- (1) Notwithstanding the provisions of the Companies Act 1965 or anything contained in this Part, the Commission may—
 - (a) itself appoint an auditor of an exchange company, a clearing house, a futures broker or futures fund manager under this Part; and

[Ins. Act A927:s.55]

- (b) impose all or any of the following duties on an auditor of an exchange company, a clearing house, a futures broker or a futures fund manager, as the case may be:
 - (i) a duty to submit such additional information in relation to his audit as the Commission considers necessary;
 - (ii) a duty to enlarge or extend the scope of his audit of the business and affairs of an exchange company, a clearing house, a futures broker or a futures fund manager;
 - (iii) a duty to carry out any other examination or establish any procedure in any particular case;
 - (iv) a duty to submit a report on any of the matters referred to in subparagraphs (ii) and (iii),
and the exchange company, clearing house, futures broker or futures fund manager, as the case may be, shall be liable to pay to the auditor such remuneration as the Commission may determine.

[Subs. Act A927:s.55]

- (2) If a corporation fails to pay an amount determined by the Commission under subsection (1), that amount may be sued for and recovered by the Commission as a civil debt.

[Subs. Act A927:s.55]

- (3) An auditor appointed under this section shall have all the powers conferred upon an auditor under section 41.

- (4) [Repealed by Act A927:s.55]

48. Defamation.

- (1) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of—

- (a) any statement made orally or in writing in the discharge of his duties; or

- (b) the submission of a report to the Commission under section 39, 40 or 47.

[Subs. Act A927:s.56]

- (2) This section does not restrict or affect any right, privilege or immunity that an auditor has, apart from this section, as a defendant in an action for defamation.

PART V
TRADING PRACTICES

48A. Undesirable advertising.

- (1) In this section, unless the context otherwise requires—

“broadcast”, in relation to a statement, means to broadcast the statement by wireless transmission or television or cause it to be so broadcast;

“publish”, in relation to a statement, means—

 - (a) to insert the statement in a newspaper or periodical or cause it to be so inserted;
 - (b) to publicly exhibit the statement or cause it to be publicly exhibited; or
 - (c) to include the statement, or cause it to be included, in a document that, whether or not in response to a request, is sent or delivered to a person, or thrown or left upon premises occupied by any person.
- (2) If the Commission considers that, having regard to the conduct that a person has engaged in, is engaging in, or proposes to engage in, it is in the public interest to do so, it may, by written order given to the person, prohibit the person from publishing or broadcasting statements about—
 - (a) futures contracts;
 - (b) business carried on, or proposed to be carried on, by persons and involving trading in futures contracts on behalf of other persons;
 - (c) futures fund management business or proposed futures fund management business; or
 - (d) futures advice business or proposed futures advice business,

unless the form and content of the statements have been approved by the Commission.
- (3) An order under subsection (2) shall not be made unless the Commission has first given the person in relation to whom it proposes to make the order an opportunity to appear at a hearing before the Commission and make submissions and give evidence to the Commission in relation to the matter.
- (4) A person to whom an order under subsection (2) applies who fails to comply with the order contravenes this section.
- (5) For the purposes of this section, where a statement is published or broadcast and there is also published or broadcast in relation to the statement—
 - (a) the name or address of a person;
 - (b) the telephone, telex or facsimile number of a person; or

(c) the post office or other delivery box number of a person,

it shall be presumed, unless the contrary is proved, that the statement was published or broadcast by that person.

[Ins. Act A987:s.7]

49. Issue of contract notes.

- (1) A futures broker shall in respect of every transaction consisting of trading in futures contracts effected by the broker for or on behalf of another person give a contract note that complies with subsection (3) to that other person as soon as practicable and in any event not later than the prescribed period.
- (2) Subsection (1) shall not require a futures broker to give a contract note in respect of a transaction referred to in subsection (1) to such person or a class of persons prescribed in the regulations for the purposes of this section.
- (3) A contract note given by a futures broker under subsection (1) shall include such information relating to that transaction as may be prescribed in the regulations and different information may be prescribed in relation to different classes of futures contracts.
- (4) A futures broker shall not include in a contract note given under subsection (1), as the name of a person with or on behalf of whom the broker has entered into the transaction, a name that the broker knows, or could reasonably be expected to know, is not a name by which that person is ordinarily known.
- (4A) The Minister may make regulations providing for and with respect to the giving of contract notes by futures fund managers or any class of futures fund managers for transactions entered into by them, or at their direction, on behalf of other persons.

[Ins. Act A1042:s.7]

- (5) In this section, "transaction" shall have such meaning as may be prescribed by the Minister in regulations.

[Subs. Act A927:s.57]

50. Trading by futures broker on own account.

- (1) A futures broker shall not knowingly take the other side of an order of a client of the broker in relation to a futures contract unless—
 - (a) the client has consented to the broker taking the other side of the order in relation to the futures contract; or
 - (b) in trading in the futures contract on behalf of the client, the broker is to be taken, for the purposes of this Act, to be trading in the futures contract on the broker's own account.
- (2) For the purposes of subsection (1), a futures broker takes the other side of an order of a client of the broker in relation to a futures contract if the broker—
 - (a) when trading on the broker's own account, assumes a long position or short position in relation to the contract; and
 - (b) when trading on the instructions of the client, assumes the opposite short position or long position in relation to the contract.

[Subs. Act A927:s.58]

51. Futures broker and futures fund manager to give statements to client.

(1) The Minister may make regulations providing for and with respect to the giving by futures brokers and futures fund managers of statements to their clients.

[Ins. Act A1042:s.8]

(2) A futures broker and futures fund manager shall comply with the requirements of any regulations made under subsection (1).

[Subs. Act A927:s.59; Ins. Act A1042:s.8]

52. Interpretation.

(1) For the purposes of this section and section 52A–

“client”, in relation to a futures broker, means a person on behalf of whom the broker trades or from whom the broker accepts instructions to trade, in futures contracts, but does not include the broker;

“credit facility” means a document evidencing the right of a person to obtain money on credit from another person and, without prejudice to the generality of the foregoing, includes a letter of credit and a bank guarantee;

“property” includes credit facilities and prescribed securities;

“relevant credit balance”, in relation to a client of a futures broker, means the total of–

(a) the amounts deposited by the broker in respect of the client in a clients’ segregated account, or clients’ segregated accounts, of the broker, less so much of those amounts as has been withdrawn from the account or accounts; and

(b) the value of the items of property that–

- (i) have, in respect of the client, been deposited by the broker in safe custody under subsection 52A(1) and have not been withdrawn from safe custody; and
- (ii) under the terms and conditions on which they were deposited with, or received by, the broker, are available to meet, or to provide security in connection with the meeting of, relevant liabilities of the client;

“relevant liabilities”, in relation to a client of a futures broker, means debts and liabilities of the client arising out of trading in futures contracts effected by the broker on behalf of the client;

“settling”, in relation to a trading in a futures contract, includes making delivery, or taking delivery, of an instrument to which the futures contract relates.

[Subs. Act A987:s.8]

(2) For the purposes of the definition of “relevant credit balance” in subsection (1), the value of an item of property at a particular time is–

(a) if the item is a credit facility, the amount of money that the person entitled to the right evidenced by the credit facility can, at that time or within a reasonable period after that time, obtain because of that right; or

- (b) if it is otherwise than a credit facility, the market value of the property as at the end of the last business day before that time.

[Subs. Act A927:s.60]

52A. Segregation of clients' money and property.

- (1) If any money or property is deposited with a futures broker by a client of that broker or is received by the broker for or on behalf of a client of the broker in connection with—
 - (a) trading in futures contracts effected or proposed to be effected, whether in Malaysia or elsewhere, by a futures broker on behalf of that client of the broker; or
 - (b) instructions by that client of a futures broker to trade in futures contracts, whether in Malaysia or elsewhere,

the broker shall—

- (aa) in respect of money, deposit the money in a clients' segregated account of the broker kept and maintained in Malaysia or in the place where the money was deposited with or received by the broker; or
- (bb) in respect of property, deposit the property in safe custody in Malaysia or in the place where the property was deposited with or received by the broker, in such a manner that the property is segregated from property other than property deposited by the broker in safe custody under this subsection,

no later than the next day after the money or property is deposited with or received by the broker that is a day on which the amount or property can be deposited as first mentioned in paragraph (aa) or (bb), as the case may be.

- (2) Without prejudice to the generality of subsection (1), if in connection with trading in futures contracts effected, whether in Malaysia or elsewhere, by a futures broker, the broker receives from a person an amount of money, some or all of which is attributable to trading in futures contracts so effected, whether in Malaysia or elsewhere, on behalf of the clients of the broker, the broker shall, no later than the next day on which the amount can be so deposited, deposit the amount in a clients' segregated account of the broker kept and maintained in Malaysia or in the place where the broker receives the amount.
- (3) If, under this section, a futures broker deposits money in respect of a client in a clients' segregated account of the broker, the broker shall not withdraw any of the money except for the purpose of—
 - (a) making a payment to or in accordance with the written direction of, a person entitled to the money;
 - (b) making a payment for or in connection with, the entering into, margining, guaranteeing, securing, transferring, adjusting or settling of trading in futures contracts effected by the broker on behalf of the client;
 - (c) defraying brokerage and other proper charges incurred in respect of trading in futures contracts effected by the broker on behalf of the client;
 - (d) investing it—

- (i) on deposit at interest with a licensed bank;
 - (ii) on deposit with a clearing house for an exchange company; or
 - (iii) in any other prescribed manner; or
 - (e) making a payment that is otherwise authorised by law or by the business rules of an exchange company or clearing house of which the broker is an affiliate,
- or as permitted by subsection (7).
- (4) A futures broker shall not deal with property deposited by the broker in safe custody under subsection (1) except in accordance with the terms and conditions on which the property was deposited with or received by the broker.
 - (5) A futures broker shall not invest an amount under paragraph (3)(d) by depositing it with a person for that person to invest unless the broker—
 - (a) has told the person that the amount has been withdrawn from a clients' segregated account of the broker and is money to which the clients of the broker are entitled; and
 - (b) has obtained from the person a written statement that is signed by the person, setting out the amount and acknowledging that the broker has informed the person as required under paragraph (a).
 - (6) If, at any particular time, the total amount of the relevant liabilities of a client of a futures broker exceeds the relevant credit balance of the client, the broker may, in respect of the client, deposit in a clients' segregated account of the broker an amount of money not greater than the amount of the excess, and, if the broker does so, the amount so deposited is to be taken, subject to subsection (7), to be money to which the client is entitled.
 - (7) If—
 - (a) a futures broker has, in respect of a client of the broker, deposited an amount under subsection (6) in a clients' segregated account of the broker; and
 - (b) the relevant credit balance of the client exceeds the total amount of the relevant liabilities of the client,the broker may withdraw from the account so much of the amount referred to in paragraph (a) as does not exceed the amount of the excess referred to in paragraph (b).
 - (8) A futures broker shall keep, in relation to the clients' segregated account or clients' segregated accounts of the broker, accounting records that—
 - (a) are separate from any other accounting records of the broker;
 - (b) record separately in respect of each client of the broker particulars of the amounts deposited in and the amounts withdrawn from the account or accounts in respect of the client; and
 - (c) record, separately from the particulars referred to in paragraph (b),—
 - (i) particulars (including particulars of withdrawals) of so much of the amounts deposited in accordance with subsection (2) in the account or accounts as was

not attributable to trading in futures contracts effected by the broker on behalf of clients of the broker;

- (ii) particulars of all amounts deposited in the account or accounts under subsection (6); and
 - (iii) particulars of all amounts withdrawn from the account or accounts under subsection (7).
- (9) A futures broker shall keep records that—
- (a) relate to the deposits of property in safe custody by the broker under subsection (1); and
 - (b) record separately in respect of each client of the broker particulars of the property deposited in respect of the client.
- (10) Section 36 shall apply in relation to accounting records and any other records that are required by subsections (8) and (9) to be kept by a futures broker, and shall apply as if those accounting records and other records were accounting records required by that section to be kept by the broker.
- (11) Notwithstanding anything contained in the Companies Act 1965, but subject to subsections (12) and (13),—
- (a) money deposited by a futures broker under this section in a clients' segregated account of the broker;
 - (b) property in which money deposited by a futures broker as mentioned in paragraph (a) has been invested under paragraph (3)(d); and
 - (c) property deposited by a futures broker in safe custody under subsection (1),
- shall not be available for the payment of a debt or liability of the broker or liable to be attached or taken in execution under the order or process of a court at the instance of a person suing in respect of such a debt or liability.
- (12) Nothing in subsection (11) affects the right of a client of a futures broker to recover money or property to which the client is entitled.
- (13) Subsection (11) does not apply in relation to money that a futures broker is entitled to withdraw money from a clients' segregated account of the broker for the purpose of making a payment to the broker or otherwise under subsection (3).
- (14) If a futures broker invests money under paragraph (3)(d) by depositing it with a person for the person to invest, neither that money nor any property in which the person invests any of that money, is available for the payment of a debt or liability of the person or is liable to be attached or taken in execution under the order or process of a court at the instance of a person suing in respect of such a debt or liability.
- (15) Without prejudice to the rights of a futures broker under any other written law, subsection (14) may only be invoked by the futures broker or any person claiming on behalf of or in the name of the futures broker for the purpose of settling any liabilities due to a clearing house, in respect of futures contracts effected by the broker for the clients to

whom any money or property referred to in subsection (14) relates.

- (16) Nothing in this section affects a claim or lien that a futures broker has, in relation to a futures broking business carried on by it, under an agreement, any law in Malaysia or otherwise, against or on—
- (a) money deposited by the broker under this section in a clients' segregated account of the broker;
 - (b) property in which money so deposited has been invested under paragraph (3)(d); or
 - (c) property deposited by the broker in safe custody under subsection (1).
- [Ins. Act A927:s.61]

52B. Adviser to have reasonable basis for recommendation.

- (1) An adviser who makes a recommendation in relation to trading in futures contracts to a person who may reasonably be expected to rely on it must have a reasonable basis for making the recommendation to the person.
- (2) An adviser has a reasonable basis for making a recommendation in relation to trading in futures contracts to a person if the adviser has—
 - (a) taken into account the person's investment objectives, financial situation and particular needs; and
 - (b) conducted an investigation of the subject-matter of the recommendation as may be reasonable in all the circumstances.
- (3) Where an adviser makes a recommendation to a person in relation to trading in futures contracts, and—
 - (a) the person, in reliance on the recommendation, does or omits to do a particular act; and
 - (b) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do or omit to do, as the case may be, that act in reliance on the recommendation; and
 - (c) the person suffers loss or damage as a result of that act or omission,the adviser shall be liable to pay damages to the person in respect of that loss or damage.
- (4) An adviser shall not be held liable under subsection (3) if it is proved that the recommendation was, in all the circumstances, appropriate having regard to the information the adviser had about the client's investment objectives, financial situation and particular needs when making the recommendation.
- (5) For the purposes of this section, an "adviser" means a futures broker, a futures fund manager or a futures trading adviser.

[Ins. Act A927:s.61]

52C. Interpretation for the purposes of sections 52D and 52E.

For the purposes of sections 52D and 52E—

“client’s money or property” means any money or property received or retained by a futures fund manager from, for or on behalf of a client, in connection with trading in futures contract effected or proposed to be effected, whether within or outside Malaysia, by the futures fund manager on behalf of that client;

“custodian”, in relation to a trust account, means–

- (a) a licensed institution appointed by a futures fund manager with the prior written consent of his client; or
- (b) any other institution appointed or authorised by the client of a futures fund manager;

“trust account” means a current, deposit or property account which contains in its title the words “Trust Account/Clients” maintained in accordance with section 52D.

[Ins. Act A1042:s.9]

52D. Operation of trust accounts.

- (1) Subject to section 52G, a futures fund manager shall open a trust account for his client’s money or property and shall make arrangements for a custodian to maintain such trust account.
- (2) The Commission may, where it thinks fit to do so, exempt a futures fund manager from the requirement under subsection (1) to arrange for a custodian to maintain a trust account, and permit any other person to maintain a trust account.
- (3) A futures fund manager shall pay his client’s money or deposit his client’s property into a trust account not later than the next bank business day following the day on which the futures fund manager receives the client’s money or property.
- (4) Notwithstanding subsection (1), where a futures fund manager receives his client’s money or property in a place outside Malaysia, the futures fund manager may pay the money or deposit the property into a trust account opened or maintained by him in that place.
- (5) A futures fund manager shall not withdraw any money from, or deal with any property in, a trust account except for the purpose of making a payment to a person entitled to it or where otherwise authorised by law.
- (6) Except as otherwise provided in this Part, money or property held in a trust account shall not be available for the payment of a debt or liability of a futures fund manager or liable to be paid or taken in execution of an order or process of the court for the payment of a debt or liability of a futures fund manager.
- (7) The holder of a futures fund manager’s representative’s licence shall neither accept nor hold client’s money or property unless he does so on behalf of a futures fund manager in the course of employment under a contract of employment with the futures fund manager.
- (8) Nothing in this Part shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any money or property held in a trust account or against or upon any money or property received for the purchase or from the sale of securities or any other instrument or in respect of any trading in any futures contract before such money is paid or property deposited into the trust account.

[Ins. Act A1042:s.9]

52E. Application of client's money or property.

A futures fund manager shall not apply his client's money or property which he has received to trade in futures contracts for or on behalf of that client unless—

- (a) he trades on the basis that the client's money or property is applied solely for specified purposes agreed upon by the client when or before he received such money or property;
- (b) pending the application in paragraph (a), the money is paid or the property is deposited into a trust account by the next bank business day; and
- (c) a separate book entry is recorded and maintained for each client by him in accordance with this Act or any regulations made under this Act, in relation to the client's money or property.

[Ins. Act A1042:s.9]

52F. Right to copies of book entries, inspection of contract notes, etc.

- (1) A futures fund manager shall supply, on demand, to his client or any person authorised by the client, copies of all entries in his books relating to any transaction.
- (2) A client of a futures fund manager shall be entitled free of charge, either personally or by his agent, to inspect any contract notes and other statements relating to any transaction.

[Ins. Act A1042:s.9]

52G. Non-application to related corporations.

Nothing in section 52D, 52E or 52F shall apply to a corporation which manages money or property solely for or on behalf of any of its related corporations, provided that the money or property of the second-mentioned corporation which is being managed by the first-mentioned corporation is not money or property held on trust or on behalf of or beneficially belonging to any other person, or arising from any investment contract as defined under subsection 84(1) of the Companies Act 1965 [Act 125] entered into by the second-mentioned corporation.

[Ins. Act A1042:s.9]

53. Futures brokers and futures fund managers to give information to prospective clients.

- (1) A futures broker shall, before accepting a person as a client of the broker, give to the person—
 - (a) a document that—
 - (i) explains the nature of futures contracts;
 - (ii) explains the nature of the obligations assumed by a person who instructs a futures broker to enter into a futures contract;
 - (iii) sets out a risk disclosure statement in the prescribed form; and
 - (iv) sets out the specifications and details of the essential terms of each kind of futures contract in which the broker trades on behalf of clients; and
 - (b) a copy of each agreement into which the broker proposes, if the broker agrees to accept instructions from the person in relation to trading in futures contracts, to require

the person to enter.

- (2) In addition to its obligations under subsection (1), a futures broker shall give to its clients or prospective clients, at such times as may be stated in the regulations, any information that the regulations require.
- (3) A futures fund manager shall give to a person with whom an agreement is made or to whom an offer or invitation within the meaning of "futures fund management business" in section 2 is made at such times as may be specified in the regulations, any information that the regulations require.

[Subs. Act A927:s.62; Am. Act A1042:s.10]

54. Sequence of sending and carrying out of orders.

- (1) In this section, a reference to the sending by a futures broker of instructions to trade in a class of futures contracts is a reference—
 - (a) if the broker has direct access to the futures market on which the instructions are to be carried out, to the sending of the instructions to that futures market; or
 - (b) if the broker has access to the futures market on which the instructions are to be carried out only through another futures broker, to the sending of instructions to that other futures broker.

Consent of client to be obtained.

- (2) A futures broker shall not instruct another futures broker to carry out the instructions of the first-mentioned broker's client unless the consent of that client has been obtained.

Sending of instructions in sequence of receipt.

- (3) Subject to subsection (4), a futures broker shall send in the sequence in which they are received by the broker all instructions to trade in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before the carrying out of the instructions.

Client's instructions to take priority.

- (4) If—
 - (a) a futures broker proposes to trade in a class of futures contracts on the broker's own account; and
 - (b) the person by whom or on whose instructions the instructions for the trading are to be sent is aware of the instructions of a client of the broker to trade in that class of futures contracts at or near the market price for a futures contract of that class prevailing at that time; and
 - (c) the client's instructions have not been sent,

that person shall not send, and shall not give instructions to any other person to send, the instructions to give effect to the proposal of the broker to trade in that class of futures contracts before the instructions of the client are sent.

Instructions not to be disclosed.

- (5) A futures broker, or a director, officer, employee or representative of a futures broker, shall not, except—
- (a) to the extent necessary to carry out the instructions concerned;
 - (b) as required by this Act or any other law; or
 - (c) as required by the business rules of any exchange company of which the broker is an affiliate,
- disclose to any other person the instructions of a client to trade in a class of futures contracts.

Instructions to be carried out in order of receipt.

- (6) A futures broker who is an affiliate of an exchange company and who is concerned in the carrying out, on a futures market of the exchange company, of instructions to trade in futures contracts shall carry out in the order in which they are received by the broker all instructions to trade in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before the carrying out of the instructions.

Sequence in which futures broker to allocate trading.

- (7) If—
- (a) during a particular period, a futures broker sends instructions (whether or not those instructions consist of or include instructions giving effect to the proposal of the broker to trade in the class of contracts concerned on the broker's own account) to trade in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before the carrying out of the instructions; and
 - (b) trading in that class of futures contracts is effected under those instructions,
- the broker shall, except so far as the business rules of the exchange company of which the broker is an affiliate otherwise provide, allocate trading to those instructions—
- (aa) in the sequence in which the trading was effected; and
 - (bb) in the sequence in which the broker sent those instructions.

Records to be kept.

- (8) A futures broker shall keep, in accordance with the regulations, records that set out the prescribed particulars of—
- (a) the instructions by a client to trade in futures contracts;
 - (b) the date and time of receipt, sending and carrying out of those instructions;
 - (c) the person by whom those instructions are received, the person by whom they are sent and the person by whom they are carried out;
 - (d) the date and time of receipt, sending and carrying out of instructions to trade in futures contracts on the broker's own account; and

- (e) the person by whom instructions of the kind referred to in paragraph (d) are received, the person by whom they are sent and the person by whom they are carried out,

and shall retain those records for the prescribed period.

Futures markets outside Malaysia.

(9) If—

- (a) a futures broker sends, for carrying out on a futures market outside Malaysia, instructions to trade in futures contracts; and
- (b) it is not reasonably practicable for the broker to set out in the records kept by the broker under subsection (8) the prescribed particulars of the date and time of the carrying out of those instructions,

the broker shall so set out those particulars as precisely as is reasonably practicable.

[Subs. Act A927:s.63]

55. Fixing of positions and trading limits in futures contracts.

- (1) The Commission or an exchange company with the approval of the Commission may, by notice in writing from time to time, establish, fix or vary such limits as it considers necessary on the amount of trading which may be done or positions which may be assumed by any person under a futures contracts on an exchange company or subject to the business rules of the exchange company.

[Am. Act A927:s.64]

- (2) In determining whether a person has exceeded the limits referred to in subsection (1), the positions assumed and trading done by any persons directly or indirectly controlled by such a person shall be included with the positions assumed and trading done by that person.

[Am. Act A927:s.64]

- (3) The limits referred to in subsection (1) upon positions and trading shall apply to positions assumed, and trading done, by two or more persons acting pursuant to an express or implied agreement or understanding as if the positions were assumed, or the trading done, by a single person.

[Am. Act A927:s.64]

- (4) A person shall not directly or indirectly—

- (a) trade or agree to trade in futures contracts on, or subject to the business rules of, an exchange company in excess of the trading limits fixed for a period set by the Commission or the exchange company under this section; or
- (b) assume a long position or a short position under a futures contract of any class on, or subject to the business rules of, an exchange company in excess of any position limit fixed by the Commission or the exchange company under this section with respect to that futures contract.

[Am. Act A927:s.64]

- (5) This section shall not preclude the Commission or an exchange company from fixing different trading or position limits for different types or classes of futures contracts or different

limits for the same type or class of futures contracts traded for different purposes, different delivery months or different days remaining until the last day of trading in a contract for the purpose of subsection (4).

[Am. Act A927:s.64]

(6) [Repealed by Act A927:s.64]

55A. Reportable positions.

(1) The Commission may fix or vary by notice in writing the size of aggregate long or short positions, or any combination of long and short positions, in relation to a class or classes of futures contracts which—

- (a) may be assumed by a person; or
- (b) may be assumed by a person and any of his associates,

and in excess of which the person or the person and his associate or associates shall report particulars of their positions to the Commission in the prescribed form and manner.

(2) A person contravenes this section—

- (a) if he assumes a long or short position the effect of which is to exceed the size fixed by the Commission under subsection (1); and
- (b) if he does not report particulars of positions assumed by him, or by him and any of his associates in the prescribed form and manner.

[Ins. Act A987:s.9]

56. Failure to comply with provisions of this Part.

Any person who contravenes or fails to comply with any of the provisions of this Part shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

PART VI
FIDELITY FUND

57. [Repealed by Act A927:s.65]

58. Establishment of fidelity fund.

- (1) An exchange company shall establish and maintain a fidelity fund which shall be administered under this Part.
- (2) The assets of the fidelity fund are the property of the exchange company, but the exchange company shall keep them separate from all its other property and is to hold them in trust for the purposes set out in the regulations.
- (3) The Minister may by regulations prescribe—
 - (a) in respect of a fidelity fund of an exchange company—
 - (i) the powers of the Commission;
 - (ii) the powers, obligations and liabilities of the exchange company; and
 - (iii) the manner in which the fidelity fund is to be administered;
 - (b) the manner in which an exchange company shall apply its fidelity fund; and
 - (c) without prejudice to section 66A, in respect of claims made to a fidelity fund of an exchange company, persons who are eligible to make claims, circumstances under which claims are allowed, procedures and limitations in respect of such claims, a right of appeal and the procedures applicable to it.
- (4) The matters that may be prescribed under paragraph (3)(c) include the satisfaction of claims in relation to any trading or proposed trading in futures contracts made against affiliates of the exchange company.

[Subs. Act A927:s.66]

59. [Repealed by Act A927:s.67]

60. Money constituting fidelity fund.

The fidelity fund of an exchange company shall consist of the following:

- (a) any amount that is paid to the credit of the fund by the exchange company on the establishment of the fund;
- (b) moneys paid to the exchange company by futures brokers under this Part;
- (c) the interest and profits from time to time accruing from the investment of the fidelity fund;
- (d) moneys paid into the fidelity fund by the exchange company;
- (e) moneys recovered by or on behalf of the exchange company in the exercise of a right of

action conferred by this Part;

- (f) moneys paid by an insurer under a contract of insurance or indemnity entered into by the exchange company under section 76;
- (g) all other moneys lawfully paid into the fidelity fund.

[Subs. Act A927:s.68]

61. Fidelity fund to be kept in separate account.

All moneys forming part of the fidelity fund of an exchange company shall, pending its application in accordance with this Part, be paid or transferred into a separate trust account by the exchange company to be opened at one or more licensed banks.

62. Payments out of fidelity fund.

Subject to this Part, there shall be paid out of the fidelity fund of an exchange company in such order as the exchange company thinks proper—

- (a) the amount of all claims, including costs, allowed by the company or established against the fund under this Part; and
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the company of the rights, powers and authority conferred by this Part in relation to the fund; and
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the exchange company under section 76; and
- (d) all expenses incurred in the administration of the fund, including remuneration and allowances of the members of any committee established by the company and of persons employed by the company, in relation to the fund; and
- (e) all other moneys payable out of the fund under this Part.

[Subs. Act A927:s.69]

63. Accounts of fidelity fund.

Sections 36, 39, 40, 41, 43 and 47 shall apply to the accounts of a fidelity fund established under section 58 insofar as they are applicable and with such necessary changes as may be prescribed, and in the same way as they apply in relation to any other accounts kept by the exchange company.

[Subs. Act A927:s.69]

64. Contributions to fidelity fund.

- (1) A futures broker shall, upon being licensed under this Act, pay to the exchange company the amount of RM30,000 as a contribution to the fidelity fund and shall thereafter on or before the thirty-first of December in each of the five years following in which he is licensed pay to the exchange company the amount of RM10,000 as a contribution to the fidelity fund.
- (2) All contributions made under this section shall not be refundable.
- (3) Notwithstanding anything in this section, the exchange company may, from time to time with the approval of the Commission, vary the amount and the manner of the contribution by futures brokers to the fidelity fund.

65. Power of exchange company to make advances to fidelity fund.

- (1) An exchange company may, from time to time from its general funds, give or advance on such terms as the exchange company thinks fit any sum of money to its fidelity fund.
- (2) Any money advanced under subsection (1) may from time to time be repaid from the fidelity fund to the general funds of the exchange company.

66. Investment of money in the fidelity fund.

An exchange company may invest any money which forms part of its fidelity fund and is not immediately required for any other purposes provided by this Part—

- (a) on fixed deposit with a licensed institution; or
- (b) in securities in which trustees are authorised by law to invest trust funds.

66A. Application of fidelity fund.

- (1) Subject to this Part, if—
 - (a) a person (the “futures person”) suffers monetary loss at a particular time because of a defalcation, or because of fraudulent misuse of money or other property, by a director, officer, employee or representative of a futures broker that is at that time an affiliate of an exchange company or in such other circumstances as may be prescribed under paragraph 58(3)(c); and
 - (b) the loss is suffered in respect of money or other property that was, in connection with the broker’s trading in futures contracts, entrusted to or received by the broker or by a director, officer or employee of the broker (whether before or after the commencement of this section)—
 - (i) for or on behalf of the futures person or another person; or
 - (ii) because the broker was trustee of the money or other property,

the fidelity fund of the exchange company shall be applied for the purpose of compensating the futures person.

- (2) The amount or the sum of the amounts paid under this Part out of an exchange company’s fidelity fund for the purpose of—
 - (a) compensating for monetary loss suffered by a futures person; or
 - (b) compensating for monetary loss suffered by any person or persons in respect of a particular futures broker,

must not be greater than the applicable amount stated in or calculated in accordance with, the company’s business rules.

- (3) For the purposes of applying subsection (2), an amount that is paid from a fidelity fund is, to the extent to which that amount is repaid to the fund, to be disregarded.
- (4) A reference in this section to a defalcation, or to a fraudulent misuse of money or other

property, is a reference to a defalcation, or to such a fraudulent misuse, wherever and whenever occurring.

[Ins. Act A927:s.70]

67. [Repealed by Act A927:s.71]

68. [Repealed by Act A927:s.71]

69. [Repealed by Act A927:s.71]

70. [Repealed by Act A927:s.71]

71. [Repealed by Act A927:s.71]

72. [Repealed by Act A927:s.71]

73. Subrogation by exchange company to rights, etc. of claimant upon payment from fidelity fund.

If an exchange company makes a payment out of its fidelity fund in respect of a claim from compensation under this Part—

- (a) the exchange company is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and
- (b) the claimant shall not have any claim or right under any bankruptcy or legal proceeding or otherwise—
 - (i) to receive in respect of the loss any sum out of the assets of the futures broker concerned; or
 - (ii) if the loss was caused by an act or omission of a director or employee of a futures broker to receive in respect of the loss any sum,

until the exchange company has been reimbursed the full amount of the payment made by it out of the fidelity fund.

[Subs. Act A927:s.72]

74. Payment of claims only from fidelity fund.

No money or other property belonging to an exchange company, other than its fidelity fund, shall be used for the payment of any claim under this Part.

75. [Repealed by Act A927:s.73]

76. Power of exchange company to enter into contract of insurance.

- (1) An exchange company may enter into a contract with a registered insurance business in Malaysia under which the company will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Part.
- (2) Such a contract may be entered into in relation to affiliates of the company generally, or in relation to a particular affiliate named in the contract, or in relation to affiliates generally with the exclusion of particular affiliates named in the contract.

[Subs. Act A927:s.74]

76A. Application of insurance money.

A claimant against a fidelity fund of an exchange company shall not have—

- (a) a right of action against a person with whom a contract of insurance or indemnity is made under this Part, in respect of such a contract; or
- (b) a right or claim with respect to any money paid by the insurer in accordance with such a contract.

[Ins. Act A927:s.75]

77. Exchange company's indemnity.

Notwithstanding anything in this Part, an exchange company is liable to any affiliate of the company for any loss caused to the affiliate by any fraudulent or negligent act or omission by the company.

[Subs. Act A927:s.76]

77A. Exclusion of claim against exchange company.

A person claiming against the fidelity fund of an exchange company for compensation under this Part or any other person suffering monetary loss as a result of an act or omission giving rise to such claim does not have any right of action against the exchange company and may only claim against the affiliate or the fidelity fund, as the case may be.

[Ins. Act A927:s.77]

78. Money in the fidelity fund upon winding-up of the exchange company.

In the event of an exchange company being wound up under the Companies Act 1965, the exchange company shall, after the satisfaction of all outstanding liabilities against its fidelity fund, make available to the liquidator of the exchange company the balance of the amount available in the fidelity fund which shall form part of the assets of the exchange company and be available to the liquidator for distribution in accordance with the Companies Act 1965.

PART VII
OFFENCES

79. False trading.

No person shall create or cause to be created or do anything that is calculated to create a false or misleading appearance of active trading in futures contracts on a futures market or a false or misleading appearance with respect to the market for, or the price of trading in, futures contracts on the futures market.

80. Bucketing.

No person shall execute, or hold himself out as having executed, an order for the purchase or sale of a futures contract on a futures market without having effected a bona fide purchase or sale of the futures contract in accordance with the business rules and practices of the futures market.

81. Dissemination of information about false trading.

No person shall circulate, disseminate or authorise, or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of trading in a class of futures contracts will, or is likely to, rise or fall because of the market operations of one or more persons, which operations, to his knowledge, are conducted in contravention of section 79.

82. Manipulation of price of futures contract and cornering.

No person shall, directly or indirectly—

- (a) manipulate or attempt to manipulate the price of futures contracts that may be dealt in on a futures market, or of any underlying instrument which is the subject of such futures contract; or
- (b) corner, or attempt to corner, any underlying instrument which is the subject of a futures contract.

83. Employment of devices, etc. to defraud.

No person shall, directly or indirectly, in connection with any transaction with any other person involving trading in futures contract—

- (a) employ any device, scheme or artifice to defraud that other person;
- (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, of that other person; or
- (c) make any false statement of a material fact, or 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.

84. False or misleading statements.

No person shall, directly or indirectly, for the purposes of inducing the purchase or sale of a futures contract, make—

- (a) any statement which, at the time and in the light of the circumstances in which it is made, is false, misleading or deceptive with respect to any material fact; or
- (b) any statement which, by reason of the omission of a material fact, is rendered false or misleading.

85. Restriction on employees of exchange company or clearing house.

- (1) An employee of an exchange company or a clearing house shall not engage directly or indirectly in trading in futures contracts.
- (2) For the purposes of this section, an employee includes the Executive Chairman of the Board.
[Subs. Act A927:s.78]

86. Prohibition of abuse of information obtained in official capacity.

Any person who, in relation to trading in futures contracts, has any information which if generally known might reasonably be expected to affect materially the price of the subject-matter of such trading and which—

- (a) he holds by virtue of his official capacity or former official capacity;
- (b) it would be reasonable to expect a person in his official capacity or former official capacity not to disclose except for the proper performance of the functions attached to that official capacity; and
- (c) he knows is unpublished price-sensitive information in relation to an underlying instrument which is the subject of a futures contract or in relation to the trading in a futures contract,

shall not make improper use of such information to gain, directly or indirectly, an advantage for himself or for any other person.

87. Falsification of records.

- (1) A person shall not, in any books in relation to the business of an exchange company, a clearing house, a futures broker or a futures fund manager, whether or not kept under this Act or the regulations,—
 - (a) in any manner enter, record or store, or cause to be entered, recorded or stored, any matter that is false or misleading in any material particular;
 - (b) in any manner destroy, remove or falsify, or cause to be destroyed, removed or falsified, any matter that—
 - (i) is recorded or stored;
 - (ii) has been prepared for the purpose of being recorded or stored; or
 - (iii) has been prepared for use in compiling other matters to be recorded or stored;
or
 - (c) fail to enter, record or store any matter with intent to falsify the records or any part of the records intended to be compiled from that matter.

- (2) A person shall not—
- (a) destroy, conceal or alter a book relating to the business of an exchange company, clearing house, futures broker or futures fund manager; or
 - (b) remove or conspire with any other person to remove from Malaysia any such book belonging to or in the possession or under the control of an exchange company, clearing house, futures broker or futures fund manager.
- (3) Paragraph (2)(b) shall not prevent a person from removing a book from Malaysia if a copy of the book is kept in the possession or under the control of the relevant exchange company, clearing house, futures broker or futures fund manager in Malaysia.
- (4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Subs. Act A927:s.79]

87A. False statements.

A person shall not, without reasonable excuse—

- (a) in connection with an application for the grant or renewal of a licence;
- (b) in the course of a hearing, inquiry or examination before the Commission or an exchange company; or
- (c) in compliance or purported compliance with this Act,

do either of the following:

- (aa) make a statement or give information or evidence (whether oral or written) that is false or misleading in a material particular; or
- (bb) produce a document that the person knows to be false or misleading in a material particular without—
 - (i) indicating to the person to whom the document is produced that it is false or misleading and the manner in and extent to which it is false or misleading; and
 - (ii) providing correct information to the person to whom the document is produced if the person producing the document is in possession of or can reasonably obtain, the correct information.

[Ins. Act A927:s.80]

88. Penalties.

Any person who contravenes or fails to comply with any of the provisions of this Part shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

PART VIII

ENFORCEMENT AND INVESTIGATION

- 89. [Repealed by Act A1075:s3]
- 90. [Repealed by Act A1075:s3]
- 91. [Repealed by Act A1075:s3]
- 92. [Repealed by Act A1075:s3]

PART IX
GENERAL

93. Conduct of prosecution.

No prosecution for any offence under this Act shall be instituted except with the consent in writing of the Public Prosecutor.

[Am. Act A1075:s.4]

(2) [Repealed by Act A1075:s.4]

94. Secrecy.

(1) Every director, officer or employee of an exchange company or a clearing house shall preserve, and aid in preserving, secrecy with regard to all matters coming to his knowledge in the exercise or performance of his duties.

(2) Subsection (1) shall not apply—

(a) to the disclosure of any information which is authorised by the Commission to be disclosed or furnished;

(b) to the disclosure of information for the purpose of any legal proceeding brought under this Act, or any other written law, or for the purpose of any report of any such proceeding, except that, in relation to a futures broker's customer's position, such proceeding may, if the court of its own motion or on the application of a party to the proceeding so orders, be held in camera and the information shall be secret as between the court and the parties thereto; or

(c) to the disclosure of information for such other purposes, or in such other circumstances, as the Commission may, by regulations, prescribe.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

95. Production of records, etc., by exchange company, etc.

(1) An exchange company, a clearing house or a licensed person shall—

(a) produce such books, accounts and records kept by it or him in connection with or for the purpose of his business or in respect of any trading in futures contract; and

(b) provide such other information relating to its or his business or trading in futures contracts,
as the Commission may require.

(2) If any exchange company, clearing house or any licensed person fails to comply with any requirement under subsection (1), the exchange company, clearing house or licensed person, as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to

both.

96. General penalty.

Any person who is guilty of an offence under this Act for which no penalty is expressly provided shall be liable, on conviction, to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both.

97. Compounding of offences.

- (1) The Chairman of the Commission may, with the consent in writing of the Public Prosecutor, compound any offence under this Act or the regulations which is prescribed to be a compoundable offence by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding such amount as may be prescribed.
- (2) Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any goods, such goods may be released, subject to such conditions as may be imposed in accordance with the conditions of the compound.
- (3) All amounts received by the Commission under this section shall be paid into the Consolidated Fund.

[Subs. Act A927:s.81]

98. Convicted persons liable to pay compensation.

- (1) A person who contravenes any of the provisions of this Act and has been convicted of an offence in respect of the contravention shall be liable to pay compensation to any other person who, in trading in futures contracts with the first-mentioned person or a person acting for or on behalf of the first-mentioned person, suffers a loss by reason of the difference between the price at which the trading took place and the price at which it would have been likely to have taken place if the contravention had not occurred.
- (2) The amount of compensation for which a person shall be liable under subsection (1) shall be the amount of the actual pecuniary loss suffered by the person claiming the compensation.
- (3) An action for the recovery of a loss under this section shall not be commenced after the expiration of two years from the date of conviction of the person for an offence in respect of the contravention to which the claim for compensation relates or, where there is an appeal in respect of such conviction, from the final disposal of such appeal.
- (4) Nothing in subsection (1) shall affect any liability that a person may incur under any other written law.

99. Offences by corporations, etc.

- (1) Where a corporation is guilty of an offence under this Act, any officer or representative of the corporation who was, in any way, by act or omission directly or indirectly, concerned in, or a party to, the commission of the offence shall also be deemed to be guilty of that offence.
- (2) Where a representative is guilty of an offence under this Act, the futures broker, futures fund manager or the futures trading adviser to whom he is accredited shall also be deemed to be guilty of that offence.

- (3) For the purposes of this section, "officer", in relation to a director of a corporation, includes—
- (a) a person occupying or acting in the position of director of the 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 the corporation are accustomed to act; and
 - (c) if the corporation is incorporated outside Malaysia—
 - (i) a member of the corporation's Board;
 - (ii) a person occupying or acting in the position of director 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; and
 - (iii) a person in accordance with whose directions or instructions the members of the corporation's Board are accustomed to act.

100. Futures contract not shortselling, or gaming or wagering contract.

- (1) Subsection 41(1) of the Securities Industry Act 1983 [Act 280] shall not apply to—
- (a) the making or trading of a futures contract on the futures market of an exchange company or on an exempt futures market;
 - (b) anything done under a futures contract referred to in paragraph (a); or
 - (c) any sale of securities conducted on a stock exchange approved under subsection 8(2) of the Securities Industry Act 1983 for the purpose of hedging a risk under or in connection with a futures contract referred to in paragraph (a) where—
 - (i) the securities are included in a class of securities in relation to which there is a provision in the rules of the stock exchange to the effect that the class is a class of securities to which this paragraph applies;
 - (ii) the sale is made as provided by the rules of the stock exchange; and
 - (iii) at the time of the sale, neither the person who sold the securities, nor any person on behalf of whom the first-mentioned person sold the securities was an associate, in relation to the sale, of the body corporate that issued or made available the securities.
- (2) For the purposes of any written law, a futures contract made or traded—
- (a) on the futures market of an exchange company; or
 - (b) on an exempt futures market,
- or anything done under such a futures contract, is not to be taken to be a gaming or wagering contract.

[Subs. Act A927:s.83]

101. [Repealed by Act A927:s.84]

102. Trading in futures contracts outside Malaysia.

(1) A futures broker and futures fund manager shall not trade in a futures contract on any futures market outside Malaysia unless—

- (a) the futures market is a futures market of a Specified Exchange; and
- (b) the futures contract is of an approved class of futures contracts.

[Subs. Act A987:s.10; Ins. Act A1042:s.11]

(1A) The Minister may prescribe—

- (a) any futures market outside Malaysia to be a Specified Exchange; and
- (b) any class of futures contracts of the futures market of a Specified Exchange to be an approved class of futures contracts.

[Ins. Act A987:s.10]

(1B) If—

- (a) the Commission has reason to believe that a situation exists which, in the opinion of the Commission, is likely to affect the proper operation of the futures market of any Specified Exchange or cause a disruption to the orderly trading of futures contracts on such a futures market;
- (b) it is shown that a futures broker or futures fund manager or any of its employees, directors or representatives has acted in any manner, in relation to the operation—
 - (i) of any futures market of an exchange company or in respect of which a clearing house provides clearing house facilities; or
 - (ii) of any futures market of a Specified Exchange,
which is likely to prejudice the public interest;
- (c) a futures broker or futures fund manager has contravened—
 - (i) this Act;
 - (ii) the business rules of an exchange company or a clearing house of which the futures broker or futures fund manager is an affiliate; or
 - (iii) any condition applicable in respect of its licence; or
- (d) other prescribed circumstances exist in respect of a futures broker or futures fund manager,

the Commission may direct—

- (aa) the futures broker or futures fund manager to cease trading in futures contracts, or in any class of futures contracts, on the futures market of any Specified Exchange; or
- (bb) that trading in futures contracts, or in any class of futures contracts, by the futures broker or futures fund manager on the futures market of any Specified Exchange be limited to the closing out of futures contracts.

[Ins. Act A987:s.10; Ins. Act A1042:s.11]

- (2) Any futures broker or futures fund manager who contravenes subsection (1) or any direction made under subsection (1B) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Ins. Act A1042:s.11]

103. Amounts to be paid for trading in Specified Exchanges.

- (1) A futures broker and futures fund manager shall not trade in the futures market of a Specified Exchange unless he has paid to the Commission RM100,000 or such other amount as may be determined by the Commission.

[Subs. Act A1042:s.12]

- (2) The moneys paid under subsection (1) shall be applied on the occurrence of any of the following events:

(a) where the futures broker or futures fund manager is being wound up;

[Ins. Act A1042:s.12]

(b) where there is a default by the futures broker or futures fund manager in connection with futures contracts traded on a Specified Exchange; or

[Ins. Act A1042:s.12]

(c) such other prescribed events,

in such manner as the Commission may determine.

[Subs. Act A927:s.86]

104. Settlement of disputes.

An action or other proceeding may not be brought in any court in respect of a dispute arising out of the business of trading in futures contracts—

(a) between futures brokers;

(b) between an affiliate and an exchange company;

(c) between an affiliate and a clearing house; or

(d) between a futures broker and a client of that broker,

unless all the facilities for the settlement of the dispute as provided in this Act or the regulations or the business rules of the relevant exchange company or clearing house, as the case may be, have been exhausted.

[Subs. Act A927:s.87]

105. Prohibition of use of certain titles.

- (1) Unless the Commission otherwise permits, a person other than an exchange company shall not take or use or have attached to or exhibited at any place, the name or title of “futures exchange” or any other name, title or description implying or intending to create the belief that the person is an exchange company.

- (2) A person who is not the holder of a futures broker's licence shall not take or use the name or title of "futures broker" or take or use or have attached to or exhibited at any place, a name, title or description implying or intending to create the belief that the person is a futures broker.

[Subs. Act A987:s.11]

- (3) A person who is not the holder of a futures fund manager's licence shall not take or use the name or title of "futures fund manager" or take or use or have attached to or exhibited at any place, a name, title or description implying or intending to create the belief that the person is a futures fund manager.

- (4) A person who is not the holder of a futures trading adviser's licence shall not take or use the name or title of "futures trading adviser" or take or use or have attached to or exhibited at any place, a name, title or description implying or intending to create the belief that the person is a futures trading adviser.

- (5) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding three years or to both.

[Subs. Act A927:s.88]

106. Power to make regulations.

- (1) The Minister may make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act.

- (2) Without prejudice to the generality of subsection (1), regulations may be made—

- (a) to provide for the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;
- (b) to prescribe any forms for the purposes of this Act;
- (c) to prescribe the fees to be paid in respect of any matter or thing required for the purposes of this Act; and
- (d) for all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

- (3) Regulations under this section—

- (a) may provide that any act or omission in contravention of any provisions thereof shall be an offence; and
- (b) may provide for the imposition of penalties which shall not exceed RM100,000 for such offence.

106A. Power to prescribe by order.

The Minister may, by order published in the Gazette, prescribe any matter or thing required or permitted to be prescribed by or under this Act or any regulations made under this Act other than matters or things required or permitted to be prescribed by regulations.

[Ins. Act A927:s.89]

106B. Commission may authorise clearing house to take action in respect of insolvent or defaulting futures broker.

(1) Where a futures broker that is an affiliate of a clearing house for an exchange company—

- (a) is being wound up; or
- (b) has contravened any financial, margining or payment requirements contained in the business rules of the clearing house; or
- (c) is an affiliate in respect of whom circumstances as may be prescribed exist,

the clearing house may, with the approval of the Commission, take such action (not inconsistent with its business rules) as it thinks appropriate for protecting its financial integrity or stability, including any one or more of the following:

- (aa) deal, in such manner as it thinks appropriate, with money in a clients' segregated account of the broker;
- (bb) transfer money in such an account to a clients' segregated account of another futures broker;
- (cc) deal, in such manner as it thinks appropriate, with the existing positions of another futures broker;
- (dd) enter into liquidating trades on behalf of the futures broker.

(2) Nothing contained in the Companies Act 1965 shall prevent a clearing house from acting, or invalidate or otherwise affect an action taken by a clearing house, in accordance with subsection (1) in relation to a futures broker.

[Ins. Act A927:s.89]

106C. Power of court to make certain orders.

(1) A High Court may make such order as it thinks fit where—

(a) on an application by the Commission, it appears to the High Court that—

- (i) there is reasonable likelihood that any person will contravene a relevant requirement;
- (ii) any person has contravened a relevant requirement; or
- (iii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention, or to mitigate the effect of such contravention, including making restitution to any other person aggrieved by such contravention,

whether or not that person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution;

(b) on an application by an exchange holding company, an exchange company or a clearing house, as the case may be, it appears to the High Court that—

- (i) any person has contravened a relevant requirement; or
- (ii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention or to mitigate the effect of such contravention; or
- (c) on an application by any person aggrieved by an alleged contravention by another person of a relevant requirement, it appears to the High Court that—
 - (i) the other person has contravened the relevant requirement; and
 - (ii) the applicant is aggrieved by the contravention.

[Subs. Act A1215:s.20]

(2) The orders that a court may make under subsection (1) include the following:

- (a) an order restraining or requiring the cessation of the contravention;
[Subs. Act A1215:s.20]
- (b) an order restraining a person from trading in any class of futures contracts mentioned in the order;
- (c) an order declaring a futures contract to be void or voidable;
- (ca) an order restraining the person from acquiring, disposing of or otherwise dealing with, assets which the High Court is satisfied that such person is reasonably likely to dispose of or otherwise deal with;
[Ins. Act A1215:s.20]
- (cb) an order requiring the person, or any other person who appears to have been knowingly involved in the contravention, to take such steps as the High Court may direct to remedy it or to mitigate its effect including making restitution to any other person aggrieved by such contravention;
- (d) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a particular act;
- (e) any ancillary order considered desirable as a result of the making of any other order under this section.

(3) If an application is made to a court for an order under subsection (1), the court may, if in its opinion it is desirable to do so, before considering the application, make an interim order of the kind applied for and such order shall be expressed to have effect pending the determination of the application.

(4) Before making an order under this section, a court may direct that notice of the application be given to any person that it thinks fit or direct that notice of the application be published in any manner that it thinks fit, or both.

(5) Any person who contravenes an order made under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both.

(6) The court may rescind, vary or discharge any order made under this section or suspend the operation of such order.

[Ins. Act A927:s.89]

- (7) For the purposes of this section, “relevant requirement”–
- (a) in relation to an application under this section by the Commission, means a requirement–
 - (i) which is imposed by or under this Act;
 - (ii) which is imposed as a condition or restriction of any licence or an approval that is given or issued under or pursuant to this Act;
 - (iii) which is imposed by or under the business rules of an exchange company or a clearing house; or
 - (iv) which is imposed by or under any other law and whose contravention constitutes an offence which the Commission has power to prosecute with the consent in writing of the Public Prosecutor;
 - (b) in relation to an application by the exchange holding company, the exchange company or the clearing house, means a requirement which is imposed by or under the business rules of the exchange company or the clearing house, as the case may be; and
 - (c) in relation to an application by any person aggrieved by an alleged contravention, means a requirement–
 - (i) which is imposed by or under this Act;
 - (ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act; or
 - (iii) which is imposed by or under the business rules of an exchange company or a clearing house.
- [Ins. Act A1215:s.20]
- (8) An application made pursuant to this section shall not prejudice any other action that may be taken by the Commission, exchange holding company, exchange company, clearing house or aggrieved person, as the case may be, under any of the securities laws, any other law or any business rules.

[Ins. Act A1215:s.20]

106D. Indemnity.

No civil liability shall be incurred by–

- (a) an exchange holding company, an exchange company or a clearing house;
- (b) any person acting on behalf of an exchange holding company, an exchange company or a clearing house, including–
 - (i) any member of the Board of the exchange holding company, exchange company or clearing house, or any member of any committee established by any such Board;
 - (ii) any officer of the exchange holding company, exchange company or clearing house; and

- (iii) any agent of, or any person acting under the direction of the exchange holding company, exchange company or clearing house,

for, on account of, in respect of anything done or any statement made or omitted to be done or made, in connection with the discharge or performance or purported discharge or performance of any duties under this Act or in the exercise or intended exercise of any power under the business rules or constituent documents, where such act, statement or omission was done in good faith.

[Ins. Act A1215:s.21]

107. [Repealed by Act A927]

108. [Repealed by Act A987]

109. Exemption of offshore bank, etc.

- (1) A licensed offshore bank, an offshore company or a foreign offshore company shall not be deemed to carry on a futures advice business, or to hold out that the bank or company is a futures trading adviser, insofar as the bank or company advises a person who is not a resident of Malaysia about futures contracts.

- (2) For the purposes of this section—

“licensed offshore bank” has the same meaning as in the Offshore Banking Act 1990 [Act 443];

“offshore company” or “foreign offshore company” has the same meaning as in the Offshore Companies Act 1990 [Act 441].

[Subs. Act A927:s.91]

NOTES

Amendment of the Futures Industry (Licensing) Regulations 1995 and the Futures Industry (Variation of

Board Composition) Order 1998:

- (1) The Futures Industry (Licensing) Regulations 1995 [P.U. (A) 413/1995] is amended by deleting paragraph 8(b)(ii) and regulation 9.
- (2) The Futures Industry (Variation of Board Composition) Order 1998 [P.U. (A) 139/1998].

Notes: (A) Position of directors of exchange company and clearing house.

The directors of the Board of any exchange company and clearing house, approved under sections 5 and 6C of the principal Act respectively, shall, on the coming into operation of sections 5 and 7 of this Act, be deemed to have resigned.

[Act A1215:s.23]

Notes: (B) Savings and transitional.

- (1) All regulations, rules, orders, directions, notifications, approvals, decisions, guidelines, actions and other executive acts, made, given, taken or done under, or in accordance with, or by virtue of the principal Act before the commencement of this Act, to the extent that they are affected by this Act shall be deemed to have been made, given, taken or done under, or in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act, and shall continue to remain in full force and effect in relation to any person to whom they apply until amended, revoked, repealed or rescinded under, in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act.
- (2) Nothing in the principal Act or this Act shall affect any person's liability to be prosecuted or punished for offences committed under the principal Act before the commencement of this Act or any proceeding brought or sentence imposed before that day in respect of such offence.
- (3) Any right, privilege, obligation or liability acquired, accrued or incurred before the commencement of this Act or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall, insofar as it is not inconsistent with the provisions of this Act, continue to remain in force unless amended, revoked or rescinded under, in accordance with or pursuant to the provisions of the principal Act as amended by this Act, the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003 [Act 632] or any regulations made under the principal Act or the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003, pursuant to the coming into operation of this Act.

[Act A1215:s.24]

Notes: (C) Prevention of anomalies.

If any difficulty arises with respect to the application of any one or more of the provisions introduced or amended by this Act and the savings and transitional provisions, the Minister may, by order published in the Gazette, make such modifications in any one or more of those provisions as may appear to him to be necessary to prevent anomalies.

[Act A1215:s.25]