



LAWS OF MALAYSIA

Act A943

**SECURITIES INDUSTRY (AMENDMENT)
ACT 1996**

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SECURITIES INDUSTRY (AMENDMENT)
ACT 1996

An Act to amend the Securities Industry Act 1983 and to provide for matters incidental thereto or connected therewith.

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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 Securities Industry (Amendment) Act 1996. Short title and commencement.
 - (2) This Act shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.
 - (3) The Minister may appoint different dates for the coming into force of—
 - (a) different provisions of this Act; or
 - (b) all or different provisions of this Act in respect of different classes or categories of persons.
2. The Securities Industry Act 1983, which in this Act is referred to as the "principal Act", is amended in section 1 by deleting subsection (2). Amendment of section 1. Act 280.

A
Amendment
of section 2.

3. Subsection 2(1) of the principal Act is amended—

(a) by inserting before the definition of “agent” the following definition:

‘ “accounting records” has the same meaning as is assigned to that expression in the Companies Act 1965;’;

Act 125.

(b) by inserting after the definition of “agent” the following definition:

‘ “assets”, in relation to the holder of a dealer’s licence, means all the assets of the holder, whether or not used in connection with a business of dealing in securities;’;

(c) by inserting after the definition of “auditor” the following definitions:

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

“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;’;

(d) by deleting the definition of “business”;

(e) by inserting after the definition of “books” the following definitions:

‘ “central depository” means a central depository which has been approved by the Minister under subsection (1) of section 5 of the Securities Industry (Central Depositories) Act 1991;

Act 453.

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

"clearing house" means a person—

(a) whose activities or objects include the provision of services for the clearing and settlement of transactions in securities effected on, or subject to the rules of, the stock exchange; or

(b) who guarantees the settlement of any such transactions;'

(f) by substituting for the definitions of "dealer's representative" and "dealing in securities" the following definitions respectively:

' "dealer's representative" means a person, by whatever name described, who is in the employment of, or acting for or by arrangement with, a dealer, not being an exempt dealer, a licensed fund manager or an exempt fund manager, and performs for that dealer any of the functions of a dealer other than work ordinarily performed by accountants, clerks or cashiers;

"dealing in securities" means, whether as principal or agent,—

(a) acquiring, disposing of, subscribing for or underwriting, securities; or

(b) making or offering to make with any person, or inducing or attempting to

induce any person to enter into or to offer to enter into—

- (i) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or
- (ii) any agreement, other than a futures contract, the purpose or avowed purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;'

(g) by inserting after the definition of "director" the following definition:

Act 56. ' "document" has the same meaning as is assigned to that expression in the Evidence Act 1950;'

(h) in the definition of "exempt dealer"—

- (i) in paragraph (a) by inserting after the word "account" the words "or for its related corporation";
- (ii) by substituting for paragraph (b) the following paragraph:

"(b) an exempt fund manager;";
- (iii) by renumbering paragraphs (d) and (e) as paragraphs (c) and (d) respectively;
- (iv) by deleting the word "or" at the end of paragraph (c);
- (v) by inserting the word "or" at the end of paragraph (d); and
- (vi) by inserting after paragraph (d) the following paragraph:

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"(e) a licensed fund manager whose dealing in securities is solely incidental to his carrying on the business of managing a portfolio of securities on behalf of other persons;"

(i) by inserting after the definition of "exempt dealer" the following definitions:

"exempt fund manager" means a person exempted under paragraph (d) of subsection (2) of section 15A;

"exempt stock market" means a stock market which is declared to be an exempt stock market under paragraph (a) of subsection (2) of section 7;

"fund manager" means a person who pursuant to an agreement with any other person or persons, undertakes on behalf of that person or persons (whether on a discretionary authority granted by that person or persons or otherwise) the management of a portfolio of securities for the purposes of investment;

"fund manager's representative" means a person, by whatever name described, who is in the employment of, or acting for or by arrangement with, a fund manager, not being a person described in subsection (2) of section 15A, and performs for that fund manager any of the functions of a fund manager other than work ordinarily performed by accountants, clerks or cashiers;

"futures contract" has the same meaning as is assigned to that expression in the Futures Industry Act 1993;

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“information service” means—

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

(j) in the definition of “investment adviser”—

- (i) by substituting for the words ‘ “investment adviser” means a person who carries on a business of advising others concerning securities or who as part of a regular business issues or promulgates analyses or reports concerning securities but the expression does not include—’ the following words:

‘ “investment adviser” means a person who—

- (a) carries on a business of advising others concerning securities; or
- (b) as part of a business, issues or promulgates analyses or reports concerning securities,

but the expression does not include—’;

- (ii) by renumbering paragraphs (a), (b); (c), (d), (e), (f) and (g) as paragraphs (c), (d), (e), (f), (g), (h) and (i) respectively;
- (iii) by deleting the word “or” at the end of paragraph (h);

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(iv) in paragraph (i)—

(A) by substituting for the words "Printing Presses Act 1948 of West Malaysia, the Printing Presses Ordinance of Sabah and the Printing Presses Ordinance 1962 of Sarawak" the words "Printing Presses and Publications Act 1984"; and

(B) by substituting for the marginal references "Act 58.", "Sabah Cap. 107." and "Sarawak Ord.14/62." the marginal reference "Act 301.";

(v) by inserting at the end of paragraph (i) the word "of"; and

(vi) by inserting after paragraph (i) the following paragraph:

"(j) a licensed fund manager or exempt fund manager whose carrying on of that business is solely incidental to the carrying on of the business of managing a portfolio of securities on behalf of other persons;";

(k) by substituting for the definitions of "investment representative" and "licence" the following definitions respectively:

' "investment representative" means a person, by whatever name described, who is in the employment of, or acting for or by arrangement with, an investment adviser, not being a licensed dealer, an exempt dealer, a licensed fund manager or an exempt fund manager, and performs for that investment adviser any of the functions of an investment

adviser other than work ordinarily performed by accountants, clerks or cashiers;

"licence" means—

- (a) a dealer's licence;
- (b) a fund manager's licence;
- (c) an investment adviser's licence;
- (d) a dealer's representative's licence;
- (e) a fund manager's representative's licence; or
- (f) an investment representative's licence,

granted or renewed under Part IV;';

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

Act 372. "licensed institution" has the same meaning as is assigned to that expression in the Banking and Financial Institutions Act 1989;

"licensed person" means a person licensed under Part IV;';

(m) by deleting the definition of "Licensing Officer";

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

"participant" means a person who, in accordance with the rules of a recognised clearing house, may participate in one or more of the services provided by the recognised clearing house;

"prescribed" means prescribed by the Minister by or under this Act or under any regulations made under this Act, and where

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no mode is mentioned means prescribed from time to time by order published in the *Gazette*, and a power to prescribe includes the power to prescribe differently for different persons, securities or transactions, or different classes, categories or descriptions of persons, securities or transactions;

“recognised clearing house” means a clearing house which is declared to be a recognised clearing house under subsection (1) of section 8A;’;

(o) by inserting after the definition of “Registrar” the following definition:

‘ “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;’;

(p) by deleting the definition of “relevant authority”;

(q) by substituting for the definitions of “representative” and “rules” the following definitions respectively:

‘ “representative” means a dealer’s representative, a fund manager’s representative or an investment representative;

“rules”, in relation to—

(a) a stock exchange, means the memorandum of association and the articles of association, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the stock exchange, or the conduct of its members or member companies and, without

limiting the generality of the foregoing, includes—

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

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- (ii) the provision of services other than the services referred to in subparagraph (i);
- (iii) the persons who may participate in one or more of the services referred to in subparagraph (i) or (ii); and
- (iv) the specification of fees and charges;';

(r) by inserting after the definition of "securities" the following definitions:

Act 453. ' "securities laws" means this Act, the
Act 498. Securities Industry (Central Depositories) Act 1991, the Securities Commission Act 1993 and unless expressly stated otherwise, includes any regulations, rules, orders, notifications or other subsidiary legislation made under those laws;

"specify", where no mode is mentioned, means specify from time to time in writing, and a power to specify includes the power to specify differently for different persons, securities or transactions, or different classes, categories or descriptions of persons, securities or transactions;';

(s) by inserting after the definition of "stock market" the following definition:

' "this Act" includes any subsidiary legislation made under this Act;'; and

(t) in the definition of "trust account" by inserting after the words "section 44" the words "or 47C".

Amendment
of section 3.

4. Paragraph 3(1)(d) of the principal Act is amended by inserting before paragraph (iii) the following paragraphs:

- “(i) a person dealing in securities as a sole proprietor or in partnership with the other person;
- (ii) subject to subsection (2), a person who is a partner of the other person otherwise than as a result of him dealing in securities in partnership with the other person;”.

Amendment
of section 4.

5. Subsection 4(5) of the principal Act is amended—

- (a) by inserting after the word “interest” the words “in a security”; and
- (b) in paragraph (c) by inserting after the word “right” wherever it appears the words “or power”.

Amendment
of heading
of Part III.

6. The principal Act is amended by substituting for the heading of Part III the following heading:

“STOCK EXCHANGES AND CLEARING
HOUSES”.

Substitution
of section 7.

7. The principal Act is amended by substituting for section 7 the following section:

“Establish-
ment
of stock
markets.

7. (1) A person shall not establish, operate or maintain, or assist in establishing, operating or maintaining, or hold himself out as providing, operating or maintaining, a stock market that is not a stock market of a stock exchange or an exempt stock market.

(2) The Minister may, by order published in the *Gazette*,—

- (a) declare a particular stock market, or a stock market included in a particular class of stock markets, to be an exempt stock market for the purposes of this Act subject to such terms and conditions

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as he thinks reasonable and appropriate after having regard to, among other things,—

- (i) the types of securities traded or to be traded; or
- (ii) the types of participants; or
- (iii) the types of investors; or
- (iv) the volume of trading,

relating to the particular stock market, or stock market included in the particular class of stock markets; and

(b) revoke any declaration made under paragraph (a) or vary any term or condition as may be specified in the declaration, after having regard to, among other things,—

- (i) any breach of the terms and conditions specified in the declaration; or
- (ii) such other matters as the Minister thinks fit.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both."

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

"Recognised
clearing
house.

8A. (1) Where the Commission is satisfied that it is appropriate to do so in the public interest, or for the proper regulation of services for the clearing and settlement of transactions in securities, it may, with the approval of the Minister, by notice published in the *Gazette*, declare a clearing house to be a recognised clearing house for the purposes of this Act subject to such conditions as the Commission thinks fit.

(2) Where the Commission makes a declaration under subsection (1) in respect of a clearing house,—

- (a) it shall give notice thereof to the clearing house; and
- (b) the rules of the clearing house in operation before the declaration shall continue to have effect unless otherwise specified, or until such time as may be specified, in the notice referred to in paragraph (a).

Withdrawal
of
recognition
of clearing
house.

8B. (1) Subject to subsections (2) and (3), the Commission may, with the approval of the Minister, by notice published in the *Gazette*, withdraw a recognition given under subsection (1) of section 8A to a clearing house where the clearing house has contravened a securities law.

(2) The Commission shall give a recognised clearing house not less than fourteen days notice in writing—

- (a) stating that the Commission is considering whether to withdraw the recognition given under subsection (1) of section 8A;
- (b) stating the grounds on which the Commission's consideration is being based; and
- (c) inviting the recognised clearing house, within such period as may be specified in the notice, to make a written submission to show cause why the recognition should not be withdrawn.

(3) No notice under subsection (2) need be given where the Commission, with the concurrence of the Minister, certifies that the recognition should be withdrawn as a matter of urgency in the interest of maintaining market integrity or in the public interest.

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(4) Where the Commission is satisfied by the written submission of the clearing house, the Commission shall not withdraw the recognition given under subsection (1) of section 8A.

(5) Where the recognition of a clearing house is withdrawn under subsection (1), the Commission shall, as soon as practicable, notify the stock exchange in writing of the withdrawal of recognition and direct the stock exchange to take any action as may be specified in the notice including a direction to the stock exchange that all trades effected on the stock exchange are not to be cleared by such clearing house."

9. The principal Act is amended by substituting for section 9 the following section: Substitution
of section 9.

"Commission
to approve
amendment
to rules of
stock
exchange. 9. (1) No amendment to the rules of a stock exchange shall have effect unless it has been approved by the Commission under subsection (3).

(2) Where a stock exchange proposes to make any amendment to its rules, the stock exchange shall submit to the Commission—

(a) the text of the proposed amendment;
and

(b) an explanation of the purpose of the proposed amendment.

(3) The Commission shall, within six weeks after the receipt of any proposed amendment under subsection (2), give notice in writing to the stock exchange that it approves or disapproves of the proposed amendment or any part of the proposed amendment, as the case may be.

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(4) The Commission may, by notice in writing, declare any class of rules of a stock exchange to be a class of rules whose amendments do not require the approval of the Commission under subsection (3), and accordingly, any amendment to the rules of a stock exchange that belongs to that class shall, subject to subsections (5) and (6), have effect notwithstanding that they have not been so approved under subsection (3).

(5) Where the Commission is of the opinion that any amendment to the rules of a stock exchange made under subsection (4) does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with the stock exchange, require the stock exchange to submit such amendment for its approval under subsection (3).

(6) Where a rule amended by the stock exchange under subsection (4) is the subject of a requirement made by the Commission under subsection (5), such amendment shall cease to have effect from the date of the Commission making such a requirement or such later date as the Commission may determine:

Provided that this subsection shall not have effect until a reasonable time has been given to the stock exchange to notify the persons affected by such amendment.

(7) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the stock exchange, by written notice require the stock exchange to amend the rules of the stock exchange in such manner and within such period as may be specified in the notice.

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(8) A stock exchange which fails to comply with subsection (2) or which fails to comply with a requirement made under subsection (5) or a written notice made under subsection (7) commits an offence.

(9) A notice under this section may be served personally or by post."

10. The principal Act is amended by inserting after section 9 the following sections:

New sections
9A, 9B and
9C.

"Commission to approve amendment to rules of recognised clearing house.

9A. (1) No amendment to the rules of a recognised clearing house shall have effect unless it has been approved by the Commission under subsection (3).

(2) Where a recognised clearing house proposes to make any amendment to its rules, the recognised clearing house shall submit to the Commission—

- (a) the text of the proposed amendment; and
- (b) an explanation of the purpose of the proposed amendment.

(3) The Commission shall, within six weeks after the receipt of any proposed amendment under subsection (2), give notice in writing to the recognised clearing house that it approves or disapproves of the proposed amendment or any part of the proposed amendment, as the case may be.

(4) The Commission may, by notice in writing, declare any class of rules of a recognised clearing house to be a class of rules whose amendments do not require the approval of the Commission under subsection (3), and accordingly, any amendment to the rules of a recognised clearing house that belongs to that class shall, subject to subsections (5) and (6), have effect notwithstanding that they have not been so approved under subsection (3).

(5) Where the Commission is of the opinion that any amendment to the rules of a recognised clearing house made under subsection (4) does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with the recognised clearing house, require the recognised clearing house to submit such amendment for its approval under subsection (3).

(6) Where a rule amended by the recognised clearing house under subsection (4) is the subject of a requirement made by the Commission under subsection (5), such amendment shall cease to have effect from the date of the Commission making such a requirement or such later date as the Commission may determine:

Provided that this subsection shall not have effect until a reasonable time has been given to the recognised clearing house to notify the persons affected by such amendment.

(7) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the recognised clearing house, by written notice require the recognised clearing house to amend the rules of the recognised clearing house in such manner and within such period as may be specified in the notice.

(8) A recognised clearing house which fails to comply with subsection (2) or which fails to comply with a requirement made under subsection (5) or a written notice made under subsection (7) commits an offence.

(9) A notice under this section may be served personally or by post.

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Duties of
stock
exchange.

9B. (1) It shall be the duty of the stock exchange to ensure, so far as may be reasonably practicable, an orderly and fair market in the securities that are traded through its facilities.

(2) In performing its duty under subsection (1), the stock exchange shall—

(a) act in the public interest; and

(b) ensure that where any interests that it is required to serve under any law relating to corporations conflict with the interest referred to in paragraph (a), the latter shall prevail.

(3) It shall be the duty of the stock exchange to ensure that the members of the stock exchange, member companies and corporations whose securities are listed on the stock exchange comply with the rules of the stock exchange that apply to such members, member companies or corporations.

(4) A stock exchange shall immediately notify the Commission if it becomes aware of—

(a) any matter which adversely affects, or is likely to adversely affect, the ability of any member company to meet its obligations in respect of its business of dealing in securities, including the ability of any member company to comply with the minimum financial requirements as may be prescribed under this Act; or

(b) any irregularity, breach of any provision of the securities laws or the rules of the stock exchange or recognised clearing house, or any other matter which, in the opinion of the stock exchange, indicates or may indicate, that the financial standing or financial integrity of any member company or of the chief executive or directors of the member company, as the case may be, is in question or may reasonably be affected.

(5) Without prejudice to subsection (4), when a stock exchange expels, or suspends the membership of, any of its members or otherwise disciplines any of its members, it shall, within seven days, give to the Commission in writing the following particulars:

- (a) the name of the member;
- (b) the reason for and the nature of the action taken;
- (c) the amount of the fine;
- (d) the period of suspension, if any; and
- (e) any other disciplinary action taken.

(6) A stock exchange shall at all times provide and maintain to the satisfaction of the Commission—

- (a) adequate and properly equipped premises for the conduct of its business;
- (b) competent personnel for the conduct of its business; and
- (c) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.

Closure of stock exchange in emergency.

9c. (1) The Minister may direct a stock exchange to close a stock market of the stock exchange for a period not exceeding five business days if the Minister is of the opinion that an orderly and fair market for trading in securities on the stock 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.

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

(3) The Minister shall specify the grounds for the closure in the direction given under subsection (1) and the grounds for any extension of closure under subsection (2).

(4) The Minister shall, as soon as may be practicable, give a copy of the direction under subsection (1) or extension under subsection (2) to a recognised clearing house and direct the recognised clearing house to do all that it is reasonably capable of doing to give effect to the direction under subsection (1) or extension under subsection (2) while the direction or extension remains in force.

(5) In this section—

“business day” means any day on which there is official trading on the stock exchange but for the closure;

“fair market” includes but is not limited to a market that reflects the forces of supply and demand.”

11. The principal Act is amended by substituting for sections 10 and 11 the following sections: Substitution of sections 10 and 11.

“Stock exchange and recognised clearing house to provide assistance to Commission or Registrar.

10. (1) A stock exchange or a recognised clearing house shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires including the furnishing of such returns, and the provision of such information relating to the operations of the stock exchange or recognised clearing house or in respect of such dealing in securities or any other information as the Commission or such person may require for the proper administration of the securities laws.

(2) A stock exchange or a recognised clearing house shall provide such assistance to the Registrar as the Registrar reasonably requires including the furnishing of such returns, and the provision of such information relating to the operations of the stock exchange or recognised clearing house or in respect of such dealing in securities or any other information as the Registrar may require to perform his functions or discharge his duties under this Act.

(3) No liability shall be incurred by the stock exchange or recognised clearing house or any person acting for the stock exchange or recognised clearing house in respect of anything done or omitted to be done in good faith in the performance or purported performance of any duty referred to in subsection (1) or (2) or any other power or duty under this Act.

(4) A person acting on behalf of, or authorised by, the Commission or the Registrar shall be entitled at all reasonable times to full and free access for any of the purposes of this Act to the trading facility of a stock market of a stock exchange.

(5) A person who refuses or fails, without lawful excuse, to allow a person acting on behalf of, or authorised by, the Commission or the Registrar access in accordance with subsection (4) to the trading facility of a stock market of a stock exchange 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 three years or to both.

(6) In this section, "trading facility", in relation to a stock market of a stock exchange, means any place or facility maintained or provided by a stock exchange for the sale, purchase or exchange of securities by member companies, members of a stock exchange and any other persons.

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Powers concerning compliance with and enforcement of rules or listing requirements of stock exchange or recognised clearing house.

11. (1) Where any person who is under an obligation to comply with, observe, enforce or give effect to any rule of the stock exchange or recognised clearing house fails to comply with, observe, enforce or give effect to any such rule (the "person in default"), the stock exchange or the recognised clearing house may take any action against the person in default in accordance with the rules of the stock exchange or recognised clearing house, as the case may be.

(2) Without prejudice to subsection (1), where any person who is under an obligation to comply with, observe, enforce or give effect to the listing requirements of a stock exchange fails to comply with, observe, enforce or give effect to any such listing requirements (the "person in default"), the stock exchange may, in addition to or in lieu of any action which it may take under the listing requirements, take any one or more of the following actions:

- (a) direct the person in default to comply with, observe, enforce or give effect to any such listing requirements;
- (b) impose a penalty not exceeding two hundred and fifty thousand ringgit on the person in default; or
- (c) reprimand the person in default.

(3) For the purposes of subsections (1) and (2),—

- (a) a member of the stock exchange;
- (b) a member company;
- (c) a participant;
- (d) a body corporate that has been admitted to the official list of a stock exchange and has not been removed from that official list or a person associated with the body corporate; or

(e) the directors or officers of the persons referred to in paragraphs (a) to (c),

shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of the stock exchange or recognised clearing house, as the case may be, to the extent to which the rules purport to apply in relation to the person.

(4) The stock exchange before taking any action under subsection (1) or (2), or the recognised clearing house before taking any action under subsection (1), as the case may be, shall give—

(a) the person in default; and

(b) any person aggrieved by the failure of the person in default to comply with, observe, enforce or give effect to the rules (the "aggrieved person"),

at least fourteen days notice of its intention to take any of the actions under subsection (1) or (2), as the case may be, and shall state the grounds for the action taken in such notice.

(5) A direction given by the stock exchange under subsection (2) shall remain in force until it is revoked.

(6) A direction, penalty or reprimand given by the stock exchange under subsection (2) shall be final unless, within fourteen days after it is given or imposed, the person in default or the aggrieved person appeals to the Commission in writing against the direction, penalty or reprimand, as the case may be.

(7) On an appeal under subsection (6) against any action by the stock exchange, the Commission may—

(a) affirm the action of the stock exchange;

(b) set aside the action of the stock exchange;
or

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(c) substitute for the action of the stock exchange any other action referred to in subsection (2).

(8) The decision of the Commission under subsection (7) shall be final

(9) Nothing in this section shall preclude the Commission in any case from itself taking any of the actions referred to in subsection (1) or (2) against the person in default but before doing so, the Commission shall give the person in default and any aggrieved person at least fourteen days notice of its intention to take any of those actions and shall state the grounds for the action taken in such notice:

Provided that a stock exchange or a recognised clearing house shall not take any action under this section in the event that the Commission takes an action under this subsection.

(10) An action taken by the Commission under subsection (9) shall be final unless, within fourteen days after the action is taken, the person in default or the aggrieved person appeals to the Minister in writing against the action taken by the Commission.

(11) On an appeal under subsection (10) against any action by the Commission, the Minister may—

- (a) affirm the action of the Commission;
- (b) set aside the action of the Commission;
or
- (c) substitute for the action of the Commission any other action referred to in subsection (2)."

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New sections
11A and 11B.

12. The principal Act is amended by inserting after section 11 the following sections:

"Power of
Commission
to prohibit
trading in
particular
securities.

11A. (1) Where the Commission is satisfied that it is in the public interest, or it is appropriate to do so for the protection of investors, to prohibit the trading of particular securities or a particular class of securities made available by a corporation on the stock market of a stock exchange, the Commission may give written notice to the stock exchange stating that it is so satisfied and setting out the reasons for that opinion and the date from which the stock exchange is to give effect to the notice.

(2) Where the Commission gives a notice to a stock exchange under subsection (1), the Commission shall at the same time—

- (a) send a copy of the notice to the corporation together with a statement setting out the reasons for the giving of the notice; and
- (b) furnish to the Minister a written report setting out the reasons for the giving of the notice; and
- (c) send a copy of the report to the stock exchange.

(3) Where the Commission gives a notice to a stock exchange under subsection (1) in relation to the trading of securities of, or made available by, a corporation, the corporation may in writing request the Commission to refer the matter to the Minister.

(4) If a request is made under subsection (3), the Commission shall immediately refer the matter to the Minister, who may, if he thinks fit,—

- (a) direct the Commission to revoke the notice and, if such a direction is given, the Commission shall immediately revoke the notice; or

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(b) confirm the prohibition imposed by the Commission.

(5) Upon receipt of a written report pursuant to paragraph (b) of subsection (2), the Minister may, if he thinks fit, take any action specified in paragraph (a) or (b) of subsection (4).

(6) A stock exchange shall not permit trading in securities on a stock market of the stock exchange in contravention of a notice under subsection (1).

Suspension order relating to stock exchange, recognised clearing house or central depository.

11B. (1) Without prejudice to section 9c or 11A, where the Minister is satisfied that it is in the public interest, or it is appropriate to do so for the protection of investors or for the proper regulation of a stock exchange, recognised clearing house or central depository, the Minister may, on the recommendation of the Commission, make an order ("suspension order") relating to all or any of the following:

- (a) the functions of the board of the stock exchange, recognised clearing house or central depository, or any member of its board;
- (b) the functions of any committee (including a sub-committee) established by a board referred to in paragraph (a); or
- (c) the functions of the principal officer, by whatever name called, who is responsible for the conduct of the business and operations of the stock exchange, recognised clearing house or central depository, as the case may be.

(2) For so long as a suspension order is in force, the following provisions shall apply:

- (a) none of the functions to which the order relates shall be performed by any board, committee or officer thereof;

- (b) any function to which paragraph (a) applies may be performed by such person as shall be specified in the order in relation to that function; and
- (c) a person referred to in paragraph (a) shall not, by act or omission, either directly or indirectly, affect the manner in which functions therein referred to are performed unless the person to perform the functions under paragraph (b) requests for his assistance.

(3) Subject to subsection (6), a suspension order shall continue in force for such period, being a period not exceeding six months, as shall be specified in the order.

(4) A suspension order or any extension thereof under subsection (6) shall take effect when a copy of the order or notice of the extension is served under paragraph (a) of subsection (7) on the stock exchange, recognised clearing house or central depository to which the order relates.

(5) Without prejudice to subsection (4), where a suspension order is made or such an order is extended under subsection (6), the Commission shall, where it is practicable to do so, as soon as may be practicable, give a copy of the order or, as the case may be, the notice of its extension, to the principal officer of the stock exchange, recognised clearing house or central depository to which the order relates and to such members of the governing body thereof (if any) as the Commission may consider appropriate in the circumstances.

(6) The Minister may, on the recommendation of the Commission, extend the period during which a suspension order is to remain in force for any further periods each not exceeding three months.

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(7) Where a suspension order is made or extended under this section, the Commission shall—

- (a) forthwith serve a copy of the order or notice in writing of the extension on the stock exchange, recognised clearing house or central depository to which the order relates; and
- (b) cause the suspension order or, as the case may be, the notice of the extension, to be published in the *Gazette*.

(8) A person who contravenes or fails to comply with a suspension order issued under subsection (1) commits an offence and is liable on conviction to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

(9) For the purposes of this section, "principal officer" includes a person, by whatever name called, who either individually or jointly with one or more other persons, is responsible for the conduct of the business and the administration of the stock exchange, recognised clearing house or central depository."

13. The principal Act is amended by substituting for section 13 the following section: Substitution of section 13.

"Dealer's representative's licence. 13. A person shall not act as a dealer's representative unless—

- (a) the dealer holds a dealer's licence under this Part; and
- (b) the person holds a dealer's representative's licence under this Part."

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Substitution
of sections
15 and 15A.

14. The principal Act is amended by substituting for sections 15 and 15A the following sections:

"Investment
representative's
licence.

15. A person shall not act as an investment representative of an investment adviser unless—

- (a) the investment adviser holds an investment adviser's licence under this Part; and
- (b) the person holds an investment representative's licence under this Part.

Fund
manager's
licence.

15A. (1) A person shall not act as a fund manager or hold himself out to be a fund manager unless he is the holder of a fund manager's licence under this Part.

(2) The provisions of subsection (1) shall not apply to—

- (a) the holder of a dealer's licence;
- (b) any public statutory corporation constituted under any written law;
- (c) any person declared to be an exempt dealer by the Minister under paragraph (d) of the definition of "exempt dealer" in subsection (1) of section 2 for the purposes of managing a portfolio of securities on behalf of other persons; or
- (d) any person or class of persons declared to be an exempt fund manager by the Minister by order published in the *Gazette*, subject to such conditions, limitations or restrictions as the Minister may, on the recommendation of the Commission, specify in the order."

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15. The principal Act is amended by inserting after section 15A the following sections: New sections 15B and 15C.

"Fund manager's representative's licence. 15B. A person shall not act as a fund manager's representative unless—

(a) the fund manager holds a fund manager's licence under this Part; and

(b) the person holds a fund manager's representative's licence under this Part.

Contra-vention of section 12, 13, 14, 15, 15A or 15B. 15C. A person who contravenes section 12, 13, 14, 15, 15A or 15B commits an offence and is liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both."

16. Section 16 of the principal Act is amended— Amendment of section 16.

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

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

"(3) Any fees paid to the Commission under subsection (1) shall be paid into and form part of the Federal Consolidated Fund."

17. The principal Act is amended by substituting for section 17 the following section: Substitution of section 17.

"Grounds for refusal to grant or renew licence. 17. (1) The Commission may refuse an application made under section 16 if—

(a) the application was not made in accordance with subsection (1) of section 16 or information was not supplied in accordance with subsection (2) of section 16;

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- (b) the applicant has failed to comply with any other requirement of this Act or any regulations made under this Act relating to the application;
- (c) the grant of a licence to the applicant is not in the public interest; or
- (d) the Commission is satisfied that the minimum criteria set out in the Schedule has not been fulfilled by the applicant.

(2) The Commission shall not refuse an application made under section 16 without first giving the applicant an opportunity to be heard.

(3) The Minister may from time to time, on the recommendation of the Commission, by order published in the *Gazette* amend the Schedule.”.

New section 17A. 18. The principal Act is amended by inserting after section 17 the following section:

“Licensed person to notify Commission of disqualifying event.

17A. (1) A licensed person shall, immediately after the happening of an event that is a ground on which the Commission may revoke a licence under section 27, give to the Commission written notice setting out the particulars of the event.

(2) Subject to subsection (1), it shall be a defence for a person who is required to give notice under subsection (1) if it is proved that when the requirement arose—

- (a) the defendant was unaware of the event that gave rise to the requirement; and
- (b) the defendant believed on reasonable grounds that the event that gave rise to the requirement was not a ground on which the Commission would be entitled to revoke the licence.

(3) A person who fails to comply with subsection (1) commits an offence.”.

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19. The principal Act is amended by substituting for sections 18 and 19 the following sections: Substitution of sections 18 and 19.

"Grant or renewal of licences.

18. (1) The Commission may—

- (a) on an application for the grant or renewal of a dealer's licence having been duly made in accordance with section 16 and after being provided with all such information and documents as it may require under that section, with the concurrence of the Minister, grant or renew a licence subject to such conditions or restrictions as it thinks fit; or
- (b) on an application for the grant or renewal of—
 - (i) a fund manager's licence;
 - (ii) an investment adviser's licence;
 - (iii) a dealer's representative's licence;
 - (iv) a fund manager's representative's licence; or
 - (v) an investment representative's licence,

having been duly made in accordance with section 16 and after being provided with all such information and documents as it may require under that section, grant or renew a licence subject to such conditions or restrictions as it thinks fit.

(2) A person who contravenes or fails to comply with any condition of, or restriction in, a licence commits an offence.

Commission's power to vary licences in certain circumstances. 19. (1) The holder of a representative's licence may make an application to the Commission in the prescribed form and manner for a variation of the name of the holder of a dealer's licence, a fund manager's licence or an investment adviser's licence, as the case may be, on whose behalf he may act.

(2) Where an application is duly made under subsection (1) the Commission may, if the Commission is satisfied that the applicant meets the requirements in section 16 and none of the circumstances as described in subsection (1) of section 17 exist, vary the licence by varying the name and address of the dealer, fund manager or investment adviser specified in the licence.”.

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

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

“Power of Commission to enquire into securities transactions.”;

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

“(1) In deciding whether to grant or renew a licence, the Commission may enquire into any transaction involving the purchase or sale of securities entered into or caused to be entered into by that person, whether directly or indirectly, during any period of twelve months preceding the application for grant or renewal thereof, as the case may be, referred to in this section as the “relevant period”, to ascertain if that person has in such transaction used dishonest, unfair or unethical devices or trading practices, whether such devices or trading practices constitute an offence under this Act or otherwise.”;

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(c) in subsection (2) by substituting for the words "Licensing Officer" and "he" the words "Commission" and "it" respectively; and

(d) in subsection (3)—

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

(ii) in the English language text by substituting for the words "for renewal of a licence" the words "for the renewal of a licence,";

(iii) in the English language text by substituting for the word "cancelled" the word "revoked"; and

(iv) by inserting after the words "first application for" the words "the grant of".

21. The principal Act is amended by inserting after section 20 the following section: New section 20A.

"Minimum financial requirements.

20A. No licensed person shall carry on the business in respect of which it is licensed without the written consent of the Commission if it does not meet the minimum financial requirements as may be prescribed by regulations made under this Act or as may be provided in the rules of a stock exchange."

22. The principal Act is amended by substituting for section 21 the following section: Substitution of section 21.

"Power of Commission to impose conditions or restrictions on licences.

21. (1) Without prejudice to subsection (1) of section 18, the Commission may impose such other conditions or restrictions on a licence as it thinks fit while the licence is in force:

Provided that in the case of a dealer's licence, such other conditions or restrictions may only be imposed on the licence with the concurrence of the Minister:





And provided further that where the conditions or restrictions proposed to be imposed are likely to prejudice the interests of the licensed person, the Commission shall give such licensed person an opportunity to be heard.

(2) Any condition or restriction imposed under subsection (1) shall be deemed to be a condition or restriction validly imposed under subsection (1) of section 18."

Substitution
of section
23.

23. The principal Act is amended by substituting for section 23 the following section:

"Deposit to
be lodged
in respect
of dealer's
or fund
manager's
licence.

23. (1) Except in the case of a dealer who is a member company, the Commission shall not grant or renew a dealer's or a fund manager's licence unless there is lodged with the Commission, at the time of the application for the licence, a deposit in the sum of one hundred thousand ringgit, or such greater sum as the Minister may specify to be lodged in respect of the licence.

(2) A deposit required by subsection (1) shall be in cash or in such other form as the Commission may in any particular case allow.

(3) A deposit lodged under subsection (1) shall be applied by the Commission subject to and in accordance with the regulations made under this Act."

Amendment
of section
25.

24. Section 25 of the principal Act is amended—

(a) by renumbering paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e) respectively;

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

"(b) the holder of a fund manager's licence ceases to act as, or hold himself out to be, a fund manager;"

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- (c) in the English language text in paragraph (c) by substituting for the words "act, as" the words "act as,";
- (d) in paragraph (d) by inserting after the word "dealer" the words ", fund manager";
- (e) by deleting the word "or" at the end of paragraph (d);
- (f) by substituting for the comma at the end of paragraph (e) the words "; or";
- (g) by inserting after paragraph (e) the following paragraph:
 - "(f) a change occurs in the information submitted to the Commission in accordance with subsection (1) or (2) of section 16,"; and
- (h) by substituting for the words "Licensing Officer" the word "Commission".

25. Section 26 of the principal Act is amended—

Amendment
of section
26.

- (a) in subsection (1) —
 - (i) by substituting for the words "Licensing Officer" and "he" the words "Commission" and "it" respectively;
 - (ii) in paragraph (a) by inserting after the word "dealer's" the words ", fund manager's"; and
 - (iii) in subparagraphs (b)(ii) and (iii) by inserting after the word "dealer" wherever it appears the words ", fund manager"; and
- (b) by inserting after subsection (2) the following subsections:
 - "(3) The Commission shall cause to be published in the *Gazette*, in such form and manner as the Commission thinks fit, a list of the names and addresses of all licensed dealers, licensed fund managers and licensed investment advisers.

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(4) The information required to be published under subsection (3) shall be published at least once in each year.

(5) If the Commission at any time amends any register kept by it under this section by adding or removing the name of any licensed dealer, licensed fund manager or licensed investment adviser, the Commission shall cause particulars of the amendments to be published in the *Gazette*."

Substitution
of sections
27 and 28.

26. The principal Act is amended by substituting for sections 27 and 28 the following sections:

"Revocation
and
suspension
of licence. 27. (1) A licence shall be deemed to be revoked—

(a) in the case of an individual,—

(i) if the licensed person dies; or

(ii) if the licence is a representative's licence and the holder of such licence ceases to be a representative of the dealer, fund manager or investment adviser;

(b) in the case of a corporation, if the corporation has been wound up.

(2) The Commission may revoke a licence—

(a) in the case of a licensed person who is an individual,—

(i) on any ground on which the Commission may refuse to grant or renew a licence under section 17;

(ii) if a levy of execution in respect of the licensed person has not been satisfied;

(iii) if the licensed person ceases to carry on the business for which he was licensed for a consecutive period of three months;

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- (iv) if, in the case of a representative, the licence of the dealer, fund manager or investment adviser in relation to whom the licence was granted is revoked;
 - (v) if the Commission has reason to believe that the licensed person or any of his representatives has failed to perform his duties efficiently, honestly or fairly;
 - (vi) if the licensed person contravenes or fails to comply with any of the rules of a stock exchange, recognised clearing house or central depository which is binding upon him; or
 - (vii) if the licensed person contravenes or fails to comply with any condition or restriction applicable in respect of the licence or any other provision of this Act;
- (b) in the case of—
- (i) a corporation which is a licensed dealer, with the concurrence of the Minister; and
 - (ii) in the case of any other corporation—
 - (A) on any ground on which the Commission may refuse to grant or renew a licence under section 17;
 - (B) if a levy of execution in respect of the corporation has not been satisfied;

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- (C) if the corporation is being or will be wound up;
- (D) if a receiver, or a receiver and manager, has been appointed, whether by the court or by the creditors in respect of the corporation's property;
- (E) if the corporation has entered into any composition or arrangement with its creditors;
- (F) if the corporation ceases to carry on the business for which it was licensed for a consecutive period of three months;
- (G) if the Commission has reason to believe that the corporation or any of its representatives has failed to perform its duties efficiently, honestly or fairly;
- (H) if the corporation contravenes or fails to comply with any of the rules of a stock exchange, recognised clearing house or central depository which is binding upon it; or
- (I) if the corporation contravenes or fails to comply with any condition or restriction applicable in respect of the licence or any other provision of this Act.

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(3) In a case to which subsection (2) applies, the Commission may, if it considers it desirable to do so and that the circumstances are not such as to justify revocation, suspend the licence for a specific period and may at any time revoke the suspension:

Provided that in the case of a dealer's licence, the licence may only be suspended with the concurrence of the Minister.

(4) The Commission shall not revoke or suspend a licence under subsection (2) or (3) without first giving the licensed person an opportunity to be heard.

(5) A person whose licence is revoked or suspended under this section shall, for the purposes of this Part, be deemed not to be licensed from the date that the revocation or suspension takes effect, as the case may be.

(6) The revocation or suspension of a licence under this section or the surrender of a licence under subsection (1) of section 28A or the expiry of a licence, shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement relating to securities entered into by such person, where the agreement, transaction or arrangement was entered into before the action so taken by the Commission, or the surrender of the licence by the person or the expiry of the licence; or

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

Appeal.

28. (1) A person, other than a licensed dealer, who is aggrieved by any decision of the Commission under section 17 or 27 may appeal to the Minister within fourteen days of the decision of the Commission.

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(2) Where an appeal is made to the Minister under subsection (1), the decision of the Commission under section 17 or 27, as the case may be, shall not take effect until the appeal is disposed of by the Minister.

(3) On an appeal against a decision of the Commission under subsection (1), the Minister may—

- (a) affirm the decision of the Commission;
- (b) set aside the decision of the Commission; or
- (c) set aside the decision of the Commission and make a decision in substitution for that decision.

(4) The decision of the Minister under subsection (3) shall be final.”.

New section 27. The principal Act is amended by inserting after section 28A. 28 the following section:

“Surrender of licence. 28A. (1) Subject to subsection (2), a licensed person may surrender the licence by sending it to the Commission together with a written notice of its surrender.

(2) The surrender of a licence shall not take effect until the Commission is satisfied that adequate arrangements have been made to meet all the liabilities and obligations of the licensed person that are outstanding at the time when the notice of surrender was given by the licensed person.

(3) The Commission shall cause to be published in the *Gazette* as soon as may be practicable a notice of every surrender of a licence under subsection (1), but any delay in publishing such notice or failure to publish it shall not affect the validity of the surrender.”

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28. Section 29 of the principal Act is amended—

Amendment
of section
29.

(a) in subsection (1)—

(i) by substituting for paragraph (e) the following paragraph:

“(e) a fund manager;”

(ii) by renumbering paragraphs (f) and (g) as paragraphs (g) and (h) respectively; and

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

“(f) a fund manager’s representative;”

and

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

“(2) In this Part, “financial journalist” means a person who is not a licensed person and, in the course of the person’s business or employment contributes advice, or prepares analyses or reports, about securities for publication—

(a) in a newspaper or periodical;

(b) in the course of, or by means of, transmissions made by means of an information service; or

(c) in sound recordings, video recordings or data recordings.

(3) In this Part, a reference to securities is a reference to the securities of a corporation or to the securities which are quoted or dealt in on a stock exchange in Malaysia, as the case may require.”.

29. Section 30 of the principal Act is amended—

Amendment
of section 30.

(a) in subsection (2) by substituting for the words “he nominates in his application for a licence” the words “may be nominated by the person

referred to in subsection (1) for the purposes of this Part provided that such person shall notify the Commission in writing after beginning to keep the register"; and

(b) in subsection (3) by substituting for the words "of the acquisition of the interest" the words "from the time at which he is reasonably deemed to be aware of the acquisition".

Amendment
of section
31.

30. Section 31 of the principal Act is amended—

(a) in the marginal note by substituting for the words "Licensing Officer" the word "Commission"; and

(b) in subsections (1) and (4) by substituting for the words "Licensing Officer" the word "Commission".

Amendment
of section
32.

31. Subsection 32(1) of the principal Act is amended—

(a) by substituting for the words "sections 30 and 31" the words "section 30 or 31"; and

(b) in paragraph (c) by substituting for the words "within fourteen days" the words "within such time as may be prescribed".

Amendment
of section
37.

32. Subsection 37(1) of the principal Act is amended by substituting for the words "Licensing Officer" the word "Commission".

Substitution
of section 38.

33. The principal Act is amended by substituting for section 38 the following section:

"Issue of
contract
notes.

38. (1) The Minister may make regulations to provide for and with respect to the giving of contract notes by dealers and fund managers for transactions entered into by them, or at their direction, on behalf of other persons in respect of a transaction of purchase or sale of securities.

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(2) A dealer or a fund manager referred to in subsection (1) shall comply with the requirements of any regulations made under subsection (1).

(3) A dealer or a fund manager who contravenes or fails to comply with any requirement of the regulations made under subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both."

34. Section 39 of the principal Act is amended—

Amendment
of section 39.

(a) in subsection (1)—

(i) by inserting after the word "dealer," the words "fund manager,"; and

(ii) by inserting after the words "dealer's representative" the words ", fund manager's representative";

(b) by inserting after subsection (5) the following subsection:

"(5A) For the purposes of subsection (5), "underwriting" includes sub-underwriting."

(c) in subsection (6)—

(i) by inserting after the word "dealer," the words "fund manager,"; and

(ii) by inserting after the words "dealer's representative" the words ", fund manager's representative";

(d) by substituting for subsection (7) the following subsection:

"(7) Where a person who is a dealer, a fund manager, an investment adviser, a dealer's representative, a fund manager's representative or an investment representative sends to a person a circular or other communication or

a written offer or recommendation to which subsection (1), (4) or (5) applies, the first-mentioned person shall preserve a copy of the circular or other communication, or of a written offer or recommendation, duly signed by the person concerned, for a period of seven years.”,

(e) by deleting subsections (8) and (9); and

(f) by inserting after subsection (11) the following subsection:

“(11A) The Commission may, with the approval of the Minister if it is in the public interest, exempt in writing any securities or any class of securities from this section.”.

Amendment
of section
40.

35. Section 40 of the principal Act is amended—

(a) in subsection (5) by inserting after the word “member” the word “company”; and

(b) in subsection (7)—

(i) by substituting for the words “given to a dealer” the words “given to the dealer”;

(ii) by inserting after the words “contract note” the words “or on becoming aware of the failure to comply with subsection (1) or (3), whichever is the later,”; and

(iii) by substituting for the words “where a dealer fails” the words “where the dealer fails”.

New sections
40A, 40B and
40C.

36. The principal Act is amended by inserting after section 40 the following sections:

“Recom-
mendations
by adviser.

40A. (1) An adviser shall not make a recommendation with respect to securities or a class of securities to a person who may reasonably be expected to rely on the recommendation without having a reasonable basis for making the recommendation to the person.

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(2) For the purposes of subsection (1), an adviser does not have a reasonable basis for making a recommendation to a person unless—

- (a) the adviser has, for the purposes of ascertaining that the recommendation is appropriate, taken into account the information possessed by the adviser concerning the investment objectives, financial situation and particular needs of the person;
- (b) the adviser has given such consideration to, and conducted such investigation of, the subject-matter of the recommendation as may be reasonable in all the circumstances; and
- (c) the recommendation is based on such consideration and investigation.

(3) An adviser who contravenes subsection (1) does not commit an offence.

(4) Where—

- (a) an adviser contravenes subsection (1) or section 39 by making a recommendation to a person; and
- (b) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act; and
- (c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act, as the case may be, in reliance on the recommendation; and
- (d) the person suffers loss or damage as a result of doing that act or refraining from doing that act, as the case may be,

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the adviser shall be liable to pay damages to the person in respect of that loss or damage.

(5) An adviser shall not be liable under subsection (4) if it is proved that a reasonable person in the circumstances could be expected to have done or omitted to do, as the case may be, that act in reliance on the recommendation even if the adviser had complied with that section in relation to the recommendation.

(6) In the case of a contravention of subsection (1), an adviser shall not be so liable if it is proved that the recommendation was, in all circumstances, appropriate having regard to the information that, when making the recommendation, the adviser had about the client's investment objectives, financial situation and particular needs.

(7) In this section—

(a) a reference to an adviser is a reference to a person who is a dealer, fund manager, investment adviser, dealer's representative, fund manager's representative or investment representative; and

(b) a reference to the making of a recommendation is a reference to the making of a recommendation whether expressly or by implication.

Duty to
furnish
Commission
with such
returns and
information
as
Commission
requires.

40B. (1) A dealer, fund manager or investment adviser shall furnish such returns and provide such information relating to its business as the Commission may require.

(2) The Commission may specify that any information required under subsection (1) shall be submitted within such period, at such intervals, in such manner or in such form as the Commission may specify.

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Additional obligations on licensed persons.

40c. (1) In addition to the requirements imposed on licensed persons under this Act, the Commission may impose—

- (a) in the case of licensed persons generally, or any class of licensed persons, by regulations made under this Act; or
- (b) in the case of any particular licensed person, by written direction given to the person,

any further requirements that the Commission considers appropriate with respect to the manner in which a person to whom the requirement relates is to engage in conduct as such licensed persons or as may be required of such licensed persons with respect to the financial affairs of such licensed persons.

(2) A licensed person shall comply with a requirement imposed under subsection (1).”

37. Subsection 41(4) of the principal Act is amended by substituting for paragraph (c) the following paragraph: Amendment of section 41.

“(c) a sale of securities 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 may be 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.”

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Amendment
of heading
of Part VII.

38. The heading of Part VII of the principal Act is amended by inserting after the words "ACCOUNTS AND AUDIT" the following words:

"DIVISION 1
Accounts - Dealers".

Amendment
of section
42.

39. Section 42 of the principal Act is amended—

- (a) in the marginal note by substituting for the word "Part" the word "Division"; and
- (b) by substituting for the word "Part" the word "Division".

Amendment
of section
43.

40. Section 43 of the principal Act is amended—

- (a) in subsections (1) and (2) by inserting after the word "accounting" the word "records"; and
- (b) by substituting for subsections (3), (4), (5) and (6) the following subsections:

"(3) Without affecting the generality of subsection (1), a dealer shall—

(a) keep or cause to be kept accounts and records in sufficient detail to show particulars of—

- (i) all monies received or paid by the dealer, including monies paid into, or disbursed from, a trust account;
- (ii) all purchases and sales of securities made by the dealer, the charges and credits arising therefrom, and the names of the buyer and seller, respectively, of each of those securities;

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- (iii) all income received from commission, interest and other sources, and all expenses, commissions and interest paid by the dealer;
- (iv) all the assets and liabilities including contingent liabilities of the dealer whether relating to its business of dealing in securities or other business;
- (v) all securities that are the property of the dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by some other person, whether or not they are held as security against loans or advances;
- (vi) all securities that are not the property of the dealer and for which the dealer or any nominee controlled by the dealer is accountable, showing by whom, and for whom, the securities, or the documents of title to the securities, are held and, the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances made to the dealer;

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- (vii) all underwriting transactions entered into by the dealer; and
 - (viii) all arbitrage transactions entered into by the dealer;
- (b) keep accounts and records in sufficient detail to show separately particulars of every transaction entered into by the dealer;
 - (c) keep accounts and records specifying the day on which or the period during which each transaction by the dealer took place;
 - (d) keep copies of acknowledgements of receipt of securities or documents of title to the securities received by the dealer from clients for sale or safe custody, clearly showing the name or names in which the particular securities are registered;
 - (e) keep and maintain a General Scrip Register recording the receipt and disposal by the dealer of all securities other than those dealt with in the Safe Custody Scrip Register;
 - (f) keep and maintain a Safe Custody Scrip Register recording all securities held by the dealer for safe custody; and
 - (g) keep and maintain an Underwriting Register recording all underwriting and sub-underwriting transactions entered into by the dealer.

(4) Without prejudice to subsection (3), a dealer shall keep records in sufficient detail to show separately particulars of all transactions by the dealer with, or for the account of,—

- (a) clients of the dealer;

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- (b) the dealer himself;
- (c) the dealer's representatives; and
- (d) associates of the dealer.

(5) An entry in the accounting records and other records of a dealer required to be kept in accordance with this section shall be deemed to have been made by, or with the authority of, the dealer.

(6) Notwithstanding any other provision of this section, a dealer shall not be deemed to have failed to keep a record referred to in subsection (1) by reason only that the record is kept as part of, or in conjunction with, the records relating to any business other than the business of dealing in securities that is carried on by him.

(7) A dealer who—

- (a) contravenes or fails to comply with any provision of this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand ringgit; or
- (b) with intent to defraud, contravenes or fails to comply with any provision of this section commits an offence and is liable on conviction to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.”.

41. Subsection 44(1) of the principal Act is amended—

Amendment
of section
44.

- (a) by substituting for the words “bank or banks in Malaysia” the words “licensed institution”;
- (b) in paragraph (a) by substituting for the words “before or within five bank trading days after receipt of those amounts” the words “not later than the next bank business day on which they were received by the dealer”; and

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(c) in paragraph (b) by substituting for the words "within five bank trading days after receipt of such amounts" the words "not later than the next bank business day on which they were received by the dealer".

New section 44A. 42. The principal Act is amended by inserting after section 44 the following section:

"Property other than monies received by dealers. 44A. (1) A dealer shall deal with any property, other than money, received, held or deposited with the dealer in the course of its business, and for which it is liable to account to another person, in such manner as may be prescribed in regulations made under this Act.

(2) A dealer who contravenes or fails to comply with the regulations made for the purposes of subsection (1) commits an offence."

Amendment of section 45. 43. Section 45 of the principal Act is amended by substituting for paragraphs (a) and (b) the following paragraphs:

- “(a) to, or in accordance with the written instructions of, a person entitled to the money;
- (b) defraying brokerage and other proper charges; or”.

New section 45A. 44. The principal Act is amended by inserting after section 45 the following section:

"Dealer to supply copies of entries in books. 45A. (1) A dealer shall supply, on demand, to its clients or any person authorised by the client, copies of all entries in its books relating to any transaction carried out on behalf of that client and the dealer shall be entitled to levy a reasonable charge therefor.

(2) A person referred to in subsection (1) shall be entitled at any time free of charge either personally or by his agent to inspect any contract notes or vouchers relating to the said transaction."

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45. Section 46 of the principal Act is amended by substituting for the word "Part" the word "Division".

Amendment
of section
46.

46. The principal Act is amended by inserting after section 47 the following Division:

New
Division 2.

"DIVISION 2

Accounts—Fund Managers

Application of Division. 47A. (1) This Division applies to and in relation to a fund manager.

(2) Nothing in subsection (1) shall apply to a corporation which manages a portfolio of securities solely for or on behalf of any of its related corporations, provided that the second-mentioned corporation's securities being managed by the first-mentioned corporation are not securities held on trust or on behalf of or beneficially belonging to any other person, or as a result of any investment contract entered into by the second-mentioned corporation.

Act 125. (3) For the purposes of this section, "investment contract" has the same meaning as is assigned to that expression in subsection (1) of section 84 of the Companies Act 1965.

Accounts to be kept by fund manager. 47B. (1) A fund manager shall keep or cause to be kept such accounting records and other records as will sufficiently explain the transactions and financial position of his business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time, and shall cause those records to be kept in such form and manner as may be prescribed so as to enable them to be conveniently and properly audited.

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(2) Without prejudice to the generality of subsection (1), every fund manager shall maintain such books and records and file such reports to the Commission in such form and manner as may be prescribed.

(3) A fund manager who contravenes this section commits an offence.

Operation
of trust
account.

47c. (1) A fund manager shall maintain a trust account for all his client's monies or property and shall make arrangements for a custodian to maintain such trust account.

(2) The Commission may, where it thinks fit to do so, exempt a fund manager from the requirement under subsection (1) to arrange for a custodian to maintain the trust account and permit any other person to maintain the trust account.

(3) A fund manager shall pay client's monies or property into the trust account maintained by a custodian or any other person as may be permitted by the Commission under subsection (2), as the case may be, not later than the next bank business day following the day on which the fund manager receives the client's monies or property.

(4) Notwithstanding subsection (1), where monies or property that is required by this section to be paid or deposited into a trust account is received by a fund manager in a place outside Malaysia, the fund manager may pay those monies or deposit that property into a trust account maintained by him in that place.

(5) A fund manager shall not withdraw any monies from a trust account except for the purpose of making a payment—

(a) to the persons entitled thereto; or

(b) that is otherwise authorised by law.

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(6) Except as otherwise provided in this Division, monies or property held in a trust account shall not be available for the payment of the debts of a fund manager or liable to be paid or taken in execution under an order or process of court for the payment of the debt of a fund manager.

(7) The holder of a fund manager's representative's licence shall neither accept nor hold client's monies or property unless he does so on behalf of a fund manager and in the course of employment under a contract of employment with that fund manager.

(8) Nothing in this Division shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any monies or property held in a trust account or against or upon any monies or property received for the purchase or from the sale of securities before such monies or property is paid into the trust account.

(9) A fund manager who—

(a) contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand ringgit; or

(b) with intent to defraud, contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(10) For the purposes of this Division—

“custodian”, in relation to a client of a fund manager, means—

- (a) a licensed institution appointed by the fund manager with the prior written consent of the client; or
- (b) any other institution appointed by the client or authorised by the client, as the case may be;

“trust account” means a current, deposit or property account which—

- (a) is kept with a custodian; or
- (b) is kept by any other person as may be permitted by the Commission under subsection (2),

and contains in its title the words “Trust Account/Clients”.

Client's monies.

47D. (1) A fund manager shall not deal in securities for or on behalf of a client unless, to the extent that he receives client's monies or property,—

- (a) he does so on the basis that it shall be applied solely for specified purposes agreed when or before he receives the monies or property;
- (b) pending such application, the monies or property is paid or deposited by the next bank business day to a custodian with whom a trust account is maintained in accordance with this Division or to any other person as may be permitted by the Commission under subsection (2) of section 47c; and
- (c) a separate book entry shall be recorded and maintained for each client by him in accordance with this Act or regulations made under this Act, in relation to the client's monies or property.

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(2) A fund manager who contravenes subsection (1) commits an offence.

(3) In this section, "client's monies or property" means monies received or retained by a fund manager, or property deposited with a fund manager, in the course of his business as such for which he is liable to account to the client, and includes monies received or property deposited with or held by a custodian or by any other person as may be permitted by the Commission under subsection (2) of section 47c for which it is liable to account or deliver to the client.

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

47E. (1) A fund manager shall supply, on demand, to his clients or any person authorised by the client, copies of all entries in his books relating to any transaction.

(2) A person referred to in subsection (1) shall be entitled free of charge either personally or by his agent to inspect any contract notes and vouchers relating to the said transaction."

47. The principal Act is amended by inserting after section 47E the following heading: New Division 3.

"DIVISION 3

Audit".

48. The principal Act is amended by substituting for section 48 the following section: Substitution of section 48.

"Appointment of auditor.

48. (1) This Division applies to the business of a dealer, a fund manager, a stock exchange and a recognised clearing house.

(2) A reference to a relevant person in this Division shall be construed as a reference to a dealer, a fund manager, a stock exchange or a recognised clearing house.

Act 125. (3) Notwithstanding the provisions of the Companies Act 1965, a relevant person shall appoint an auditor to carry out for the year in respect of which he is appointed an audit of the accounts of the relevant person.

(4) A relevant person—

(a) shall remove an auditor of the relevant person if the auditor becomes ineligible by virtue of section 48A; and

(b) may in any other case, with the Commission's written consent, remove an auditor of the relevant person from office.

(5) An auditor of a relevant person may resign his office by depositing a notice in writing to that effect with the Commission provided that such notice shall be accompanied by—

(a) a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the Commission; or

(b) if he considers that there are no such circumstances, a statement that there are none.

(6) Notwithstanding any other provisions of this Act, the Commission may at any time remove an auditor appointed by a relevant person if the Commission is not satisfied with the manner in which the auditor is performing his duties.”.

New section 48A. 49. The principal Act is amended by inserting after section 48 the following section:

“Associates not to be appointed as auditors. 48A. A relevant person shall not appoint a person who is an associate of the relevant person as an auditor of any of its accounts.”.

Securities Industry (Amendment)

50. The principal Act is amended by substituting for sections 49 and 50 the following sections:

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Substitution
of sections
49 and 50.

"Relevant
person to
lodge
auditor's
report.

49. (1) A relevant person shall, within three months after the close of each financial year, or such further period as the Commission may permit under subsection (2), lodge with the Commission and the Registrar, the auditor's report containing information on such matters as may be prescribed.

(2) Where an application for the extension of the period of three months specified in subsection (1) is made by a relevant person to the Commission and if the Commission is satisfied that there are special reasons for requiring the extension, the Commission may extend that period by three months subject to such conditions as the Commission thinks fit to impose.

(3) A relevant person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

(4) For the purposes of subsection (1), "financial year", in relation to a relevant person, means the financial year of the corporation within the meaning of the Companies Act 1965.

Act 125.

Duties of
auditor.

50. (1) Where, in the performance of his duties as auditor for a relevant person, an auditor becomes aware—

- (a) of any matter which in his opinion may constitute a breach of any provision of the securities laws;
- (b) of any irregularity that may have a material effect upon the accounts of the relevant person, including any irregularity that jeopardises or may jeopardise the

funds or property of the clients of a relevant person, where applicable;

- (c) that losses have been incurred by the relevant person who is a dealer or a fund manager which renders the relevant person to be unable to meet the minimum financial requirements as may be prescribed in the regulations made under this Act; or
- (d) that the auditor is unable to confirm that the claims of clients or creditors of the relevant person are covered by the assets of the relevant person,

the auditor shall immediately report the matter to—

- (e) in the case of a member company, the stock exchange, the Commission and the Registrar; or
- (f) in any other case, the Commission and the Registrar.

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

- (a) in his report under subsection (1); or
- (b) under subsection (5) of section 48.

(3) The Commission may at any time require an auditor appointed under this Division to—

- (a) submit such additional information in relation to his audit as the Commission may specify;
- (b) enlarge or extend the scope of his audit of the business and affairs of the relevant person in such manner or to such extent as the Commission may specify;

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(c) carry out any specific examination or establish any procedure in any particular case; or

(d) submit a report on any of the matters referred to in paragraphs (a) to (c),

and the Commission may specify the time within which any of the aforesaid requirements shall be complied with by the auditor and may specify the remuneration which the relevant person shall pay to the auditor in respect thereof.

(4) The auditor shall comply with any requirement of the Commission under subsection (3) and the relevant person shall remunerate the auditor in respect of the discharge by him of all or any of these additional duties.”.

51. Section 51 of the principal Act is amended—

Amendment of section 51.

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

“Duty of relevant person or its directors or officers to furnish information.”; and

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

“(1) A relevant person and any director or officer of the relevant person shall—

(a) furnish to an auditor appointed under any provision of this Division—

(i) all the information within its or his knowledge or which it or he is capable of obtaining; or

(ii) any information which the auditor requires to enable him to carry out his duties; and

(b) ensure that all the information which is furnished to the auditor, including information furnished under paragraph (a), is not false or misleading in any material particular.”.

Amendment
of section 52.

52. Section 52 of the principal Act is amended—

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

“(1) Where—

(a) a relevant person has failed to submit the auditor’s report in compliance with subsection (1) of section 49; or

(b) the Commission has received a report under section 49 or 50,

the Commission may, if the Commission is satisfied that it is in the interests of the relevant person concerned or the clients of that relevant person to do so, appoint in writing an independent auditor or such other person or body of persons as the Commission may decide, to examine, audit and report, either generally or in relation to any particular matter, upon the books, accounts and records of and securities held by the relevant person.”;

(b) in subsection (2) by substituting for the words “dealer or relevant authority” wherever they appear the words “relevant person”; and

(c) in subsection (3) by substituting for the words “dealer or the relevant authority” the words “relevant person”.

Amendment of
section 53.

53. Section 53 of the principal Act is amended in subsections (1), (2) and paragraph (4)(b) by substituting for the word “dealer” wherever it appears the words “relevant person”.

Amendment of
section 55.

54. Section 55 of the principal Act is amended by substituting for the words “dealer” and “dealer’s” wherever they appear the words “relevant person” and “relevant person’s” respectively.

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55. Section 57 of the principal Act is amended by substituting for the word "dealer" wherever it appears the words "relevant person". Amendment of section 57.

56. Subsection 58(1) of the principal Act is amended by substituting for the word "dealer" wherever it appears the words "relevant person". Amendment of section 58.

57. Section 59 of the principal Act is amended by substituting for the word "members" the words "member companies". Amendment of section 59.

58. The principal Act is amended in Part VIII by substituting for the heading "FIDELITY FUNDS" the heading "COMPENSATION FUND". Amendment of heading of Part VIII.

59. The principal Act is amended by substituting for sections 60, 61, 62, 63 and 64 the following sections: Substitution of sections 60, 61, 62, 63 and 64.

"Interpretation. 60. In this Part, unless the context or subject-matter otherwise requires—

"compensation fund" or "fund" means a compensation fund established and maintained under section 61;

"relevant stock exchange", in relation to a compensation fund, means the stock exchange which established the compensation fund under section 61.

Establishment of compensation fund. 61. (1) A stock exchange shall establish and maintain a compensation fund which shall be administered under this Part.

(2) The assets of the compensation fund shall be the property of the relevant stock exchange but the relevant stock exchange shall keep such assets separate from all its other property and shall hold such assets in trust for the purposes set out in the regulations made under this Act.

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Mones
constituting
compensation
fund.

62. The compensation fund of a relevant stock exchange shall consist of the following:

- (a) monies paid to the credit of the compensation fund by the relevant stock exchange on the establishment of the compensation fund;
- (b) monies paid to the relevant stock exchange by member companies under this Part;
- (c) the interest and profits from time to time accruing from the investment of the compensation fund;
- (d) monies paid into the compensation fund by the relevant stock exchange under subsection (1) of section 66;
- (e) monies recovered by or on behalf of the relevant stock exchange in the exercise of a right of action conferred by this Part;
- (f) monies paid by an insurer under a contract of insurance or indemnity entered into by the relevant stock exchange under section 82;
- (g) all other monies lawfully paid into the compensation fund.

Funds to
be kept in
separate
account.

63. (1) All monies forming part of the compensation fund of a relevant stock exchange shall, pending its application in accordance with this Part and the regulations made under this Act, be paid or transferred into a separate trust account by the relevant stock exchange.

(2) A trust account referred to in subsection (1) may be opened at one or more licensed institutions.

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Payments
out of
compensation
fund.

64. Subject to this Part, there shall be paid out of the compensation fund of a relevant stock exchange in such order as the relevant stock exchange thinks proper—

- (a) the amount of all claims, including costs, allowed by the relevant stock exchange or established against the compensation fund under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the compensation fund or in the exercise by the relevant stock exchange of the rights, powers and authority conferred by this Part in relation to the compensation fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the relevant stock exchange under section 82;
- (d) all expenses incurred in the administration of the compensation fund, including the remuneration and allowances of any persons employed by the relevant stock exchange in relation thereto; and
- (e) all other monies payable out of the compensation fund in accordance with the provisions of this Act.”.

60. Section 65 of the principal Act is amended—

Amendment of
section 65.

- (a) in the marginal note by inserting before the word “fund” the word “compensation”;
- (b) in subsection (1)—
 - (i) by inserting before the words “stock exchange” the word “relevant”; and
 - (ii) by substituting for the words “its fidelity” the words “the compensation”;

(c) in subsection (2)—

- (i) by substituting for the words "committee of the" the words "the relevant"; and
- (ii) by substituting for the word "fidelity" the word "compensation"; and

(d) in subsection (3)—

- (i) by substituting for the word "committee" wherever it appears the words "relevant stock exchange"; and
- (ii) by substituting for the word "fidelity" the word "compensation".

Substitution of sections 66, 67, 68 and 69. **61.** The principal Act is amended by substituting for sections 66, 67, 68 and 69 the following sections:

“Require-
ment of
relevant
stock
exchange
to pay
portion of
net income
into
compen-
sation
fund.”

66. (1) The Commission may, after consultation with a relevant stock exchange and with the approval of the Minister, require the relevant stock exchange to pay a portion of the net income of the relevant stock exchange in any particular financial year into the compensation fund.

(2) Where the Commission requires a relevant stock exchange to make a payment under subsection (1), it shall give notice in writing to the relevant stock exchange and the relevant stock exchange shall comply with the requirement on or before the date specified in the written notice.

Contribu-
tions to
compen-
sation
fund.

67. (1) A member company shall, upon being licensed under this Act, pay to the relevant stock exchange the amount of thirty thousand ringgit as a contribution to the compensation fund and shall thereafter on or before the thirty-first of December pay to the relevant stock exchange the amount of ten thousand ringgit as a contribution to the compensation fund.

(2) All contributions made under this section shall not be refundable.

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(3) Notwithstanding anything in this section, the relevant stock exchange may, from time to time with the approval of the Commission, vary the amount and manner of contribution by member companies to the compensation fund.

Provision where compensation fund exceeds fifty million ringgit.

68. (1) Where the amount at credit in a compensation fund exceeds fifty million ringgit, or such greater sum as the Commission may after consultation with the relevant stock exchange determine, every member company of the relevant stock exchange who has made fifty annual contributions, or such greater number as the Commission may after consultation with the relevant stock exchange determine, to the compensation fund, and in respect of whom no payment from the compensation fund has been made or, if any such payment has been made, the compensation fund has been fully reimbursed, shall be freed and discharged from further annual contributions to the compensation fund.

(2) If a compensation fund, for any reason, stands below the sum of ten million ringgit, or such other sum as the Commission may after consultation with the relevant stock exchange determine, the relevant stock exchange may, with the approval of the Commission, require a member company of the relevant stock exchange who has been freed and discharged from the requirement to make annual contributions under subsection (1), to such extent as it thinks necessary, to pay annual contributions under section 67.

Levy in addition to annual contribution.

69. (1) If at any time a compensation fund is not sufficient to satisfy the liabilities of the relevant stock exchange that are then ascertained in relation thereto, the relevant stock exchange may impose on every member company liable to contribute to that compensation fund a levy of such amount as may be determined by the

Minister to be appropriate as reasonable compensation against such liabilities, to be paid into the compensation fund.

(2) The amount of such levy shall be paid within the time and in the manner specified by the relevant stock exchange either generally or in relation to any particular case.”.

Amendment
of section
70.

62. Section 70 of the principal Act is amended—

- (a) in the marginal note by inserting before the word “fund” the word “compensation”; and
- (b) by substituting for the word “fidelity” wherever it appears the word “compensation”.

Substitution
of sections
71 and 72.

63. The principal Act is amended by substituting for sections 71 and 72 the following sections:

“Invest-
ment of
monies in
compen-
sation
fund.

71. A relevant stock exchange may invest any monies which form part of its compensation fund and is not immediately required for any other purpose under this Part—

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

Application
of compen-
sation fund.

72. (1) Subject to this Part, if a person (the “person suffering the loss”) suffers monetary loss at any particular time because of—

- (a) a defalcation, or because of fraudulent misuse of monies or other property, by a director, officer, employee or representative of a licensed dealer that is at that time a member company;
- (b) an insolvency of a member company,

and the loss is suffered in respect of monies or other property that was, in connection with the

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member company's dealing in securities, entrusted to or received by the member company, or by a director, officer, employee or representative of the member company (whether before or after the commencement of this section)—

- (c) for or on behalf of the person suffering the loss or another person; or
- (d) because the member company was trustee of the monies or other property,

the compensation fund of the relevant stock exchange shall be applied for the purpose of compensating the person suffering the loss.

(2) Without prejudice to subsection (1), the Minister may on the recommendation of the Commission, after consultation with the relevant stock exchange, by order published in the *Gazette* prescribe any other circumstances for the application of the compensation fund.

(3) The amount or the sum of the amounts paid out of the compensation fund of a relevant stock exchange under this Part for the purpose of—

- (a) compensating for monetary loss suffered by a person referred to in subsection (1) or (2), as the case may be; or
- (b) compensating for monetary loss suffered by such person or persons in respect of a particular member company,

shall not be greater than the amount stated in or calculated in accordance with this Part and the regulations made under this Act.

(4) A reference in this section to a defalcation, or to a fraudulent misuse of monies or other property, is a reference to such defalcation or fraudulent misuse wherever and whenever occurring.

(5) For the purposes of subsection (1), a member company shall be deemed to be insolvent—

- (a) when the member company is being wound up; or
- (b) where the relevant stock exchange determines, in accordance with its rules that the member company appears to be unable, or likely to become unable, to meet its obligations in respect of all trades effected on the relevant stock exchange to which the member company is a party.

(6) If, in any particular case, after taking into account all ascertained or contingent liabilities of a compensation fund, the relevant stock exchange considers that the assets of the compensation fund so permit, the relevant stock exchange may apply out of the compensation fund such sum in excess of the total amount limited by or under this Part and the regulations made thereunder as the relevant stock exchange in its absolute discretion thinks fit in or towards the compensation of persons who have suffered monetary loss as provided in subsection (1) or (2), as the case may be.

(7) For the purposes of this section, "director" includes a person who has been, but at the time of any defalcation or fraudulent misuse of monies or property in question has ceased to be, a director of a member company if, at the time of the defalcation or fraudulent misuse of monies or property the person claiming compensation has reasonable grounds to believe that the person is a director of a member company."

Deletion of sections 73, 75, 76 and 77.

Amendment of section 78.

64. The principal Act is amended by deleting sections 73, 75, 76 and 77.

65. Section 78 of the principal Act is amended—

- (a) in the marginal note by substituting for the word "committee" the words "relevant stock exchange";

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- (b) by substituting for the word "committee" wherever it appears the words "relevant stock exchange"; and
- (c) by inserting after the words "in respect of a defalcation" the words "or fraudulent misuse of monies or property".

66. The principal Act is amended by substituting for sections 79 and 80 the following sections:

Substitution
of sections
79 and 80.

"Subro-
gation of
relevant
stock
exchange
to rights
and
remedies
of claimant
upon
payment
from
compen-
sation
fund.

79. If a relevant stock exchange makes a payment out of its compensation fund in respect of a claim for compensation under this Part,—

- (a) the relevant stock exchange 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 member company concerned; or
 - (ii) if the loss was caused by an act or omission of a director, officer, representative or employee of a member company, to receive in respect of the loss any sum,

until the relevant stock exchange has been reimbursed the full amount of the payment made by it out of the compensation fund, including any interest paid.

Payment of
claims only
from
compen-
sation fund.

80. No monies or other property belonging to a relevant stock exchange, other than its compensation fund, shall be used for the payment of any claim under this Part."





Deletion of section 81.

67. The principal Act is amended by deleting section 81.

Substitution of sections 82 and 83.

68. The principal Act is amended by substituting for sections 82 and 83 the following sections:

“Power of relevant stock exchange to enter into contract of insurance.

82. (1) A relevant stock exchange may enter into a contract with a registered insurance business in Malaysia under which the relevant stock exchange 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 or any regulations made under this Act.

(2) A contract under subsection (1) may be entered into in relation to member companies generally, or in relation to a particular member company named in the contract, or in relation to member companies generally with the exclusion of particular member companies named in the contract.

(3) An action shall not lie against a relevant stock exchange or against any member or employee, or against any committee or sub-committee of a relevant stock exchange, as the case may be, for injury alleged to have been suffered by any member company of the relevant stock exchange by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to the member company.

Application of insurance monies.

83. A claimant against a compensation fund of a relevant stock exchange shall not have—

- (a) a right of action against a person with whom a contract of insurance or indemnity is made under this Part in respect of such a contract; or

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(b) a right or claim with respect to any monies paid by the insurer in accordance with such a contract.”.

69. The principal Act is amended by inserting after section 83 the following sections:

New sections 83A and 83B.

“Monies in compensation fund where relevant stock exchange wound up. Act 125.

83A. In the event of a relevant stock exchange being wound up under the Companies Act 1965, the relevant stock exchange shall, after satisfying all the outstanding liabilities against its compensation fund, make available to the liquidator of the relevant stock exchange the balance of the amount available in the compensation fund which shall form part of the assets of the relevant stock exchange and be available to the liquidator for distribution in accordance with the Companies Act 1965.

Regulations in respect of compensation fund.

83B. (1) The Minister may by regulations prescribe—

(a) in respect of a compensation fund of a relevant stock exchange—

(i) the powers of the Commission in relation to the compensation fund;

(ii) the powers, obligations and liabilities of the relevant stock exchange in relation to the compensation fund; and

(iii) the manner in which the compensation fund is to be administered;

(b) the manner in which the relevant stock exchange shall apply its compensation fund; and

(c) without prejudice to section 72, in respect of claims made against a compensation fund of a relevant stock exchange,—

(i) the persons who are eligible to make claims;

- (ii) the circumstances under which claims are to be allowed;
- (iii) the procedures and limitations in respect of such claims; and
- (iv) appeals and the procedures applicable thereto.

(2) The purposes that may be prescribed under paragraph (b) of subsection (1) include the satisfaction of claims in relation to any dealing or proposed dealing in securities made against member companies."

Amendment
of section
94A.

70. Section 94A of the principal Act is amended by inserting before the words "the Registrar" wherever they appear the words "the Commission or".

Amendment
of section
95.

71. Section 95 of the principal Act is amended—

(a) in paragraph (1)(a)—

(i) in subparagraph (iii)—

(A) by inserting after the word "dealer" the words ", a fund manager"; and

(B) by inserting after the words "dealer's representative" the words ", a fund manager's representative"; and

(ii) in subparagraph (x) by inserting after the word "dealer" the words ", of a fund manager"; and

(b) in paragraph (8) (a) by substituting for the word "breakopen" the words "break open".

72. The principal Act is amended by inserting after section 95 the following section: New section 95A.

“Power to specify form and manner of information, returns or documents and period for submission.” 95A. (1) Where under any provision of this Act—

- (a) any person is required to; or
- (b) power is given to the Commission or the Registrar to require any person to,

submit to the Commission or the Registrar any information, returns or documents, the Commission or the Registrar, as the case may be, may specify that such information, returns or documents be submitted in such form or manner and within such period or at such intervals as the Commission or the Registrar may specify.

(2) The information, returns or documents referred to in subsection (1) may be submitted—

- (a) in writing;
- (b) by means of a visual recording (whether stills or moving images);
- (c) by means of sound recordings;
- (d) by means of any electronic, magnetic, mechanical or other recording whatsoever,

on any substance, material, thing or article.”.

73. Subsection 96(3) of the principal Act is amended by inserting after the word “hinders” the words “the Commission or another person in the exercise of any power under section 94A, or”. Amendment of section 96.

74. Section 98 of the principal Act is amended— Amendment of section 98.
(a) by inserting before the word “Registrar” wherever it appears the words “Commission or the”;

- (b) in subsection (1) by substituting for the word "him" the words "the Commission or the Registrar, as the case may be";
- (c) in subsection (2) by substituting for the word "him" the words "the Commission or the Registrar, as the case may be,"; and
- (d) in subsection (3) by substituting for the word "him" the words "the Commission or the Registrar, as the case may be".

Amendment of section 99. 75. Section 99 of the principal Act is amended—

- (a) by inserting after the word "Where" the words "the Commission or";
- (b) by substituting for the words "he may;" the words "the Commission or the Registrar, as the case may be, may"; and
- (c) by substituting for the words "he thinks" the words "the Commission or the Registrar thinks".

Amendment of section 100. 76. Section 100 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (a)—
 - (A) by inserting before the word "Registrar" the words "Commission or the"; and
 - (B) by inserting after the word "contravention" the words ", or has engaged in, is engaging in, or is proposing to engage in, any conduct that constitutes or would constitute a contravention of this Act";
 - (ii) in paragraph (c)—
 - (A) by inserting after the words "acting as" the words "a fund manager or";
 - (B) by inserting after the words "dealer's representative" the words ", a fund manager's representative"; and

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- (C) in the English language text by inserting before the words "investment representative" the words "as an";
- (iii) in paragraph (e) by inserting after the word "dealer" wherever it appears the words "or a fund manager"; and
- (iv) by inserting after paragraph (f) the following paragraph:
- “(fa) where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that he is required to do under this Act, an order requiring such person to do such act or thing;”;
- (b) by inserting after subsection (2) the following subsections:
- “(2A) Where an application is made to the High Court for an order under paragraph (fa) of subsection (1), the High Court may grant the order—
- (a) where the High Court is satisfied that the person has refused or failed to do the required act or thing, whether or not it appears to the High Court that the person intends to again refuse or fail, or continue to refuse or fail, to do the required act or thing; or
- (b) where it appears to the High Court that in the event that such an order is not granted it is likely that the person will refuse or fail to do the required act or thing, whether or not the person has previously refused or failed to do the act or thing and whether or not there is any imminent risk of damage to any person if the person required to do such act or thing refuses or fails to do so.

(2B) Where an application for an order under paragraph (fa) of subsection (1) is made by the Commission or the Registrar, or by any person duly authorised by the Commission or the Registrar, the High Court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Commission or the Registrar, as the case may be.”.

(c) in subsection (3)—

- (i) by inserting after the word “dealer” the words “or a fund manager”, and
- (ii) in paragraph (a) by inserting after the word “dealer” the words “or the fund manager, as the case may be,”, and

(d) in subsection (4)—

- (i) by inserting after the words “in relation to a dealer” the words “or a fund manager”;
- (ii) by inserting after the words “by the dealer” the words “or fund manager”; and
- (iii) by substituting for the words “a business of dealing in securities carried on by the dealer” the words “the business of the dealer or the fund manager”.

Substitution of section 120. **77.** The principal Act is amended by substituting for section 120 the following section:

“Prohibition of use of certain titles. 120. (1) A person who is not a stock broker, a member of a stock exchange or a member company shall not take or use or by inference adopt the name, title or description of “stock broker”, “member of a stock exchange” or “member company”, or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a stock broker, member of a stock exchange or member company.

(2) Unless the Commission otherwise permits, a person who is not a stock exchange shall not take or use or by inference adopt the name, title or description of "stock exchange", "stock market" or "securities trading market", or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a stock exchange.

(3) A person who is not a holder of a dealer's licence shall not take or use or by inference adopt the name, title or description of "dealer", or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a dealer.

(4) A person who is not a holder of a fund manager's licence shall not take or use or by inference adopt the name, title or description of "fund manager", or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is a fund manager.

(5) A person who is not a holder of an investment adviser's licence shall not take or use or by inference adopt the name, title or description of "investment adviser", or take or use or have attached to or exhibited at any place any name, title or description implying or tending to create the belief that such person is an investment adviser.

(6) A person who is not a holder of a dealer's representative's licence, a fund manager's representative's licence or an investment representative's licence shall not take or use or by inference adopt the name, title or description of "dealer's representative", "fund manager's representative" or "investment representative", as the case may be, or take or use or have attached to or exhibited at any place any name,

title or description implying or tending to create the belief that such person is a dealer's representative, a fund manager's representative or an investment representative, as the case may be."

Amendment of section 121.

78. Section 121 of the principal Act is amended—

- (a) in the marginal note by inserting after the word "dealer's" the words "or fund manager's";
- (b) in the English language text by inserting after the word "accounting" wherever it appears the word "records";
- (c) in subsection (1) by inserting after the word "dealer" the words "or a fund manager";
- (d) in subsection (2)—
 - (i) by inserting after the words "a dealer" the words "or a fund manager"; and
 - (ii) by inserting after the words "the dealer" wherever they appear the words "or the fund manager";
- (e) in subsection (3) by substituting for the words "dealer or any employee of the dealer" the words "dealer, fund manager or any employee, officer or representative of the dealer or the fund manager"; and
- (f) in subsection (4) by inserting after the word "dealer" the words "or a fund manager"

New section 121A.

79. The principal Act is amended by inserting after section 121 the following section:

"Decision of Minister to be final.

121A. Except as otherwise provided in this Act, any decision made by the Minister under this Act, whether an original decision by him or a decision on appeal to him from a decision of the Commission shall be final."

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80. Section 122 of the principal Act is amended—

Amendment
of section
122.

(a) in subsection (1) by substituting for the words "an executive officer or the secretary" the words "a chief executive officer, an officer or a representative";

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

"(2) Where any person is liable under this Act to any punishment for any act, omission, neglect or default, he shall be liable to the same punishment for every such act, omission, neglect or default of any employee provided that such act, omission, neglect or default was committed by such employee in the course of his employment."; and

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

"(3) Without prejudice to the generality of subsection (2), where any dealer's representative, fund manager's representative or investment representative contravenes any provision of this Act, the dealer, fund manager or investment adviser for whom the representative is acting for or on behalf of shall be deemed to have contravened such provision.

(4) 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."

New sections
122A, 122B
and 122C.

81. The principal Act is amended by inserting after section 122 the following sections:

"Falsification of records by directors, employees and agents. 122A. A director, manager, officer, trustee, auditor, employee or agent of a stock exchange, recognised clearing house, dealer, fund manager or investment adviser who—

- (a) wilfully makes, or causes to be made, a false entry in any book or record or in any report, slip, document or statement of the business, affairs, transactions, conditions, assets or accounts of the stock exchange, recognised clearing house, dealer, fund manager or investment adviser;
- (b) wilfully omits to make an entry in any book or record or in any report, slip, document or statement of the business, affairs, transactions, conditions, assets or accounts of the stock exchange, recognised clearing house, dealer, fund manager or investment adviser, or wilfully causes any such entry to be omitted; or

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- (c) wilfully alters, abstracts, conceals or destroys an entry in any book or record or in any report, slip, document or statement of the business, affairs, transactions, conditions, assets or accounts of the stock exchange, recognised clearing house, dealer, fund manager or investment adviser, or wilfully causes any such entry to be altered, abstracted, concealed or destroyed,

commits an offence and is liable on conviction to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

False reports to Commission, stock exchange or recognised clearing house.

122b. A person who with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to the Commission, a stock exchange or a recognised clearing house relating to—

- (a) dealings in securities;
- (b) the affairs of a listed company;
- (c) any matter or thing required by the Commission for the proper administration of this Act; or
- (d) the enforcement of the rules of a stock exchange or a recognised clearing house.

commits an offence and is liable on conviction to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Attempts, abetments and conspiracies.

122c. A person who—

- (a) attempts to commit any offence under this Act;
- (b) does any act in furtherance of the commission of any offence under this Act; or

F.M.S.
Cap. 45.

(c) abets or is engaged in a criminal conspiracy to commit (as those terms are defined in the Penal Code) any offence under this Act, whether or not the offence is committed in consequence thereof,

commits such offence and is liable to the penalty for such offence.”

Substitution
of sections
123 and 124.

82. The principal Act is amended by substituting for sections 123 and 124 the following sections:

“General
penalty.

123. (1) A person who contravenes or fails to comply with a requirement or a provision of this Act commits an offence under this Act and, where no penalty is expressly provided, 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.

(2) In the case of a continuing offence the offender is, in addition to the penalties under subsection (1), liable to a fine not exceeding five thousand ringgit for every day or part of a day during which the offence continues after conviction.

Compound-
ing of
offences.

124. (1) The Chairman of the Commission may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under Part IV, V or VII or any regulations made thereunder, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding the maximum fine (including the daily fine in the case of a continuing offence, if any) for that offence.

(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

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of any books, records or other documents or any other thing, such books, records, documents or things 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 and form part of the Federal Consolidated Fund.”.

83. The principal Act is amended by inserting after section 126A the following section: New section
126B.

“Proceed- 126B. (1) For the purposes of this section—
ings of
recognised
clearing
house in
event of
insolvency
of
participant.

“default rules”, in relation to a recognised clearing house, means the rules made under subsection (2);

“market contract” means a contract—

(a) entered into by a member company on, or otherwise subject to the rules of, the stock exchange which is, or is to be, cleared and settled through a recognised clearing house; or

(b) subject to the rules of the recognised clearing house, entered into by the recognised clearing house pursuant to a novation for the purposes of, or in connection with, the provision of clearing and settlement services for transactions effected on, or subject to the rules of, a stock exchange.

(2) A recognised clearing house shall have default rules which will enable it to take action in the event of a participant appearing to be unable, or likely to become unable, to meet its obligations in respect of all or any unsettled market contracts to which the participant is a party.

(3) All default rules made under subsection (2) shall be approved by the Commission in accordance with subsection (3) of section 9A.

(4) Where a participant of a recognised clearing house is being wound up, or appears to be unable or likely to become unable to meet its obligations in respect of all unsettled market contracts to which the participant is a party, any default proceedings or other action taken by the recognised clearing house under its default rules shall not be regarded as invalid on the ground that such proceeding or action is inconsistent with the law relating to the distribution of assets of persons on insolvency, bankruptcy or winding-up, or on the appointment of receivers over the assets of such persons.

Act 453.

(5) Subject to subsections (6) and (7), in the event of a default or insolvency of a participant of a recognised clearing house who is also an authorised depository agent, an authorised direct member or a depositor (as defined in the Securities Industry (Central Depositories) Act 1991), any transfer of securities from such a participant's securities account effected by or through the central depository up to the date of the winding-up or bankruptcy petition, as the case may be, shall have effect notwithstanding that such transfer is invalid on the ground that it is inconsistent with the law relating to the distribution of assets of persons on insolvency, bankruptcy or winding-up, or on the appointment of receivers over the assets of such persons.

(6) Subsection (5) shall apply only in relation to transfers effected by the central depository arising as a result of, or to give effect to, the settlement of market contracts.

(7) Subsection (5) shall not apply to any transfer in relation to market contracts which have been proved by the liquidator or receiver to have been effected by the defaulting or insolvent participant, as the case may be, with the intention to defraud creditors."

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84. The principal Act is amended by substituting for section 127 the following section: Substitution
of section
127.

^{“Regulations.} 127. (1) The Minister may make such regulations as may be—

- (a) required or permitted by this Act to be prescribed by regulations;
- (b) necessary or expedient for—
 - (i) giving full effect to the provisions of this Act;
 - (ii) carrying out or achieving the objects and purposes of this Act; or
 - (iii) the further, better or more convenient implementation of the provisions of this Act.

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

- (a) to provide for the licensing of dealers, fund managers, investment advisers and their representatives and matters incidental thereto;
- (b) to prescribe the activities of, and the standards to be maintained by, dealers, fund managers and investment advisers including the manner, method and place of soliciting business and the conduct of such solicitation;
- (c) to prescribe the standards with respect to the qualifications, experience and training of licensed persons;
- (d) to regulate the conduct of business on a stock exchange;
- (e) to provide for the control of the contents and distribution of written, printed or visual material or advertisements that may be distributed or used by a person in respect of securities;

- (f) to prescribe the minimum financial requirements in respect of a dealer's, fund manager's or investment adviser's business;
- (g) to prescribe the form and contents of a contract note;
- (h) to prohibit the use of any manipulative or deceptive devices and contrivances in connection with the purchase or sale of securities;
- (i) to prescribe the particulars to be recorded in, or in respect of, the accounting records kept by dealers, fund managers and investment advisers under this Act;
- (j) to prescribe the particulars to be recorded in the profit and loss accounts and balance-sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of dealers and fund managers;
- (k) to regulate the purchase or sale of securities, directly or indirectly, for the personal account of dealers, fund managers, investment advisers and their representatives and financial journalists;
- (l) to provide for the disclosure by a dealer, fund manager, investment adviser, exempt dealer or exempt fund manager of any material interest that such person may have in a proposed transaction relating to trading in securities;
- (m) to provide for the control of the form, content and publication of advertisements—
 - (i) offering the services of dealers and fund managers; or
 - (ii) offering securities for purchase or sale;

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- (n) to regulate or prohibit the sale of securities by any person who does not have a right to vest the securities in the purchaser;
- (o) to provide for matters relating to the listing of securities on the stock exchange, and in particular—
 - (i) to require that the requirements be met before securities may be listed on the stock exchange;
 - (ii) to provide the procedure for dealing with applications for the listing of securities on the stock exchange;
 - (iii) to provide for the cancellation of the listing of any specified securities on the stock exchange if the Commission's requirements for listing, or the requirements of the undertaking referred to in subparagraph (vi), are not complied with, or where the Commission considers that such action is necessary to maintain an orderly market in Malaysia;
 - (iv) to provide the conditions subject to which, and the circumstances in which, the stock exchange shall suspend dealings in securities;
 - (v) to provide the procedure for, and the method of allotment of, any securities arising out of an offer for sale in respect of those securities; and
 - (vi) to require a corporation whose securities are listed or accepted for listing on the stock exchange to enter into such undertaking as may be required by the rules of the stock exchange, to provide such information at such times as may

be specified, and to carry out such duties in relation to its securities as may be imposed in the undertaking;

(p) to provide for the supply to the Commission of—

Act 125.

(i) such information as a person to whom sections 69c and 69d of the Companies Act 1965 applies or any other person is required to supply;

(ii) such notice as a person to whom section 69E, 69F or 69G of that Act applies is required to give;

(q) to provide for the authorisation of any person who maintains in Malaysia a register of members of a corporation whose securities are listed on the stock exchange and the requirements to which such person shall comply with;

(r) to provide for the borrowing in the ordinary course of business by dealers as the Minister may consider necessary or appropriate in the public interest or for the protection of investors;

(s) to provide for returns or information or otherwise, to be supplied by a stock exchange, recognised clearing house, licensed persons, corporations whose securities are listed on a stock exchange or directors or officers thereof, to the Commission;

(t) to provide for the operation or administration of, or any other matter whatsoever relating to, the compensation fund;

(u) to provide for all matters relating to the lending and borrowing of securities and the persons involved in such lending and borrowing;

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- (v) to require a corporation which has any of its securities quoted on a stock market of a stock exchange to comply with such accounting standards or to disclose such information as the Minister thinks necessary;
- (w) to prescribe any forms for the purposes of this Act; and
- (x) to prescribe the fees to be paid in respect of any matter or thing required for the purposes of this Act.

(3) Nothing in paragraph (o) of subsection (2) shall prevent the stock exchange from making rules on any matter mentioned in that subsection if those rules have been approved by the Commission, but any such rules shall have effect only to the extent that they are not inconsistent with the regulations made under this Act.

(4) Without prejudice to the generality of subsection (1), regulations made under this section may provide that, subject to any terms and conditions that may be prescribed, the provisions of this Act—

- (a) shall not have effect in relation to any specified person or to any person who is a member of a specified class of persons—
 - (i) who is or may be a dealer, fund manager or investment adviser by reason only of his doing anything which is merely incidental to another business;
 - (ii) who does not deal in securities for or on behalf of any other person; or
 - (iii) who is a dealer, fund manager or investment adviser by reason only of the entering by him into any specified transaction or class of transactions;

- (b) shall not have effect in relation to the representative of any person referred to in paragraph (a); or
- (c) shall have effect in relation to any person referred to in paragraph (a) or (b) only to such extent as may be prescribed.”.

New Schedule.

85. The principal Act is amended by inserting after section 134 the following Schedule:

“SCHEDULE

(Paragraph (d) of subsection (1) of section 17)

Minimum Criteria

Dealers, fund managers, investment advisers, directors, etc. to be fit and proper persons

1. (1) Every dealer, fund manager or investment adviser who is applying for a licence is a fit and proper person to hold the licence applied for.

(2) Every person who is, or is to be, a director, chief executive, manager or representative of a dealer, fund manager or investment adviser, as the case may be, is a fit and proper person to hold the particular position which he holds or is to hold.

(3) In determining whether a person is fit and proper to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgment of fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of customers, if any, of the dealer, fund manager or investment adviser, as the case may be, are or are likely to be, in any way threatened by his holding that position.

(4) Without prejudice to the generality of subparagraph (3), regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (a) committed an offence involving fraud or other dishonesty, or violence;
- (b) contravened any provision made by or under any written law appearing to the Commission to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons

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concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;

- (c) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business; or
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

Composition of board of directors

2. The directors include such number (if any) of directors without executive responsibility for the management of its business as the Commission considers appropriate having regard to the circumstances of the dealer, fund manager or investment adviser, as the case may be, and the nature and scale of its operations.

Business to be conducted efficiently, honestly and fairly

3. (1) The business of the dealer, fund manager or investment adviser, as the case may be, will be conducted efficiently, honestly and fairly, and is or will be carried on with the integrity and professional skill appropriate to the nature and scale of its activities.

(2) Without prejudice to the generality of subparagraph (1), in considering whether any person is conducting or will conduct business efficiently, honestly and fairly, regard may be had to the management and organisational structure, reporting principles and procedures, internal audit procedures, procedures for compliance with the securities laws and risk management policies which the dealer, fund manager or investment adviser, as the case may be, has adopted or proposes to adopt for its business.

Shareholding structure

4. The shareholding structure of the dealer, fund manager or investment adviser, as the case may be, is in accordance with the economic policy of Malaysia."

86. (1) For the purposes of this section and sections 87 and 88—

General
transitional
and savings
provision.

"effective date" means the relevant date or dates, as the case may be, appointed by the Minister under section 1 of this Act;





"Licensing Officer" has the same meaning as is assigned to that expression in the principal Act.

(2) All actions, regulations, orders, directions, notifications, approvals, decisions and other executive acts, howsoever called, made, given, or done under, or in accordance with, or by virtue of, the principal Act before the commencement of this Act, shall in so far as it is not inconsistent with the substituted provisions be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of the principal Act as amended by this Act, and shall continue to remain in force and have effect in relation to the persons to whom they apply until amended, revoked or rescinded under, in accordance with or by virtue of, the corresponding provisions of the principal Act as amended by this Act.

(3) Nothing in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the principal Act before the commencement of this Act or any proceedings brought or sentence imposed before that day in respect of such offence.

(4) Nothing in this Act shall affect any right, privilege, obligation or liability acquired, accrued or incurred under the principal Act before the commencement of this Act and any legal proceedings or remedy in respect of such right, privilege, obligation or liability shall not be affected and any such legal proceedings or remedy may be instituted, continued or enforced as if this Act had not been enacted.

(5) The powers, rights, privileges, duties, liabilities and obligations which immediately before the commencement of this Act were those of the Licensing Officer shall, as from the commencement of this Act, be the powers, rights, privileges, duties, liabilities and obligations of the Commission.

Specific
transitional
and savings
provisions.

87. (1) Without limiting the generality of section 86, the following transitional and savings provisions shall apply.

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(2) Where—

- (a) a notice under subsection 9(1) of the principal Act was duly given by the committee of a stock exchange to the Commission before the commencement of this Act; and
- (b) a period of twenty-one days had not elapsed after the receipt of the notice by the Commission before the commencement of this Act; and
- (c) the Commission had not before the commencement of this Act disallowed the whole or any part of the amendment to which the notice relates,

the amendment shall not take effect unless—

- (aa) the committee of the stock exchange immediately after the commencement of this Act submits or causes to be submitted to the Commission the matters specified in subsection 9(1) of the principal Act as amended by this Act; and
- (bb) the Commission approves in writing the amendment under subsection 9(3) of the principal Act as amended by this Act.

(3) Where—

- (a) a notice under subsection 9(4) of the principal Act was duly given to a stock exchange by the Commission before the commencement of this Act; and
- (b) the date specified in the notice as the date on which the amendment was to take effect is a date after the commencement of this Act,

the notice shall have effect as if it were a request made by the Commission under subsection 9(5) of the principal Act as amended by this Act and the amendments made by this Act had been in force when the notice was given.

(4) A requirement made of a stock exchange by the Licensing Officer under subsection 10(1) of the principal Act that had not been complied with before the commencement of this Act shall be taken to have been

duly made by the Commission under subsection 10(1) of the principal Act as amended by this Act.

(5) If immediately before the commencement of this Act, a person holds a dealer's licence or a dealer's representative's licence under Part IV of the principal Act in respect of which the person acts as a fund manager or a fund manager's representative, as the case may be, the dealer's licence or the dealer's representative's licence shall have effect as if it were a fund manager's licence or a fund manager's representative's licence granted under the corresponding provisions of Part IV of the principal Act as amended by this Act until the expiry of such licence.

(6) If immediately before the commencement of this Act, a person holds a dealer's licence or a dealer's representative's licence under Part IV of the principal Act in respect of which the person acts only as a fund manager or a fund manager's representative, as the case may be, and in respect of which an application for renewal was made under the principal Act and was pending on the commencement of this Act, such application shall be deemed to be an application for renewal of a fund manager's licence or a fund manager's representative's licence, as the case may be, under the corresponding provisions of the principal Act as amended by this Act.

(7) A deposit lodged with the Accountant-General under subsection 23(1) of the principal Act before the commencement of this Act shall, after the commencement of this Act, be deemed to be a deposit lodged under subsection 23(1) of the principal Act as amended by this Act and any monies held by the Accountant-General pursuant to subsection 23(1) of the principal Act shall be transferred to the Commission and may be applied in accordance with subsection 23(3) of the principal Act as amended by this Act

(8) The register kept by the Licensing Officer under subsection 26(1) of the principal Act before the commencement of this Act shall be deemed to be part of the register to be kept by the Commission under subsection 26(1) of the principal Act as amended by this Act.

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(9) An appeal made to the Minister under subsection 28(1) of the principal Act against a decision of the Licensing Officer before the commencement of this Act and pending on the commencement of this Act, shall be deemed to have been duly made under subsection 28(1) of the principal Act as amended by this Act as if it were an appeal against a corresponding decision of the Commission under the principal Act as amended by this Act and the amendments made by this Act had been in force when the appeal was made.

(10) A stock exchange that immediately before the commencement of this Act kept a fidelity fund under subsection 61(1) of the principal Act shall, after the commencement of this Act, treat and maintain that fidelity fund as part of the compensation fund established under subsection 61(1) of the principal Act as amended by this Act in accordance with and for the purposes of Part VIII of the principal Act as amended by this Act and any regulations made under that Part and all monies standing in or due to be paid to such fidelity fund shall on the effective date be transferred to or be payable to the said compensation fund and such monies shall from the effective date form part of that compensation fund.

(11) All investments and property of the fidelity fund maintained under section 61 of the principal Act before the commencement of this Act shall on the effective date vest in the relevant stock exchange that maintains the compensation fund under section 61 of the principal Act as amended by this Act and shall from the effective date form part of that compensation fund.

(12) The rights which the stock exchange that established and maintained the fidelity fund under section 61 of the principal Act before the commencement of this Act had, whether under the provisions of the principal Act or otherwise, in connection with the administration of that fidelity fund shall, after the commencement of this Act, be vested in the relevant stock exchange which establishes and maintains the compensation fund under section 61 of the principal Act as amended by this Act.

(13) A management sub-committee appointed by the committee of a stock exchange under subsection 66(1) of the principal Act shall, if the appointment is in force at the commencement of this Act, continue to remain in existence and shall exercise all such functions as may be conferred on the management sub-committee under the principal Act until there is established a committee or sub-committee, as the case may be, under the corresponding provision of the regulations made under the principal Act as amended by this Act.

(14) A claim against the fidelity fund of a stock exchange that was duly made under Part VIII of the principal Act and that was pending on the commencement of this Act shall be deemed to have been duly made against the compensation fund under Part VIII of the principal Act as amended by this Act.

(15) An offer made to a person by the Licensing Officer under subsection 124(1) of the principal Act that had not been accepted before the commencement of this Act shall be deemed to have been duly made by the Commission under subsection 124(1) of the principal Act as amended by this Act.

Prevention of anomalies.

88. If any difficulty arises with respect to the provisions introduced or amended by this Act or the savings and transitional provisions in sections 86 and 87, the Minister may, by order published in the *Gazette*, make such modifications in those provisions as may appear to him to be necessary for preventing anomalies:

Provided that the Minister shall not exercise the power so conferred by this section after the expiration of two years from the commencement of this Act.

