

# Securities Industry Act 1983

(Act 280)

Incorporating all amendments up to  
5 January 2004

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SECURITIES INDUSTRY ACT 1983  
(Incorporating amendment – Act A1218/2003)  
Act 280

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# SECURITIES INDUSTRY ACT 1983

(Act 280)

An Act to make provisions with respect to stock exchange and persons dealing in securities, and for certain offences relating to trading in securities, and for other purposes connected therewith.

[7 July 1983]

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

## PART I

### PRELIMINARY

#### 1. Short title, commencement and application.

(1) This Act may be cited as the Securities Industry Act, 1983 and shall come into operation on such date as the Minister may, by notification in the Gazette, appoint.

(2) [Repealed by Act A943:s.2]

#### 2. Interpretation.

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

“accounting records” has the same meaning as is assigned to that expression in the Companies Act 1965 [Act 125];

[Ins. Act A943:s.3]

“agent”, in relation to a dealer, includes a person who is or has at any time been a banker of the dealer;

“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;

[Ins. Act A943:s.3]

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

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

[Ins. Act A943:s.3; Am. Act A1218:s.2]

“books” includes—

(a) a register;

(b) any other record of information;

- (c) accounts or accounting records, however compiled, recorded or stored; and
- (d) a document;

[Ins. Act A943:s.3]

“business rules” has the same meaning as is assigned to that expression in the Futures Industry Act 1993 [Act 499];

[Ins. Act A1218:s.2]

“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];

[Ins. Act A943:s.3]

“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;

[Ins. Act A943:s.3]

“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;

[Ins. Act A943:s.3]

“clearing house of an exchange company” has the same meaning as is assigned to the expression “clearing house” in the Futures Industry Act 1993;

[Ins. Act A1218:s.2]

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

[Am. Act A847:s.2]

“committee” [Deleted by Act A1218:s.2]

“company” has the same meaning as is assigned to that expression in the Companies Act 1965;

“corporation” has the same meaning as is assigned to that expression in the Companies Act 1965;

“dealer” means a person who carries on a business of dealing in securities as a corporation whether or not he carries on any other business, but does not include an exempt dealer;

[Am. Act A661:s.2]

“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, and performs for that dealer any of the functions of a dealer other than work ordinarily performed by accountants, clerks or cashiers;

[Am. Act A661:s.2; Act A943:s.3; Am. Act A1218:s.2]

“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;

[Am. Act A943:s.3]

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

[Ins. Act A1218:s.2]

“director” has the same meaning as is assigned to that expression in the Companies Act 1965;

“document” has the same meaning as is assigned to that expression in the Evidence Act 1950 [Act 56];

[Ins. Act A943:s.3]

“exchange company” has the same meaning as is assigned to that expression in the Futures Industry Act 1993;

[Ins. Act A1218:s.2]

“exchange holding company” means a body corporate that is the holding company of any stock exchange, recognized clearing house, exchange company, clearing house of an exchange company or central depository, and that has been approved as an exchange holding company under section 11D;

[Ins. Act A1218:s.2]

“exempt dealer” means—

- (a) a person who carries on a business of dealing in securities only through the holder of a dealer's licence for his own account or for its related corporation;

[Am. Act A661:s.2; Act A943:s.3]

- (b) a person who is registered with a body that is approved by the Commission, and the dealing in securities by such person is in relation to arranging or offering for the sale or purchase of, any interest in a unit trust scheme, subject to any term or condition as may from time to time be specified by the Commission;

[Am. Act A943:s.3; Subs. Act A1218:s.2]

- (c) any public statutory corporation constituted under any written law;

[Am. Act A943:s.3]

- (d) such other person or class of persons as the Minister may prescribe to be an exempt dealer or exempt dealers subject to such terms and conditions as the Minister may impose; or

[Am. Act A847:s.2, Act A943:s.3, Act A1017:s.3]

(e) a licensed fund manager or an exempt fund manager whose dealing in securities is solely incidental to the conduct of his business as a fund manager or an exempt fund manager;

[Ins. Act A943:s.3; Am. Act A1017:s.3; Subs. Act A1218:s.2]

“exempt fund manager” means a person exempted under paragraph 15A(2)(d);

[Ins. Act A943:s.3]

“exempt investment adviser” means a person exempted under paragraph 14(2)(d);

[Ins. Act A1218:s.2]

“exempt stock market” means a stock market which is declared to be an exempt stock market under paragraph 7(2)(a);

[Ins. Act A943:s.3]

“fund manager” means a person who under an agreement with any other person or persons, undertakes on behalf of that person or persons, whether on a discretionary authority granted by such person or persons or otherwise, the management of a portfolio of securities (other than any arrangement made for the purpose, or having the effect, of providing facilities for the participation of persons as beneficiaries under a trust in profits or income arising from the trading in futures contracts) for the purposes of investment;

[Ins. Act A943:s.3; Am. Act A1017:s.3]

“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 15A(2), and performs for that fund manager any of the functions of a fund manager other than work ordinarily performed by accountants, clerks or cashiers;

[Ins. Act A943:s.3]

“futures contract” has the same meaning as is assigned to that expression in the Futures Industry Act 1993 [Act 499];

[Ins. Act A943:s.3]

“holding company” has the same meaning as is assigned to that expression in sections 5 and 5A of the Companies Act 1965;

[Ins. Act A1218:s.2]

“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;

[Ins. Act A943:s.3]

“Investigating Officer” means an Investigating Officer of the Commission appointed under the Securities Commission Act 1993;

[Am. Act A847:s.2]

“investment adviser” means a person who—

- (a) carries on a business of advising others concerning securities;
- (b) as part of a business, issues or promulgates analyses or reports concerning securities;  
or
- (ba) carries on a business of analysing the financial circumstances of another person and provides a plan to meet that other person’s financial needs and objectives, including any investment plan in securities, whether or not a fee is charged in relation thereto,  
[Ins. Act A1218:s.2]

but the expression does not include—

[Am. Act A943:s.3]

- (c) a licensed bank as defined under the Banking Act 1973 [Act 102];
- (d) an Islamic bank as defined under the Islamic Banking Act 1983 [Act 276];
- (e) a company or society registered under any legislation relating to insurance;
- (f) a company registered under the Trust Companies Act 1949 [Act 100];
- (g) an advocate and solicitor or accountant in practice whose carrying on of that business is solely incidental to the practice of his profession; or
- (h) [Deleted by Act A1218:s.2]
- (i) a person who is the proprietor of a newspaper and holder of a permit issued under the Printing Presses and Publications Act 1984 [Act 301] where—  
[Am. Act A943:s.3]
  - (i) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers for, and purchasers of, the newspaper for value;
  - (ii) the advice is given or the analyses or reports are issued or promulgated only through that newspaper;
  - (iii) that person receives no commission or other consideration for issuing or promulgating the analyses or reports; and
  - (iv) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person's business as a newspaper proprietor;

[Am. Act A943:s.3]

- (j) [Deleted by Act A1218:s.2]

“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 who is not a person referred to in subsection 14(2), and performs for that investment adviser any of the functions of an investment adviser other than work ordinarily performed by accountants, clerks or cashiers;

[Am. Act A943:s.3; Am. Act A1218:s.2]

“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;

[Am. Act A943:s.3]

“licensed institution” has the same meaning as is assigned to that expression in the Banking and Financial Institutions Act 1989 [Act 372];

[Ins. Act A943:s.3]

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

[Ins. Act A943:s.3]

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

[Ins. Act A1218:s.2]

“Licensing Officer” [Repealed by Act A943:s.3]

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

[Am. Act A1218:s.2]

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

[Am. Act A1218:s.2]

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

whether those rules—

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

[Ins. Act A661:s.2]



“member company” [Deleted by Act A1218:s.2]

“Minister” means the Minister of Finance;

“officer”, in relation to a corporation, includes—

- (a) any director, secretary or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and
- (c) any liquidator of a company appointed in a voluntary winding up,

but does not include—

- (d) any receiver who is not also a manager;
- (e) any receiver and manager appointed by the Court; or
- (f) any liquidator appointed by the Court or by the creditors;

“participant” means a person who, in accordance with the rules of a recognized clearing house, may participate in one or more of the services provided by the recognized clearing house for the clearing and settlement of transactions or trades effected on the stock market of a stock exchange or subject to the rules of a stock exchange;

[Ins. Act A943:s.3; Subs. Act A1218:s.2]

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

[Ins. Act A1218:s.2]

“prescribed” means prescribed by the Minister by or under this Act or under any regulations made under this Act, and where 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;

[Ins. Act A943:s.3]

“public interest directors”, in relation to a stock exchange or an exchange holding company, means persons who are appointed by the Minister under section 8D;

[Ins. Act A1218:s.2]

“recognized clearing house” means a clearing house which is declared to be a recognized clearing house under subsection 8A(1);

“Registrar” [Repealed by Act A1017:s.3]

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

[Ins. Act A943:s.3]

“relevant authority” [Repealed by Act A943:s.3]

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

investment representative;

[Am. Act A943:s.3]

“rules”, in relation to—

- (a) a stock exchange, means the memorandum of association and the articles of association, or the rules or directions, by whatever name called and wherever contained, governing the membership, management, operations or procedures of the stock exchange, or the conduct of its participating organizations and, without limiting the generality of the foregoing, includes—

[Am. Act A1218:s.2]

- (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 participating organizations of any obligations imposed by this Act or any other written law;
- (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; and
- (v) the listing requirements of the stock exchange;

[Ins. Act A1218:s.2]

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

[Am. Act A943:s.3]

- (v) the default rules;

[Ins. Act A1218:s.2]

- (c) a central depository, has the same meaning as is assigned to that expression in the Securities Industry (Central Depositories) Act 1991;

[Ins. Act A1218:s.2]

- (d) an exchange company, has the same meaning as is assigned to the expression “business rules” in the Futures Industry Act 1993;

[Ins. Act A1218:s.2]

(e) a clearing house of an exchange company, has the same meaning as is assigned to the expression “business rules” in the Futures Industry Act 1993; and

[Ins. Act A1218:s.2]

(f) an exchange holding company, means the memorandum and articles of association, including the rules regulating the activities and conduct of the company in its capacity as an exchange holding company;

[Ins. Act A1218:s.2]

“securities” has the same meaning as is assigned to that expression in section 2 of the Securities Commission Act 1993;

[Am. Act A847:s.2; Act A1017:s.3]

“securities laws” has the same meaning as is assigned to that expression in the Securities Commission Act 1993;

[Ins. Act A943:s.3; Subs. Act A1218:s.2]

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

[Ins. Act A1218:s.2]

“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;

[Ins. Act A943:s.3]

“stock broker” [Repealed by Act A1017:s.3]

“stock exchange” means any body corporate which has been approved by the Minister under subsection 8(2);

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

(a) offers to sell, purchases or exchanges of securities are regularly made or accepted;  
(b) offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities, are regularly made; or

[Am. Act A1017:s.3]

(c) information concerning the prices at which or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected to sell, purchase or exchange securities is regularly provided;

[Ins. Act A661:s.2]

“subsidiary” has the same meaning as is assigned to that expression in section 5 of the Companies Act 1965;

[Ins. Act A1218:s.2]

“this Act” includes any subsidiary legislation made under this Act;

[Ins. Act A943:s.3]

“trust account” means a trust account established under section 44 or 47C;

[Am. Act A943:s.3]

“unit trust scheme” has the same meaning as is assigned to that expression in section 2 of the Securities Commission Act 1993;

[Am. Act A847:s.2; Act A1017:s.3]

“voting shares” has the same meaning as is assigned to that expression in section 4 of the Companies Act 1965;

[Ins. Act A1218:s.2]

(2) Regulations may provide that, subject to any terms and conditions prescribed, all or any of 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;

[Am. Act A1017:s.3]

(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 into by him of any specified transaction or class of transactions;

[Am. Act A1017:s.3]

(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) to such extent as is prescribed.

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

[Ins. Act A1218:s.2]

### 3. Associated person.

(1) A reference in this Act to a person associated with another person shall be construed as a reference to—

(a) where the other person is a body corporate—

(i) a director or secretary of the body corporate;

(ii) a body corporate that is related to the other person; or

(iii) a director or secretary of such a related body corporate;

(b) where the matter to which the reference relates is the extent of a power

to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied–

- (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the body corporate;
  - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or
  - (iii) under which either of those persons may acquire from the other of them shares in the body corporate or may be required to dispose of such shares in accordance with the directions of the other of them;
- (c) a person in concert with whom the other person is acting, or proposes to act, in relation to the matter to which the reference relates;
- (d) where the matter to which the reference relates is a matter other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate–
- (i) a 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;
- [Am. Act A943:s.4]
- (iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
  - (iv) a person who is a director of a body corporate that carries on a business of dealing in securities and of which the other person is also a director; or
  - (v) subject to subsection (2), a person who is a director of a body corporate of which the other person is a director, not being a body corporate that carries on a business of dealing in securities;
- (e) a person with whom the other person is, by virtue of any regulation that may be introduced, to be regarded as associated in respect of the matter to which the reference relates;
- (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in any of the preceding paragraphs – that last mentioned person.

- (2) Where, in proceedings under this Act, it is alleged that a person referred to in subparagraph (1)(d)(v) was associated with another person at a particular time, that person shall be deemed not to have been so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.
  - (3) A person shall not be taken to be associated with another person by virtue of paragraph (1)(b), (c), (e) or (f) by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in a professional capacity.
4. Interest in Securities.
- (1) Where any property held in trust consists of or includes securities in which a person knows or has reasonable grounds for believing that he has an interest, he shall be deemed to have interest in those securities.
  - (2) A right does not constitute an interest in a security where—
    - (a) a right, being a right or an interest described in the definition of “interest” in section 84 of the Companies Act 1965, was issued or offered to the public for subscription or purchase;
    - (b) the public was invited to subscribe for or purchase such a right, and the right was so subscribed for or purchased; or
    - (c) such a right is held by the management company and was issued for the purpose of an offer to the public within the meaning of section 84 of the Companies Act 1965.
  - (3) A person shall be deemed to have an interest in a security where a body corporate has an interest in a security and—
    - (a) the body corporate is, or its directors are accustomed, or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of that person in relation to that security;
    - (b) that person has a controlling interest in the body corporate; or
    - (c) that person, or the associates of that person or that person and his associates are entitled to exercise or control the exercise of not less than 15% of the votes attached to the voting shares in the body corporate.
  - (4) For the purposes of paragraph (3)(c), a person is an associate of another person if the first-mentioned person is—
    - (a) a corporation which, by virtue of section 6 of the Companies Act 1965 [Act 125] is deemed to be related to that other person;
    - (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (3);
    - (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in

relation to that security;

- (d) a body corporate which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or
  - (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.
- (5) A person shall be deemed to have an interest in a security in any one or more of the following circumstances where he—
- [Am. Act A943:s.5]
- (a) has entered into a contract to purchase a security; or
  - (b) has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
  - (c) has the right or power to acquire a security or an interest in a security, under an option, whether the right or power is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
- [Am. Act A943:s.5]
- (d) is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.
- (6) A person shall be deemed to have an interest in a security if that security is held jointly with another person.
- (7) For the purpose of determining whether a person has an interest in a security it is immaterial that the interest cannot be related to a particular security.
- (8) There shall be disregarded—
- (a) [Repealed by Act A1040]
  - (b) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
  - (c) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and
  - (d) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.
- (9) An interest in a security shall not be disregarded by reason only of—
- (a) its remoteness;

- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.



PART II

CAPITAL ISSUES COMMITTEE

5. [Repealed by Act 498]
6. [Repealed by Act 498]

## PART III

### STOCK EXCHANGES AND CLEARING HOUSES

#### 7. Establishment of stock markets.

- (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) a stock market of a stock exchange;
  - (b) a stock market of an exchange holding company which is itself approved as a stock exchange; or
  - (c) an exempt stock market.

[Subs. Act A1218:s.3]

(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 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 RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A847:s.3; Act A943:s.6; Act A943:s.7]

#### 8. Power of Minister to approve a stock exchange.

- (1) An application for the approval of a body corporate as a stock exchange may be made in writing to the Minister.

- (2) The Minister may in writing, on the recommendation of the Commission, approve a body corporate as a stock exchange, subject to any terms and conditions as he deems fit, if he is satisfied that—
- (a) the body corporate will ensure that, as far as is reasonably practicable, it will operate an orderly and fair market in relation to securities that are traded through its facilities;
  - (b) the body corporate will manage any risks associated with its business and operations prudently;
  - (c) the body corporate, in discharging its obligations under paragraph (a), will not act contrary to the public interest and in particular the interest of investors;
  - (d) the body corporate is able to take appropriate action against its participating organizations and any person to whom the rules apply for any breach of its rules;
  - (e) the rules of the body corporate make satisfactory provision—
    - (i) for an orderly and fair market in relation to the securities that are traded through its facilities;
    - (ii) for the proper regulation and supervision of its participating organizations;
    - (iii) for the exclusion of persons who are not of good character and high business integrity from being recognized as participating organizations;
    - (iv) for the expulsion, suspension or disciplining of participating organizations and any person acting on behalf of the participating organizations to whom the rules apply, for conduct that is inconsistent with just and equitable principles in the transaction of business or for a contravention of or failure to comply with the rules of the stock exchange;
    - (v) with respect to the conditions under which securities may be listed for trading in the market proposed to be conducted by the body corporate;
    - (vi) with respect to the conditions governing dealings in securities by participating organizations;
    - (vii) with respect to the class or classes of securities that may be dealt in by participating organizations; and
    - (viii) generally for the carrying on of the business of the proposed stock exchange with due regard to the need for the protection of investors and public interest;
  - (f) the body corporate shall at all times have sufficient financial, human and other resources to ensure the provision of—
    - (i) an orderly and fair market in relation to securities that are traded through its facilities;
    - (ii) adequate and properly equipped premises for the conduct of its business;
    - (iii) competent personnel for the conduct of its business; and
    - (iv) automated systems with adequate capacity, security arrangements and facilities

to meet emergencies; and

- (g) the interest of the public or the proper regulation of the market will be served by the granting of this approval.
- (3) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation, to the Minister.
- (4) An applicant under subsection (1) shall provide such information as the Minister or the Commission considers necessary in relation to the application.
- (5) Without limiting the generality of the terms and conditions specified in subsection (2), the Minister may in writing, on the recommendation of the Commission, amend, revoke or impose new terms and conditions, if the Minister is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the stock market.

[Am. Act A847:s.4; Act A943:s.8; Subs. Act A1218:s.4]

#### 8A. Recognized clearing house.

- (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 recognized 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 will such time as may be specified, in the notice referred to in paragraph (a).

[Ins. Act A943:s.8]

#### 8B. Withdrawal of recognition of clearing house.

- (1) The Commission may with approval of the Minister, by notice published in the Gazette, and by such other means as the Commission considers appropriate—
  - (a) withdraw a recognition granted under section 8A to the clearing house with effect from the date specified in the notice; or
  - (b) direct the clearing house to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.
- (2) The Commission shall not withdraw a recognition or issue a direction under subsection (1) unless the Commission is satisfied that it is appropriate to do so for the protection of investors or in the public interest or for the proper regulation of the clearing and settlement of transactions in securities, where any of the following circumstances occurs:

- (a) the clearing house ceases to provide clearing house facilities;
  - (b) the clearing house is being wound up or otherwise dissolved, whether in Malaysia or elsewhere;
  - (c) the clearing house has contravened section 9A or any term or condition of its recognition or is charged with any offence under any securities laws;
  - (d) the clearing house has failed to comply with a condition, requirement or direction given under section 11 or 11L;
  - (e) any information provided for the purposes of section 8A was false or misleading in a material particular;
  - (f) a judgement debt against the clearing house has not been satisfied in whole or in part;
  - (g) a receiver, a receiver and manager, or an equivalent person has been appointed, whether in Malaysia or elsewhere, in relation to or in respect of any property of the clearing house;
  - (h) the clearing house has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
  - (i) the clearing house on its own accord applies to the Commission to withdraw the recognition as a clearing house granted to it and the Commission, with the approval of the Minister, deems it fit to do so.
- (3) For the purposes of paragraph (2)(a), a clearing house shall be deemed to have ceased to provide clearing house facilities if it has ceased to provide such facilities for a period of one month unless it has obtained the prior approval of the Commission to do so.
- (4) Notwithstanding the withdrawal of a recognition or the issuance of a direction under subsection (1), the Commission may permit the clearing house to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice published under that subsection for the purpose of—
- (a) closing down the operations of the clearing house or ceasing to provide the services specified in the notice; or
  - (b) protecting the investors or the public interest.
- (5) Where the Commission has granted permission to a clearing house under subsection (4), the clearing house shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 8A.
- (6) The Commission shall not take any action under subsection (1) without giving an opportunity to be heard.

[Subs. Act A1218:s.5]

### 8C. Effect of withdrawal of recognition of clearing house.

Any withdrawal of recognition or direction issued under section 8B shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement entered into through the clearing house facilities operated by the recognized clearing house, whether the agreement, transaction or arrangement was entered into before or, where subsection 8B(4) applies, after the withdrawal of the recognition or issuance of the direction under section 8B; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[Ins. Act A1218:s.6]

8D. Appointment of directors of stock exchange and exchange holding company.

- (1) In relation to an exchange holding company or a stock exchange other than a stock exchange that is referred to in subsection (2)–
  - (a) one third of the number of directors on the board of such exchange holding company or stock exchange as the case may be, shall be appointed by the Minister, in consultation with the Commission, to be public interest directors of the exchange holding company or stock exchange and, notwithstanding the provision of any other written law, such public interest directors so appointed–
    - (i) shall have the same rights, powers, duties and obligations, liberties and privileges as any director of the exchange company or stock exchange; and
    - (ii) shall hold office for a period specified by the Minister who may at any time revoke such an appointment; and
  - (b) no person other than a public interest director referred to in paragraph (a) shall accept appointment or election as a director of the exchange holding company or stock exchange unless the concurrence of the Commission is obtained.
- (2) Notwithstanding the provisions of subsection (1), in relation to the board of a stock exchange that is a subsidiary of an exchange holding company, no person shall accept appointment or election as a director of such stock exchange unless the concurrence of the Commission is obtained.
- (3) The Minister shall, in consultation with the Commission, appoint one person from amongst the public interest directors so appointed under subsection (1) to be the non-executive Chairman of the board of the exchange holding company or stock exchange, as the case may be, whose remuneration shall be determined by the board of the exchange holding company, or stock exchange, as the case may be.
- (4) Where the concurrence of the Commission is required under subsection (1) or (2), the Commission may refuse to concur if–
  - (a) any proposed director is an undischarged bankrupt, whether in Malaysia or elsewhere;
  - (b) a judgement debt against the proposed director has not been satisfied in whole or in part;
  - (c) the proposed director has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
  - (d) the proposed director–

- (i) has been convicted, whether in Malaysia or elsewhere, of an offence, involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or
    - (ii) has been convicted of an offence under the securities laws; or
  - (e) the Commission is not satisfied that the proposed director is a person of integrity and is fit and proper to be a director.
- (5) For the purposes of subsection (1)–
- (a) the Minister may, on the recommendation of the Commission, reduce the number of public interest directors on the board of the exchange holding company or stock exchange; and
  - (b) all public interest directors appointed under subsection (1) shall retire after a term of three years but are eligible for reappointment.

9. Commission to approve amendment to rules of stock exchange.

- (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.
- (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.
- (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.  
[Am. Act A847:s.5; Subs. A943:s.9]

9A. Commission to approve amendment to rules of recognized clearing house.

- (1) No amendment to the rules of a recognized clearing house shall have effect unless it has been approved by the Commission under subsection (3).
- (2) Where a recognized clearing house proposes to make any amendment to its rules, the recognized 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 recognized 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 recognized clearing house, except any default rules of the 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 recognized 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).  
[Am. Act A1218:s.7]
- (5) Where the Commission is of the opinion that any amendment to the rules of a recognized 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 recognized clearing house, require the recognized clearing house to submit such amendment for its approval under subsection (3).
- (6) Where a rule amended by the recognized 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 recognized 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 recognized clearing house, by written notice require the recognized clearing house to amend the rules of the recognized clearing house in such manner and within such period as may be specified in the notice.
- (8) A recognized 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.

[Ins. Act A943:s.10]

#### 9B. Duties of stock exchange.

- (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 having particular regard to the need for the protection of investors; and  
[Am. Act A1218:s.8]
  - (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 take appropriate action as may be provided for under its rules for the purpose of monitoring or securing compliance with such rules;  
[Subs. Act A1218:s.8]
- (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 participating organization to meet its obligations in respect of its business of dealing in securities, including the ability of any participating organization 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 recognized 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 participating organization or of the chief executive or directors of the participating organization, as the case may be, is in question or may reasonably be affected.  
[Am. Act A1218:s.8]
- (5) Without prejudice to subsection (4), when a stock exchange expels, or suspends any participating organization, or otherwise disciplines any of its participating organizations, it shall, within seven days, give to the Commission in writing the following particulars:  
[Am. Act A1218:s.8]
  - (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 have sufficient financial, human and other resources to ensure the provision of—
- (a) an orderly and fair market in relation to securities that are traded through its facilities;
  - (b) adequate and properly equipped premises for the conduct of its business;
  - (c) competent personnel for the conduct of its business; and
  - (d) automated systems with adequate capacity, security arrangements and facilities to meet emergencies.

[Am. Act A1218:s.8]

#### 9C. Closure of stock exchange in emergency.

- (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.
- (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 recognized clearing house and direct the recognized 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.

[Am. Act A943:s.10]

9D. Withdrawal of approval of stock exchange.

- (1) The Minister may, on the recommendation of the Commission, by notice published in the Gazette, and by such other means as the Commission considers appropriate—
  - (a) withdraw an approval granted under section 8 to the stock exchange, with effect from the date specified in the notice; or
  - (b) direct the stock exchange to cease to provide or operate such facilities, or to cease to provide such services, as are specified in the notice, with effect from the date specified in the notice.
- (2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of markets in securities, where any of the following circumstances occurs:
  - (a) the stock exchange ceases to operate its stock market;
  - (b) the stock exchange is being wound up or otherwise dissolved, whether in Malaysia or elsewhere;
  - (c) the stock exchange has contravened any term or condition of its approval or is charged with any offence under any securities laws;
  - (d) the stock exchange has failed to comply with a condition, requirement or direction given under section 11 or 11L;
  - (e) any information provided for the purposes of section 8 was false or misleading in a material particular;
  - (f) a judgement debt against the stock exchange has not been satisfied in whole or in part;
  - (g) a receiver, a receiver and manager, or equivalent person has been appointed, whether in Malaysia or elsewhere, in relation to or in respect of any property of the stock exchange;
  - (h) the stock exchange has, whether in Malaysia or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
  - (i) the stock exchange on its own accord applies to the Minister to withdraw the approval as a stock exchange granted to it and the Minister, on the recommendation of the Commission, deems it fit to do so.
- (3) For the purposes of paragraph (2)(a), a stock exchange shall be deemed to have ceased to operate its stock market if it has ceased to operate its stock market for a period of one month unless it has obtained the prior approval of the Minister to do so.
- (4) Notwithstanding the withdrawal of an approval or the issuance of a direction under

subsection (1), the Minister may permit the stock exchange to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purpose of—

- (a) closing down the operations of the stock exchange or ceasing to provide the services specified in the notice; or
  - (b) protecting the interest of investors or the public interest.
- (5) Where the Minister has granted permission to a stock exchange under subsection (4), the stock exchange shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 7.
- (6) The Minister shall not take any action under subsection (1) without giving an opportunity to be heard.

[Ins. Act A1218:s.9]

9E. Effect of withdrawal of approval of stock exchange.

Any withdrawal of approval or direction issued under section 9D shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement entered into on the stock market or operated by the stock exchange, whether the agreement, transaction or arrangement was entered into before or, where subsection 9D(4) applies, after the withdrawal of the approval or issuance of the direction under section 9D; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[Ins. Act A1218:s.9]

10. Exchange holding company, stock exchange and recognized clearing house to provide assistance to Commission.

[Am. Act A1218:s.10]

- (1) An exchange holding company, a stock exchange or a recognized 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 exchange holding company or stock exchange or recognized 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.

[Am. Act A1218:s.10]

(2) [Repealed by Act A1017:s.4]

(3) [Deleted by Act A1218:s.10]

(4) A person acting on behalf of, or authorised by, the Commission 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, 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 RM500,000 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 participating organizations and any other persons.

[Am. Act A661:s.5; Act A847:s.6; Subs. Act A943:s.6;  
Subs. Act A943: s 11; Act A1017:s.4; Am. Act A1218:s.10]

11. Powers concerning compliance with provisions of this Act and rules of the stock exchange, etc.

- (1) Where any person fails to comply with, observe, enforce or give effect to—

- (a) the rules of a stock exchange or a recognized clearing house or rules of a central depository; or
- (b) the provisions of this Act other than the provisions of Part IX,

in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules or provisions, that person has committed a breach.

- (2) Without limiting the generality of subsection (1), the following persons shall be deemed to be under an obligation to comply with, observe, enforce or give effect to the rules of a stock exchange, a recognized clearing house or a central depository, to the extent to which such rules purport to apply in relation to those persons, or the provisions of this Act other than the provisions of Part IX:

- (a) an exchange holding company;
- (b) a stock exchange;
- (c) a central depository;
- (d) a recognized clearing house;
- (e) a participant;
- (f) a participating organization;
- (g) a depository participant;
- (h) a corporation that has been admitted to the official list of a stock exchange and has not been removed from that official list and a person associated with such corporation;
- (i) a person to whom the rules of a stock exchange, a recognized clearing house or a central depository, as the case may be, apply;
- (j) the directors or officers of the persons referred to in paragraphs (a) to (h);
- (k) the advisers of a corporation referred to in paragraph (h) in relation to any corporate proposal or transaction; and

- (l) any other person on whom an obligation under the provisions of this Act has been imposed.
- (3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:
- (a) direct the person in breach to comply with, observe, enforce or give effect to such rules or provisions;
  - (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding RM1 million;
  - (c) reprimand the person in breach;
  - (d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.
- (4) The Commission shall not take any action under subsection (3) without giving an opportunity to be heard.
- (5) For the purposes of paragraph (3)(d), in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to—
- (a) the profits that have accrued to such person in breach; or
  - (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.
- (6) Where the Commission takes an action under subsection (3) against any person other than an exchange holding company, a stock exchange, a recognized clearing house or a central depository, the Commission shall serve a written notice on the exchange holding company, the stock exchange, the recognized clearing house or the central depository, as the case may be, of the grounds and the proposed action to be taken by the Commission.
- (7) Nothing in this section shall preclude—
- (a) the Commission from taking any of the actions that it is empowered to take under this Act or any securities laws against the person in breach; and
  - (b) the exchange holding company, stock exchange, recognized clearing house or central depository, as the case may be, from taking any action under the relevant rules.
- [Am. Act A847:s.7; Subs. Act A943:s.6; Subs. Act A943:s.11;  
Subs. Act A1040:s.4; Subs. Act A1218:s.11]

#### 11A. Power of Commission to prohibit trading in particular securities.

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

[Ins. Act A943:s.12]

11B. Suspension order relating to stock exchange, recognized clearing house or central depository.

- (1) Without prejudice to section 9C, 9D 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, recognized 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, recognized 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, recognized 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,

[Am. Act A1218:s.12]

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 (7)(a) on the stock exchange, recognized 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, recognized 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.
  - (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, recognized 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 RM5 million or to imprisonment for a term not exceeding 10 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, recognized clearing house or central depository.

[Ins. Act A943:s.12]

#### 11C. Exchange holding company.

No body corporate shall be an exchange holding company or a holding company of an exchange holding company, unless the body corporate has been approved as an exchange holding company under section 11D.

[Ins. Act A1218:s.13]

#### 11D. Power of Minister to approve an exchange holding company.



- (1) An application for approval of a body corporate as an exchange holding company may be made in writing to the Minister.
- (2) The Minister may in writing, on the recommendation of the Commission, approve a body corporate as an exchange holding company, subject to any terms and conditions as he deems fit, if he is satisfied that it is appropriate to do so—
  - (a) for the protection of investors;
  - (b) in the public interest; or
  - (c) for the proper regulation of a stock market of a stock exchange.
- (3) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation, to the Minister.
- (4) An applicant under subsection (1) shall provide such information as the Minister or the Commission considers necessary in relation to the application.
- (5) The Minister may, on the recommendation of the Commission, impose different conditions or restrictions or give different directions with respect to different applications for approval as an exchange holding company.
- (6) For the avoidance of doubt—
  - (a) to the extent that an exchange holding company would be holding itself out as, or is, providing, operating or maintaining a stock market of a stock exchange, the exchange holding company shall obtain an approval in accordance with the provisions of section 8;
  - (b) to the extent that an exchange holding company would be holding itself out as, or is, establishing or maintaining a central depository, the exchange holding company shall obtain an approval in accordance with the provisions of sections 4 and 5 of the Securities Industry (Central Depositories) Act 1991;
  - (c) to the extent that an exchange holding company is holding itself out as, or is, providing clearing and settlement services of a—
    - (i) recognized clearing house; or
    - (ii) clearing house of an exchange company,the exchange holding company shall obtain recognition in accordance with the provisions of section 8A or approval in accordance with the provisions of section 6B of the Futures Industry Act 1993, as the case may be; and
  - (d) to the extent that an exchange holding company is holding itself out as, or is, providing, operating or maintaining a futures market of an exchange company, the exchange holding company shall obtain an approval in accordance with the provisions of section 4 of the Futures Industry Act 1993.
- (7) Notwithstanding the provisions of this Act, the Securities Industry (Central Depositories) Act

1991 and the Futures Industry Act 1993, the Minister may, in his discretion, exempt the applicant from any of the requirements of section 8 of this Act or sections 4 and 5 of the Securities Industry (Central Depositories) Act 1991 or sections 4 and 6B of the Futures Industry Act 1993, as he deems fit, for the purposes of giving his approval.

- (8) Notwithstanding the provisions of section 8A, the Commission may, with the approval of the Minister, exempt the applicant from any of the requirements of section 8A, as it deems fit, for the purpose of giving recognition to an exchange holding company as a recognized clearing house.

11E. Annual Regulatory Report on compliance with ongoing requirements.

- (1) Within three months after the end of each financial year, a body corporate that has been approved as a stock exchange or an exchange holding company shall prepare and submit to the Commission a regulatory report on the extent to which it has complied with the requirements under sections 9B and 11J, and its rules, during the financial year.
- (2) The Commission shall forthwith send a copy of the regulatory report submitted under subsection (1) to the Minister.
- (3) For the purposes of subsection (1)–
  - (a) the Commission may specify that either the stock exchange or the exchange holding company, or both, shall be required to submit a regulatory report; and
  - (b) the Commission and the stock exchange or the exchange holding company, as the case may be, may determine between themselves the scope and content of the regulatory report.
- (4) Upon receipt of the regulatory report under subsection (1), the Commission may at any other time it deems necessary–
  - (a) conduct a regulatory audit of a body corporate that has been approved as a stock exchange or an exchange holding company, as the case may be, or of both the stock exchange and exchange holding company;
  - (b) appoint any independent person to assist the Commission in a regulatory audit conducted under this subsection; and
  - (c) charge the costs related to the conduct of the regulatory audit to the stock exchange or the exchange holding company, as the case may be, or both.
- (5) The Commission shall as soon as practicable submit to the Minister a copy of the report of the regulatory audit conducted by the Commission under subsection (4).
- (6) For the purposes of this section–
  - (a) “regulatory audit” refers to an audit on the extent to which the stock exchange or exchange holding company, as the case may be, has complied with its regulatory responsibilities, duties or functions under this Act, the rules, and any securities laws; and
  - (b) “regulatory report” is a report that is submitted under subsection (1).

[Ins. Act A1218:s.13]

11F. Special report by exchange holding company about compliance with ongoing requirements.

Notwithstanding the provisions of section 11E, the Minister may, at any time, require a body corporate that has been approved as a stock exchange, or an exchange holding company, as the case may be, to prepare and submit to the Minister a special report on the extent to which the stock exchange or the exchange holding company, as the case may be, has complied with the requirements of the securities laws and rules.

[Ins. Act A1218:s.13]

11G. Withdrawal of approval of an exchange holding company.

- (1) The Minister may, on the recommendation of the Commission, by a notice published in the Gazette, and by such other means as the Commission considers appropriate—
  - (a) withdraw an approval granted under section 11D to an exchange holding company, with effect from the date specified in the notice; or
  - (b) direct the exchange holding company to cease to provide or operate such facilities, or provide such services, as are specified in the notice, with effect from the date specified in the notice.
- (2) The Minister shall not withdraw an approval or issue a direction under subsection (1) unless the Minister, on the recommendation of the Commission, is satisfied that it is appropriate to do so for the protection of investors, or in the public interest or for the proper regulation of the markets in securities, where any of the following circumstances occurs:
  - (a) the exchange holding company ceases to be a holding company of a stock exchange or an exchange company, as the case may be;
  - (b) the exchange holding company is being wound up or otherwise dissolved, whether in Malaysia or elsewhere;
  - (c) the exchange holding company has contravened any term or condition of its approval or is charged with any offence under any securities laws;
  - (d) the exchange holding company has failed to comply with a condition, requirement or direction given under section 11 or 11L;
  - (e) any information provided for the purposes of section 11D was false or misleading in a material particular; or
  - (f) an exchange holding company on its own accord applies to the Minister to withdraw the approval as an exchange holding company granted to it and the Minister, on the recommendation of the Commission, deems it fit to do so.
- (3) Notwithstanding the withdrawal of an approval or the issuance of a direction under subsection (1) the Minister may permit the exchange holding company to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Minister may specify in the notice published under that subsection for the purposes of—

- (a) closing down the operations of the exchange holding company or ceasing to provide the services specified in the notice; or
- (b) protecting investors or the public interest.
- (4) Where the Minister has granted permission to an exchange holding company under subsection (3), the exchange holding company shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened sections 7, 8A and 11C of this Act, sections 3 and 6A of the Futures Industry Act 1993 and section 3 of the Securities Industry (Central Depositories) Act 1991, if applicable.
- (5) The Minister shall not take any action under subsection (1) without giving an opportunity to be heard.

[Ins. Act A1218:s.13]

#### 11H. Effect of withdrawal of approval of exchange holding company.

Any withdrawal of an approval or issuance of a direction under section 11G shall not operate so as to prejudice sections 8C and 9E of this Act, sections 7B and 7C of the Futures Industry Act 1993 and section 5B of the Securities Industry (Central Depositories) Act 1991.

[Ins. Act A1218:s.13]

#### 11I. Listing of exchange holding company on stock exchange.

- (1) Where the approval of the Commission under section 32 of the Securities Commission Act 1993 has been granted for the securities of an exchange holding company to be listed on a relevant stock exchange, the exchange holding company shall enter into such arrangements as the Commission may require—
  - (a) for dealing with possible conflicts of interest that may arise from the listing on the relevant stock exchange;
  - (b) for the purpose of ensuring the integrity of trading of the securities of the exchange holding company; and
  - (c) for the compliance with obligations as a listed corporation if the exchange holding company was to become a listed corporation,and the exchange holding company shall comply with such requirements.
- (2) The listing requirements of the relevant stock exchange shall be deemed to allow the Commission, instead of the relevant stock exchange, to make decisions and to take action, or to allow the Commission to require the relevant stock exchange to make decisions and to take action on the Commission's behalf on—
  - (a) the admission to or removal of the exchange holding company from the official list of the relevant stock exchange;
  - (b) the stopping or suspension of the securities of the exchange holding company from being listed on the relevant stock exchange; and
  - (c) such other matters as the Commission deems fit for the purpose of subsection (1).
- (3) An arrangement under subsection (1) may provide for the exchange holding company to pay such fees to the Commission as the Commission may determine for services provided by the

Commission under the arrangement, or otherwise provided under or for the purposes of this section.

- (4) Without prejudice to the provisions of section 9, the Commission may, by notice in writing—
  - (a) modify the listing requirements of the relevant stock exchange for the purpose of applying to the listing for quotation or trading of the securities of the exchange holding company; and
  - (b) exempt the exchange holding company from any listing requirement of the relevant stock exchange.
- (5) For the purposes of this section, the “relevant stock exchange” means the stock exchange of the exchange holding company.

[Ins. Act A1218:s.13]

#### 11J. Duties of an exchange holding company.

- (1) It shall be the duty of an exchange holding company to ensure—
  - (a) insofar as may be reasonably practicable—
    - (i) an orderly and fair market in relation to securities that are traded on the market through the facilities of the stock exchange of the exchange holding company, or through the facilities of any of its subsidiaries that is duly approved as a stock exchange, as the case may be;
    - (ii) an orderly and fair market for trading in futures contracts on the futures market through the facilities of the exchange company of the exchange holding company, or through the facilities of any of its subsidiaries that is duly approved as an exchange company, as the case may be;
    - (iii) that there are orderly dealings in securities deposited or lodged with a central depository through facilities of a central depository of the exchange holding company, or through the facilities of any of its subsidiaries that is duly approved as a central depository, as the case may be;
    - (iv) that there are orderly, clear and efficient clearing and settlement arrangements for any transaction in securities cleared or settled through the facilities of a recognized clearing house of an exchange holding company, or through the facilities of any of its subsidiaries that is duly recognized as a clearing house, as the case may be; and
    - (v) that there are orderly, clear and efficient clearing and settlement arrangements for any transaction in futures contracts cleared or settled through the facilities of a clearing house for a futures market of an exchange company, or through the facilities of any of its subsidiaries that is duly approved as a clearing house of an exchange company, as the case may be;
  - (b) the prudent risk management of its business and operations; and
  - (c) that the stock exchange, recognized clearing house, central depository, exchange company or clearing house of an exchange company, as the case may be, comply

with any lawful requirements placed on it under any securities laws and any other laws applicable to it.

- (2) In performing its duty under subsection (1) the exchange holding company shall—
  - (a) act in the public interest, having particular regard to the need for the protection of investors; and
  - (b) ensure that where its own interest or any interest that it is required to serve under any law relating to corporations conflicts with the interest referred to in paragraph (a), the latter shall prevail.
- (3) An exchange holding company shall immediately notify the Commission if it becomes aware of—
  - (a) any matter which adversely affects or is likely to adversely affect—
    - (i) the ability of the exchange holding company to meet its obligations in respect of its business as an exchange holding company, a stock exchange, a central depository, a recognized clearing house, an exchange company or a clearing house of an exchange company, as the case may be, including its ability to comply with any requirements as may be specified by the Commission, if applicable; or
    - (ii) the ability of any subsidiary of the exchange holding company to meet its obligations in respect of its business as a stock exchange, a central depository, a recognized clearing house, an exchange company or a clearing house of an exchange company, as the case may be, including the ability of any such subsidiary to comply with any requirement as may be specified by the Commission, if applicable; or
  - (b) any irregularity, breach of any provision of the securities laws, the rules of a stock exchange, a recognized clearing house or a central depository or the business rules of an exchange company or clearing house of an exchange company, or any other matter which, in the opinion of the exchange holding company, indicates or may indicate, that the financial standing or financial integrity of any of its subsidiaries or the chief executive or directors of such subsidiary, as the case may be, is in question or may reasonably be affected.
- (4) Where an exchange holding company, which itself has been approved as a stock exchange under section 8, undertakes any function of a subsidiary that is approved as a stock exchange under section 8, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (5) Where an exchange holding company which itself has been approved as a recognized clearing house under section 8A, undertakes any function of a subsidiary that is approved as a recognized clearing house under section 8A, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (6) Where an exchange holding company, which itself has been approved as a central

depository under section 5 of the Securities Industry (Central Depositories) Act 1991, undertakes any function of a subsidiary that is approved as a central depository under section 5 of the Securities Industry (Central Depositories) Act 1991, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.

- (7) Where an exchange holding company, which itself has been approved as exchange company under section 4 of the Futures Industry Act 1993, undertakes any function of a subsidiary that is approved as an exchange company under section 4 of the Futures Industry Act 1993, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (8) Where an exchange holding company, which itself has been approved as a clearing house under section 6B of the Futures Industry Act 1993, undertakes any function of a subsidiary that is approved as a clearing house under section 6B of the Futures Industry Act 1993, such exchange holding company shall enter into such arrangements with the Commission, as the Commission may determine, as to how the duties and obligations of the exchange holding company and such subsidiary, under the securities laws, are satisfied.
- (9) Where the duties and obligations of a stock exchange, a recognized clearing house, a central depository, an exchange company or a clearing house of an exchange company, as the case may be, are discharged in accordance with the arrangements referred to in subsection (4), (5), (6), (7) or (8), such duties and obligations shall be deemed to have been satisfied by both the exchange holding company and its subsidiary.
- (10) Where the rules of a subsidiary of an exchange holding company which is a stock exchange, a recognized clearing house, a central depository, an exchange company or clearing house of an exchange company provide for such subsidiary to take any action, the exchange holding company shall have the power to take such action on behalf of the relevant subsidiary.
- (11) Nothing in subsection (10) shall preclude a subsidiary of an exchange holding company which is a stock exchange, a recognized clearing house, an exchange company, a clearing house of an exchange company or a central depository from itself taking any action against any person to whom its rules apply but such subsidiary shall not take any action under its rules in the event the exchange holding company takes such action pursuant to subsection (10).

[Ins. Act A1218:s.13]

#### 11K. Risk Management Committee of exchange holding company.

An exchange holding company shall establish and maintain a committee, to be called the Risk Management Committee, to formulate policies on risk management matters relating to the activities of the exchange holding company and of its subsidiaries, and to submit such policies to the board of the exchange holding company for its consideration.

[Ins. Act A1218:s.13]

#### 11L. Power to issue directions.

- (1) Where the Commission is satisfied that—

- (a) a conflict exists or may come into existence between—
- (i) the interest of a body corporate that has been approved as an exchange holding company, a stock exchange, a recognized clearing house, an exchange company, a clearing house of an exchange company, a central depository, or a relevant body corporate, as the case may be; and
  - (ii) the interest of the proper performance of the functions or duties conferred by this Act or any other law, on the exchange holding company, stock exchange, recognized clearing house, exchange company, clearing house of an exchange company, central depository or the relevant body corporate, as the case may be; or
- (b) where the Commission is satisfied that such a conflict of interest has occurred or has existed in circumstances that make it likely that the conflict of interest will continue or be repeated,

then the Commission may serve a written notice on the exchange holding company, stock exchange, recognized clearing house, exchange company, clearing house of an exchange company, central depository, or relevant body corporate, as the case may be, stating the reasons in support of the ground or grounds for the notice and direct any of the aforementioned persons to forthwith take such steps as are specified in the notice, including steps in relation to any of its affairs, business or property for the purposes of remedying the conflict of interest or the matters occasioning the conflict of interest.

- (2) A notice served under subsection (1) shall take effect immediately.
- (3) A body corporate that has been served with a notice under subsection (1) shall not without reasonable excuse, fail to comply with the notice.
- (4) A body corporate that has been served with a notice under subsection (1) may appeal against the notice to the Minister not later than 14 days after the date of service of the notice or such longer period if any, as the Commission may specify in the notice, but the notice shall take effect immediately notwithstanding that the appeal has been or may be made under this subsection.
- (5) For the purposes of this section, "relevant body corporate" means a body corporate of which an exchange holding company is a shareholder who, either alone or with any associated person or persons, is entitled to exercise or control the exercise of more than 33% of the aggregate of the nominal amount of all voting shares in the body corporate.

[Ins. Act A1218:s.13]

#### 11M. Restriction on exchange holding company from reducing its shareholding.

No exchange holding company shall reduce its shareholding in a stock exchange, a recognized clearing house, an exchange company, a clearing house of an exchange company or a central depository, as the case may be, to a level below 75%, or such other percentage as may be prescribed from time to time by the Minister, of the total issued and paid-up capital in the stock exchange, recognized clearing house, exchange company, clearing house of an exchange company or a central depository as the case may be, without first obtaining the written approval of the Minister.

[Ins. Act A1218:s.13]

#### 11N. Disposal and acquisition of assets, etc.



- (1) Without prejudice to the provisions of section 11M, where—
  - (a) an exchange holding company;
  - (b) a stock exchange;
  - (c) a recognized clearing house;
  - (d) an exchange company;
  - (e) a clearing house of an exchange company;
  - (f) a central depository; or
  - (g) any other relevant body corporate as defined under subsection 11L(5), intends to enter into an agreement or arrangement, to dispose of or acquire such assets or classes of assets of such value as may have been specified by the Commission, it shall give the Commission prior written notification of such intention.
- (2) Where the Commission makes a specification under subsection (1), it shall have regard to whether the assets referred to in the specification are integral to the operations of the exchange holding company, stock exchange, recognized clearing house, exchange company, clearing house of an exchange company, central depository, or any other relevant body corporate, as the case may be, or significant in affecting the business direction of such persons.

[Ins. Act A1218:s.13]

#### 11O. Control in shareholding of exchange holding company.

- (1) Notwithstanding section 11N, no person shall enter into any agreement or arrangement to acquire any voting shares of an exchange holding company by which, if the agreement or arrangement is carried out, he would acquire, together with any other voting shares of the exchange holding company which were then already held by him, or by him and by persons acting in concert with him, voting shares of 5% or more of the aggregate of the nominal amount of all the voting shares in the exchange holding company, without first obtaining the prior written approval of the Minister.
- (2) An application for approval under subsection (1) shall be made by the person intending to acquire voting shares referred to therein and shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation to the Minister.
- (3) The Minister may grant his approval subject to such terms and conditions, as he deems fit to impose.
- (4) For the purposes of this section, in determining whether a person is a person acting in concert with another person, subsections 33(2) and (3) of the Securities Commission Act 1993 shall apply.

[Ins. Act A1218:s.13]

#### 11P. Power of Commission upon contravention of sections 11M, 11N and 11O.

- (1) Notwithstanding any of the provisions in any memorandum and articles, the Companies Act 1965, or any rule of law, but subject to the provisions of this Act, where the Commission is

satisfied that any person has contravened the provisions of section 11M, 11N or 11O, it may make a preliminary order in writing, imposing one or more of the following prohibitions or restrictions as may be applicable or appropriate in the circumstances of the contravention in respect of any shares which are the subject of the contravention—

- (a) prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, such voting shares, or, in the case of unissued shares, prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, the right to be issued with them;
  - (b) prohibit the exercise of any voting rights in respect of such shares;
  - (c) prohibit the issue of any further shares in right of such shares or in pursuance of any offer made to their holder; or
  - (d) except in liquidation, prohibit the payment of any sums due from the exchange holding company on such shares, whether in respect of capital or otherwise.
- (2) A preliminary order made under subsection (1) shall be served on the defaulting person as soon as is practicable, and may be publicised in such manner as the Commission deems fit, if, in the opinion of the Commission, it needs to be publicised.
  - (3) A preliminary order shall be binding on the defaulting person, on any person for the time being holding the voting shares to which such order applies, and on any other person specified in the order or to whom the order is directed.
  - (4) No person shall be given an opportunity to be heard before the Commission makes a preliminary order under subsection (1) against him or which affects him in any manner.
  - (5) Any defaulting person against whom a preliminary order has been made, or any other person prejudicially affected by such order, may within 14 days of the service of the order on the defaulting person, make representations in writing to the Commission applying for the setting aside of the order on the ground that he had not contravened the provisions in relation to which the order has been made, or for a modification of the order on the ground that it would be just and proper to modify it for reasons to be specified in the representations.
  - (6) The Commission may, after considering the representations made under subsection (5), either confirm, revoke, or vary the preliminary order in such manner as it deems fit.
  - (7) Where the Commission confirms a preliminary order, it may make an order to the holder of the shares to which the preliminary order applies to, directing such holder to dispose of the shares.
  - (8) The Commission may give any instruction or direction to the directors or officers of the exchange holding company, stock exchange, recognized clearing house, exchange company, clearing house of an exchange company, central depository or any other relevant body corporate as defined under subsection 11L(5), as the case may be, as may be necessary or requisite to give effect to any order of the Commission under this section, or as may be incidental, ancillary or consequential to such order.
  - (9) Any transaction, including any agreement or arrangement in relation to any shares, which is in contravention of any preliminary order, or of any order confirmed under subsection (6), or of any instruction or direction given by the Commission under subsection (8), shall be void and of no effect.

- (10) A person who contravenes any preliminary order, any order confirmed under subsection (6), or any instruction or direction given under subsection (8), commits an offence and is liable on conviction to a fine not exceeding RM5 million or to imprisonment for a term not exceeding five years or to both.
- (11) The satisfaction of the Commission under subsection (1) that the provisions of section 11M, 11N or 11O have been contravened by any person may be arrived at regardless as to whether or not there is any prosecution of any person for such contravention.

[Ins. Act A1218:s.13]

PART IV  
LICENCES

12. Dealer's licence.

- (1) A person shall not carry on a business of dealing in securities or hold himself out as carrying on such a business unless he is the holder of a dealer's licence under this Part.
- (2) Subsection (1) shall not apply to an exempt dealer.

[Am. Act A661:s.6]

13. Dealer's representative's licence.

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.

[Subs. Act A943:s.13]

14. Investment adviser's licence.

- (1) A person shall not act as an investment adviser or hold himself out to be an investment adviser unless he is the holder of an investment adviser's licence under this Part.
- (2) The provisions of subsection (1) shall not apply to—
  - (a) a holder of a dealer's licence;
  - (b) a holder of a fund manager's licence;
  - (c) a person who is registered with a body as may be approved by the Commission, who acts as an investment adviser only in relation to its arranging or offering for the sale or purchase of any interest in a unit trust scheme; or
  - (d) any person prescribed to be an exempt investment adviser by the Minister by order published in the Gazette, subject to such terms and conditions as the Minister may, on the recommendation of the Commission, specify in the order;

[Am. Act A1017:s.5; Subs. Act A1218:s.14]

15. Investment representative's licence.

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.

[Subs. Act A943:s.14]

15A. Fund manager's licence.

- (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 prescribed to be an exempt dealer by the Minister under paragraph (d) of the definition of "exempt dealer" in subsection 2(1) for the purposes of managing a portfolio of securities on behalf of other persons;  
[Am. Act A1017:s.6; Am. Act A1218:s.15]
  - (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; or  
[Subs. Act A943:s.14; Ins. Act A847:s.8; Am. Act A1218:s.15]
  - (e) a person who acts as a fund manager only for its related corporation;  
[Ins. Act A1218:s.15]

15B. Fund manager's representative's licence.

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.  
[Ins. Act A943:s.15]

15C. Contravention of section 12, 13, 14, 15, 15A or 15B.

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 RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Ins. Act A943:s.15]

16. Application for licence or renewal.

- (1) An application for a licence or for the renewal of a licence shall be made to the Commission in the prescribed form and manner and shall be accompanied by the prescribed fee and, in the case of an application for renewal of a licence, shall be made not later than 30 days before the expiry of the licence.

[Am. Act A847:s.9; Act A943:s.16]

- (1A) Notwithstanding subsection (1) where an application for the renewal of a licence is made less than 30 days but before the expiry date of the licence, the Commission may for any special reason he deems fit accept such application for consideration.

[Am. Act A661:s.7; Act A847:s.9; Act A943:s.16]

- (2) The Commission may require an applicant to supply him with such further information as he considers necessary in relation to the application.

[Am. Act A847:s.9; Act A943:s.16]

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

[Am. Act A943:s.16]

17. Grounds for refusal to grant or renew licence.

- (1) The Commission may refuse an application made under section 16 if—

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

[Subs. Act A661:s.8; Am. Act A847:s.9; Subs. Act A943:s.17]

17A. Licensed person to notify Commission of disqualifying event.

- (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.

[Ins. Act A943:s.18]

18. Grant or renewal of licences.

- (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.

[Subs. Act A943:s.19; Am. Act A847:s.9; Subs. Act A661:s.8]

#### 19. Commission's power to vary licences in certain circumstances.

- (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 17(1) exist, vary the licence by varying the name and address of the dealer, fund manager or investment adviser specified in the licence.

[Am. Act A847:s.9; Subs. Act A943:s.19]

#### 20. Power of Licensing Officer to enquire into securities transactions.

- (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 12 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.

[Am. Act A847:s.9; Act A943:s.20]

- (2) For the purposes of subsection (1) the Commission may, in such form and within such time as it may specify by notice in writing, require an applicant for a licence or the renewal thereof to submit detailed information of any transaction involving the purchase or sale of securities during the relevant period, irrespective of whether the relevant period falls before or after the

date of the coming into operation of this Act.

[Am. Act A847:s.9; Act A943:s.20]

- (3) A person who fails or refuses to submit information to the Commission within the time specified in the notice referred to in subsection (2) or who gives false or misleading information is, in addition to any other penalty that may be imposed under this Act, liable in the case of an application for the renewal of a licence to have his licence revoked under section 27, and in the case of a first application for the grant of for a licence, liable to have his application rejected.

[Am. Act A847:s.9; Act A943:s.20]

#### 20A. Minimum financial requirements.

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.

[Ins. Act A943:s.21]

#### 21. Power of Commission to impose conditions or restrictions on licences.

- (1) Without prejudice to subsection 18(1), 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 18(1).

[Am. Act A847:s.9; Subs. Act A943:s.22]

#### 22. False statements.

A person who in connection with an application for a licence or for the renewal of a licence wilfully makes a statement that is false or misleading in a material particular knowing it to be false or misleading or wilfully omits to state any matter or thing without which the application is misleading in a material respect commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A661:s.9; Act A847:s.10]

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

- (1) Except in the case of a dealer who is a participating organization, 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 RM100,000, or such greater sum as the Minister may specify to be lodged in respect of the licence.

[Ins. Act A1218:s.16]



- (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.  
[Am. Act A661:s.10; Am. Act A847:s.11; Subs. Act A943:s.23]

24. Period of licence.

- (1) Subject to subsection (2), a licence shall expire 12 months after the date it is issued or on such date as may be specified by the Commission in writing with the consent of the applicant.
- (2) Unless otherwise specified by the Commission in writing with the consent of the licensed person, a licence that has been renewed in accordance with the provisions of this Part shall continue in force for a further period of 12 months commencing on the date upon which but for its renewal it would have expired.  
[Subs. Act A1218:s.17]

25. Notification of change in particulars.

Where—

- (a) the holder of a dealer's licence ceases to carry on the business to which the licence relates;
- (b) the holder of a fund manager's licence ceases to act as, or hold himself out to be, a fund manager;
- (c) the holder of an investment adviser's licence ceases to act as, or hold himself out to be, an investment adviser;
- (d) the holder of a representative's licence ceases to be a representative of the dealer, fund manager or investment adviser in relation to whom the representative's licence was issued, and the licence has not been varied under section 19;
- (e) a change occurs in any matter particulars of which are required by section 26 to be entered in the register of licence holders in relation to the holder of a licence; or
- (f) a change occurs in the information submitted to the Commission in accordance with subsection 16(1) or (2),  
[Am. Act A943:s.24]

the holder of the licence shall, not later than 14 days after the occurrence of the event concerned, give to the Commission, in the prescribed form, particulars in writing of the event concerned.  
[Am. Act A847:s.11; Act A943:s.24]

26. Register of licence holders.

- (1) The Commission shall keep in such form as it thinks fit a register of the holders of current licences, specifying—  
[Am. Act A843:s.11; Act A943:s.25]
  - (a) in relation to each holder of a dealer's, fund manager's or investment adviser's

licence—

[Am. Act A943:s.25]

- (i) his name;
- (ii) where the holder is a corporation, the names of the directors and the secretary of the corporation;
- (iii) the address of the principal place of business at which he carries on the business in respect of which the licence is held; and
- (iv) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and

(b) in relation to each holder of a representative's licence—

- (i) his name;
- (ii) the name of the dealer, fund manager or investment adviser in relation to whom the licence was issued; and

[Am. Act A943:s.26]

- (iii) where the business of that dealer, fund manager or investment adviser is carried on under a name or style other than the name of the dealer, fund manager or investment adviser, the name or style under which that business is carried on.

[Am. Act A943:s.26]

- (2) A person may, upon payment of the prescribed fee, inspect and take extracts from the register kept under subsection (1).
- (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.
- (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.

[Am. Act A847:s.11; Am. Act A943:s.25]

## 27. Revocation and suspension of licence.

(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,
  - (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, recognized 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;
    - (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, recognized 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.
- (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 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 28A(1) 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.

[Am. Act A847:s.11; Subs. Act A943:s.26]

## 28. Appeal.

- (1) A licensed 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 14 days of the decision of the Commission.

[Am. Act A1040:s.5]
- (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.  
[Subs. Act A943:s.26; Am. Act A847:s.11; Am. Act A1040:s.5]

28A. Surrender of licence.

- (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.

[Ins. Act A943:s.27]

28B. Powers concerning compliance with conditions of licence, etc. by licensed persons.

- (1) Without prejudice to section 11, where any licensed person—
- (a) fails to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, any condition of, or restriction on, a licence granted under or pursuant to this Act or the rules of a stock exchange, a recognized clearing house or a central depository, as the case may be, in circumstances where the licensed person is under an obligation to comply with, observe, enforce or give effect to such requirement, provision, condition of, or restriction on, a licence granted under or pursuant to this Act or rules; or
  - (b) performs or omits to perform any act in respect of any business carried on by the licensed person pursuant to a licence granted under or pursuant to this Act, that is likely to—
    - (i) jeopardise the interests of the clients of the licensed person; or
    - (ii) be prejudicial to the public interest,
- that licensed person has committed a breach.
- (2) If a licensed person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that licensed person, the Commission may take any one or more of the following actions:
- (a) direct the person in breach to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, any condition of, or restriction on a licence granted under or pursuant to this Act or the rules of a stock exchange, recognized clearing house or central depository, as the case may be;
  - (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but which in any event shall not exceed RM1 million;
  - (c) reprimand the person in breach;

- (d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.
- (3) The Commission shall not take any action under subsection (2) without giving an opportunity to be heard.
- (4) For the purposes of paragraph (2)(d), in the determination of whether restitution is to be made by a person in breach, the Commission shall have regard to—
  - (a) the profits that have accrued to such person in breach; or
  - (b) whether any person has suffered loss or been otherwise adversely affected as a result of the breach.
- (5) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to do under this Act or any securities laws against the person in breach.

[Ins. Act A1218:s.18]

PART V  
RECORDS

29. Application of this Part.

- (1) This Part applies to a person who is—
- (a) a dealer;
  - (b) a dealer's representative;
  - (c) an investment adviser;
  - (d) an investment representative;
  - (e) a fund manager; [Am. Act A790:s.2; Am. Act A943:s.25]
  - (f) a fund manager's representative; [Am. Act A790:s.2; Am. Act A943:s.25]
  - (g) a financial journalist; or [Ins. Act A790:s.2]
  - (h) an authorised depository agent appointed under section 13 of the Securities Industry (Central Depositories) Act 1991 [Act 453]. [Am. Act A790:s.2; Am. Act A943:s.25]
- (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. [Am. Act A943:s.28; Am. Act A790:s.2;]

30. Register of Securities.

- (1) A person to whom this Part applies shall maintain a register in the prescribed form of the securities in which he has an interest.
- (2) The register required to be kept under this Part shall be kept at such place in Malaysia as 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.

[Am. Act A943:s.29]

- (3) Particulars of the securities in which a person to whom this Part applies has an interest and particulars of his interest in those securities shall be entered in the register within seven days from the time at which he is reasonably deemed to be aware of the acquisition.

[Am. Act A943:s.29]

- (4) (a) Where there is a change, not being a prescribed change, in the interest or interests of a person to whom this Part applies in securities he shall enter in the register full particulars of the change including the date of the change and the circumstances by reason of which that change has occurred.
- (b) The entry shall be made within seven days after the date of the change.
- (c) For the purposes of this subsection, where a person acquires or disposes of securities there shall be deemed to be a change in the interest or interests of that person.

### 31. Notice of particulars to Commission.

- (1) A person to whom this Part applies shall give notice to the Commission in the prescribed form containing such particulars as are prescribed including the place at which he will keep the register of his interest in securities.

[Am. Act A847:s.11; Am. Act A943:s.30]

- (2) The notice shall be given—

- (a) in the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or
- (b) in the case of any other person if the person becomes a person to whom this Part applies, within 14 days from the date of his becoming such a person.

- (3) The notice shall be so given notwithstanding that the person has ceased to be a person to whom this Part applies before the expiration of the period referred to in subsection (2).

- (4) A person who ceases to be a person to whom this Part applies shall give notice to the Commission of his so ceasing in the prescribed form within 14 days of his so ceasing.

[Am. Act A847:s.11; Am. Act A943:s.30]

- (5) Any person who fails or neglects to give notice as required by this section commits an offence.

### 32. Defence to prosecution.

- (1) It is a defence to a prosecution for contravening or failing to comply with section 30 or 31, if the defendant proves that his failure was due to his not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence, and that—

[Am. Act A943:s.31]

- (a) he was not so aware on the date of the summons;
- (b) he became so aware less than 14 days before the date of the summons; or



- (c) he became so aware not less than 14 days before the date of the summons and complied with the relevant section within such time as may be prescribed after becoming so aware.

[Am. Act A943:s.31]

- (2) For the purposes of subsection (1), a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time of which an employee or agent of the person being an employee or agent having duties or acting in relation to his employer's or principal's interest in the securities concerned, was aware at that time.

### 33. Production of register.

- (1) The Commission may require any person to whom this Part applies to produce for inspection the register required to be kept pursuant to section 30 and the Commission may make a copy of or make extracts from the register.

[Am. Act A661:s.11; Act A847:s.12; Act A1017:s.7]

- (2) A person who fails to produce a register for inspection or fails to allow the Commission to make a copy of or make extracts from the register commits an offence.

[Am. Act A661:s.11; Act A847:s.12; Act A1017:s.7]

### 34. Particulars of financial journalists.

- (1) The Commission may by notice in writing require the proprietor, publisher or producer of a newspaper, periodical, information service or sound, video or data recording to supply the Commission with the name and address of the financial journalist who has contributed any advice or prepared any analysis or report that has been published or broadcasted in a newspaper, periodical, information service or sound, video or data recording owned, published or broadcasted by that proprietor, publisher or producer or with the names and addresses of all the financial journalists who have contributed any such advice or prepared any such analysis or report within a period as may be specified in the notice.

- (2) A proprietor, publisher or producer of a newspaper, periodical, information service or sound, video or data recording who wilfully fails to comply with a notice under subsection (1) commits an offence.

[Am. Act A661:s.12; Act A847:s.13; Act A1017:s.7; Subs. Act A1218:s.19]

### 35. Commission may supply copy of the extract of a register.

The Commission may upon payment of the prescribed fee supply to any person a copy of the extract of a register obtained pursuant to section 33.

[Am. Act A847:s.14; Act A1017:s.8]

## PART VI

### CONDUCT OF SECURITIES BUSINESS

36. [Repealed by Act A661:s.13]

37. Certain representation prohibited.

(1) A person who is the holder of a licence shall not represent or imply, or knowingly permit to be represented or implied in any manner to a person that the abilities or qualifications of the holder of the licence have in any respect been approved by the Commission.

[Am. Act A847:s.15; Act A943:s.32]

(2) A statement that a person is the holder of a licence is not a contravention of this section.

38. Issues of contract notes.

(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.

(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 RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Subs. Act A943:s.33; Am. Act A661:s.31]

39. Certain persons to disclose certain interests in securities.

(1) Where a person who is a dealer, fund manager, investment adviser, dealer's representative, fund manager's representative or investment representative sends circulars or other similar written communications in which he made a recommendation, whether expressly or by implication, with respect to securities or a class of securities, the first-mentioned person shall cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any relevant interest in, or any interest in the acquisition or disposal of, those securities or securities included in that class that the first-mentioned person or a person associated with him has at the date on which the first-mentioned person last sends the circular or other communication.

[Am. Act A943:s.34]

(2) It is a defence to a prosecution for an offence against subsection (1) in relation to a failure to include in a circular or other communication in a statement of the nature of a relevant interest in, or an interest in the acquisition or disposal of, securities or securities included in a class of securities, being a relevant interest or an interest of the defendant or of a person associated with the defendant, if the defendant establishes that, at the time at which the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware—

- (a) that he had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class; or
- (b) that the person associated with him had a relevant interest in, or an interest in the acquisition or disposal of, those securities, or securities included in that class,

as the case may be.

(3) For the purposes of subsections (1) and (2)–

- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;
- (b) without limiting the generality of the foregoing, a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
- (c) notwithstanding the provisions of section 3, a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities, unless the person and the other person are acting jointly, or otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

[Am. Act A661:s.15]

(4) Where–

- (a) a person has subscribed for or purchased securities for the purpose of offering all or any of them to the public for purchase; and
- (b) the person offers any of those securities for purchase,

the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(5) Where–

- (a) securities have been offered for subscription or purchase; and
- (b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased,

the person shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a stock market, or make a recommendation with respect to those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will or may be required to acquire, under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

- (5A) For the purposes of subsection (5), “underwriting” includes sub-underwriting.  
[Am. Act A943:s.34]
- (6) A person who is a dealer, fund manager, investment adviser, dealer’s representative, fund manager’s representative or investment representative (in this subsection referred to as “that person”) shall not send to a person a circular or other communication or written offer or recommendation to which subsection (1), (4) or (5) applies unless the circular or other communication or the offer or recommendation—  
[Am. Act A1017:s.9]
- (a) where that person is a natural person, is signed by that person;
  - (b) where that person is a natural person who carries on business in partnership, is signed by a partner in the partnership in his own name or in the name of the partnership;
  - (c) where that person is a natural person who carries on business in a corporation, is signed by a director, an executive officer or the secretary of the corporation; or  
[Am. Act A1017:s.9]
  - (d) where that person is a corporation, is signed by a director, an executive officer or the secretary of the corporation.
- (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.  
[Am. Act A943:s.34]
- (8) [Repealed by Act A943:s.34]
- (9) [Repealed by Act A943:s.34]
- (10) A reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.
- (11) For the purposes of this sections, a circular or other communication or a written offer or recommendation sent to a person shall—
- (a) where it is signed by a person in partnership, be deemed to have been sent by each of the partners in the partnership; or
  - (b) where it is signed by a director, an executive officer or the secretary of a corporation, be deemed to have been sent by the corporation.
- (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.  
[Am. Act A943:s.34]
- (12) A person who contravenes or fails to comply with the provisions of this

section commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A943:s.34; Act A1017:s.16; Am. Act A661:s.15; Act A847:s.16]

#### 40. Dealings as principal.

- (1) Subject to subsection (5), a dealer shall not, as principal, deal in any securities with a person who is not a dealer unless he first informs the person with whom he is dealing that he is acting in the transaction as principal and not as agent.
- (2) A reference in this section to a dealer dealing or entering into a transaction as principal includes a reference to a person—

[Am. Act A661:s.16]

  - (a) dealing or entering into a transaction on behalf of a person associated with him;
  - (b) dealing in securities on behalf of a corporation in which he has a controlling interest; or
  - (c) where he carries on business as a dealer on behalf of a corporation in which his interest and the interests of his directors together constitute a controlling interest.

[Am. Act A661:s.16]
- (3) A dealer who, as principal, enters into a transaction of sale or purchase of securities with a person who is not a dealer shall state in the contract note that he is acting in the transaction as principal and not as agent.
- (4) [Repealed by Act A790:s.3]
- (5) Subsection (1) does not apply in relation to a transaction entered into by a dealer who is a participating organization of a stock exchange and specialises in transactions relating to odd lots of securities, being a transaction of sale or purchase of an odd lot of securities.

[Am. Act A790:s.3; Am. Act A1218:s.20]
- (6) [Repealed by Act A790:s.3]
- (7) Where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the dealer not later than 14 days after the receipt of the contract note or on becoming aware of the failure to comply with subsection (1) or (3), whichever is the later, and, where the dealer fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner, rescind the contract.

[Am. Act A790:s.3; Act A943:s.35]
- (8) Nothing in subsection (7) affects any right that a person has apart from that subsection.
- (9) A person who contravenes or fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A847:s.17]

#### 40A. Recommendations by adviser.

- (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.
- (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 all practicable measures to ascertain that the information possessed and relied upon by the adviser concerning the investment objectives, financial situation and particular needs of the person is accurate and complete;  
[Subs. Act A1218:s.21]
  - (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,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 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.

[Am. Act A943:s.36]

40B. Duty to furnish Commission with such returns and information as Commission requires.

- (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.

[Am. Act A943:s.36]

40C. Additional obligations on licensed persons.

- (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).

[Ins. Act A943:s.36]

41. Shortselling.

- (1) Subject to this section and any regulations that may be made, a person shall not sell securities unless, at the time when he sells them—
  - (a) he has or, where he is selling as agent, his principal has; or
  - (b) he believes on reasonable grounds that he has, or where he is selling as agent, his principal has,

a presently exercisable and unconditional right to vest the securities in a purchaser of the securities.

[Am. Act A1017:s.10]

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

[Am. Act A661:s.17; Act A847:s.18]

- (3) For the purposes of subsection (1)–

- (a) a person who, at any particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person; and
  - (b) a right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of another person to secure the repayment of money.
- (4) Subsection (1) does not apply in relation to—
- (a) a sale of securities by the holder of a dealer's licence who specialises in transactions relating to odd lots of securities, being a sale made by him as principal solely for the purpose of—

[Am. Act A661:s.17]

    - (i) accepting an offer to purchase an odd lot of securities; or
    - (ii) disposing of a parcel of securities that is less than one marketable parcel of securities by means of the sales of one marketable parcel of those securities;
  - (b) a sale of securities by a person who before the time of sale has entered into a contract to purchase those securities and who has a right to have those securities vested in him that is conditional only upon all or any of the following:
    - (i) payment of the consideration in respect of the purchase;
    - (ii) the receipt by him of a proper instrument of transfer in respect of the securities;
    - (iii) the receipt by him of the documents that are, or are documents of title to, the securities;

[Am. Act A1017:s.10]
  - (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;

[Am. Act A943:s.37; Act A1017:s.10]
  - (d) a sale of securities which are permitted by Bank Negara Malaysia to be transacted in the short-term money market; and
  - (e) a sale of securities—
    - (i) of such class or category; or



(ii) which is transacted in such manner or under such circumstances,

as may be prescribed by the Minister.

[Am. Act A1017:s.10]

- (5) For the purpose of this section, a “marketable parcel” in relation to securities that are listed for quotation on the stock market of a stock exchange, means a marketable parcel of those securities within the meaning of the rules of that stock exchange.

[Am. Act A1218:s.22]

- (6) A person who requests a holder of a dealer’s licence to effect a sale of securities to which subsection (1) would apply but for paragraph (4)(c) shall, at the time of making the request, inform the holder of the licence that the sale is a short sale.

- (7) A person who, on a stock market of a stock exchange, effects, whether as principal or agent, a sale of securities to which subsection (1) would apply but for paragraph (4)(c) shall cause to be endorsed on any document evidencing the sale that is given to the person who, whether as principal or agent, purchases the securities a statement that the sale was a short sale.

- (8) For the purposes of this section, where a person—

- (a) purports to sell securities;
- (b) offers to sell securities;
- (c) holds himself out as entitled to sell securities; or
- (d) instructs a dealer to sell securities,

he shall be deemed to sell the securities.

PART VII  
ACCOUNTS AND AUDIT

DIVISION 1

Accounts – Dealers

42. Application of this Division.

This Division applies to and in relation to the business of a dealer within the meaning of this Act whether that business is carried on in Malaysia or outside Malaysia.

[Am. Act A661:s.18; Act A943:s.39]

43. Accounts to be kept by dealers.

- (1) A dealer shall keep or cause to be kept in the National Language or English 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 a manner as to enable them to be conveniently and properly audited.
- (2) If accounting records and other records are kept by a dealer at a place outside Malaysia, the dealer shall cause to be sent to and kept at a place in Malaysia such statement and returns with respect to the business dealt with in those records as will enable to be prepared true and fair profit and loss accounts and balance-sheets.
- (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;
    - (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;

- (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;
  - (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 RM500,000; 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 RM3 million or

to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A943:s.38; Act A943:s.40; Act A847:s.19]

44. Certain monies received by dealers to be paid into a trust account.

(1) A dealer shall establish and keep in a licensed institution one or more trust accounts designated or evidenced as such into which he shall pay—

[Am. Act A943:s.41]

(a) all amounts, less any brokerage and other proper charges, that are received from or on account of any person, other than a dealer, for the purchase of securities and that are not attributable to securities delivered to the dealer not later than the next bank business day on which they were received by the dealer; and

[Am. Act A943:s.41]

(b) all amounts, less any brokerage and other proper charges, that are received for or on account of any person, other than a dealer, from the sale of securities and that are not paid to that person or as that person directs not later than the next bank business day on which they were received by the dealer.

[Am. Act A943:s.41]

(1A) For the purpose of paragraph (1)(b), any cheque issued for the purpose of payment to a person which is not collected by that person or as directed by that person within five bank business days after the date such cheque is issued shall be credited into the trust account.

[Am. Act A847:s.20; Act A1017:s.11]

(2) 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 RM1 million; or

[Am. Act A847:s.20]

(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 RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A661:s.19; Act A847:s.20]

44A. Property other than monies received by dealers.

(1) A dealer shall deal with any property, other than money, received, held or deposited with the dealer in the cause 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.

[Ins. Act A943:s.38; Ins. Act A943:s.42]

45. Purposes for which monies may be withdrawn from trust account.

A dealer shall not withdraw any monies from a trust account except for the purpose of making a payment—

(a) to, or in accordance with the written instructions of, a person entitled to the money;

(b) defraying brokerage and other proper charges; or

[Am. Act A943:s.43; Ins. Act A943:s.38]

(c) that is otherwise authorised by law.

45A. Dealer to supply copies of entries in books.

(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.

[Ins. Act A943:s.38; Ins. Act A943:s.44]

46. Monies in trust accounts not available for payment of debts, etc.

Save as otherwise provided in this Division, monies held in a trust account shall not be available for payment of the debts of a dealer or be liable to be paid or taken in execution under an order or process of any court.

[Am. Act A943:s.38; Ins. Act A943:s.45]

47. Claims and liens not affected.

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

[Ins. Act A943:s.38]

## DIVISION 2

### Accounts – Fund Managers

47A. Application of Division.

(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.

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

[Ins. Act A943:s.46]

47B. Accounts to be kept by fund manager.

(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.

- (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.

[Ins. Act A943:s.46]

#### 47C. Operation of trust account.

- (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, or deal with any property in, a trust account except for the purpose of making a payment—
  - (a) to the person entitled thereto; or
  - (b) that is otherwise authorised by law.
- (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 RM500,000; 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 RM1 million or to imprisonment for a term not exceeding 10 years or to both.  
[Ins. Act A943:s.46; Am. Act A1017:s.12]
- (10) For the purposes of this Division, "custodian", in relation to a client of a fund manager, means—
- (a) a licensed bank as defined in the Banking and Financial Institutions Act 1989 [Act 372] appointed by the fund manager with the prior written consent of the client;
  - (b) a licensed finance company as defined in the Banking and Financial Institutions Act 1989 appointed by the fund manager with the prior written consent of the client;
  - (c) a licensed merchant bank as defined in the Banking and Financial Institutions Act 1989 appointed by the fund manager with the prior written consent of the client; or
  - (d) any other person as may be specified by the Commission.  
[Subs. Act A1218:s.23]

#### 47D. Client's monies.

- (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 47C(2); 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.
- (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 47C(2) for which it is liable to account or deliver to the client.  
[Ins. Act A943:s.46]

#### 47E. Right to copies of book entries, inspection of contract notes, etc.

- (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.

[Ins. Act A943:s.46]

47F. Commission's power to transfer client's property and monies to a trust company, etc. under certain circumstances.

- (1) Notwithstanding the provisions of this Division, where—

- (a) the Commission is satisfied that a fund manager has contravened or failed to comply with any provision of this Act or any term or condition in respect of its licence; or
- (b) the Commission is of the view that the interests of the clients of the fund manager are likely to be jeopardised or are jeopardised,

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

- (aa) direct the fund manager not to deal with the monies and property of such clients subject to such terms and conditions as the Commission may impose; or
- (bb) direct the fund manager to transfer the monies and property of such clients to whom a direction under subsection (1) applies to a trust company registered under the Trust Companies Act 1949, or any other person as may be specified by the Commission.
- (2) Where the Commission takes action under paragraph (1)(bb), the Commission shall cause to be published in two daily newspapers published and circulating generally in Malaysia, one in the National Language and one in the English Language, a notice to all clients of the fund manager to whom a direction under paragraph (1)(bb) applies.
- (3) The Commission may revoke the direction or vary any term or condition of the direction under subsection (1), if the circumstances that give rise to the direction or such term or condition of the direction, as the case may be, cease to exist.
- (4) A fund manager to whom the direction is made under subsection (1) shall comply with or give effect to such direction or to such term or condition of the direction.

[Ins. Act A1218:s.24]

### DIVISION 3

#### Audit

48. Appointment of auditor.

- (1) This Division applies to the business of a dealer, a fund manager, an exchange holding company, a stock exchange, a recognized clearing house and a central depository.

[Subs. Act A1218:s.25]

- (2) A reference to a relevant person in this Division shall be construed as a reference to a dealer, a fund manager, an exchange holding company, a stock exchange, a recognized clearing house and a central depository.

[Subs. Act A1218:s.25]



- (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.

[Subs. Act A943:s.48]

#### 48A. Associates not to be appointed as auditors.

A relevant person shall not appoint a person who is an associate of the relevant person as an auditor of any of its accounts.

[Ins. Act A943:s.49]

#### 49. Relevant person to lodge auditor's report.

- (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, 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 RM1 million or to imprisonment for a term not exceeding three years or to both.
- (4) For the purposes of subsection (1), "financial year", in relation to a relevant person, means the financial year of the corporation within the meaning of the Companies Act 1965 [Act 125].

[Am. Act A1017:s.13]

[Am. Act A661:s.20; Act A847:s.21; Subs. Act A943:s.50]

#### 50. Duties of auditor.

- (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—
- (aa) in the case of a participating organization, the stock exchange and the Commission; or  
[Am. Act A1218:s.26]
  - (bb) in any other case, the Commission.  
[Am. Act A1017:s.14]
- (2) No auditor shall be liable to be sued in any court in respect of any statement made by the auditor in good faith—
- (a) in his report under subsection (1); or
  - (b) under subsection 48(5);  
[Subs. Act A1218:s.26]
- (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;
  - (c) carry out any specific examination or establish any procedure in any particular case;
  - (d) submit a report on any of the matters referred to in paragraphs (a) to (c); or
  - (e) submit an interim report on any of the matters referred to in paragraphs (a) to (d),  
[Subs. Act A1218:s.26]
- 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.

[Am. Act A661:s.21; Subs. Act A943:s.50]

- (5) The relevant person shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this Division.

[Ins. Act A1218:s.26]

51. Duty of relevant person or its directors or officers to furnish information.

- (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.

[Am. Act A943:s.51]

- (2) It shall be a defence to any proceedings in defamation in respect of any statement made in any such report of an auditor or in any such further report of a relevant authority if the defendant satisfies the Court that the statement was made bona fide and without malice.

[Am. Act A847:s.22]

52. Power of Commission to appoint independent auditor, etc.

- (1) Where—
- (a) a relevant person has failed to submit the auditor's report in compliance with subsection 49(1); 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.

[Am. Act A943:s.52]

- (2) Where the Commission is of the opinion that the whole or any part of the Commission costs and expenses of an independent auditor, person or body of persons appointed by the Commission under this section should be borne by the relevant person concerned, the Commission may, by order in writing, direct such relevant person to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified.

[Am. Act A847:s.23; Act A943:s.52]

- (3) Where a relevant person has failed to comply with an order of the Commission under subsection (2) the amount specified in the order may be sued for and recovered by the Commission in a Court as a debt due to the Commission.

[Am. Act A847:s.23; Act A943:s.52]

53. Power of Commission to appoint an independent auditor, etc., upon application of client.

- (1) Upon receipt of an application in writing from a person who alleges that a relevant person has failed to account to him in respect of any monies or securities held or received by that relevant person for or on his behalf, the Commission may 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 that relevant person.

[Am. Act A847:s.24; Act A943:s.53]

- (2) Every application under subsection (1) shall state—

- (a) particulars of the circumstances under which the relevant person received the monies or securities in respect of which he is alleged to have failed to account;

[Am. Act A943:s.53]

- (b) particulars of those monies or securities and of the transactions of the applicant and the relevant person relating thereto; and

[Am. Act A943:s.53]

- (c) such other particulars as the Commission may require.

[Am. Act A847:s.24]

- (3) Every statement in any such application shall be verified by a statutory declaration made by the applicant and shall, if made bona fide and without malice, be privileged.

- (4) The Commission shall not appoint an independent auditor, person or body of persons under subsection (1) unless he is satisfied—

[Am. Act A847:s.24]

- (a) that the applicant has good reason for making the application; and

- (b) that it is expedient in the interests of the relevant person or the applicant or the general public that the books, accounts and records of and securities held by the relevant person should be examined, audited and reported upon.

[Am. Act A943:s.53]

54. Independent auditor, etc., to report to Commission.

An independent auditor, person or body of persons appointed by the Commission under section 52 or 53 shall, upon the conclusion of the examination and audit in respect of which he was appointed, make a report thereon to the Commission.

[Am. Act A847:s.25]

55. Powers of independent auditor, etc.

An independent auditor, person or body of persons appointed by the Commission under section 52 or 53 to examine and audit the books, accounts and records of and securities held by a relevant person may for the purpose of carrying out such examination and audit—

[Am. Act A847:s.26; Act A943:s.54]

- (a) examine on oath any director, executive officer or the secretary of the relevant person concerned and any of the relevant person's employees and agents and any other auditor appointed under this Act in relation to those books, accounts, records and securities;  
[Am. Act A661:s.22; Act A943:s.54]
- (b) employ such persons as he considers necessary; and
- (c) by instrument in writing under his hand authorise any person employed by him to do, in relation to such examination and audit, any act or thing that he could himself do in his capacity as auditor, except to examine any person on oath or to exercise the power conferred by this paragraph.

56. Prohibition against communication of certain matters by independent auditors, etc., and employees.

Except for the purpose of carrying into effect the provisions of the Act, or so far as may be required for the purpose of any proceedings, civil or criminal, an independent auditor, person or body of persons appointed by the Commission under section 52 or 53 and an employee of such independent auditor, person or body of persons shall not communicate any matter, which may come to his knowledge in the performance of his duties as such independent auditor, person or body of persons or employee, to any person other than the Commission, or any other person specified by the Commission and, in the case of an employee, to any person other than the auditor by whom he is employed.

[Am. Act A847:s.26]

57. Books, accounts and records to be produced upon demand.

- (1) Upon request by an independent auditor, person or body of persons appointed by the Commission under section 52 or 53 or by a person who produces a written authority in that behalf given under paragraph 55(c)–
  - (a) a relevant person and any of its director, executive officer or secretary, employee or agent shall produce any books, accounts and records of and any securities held by the relevant person relating to his business; and  
[Am. Act A661:s.23; Act A943:s.55]
  - (b) an auditor appointed by a relevant person shall produce any books, accounts and records held by him relating to the business of the relevant person.  
[Am. Act A943:s.55]
- (2) A relevant person and any of its director, executive officer, secretary, employee or agent and any auditor appointed by the relevant person, shall answer all questions relevant to an examination and audit which are put to him by an independent auditor, person or body of persons appointed by the Commission under section 52 and 53 or by a person who produces a written authority in that behalf given under paragraph 55(c).  
[Am. Act A661:s.23]
- (3) Any person who contravenes or fails to comply with the provisions of subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding five years or to both.  
[Am. Act A847:s.27]

58. Penalty for destroying, concealing or altering records or sending records of other property

out of Malaysia.

(1) A person who, with intent to defeat the purposes of this Part or with intent to prevent, delay or obstruct the carrying out of any examination and audit under this Part—

(a) destroys, conceals or alters any book, account, record or document relating to the business of a relevant person; or

[Am. Act A943:s.56]

(b) sends or attempts to send or conspires with any other person to send out of Malaysia any such book, account, record or document or any property of any description belonging to or in the disposition of or under the control of a relevant person,

[Am. Act A943:s.56]

commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A661:s.24; Act A847:s.28]

(2) If in a prosecution for an offence under subsection (1) it is proved that the person charged—

(a) destroyed, concealed or altered any book, account, record or document referred to in subsection (1); or

(b) sent or attempted to send or conspired to send out of Malaysia any such book, account, record or document or any property referred to in subsection (1),

the onus of proving that in so doing he did not act with intent to defeat the purposes of this Part or with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Part shall lie on him.

59. Rights of board of stock exchange to impose obligations on participating organization.

The provisions of this Part shall not prevent the board of a stock exchange or an exchange holding company, as the case may be, from imposing on any participating organization any further obligation or requirement which the board deems fit with respect to—

(a) the audit of accounts;

(b) the information to be furnished in reports from auditors; or

(c) the keeping of accounts, books and records.

[Am. Act A943:s.57; Subs. Act A1218:s.27]

PART VIII  
COMPENSATION FUND

60. Interpretation.

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.

[Am. Act A661:s.25; Subs. Act A943:s.59]

61. Establishment of compensation fund.

- (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.

[Subs. Act A943:s.59]

62. Monies constituting compensation fund.

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 participating organizations under this Part;  
[Am. Act A1218:s.28]
- (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 66(1);
- (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.

[Am. Act A661:s.26; Subs. Act A943:s.59]

63. Fund to be kept in separate account.

- (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.

[Subs. Act A943:s.59]

64. Payments out of compensation fund.

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.

[Subs. Act A943:s.59]

65. Accounts of compensation fund.

- (1) A relevant stock exchange shall establish and keep proper accounts of the compensation fund and shall before the thirty-first day of December in each year cause a balance-sheet in respect of such accounts to be made out as at the preceding thirtieth day of June.
- (2) The relevant stock exchange shall appoint an auditor to audit the accounts of the compensation fund.
- (3) The auditor appointed by the relevant stock exchange shall regularly and fully audit the accounts of the fidelity fund and shall audit each balance-sheet and cause it to be laid before the relevant stock exchange not later than one month after the balance-sheet was made out.

[Am. Act A943:s.60]

66. Requirement of relevant stock exchange to pay portion of net income into compensation fund.

- (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.

[Am. Act A661:s.27; Subs. Act A943:s.61]

67. Contribution to compensation fund.

- (1) A participating organization shall, upon being licensed under this Act, pay to the relevant stock exchange the amount of RM30,000 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 RM10,000 as a contribution to the compensation fund.

[Am. Act A1218:s.29]

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

- (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 participating organizations to the compensation fund.

[Am. Act A661:s.28; Subs. Act A943:s.61; Am. Act A1218:s.29]

68. Provision where compensation fund exceeds RM50 million.

- (1) Where the amount at credit in a compensation fund exceeds RM50 million, or such greater sum as the Commission may after consultation with the relevant stock exchange determine, every participating organization of the relevant stock exchange who has made 50 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.

[Am. Act A1218:s.29]

- (2) If a compensation fund, for any reason, stands below the sum of RM10 million, 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 participating organization 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.

[Am. Act A661:s.29; Act A847:s.29;  
Subs. Act A943:s.61; Am. Act A1218:s.29]

69. Levy in addition to annual contributions.

- (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 participating organization 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.

[Am. Act A1218:s.29]

- (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.

[Am. Act A661:s.30; Act A847:s.30; Subs. Act A943:s.61]

70. Power of stock exchange to make advances to compensation fund.

- (1) A stock exchange may from time to time from its general funds give or advance on such terms as the board of the stock exchange thinks fit any sums of money to its compensation fund.

[Am. Act A1218:s.30]

- (2) Any monies advanced under subsection (1) may from time to time be repaid from the compensation fund to the general funds of the stock exchange.

[Am. Act A943:s.62]

71. Investment of monies in compensation fund.

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.

[Subs. Act A943:s.63]

72. Application of compensation fund.

- (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 participating organization;

[Am. Act A1218:s.31]

- (b) an insolvency of a participating organization,

[Am. Act A1218:s.31]

and the loss is suffered in respect of monies or other property that was, in connection with the participating organization’s dealing in securities, entrusted to or received by the participating organization, or by a director, officer, employee or representative of the participating organization (whether before or after the commencement of this section)—

[Am. Act A1218:s.31]

- (c) for or on behalf of the person suffering the loss or another person; or

- (d) because the participating organization 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 participating organization,

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

[Am. Act A1218:s.31]

- (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 participating organization shall be deemed to be insolvent—
- (a) when the participating organization is being wound up; or
  - (b) where the relevant stock exchange determines, in accordance with its rules that the participating organization 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 participating organization is a party.

[Am. Act A1218:s.31]

- (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 participating organization 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 participating organization.

[Subs. Act A661:s.31; Am. Act A847:s.31;  
Subs. Act A943:s.63; Am. Act A1218:s.31]

73. [Repealed by Act A943:s.64]

74. [Repealed by Act A943:s.64]

75. [Repealed by Act A943:s.64]

76. [Repealed by Act A943:s.64]

77. [Repealed by Act A943:s.64]

78. Power of relevant stock exchange to require production of securities.

The relevant stock exchange may at any time and from time to time require any person to produce and deliver any securities, documents or statements of evidence necessary to support any claim made or necessary for the purpose either of exercising its rights against a participating organization or the directors thereof or any other person concerned or of enabling criminal proceedings to be taken against any person in respect of a defalcation, or fraudulent misuse of monies or property and in default of delivery of any such securities, documents or statements of evidence by such first-mentioned person, the relevant stock exchange may disallow any claim by him under this Part.

[Am. Act A661:s.35; Act A943:s.65; Am. Act A1218:s.32]

79. Subrogation of relevant stock exchange to rights and remedies of claimant upon payment from compensation fund.

If a relevant stock exchange makes a payment out of its compensation fund in respect of a claim from 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 participating organization concerned; or

[Am. Act A1218:s.32]

- (ii) if the loss was caused by an act or omission of a director, officer, representative or employee of a participating organization, to receive in respect of the loss any sum,

[Am. Act A1218:s.32]

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.

[Subs. Act A943:s.66; Am. Act A1218:s.32]

80. Payment of claims only from compensation fund.

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.

[Subs. Act A943:s.66]

81. [Repealed by Act A943:s.67]

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

(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 participating organizations

generally, or in relation to a particular participating organization named in the contract, or in relation to participating organizations generally with the exclusion of particular participating organizations named in the contract.

[Am. Act A1218:s.33]

- (3) An action shall not lie against a relevant stock exchange or against any member or employee or against any committee or subcommittee of a board of a relevant stock exchange as the case may be, for injury alleged to have been suffered by any participating organization 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 participating organization.

[Am. Act A661:s.37; Subs. Act A943:s.68; Subs. Act A1218:s.33]

### 83. Application of insurance monies.

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

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

[Subs. Act A943:s.68]

### 83A. Monies in compensation fund where relevant stock exchange wound up.

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.

[Ins. Act A943:s.69]

### 83B. Regulations in respect of compensation fund.

- (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 (1)(b) include the satisfaction of claims in relation to any dealing or proposed dealing in securities made against participating organizations.

[Ins. Act A943:s.69; Am. Act A1218:s.34]

## Part VIIIA

### CAPITAL MARKET DEVELOPMENT FUND

#### 83C. Establishment of Capital Market Development Fund.

- (1) There shall be established a fund to be called the Capital Market Development Fund, referred to in this Part as “the Fund”.
- (2) The Fund shall be administered by the Capital Market Development Fund Board referred to in this Part as the “Board”.
- (3) The Commission shall be responsible to assist the Board in the day-to-day administration and management of the affairs of the Fund.

[Ins. Act A1218:s.35]

#### 83D. Assets constituting Fund.

The Fund shall consist of—

- (a) such shares as are approved for the Fund under paragraph 4(1)(d) of the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003 [Act 632];
- (b) proceeds raised in connection with the sale of the shares that are referred to in paragraph (a);
- (c) such sums as may be provided from time to time for the purposes of this Part by Parliament;
- (d) all donations and gifts accepted by the Board for the Fund;
- (e) all interest, dividend and other income derived from the investment of the monies of the Fund; and
- (f) all other sums or property which may in any manner become payable to or vested in the Fund.

[Ins. Act A1218:s.35]

#### 83E. Objects of the Fund, etc.

- (1) The objects for which monies of the Fund may be applied are as follows:
  - (a) the promotion of the capital market in Malaysia to be an efficient, innovative and

internationally competitive market;

- (b) the development and upgrading of skills and expertise required by the capital market in Malaysia;
  - (c) the development of self regulation by professional associations and market bodies in the securities and futures industries; and
  - (d) the development and support of high quality research and development programmes and projects relating to the capital market in Malaysia.
- (2) The Fund shall be expended for the purposes of—
- (a) meeting all payments required to be made by the Fund consistent with its objects;
  - (b) paying any expenses lawfully incurred by the Fund including fees and costs, and the remuneration of persons employed or engaged by the Board, including the granting of loans, superannuation allowances or gratuities;
  - (c) paying any other expenses, costs or expenditure properly incurred or accepted by the Board, for purposes of its powers and carrying out of its duties; and
  - (d) generally paying any expenses for carrying into effect the provisions of this Part and in connection with the administration of the Fund.
- (3) The Minister may approve the payment out of the Fund of any cost, expense or other payment for purposes other than those specified in subsection (2) that are not inconsistent with the objects of the Fund.

[Ins. Act A1218:s.35]

#### 83F. Membership of the Board.

- (1) The members of the Board shall be appointed by the Minister and the Board shall consist of—
- (a) the Chairman of the Commission, as an ex-officio member, who shall be the Chairman;
  - (b) the Deputy Chief Executive of the Commission, who shall be an ex-officio member;
  - (c) a senior representative of an exchange holding company; and
  - (d) four other members who possess knowledge and experience in finance, business, law or other relevant experience.
- (2) If the Chairman of the Board is absent or unable to act due to illness or any other cause, the Deputy Chief Executive of the Commission shall act in his place as the Chairman of the Board.
- (3) Members of the Board shall not be entitled to any remuneration but may be paid such honorarium and travelling and subsistence allowances as the Minister may determine.
- (4) The Board shall have such powers and shall perform such duties as are given or imposed by this Act or as may be prescribed from time to time by the Minister and may by instrument in writing delegate to any person all or any of such powers and duties.

[Ins. Act A1218:s.35]

83G. Tenure of office.

- (1) Subject to subsection (2), a member of the Board, other than the ex-officio members referred to in subsection 83F(1), shall hold office for a term not exceeding three years and shall be eligible for reappointment.
- (2) In the case of the Chairman of the Commission and the Deputy Chief Executive of the Commission, who are ex-officio members of the Board, their tenure of office as members of the Board shall be the tenure of their appointments as Chairman of the Commission and Deputy Chief Executive of the Commission respectively under the Securities Commission Act 1993.

[Ins. Act A1218:s.35]

83H. Resignation and revocation of appointment.

- (1) A member of the Board may, at any time resign his office by a written notice addressed to the Minister.
- (2) The Minister may at any time revoke the appointment of a member of the Board if he deems fit.

[Ins. Act A1218:s.35]

83I. Vacation of office.

The office of a member of the Board shall be vacated if—

- (a) he dies;
- (b) he has been convicted of any offence involving fraud or dishonesty;
- (c) he becomes bankrupt;
- (d) he is of unsound mind or is otherwise incapable of discharging his duties;
- (e) he is absent from three consecutive meetings of the Board except on leave granted by the Minister; or
- (f) he is guilty of serious misconduct in relation to his duties under this Act.

[Ins. Act A1218:s.35]

83J. Quorum and procedures of meetings.

- (1) The Board shall meet as often as may be necessary for the performance of its functions or duties under this Part.
- (2) The quorum of the Board shall be four.
- (3) Subject to this Part, the Board shall determine its own procedures.
- (4) The Board may invite any person to attend any meeting or deliberation of the Board for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.



- (5) Subject to section 83K, if on any question to be determined, there is an equality of votes, the Chairman of the Board shall have the casting vote in addition to his original vote.  
[Ins. Act A1218:s.35]

**83K. Disclosure of interest.**

- (1) A member of the Board who has or acquires a direct or indirect interest in relation to any matter under discussion by the Board shall disclose to the Board the existence of his interest and nature thereof.
- (2) A disclosure made under subsection (1) shall be recorded in the minutes of the Board, and after the disclosure—
- (a) the member shall not take part nor be present in any deliberation or decision of the Board;
- (b) the member shall be disregarded for the purpose of constituting a quorum of the Board relating to the matter; and
- (c) no act or proceedings of the Board shall be invalidated on the ground that any member of the Board has contravened the provisions of this section.

[Ins. Act A1218:s.35]

**83L. Conservation of the Fund.**

- (1) It shall be the duty of the Board to conserve the Fund consistent with the provisions of this Part or any regulations made under this Part.
- (2) The Board may invest the monies of the Fund available for investment in such manner as the Board may, by any regulations prescribed by the Minister, be authorised to invest.
- (3) Without affecting the generality of section 83F, the Board may by written instrument delegate all or any of its powers and functions under subsection (2) to any employee or person as it may appoint.
- (4) The Board may pay to any person appointed under subsection (3) a fee for any service rendered in exercise of any power and function delegated to that person under that subsection.

[Ins. Act A1218:s.35]

**83M. Financial year.**

For the purposes of this Part, the financial year of the Fund shall commence on 1 January and end on 31 December of each year.

[Ins. Act A1218:s.35]

**83N. Accounts and audit.**

- (1) The Board shall keep or cause to be kept proper accounts and other records in respect of the operation of the Fund and shall prepare statements of accounts in respect of each financial year.

- (2) The Board shall, not later than three months after the end of each financial year, cause the accounts of the Fund to be audited by auditors appointed by the Board.
- (3) At the end of each financial year and as soon as the accounts of the Fund have been audited, the Board shall cause a copy of the statement of accounts to be submitted to the Minister, together with a report dealing with the investments of the Fund the preceding financial year and containing such information relating to the proceedings and policies of the Board as the Minister may from time to time direct.
- (4) The Statutory Bodies (Accounts and Annual Reports) Act 1980 [Act 240] shall not apply to the Fund.

[Ins. Act A1218:s.35]

#### 83O. Power of Minister in relation to the Board.

The Minister may give the Board such directions of a general nature that are not inconsistent with the provisions of this Part that relate to the exercise and performance of its functions and the Board shall give effect to such directions.

[Ins. Act A1218:s.35]

#### 83P. Dissolution of the Fund.

- (1) Where the Minister is satisfied that there are insufficient funds standing to the credit of the Fund to adequately fulfil the objects referred to in section 83E, he may, by notification in the Gazette, dissolve the Fund and transfer such assets and monies as may remain to the credit of the Fund to such other fund that has similar objects to the Fund.
- (2) In the event the Fund is dissolved under subsection (1) and there is no other fund that satisfies the provisions of subsection (1) with regards to its objects, the assets and funds that remain to the credit of the Fund shall be transferred to the Federal Consolidated Fund.

[Ins. Act A1218:s.35]

#### 83Q. Power to make regulations.

The Minister may make such regulations for the better carrying out of the provisions of this Part or as may be necessary or expedient for—

- (a) giving full effect to the provisions of this Part;
- (b) carrying out or achieving the objects and purposes of this Part; or
- (c) the further, better or more convenient implementation of the provisions of this Part.

[Ins. Act A1218:s.35]

PART IX  
TRADING IN SECURITIES

DIVISION 1

Prohibited Conduct

84. False trading and market rigging transaction.

- (1) Subject to section 87B, no person shall create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a stock market in Malaysia or a false or misleading appearance with respect to the market for, or the price of, any such securities.

[Am. Act A1017:s.16]

- (2) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transactions or devices, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

- (3) Without affecting the generality of subsection (1), a person who—

- (a) effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;
- (b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
- (c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

shall be deemed to have created a false or misleading appearance of active trading in securities on a stock market.

- (4) In a prosecution of a person for an act referred to in subsection (3) it is a defence if the defendant establishes that—

- (a) the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance; and

- (b) he did not act recklessly, whether or not he created a false or misleading appearance,

of active trading in securities on a stock market.

- (5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.
- (6) In a prosecution for an offence against subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.
- (7) The reference in paragraph (3)(a) to a transaction of sale or purchase of securities includes—
  - (a) a reference to the making of an offer to sell or purchase securities; and
  - (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

85. Stock market manipulations.

- (1) Subject to section 87B, no person shall effect, take part in, engage in, be concerned in, or carry out, either directly or indirectly, any number of transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of—
  - (a) raising;
  - (b) lowering; or
  - (c) pegging, fixing, maintaining or stabilising,

the price of securities of the corporation on a stock market in Malaysia, for the purpose or purposes which may include the purpose of inducing other persons, whether or not another person is induced, to acquire or dispose of the securities of the corporation or of a related corporation.

[Am. Act A1017:s.17; Act A1040:s.6]

- (2) A reference in this section to a transaction, in relation to securities of a corporation, includes—
  - (a) a reference to the making of an offer to sell or purchase such securities of the corporation; and
  - (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase such securities of the corporation.

86. False or misleading statements, etc.

Subject to section 87B, a person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities if, when he makes the statement or disseminates the information—

[Am. Act A1017:s.8]

- (a) he does not care whether the statement or information is true or false; or
- (b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

[Am. Act A661:s.38]

87. Fraudulently inducing persons to deal in securities.

- (1) Subject to section 87B, a person shall not—

[Am. Act A1017:s.19]

- (a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular,

[Am. Act A661:s.39]

[Am. Act A661:s.39]

induce or attempt to induce another person to deal in securities.

[Am. Act A661:s.39]

- (2) In a prosecution for an offence under paragraph (1)(d), in relation to the recording or storing of information, it shall be a defence if the defendant establishes that when the information was recorded or stored, he had no reasonable grounds for expecting that the information would be available to any person.

[Am. Act A1017:s.19]

87A. Use of manipulative and deceptive devices.

Subject to section 87B, it shall be unlawful for any person directly or indirectly in connection with the purchase or sale of any securities—

[Am. Act A1017:s.20]

- (a) to use any device, scheme or artifice to defraud;
- (b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (c) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

[Am. Act A661:s.40]

87B. Person or transaction to whom or which sections 84, 85, 86, 87 and 87A do not apply.

The Minister may prescribe, and make regulations in respect of, persons, or transactions relating to securities, or any particular class, category or description of persons, or any particular class,

category or description of transactions relating to securities, to whom or which section 84, 85, 86, 87 or 87A does not apply.

[Am. Act A1017:s.21]

**88. Dissemination of information about illegal transactions.**

A person shall not circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that securities of that body corporate, or of a corporation that is related to that corporation, in contravention of section 84, 85, 86, 87 or 87A if—

[Am. Act A661:s.41]

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

**88A. Civil liability for contravention of sections 84, 85, 86, 87, 87A and 88.**

(1) Where a person contravenes section 84, 85, 86, 87, 87A or 88, any other person who entered into a transaction for the sale and purchase of securities with the first-mentioned person or with a person acting on behalf of the first-mentioned person may, by civil action against the first-mentioned person or against any person acting on behalf of the first-mentioned person, recover the amount of loss suffered by that other person—

- (a) whether or not the first-mentioned person or any person acting on his behalf has been charged with an offence in respect of the contravention; or
- (b) whether or not a contravention has been proved against the first-mentioned person or any person acting on his behalf in a prosecution.

(2) In this section, “loss” includes an unrealised loss in the price or value of securities being the difference between—

- (a) the price or value of securities in a transaction in which the person bringing the action claims to have suffered loss; and
- (b) the price which would have been the likely price of the securities in the transaction, or the value which it is likely that such securities would have had at the time of that transaction, if the contravention had not occurred.

(3) This section shall not affect any liability under any other written law in respect of the conduct constituting the contravention.

[Am. Act A1017:s.22]

**88B. Penalty for offence under Division 1.**

A person who contravenes or fails to comply with section 84, 85, 86, 87A or 88 commits an offence and is liable on conviction to a fine of not less than RM1 million and to imprisonment for a term not exceeding 10 years.

[Am. Act A1017:s.22]

88C. Acts and omissions within and outside Malaysia relating to prohibited conduct under Division 1.

This Division applies to—

- (a) acts and omission occurring within Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within or outside Malaysia; and
- (b) acts and omission occurring outside Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within Malaysia.

[Am. Act A1040:s.7]

DIVISION 2

Insider Trading

89. Information.

For the purposes of this Division, “information” includes—

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;
- (b) matters relating to the intentions, or likely intentions, of a person;
- (c) matters relating to negotiations or proposals with respect to—
  - (i) commercial dealings; or
  - (ii) dealing in securities;
- (d) information relating to the financial performance of a corporation;
- (e) information that a person proposes to enter into, or has previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and
- (f) matters relating to the future.

[Am. Act A1017:s.24]

89A. Information generally available.

- (1) For the purposes of this Division, information is generally available if the information has been made known in a manner that would, or would tend to, bring it to the attention of reasonable persons who invest in securities of a kind whose price or value might be affected by the information, and since it was so made known, a reasonable period for it to be disseminated among, and assimilated by, such persons has elapsed.
- (2) The information referred to in subsection (1) includes information that consists of deductions or conclusions made or drawn from such information.

[Am. Act A1017:s.25]

89B. Material effect on price or value of securities.

For the purposes of this Division, an information that on becoming generally available would or would tend to have a material effect on the price or value of securities, refers to such information which would or would tend to, on becoming generally available, influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities, or enter into an agreement with a view to acquire or dispose of such securities.

[Am. Act A1017:s.25]

89C. Trading in securities.

For the purposes of this Division, trading in securities that is ordinarily permitted on the stock market of a stock exchange is to be taken to be permitted on that stock market even though trading in any such securities on that stock market is suspended.

[Am. Act A1017:s.25]

89D. Reference to “procure”.

For the purposes of this Division and section 90A but without limiting the meaning of the term “procure” as provided in this section, if a person incites, induces, encourages or directs an act or omission by another person, the first-mentioned person is taken to procure the act or omission by the other person.

[Am. Act A1017:s.25]

89E. Prohibited conduct of person in possession of inside information.

(1) A person is an “insider” if that person—

- (a) possesses information that is not generally available which on becoming generally available a reasonable person would expect it to have a material effect on the price or the value of securities; and
- (b) knows or ought reasonably to know that the information is not generally available.

(2) An insider shall not, whether as principal or agent, in respect of any securities to which information in subsection (1) relates—

- (a) acquire or dispose of, or enter into an agreement for or with a view to the acquisition or disposal of such securities; or
- (b) procure, directly or indirectly, an acquisition or disposal of, or the entering into an agreement for or with a view to the acquisition or disposal of such securities.

(3) Where trading in the securities to which the information in subsection (1) relates is permitted on a stock market of a stock exchange, the insider shall not, directly or indirectly, communicate the information referred to in subsection (1), or cause such information to be communicated, to another person, if the insider knows, or ought reasonably to know, that the other person would or would tend to—

- (a) acquire, dispose of, or enter into an agreement with a view to the acquisition or disposal of, any securities to which the information in subsection (1) relates; or
- (b) procure a third person to acquire, dispose of or enter into an agreement with a view to the acquisition or disposal of, any securities to which the information in subsection (1)



relates.

- (4) A person who contravenes or fails to comply with subsection (2) or (3) commits an offence and is liable on conviction to a fine of not less than RM1 million and to imprisonment for a term not exceeding 10 years.
- (5) The Minister may prescribe, and make regulations in respect of, persons, or transactions relating to securities, or any particular class, category or description of persons, or any particular class, category or description of transactions relating to securities, to whom or which this section does not apply.

[Am. Act A1017:s.25]

#### 89F. Proof of contravention of section 89E.

In a prosecution of an offence under subsection (2) or (3) of section 89E, it is not necessary for the prosecution to prove the non-existence of facts or circumstances which if they existed would, by virtue of section 89G, 89H, 89I, 89J, 89K, 89L, 89M, 89N or 89O, or any regulations made under subsection (5) of section 89E, preclude the act from constituting a contravention of subsection (2) or (3) of section 89E, as the case may be.

[Am. Act A1017:s.25]

#### 89G. Secrecy arrangements by corporation.

- (1) For the purposes of this Division, a corporation is deemed to possess any information—
  - (a) which an officer of the corporation—
    - (i) possesses and which came into his possession in the course of his duties as an officer of the corporation; or
    - (ii) knows or ought reasonably to have known because he is an officer of the corporation; or
  - (b) which an officer of the corporation possesses and which came into his possession in the course of his duties as an officer of a related corporation of the first-mentioned corporation where—
    - (i) the officer is an insider by reason of being in possession of the information;
    - (ii) the officer is involved in, the decision, transaction or agreement of the first-mentioned corporation in acquiring or disposing of securities in relation to which the officer is an insider or entering into an agreement to acquire or dispose of such securities, procuring another person to acquire or dispose of such securities or enter into an agreement to do so, or communicating the information in circumstances referred to in subsection 89E(3); or
    - (iii) it is reasonable to expect that the officer would communicate the information to another officer of the first-mentioned corporation acting in his capacity as such, unless it is proved that the information was not in fact so communicated.
- (2) In this section, “information” refers to information which a corporation is taken to possess and where a person in possession of the information is an insider.
- (3) A corporation does not contravene subsection 89E(2) by entering into the transaction or agreement at any time merely because of information in the possession of the corporation if—

- (a) the decision to enter into the transaction or agreement was taken on behalf of the corporation by a person or persons other than an officer of the corporation in possession of the information;
- (b) the corporation had in operation at that time arrangements that could reasonably be expected to ensure that—
  - (i) the information was not communicated to a person or one of the persons who was involved in, or made the decision to enter into, or be involved in, the transaction or agreement;
  - (ii) no advice with respect to the decision to enter into, or be involved in, the transaction or agreement was given to that person by the person in possession of the information; or
  - (iii) the person in possession of the information would not be involved in the decision to enter into or be involved in, the transaction or agreement, or involved in the transaction or agreement; and
- (c) the information was not so communicated, no such advice was given and the person in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement or was not involved in the transaction or agreement.

#### 89H. Secrecy agreements by partnerships.

- (1) For the purposes of this Division, a partner of a partnership is deemed to possess any information—
  - (a) which another partner possesses and which came into the other partner's possession in his capacity as a partner of the partnership;
  - (b) which an employee of the partnership possesses and which came into the employee's possession in the course of his duties; or
  - (c) if a partner or an employee of a partnership knows or ought reasonably to know any matter or thing because the partner or employee is a partner or an employee as such, it is presumed that every partner and employee of the partnership know or ought reasonably to know that matter or thing.
- (2) In this section, "information" refers to information which a partnership is deemed to possess and where a partner or an employee of the partnership in possession of that information is an insider.
- (3) A partner of a partnership does not contravene subsection 89E(2) by entering into the transaction or agreement referred to in that subsection at any time merely because one or more (but not all) partners, or an employee or employees of the partnership, were in actual possession of information at the time if—
  - (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:
    - (i) a partner who is taken to possess the information merely because another partner, or an employee of the partnership, was in possession of the

information; or

- (ii) an employee of the partnership who was not in possession of the information; and
  - (b) the partnership had in operation at that time agreements that could reasonably be expected to ensure that—
    - (i) the information was not communicated to a partner or an employee or one of the partners or employees who was or were involved in, or made the decision with respect to the entering into the transaction or agreement in question;
    - (ii) no advice with respect to the decision to enter into the transaction or agreement was given to that partner or employee by a partner or an employee in possession of the information;
    - (iii) the partner or employee in possession of the information would not be involved in the decision to enter into, or be involved in, the transaction or agreement; and
  - (c) the information was not communicated, no advice was given and the partner or employee in possession of the information was not involved in the decision to enter into, or be involved in, the transaction or agreement.
- (4) A partner of a partnership does not contravene subsection 89E(2) by entering into the transaction or agreement referred to in that subsection otherwise than on behalf of the partnership merely because the partner is taken to possess information that is in the possession of another partner or employee of the partnership.

[Am. Act A1017:s.25; Act A1040:s.8]

#### 89I. Underwriting and sub-underwriting.

- (1) Subsection 89E(2) shall not apply in respect of—
  - (a) the entering into of an underwriting agreement or a sub-underwriting agreement; or
  - (b) the acquisition of securities under an obligation to do so in an agreement referred to in paragraph (a).
- (2) Subsection 89E(3) shall not apply in respect of the communication of information in relation to securities to a person solely for the purpose of procuring the person—
  - (a) to enter into an underwriting agreement or a sub-underwriting agreement in relation to any such securities; or
  - (b) to acquire any such securities under an obligation to do so in an agreement referred to in paragraph (a).

[Am. Act A1017:s.25]

#### 89J. Non-application of section 89E to transactions carried out under schemes of arrangement, etc. under any written law.

- (1) Section 89E shall not apply to an acquisition or disposal of securities or the communication of information that is carried out under any other written law relating to schemes of

arrangement, reconstructions and take-overs relating to corporations.

[Am. Act A1017:s.25; Am. Act A1218:s.36]

- (2) Subsection (2) shall not apply to a recognized clearing house which acquires or disposes of securities for the purpose of settlement of a market contract or in relation to any proceedings or other action relating to the settlement of a market contract where the acquisition or disposal of securities is effected in accordance with the rules of a recognized clearing house.  
[Ins. Act A1218:s.36]
- (3) Subsection (2) shall not apply to a stock exchange in relation to a sale or purchase of securities where the stock exchange acts on an instruction from a recognized clearing house pursuant to section 114.

[Ins. Act A1218:s.36]

**89K. Exception for corporation with knowledge of its intention.**

- (1) A corporation does not contravene subsection 89E(2) by entering into a transaction or an agreement in relation to securities other than those of the corporation merely because the corporation is aware that it proposes to enter into or has previously entered into one or more transactions or agreements in relation to those securities.
- (2) Subject to subsection (3), a corporation does not contravene subsection 89E(2) by entering into a transaction or an agreement in relation to securities other than those of the corporation because an officer of the corporation is aware that it proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.
- (3) Subsection (2) shall not apply unless the officer of the corporation became aware of the matter referred to in that subsection in the course of his duties.
- (4) Subject to subsection (5), a person does not contravene subsection 89E(2) by entering into a transaction or an agreement on behalf of a corporation in relation to securities other than those of the corporation merely because the person is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.
- (5) Subsection (4) shall not apply unless the person became aware of the matters referred to in the course of his duties as an officer of the first-mentioned corporation or in the course of acting as an agent of the first-mentioned corporation.

[Am. Act A1017:s.25]

**89L. Exception of knowledge of individual's own intentions or activities.**

An individual does not contravene subsection 89E(2) by entering into a transaction or an agreement in relation to securities merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

[Am. Act A1017:s.25]

**89M. Unsolicited transaction by a broker.**

- (1) A dealer or a dealer's representative does not contravene subsection 89E(2) by entering into a transaction or an agreement as an agent for another person, being a transaction or an agreement entered into on the stock market of a stock exchange in securities which are quoted for trading on the stock market of that stock exchange if—

- (a) the transaction or agreement is entered into under a specific instruction by the other person which was not solicited by the dealer or the dealer's representatives;
  - (b) the dealer or dealer's representative has not given any advice to the other person in relation to the transaction or agreement or otherwise sought to procure the other person's instructions to enter into the transaction or agreement; and
  - (c) the other person is not associated with the dealer or the dealer's representative.
- (2) Nothing in this section shall affect the application of subsection (1) in relation to the principal.  
[Am. Act A1017:s.25]

89N. Exception for redemption of units of a unit trust scheme under buy-back covenant.

Subsection 89E(2) shall not apply in respect of the redemption by a trustee under a trust deed relating to a unit trust scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets, less any liabilities of the unit trust scheme to which the units of the unit trust scheme relates, and less any reasonable charge for purchasing the units of the unit trust scheme or interest.

[Am. Act A1017:s.25]

89O. Parity of information defence.

- (1) A person does not contravene subsection 89E(2) if—
- (a) the securities that are the subject of the transaction or agreement or the action of procuring a transaction or an agreement are not securities which are permitted on the stock market of a stock exchange;
  - (b) the Court is satisfied that the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement; and
  - (c) that person acquires or disposes of such securities on such terms and in such circumstances that—
    - (i) he does not obtain any gain or avoid any loss, including an unrealised gain or unrealised avoidance of loss in price or value, of the securities, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available; and
    - (ii) the purpose of the acquisition or disposal of the securities does not include any purpose of securing a gain or avoiding a loss, as the case may be, for himself or any other person by reason of the effect that the information is likely to have when it becomes generally available.
- (2) In a prosecution for an offence under subsection 89E(3) where the person communicated information or caused information to be communicated to another person, it shall be a defence—
- (a) if the Court is satisfied that the information came into the possession of the person so communicating the information solely as a result of it being made known in a manner

likely to make it generally available pursuant to section 89A; or

[Am. Act A1040:s.9]

- (b) if the Court is satisfied that the other party knew of, or ought reasonably to have known, the information before the information was communicated.

[Am. Act A1017:s.25]

#### 89P. Acts and omission within and outside Malaysia relating to insider trading.

This Division applies to—

- (a) acts and omission occurring within Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within or outside Malaysia; and
- (b) acts and omission occurring outside Malaysia in relation to securities of any body corporate which is formed or is carrying on business or is listed within Malaysia.

[Am. Act A1040:s.10]

### DIVISION 3

#### Liability For Unlawful Activity

#### 90. Civil remedies.

- (1) Where it appears to the Commission that any person has contravened section 84, 85, 86, 87, 87A, 88 or 89E, the Commission may institute civil proceedings in the Court against that person, whether or not that person has been charged with an offence in respect of the contravention, or whether or not a contravention has been proved in a prosecution.
- (2) A proceeding under subsection (1) or under section 88A or 90A may be begun at any time within 12 years from—
  - (a) the date on which the cause of action accrued; or
  - (b) the date on which the Commission or the plaintiff, as the case may be, discovered the contravention,

[Subs. Act A1017:s.27]

whichever is the later.

#### 90A. Recovery of loss or damages.

- (1) A person who suffers loss or damages by reason of, or by relying on, the conduct of another person who has contravened section 89E may recover the amount of loss or damages by instituting civil proceedings against the other person, whether or not the other person has been charged with an offence in respect of the contravention or, whether or not a contravention has been proved in a prosecution.
- (2) In subsection (1), “loss or damages” includes an unrealised loss or gain, as the case may be, in the price or value of securities of a corporation being the difference between—
  - (a) the price or value of securities in a transaction in connection with which the person

first-mentioned in subsection (1) claims to have suffered loss or damages; and

- (b) the price which would have been the likely price of the securities in the transaction, or the value which it is likely that such securities would have had at the time of that transaction, if the contravention had not occurred.
- (3) Where an insider acquired or agreed to acquire, or procured another person to acquire or agree to acquire, securities from a person (the “seller”) who did not possess the information, in contravention of subsection 89E(2), the seller may, by civil action against the insider or any other person involved in the contravention, recover, as a loss or damages suffered by the seller, the difference between—
  - (a) the price at which the securities were acquired, or agreed to be acquired, by the insider or the other person, from the seller; and
  - (b) the price at which the securities would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, referred to in paragraph (a) if the information had been generally available.
- (4) Where an insider disposed of or agreed to dispose of, or procured another person to dispose of or agree to dispose of, securities to a person (the “buyer”) who did not possess the information, in contravention of subsection 89E(2), the buyer may, by civil action against the insider or any other person involved in the contravention, recover, as a loss or damages suffered by the buyer, the difference between—
  - (a) the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, to the buyer; and
  - (b) the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, referred to in paragraph (a) if the information had been generally available.
- (5) Where an insider acquired or agreed to acquire, or procured another person to acquire or agree to acquire, securities, in contravention of subsection 89E(2), and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider or any other person involved in the contravention has been charged with an offence in respect of the contravention or whether or not the contravention has been proved in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against the insider or any other person involved in the contravention—
  - (a) recover an amount equal to three times the amount being the difference between the price at which the securities were acquired, or agreed to be acquired, by the insider or the other person, and the price at which they would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, if the information had been generally available; and
  - (b) claim civil penalty in such amount as the Court considers appropriate having regard to the seriousness of the contravention, being an amount not more than RM1 million.
- (6) Where an insider disposed of or agreed to dispose of, or procured another person to dispose of or agree to dispose of, securities, in contravention of subsection 89E(2), and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider or any other person involved in the contravention has been charged with an offence in respect of the contravention or whether or not the contravention has been proved

in a prosecution, the Commission may, if it considers that it is in the public interest to do so, by civil action against the insider or any other person involved in the contravention—

- (a) recover an amount equal to three times the amount being the difference between the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, and the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, if the information had been generally available; and
- (b) claim civil penalty in such amount as the Court considers appropriate having regard to the seriousness of the contravention, being an amount not more than RM1 million.

[Am. Act A1218:s.37]

(7) An amount recovered or obtained by the Commission in an action pursuant to subsection (5) or (6), respectively, shall be applied—

(a) firstly, to reimburse the Commission for all costs of the investigation and proceedings in respect of the contravention or suspected contravention; and

(b) secondly—

(i) where it relates to subsection (5), to compensate the sellers who disposed of securities of the same class on the stock market of the stock exchange when information was not generally available between the time when the first contravention of subsection 89E(2) occurred and the time when information became generally available; and

(ii) where it relates to subsection (6), to compensate the buyers who acquired securities of the same class on the stock market of the stock exchange when the information was not generally available between the time when the first contravention of subsection 89E(2) occurred and the time when the information became generally available.

(8) If the Commission considers that it is not practicable to compensate the persons referred to in paragraph (7)(b), in view of the likely administration costs, the amount of any potential distribution to each person and the difficulty of ascertaining or notifying the persons whom it is appropriate to compensate, as the case may be, the Commission may decide not to distribute to the persons referred to in paragraph (7)(b).

(9) To the extent that any of the amount recovered or obtained in a civil action under subsection (5) or (6) has not been distributed pursuant to subsection (7), it shall be paid to the compensation fund maintained under Part VIII or retained by the Commission to defray the costs of regulating market trading, as the Commission, with the approval of the Minister, may determine.

(10) Any right of action that a person has by virtue of this section is in addition to any right that any other person has under any other written law.

[Ins. Act A1017:s.28]

91. [Deleted by Act A1017:s.29]

92. Dealer to give priority to client's order.

(1) Except as permitted by subsection (3)—



- (a) the holder of a dealer's licence or a fund manager's licence when acting as principal or on behalf of a person associated with or connected to the holder; or
- (b) a representative of such a holder when acting for his own account or on behalf of a person associated with or connected to the representative,

shall not enter into a transaction of purchase or sale of securities that are permitted to be traded on the stock market of a stock exchange if a client of that holder or representative who is not associated with or connected to the holder or representative, has instructed the holder or representative to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.

- (2) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than RM1 million and to imprisonment for a term not exceeding 10 years.
- (3) Subsection (1) does not apply in relation to the entering into of a transaction by the holder of a dealer's licence or a fund manager's licence as principal or on behalf of a person associated with or connected to the holder, or by a representative of such a holder for his own account or on behalf of a person associated with or connected to the representative, if—
  - (a) the instructions from the client of the holder of a dealer's licence or a fund manager's licence required the purchase or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be purchased or sold and the holder of a dealer's licence or a fund manager's licence or a representative of such holder has been unable to purchase or sell the securities by reason of those conditions; or
  - (b) the transaction is entered into in prescribed circumstances.

[Am. Act A661:s.43; Act A847:s.33; Subs. Act A1218:s.38]

### 93. Dealings by employees of holders of licences.

- (1) A dealer or an investment adviser and an employee of that person shall not, as principals, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

[Am. Act A661:s.44]
- (2) A dealer or an investment adviser shall not give credit to an employee of that person or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if—
  - (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to purchase or subscribe for any securities; or
  - (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of purchasing or subscribing for securities.
- (3) A person who is an employee of a participating organization shall not, as principal, purchase or agree to purchase any securities or rights or interests in securities unless the participating organization acts as the agent of the person in respect of the transaction.

[Am. Act A661:s.44; Am. Act A1218:s.39]

- (4) A person who contravenes or fails to comply with this section commits an offence and is liable on conviction to a fine or to imprisonment for a term not exceeding one year or to both.

PART X  
ENFORCEMENT AND INVESTIGATION

DIVISION 1

General

94. Interpretation.

- (1) This Part does not authorise any investigation into the business of a banking corporation as defined under the Banking Act 1973, or a finance company as defined under the Finance Companies Act 1969 [Act 6], unless specifically provided for in this Part.
- (2) In this Part, “books” includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document.

94A. Inspection of books and records of licensee and others.

- (1) For the purposes of ascertaining whether the holder of a licence has complied with the provisions of this Act and any conditions or restrictions subject to which the licence was granted or renewed, the Commission may inspect and make copies of or take extracts from—
  - (a) any document, record or matter required by or under this Act or the conditions of the licence to be kept by the holder of that licence; and
  - (b) the books of a dealer, insofar as they relate to the business of the holder of that licence.
- (2) The holder of a licence under this Act, and any of the servants or agents of that person shall, on being required by the Commission so to do, produce any document, record or matter referred to in subsection (1).

[Am. Act A661:s.45; Am. Act A943:s.70; Act A1017:s.30]

95. Power of Commission to require production of books.

- (1) The Commission may, at any time, if it considers there is sufficient reason to do so, by writing—

[Am. Act A1017:s.31]

  - (a) give a direction to—
    - (i) an exchange holding company or a stock exchange; [Subs. Act A1218:s.40]
    - (ii) a member of the board of an exchange holding company or a stock exchange; [Subs. Act A1218:s.40]
    - (iii) a person who is or has been either alone or together with another person or other persons, a dealer, a fund manager or an investment adviser or is or has been a dealer’s representative, a fund manager’s representative or an

investment representative;

[Am. Act A943:s.71]

- (iv) a nominee controlled by a person referred to in subparagraph (iii) or jointly controlled by two or more persons at least one of whom is a person referred to in that subparagraph; or
- (v) a person who is or has been an officer or employee of, or an agent, advocate and solicitor, auditor or other person acting in any capacity for or on behalf of, an exchange holding company or a stock exchange or a person referred to in subparagraph (ii), (iii) or (iv),

[Am. Act A1218:s.40]

requiring the production, to the Commission, of such books as are so specified, being books relating to—

[Am. Act A661:s.46; Act A1017:s.31]

- (vi) the business or affairs of an exchange holding company or a stock exchange, as the case may be;
- (vii) any dealing in securities;
- (viii) any advice concerning securities or the issuing or publication of a report or analysis concerning securities;
- (ix) the character or financial position of, or any business carried on by, a person referred to in subparagraph (iii) or (iv); or
- (x) an audit of, or any report of an auditor concerning, a dealing in securities or any accounts or records of a dealer, of a fund manager or of an investment adviser; or

[Am. Act A943:s.71]

- (b) give a direction to any person requiring the production, to the Commission, of any books relating to matters mentioned in subparagraph (vi), (vii), (viii), (ix) or (x) of paragraph (a) that are in the custody or under the control of that person:

[Am. Act A661:s.46; Act A1017:s.31]

Provided that the books shall not be required to be produced at such times and at such places as shall interfere with the proper conduct of the normal daily business of that person.

(2) [Repealed by the Act A661:s.46]

(3) A reference in subsection (1) to a dealing in securities or to a business carried on by a person includes a reference to a dealing in securities by a person as trustee or to a business carried on by a person as a trustee, as the case may be.

(4) [Repealed by the Act A661:s.46]

(5) Where the Commission, requires the production of any books under this section and a person has a lien on the books, the production of the books does not prejudice the lien.

[Am. Act A661:s.46; Act A1017:s.31]

(6) Where the Commission, exercises a power under this section to require another person to

produce books—

[Am. Act A661:s.46; Act A1017:s.31]

(a) if the books are produced, the Commission—

[Am. Act A661:s.46; Act A1017:s.31]

- (i) may take possession of the books and make copies of, or take extracts from, the books;
- (ii) may require the other person or any person who was party to the compilation of the books to make a statement providing an explanation of any of the books;
- (iii) may retain possession of the books for as long as the Commission may consider necessary; and
- (iv) shall permit the other person, upon giving a reasonable notice and specifications of the books, to have access to such books which are in the possession of the Commission; or

(b) if the books are not produced, the Commission may require the other person—

[Am. Act A661:s.46; Act A1017:s.31]

- (i) to state, to the best of his knowledge and belief, where the books may be found; and
- (ii) to identify the person who, to the best of his knowledge and belief, last had custody of the books and to state, to the best of his knowledge and belief, where that last-mentioned person may be found.

(7) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate, including a body corporate that is in the course of being wound up, or was a body corporate, being a body corporate that has been dissolved, to making that requirement of any person who is or has been an officer of the body corporate.

(8) Whenever it appears to any magistrate, upon written information on oath, and after any enquiry he may think necessary, that there are reasonable grounds for suspecting that there are on particular premises any books the production of which has been required by virtue of this section, and which have not been produced in compliance with that requirement, such magistrate may issue a warrant authorising the Commission or any person named therein with or without assistance—

(a) to search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in the premises; and  
[Am. Act A943:s.71]

(b) to take possession of, or secure against interference, any books that appear to be books the production of which was so required.

(9) The powers conferred under subsection (8) are in addition to, and not in derogation of, any other powers conferred by law.

(10) In this section “premises” includes any structure, building, aircraft, vehicle, vessel or place.

95A. Power to specify form and manner of information, returns or documents and period for

submission.

(1) Where under any provision of this Act—

(a) any person is required to; or

(b) power is given to the Commission to require any person to,

[Am. Act A1017:s.32]

submit to the Commission any information, returns or documents, the Commission, 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 may specify.

[Am. Act A1017:s.32]

(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.

[Am. Act A943:s.72]

## 96. Offences.

(1) A person who refuses or fails to comply with a requirement made under section 94A or 95 commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A661:s.47; Act A847:s.34]

(2) A person who, in purported compliance with a requirement made under section 94A or 95, furnishes information or makes a statement that is false or misleading in a material particular commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A661:s.47; Act A847:s.34]

(3) A person who obstructs or hinders the Commission or another person in the exercise of any power under section 94A or 95 commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A661:s.47; Act A847:s.34;  
Act A943:s.73; Act A1017:s.33]

## 97. Privileges.

(1) Where—

(a) the Commission, makes a requirement under section 95 of an advocate and solicitor in respect of a book; and

- (b) the book contains a privileged communication made by or on behalf of or to the advocate and solicitor in his capacity as an advocate and solicitor,

he is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under receivership or is in the course of being wound up, the receiver or the liquidator, as the case may be, agrees to him complying with a requirement, but where he so refuses to comply with a requirement, he shall forthwith furnish in writing to the Commission the name and address of the person to whom or by whom the communication was made.

[Am. Act A661:s.48]

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

[Am. Act A661:s.48]

- (3) The Commission shall seek the assistance of Bank Negara Malaysia where it appears to the Commission that it is necessary to examine the books of a banking corporation or a finance company relating to the affairs of a customer of the banking corporation or finance company for the purpose of investigating the affairs of the customer.

[Am. Act A847:s.35; Act A1017:s.34]

#### 98. Disclosure to Commission.

- (1) The Commission may require a dealer to disclose to the Commission in relation to any acquisition or disposal of securities, any information including the name of the person from or through whom or on whose behalf the securities were acquired or to or through whom or on whose behalf the securities were disposed of and the nature of the instructions given to the dealer in respect of the acquisition or disposal.

[Am. Act A661:s.49]

- (2) The Commission may require a person who has acquired or disposed of securities to disclose to the Commission, whether he acquired or disposed of those securities, as the case may be, as trustee for, or for or on behalf of, another person and, if he acquired or disposed of those securities as trustee for, or for or on behalf of, another person, to disclose the name of that other person and the nature of any instructions given to the first-mentioned person in respect of the acquisition or disposal.

- (3) The Commission may require a stock exchange to disclose to the Commission, in relation to an acquisition or disposal of securities on the stock market of that stock exchange, the names of the participating organizations who acted in the acquisition or disposal.

[Am. Act A1218:s.41]

- (4) A person who refuses or fails to comply with a requirement of the Commission under subsection (1), (2), or (3) commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A847:s.36; Act A943:s.74; Act A1017:s.35; Act A661:s.49]

#### 99. Investigation of certain matters.

Where the Commission has reason to suspect that a person has committed an offence under this Act or has been guilty of fraud or of an offence under any other written law relating to dealing in securities, fund management or investment advice, the Commission may make such investigation

as the Commission thinks expedient for the due administration of this Act.

[Am. Act 1017:s.36]

99A. Disclosure of information relating to dealing in securities.

- (1) The Commission may require a person to disclose to the Commission, in relation to any dealing in securities, whether or not the dealing was carried out on another person's behalf—
  - (a) the name of, and particulars sufficient to identify the person from whom, through whom or on whose behalf the securities were dealt with;
  - (b) the nature of the instructions given to that person in relation to the dealing in securities;
  - (c) the particulars of the dealing in securities, including—
    - (i) particulars of the securities that were dealt with; and
    - (ii) particulars of consideration given or received for the dealing in securities or any other transaction related to the dealing in securities; and
  - (d) any other information in the possession of the person as the Commission may specify as it deems expedient for the due administration of this Act.
- (2) A person who refuses or fails to comply with a requirement of the Commission under subsection (1) commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act 1017:s.37]

99B. Duty of chief executive and directors of listed corporation to disclose interests in securities.

- (1) Unless exempted by the Commission in writing, a person who—
  - (a) on the date of coming into force of this provision, is the chief executive or director of a listed corporation, and is then interested in the securities of, the listed corporation or any associated corporation of the listed corporation; or
  - (b) after the date of coming into force of this provision, becomes a chief executive or director of a listed corporation and at the time when he does so is interested in securities of the listed corporation or any associated corporation of the listed corporation,shall notify the Commission in writing—
  - (aa) of the subsistence of his interests at that time; and
  - (bb) the extent of his interests in the listed corporation or associated corporation of the listed corporation at that time.
- (2) A chief executive or director of a listed corporation shall notify the Commission in writing of the occurrence, while he is a chief executive or director of the listed corporation, of any of the following events:
  - (a) any event in consequence of which he becomes, or ceases to be, interested in



securities in the listed corporation or any associated corporation of the listed corporation;

- (b) the entering into by him of a contract to sell any securities in the listed corporation or any associated corporation of the listed corporation in which he has an interest;
  - (c) the assignment by him to any other person of a right granted to him by the listed corporation to subscribe for securities in the listed corporation;
  - (d) the grant to him by another corporation, being an associated corporation of the listed corporation, of a right to subscribe for securities in that associated corporation, the exercise of such a right granted to him and the assignment by him to any other person of such a right so granted; and
  - (e) any event in consequence of which a corporation becomes an associated corporation of the listed corporation where immediately after the event he has an interest in the securities of the corporation.
- (3) Subsection (2) does not require the notification by a person of the occurrence of an event which comes to his knowledge after he had ceased to be a chief executive or director.
- (4) A person who—
- (a) fails to notify the Commission, as required under subsection (1) or (2); or
  - (b) in the purported performance of a duty to which he is subject, makes to the Commission a statement which he knows to be false,
- commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a period not exceeding 10 years or to both.
- (5) For the purpose of this section, “chief executive” and “director” include a spouse, child or parent of the chief executive or director.

[Am. Act 1017:s.37]

#### 99C. Disqualification of chief executive or director of listed companies.

- (1) A person—
- (a) to whom subsection 130(1) of the Companies Act 1965 applies; and
  - (b) who intends to apply for leave of the High Court to be a director or promoter of a listed company, or to be directly or indirectly concerned, or to take part, or engage, in the management of a listed company,
- shall give to the Commission not less than 14 days' notice of his intention to apply, and the Commission shall be made a party to the proceedings.
- (2) On the hearing of any application referred to in subsection (1), the Commission may—
- (a) oppose the granting of an application; or
  - (b) apply to the High Court to disallow the person to be a director or promoter of a listed company, or to be directly or indirectly concerned, or to take part, or engage, in the

management of the listed company, for such longer period exceeding five years as the High Court thinks appropriate.

- (3) Notwithstanding subsection 130(1) of the Companies Act 1965, where it appears to the Commission that by reason of any chief executive or director of a listed company—
- (a) having been convicted of an offence under a securities law; or
  - (b) having had an action taken against him under section 11, 88A or 90 or subsection 90A(5) or (6) of, or section 100,

the chief executive or the director is unfit, to be directly or indirectly concerned, or to take part, engage, in the management of the listed company, the Commission may apply to the High Court to remove from office such chief executive or director of the listed company.

- (4) The Commission may require a chief executive or director concerned in an application under subsection (3) or the listed company in which the chief executive or director holds office—
- (a) to furnish the Commission with such information with respect to the affairs of the listed company; and
  - (b) to produce and permit inspection of such books or documents of or relevant to the listed company,

as the Commission may require for the purpose of determining whether or not to make an application under subsection (3); and if the chief executive or director concerned fails to comply with any requirement under this section, the High Court may, on the application of the Commission, make an order requiring the chief executive or director to comply with the requirement within such time as may be specified by the High Court.

- (5) Where on an application under subsection (3), the High Court is satisfied—
- (a) that a chief executive or director of the listed company—
    - (i) has been convicted under a securities law; or
    - (ii) has had an action taken against him under sections 11, 88A or 90 or subsection 90A(5) or (6) or section 100; and
  - (b) that his conduct as chief executive or director of the listed company renders him unfit to be directly or indirectly concerned, or to take part, or engage, in the management of the listed company,

the High Court may make an order that the chief executive or director concerned be removed from office with effect from such date as may be set out in the order, notwithstanding anything in any other written law or any limitations contained in the memorandum and articles of association of the listed company, and, in particular, notwithstanding any limitation therein as to the minimum or maximum number of directors in that listed company.

- (6) A chief executive or director removed from office under subsection (5) shall cease to hold office from the date set out in the order, and shall not thereafter hold any other office in that listed company or in any manner, whether directly or indirectly, be concerned with, or take part, or engage, in any activity, affairs or business of or in relation to that listed company.

[Ins. Act 1017:s.37]

99D. Submission of information.

- (1) A listed corporation shall cause to be submitted to the Commission—
  - (a) a copy of its audited annual accounts within two weeks from the date of its annual general meeting; and
  - (b) its interim and periodic financial reports immediately after figures are available.
- (2) A listed corporation shall notify the Commission in writing—
  - (a) of any change in the registered or business address of the listed corporation;
  - (b) if the chief executive or any of the directors of the listed corporation ceases to hold office as a chief executive or director; and
  - (c) of the names and particulars of any new chief executive or director of the listed corporation,

within two weeks of the occurrence of such a change or event.

[Ins. Act 1017:s.37]

99E. Duties of auditor of listed corporations.

- (1) If an auditor, in the course of the performance of his duties as an auditor of a listed corporation, is of the professional opinion that there has been a breach or non-performance of any requirement or provision of the securities laws, a breach of any of the rules of the stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation, the auditor shall immediately submit a written report on the matter—
  - (a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission;
  - (b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the relevant stock exchange and the Commission; or
  - (c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the relevant stock exchange and the Commission.
- (2) No auditor shall be liable to be sued in any court for any report submitted by the auditor in good faith and in the intended performance of any duty imposed on the auditor under this section.
- (3) The Commission may, at any time during or after an audit, require an auditor of a listed corporation 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 listed corporation in such manner or to such extent as the Commission may specify;
  - (c) carry out any specific examination or establish any procedure in any particular case;

- (d) submit a report on any matter referred to in paragraphs (a) to (c); or
- (e) submit an interim report on any matter referred to in paragraphs (a) to (d),

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

- (4) The auditor shall comply with any requirement of the Commission under subsection (3) and the listed corporation shall remunerate the auditor in respect of the discharge by him of all or any of the additional duties under this section.
- (5) The listed corporation shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all or any of the additional duties under this section.

[Ins. Act A1218:s.42]

99F. Protection for persons against retaliation for reporting to authorities in specific circumstances.

- (1) Where a chief executive, any officer responsible for preparing or approving financial statements or financial information, an internal auditor or a secretary of a listed corporation by whatever name described, has in the course of the performance of his duties reasonable belief of any matter which may or will constitute a breach or non-performance of any requirement or provision of the securities laws or a breach of any of the rules of a stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation and any of the aforementioned persons submits a report on the matter—
  - (a) in the case of a breach or non-performance of any requirement or provision of the securities laws, to the Commission;
  - (b) in the case of a breach or non-performance of any of the rules of a stock exchange, to the relevant stock exchange or the Commission; or
  - (c) in any other case which adversely affects to a material extent the financial position of the listed corporation, to the relevant stock exchange or the Commission,

the listed corporation shall not remove, discriminate, demote, suspend or interfere with the lawful employment or livelihood of, the chief executive, any officer responsible for preparing or approving financial statements or financial information, internal auditor or secretary, of the listed corporation because of the report submitted by any of such persons.

- (2) No chief executive, officer responsible for preparing or approving financial statements or financial information, internal auditor or a secretary of a listed corporation shall be liable to be sued in any court for any report submitted by such person in good faith and in the intended performance of his duties.
- (3) For the purposes of this section, "secretary" means a person who is referred to in section 139 of the Companies Act 1965.

[Ins. Act A1218:s.42]

100. Power of court to make certain orders.

(1) Where—

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

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

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

[Am. Act A1040:s.11; Subs. Act A1218:s.43]

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

- (i) any person has contravened a relevant requirement; or
- (ii) any person has contravened a relevant requirement and that there are steps which could be taken for remedying the contravention or mitigating the effect of such contravention; or

[Am. Act A1040:s.11; Subs. Act A1218:s.43]

(c) on an application by any person aggrieved by an alleged contravention by another person of a relevant requirement, it appears to the High Court that—

- (i) the other person has contravened the relevant requirement; and
- (ii) the applicant is aggrieved by the contravention,

[Am. Act A1040:s.11; Subs. Act A1218:s.43]

the High Court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders:

(aa) an order restraining the contravention;

[Am. Act A1040:s.11; Subs. Act A1218:s.43]

(bb) an order restraining the person from acquiring, disposing of or otherwise dealing with, assets which the High Court is satisfied such person is reasonably likely to dispose of or otherwise deal with;

[Subs. Act A1218:s.43]

(cc) an order directing a person to dispose of any securities that are specified in the order;

(dd) an order restraining the exercise of any voting or other rights attached to any securities that are specified in the order;

(ee) an order restraining a person from making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase, or allotting any securities that are specified in the order;

- (ff) an order appointing a receiver of the property of a dealer or a fund manager or of property that is held by a dealer or a fund manager for or on behalf of another person whether on trust or otherwise;
  - (gg) an order vesting securities that are specified in the order in the Commission or a trustee appointed by the High Court;
  - (hh) an order declaring the whole or any part of a contract relating to securities, including a contract for the acquisition or disposal of securities, to be void, and if the High Court thinks fit, to have been void ab initio or at all times on or after a specified date before the order is made;
  - (ii) 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 a relevant requirement, an order requiring such person to do such act or thing;  
[Am. Act A1218:s.43]
  - (jj) in a case of a contravention by a person of the rules of a stock exchange or the rules of a recognized clearing house, an order giving directions concerning compliance with or enforcement of those rules to—  
[Am. Act A1218:s.43]
    - (i) the person; and
    - (ii) if the person is a body corporate, the directors of the body corporate;
  - (kk) in a case where the person is a director, an order removing him from office and that he be barred from becoming a director of any other public company for such period of time as may be determined by the High Court;  
[Am. Act A1040:s.11]
  - (kka) an order requiring that person, or any other person who appears to have been knowingly involved in the contravention to take such steps as the High Court may direct to remedy it or to mitigate its effect including making restitution to any other person aggrieved by such contravention;  
[Ins. Act A1218:s.43]
  - (ll) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; and
  - (mm) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.  
[Am. Act A1017:s.38]
- (2) The High Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
- (2A) Where an application is made to the High Court for an order under paragraph (1)(ii), 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 subsection (1) is made by the Commission or any person duly authorised by the Commission or a stock exchange, or a recognized clearing house, 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, stock exchange or recognized clearing house.
- [Am. Act A1017:s.38; Act A1040:s.11]
- (3) A person appointed by order of the High Court under subsection (1) as a receiver of the property of a dealer or a fund manager—
- (a) may require the dealer or the fund manager, as the case may be, to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;
  - (b) may acquire and take possession of any property of which he has been appointed receiver;
  - (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the dealer might lawfully have dealt with the property; and
  - (d) has such other powers in respect of the property as the High Court specifies in the order.
- (4) In paragraph (1)(ff) and subsection (3), “property”, in relation to a dealer or a fund manager, includes monies, securities, and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with the business of the dealer or the fund manager.
- (4A) The Commission or a trustee appointed by an order of the High Court under paragraph (1)(gg)—
- (a) may require any person to deliver to the Commission or trustee any securities specified in the order or to give to the Commission or trustee all information concerning the securities that may reasonably be required;
  - (b) may acquire and take possession of the securities;
  - (c) may deal with the securities in any manner as it deems fit; and
  - (d) shall have such other powers in respect of the securities as may be specified by the High Court in the order.
- (4B) The proceeds of the dealing in or disposal of securities under paragraph (1)(gg) shall be paid into the High Court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within 30 days of such payment into the High Court, apply to the High Court for payment out of the proceeds to him.

[Am. Act A1017:s.38]

- (5) A person who contravenes or fails to comply with—
- (a) an order under subsection (1) that is applicable to him;
  - (b) a requirement of a receiver appointed by order of the High Court under subsection (1);  
or
  - (c) a requirement of the Commission or trustee appointed by order of the High Court under paragraph (1)(gg),

commits an offence and is liable on conviction to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 10 years or to both.

[Am. Act A847:s37]

- (6) Subsection (5) does not affect the powers of the High Court in relation to the punishment of contempt of court.
- (7) The High Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.
- (8) For the purposes of this section, “relevant requirement”—

- (a) in relation to an application by the Commission under this section, means a requirement—
  - (i) which is imposed by or under this Act or any securities laws;
  - (ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws;
  - (iii) which is imposed by or under the rules of a stock exchange or a recognized clearing house; or

[Ins. Act A1218:s.43]

- (iv) which is imposed by or under any other law and the contravention of which constitutes an offence which the Commission has the power to prosecute with the consent in writing of the Public Prosecutor;
- (b) in relation to an application by the exchange holding company, a stock exchange or a recognized clearing house, means a requirement which is imposed by or under the rules of the stock exchange or recognized clearing house, as the case may be; and
- (c) in relation to an application by the aggrieved person, means a requirement—
  - (i) which is imposed by or under this Act;
  - (ii) which is imposed as a condition or restriction of any approval or licence that is given or issued under or pursuant to this Act or any securities laws; or
  - (iii) which is imposed by or under the rules of a stock exchange or a recognized clearing house.

[Ins. Act A1218:s.43]



- (9) An application made pursuant to this section shall not prejudice any other action that may be taken by the Commission, exchange holding company, stock exchange, recognized clearing house or aggrieved person, as the case may be, under any securities laws or any other law or rules.

[Ins. Act A1218:s.43]

#### 100A. Application for winding up.

- (1) Notwithstanding the provisions of the Companies Act 1965, if a person referred to in subsection 100(1) is a company, whether or not the company is being wound up voluntarily, the person may be wound up under an order of the Court on the petition of the Commission, a stock exchange or a recognized clearing house, in accordance with the provisions of the Companies Act 1965.
- (2) The Court may order the winding up on a petition made under subsection (1) if the person referred to in subsection 100(1)–
- (a) has held a licence under this Act, and that licence has been revoked or surrendered; or
- (b) has contravened any rules of the stock exchange or rules of the recognized clearing house or has contravened a provision of a securities law, whether or not that person has been charged with an offence in respect of the contravention, or whether or not the contravention has been approved in prosecution.

[Ins. Act A1040:s.12; Am. Act A1218:s.44]

### PART XA

#### MODIFICATIONS TO THE LAW OF INSOLVENCY AND MISCELLANEOUS PROVISIONS RELATING TO THE OPERATIONS AND PROCEDURES OF THE RECOGNIZED CLEARING HOUSE

#### 101. Interpretation.

- (1) In this Part, unless the context otherwise requires–
- (a) “charge” means any form of security, including a mortgage;
- (b) “market charge” means a charge, whether fixed or floating, granted in favour of a recognized clearing house over any property as specified in the rules of the recognized clearing house;
- (c) “default rules”, in relation to a recognized clearing house, means such rules of the recognized clearing house which provide for the taking of default proceedings if a participant has failed, or appears 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;
- (d) “market collateral” means any property specified in the rules of a recognized clearing house held by or deposited with a recognized clearing house for the purpose of

securing liabilities arising directly in connection with the recognized clearing house ensuring the performance or settlement of one or more market contracts;

- (e) “market contract” means—
  - (i) a contract which is subject to the rules of a recognized clearing house and entered into by the recognized clearing house with a participant pursuant to a novation for the purpose of the clearing and settlement of transactions in securities effected on, or subject to the rules of, the stock exchange; or
  - (ii) a contract entered into by a participating organization of the stock exchange on, or subject to the rules of, the stock exchange, which is, or is to be, settled by the recognized clearing house;
- (f) “defaulter” means a participant who is the subject of any default proceedings;
- (g) “relevant office-holder” means—
  - (i) the Official Assignee appointed under section 70 of the Bankruptcy Act 1967 [Act 360];
  - (ii) any person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;
  - (iii) any person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property;
  - (v) any person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person; or
  - (vi) a Special Administrator appointed under the Pengurusan Danaharta Nasional Berhad Act 1998 [Act 587];
- (h) “default proceedings” means any proceedings or other action taken by a recognized clearing house under its default rules.

(2) Where—

- (a) charge is granted partly for the purpose specified in the definition of “market charge” and partly for other purposes, the charge is a “market charge” insofar as it has effect for the specified purposes of securing liabilities arising directly in connection with the recognized clearing house ensuring the performance or settlement of one or more market contracts;
- (b) collateral is provided partly for the purpose specified in the definition of “market collateral” and partly for other purposes, the collateral is a “market collateral” insofar as it has been provided for the specified purposes of securing liabilities arising directly in connection with the recognized clearing house ensuring the performance or settlement of one or more market contracts.

[Ins. Act A1218:s.45]

## 102. Default rules

- (1) A recognized clearing house shall have default rules which provide for the taking of proceedings or other action in the event of a participant appearing to be unable, or likely to

become unable, to meet its obligations in respect of all market contracts due for settlement to which it is a party.

- (2) Where a recognized clearing house takes any default proceedings, all subsequent proceedings or other action taken under its rules for the purposes of the settlement of market contracts of which the defaulter concerned is a party shall be treated as done under the default rules of the recognized clearing house notwithstanding that, but for this subsection, such proceedings or other action would not be treated as done under the default rules of the recognized clearing house.

[Ins. Act A1218:s.45]

#### 103. Proceedings of recognized clearing house to take precedence over law of insolvency.

- (1) None of the following shall be regarded to any extent as invalid on the ground of inconsistency with the provisions relating to the distribution of the assets of a person under the laws of insolvency, or on the appointment of a relevant office-holder over any of the assets of a person:
  - (a) a market contract;
  - (b) the rules of a recognized clearing house relating to the settlement of a market contract;
  - (c) any proceedings or other action taken under the rules of a recognized clearing house relating to the settlement of a market contract;
  - (d) a market charge;
  - (e) the default rules of a recognized clearing house; or
  - (f) any default proceedings.
- (2) Subject to subsection (3), the powers of a relevant office-holder in his capacity as such, and the powers of a court under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with—
  - (a) the settlement of a market contract in accordance with the rules of a recognized clearing house; or
  - (b) any default proceedings.
- (3) Subsection (2) shall not operate to prevent a relevant office-holder from seeking to recover any amount referred to under subsection 109(1).

[Ins. Act A1218:s.45]

#### 104. Supplementary provisions as to default proceedings.

- (1) A court may on an application by a relevant office-holder make such order as it deems fit altering or dispensing from compliance with such of the functions of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken and, accordingly, such functions of the relevant office-holder shall be construed subject to such order.
- (2) Nothing in—

- (a) section 8, 10 or 18 of the Bankruptcy Act 1967; or
  - (b) section 176, 222, 224 or 226 of the Companies Act 1965,
- shall prevent or interfere with any default proceedings.

[Ins. Act A1218:s.45]

105. Duty to report on completion of default proceedings.

- (1) A recognized clearing house shall, upon the completion of any default proceedings, make a report on such default proceedings stating in respect of each defaulter—
  - (a) the net sum, if any, certified by the recognized clearing house to be payable by or to the defaulter; or
  - (b) the fact that no sum is so payable,as the case may be, and the recognized clearing house may include in that report such other particulars in respect of such default proceedings as it thinks fit.
- (2) A recognized clearing house, which has made a report pursuant to subsection (1), shall supply the report to—
  - (a) the Commission;
  - (b) any relevant office-holder acting for—
    - (i) the defaulter to whom the report relates; or
    - (ii) that defaulter's estate;
  - (c) if there is no relevant office-holder referred to in paragraph (b), the defaulter to whom the report relates; and
  - (d) such other person as the Commission deems fit.
- (3) Where a recognized clearing house has made a report pursuant to subsection (1), it may publish notice of that fact in such a manner as it thinks appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.
- (4) Where a relevant office-holder or defaulter receives a report pursuant to subsection (2), he shall, at the request of a creditor of the defaulter to whom the report relates—
  - (a) make the report available for inspection by the creditor; and
  - (b) on payment of such reasonable fee as the relevant office-holder or defaulter, as the case may be, determines, supply to the creditor all or any part of that report.
- (5) In subsections (2), (3) and (4), “report” includes a copy of a report.

[Ins. Act A1218:s.45]

106. Net sum payable on completion of default proceedings.

- (1) This section shall apply with respect to any net sum certified under subsection 105(1) by a recognized clearing house, upon the completion by it of any default proceedings, to be

payable by or to a defaulter.

- (2) Where a receiving or winding-up order has been made, or a resolution for voluntary winding-up has been passed, any net sum shall, notwithstanding any of the provisions of section 40 or 41 of the Bankruptcy Act 1967 or section 291 of the Companies Act 1965, be—
  - (a) provable in the bankruptcy of a defaulter or winding up or, as the case may be, payable to the relevant office-holder; and
  - (b) taken into account, where appropriate, under section 41 of the Bankruptcy Act 1967 or that section as applied in the case of a winding-up order under the Companies Act 1965.

[Ins. Act A1218:s.45]

#### 107. Disclaimer of property, rescission of contracts, etc.

- (1) Neither section 59 of the Bankruptcy Act 1967 nor subsection 296(1) of the Companies Act 1965 shall apply in relation to—
  - (a) a market contract;
  - (b) a contract effected by a recognized clearing house for the purposes of realising property provided as market collateral;
  - (c) a market charge; or
  - (d) any default proceedings.
- (2) Neither section 47 of the Bankruptcy Act 1967 nor section 223 of the Companies Act 1965 shall apply in relation to any act, matter or thing which has been done pursuant to—
  - (a) a market contract;
  - (b) a disposition of property pursuant to a market contract;
  - (c) the provision of market collateral;
  - (d) a contract effected by a recognized clearing house for the purpose of realising property provided as market collateral;
  - (e) a disposition of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;
  - (f) a market charge;
  - (g) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
  - (h) a disposition of property made in enforcing a market charge; or
  - (i) any default proceedings.

[Ins. Act A1218:s.45]

#### 108. Adjustment to prior transactions.

- (1) No order shall be made pursuant to—
  - (a) sections 53, 53A and 54 of the Bankruptcy Act 1967; or
  - (b) sections 293 and 304 of the Companies Act 1965,in relation to any matter under subsection (2).
- (2) The matters to which subsection (1) apply are—
  - (a) a market contract;
  - (b) a disposition of property pursuant to a market contract;
  - (c) the provision of market collateral;
  - (d) a contract effected by a recognized clearing house for purposes of realising property provided as market collateral;
  - (e) a disposition of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;
  - (f) a market charge; and
  - (g) any default proceedings.

[Ins. Act A1218:s.45]

109. Right of relevant office-holder to recover certain amounts arising from certain transactions.

- (1) If a participant (“the first participant”) sells securities at an overvalue to, or purchases securities at an undervalue from, another participant (“the second participant”) in circumstances as described in subsection (3), and thereafter a relevant office-holder acts for—
  - (a) the second participant;
  - (b) the principal of the second participant in the sale or purchase; or
  - (c) the estate of the second participant or of the person referred to in paragraph (b),then, unless a court otherwise orders, the relevant office-holder may recover, from the first participant, or the principal of the first participant, an amount equal to the identified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.
- (2) The amount equal to the identified gain is recoverable even if the sale or purchase may have been discharged according to the rules of a recognized clearing house and replaced by a market contract.
- (3) The circumstances referred to in subsection (1) for a sale or purchase shall be when—
  - (a) an identified event has occurred in relation to the second participant or the principal of the second participant; and

- (b) either—
  - (i) the first participant knew, or ought reasonably to have known that an identified event was likely to occur in relation to the second participant or the principal of the second participant; or
  - (ii) the principal of the first participant knew or ought reasonably to have known that an identified event was likely to occur to the second participant or the principal of the second participant,

and the identified event occurs within the period of six months immediately following the date on which the sale or purchase was entered into.

(4) In this section—

- (a) “identified event”, in relation to a second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means—
  - (i) an act of bankruptcy committed by the second participant or the principal of the second participant, as the case may be;
  - (ii) the making of a statutory declaration in respect of the second participant or the principal of the second participant, as the case may be, pursuant to section 255 of the Companies Act 1965;
  - (iii) a meeting of creditors summoned in relation to the second participant or the principal of the second participant, as the case may be, pursuant to section 260 of the Companies Act 1965; or
  - (iv) the presentation of a petition for the winding up of the second participant or the principal of the second participant, as the case may be, by a court;
- (b) “identified gain”, in relation to a sale or purchase referred to in subsection (1), means the difference between—
  - (i) the market value of the securities which is the subject of the sale or purchase; and
  - (ii) the value of the consideration for the sale or purchase,

as at the time the sale or purchase was entered into.

[Ins. Act A1218:s.45]

## 110. Law of insolvency in other jurisdictions.

- (1) A court shall not, pursuant to any enactment or rule of law, recognise or give effect to—
  - (a) any order of a court exercising jurisdiction in relation to the law of insolvency in a place outside Malaysia; or
  - (b) any act of a person appointed in such a place to perform any function under the law of insolvency in such place,

insofar as the making of the order or the doing of the act would be prohibited in the case of a

court in Malaysia or a relevant office-holder by provisions made by or under this Act.

- (2) In this section, "law of insolvency" in relation to a place outside Malaysia means any law of such place which is similar to, or serves the same purposes as, all or any part of the law of insolvency in Malaysia.

[Ins. Act A1218:s.45]

111. Participant to be a party to certain transactions as principal.

- (1) Where—

(a) a participant in his capacity as such enters into any transaction (including a market contract) with a recognized clearing house; and

(b) but for this subsection, the participant would be a party to that transaction as agent,

then, notwithstanding any provision under any law, as between, but only as between, the recognized clearing house and any other person (including the participant and the person who is his principal in respect of that transaction), the participant shall for all purposes (including any civil action, claim or demand)—

(aa) be deemed not to be a party to that transaction as agent; and

(bb) be deemed to be a party to that transaction as principal.

- (2) Where—

(a) two or more participants in their capacities as such enter into any transaction; and

(b) but for this subsection, any such participant would be a party to that transaction as agent,

then, notwithstanding any provision under any law, any such participant to whom paragraph (b) applies shall for all purposes (including any civil action, claim or demand), except as between, but only as between, him and the person who is his principal in respect of the transaction—

(aa) be deemed not to be a party to that transaction as agent; and

(bb) be deemed to be a party to that transaction as principal.

[Ins. Act A1218:s.45]

112. Securities delivered to a recognized clearing house.

Where securities are delivered in settlement of a market contract or provided as market collateral or under a market charge—

(a) to a recognized clearing house;

(b) by a participant; and

(c) in accordance with the rules of the recognized clearing house,

then, notwithstanding any provision under any law, no civil action, claim or demand, in respect of any right, title or interest in those securities held or enjoyed by any person lies, or shall be



commenced or allowed, against the recognized clearing house.

[Ins. Act A1218:s.45]

#### 113. Securities transfers in settlement.

- (1) Notwithstanding any other provision of law, including the Securities Industry (Central Depositories) Act 1991, in particular section 29A of that Act, a central depository shall give effect to an instruction from a recognized clearing house to effect a transfer of securities into or out of a securities account of a depositor provided such instruction shall be for the purposes of settlement of a market contract or otherwise dealing with a market contract in accordance with the rules of the recognized clearing house.
- (2) An instruction under subsection (1) shall be given by a recognized clearing house only in relation to a securities account which relates to a depositor who is a party to a market contract or a depositor who had instructed a participant to effect a trade which results in a market contract to which the participant has become a party.
- (3) Notwithstanding any other provision of law, where any transfer of securities is effected by the central depository to or from a securities account of a depositor pursuant to subsection (1), no title in such securities shall pass to a depositor except as provided under the rules of the recognized clearing house.
- (4) Where a transfer of securities has been effected into or out of a securities account of a depositor pursuant to subsection (1), a central depository shall not be subject to any action or claim by or be liable to any damages to that depositor.
- (5) In this section, the terms “depositor” and “securities account” shall have the same meaning as in the Securities Industry (Central Depositories) Act 1991.

[Ins. Act A1218:s.45]

#### 114. Purchase and sale of securities.

- (1) A recognized clearing house may instruct any stock exchange to effect on behalf of the recognized clearing house a sale or purchase of securities, if such sale or purchase, as the case may be, is effected for the purposes of settlement of any market contract or to facilitate a default proceeding or to enable a recognized clearing house to realise any asset comprised in any market charge or provided as market collateral, and the stock exchange shall give effect to any such instruction.
- (2) Where a sale or purchase of securities has been effected on behalf of the recognized clearing house pursuant to subsection (1), the stock exchange shall not be subject to any action or claim by or be liable to any damages to any person.

[Ins. Act A1218:s.45]

#### 115. Immunity.

- (1) The functions to which this section applies are the functions of a recognized clearing house so far as relating to or arising out of—
  - (a) the default rules of the recognized clearing house; or
  - (b) any obligations to which it is subject by virtue of this Part.

- (2) A failure by a recognized clearing house to comply with its default rules in respect of any matter shall not prevent that matter from being treated for the purposes of this Act as done in accordance with those rules so long as the failure does not affect the rights of any person entitled to require compliance with those rules.
- (3) Where a relevant office-holder takes any action in respect of a defaulter which is liable to be dealt with in accordance with the default rules, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except insofar as the loss or damage, as the case may be, is caused by the office-holder's own negligence.  
[Ins. Act A1218:s.45]

116. Preservation of rights, etc.

Except as is expressly provided in this Act, the provisions of Part XA of this Act shall not operate to limit, restrict or otherwise affect—

- (a) any right, title, interest, privilege, obligation or liability of any person; or  
(b) any investigation, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation or liability.

[Ins. Act A1218:s.45]

117. Exemption from regulations on reporting of substantial shareholding and Division 3A of the Companies Act 1965.

The recognized clearing house and central depository, in carrying out its functions under this Part, shall be exempted from the requirements under the Securities Industry (Reporting of Substantial Shareholding) Regulations 1998 [P.U. (A) 174/1998] and Division 3A of the Companies Act 1965.

[Ins. Act A1218:s.45]

118–119. [Deleted]

## PART XI

### GENERAL

#### 120. Prohibition of use of certain titles.

- (1) A person who is not a participating organization shall not take or use or by inference adopt the name, title or description of "participating organization", 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 participating organization.

[Am. Act A1017:s.39; Subs. Act A1218:s.46]

- (2) Unless the Commission otherwise permits, a person who is not an exchange holding company or a stock exchange shall not take or use or by inference adopt the name, title or description of "exchange holding company", "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 an exchange holding company or stock exchange.

[Subs. Act A1218:s.46]

- (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 a dealer's licence, fund manager's licence or an investment adviser's licence shall not take or use or by inference adopt the name, title or description of "investment adviser" or "financial planner" 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" or "financial planner".

[Subs. Act A1218:s.46]

- (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", "investment representative" or "financial planner", 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, an investment representative or a financial planner, as the case may be.

[Am. Act A943:s.77; Am. Act A1218:s.46]

#### 121. Copy of an entry in the dealer's or fund manager's record as prima facie evidence of such entry.

- (1) Subject to this Act, a copy of an entry in the accounting records and other records of a dealer or a fund manager shall in all legal proceedings be received as prima facie evidence of such entry and of the matters, transactions and accounts therein recorded.
- (2) A copy of an entry in the accounting records and other records of a dealer or a fund manager shall not be received in evidence under this Act unless it first proved that the said records were, at the time of the meeting of the entry, the ordinary records of the dealer or the fund manager and that the entry was made in the usual an ordinary course of business and that the records are in the custody or control of the dealer or the fund manager.
- (3) Such proof as required under subsection (2) may be given by the dealer, fund manager or any employee, officer or representative of the dealer or the fund manager and may be given orally or by an affidavit sworn before any magistrate or person authorised to take affidavits.
- (4) A copy of an entry in the accounting records and other records of a dealer or a fund manager shall not be received in evidence under this Act unless it is further proved that the copy has been examined with the original entry and is correct.
- (5) Such proof as required under subsection (4) shall be given by a person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any magistrate or any person authorised to take affidavits.

[Am. Act A943:s.78]

#### 121A. Decision of Minister to be final.

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.

[Ins. Act A943:s.79]

#### 122. Offences by bodies of persons and by employees and agents.

- (1) Where an offence against this Act or any regulation made thereunder has been committed by a body corporate, any person who at the time of the commission of the offence was a director, a chief executive officer, an officer or a representative of the body corporate or was purporting to act in such capacity, is deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.
- (2) Where a person who is an employee of another person contravenes any provision of this Act, the person for or on behalf of whom the employee is acting shall be deemed to have contravened such provision.
- (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.

[Am. Act A1017:s.40]

- (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.
- [Am. Act A1017:s.40; Act A943:s.80]

122A. Falsification of records by directors, employees and agents.

A director, manager, officer, trustee, auditor, employee or agent of a stock exchange, recognized 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, recognized 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, recognized clearing house, dealer, fund manager or investment adviser, or wilfully causes any such entry to be omitted; or
- (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, recognized 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 RM3 million or to imprisonment for a term not exceeding 10 years or to both.

[Ins. Act A943:s.81]

122B. False reports to Commission, stock exchange or recognized clearing house.

A person who–

- (a) with intent to deceive, makes or furnishes; or
- (b) knowingly authorises or permits the making or furnishing of,

any false or misleading statement or report to the Commission, a stock exchange or a recognized clearing house relating to—

- (aa) dealings in securities;
- (bb) the affairs of a listed corporation;
- (cc) any matter or thing required by the Commission for the due administration of this Act; or
- (dd) the enforcement of the rules of a stock exchange or the rules of a recognized clearing house,

[Am. Act A1040:s.13; Am. Act A1218:s.47]

commits an offence and is liable on conviction to a fine not exceeding RM3 million or to imprisonment for a term not exceeding 10 years or to both.

[Ins. Act A943:s.81; Subs. A1017:s.41]

#### 122C. Attempts, abetments and conspiracies.

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
- (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.

[Ins. Act A943:s.81]

#### 122D. Destruction, concealment, mutilation and alteration of records.

A person who—

- (a) destroys, conceals, mutilates or alters; or
- (b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Malaysia,

any record or account required to be kept or maintained under this Act with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of any power under this Act commits an offence and is liable on conviction to a fine not exceeding RM10 million or to imprisonment for a term not exceeding 10 years or to both.

[Ins. Act A1040:s.14]

#### 123. General penalty.

- (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 RM1 million or to imprisonment for a term not exceeding five years or to both.

[Ins. Act A1040:s.15]

- (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 RM5,000 for every day or part of a day during which the offence continues after conviction.

[Subs. Act A661:s.53; Am. Act A847:s.39; Subs. Act A943:s.82]

124. Compounding of offences.

(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 III, IV, V, VI, VII, X or XI 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.

[Am. Act A1218:s.48]

(2) Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any 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.

[Am. Act A943:s.82]

125. Convicted persons liable to pay compensation.

A person who is convicted of an offence under Part IX is liable to pay such compensation as may be determined by the Court to any person who has purchased or sold any securities at a price affected by the act or transaction, the subject of the offence, for the damage suffered by him as a result of that purchase or sale.

126. Conduct of prosecution.

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

(2) Any officer authorised in writing by the Public Prosecutor, may prosecute any case in respect of any offence committed under this Act.

[Subs. Act A847:s.41]

(3) For the purpose of subsection (2), "officer" has the same meaning as is assigned to that expression in section 2 of the Securities Commission Act 1993.

[Am. Act A1017:s.42]

126A. Indemnity.

No civil liability shall be incurred by—

(a) a stock exchange, an exchange holding company, a recognized clearing house or a central depository; and

(b) any person acting on behalf of a stock exchange, an exchange holding company, a recognized clearing house or a central depository, including—

- (i) any member of the board of the stock exchange, exchange holding company, recognized clearing house, central depository or any member of any committee established by any such board;
- (ii) any officer of the stock exchange, exchange holding company, recognized clearing house or central depository; and
- (iii) any agent of, or any person acting under the direction of the stock exchange, exchange holding company, recognized clearing house, or central depository, for, on account of, or in respect of anything done, any statement made or omitted to be done or made, in connection with the discharge or performance or purported discharge or performance of any duties under the securities laws or the rules of the stock exchange, recognized clearing house and central depository or in the exercise or intended exercise of any power under the securities laws or such rules, where such act, statement or omission was done in good faith.  
[Ins. Act A661:s.55; Subs. Act A1218:s.49]

126B. [Deleted]

[Ins. Act A943:s.83; Deleted by Act A1218:s.50]

126C. Commission may be represented by any officer in civil proceedings.

- (1) Notwithstanding the provisions of any written law—
  - (a) in any civil proceedings by or against the Commission; or
  - (b) in any other civil proceedings in which the Commission is required or permitted by the court to be represented, or to be heard, or is otherwise entitled to be represented or to be heard,  
  
any officer authorised by the Commission for the purpose, may, on behalf of the Commission, institute such proceedings or appear as an advocate therein and may make all appearances and applications and do all acts in respect of such proceedings on behalf of the Commission.
- (2) For the purpose of subsection (1), “officer” has the same meaning as is assigned to that expression in section 2 of the Securities Commission Act 1993.  
[Ins. Act A1017:s.43]

127. Regulations.

- (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;
  - (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 or in relation to a sale of securities under paragraph 41(4)(e);
  - (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—
  - (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 the 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, recognized 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;
- (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 (2)(o) 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 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.

[Subs. Act A943:s.84; Am. Act A1017:s.44]

128. Provisions of Act not applicable to Pasaran Saham Bumiputra.

The provisions of this Act shall not apply to Pasaran Saham Bumiputra established or maintained by the Majlis Amanah Rakyat established under the Majlis Amanah Rakyat Act 1966 [Act 489].

## PART XII

### REPEAL AND TRANSITIONAL PROVISIONS

129. Repeal.

The Securities Industry Act 1973 [Act 112], which in this Act is referred to as the “repealed Act”, is repealed.

130. Saving.

All regulations, instructions, orders and decisions made under or in accordance with the repealed Act shall remain valid and binding and shall be deemed to have been made under the provision of this Act until they are amended or repealed or until the date upon which they expire.

131. Continuance of powers, rights, liabilities and duties of the Registrar.

Subject to the provisions of this Act, all powers, rights, privileges, duties, liabilities or obligations which immediately before the coming into operation of this Act were those of the Registrar shall, as from that day, continue to be those of the Registrar.

132. Continuance of criminal and civil proceedings in relation to the Registrar.

(1) Subject to the provisions of this Act, neither the repealed Act nor anything contained in this Act shall affect any person’s liability to be prosecuted or punished for offences committed under the repealed Act before the coming into operation of this Act, or any proceedings brought or sentence imposed before that day in respect of such offence.

(2) Subject to the provisions of this Act, any proceedings whether civil or criminal, or cause of action pending or existing immediately before the coming into operation of the Act by or against the Registrar or any person acting on behalf of the Registrar may be continued or instituted by against the Registrar as it might have been by or against the Registrar or such person if this Act had not been passed.

(3) Any appeal brought or any leave to appeal applied on or after the appointed day against a decision given in any legal proceedings before that day may be brought by or against the Registrar.

133. Continuance of other rights, liabilities, etc., under repealed Act.

Subject to the provisions of this Act, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed 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 the Act had not been made.

134. Prevention of anomalies.

If any difficulty arises with respect to the foregoing savings and transitional provisions, the Minister may by order make such modifications in those provisions as may appear to him 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.



## 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 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.

- (1) All regulations, rules, orders, directions, notifications, approvals, decisions, guidelines, actions and other executive acts made, given, taken or done under, or in accordance with, or by virtue of the principal Act before the commencement of this Act, to the extent that they are affected by this Act shall be deemed to have been made, given, taken or done under, or in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act, and shall continue to remain in full force and effect in relation to any person to whom they apply until amended, revoked, repealed or rescinded under, in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act.
- (2) Nothing in the principal Act or this Act shall affect any person's liability to be prosecuted or punished for offences committed under the principal Act before the commencement of this Act or any proceeding brought or sentence imposed before that day in respect of such offence.
- (3) Any right, privilege, obligation or liability acquired, accrued or incurred before the commencement of this Act or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall, insofar as it is not inconsistent with the provisions of this Act, continue to remain in force unless amended, revoked or rescinded under, in accordance with or pursuant to the provisions of the principal Act as amended by this Act, the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003 [Act 632] or any regulations made under the principal Act or the Demutualisation (Kuala Lumpur Stock Exchange) Act 2003, pursuant to the coming into operation of this Act.
- (4) If immediately before the commencement of this Act, a person was a member company for the purposes of the principal Act, such person shall be regarded as a participating organization for the purposes of the principal Act as amended by this Act and shall have all the rights, powers, privileges, obligations and duties of a participating organization as set out in the principal Act as amended by this Act.
- (5) If any difficulty arises with respect to the application of any one or more of the provisions introduced or amended by this Act and the savings and transitional provisions, the Minister may, by order published in the Gazette, make such modifications in any one or more of those provisions as may appear to him to be necessary to prevent anomalies.

Notes: (B) Revocation of Securities Industry (Exempt Fund Manager) Order 1997 [Act A1218].

- (1) The Securities Industry (Exempt Fund Manager) Order 1997 [P.U. (A) 36/1997] is revoked.
- (2) All persons to whom the Order referred to in subsection (1) applies shall be deemed to have been licensed as a fund manager from the date of the coming into operation of this section for a period of one year, after which Part IV of the principal Act as amended by this Act shall apply.



### Disclaimer

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