



# **LAWS OF MALAYSIA**

**Act A927**

**FUTURES INDUSTRY (AMENDMENT)  
ACT 1995**

#

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FUTURES INDUSTRY (AMENDMENT)  
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An Act to amend the Futures Industry Act 1993.

[ ]

BE IT ENACTED by the 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:

1. (1) This Act may be cited as the Futures Industry Short title and commencement.  
(Amendment) Act 1995.

(2) This Act shall come into force on such date or dates as the Minister may, by notification in the *Gazette* appoint, and the Minister may appoint different dates for the coming into force of different provisions of this Act.

2. The Futures Industry Act 1993, which in this Act is referred to as the "principal Act", is amended— General amendment. Act 499.

(a) by substituting for the word "Court" wherever appearing therein the word "court"; and

(b) in the national language text by substituting for the word "pelanggan" wherever appearing therein the word "klien".

3. Part I of the principal Act is amended by substituting for the heading the following heading: Amendment of heading to Part I.

"Division 1 - Preliminary".

Amendment  
of section 2.

4. Section 2 of the principal Act is amended—

- (a) in the English language text by deleting the figure “(1)”;
- (b) by inserting before the definition of “auditor” the following definitions:

Act 125. ‘ “accounting records” has the same meaning as in the Companies Act 1965;

“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;

“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

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- (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;

"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;

"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;

"associate" has the meaning given under Division 3 of Part I;';

- (c) by substituting for the definition of "Board of Directors" the following definition:

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

(d) by inserting after the definition of "Board" the following definitions:

' "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;

"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;';

(e) by substituting for the definition of "business rules" the following definition:

' "business rules" means—

- (a) 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
- (b) 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 company or clearing house or are amended by the Commission under subsection 6(3) or 6D(5);';

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(f) by substituting for the definition of "clearing house" the following definition:

"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);

(g) by inserting after the definition of "clearing house" the following definitions:

"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;

"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;

“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;

“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;’;

- (h) in the definition of “Commission” by substituting for the year “1992” the year “1993”;
- (i) by substituting for the definition of “commodity futures contract” the following definition:

“commodity futures contract” means a contract or option in respect of which trading is regulated under the Commodities Trading Act 1985;’;



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- (j) by inserting after the definition of "commodity futures contract" the following definition:

' "company" has the same meaning as in the Companies Act 1965;'

- (k) by deleting the definitions of "court" and "customer";

- (l) by inserting after the definition of "director" the following definitions:

' "document" has the same meaning as in the Evidence Act 1950;

Act 56.

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

(a) for a particular price; or

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

whether or not—

(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;

“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;

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

(m) by substituting for the definition of “exchange company” the following definition:

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

(n) by inserting after the definition of “exchange company” the following definitions:

“exempt futures broker” means a person exempted under subsection 20(1);

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“exempt futures fund manager” means a person exempted under subsection 20(1);

“exempt futures market” means a futures market exempted under section 3A;

“exempt futures trading adviser” means a person exempted under subsection 20(1);

“fidelity fund”, in relation to an exchange company, means a fidelity fund established under section 58;

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

“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;'

(o) by substituting for the definition of "futures broker" the following definition:

' "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;'

(p) by deleting the definition of "futures broking business";

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(q) by substituting for the definition of "futures broker's representative" the following definition:

' "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;';

(r) by inserting after the definition of "futures broker's representative" the following definition:

' "futures broking business", in relation to a person, means a business of trading in futures contracts on behalf of other persons;';

(s) by substituting for the definition of "futures contract" the following definition:

' "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;';

(t) by deleting the definition of "futures exchange";

(u) by inserting after the definition of "futures  
contract" the following definitions:

' "futures fund management business", in  
relation to a person, means a business of—

(a) offering to any person for subscription;  
or

(b) 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 subscribed is intended to be  
applied in relation to trading in futures  
contracts, but does not include an act that a  
person does—

(aa) while employed by, or acting for or  
by arrangement with, another person;  
and

(bb) as employee or agent of, or otherwise  
on behalf of, on account of, or for  
the benefit of, the other person;-and

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(cc) in connection with a futures fund management business carried on by the other person;

"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;

"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;';

(v) by substituting for the definition of "futures market" the following definition:

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

(w) by substituting for the definition of "futures option transaction" the following definition:

' "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;';

- (x) by inserting after the definition of "futures option" the following definition:

' "futures report" means an analysis or report that contains recommendations about trading in futures contracts;';

- (y) by substituting for the definition of "futures trading adviser" the following definition:

' "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;';

- (z) by substituting for the definition of "futures trading adviser's representative" the following definition:

' "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;';

- (aa) by inserting after the definition of "futures trading adviser's representative" the following definition:

' "information service" means—

(a) a broadcasting service;



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- (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;';
- (bb) by substituting for the definition of "instruments" the following definition:
- ' "instrument" means—
  - (a) anything that is capable of delivery under an agreement for its delivery, including 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;';
- (cc) by substituting for the definition of "licence" the following definition:
- ' "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;';
- (dd) by deleting the definition of "Licensing Officer";

(ee) by inserting after the definition of "licensed person" the following definitions:

' "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;

"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

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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;';

(ff) by substituting for the definition of "officer" the following definition:

' "officer", in relation to—

Act 498. (a) the Commission, has the same meaning as in the Securities Commission Act 1993;

(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;';

(gg) by inserting after the definition of "officer" the following definitions:

' "on", in relation to a futures market, includes at or by means of;

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

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

“premises” 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));

(hh) in the definition of “prescribed” by inserting before the words “by or under this Act” the words “by the Minister”;

(ii) by inserting after the definition of “prescribed” the following definitions:

“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;

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

“regulations” means regulations made under this Act;

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

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

- (a) the provisions of any agreement;

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- (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;

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

“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;

“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;'

(jj) by substituting for the definition of "Specified Exchange" the following definition:

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

(kk) by inserting after the definition of "Specified Exchange" the following definition:

' "trade", in relation to a futures contract, has a meaning as provided under section 2c;'

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(ll) by deleting the definition of "trading in futures contracts"; and

(mm) by inserting after the definition of "trade" the following definition:

' "value", in relation to an asset, includes amount.'

5. Part I of the principal Act is amended by inserting after Division 1 the following Divisions: New Divisions 2 and 3.

"Division 2 - Futures Contracts

Con-sequences of agreements becoming futures contracts. 2A. 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).

Prescription of futures contracts. 2B. (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.

Trading in futures contracts. 2C. (1) Subject to section 2b, 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),



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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.

Trading in futures contracts through other persons.

2D. (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.

Own  
account  
trading  
and  
transactions.

2E. (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.

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(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.

Division 3 – Associates

Application of Division.

2F. (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.

Associates of bodies corporate.

2G. 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.

Partners, trustees and directors.

2H. 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 benefitting, 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 2I(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.

General.

21. (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.

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(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.

**Exclusions.** 2j. (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.

**Associates of composite persons.** 2k. 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."

6. Part II of the principal Act is amended by substituting for the heading the following heading: Amendment of heading of Part II.

"ESTABLISHMENT OF FUTURES MARKETS".

7. Section 3 of the principal Act is amended by substituting for subsection (1) the following subsection: Amendment of section 3.

"(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.”.

New section 3A. 8. The principal Act is amended by inserting after section 3 the following section:

“Exempt futures market. 3A. 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.”.

Amendment of section 4. 9. Section 4 of the principal Act is amended—

(a) by substituting for the marginal note the following marginal note:

“Approval of exchange company.”;

(b) in subsection (1) by substituting for the words “futures exchange” the words “futures market”; and

(c) in subsection (3)—

(i) in paragraph (a) by substituting for the words “futures exchange” the words “futures market”;

(ii) in paragraph (b)—

(A) in subparagraph (i) by inserting after the word “business” the words “and facilities”;

(B) by substituting for subparagraphs (ii) and (iii) the following subparagraphs:

“(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

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(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;"; and

(C) by deleting subparagraph (iv);

(iii) by inserting after paragraph (b) the following paragraph:

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

(iv) in paragraph (c) by deleting the words "applicable to the company in its capacity as an exchange company and of business rules of its futures market"; and

(v) in paragraph (d) by substituting for the words "business rules of the futures exchange and amendments thereto" the words "amendments to the company's constitution and none of its business rules".

**10. Section 5 of the principal Act is amended—**

Amendment  
of section 5.

(a) in subsection (1) by deleting the words "of Directors";

(b) by substituting for subsection (2) the following subsection:

"(2) Subject to subsection (2A), the Board shall consist of—

(a) two directors to be elected by affiliates of the company;

(b) four directors to be elected by the shareholders of the company; and

(c) three directors to be appointed by the Minister.";

(c) by inserting after subsection (2) the following subsection:

“(2A) The Minister may, by order published in the *Gazette*, vary the composition and number of directors of the Board.”;

(d) by substituting for subsections (3), (4), (5) and (6) the following subsections:

“(3) Directors, other than those appointed by the Minister, shall hold office for such period as shall be determined by the company’s constitution.

(4) A director appointed by the Minister shall hold office for such period as may be determined by the Minister.

(5) The Minister shall appoint one director from amongst the directors appointed by him to be the Executive Chairman of the Board.

(6) The salary and remuneration of the Executive Chairman shall be as may be approved by the Minister and shall be paid by the exchange company.”; and

(e) by inserting after subsection (6) the following subsection:

“(7) Nothing in this section shall be construed to mean that the Minister is a director of an exchange company.”.

Amendment of section 6. 11. Section 6 of the principal Act is amended—

(a) by substituting for the marginal note the following marginal note:

“Approval of amendment of constitution and business rules of exchange company.”;



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- (b) in subsection (1)—
- (i) by inserting after the word “shall” the words “, as soon as practicable,”;
  - (ii) in paragraph (a) by inserting after the word “any” the word “proposed”;
  - (iii) by inserting the word “and” at the end of paragraph (a);
  - (iv) by substituting for paragraph (b) the following paragraph:
    - “(b) any proposed business rules or any proposed amendments to existing business rules.”; and
  - (v) by deleting paragraph (c);
- (c) by inserting after subsection (1) the following subsection:
- “(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.”;
- (d) by substituting for subsection (2) the following subsection:
- “(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.”;

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(e) by inserting after subsection (2) the following subsection:

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

(f) in subsection (3) by substituting for the words “, the business rules of its futures exchange or the business rules of its clearing house, as the case may be” the words “or any of its business rules”; and

(g) by inserting after subsection (3) the following subsections:

“(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.

(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 five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.”.

New sections 6A, 6B, 6C, 6D and 6E.

12. The principal Act is amended by inserting after section 6 the following sections:

“Providing unauthorised clearing house facilities. 6A. (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

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- (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 one million ringgit or to imprisonment for a term not exceeding ten 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.

Approval  
of clearing  
house.

6B. (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 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.

(3) The Minister may approve a company as a clearing house for such number of futures markets or exchange companies as the Minister thinks fit.

Management of a clearing house. 6C. (1) The management of a clearing house shall be vested in its Board.

(2) The Board shall consist of the prescribed number of directors to be—

(a) elected by the exchange companies for which the clearing house provides clearing house facilities;

(b) elected by the affiliates of the clearing house; and

(c) appointed by the Minister.

(3) A person shall not be entitled to be elected as a director unless the Minister has approved his nomination for election.

(4) A director shall hold office for such period as shall be determined by the constitution of the clearing house.

(5) Nothing in this section shall be construed to mean that the Minister is a director of a clearing house.

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

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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 five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

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

6E. 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

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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.”.

13. Section 7 of the principal Act is amended—

Amendment  
of section 7.

- (a) by substituting for the marginal note the following marginal note:

“Revocation of approval of exchange company.”; and

- (b) in subsection (1)—

- (i) by substituting for the words “an exchange company” the words “a company”;
- (ii) in paragraph (a) by deleting the word “exchange”;
- (iii) by substituting for paragraph (b) the following paragraph:

“(b) the company ceases to operate a futures market.”;

- (iv) in paragraph (c) by deleting the word “exchange”;

- (v) by deleting the word “or” at the end of paragraph (c);

- (vi) by substituting for the full stop at the end of paragraph (d) a semicolon; and

- (vii) by inserting after paragraph (d) the following paragraphs:

“(e) the company fails or ceases to satisfy any condition of approval imposed under subsection 4(4); or

(f) the company contravenes section 5 or 6.”.

**14.** The principal Act is amended by inserting after section 7 the following section:

**7A.** (1) Subject to subsection (2), the Minister may revoke the approval granted to a company under section 6B if—

- (a) the company ceases to comply with any of the requirements specified in subsection 6B(1);
- (b) the company contravenes a condition of the approval or contravenes section 6C or 6D;
- (c) the company fails to comply with a direction given under section 8, 9, 10 or 13;
- (d) the company ceases to provide clearing house facilities;
- (e) the company is being wound up; or
- (f) the company, a director of the Board, or an officer of the company, has done or omitted to do anything referred to in paragraph 10(1)(a) or (b) and the Minister considers that the act or omission is of such a nature as to justify revocation of the approval.

(2) The Minister shall give a clearing house not less than fourteen days' notice in writing of his intention to exercise his power of revocation under subsection (1) and the notice shall specify the grounds for revocation."

**15.** Subsection 8(1) of the principal Act is amended by substituting for the words "in all or any futures market of the futures exchange" the words "on the futures market of the exchange company".



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16. Section 9 of the principal Act is amended—

Amendment  
of section 9.

- (a) by substituting for subsection (1) the following subsection:

“(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.”;

- (b) in subsection (2) by substituting for the words “futures exchange” the words “futures market”; and

- (c) by inserting after subsection (3) the following subsection:

“(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.”.

17. Section 10 of the principal Act is amended—

Amendment  
of section 10.

- (a) by substituting for subsection (1) the following subsection:

“(1) Where it is shown that—

- (a) an exchange company or clearing house for an exchange company—  
(i) has failed to comply with or enforce any of its business rules;  
(ii) has contravened any provisions of this Act; or

- (iii) has failed to comply with any directions given by the Commission under this Act; or
- (b) the exchange company or clearing house, any director of their respective Boards, any officer of 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,

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

- (aa) direct the exchange company—
  - (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

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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;

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- (bb) direct the exchange company, clearing house, director of the Board, 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);
- (cc) in respect of the exchange company or clearing house, impose a penalty not exceeding one hundred thousand ringgit;
- (dd) in respect of a director of the Board, an officer or an affiliate of the exchange company or clearing house, impose a penalty not exceeding fifty thousand ringgit; or
- (ee) reprimand the exchange company, clearing house or individual concerned.”;

- (b) in subsection (2) by substituting for the words “or individual” the words “, director of the Board, officer or affiliate, as the case may be,”; and
- (c) in subsection (4) by substituting for the words “to suspend trading given under paragraph (1)(aa)” the words “given under subsection (1)”.

New section 11A. 18. The principal Act is amended by inserting after section 11 the following section:

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

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(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.”.

19. The principal Act is amended by substituting for section 12 the following section: Substitution of section 12.

“Publication of notice of revocation, suspension of trading or closure. 12. Where —

(a) an approval is revoked under section 7 or 7A; or

(b) 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 revocation of the approval or notice of the action taken in such manner as it considers appropriate.”.

20. Section 13 of the principal Act is amended— Amendment of section 13.

(a) by substituting for the marginal note the following marginal note:

“Directions to be complied with.”;

(b) by substituting for subsection (1) the following subsections:

“(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.”; and

(c) in subsection (2) by substituting for the words “subsection (1)” the words “subsection (1) or (1A)”.

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Amendment of section 14. **21.** Section 14 of the principal Act is amended—

(a) by substituting for the marginal note the following marginal note:

“Prevention of entry into premises or use of facilities of exchange company.”;

(b) by substituting for subsection (1) the following subsection:

“(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.”; and

(c) in subsection (2) by inserting after the word “writing” the words “by the Commission”.

Amendment of section 15. **22.** Section 15 of the principal Act is amended—

(a) by substituting for the marginal note the following marginal note:

“Powers of the Commission.”;

(b) in subsection (1) by substituting for the words “futures exchange or a clearing house, relating to the trading in, or liquidation of, any futures contract or any class of futures contracts” the words “futures market of an exchange company”;

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(c) by substituting for subsections (2) and (3) the following subsections:

“(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.
- (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.”; and

(d) in subsection (4)—

- (i) by substituting for the words “which threatens a futures market and shall include” the word “including”; and
- (ii) by substituting for the words “threaten orderly trading in the futures market” the words “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”.

New section  
15A.

**23.** The principal Act is amended by inserting after section 15 the following section:

“Direction  
to  
clearing  
house.

15A. 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.”.

Amendment  
of heading  
to Part III.

**24.** The heading to Part III of the principal Act is amended by inserting after the words “FUTURES BROKERS,” the words “FUTURES FUND MANAGERS.”.



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25. Section 16 of the principal Act is amended—

Amendment  
of section 16.

(a) by substituting for subsection (1) the following subsection:

“(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.”; and

(b) in subsection (2) by deleting the words “that is a futures broker”.

26. The principal Act is amended by inserting after section 16 the following section: New section  
16A.

“Futures fund managers to be licensed. 16A. (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 one million ringgit or to imprisonment for a term not exceeding ten years or to both.”.

Amendment  
of section 17.

27. Section 17 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(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.”;

(b) by substituting for subsection (2) the following subsection:

“(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.”; and

(c) by deleting subsections (3) and (4).

Amendment  
of section 18.

28. Section 18 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(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.”; and

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(b) by inserting after subsection (1) the following subsections:

" (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.

(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."

29. The principal Act is amended by inserting after section 18 the following section: New section 18A.

"Futures fund manager's representatives to be licensed. 18A. (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 one million ringgit or to imprisonment for a term not exceeding ten years or to both.”

Amendment of section 19. 30. Section 19 of the principal Act is amended—

- (a) by substituting for subsection (1) the following subsection:

“(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

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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."; and

- (b) by inserting after subsection (1) the following subsections:

"(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.

(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."

- 31. Subsection 20(1) of the principal Act is amended— Amendment of section 20.

- (a) by substituting for the words "Sections 16, 17, 18 and 19" the words "Sections 16, 16A, 17, 18, 18A and 19";

- (b) by deleting the word "or" at the end of paragraph (d);
- (c) in paragraph (e) by substituting for the word "settlement" the word "compromise";
- (d) by substituting for the comma at the end of paragraph (e) a semicolon;
- (e) by inserting after paragraph (e) the following paragraph:
  - "(f) any other prescribed person,"; and
- (f) by substituting for the words "trades in, or otherwise deals with, any futures contract whether as a futures broker or futures trading adviser or futures broker representative or futures trading adviser representative" the words "does an act of a futures broker, futures fund manager, futures trading adviser or representative".

Deletion of section 21.

32. The principal Act is amended by deleting section 21.

Amendment of section 22.

33. Section 22 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) by substituting for the words "Subject to sections 23 and 24, the Licensing Officer shall, on application made to him" the words "Subject to subsection (1A) and sections 23 and 24, the Commission may, on application made to it";
  - (ii) by deleting the word "or" at the end of paragraph (c);
  - (iii) by substituting for the comma at the end of paragraph (d) a semicolon; and
  - (iv) by inserting after paragraph (d) the following paragraphs:
    - "(e) a futures fund manager; or
    - (f) a futures fund manager's representative,";

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- (b) by inserting after subsection (1) the following subsection:

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

- (c) in paragraph (2)(b) by substituting for the words "Licensing Officer thinks fit" the words "Commission may determine when granting the licence";

- (d) by substituting for subsection (3) the following subsection:

"(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.";

- (e) by inserting after subsection (3) the following subsection:

"(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.”;
- (f) by substituting for subsection (4) the following subsection:
- “(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.”; and
- (g) by inserting after subsection (4) the following subsection:
- “(5) All fees received by the Commission for the grant or renewal of licences shall be paid into the Consolidated Fund.”.

Amendment  
of section 23.

34. Section 23 of the principal Act is amended—

- (a) in subsection (1) by substituting for the words “licence to carry on business as a futures broker shall” the words “futures broker's licence or a futures fund manager's licence may”;
- (b) in subsection (2) by substituting for the words “licence to carry on business as a futures trading adviser” the words “futures trading adviser's licence”; and
- (c) in subsection (3) by substituting for the words “licence to act as a futures broker's representative or as a futures trading adviser's representative shall” the words “representative's licence may”.



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35. The principal Act is amended by substituting for section 24 the following section: Substitution  
of section 24.

<sup>“Refusal to  
grant a  
licence.”</sup> 24. (1) The Commission may refuse to grant a licence on any 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.”.

36. Section 25 of the principal Act is amended— Amendment  
of section 25.

(a) in subsection (1)—

(i) by substituting for the words “Licensing Officer shall” the words “Commission may”; and

(ii) by deleting the words “to him”;

(b) in subsection (2)—

(i) by substituting for the words “Licensing Officer” the word “Commission”;

(ii) by substituting for the word “him” the words “the Commission”; and

(iii) by substituting for the word “he” the words “the Commission”;

(c) in subsection (3)—

(i) by substituting for the words “Licensing Officer” wherever they appear the word “Commission”;

(ii) by substituting for paragraph (a) the following paragraph:

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

(iii) in paragraph (b) by substituting for the words "any of the grounds" the words "any ground";

(d) in subsection (4)—

(i) in paragraph (a) by substituting for the words "with the day of the expiry of the licence at the time of the application for renewal" the words "at the end of the period for which it was granted or last renewed"; and

(ii) in paragraph (b) by substituting for the words "Licensing Officer thinks fit" the words "Commission may determine when renewing the licence or during the period of the renewal";

(e) in subsection (6) by substituting for the words "Licensing Officer" the word "Commission"; and

(f) in subsection (7)—

(i) by substituting for the words "Licensing Officer" the word "Commission"; and

(ii) by substituting for the words "he shall" the words "the Commission shall".

Amendment of section 26. 37. Section 26 of the principal Act is amended—

(a) in paragraph (1)(a) by substituting for the words "associated with the futures broker" the words "a representative of the futures broker, futures fund manager";

(b) in subsection (2)—

(i) by substituting for the words "Licensing Officer" wherever they appear the word "Commission";

(ii) in paragraph (a)—

- (A) by substituting for subparagraph (i) the following subparagraph:

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

- (B) by substituting for subparagraph (iv) the following subparagraph:

“(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;”;

- (C) in subparagraph (v) by substituting for the words “the business rules” the words “any business rules of an exchange company or clearing house”;

- (D) by inserting the word “or” at the end of subparagraph (v); and

- (E) by inserting after subparagraph (v) the following subparagraph:

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

(iii) in paragraph (b)—

- (A) in subparagraph (i) by substituting for the words “paragraph 24(b)” the words “section 24”;

- (B) by deleting the word “or” at the end of subparagraph (v);



(C) in subparagraph (vi) by substituting for the words "the business rules" the words "any of the business rules of an exchange company or clearing house";

(D) by substituting for the full stop at the end of subparagraph (vi) a semi-colon; and

(E) by inserting after subparagraph (vi) the following subparagraphs:

"(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;

(viii) if the corporation has entered into a compromise or arrangement with another person the administration of which has not been concluded; or

(ix) if the corporation fails to pay a penalty imposed under paragraph 28(2)(d).";

(c) in subsection (3) by substituting for the words "Licensing Officer" the word "Commission"; and

(d) in subsection (4)—

(i) by substituting for the words "Licensing Officer" the word "Commission"; and

(ii) by substituting for the words "he shall" the words "the Commission shall".

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38. Section 27 of the principal Act is amended— Amendment  
of section 27.

- (a) by substituting for the words "Licensing Officer" wherever they appear the word "Commission"; and
- (b) in subsection (2) by substituting for the words "of the surrender" the words "when the notice of surrender was given by the licensed person".

39. Section 28 of the principal Act is amended— Amendment  
of section 28.

- (a) by substituting for the marginal note the following marginal note:

"Powers of Commission in cases of misconduct, etc.";

- (b) by substituting for the words "Licensing Officer" wherever they appear the word "Commission";
- (c) by inserting after subsection (1) the following subsection:

"(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).";

- (d) in subsection (2)—

- (i) by substituting for the words "inquiring into an allegation under subsection (1)" the words "an inquiry under subsection (1) or (5)"; and

- (ii) by substituting for the words "he may" the words "the Commission may";

- (e) by substituting for subsection (4) the following subsection:

"(4) If the Commission takes action under subsection (1), it shall give written notice—

- (a) to the licensed person;

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- (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.”;
- (f) in subsection (5) by substituting for the words “direct the exchange company” the words “, if the licensed person is a futures broker, direct the exchange company of which the licensed person is an affiliate”; and
- (g) in subsection (7)—
  - (i) in paragraph (a) by substituting for the words “any business rules or any directions of the exchange company with respect to licensed persons” the words “any conditions of a licence or any business rules or directions of an exchange company or clearing house”; and
  - (ii) by substituting for paragraph (b) the following paragraph:
    - “(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.”.

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40. Paragraph 29(1)(a) of the principal Act is amended by substituting for the words "notification of the revocation, suspension or surrender of the licence" the words "revocation, suspension or surrender takes effect". Amendment  
of section 29.

41. Section 30 of the principal Act is amended by substituting for the words "Licensing Officer" wherever they appear the word "Commission". Amendment  
of section 30.

42. The principal Act is amended by deleting section 31. Deletion of  
section 31.

43. Section 32 of the principal Act is amended— Amendment  
of section 32.

(a) by substituting for the words "Licensing Officer" wherever they appear the word "Commission";

(b) in subsection (1)—

(i) in paragraph (b) by substituting for the words "or the name of the corporation" the words "under which the licensed person carries on that business or in the name of the licensed person"; and

(ii) in paragraph (c) by inserting after the words "any information" the words "required under section 22 or 25 to be";

(c) in subsection (3) by inserting after the words "futures broker" the words ", futures fund manager"; and

(d) by substituting for subsection (4) the following subsection:

"(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."

44. Section 33 of the principal Act is amended— Amendment  
of section 33.

(a) by substituting for the words "Licensing Officer" wherever they appear the word "Commission";



(b) by substituting for subsection (1) the following subsection:

“(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.”; and

(c) in subsection (2) by substituting for the word “Register” the word “register”.

Amendment of section 34. 45. Section 34 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “Licensing Officer” the word “Commission”; and

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(ii) by substituting for the word "he" the words "the Commission"; and

(b) by substituting for subsection (3) the following subsection:

"(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."

46. Section 35 of the principal Act is amended—

Amendment  
of section 35.

(a) by substituting for the marginal note the following marginal note:

"Exchange company and clearing house to provide assistance to Commission.";

(b) by substituting for subsection (1) the following subsection:

"(1) 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."; and

(c) in subsection (2)—

(i) by substituting for the words "a futures exchange" the words "an exchange company or clearing house"; and

(ii) by substituting for the words "the Licensing Officer in writing particulars of the licensed person" the words "written notice to the Commission setting out the name and the address of the place of business of the licensed person".

Amendment of section 36.

47. The principal Act is amended by substituting for section 36 the following section:

36. (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 five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both."

Deletion of sections 37 and 38.

48. The principal Act is amended by deleting sections 37 and 38.

Substitution of section 39.

49. The principal Act is amended by substituting for section 39 the following section:

39. (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;

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- (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 five hundred thousand ringgit.”.

50. Section 40 of the principal Act is amended— Amendment  
of section 40.

(a) by substituting for subsection (1) the following subsection:

“(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.”;

(b) in subsection (2) by substituting for the words “futures broker” wherever they appear the word “corporation”;

(c) by substituting for subsection (3) the following subsection:

“(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.”; and

(d) by deleting subsection (4).

Amendment of section 41. 51. Section 41 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a)—

(A) by substituting for the words “futures broker's” the word “corporation's”; and

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- (B) by deleting the words "under this Act";
  - (ii) in paragraph (b)—
    - (A) by substituting for the words "futures broker's" the word "corporation's"; and
    - (B) by substituting for the words "futures broker" the word "corporation";
  - (iii) in paragraph (c) by substituting for the words "futures broker" wherever they appear the word "corporation";
  - (iv) in paragraph (d) by inserting before the word "require" the words "if the auditor is carrying out an examination and audit in relation to a futures broker,"; and
  - (v) in paragraph (e) by inserting before the word "require" the words "if the auditor is carrying out an examination and audit in relation to a futures broker,"; and
- (b) by deleting subsection (3).

52. The principal Act is amended by deleting section 42. Deletion of section 42.

53. The principal Act is amended by substituting for section 44 the following section: Substitution of section 44.

"Additional obligations on futures broker or futures fund manager. 44. (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).

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(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 five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.”.

Deletion of sections 45 and 46.

54. The principal Act is amended by deleting sections 45 and 46.

Amendment of section 47.

55. Section 47 of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (a) by inserting after the word “auditor” the words “of an exchange company, a clearing house, a futures broker or futures fund manager”;
- (ii) in paragraph (b) by substituting for the words “futures trading adviser” wherever they appear the words “futures fund manager”; and
- (iii) by substituting for the words “and an exchange company, a clearing house, a futures broker or a futures trading adviser, as the case may be, shall remunerate the auditor in respect of the discharge of all or any of the additional duties” the words “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”;

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(b) by substituting for subsection (2) the following subsection:

“(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.”; and

(c) by deleting subsection (4).

56. Paragraph 48(1)(b) of the principal Act is amended by substituting for the words “section 39 or 47” the words “section 39, 40 or 47”. Amendment of section 48.

57. The principal Act is amended by substituting for section 49 the following section: Amendment of section 49.

“Issue of contract notes.

49. (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.



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

Substitution of section 50. 58. The principal Act is amended by substituting for section 50 the following section:

"Trading by futures broker on own account. 50. (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."

Substitution of section 51. 59. The principal Act is amended by substituting for section 51 the following section:

"Futures broker to give statements to client. 51. (1) The Minister may make regulations providing for and with respect to the giving by futures brokers of statements to their clients.

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

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60. The principal Act is amended by substituting for section 52 the following section: Substitution  
of section 52.

<sup>"Interpre-</sup> 52. (1) For the purposes of this section and  
<sub>tation.</sub> 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 a commodity to which the futures contract relates.

(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."

New sections  
52A and 52B.

61. The principal Act is amended by inserting after section 52 the following sections:

"Segregation  
of clients'  
money and  
property.

52A. (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,

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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

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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

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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.

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(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),— *Act 125.*

- (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 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 any 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).

Adviser  
to have  
reasonable  
basis for  
recommen-  
dation.

52B. (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

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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."

~~#~~  
Amendment  
of section 53.

62. The principal Act is amended by substituting for section 53 the following section:

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

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63. The principal Act is amended by substituting for section 54 the following section: Substitution  
of section 54.

*“Sequence of sending and carrying out of orders.* 54. (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

*Futures Industry (Amendment)*

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,

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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.”.

Amendment  
of section  
55.

64. Section 55 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “For the purpose of diminishing, eliminating or preventing excessive speculation in any futures contracts or any class of futures contracts, the Commission” the words “The Commission”;

(ii) by substituting for the word “held” the word “assumed”; and

(iii) by substituting for the words “futures market” the words “exchange company”;

(b) in subsections (2) and (3) by substituting for the word “held” wherever it appears the word “assumed”;

(c) by substituting for subsections (4) and (5) the following subsections:

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

(a) trade or agree to trade in futures contracts on, or subject to the business

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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.

(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)."; and

(d) by deleting subsection (6).

65. The principal Act is amended by deleting section 57. Deletion of section 57.

66. The principal Act is amended by substituting for section 58 the following section: Substitution of section 58.

"Establishment of fidelity fund. 58. (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.”.

Deletion of section 59. **67.** The principal Act is amended by deleting section 59.

Substitution of section 60. **68.** The principal Act is amended by substituting for section 60 the following section:

“Money constituting fidelity fund. **60.** 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;

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- (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."

69. The principal Act is amended by substituting for sections 62 and 63 the following sections:

Substitution  
of sections  
62 and 63.

"Payments  
out of  
fidelity  
fund.

62. 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.

Accounts of fidelity fund.

63. Sections 36, 39, 40, 41, 43 and 47 shall apply to the accounts of a fidelity fund established under section 58 in so far 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."

New section 66A.

70. The principal Act is amended by inserting after section 66 the following section:

"Application of fidelity fund. 66A. (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

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- (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.”

71. The principal Act is amended by deleting sections 67, 68, 69, 70, 71 and 72. Deletion of sections 67 to 72.

72. The principal Act is amended by substituting for section 73 the following section: Substitution of section 73.

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

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

- (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.”.

Deletion of section 75. 73. The principal Act is amended by deleting section 75.

Substitution of section 76. 74. The principal Act is amended by substituting for section 76 the following section:

“Power of exchange company to enter into contract of insurance. 76. (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.”.

New section 76A. 75. The principal Act is amended by inserting after section 76 the following section:

“Application of insurance money. 76A. 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

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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.”.

76. The principal Act is amended by substituting for section 77 the following section: Substitution of section 77.

“Exchange company’s indemnity. 77. 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.”.

77. The principal Act is amended by inserting after section 77 the following section: New section 77A.

“Exclusion of claim against exchange company. 77A. 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.”.

78. The principal Act is amended by substituting for section 85 the following section: Substitution of section 85.

“Restriction on employees of exchange company or clearing house. 85. (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.”.

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Substitution of section 87. 79. The principal Act is amended by substituting for section 87 the following section:

"Falsification of records.

87. (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.

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(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 one million ringgit or to imprisonment for a term not exceeding ten years or to both."

80. The principal Act is amended by inserting after section 87 the following section: New section 87A.

"False statements. 87A. 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



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- (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.”.

Substitution of section 97. **81.** The principal Act is amended by substituting for section 97 the following section:

“Compound-  
ing of  
offences. 97. (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.”.

Amendment of section 99. **82.** Section 99 of the principal Act is amended—

- (a) in subsection (1) by substituting for the words “any director, manager, secretary or other officer” the words “any officer or representative”;
- (b) in subsection (2)—
  - (i) by substituting for the words “futures broker’s representative or a futures trading adviser’s representative” the word “representative”; and

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- (ii) by inserting after the words "the futures broker" the words ", futures fund manager"; and
- (c) by inserting after subsection (2) the following subsection:

"(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."

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Substitution  
of section  
100.

83. The principal Act is amended by substituting for section 100 the following section:

"Futures  
contract  
not  
shortselling,  
or gaming  
or wagering  
contract.  
Act 280.

100. (1) Subsection 41(1) of the Securities Industry Act 1983 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

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(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.”.

84. The principal Act is amended by deleting section 101. Deletion of section 101.

85. Section 102 of the principal Act is amended— Amendment of section 102.

(a) in subsection (1) by substituting for the words “futures exchange” the words “futures market”; and

(b) by inserting after subsection (1) the following subsection:

“(1A) The Minister may, by order published in the *Gazette*, prescribe any futures market outside Malaysia to be a Specified Exchange.”.

86. The principal Act is amended by substituting for section 103 the following section: Substitution of section 103.

“Amounts to be paid for trading in Specified Exchanges. 103. (1) A futures broker shall not trade in the futures market of a Specified Exchange unless he has paid to the Commission one hundred thousand ringgit or such other amount as may be determined by the Commission.

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

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

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

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(c) such other prescribed events,  
in such manner as the Commission may determine.”.

Substitution of section 104. 87. The principal Act is amended by substituting for section 104 the following section:

“Settlement of disputes. 104. 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.”.

Substitution of section 105. 88. The principal Act is amended by substituting for section 105 the following section:

“Prohibition of use of certain titles. 105. (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 brokers licence shall not take or use the name or title of “futures broker” or take or

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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.

(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 one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both."

89. The principal Act is amended by inserting after section 106 the following sections:

New sections  
106A, 106B  
and 106C.

"Power to  
prescribe  
by order.

106A. 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.

Commis-  
sion may  
authorise  
clearing  
house to  
take action  
in respect  
of insolvent  
or defaulting  
futures  
broker.

106B. (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.

Act 125. (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.

Power of court to make certain orders.

106c. (1) A court may make such order or orders as it thinks fit where—

- (a) on the application of the Commission, it appears to the court that a person—
  - (i) has contravened; or
  - (ii) is about to do an act with respect to trading in futures contracts that if done would contravene,

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any of the following:

(aa) this Act;

(bb) the conditions of a licence; or

(cc) the business rules of an exchange company or a clearing house; or

(b) on the application of an exchange company or clearing house, it appears to the court that a person has contravened the business rules of the exchange company or clearing house, as the case may be.

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

(a) in the case of persistent or continuing breaches of this Act, the conditions of a licence or the business rules of an exchange company or clearing house, an order restraining a person from—

(i) carrying on a business of trading in futures contracts, a futures advice business or a futures fund management business;

(ii) holding himself or itself out as carrying on a business of trading in futures contracts, a futures advice business or a futures fund management business; or

(iii) doing an act as a representative;

(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;



- (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 five hundred thousand ringgit 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.”.

Deletion of section 107.

**90.** The principal Act is amended by deleting section 107.

Substitution of section 109.

**91.** The principal Act is amended by substituting for section 109 the following section:

“Exemption of offshore bank, etc.

109. (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, in so far 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—

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

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



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